

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of Ohio Power :
Company for Authority to :
Establish a Standard Service :Case No. 13-2385-EL-SSO
Offer Pursuant to \$4928.143, :
Revised Code, in the Form of :
an Electric Security Plan. :

In the Matter of the :
Application of Ohio Power :Case No. 13-2386-EL-AAM
Company for Approval of :
Certain Accounting Authority.:

- - -

PROCEEDINGS

before The Public Utilities Commission, Mr. Thomas
W. Johnson, Chairman, Mr. Asim Z. Haque, Mr. Steven
D. Lesser, Mr. Lynn Slaby, Ms. M. Beth Trombold,
Commissioners; and Hearing Examiners Ms. Greta M. See
and Ms. Sarah J. Parrot, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-
B, Columbus, Ohio, called at 2:00 p.m. on Wednesday,
December 17, 2014.

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ARMSTRONG & OKEY, INC.
222 East Town Street, 2nd Floor
Columbus, Ohio 43215
(614) 224-9481 - (800) 223-9481
FAX - (614) 224-5724

- - -

APPEARANCES:

American Electric Power
By Mr. Steven T. Nourse
1 Riverside Plaza, 29th floor
Columbus, Ohio 43215-2373

Steptoe & Johnson, LLP,
By Mr. Lon Bouknight
1330 Connecticut Avenue, NW
Washington, D.C. 20036

On behalf of the Applicants.

Vorys, Sater, Seymour and Pease, LLP
By Ms. Gretchen L. Petrucci
52 East Gay Street
Columbus, Ohio 43216

On behalf of Retail Energy Supply
Association.

Vorys, Sater, Seymour and Pease, LLP
By Mr. Michael J. Settineri
52 East Gay Street
Columbus, Ohio 43216

On behalf of Exelon Generation Company.

FirstEnergy Service Corporation
By Mr. Mark A. Hayden
76 South Main Street
Akron, Ohio 44308

Latham & Watkins, LLP
By Mr. David L. Schwartz
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004-1304

On behalf of FirstEnergy Solutions Corp.

Carpenter, Lipps & Leland, LLP
By Ms. Kimberly W. Bojko
280 North High Street, Suite 1300
Columbus, Ohio 43215

On behalf of Ohio Manufacturers
Association.

APPEARANCES: (Continued)

Boehm,, Kurtz & Lowry
By Mr. Michael L. Kurtz
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

On behalf of the Ohio Energy Group.

Bruce J. Weston, Ohio Consumers' Counsel
By Ms. Maureen R. Grady
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

On behalf of the Residential Ratepayers
of Ohio Power Company.

McNees, Wallace & Nurick, LLC
By Mr. Frank P. Darr
Fifth Third Center, Suite 1700
21 East State Street
Columbus, Ohio 43215-4288

On behalf of the Industrial Energy
Users - Ohio.

Ohio Environmental Council
By Ms. Madeline Fleisher
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43215-3449

On behalf of Ohio Environmental Council.

Taft Stettinius & Hollister, LLP
By Mr. Mark S. Yurick
65 East State Street, Suite 1000
Columbus, Ohio 43215

On behalf of Kroger Company.

Ohio Poverty Law Center
By Mr. Michael R. Smalz
555 Buttles Avenue
Columbus, Ohio 43215-1137

On behalf of Appalachian Peace and
Justice Network.

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Wednesday Afternoon Session,
December 17, 2014.

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EXAMINER SEE: Good afternoon. Let's go
on the record.

Scheduled for oral argument today by the
Chair and Commissioners of the Public Utilities
Commission of Ohio are Case Nos. 13-2385-EL-SSO and
13-2386-EL-AAM, being In the Matter of the
Application of the Ohio Power Company for Authority
to Establish a Standard Service Offer pursuant to
Section 4828.143 of the Revised Code in the Form of
an Electric Security Plan and for Approval of Certain
Accounting Authority.

My name is Greta See. Beside me to my
right is Sarah Parrot. Ms. Parrot and I are the
attorney examiners in the legal department, and we
have been assigned by the Commission to these cases.
Today's session will be presided over by Chairman
Johnson.

The Commission would like to thank the
members of the public who are present here to observe
the oral arguments. Although no public comments will
be taken today, five public hearings were held in
this case and public comments can be filed in the

1 case.

2 This afternoon's oral arguments will be
3 conducted in accordance with the Commission entry
4 that was issued on December 3, 2014. As was stated
5 in the entry, only parties that filed a post-hearing
6 brief will be permitted to make the presentation.

7 The purpose of today's session is to hear
8 arguments related to AEP Ohio's proposed Power
9 Purchase Agreement. AEP Ohio will have ten minutes
10 for their presentation, while the intervenors will
11 have five minutes for their presentations. The
12 Commission will call the intervenors that have
13 coordinated their presentations by the order
14 requested by those intervenors. AEP Ohio will be
15 provided ten minutes for rebuttal.

16 Any party called on this afternoon shall
17 approach the podium to address the Commission.
18 Counsel should speak clearly into the microphone so
19 his or her voice will be audible to the Commissioners
20 as well as our court reporter and those viewing the
21 webcast on the Commission's website. Although we
22 intend to provide each party with an opportunity to
23 present its argument, due to time limitations, there
24 is no guarantee that all parties in attendance will
25 be called on to present arguments; however, all

1 post-hearing briefs that have been filed will be
2 considered by the Commission.

3 As parties respond to the Commissioners'
4 questions, we ask counsel to be mindful of the
5 limited time constraints and answer the questions
6 directly with a yes or no, if appropriate, before
7 providing context to the answer.

8 If counsel does not know the answer or
9 has not presented a position on the issue, the
10 Commission appreciates an honest response. Counsel
11 should avoid making assertions that are not in the
12 record. Any statements not based upon the record
13 will be disregarded by the Commission.

14 In presenting arguments, counsel should
15 assume that all of the Commissioners have read the
16 post-hearing briefs and should avoid reciting the
17 facts or the procedural background of these
18 proceedings before beginning arguments.

19 Arguments presented by counsel must be
20 focused on the issue the Commission has agreed to
21 review, and parties will be precluded from deviating
22 beyond the narrow issue before the Commission.

23 Counsel will receive a warning from the
24 legal director or attorney-examiners if they proceed
25 beyond the scope of these oral arguments or if they

1 are running short on time.

2 AEP Ohio, the podium is yours.

3 MR. NOURSE: Thank you, your Honor. I'd
4 first like to thank the Commission for granting the
5 oral argument request so we can have a direct
6 dialogue with you today about our Power Purchase
7 Agreement Rider proposal, which I'll refer to as the
8 PPA Rider. I am also splitting time with co-counsel,
9 Lon Bouknight From Steptoe & Johnson, AEP's outside
10 FERC counsel.

11 But first I'd like to address two main
12 issues to the Commission supporting our proposal.
13 First, I'd like to discuss how the PPA Rider advances
14 and supports Ohio energy policy; and, secondly, I'd
15 like to address some practical questions or issues
16 about how the Commission will be reviewing costs and
17 making prudence determinations throughout the term of
18 the PPA.

19 So first, with regard to Ohio energy
20 policy, we would submit that this is an important
21 crossroads for Ohio energy policy. Some parties will
22 be advocating that the Commission take a hard turn
23 and rely fully on the federal PJM, the federal
24 regulated system, and some parties will also
25 characterize our proposal as doing a U-turn, heading

back toward re-regulation.

We would submit that upon close examination it becomes clear that the PPA Rider is asking the Commission to proceed directly forward down the same path that the Commission has been on since electric restructuring began in 1999. More recently, since the enactment of Senate Bill 221, there have been two options. There is the market rate option and an electric security plan option, and the Commission has made it clear in multiple cases that the ESP option is the preferred option.

And I think there's a good reason for that, and that's because the Commission retains flexibility and some regulatory oversight in the context of an ESP, certainly more so than the MRO, which is a one-time decision and it's an irretrievable path.

So the ESP inherently involves regulatory oversight and Commission flexibility, and if the ESPs in the future are just going to be market-rate offers and calling them ESPs, then it doesn't really leave the Commission much flexibility.

So with that in mind, I'd like to address what I call the three-legged stool of policy that supports the PPA Rider.

1 The first leg of the policy is rates
2 stability. And the PPA Rider -- this is the primary
3 purpose and intent of the PPA Rider. It provides
4 stability for all customers, shopping and nonshopping
5 alike. We have shown in the evidence that there's a
6 projected net credit during the term of the ESP for
7 the OVEC component and certainly during the full term
8 of the OVEC contract.

9 And the ESP statute, in particular
10 division (B)(2)(d), clearly allows the Commission to
11 establish a stability rider, and that's what the
12 Commission did in our ESP II proceeding, and it's
13 something that the Commission continues to defend at
14 the Supreme Court, and it's something that I think is
15 clearly permissible.

16 The second leg of the policy that's
17 advanced by the PPA Rider is to preserve and advance
18 competition. Our proposal leaves retail choice
19 completely in place. All the customers have the
20 right to choose competitive generation service from
21 their CRES provider of choice.

22 It also leaves in place competitive SSO
23 auction procurement. One hundred percent of AEP
24 Ohio's capacity and energy that's used for
25 nonshopping customers will be procured through a

1 competitive auction.

2 And another important feature that
3 promotes competition is what we call the safety net,
4 and the safety net has three layers to it. Number
5 one, it enhances the retail shopping experience. It
6 provides customers with the confidence that they have
7 a cost-based hedge to fall back on, and through that
8 rate stability, it makes the shopping experience
9 easier, less uncertain.

10 The second layer of the safety net is
11 that it actually helps the market because retaining
12 existing generation supply stabilizes the wholesale
13 market, promoting fuel diversity through retention of
14 the existing fossil plants. And, by the way, those
15 two things, fuel diversity and supply, avoiding
16 premature retirement, are something that the
17 Commission itself has voiced in its comments to PJM
18 and to FERC recently.

19 We introduced this at the hearing, AEP
20 Exhibit 26. The Commission expressed concern about
21 PJM price suppression leading to uneconomic and
22 premature unit retirements. The Commission also
23 expressed concern saying we cannot afford to forget
24 about protecting our coal units that help in hedging
25 against unforeseen natural gas curtailments. This

1 layer says that keeping the PPA Rider in play will
2 help the market.

3 The third layer, I would submit, of the
4 safety net is that it helps -- you know, volatility
5 is the enemy of retail choice. I think that the more
6 volatility that's experienced, the more -- you know,
7 the more customers that are affected adversely by
8 that and businesses, the more pressure there will be
9 to do something more extreme or urgent by the public
10 policymakers, the legislators, political pressure.
11 So this PPA Rider helps preserve retail choice in the
12 long run by injecting stability.

13 The third leg of policy that supports the
14 PPA Rider is economic development. And while the
15 OVEC piece or the OVEC component of the PPA Rider is
16 not as tied to economic development in the sense that
17 AEP Ohio is a minority owner and so their decisions
18 won't drive whether those plants stay open or closed,
19 certainly the affiliate PPA Rider, which we talked
20 about in this case, which we filed in a separate
21 case, we would like the opportunity to present the
22 economic impact study that we've done in that case
23 and presented in our filing.

24 The Commission, I think, has seen
25 recently how the closure of a plant, like Muskingum

1 River 5, can affect a local economy and how adverse
2 impacts occur, significant adverse impacts can occur.
3 So we also believe under the subject of economic
4 development that new load and new business, as well
5 as job retention in Ohio, business customers,
6 industrial customers are attracted by rate stability.
7 They're not attracted by rate volatility. So even
8 with the shale gas development, stable rates are
9 going to help that industry continue to develop in
10 Ohio.

11 So those are my policy arguments. The
12 second bucket of issues that I wanted to address was
13 the practical questions about the Commission's review
14 of costs, and there's two aspects of this. As with
15 many purchase power agreements or many contracts that
16 the Commission reviews and permits costs through
17 retail rates, there's kind of two aspects to it. One
18 is the up-front review. So whether it is a fuel
19 contract, whether it's a renewable energy or another
20 contract, once you accept it, then a deal is a deal.
21 And the second aspect is simply ongoing costs which
22 the Commission will review for retail recovery.

23 I'd like to defer any time I have left to
24 Mr. Bouknight.

25 MR. BOUKNIGHT: Good afternoon, and thank

1 you very much for permitting me to appear before you
2 today.

3 Some parties have suggested that if the
4 Commission were to grant the relief requested here,
5 that determination might be vulnerable to federal
6 preemptive challenge. They base that on two cases
7 coming out of Maryland and New Jersey, the Nazarian
8 and Hanna decisions.

9 Now, in those cases what happened was
10 that the states adopted contracts that required
11 people to build new generating units, bid them into
12 the PJM capacity markets and clear that market. The
13 contracts then provided that they would be paid an
14 amount of money in addition to the proceeds of the
15 capacity market. The contracts were structured as
16 contracts for differences and not power sales
17 agreements.

18 The courts found what was really going on
19 here was a substitution of a state-determined price
20 for a federally determined price, and that intruded
21 on FERC jurisdiction.

22 May I take one more minute to make two
23 brief points?

24 CHAIRMAN JOHNSON: You can have one more
25 minute.

1 MR. NOURSE: Thank you very much.

2 My two briefs points would be as follows.
3 Here you're asked to pass on retail treatment, not
4 wholesale treatment. Generally states have done this
5 throughout the country without any preemption
6 challenge in the vast majority of cases.

7 Secondly, in this case you don't have any
8 substitution of a state-determined wholesale price
9 for a federally determined price. The generators
10 will not be selling into the federal market, and what
11 they're being paid is not related in any respect to
12 the price in the federal market.

13 Finally, these contracts are power sales
14 contracts and not contracts for differences. The
15 OVEC contract has been on file with FERC for many
16 years. Any additional contract would also be subject
17 to FERC jurisdiction. It's very hard to conceive of
18 a court finding that a contract subject to FERC
19 oversight intrudes upon FERC's jurisdiction.

20 Thank you very much.

21 CHAIRMAN JOHNSON: Thank you.

22 We will now have some questions from the
23 Commissioners.

24 My question is if the General Assembly
25 had intended the Commission to approve PPAs, wouldn't

1 they have provided the Commission with clear
2 authority or clear language, like they did for
3 building new generation?

4 MR. NOURSE: Your Honor, there are
5 multiple parts, as you know, of the ESP statute.
6 There is a (B) (2) (a) that does make reference to
7 affiliate purchase power agreements.

8 Now, I grant you that that's not the
9 focus of what we're proposing. I think what we're
10 proposing because we're liquidating all the power
11 into the market and giving the customer the benefit
12 of the cost-based hedge, which we project to be a
13 credit during the period, during the short period and
14 the long period, that it fits squarely within
15 (B) (2) (d) .

16 There is the ability under (B) (2) (d) to
17 adopt a stability rider, and that is what the
18 Commission did in our last ESP with the Retail
19 Stability Rider, and I think it's quantitatively and
20 qualitatively the same thing here.

21 CHAIRMAN JOHNSON: Mr. Haque.

22 COMMISSIONER HAQUE: Thank you,
23 Mr. Chairman.

24 Mr. Nourse, good afternoon.

25 MR. NOURSE: Good afternoon.

1 COMMISSIONER HAQUE: I'd like to spend a
2 little bit of time on the legal authority associated
3 with the PPA Rider. I'd like to begin with
4 4928.143(B) (2) (d), which you've referenced already.
5 Specifically, I'd like for you to comment on the
6 concept of this PPA Rider being related to Default
7 Service.

8 So within the confines of the statute,
9 we've these, I'll call them, factors or components
10 that have to be fulfilled. One of these factors or
11 components are these sort of eight or so potential
12 items that the charge in this case, the PPA Rider,
13 needs to relate to.

14 Specifically with respect to Default
15 Service, AEP Ohio in its briefing spends a lot of
16 time classifying this as a generation charge but
17 doesn't spend a lot of time discussing how
18 specifically this relates to Default Service, so if
19 you could just provide some commentary on that
20 particular issue.

21 MR. NOURSE: Yes. So the statute that
22 you reference authorizes "Terms, conditions, or
23 charges relating to limitations on customer shopping
24 for retail electric generation service," and goes on
25 to include other categories, including Default

1 Service.

2 So I think what we tried to argue and
3 present on brief was that there are the two,
4 especially the two, categories there. The first
5 category has a limitation on shopping in the
6 technical sense. You know, again, as we've laid out,
7 we think it's very pro competitive and fully reserves
8 shopping, but in the sense that we, the electric
9 distribution utility, are providing this generation
10 service and this financial hedge, that it does -- in
11 that sense it is a layer or a limitation on shopping
12 because it would be applied to all customers, and
13 that's -- actually, OEG Witness Taylor in his
14 testimony kind of talked about it in that vein.

15 COMMISSIONER HAQUE: Since I didn't ask
16 about that particular component, I just want to
17 interrupt you real quickly about the limitation on
18 shopping. Mr. Allen, I believe, testifies that this
19 is not a limitation on shopping, does he not?

20 MR. BOUKNIGHT: Well, again, that's what
21 I just said. It's not limiting retail choice, but in
22 the sense that it's being provided to all customers,
23 including shopping customers, it's a service that's
24 being provided to everyone, and that's why we are
25 asking that everyone pay it, and in that sense it is

1 a limitation on shopping under the purpose of this --
2 under the language of the statute.

3 With respect to your -- as I was saying,
4 we have two arguments. That was one of them. The
5 Default Service, again, if you view Default Service
6 narrowly as being only nonshopping -- I gather that's
7 what your question is suggesting. But I would
8 disagree. I think Default Service is more broad than
9 that, and it relates to the EDU's Standard Service
10 Offer, which is what the ESP statute encompasses.

11 So I think, just as the Commission did in
12 ESP II in using this statute, the same provision
13 (B) (2) (d), in adopting the Retail Stability Rider,
14 which is a nonbypassable stability charge, or
15 stability rider, and in the same way applied to all
16 customers, the Commission found that the context of
17 the ESP II was promoting competition and served the
18 benefits of all customers and, therefore, as a
19 package this was part of the price tag that all
20 customers would pay.

21 COMMISSIONER HAQUE: Okay. But help me
22 understand what the specific argument is. The
23 specific argument that the PPA Rider is collectible
24 from default customers, that is the argument that
25 this relates to Default Service? Because I believe

1 you said in your opening statement that this should
2 not impact auctions --

3 MR. NOURSE: Right.

4 COMMISSIONER HAQUE: -- and SSO
5 customers, right?

6 MR. NOURSE: It doesn't impact -- the
7 fact that there's 100 percent competitive
8 procurement, it doesn't affect the customers'
9 individual choice to shop, receive generation service
10 from a CRES provider. But what it does say is that
11 as a Default Service, all customers would receive
12 this financial hedge, so whether or not you're
13 shopping you get the financial hedge service and you
14 pay for it.

15 And that's where I disagree if you're
16 saying Default Service only means nonshopping. I
17 don't think that's the context of the statute. I
18 don't think that's how the Commission used it in the
19 ESP II.

20 COMMISSIONER HAQUE: Are you saying,
21 then, it pertains more to the full-on distribution
22 customers, or are you still saying --

23 MR. NOURSE: No.

24 COMMISSIONER HAQUE: -- generation
25 service?

1 MR. NOURSE: It's a generation service.
2 It's a generation service. But, again, an EDU has a
3 unique role, and under Senate Bill 221, it's not just
4 a market-rate option where you have to shop for all
5 your generation. The ESP gives the Commission
6 flexibility and options to deal with these kinds of
7 things, and I would submit that rate stability is a
8 key factor that can and should be considered.

9 COMMISSIONER HAQUE: Okay. Let me move
10 on to the concept of rate stability. I have a hard
11 time grasping just mentally this concept of rate
12 stability and this rider providing stability to
13 consumers, because in my mind the rider works as
14 follows. So a cost is set for OVEC, okay? There are
15 essentially market predictions that AEP Ohio would
16 make for how the market will operate over a period of
17 time. Then based upon that market prediction, there
18 is either a credit or a charge to consumers, and then
19 you eventually true that up with actual costs,
20 whenever you end up truing it up with actual costs.

21 But that very notion of you trying to
22 predict what the market will look like and then
23 applying that concept of the market to the credit or
24 the debit for consumers, to me, you are still --
25 customers are still availing themselves, in my mind,

1 to the marketplace. So can you comment on, can you
2 help me understand how this helps with stability?

3 MR. BOUKNIGHT: Sure, yeah. I mean, in
4 terms of your projection point, I mean, that is into
5 the mechanics of the rider. That is true. The
6 initial rate would involve a projection like that.
7 But once the rider kicks in, and regardless of
8 timing, the substantive financial effect of the rider
9 is to provide stability in four different ways.

10 Number one, it's a cost differential, so
11 at times when market prices are higher than cost,
12 there will be a credit for the customer. At times
13 when they are lower than cost, there will be a
14 charge, so it works in the opposite direction of
15 market prices.

16 Secondly, as our testimony, Mr. Allen's
17 testimony, showed, during periods of extreme weather
18 and extreme volatility in pricing, the spikes that go
19 up with extreme weather go up ten times higher than
20 the dips go below in normal market movements, so that
21 means the credits during those periods will be ten
22 times higher than the charges would be during a dip
23 in the price.

24 And there's a compounding effect as a
25 third way for stability that during any period of

1 sustained increased market pricing, that will also
2 cause the units to run more, as Mr. Allen testified,
3 and so when they run more, there's going to be more
4 credits, more sustained periods of credits, for
5 customers.

6 The fourth stability component of the
7 rider is the fact that it uniquely provides a
8 long-term, cost-based hedge, much longer than
9 anything else that's out there in the market, being
10 CRES offers or through the auctions.

11 So, again, I think some of the opponents
12 focus on the timing. We could reconcile this rider
13 more quickly if there's a desire to avoid lag in
14 those counter-cyclical effects of the stability
15 rider. But in the end, it's clear that the financial
16 effect is there, and it works in the opposite
17 direction of market, including during those times of
18 high spikes.

19 COMMISSIONER HAQUE: Okay. So the point
20 is that the rider has a stabilizing impact on
21 consumers, but consumers are still, because they are
22 subject -- because of the application of the market
23 to the rider, the functioning of the rider, the
24 consumer is still subject to market forces, but
25 you're saying that the effect on the consumer is in

1 itself stabilizing?

2 MR. NOURSE: Yes. The consumer is still
3 subject to market forces through the CRES rates,
4 through the auction rates for SSO supply. But the
5 PPA Rider goes in the opposite direction, so, again,
6 if rates spike up, that means customers will face
7 some impact from market, but it will be offset by an
8 opposite impact of the rider. The rider will be a
9 credit during those times of price spikes. That's
10 the stability, because it smooths out the peaks and
11 the valleys.

12 COMMISSIONER HAQUE: Let me move on to
13 4928.02(H) .

14 MR. NOURSE: Okay.

15 COMMISSIONER HAQUE: So the rider is
16 recoverable from both shoppers and nonshoppers,
17 correct?

18 MR. NOURSE: Yes.

19 COMMISSIONER HAQUE: And so the
20 company's -- effectively all of the company's
21 distribution customers then are subject to recovery
22 of this rider?

23 MR. NOURSE: I would not call them
24 distribution customers, your Honor. I would call
25 them SSO customers, and they're customers of the

1 electric distribution utility, just to be clear.

2 COMMISSIONER HAQUE: Okay. Maybe this
3 can help me clear things up. So because the rider is
4 nonbypassable does not necessarily mean that it is a
5 distribution wires charge.

6 MR. NOURSE: Correct. I would say that's
7 a misnomer if someone calls it a wires charge. Some
8 people use that as a synonym, but it doesn't relate
9 to wire service in a literal sense. It's not
10 transmission. It's not distribution. As I said
11 earlier, it's generation.

12 COMMISSIONER HAQUE: It's incumbent on
13 us -- and I'm extrapolating based on your briefing.
14 It is incumbent upon us to essentially provide a
15 determination of whether this is a generation-related
16 cost or a noncompetitive retail-electric-service cost
17 based on the statute.

18 So I guess what I'm asking, do we need
19 then to clarify whether this is a generation-related
20 cost or a distribution-related cost, because if it's
21 a distribution-related cost, you potentially run into
22 problems under this particular statute.

23 MR. NOURSE: I understand what you're
24 saying, but I wouldn't fully agree with that. I do
25 think it would be helpful to classify it as a

1 generation cost because it's really going to be a
2 credit under our projections, but it's a generation
3 service. But .02(H) that you cited in the state
4 policy statute only prohibits anticompetitive
5 subsidies. I think we have shown very clearly
6 this is a very pro-competitive rider and has a
7 pro-competitive impact.

8 Secondly, since all customers receive the
9 stability service and all customers pay, there is no
10 cross-subsidy. There is no subsidy. They are paying
11 an actual cost-based rate that I don't think can
12 factually be characterized as a subsidy at all.

13 COMMISSIONER HAQUE: Okay. If I can
14 speak to Mr. Bouknight. Thank you.

15 MR. NOURSE: Thank you. I appreciate it.

16 COMMISSIONER HAQUE: Good afternoon, sir.
17 How are you?

18 MR. BOUKNIGHT: Fine, sir.

19 COMMISSIONER HAQUE: How much weight do
20 we give the Nazarian and PPL decisions? How much
21 weight does this Commission, situated in the state of
22 Ohio, give those decisions?

23 MR. BOUKNIGHT: I think you should give
24 them virtually no weight. The facts are so
25 different, they have no application here.

1 COMMISSIONER HAQUE: I actually teed that
2 up for you pretty well. Let me ask you a more narrow
3 question. Does this mechanism -- does the PPA
4 mechanism functionally set the rate that these
5 facilities would receive in the PJM marketplace?

6 MR. BOUKNIGHT: No, it doesn't. The
7 facilities belong to the generation company. The
8 generation company is going to get a cost-based price
9 no matter what happens in the PJM market.

10 COMMISSIONER HAQUE: So does that not
11 then functionally set what these facilities will --
12 what AEP Ohio will earn with their ownership of these
13 facilities?

14 MR. BOUKNIGHT: The contract ends up
15 setting that, yes, it does. Now, it's no substitute
16 for a federally determined market price since any
17 generator is free -- PJM has made it very clear that
18 any generator is free to sell its generation to
19 someone else, who then, in turn, will bid that into
20 the PJM market here. Here it's Ohio Power that's
21 going to be bidding that into the PJM market.

22 COMMISSIONER HAQUE: Okay.

23 Mr. Chairman, that is all for me.

24 CHAIRMAN JOHNSON: Commissioner Lesser.

25 COMMISSIONER LESSER: Thank you.

1 I guess, Mr. Nourse. I'd like to start
2 on the PPA itself and its application at the retail
3 level.

4 MR. NOURSE: Yes.

5 COMMISSIONER LESSER: Based on your
6 application, the testimony and the briefs, it appears
7 you are proposing a mechanism that would have a
8 one-time prudence review of the contract. And maybe
9 I was misreading it, but it appeared that the cost
10 basis would be the FERC formula or something like
11 that. Would you like to respond to that to get
12 started?

13 MR. NOURSE: Yes, the contract, as
14 Mr. Bouknight was saying, the wholesale contract is a
15 cost-based contract and it is a FERC-jurisdictional
16 contract. But AEP Ohio is -- would be here in front
17 of the Commission collecting the pass-through of
18 those costs. So the question becomes what standards
19 apply and, you know, what would the Commission be
20 reviewing in the retail cost-recovery step of the
21 equation, right? Is that what you're asking?

22 COMMISSIONER LESSER: Yes. Let's keep
23 going with that. I agree with you completely that
24 the PPA is, you know, FERC regulated. But what I was
25 foreseeing -- maybe it was just in my mind -- was

1 that the cost would be part of the retail authority
2 of the state of Ohio. The state has a long history
3 of traditional ratemaking in which it determines the
4 cost basis for facilities, for the energy produced
5 from facilities. Again, that would be within the
6 retail jurisdiction of the Commission without
7 impeding on the wholesale jurisdiction of the FERC.

8 Do you have any objection to that or do
9 you see any legal impediment to that?

10 MR. BOUKNIGHT: Yeah, I would agree, and
11 I'll give you a couple caveats. It is true under
12 established federal law, the Pike County Doctrine,
13 that state retail cost recovery and review is
14 permissible. So the two caveats are, number one,
15 whatever you would do to Ohio Power in terms of --
16 that's AEP Ohio. Whatever you would do in terms of
17 disallowances would have a financial impact on AEP
18 Ohio, but it would not affect the price that is paid
19 at wholesale under that contract, in general.

20 Now, the second caveat is the reason I
21 mention the up-front prudence review and the reason
22 we're asking for that -- by the way, for OVEC that's
23 kind of already happened in ESP I. We are collecting
24 those cost and rates for five years, no prudence
25 issues there. In the affiliate PPA, that's really

1 part of the purpose of this separate case that we
2 filed, and that would be explored in there in terms
3 of the contract provisions and the details of how it
4 works.

5 But the point is once you look at the
6 data, the evidence we would present in that separate
7 case, and determine based on all the market
8 projections of all the parties, and based on the way
9 the contract is written, based on the facts as
10 everyone knows them today, it's a good idea, it's
11 prudent for AEP Ohio to enter into that contract, you
12 know, then that could go forward on that basis.

13 So, you know, five years from now, it
14 wouldn't be a legitimate prudence review to say,
15 Well, we don't like it. The market prices have
16 changed dramatically. We don't like it anymore. But
17 it would be legitimate to look at costs that would be
18 flowing through.

19 And, you know, the particular provisions
20 that are in the affiliate PPA, for example, if
21 there's a capital investment that's going to be made,
22 AEP Ohio would get to approve that or veto it, so we
23 call that buyer's prudence under the contract. And
24 it's similar for any fuel contract and, you know,
25 there's a committee, you know, to determine the

1 costs.

2 So anything that AEP Ohio would be doing
3 under that contract, making decisions that affect
4 price, that would be certainly fair game for the
5 Commission to review, second-guess, determine after
6 the fact whether it's prudent based on, you know,
7 facts that existed at the time the decision was made,
8 and, you know, disallowances could be made at the
9 retail level. And in that circumstance we're not
10 going to be, you know, raising federal issues or
11 saying you couldn't do that. We might file for
12 rehearing and maybe an appeal.

13 COMMISSIONER LESSER: So in year five if
14 there's certain capital investments made, the
15 Commission as, let's say, part of the true-up could
16 also be doing a prudency review as to whether they
17 believe those capital costs were appropriately
18 expended.

19 MR. NOURSE: Right. And I can assure you
20 if there is a major capital investment, there is no
21 reason that AEP Ohio would want to take the risk that
22 you would disagree later. If there is a major
23 capital investment, we would be in here seeking your
24 concurrence on the prudence of doing that.

25 COMMISSIONER LESSER: Okay. I have some

1 more specific questions. If the revenue side of the
2 equation is positive to AEP, is that revenue which
3 would be subject to part of the SEET review?

4 MR. NOURSE: I would say in general it
5 would be -- the effects of the PPA Rider would be,
6 you know, relevant for ratemaking here in Ohio. But
7 to be clear, I mean, AEP Ohio is really not making
8 anything on this contract. They're passing through
9 costs. They could lose costs under the scenario we
10 just described about disallowances.

11 And I would say, yes, that example would
12 work the other way for a SEET context, but I guess
13 I'm not sure of an example where that would apply.
14 Maybe with OVEC there might be a very tiny. With
15 OVEC there's about \$500,000 in equity -- you can see
16 from OMAEG Exhibit 3 that, you know, it's like a
17 third of one percent. You know, it is very much a
18 debt-financed operation. So there could be earnings
19 associated with that, but it would be very small.

20 COMMISSIONER LESSER: Okay. This is a
21 rider which would be set up as part of an SSO case.
22 I think we can almost guarantee, if the Commission
23 approves this, challenges through our appellate
24 process, perhaps other places. How would you view
25 the Keco case application to this rider?

1 MR. BOUKNIGHT: Well, I guess two things,
2 I would say Keco applies, and I would say Keco always
3 applies, but Keco does not invalidate the operation
4 of a rider, of a reconcilable rider. As I said
5 before, this rider would be subject to not only
6 financial but management prudence audits by the
7 Commission, so it would be subject to reconciliation
8 based upon the outcome of those proceedings.

9 However, like any Commission rate order,
10 if there's an appeal and a subsequent reversal, the
11 period of time between the Commission's order and the
12 reversal would not be undone unless there was a stay
13 obtained from the Ohio Supreme Court.

14 COMMISSIONER LESSER: I have a question
15 as to your cost/benefit analysis, how this plays out
16 over the years, whether it is a net benefit or -- in
17 your company's calculations, did you consider the PJM
18 Capacity Performance Proposal in calculating capacity
19 revenues?

20 MR. NOURSE: I don't -- I'm not
21 100 percent sure, but I don't think so. It wasn't in
22 place at the time. It's still not fully in place.
23 But I would just suggest that, obviously, the effect
24 of that would be to raise revenues, and that would
25 increase the credits that we already project.

1 COMMISSIONER LESSER: Okay. I think I
2 have some -- I'm not sure exactly --

3 MR. NOURSE: Mr. Bouknight?

4 COMMISSIONER LESSER: Yes, I think so.

5 I was intrigued. At your first time up
6 there, you seemed to get cut off, and you were
7 talking about other decisions out there allowing
8 retail authority with the wholesale transaction being
9 an argument in the case.

10 MR. BOUKNIGHT: What I was saying is that
11 this has been done throughout the country in many,
12 many cases where state regulatory commissions have
13 been faced with a wholesale power purchase agreement
14 by a utility, and they had to decide on the retail
15 rate treatment of that.

16 The only instances I know where there
17 have been any prudence challenges to that are
18 situations that are very different than what we have
19 here. You recall the Grand Gulf affair in the energy
20 service territories 25 or 30 years ago, and there the
21 federal governmental allocated the Grand Gulf
22 capacity among the utilities, and the Mississippi
23 Commission said, Well, you can allocate it to me, but
24 I'm not going pass it through. And the Supreme Court
25 ultimately held that the state in that instance could

1 not trump the federal allocation decision.

2 Those are the only exceptions that I know
3 to the state. I don't know of any challenges to a
4 state making a determination on retail treatment and
5 a wholesale power agreement except in that context I
6 just described.

7 COMMISSIONER LESSER: I think it was you
8 or Steve mentioned something about the court being
9 unlikely to preempt a FERC-approved contract. But as
10 I'm sure you're familiar, AEP has an additional
11 application involving other plants of which there are
12 not FERC-approved contracts. Do you think they would
13 fare differently?

14 MR. BOUKNIGHT: No, sir. Those contracts
15 would also be subject to FERC jurisdiction, and if
16 FERC believed that contract was inconsistent with
17 something else, some other FERC policy, they have the
18 ability to do something about it.

19 COMMISSIONER LESSER: Thank you,
20 Mr. Chairman.

21 CHAIRMAN JOHNSON: Okay.
22 Mr. Slaby.

23 COMMISSIONER SLABY: Thank you,
24 Mr. Chairman.

25 I really have only one question at this

1 point, and I think it's somewhat of a follow-up to
 2 the Chairman's question as far as the specific
 3 authority to issue PPAs, and that is, it struck me
 4 that you're suggesting under 4928.143(B) (2) (d), I
 5 think it was, that they gave you the authority,
 6 notwithstanding it was not specifically granted under
 7 that section, and I think maybe we're going to
 8 hear -- maybe this question should have been
 9 preserved for later. I think we are going to hear
 10 that under that same section, other than dropping the
 11 (d), that there is no authority.

12 My question is, do you consider that a
 13 conflict, or is it not comparing apples to apples for
 14 which both arguments could be sustained? And then
 15 how do we, as a Commission, weigh those differences,
 16 if you follow my question?

17 MR. NOURSE: I'm not sure I follow the
 18 conflict.

19 COMMISSIONER SLABY: It sounds like an
 20 attorney question.

21 MR. NOURSE: It's a pretty hard question.

22 COMMISSIONER SLABY: In other words, I
 23 guess what I'm asking is do you see a conflict
 24 between the two arguments? In broad stroke
 25 143 applies to grant us the authority to do this and

1 the other one -- and my Latin is terrible -- exclusio
2 alterius, I think it was or something like that,
3 where it is not specifically granted, denies you the
4 opportunity.

5 MR. NOURSE: Okay. I think I got it.

6 So it is true that the Supreme Court of
7 Ohio has said that if you are going to do something
8 in an ESP, it has to be in (B)(2), in the ESP
9 statute. It has to be authorized in the ESP statute.

10 And while (B)(2)(a) is basically the fuel
11 clause, (B)(2)(b) and (c) relate to utility-owned
12 generation facilities and their new facilities, their
13 new capacity. And that part of the law was written
14 in as a special circumstance for providing -- again,
15 as the overall theme in an ESP, gives the Commission
16 flexibility and options. There may be a point in the
17 future where you decide EDUs should be building new
18 capacity.

19 So that's a special circumstance. I
20 don't think it is a conflict with (B)(2)(d) that
21 deals with, generally, the stability riders. And so
22 under this PPA proposal, AEP Ohio does have a
23 contractual interest in the OVEC component and would
24 be purely a buyer under the affiliate component. But
25 I think those statutes, if anything, are

1 complementary and not in conflict.

2 COMMISSIONER SLABY: One quick
3 hypothetical. If we grant this, there's a contract
4 under review at this point in time and even in the
5 next ESP all those things seem to be prudent. But
6 the astronomical impact -- for whatever reasons, the
7 costs go astronomically high. Then it seems to me at
8 some point, hypothetically, that that prudence
9 argument might fail, and what do we do or what would
10 the future commissions do under a situation like
11 that?

12 MR. BOUKNIGHT: Well, I guess two things.
13 Number one, I think both OVEC and the other Ohio
14 legacy plants have a long track record in Ohio of
15 being very stable, very reasonable plants that are
16 run at costs that are well below what you're seeing
17 in the auctions, for example, that we've done
18 recently, so I think there is a good track record
19 there.

20 But relative to what I think you're
21 asking if market -- if the markets fundamentally
22 change in a way you perceive as being a permanent
23 change or a long-term change, you might conclude that
24 it's no longer a good deal. Is that part of your
25 question?

1 COMMISSIONER SLABY: That's basically it.

2 MR. NOURSE: You know, again, that's part
3 of what I think we do have to live with, a deal's a
4 deal, and, you know, AEP is stepping up to make a
5 long-term commitment here, and we're not going to say
6 if this becomes very profitable for customers that we
7 just want to back out for that reason. So, you know,
8 one thing to keep in mind is this is a very modest
9 hedge, so we're not taking over the whole, you know,
10 generation service here for our customers. It's a
11 small hedge, part of a portfolio, and, you know, with
12 portfolios it will have the, I guess, watered-down
13 impact, but still an important impact, and that goes
14 both ways.

15 COMMISSIONER SLABY: Thank you,
16 Mr. Chairman.

17 CHAIRMAN JOHNSON: Thank you.

18 Commissioner Trombold.

19 COMMISSIONER TROMBOLD: Thank you,
20 Mr. Chairman.

21 Mr. Nourse, if you don't mind.

22 MR. NOURSE: Not at all.

23 COMMISSIONER TROMBOLD: In your filing,
24 the primary focus, you said, of the PPA Rider is
25 price stability and economic development, right?

1 MR. NOURSE: And promoting competition,
2 yes.

3 COMMISSIONER TROMBOLD: Okay. Can we get
4 back to the basics a little bit. I think
5 Commissioner Hague touched on this. Can you quantify
6 price stability for me in your mind?

7 MR. NOURSE: Well, I think if you look
8 at the graph of market prices, they go up and down,
9 just like the stock price or any other kind of
10 performance-over-time financial statistic. The
11 effect of what this would do, because it works in the
12 opposite direction of the market prices, it would
13 round out the peaks. So if you have a peak, it goes
14 up to level 10, it might go up to level 9 instead,
15 and it would round out the valley. If there's a
16 valley, it goes down to level 3, it might go down to
17 level 2.5 instead.

18 Again, there's a disproportionate effect
19 that favors customers here, as our evidence showed,
20 that during periods of extreme volatility, the price
21 spikes go a lot higher than the price dips and so the
22 credits of the PPA Rider would be more significant.

23 But, again, the effect would be that
24 you're rounding out the sharp curves and maybe the
25 volatility that would otherwise occur under pure

1 market pricing.

2 COMMISSIONER TROMBOLD: Can we talk some
3 more about the economic development portion of the
4 PPA Rider? Can you elaborate a little bit more about
5 what you foresee that doing for our economy?

6 MR. NOURSE: Well, I think it's two
7 things. I mean, you're avoiding a potentially
8 significant negative consequence. You're helping to
9 keep these plants open as a long-term decision that
10 we believe favors customers, if viewed as a long-term
11 decision. And so, like I said, MR5, Muskingum River
12 5, was closing and has closed, and jobs, people that
13 had jobs there no longer have a job; that the
14 secondary and tertiary economic impacts, tax base, et
15 cetera, they're big dollars.

16 And, again, we have an economic study
17 that we would like to present and be able to make our
18 case with the affiliate PPA piece. And as I said at
19 the outset, OVEC is a little bit different because
20 AEP Ohio is a minority owner so AEP Ohio doesn't
21 determine by itself whether that plant closes or
22 stays open.

23 But on the other side of that ledger for
24 OVEC, it is a legacy plant. We were not able to spin
25 it off. It does have a great track record. It is a

1 solid -- two plants, actually.

2 COMMISSIONER TROMBOLD: Okay.

3 MR. NOURSE: So that's the second type of
4 positive economic development impact, I think, is by
5 stabilizing rates, you know, if you look at
6 customers, potential companies coming to Ohio, I
7 don't think they are attracted by volatile
8 electricity prices. I think they're attracted by
9 stable prices and by a Commission that says, We're
10 going to support industry and support development
11 with some tools that we have.

12 And so, you know, we believe that because
13 of the stabilizing impact, because of the long-term
14 benefits to the market, that that creates a good
15 environment for economic development, positive new
16 load, not only job retention but job expansion.

17 COMMISSIONER TROMBOLD: Okay. Another
18 question. Can you talk a little bit about what point
19 in time -- if the PPA Rider is granted, what point in
20 time will it be clear that there's, like, a net gain
21 for customers, that this was a good idea? What do
22 you think? Is it at the end of the 15 years? What
23 point in time?

24 MR. NOURSE: Well, our evidence shows,
25 Mr. Allen's testimony AEP Ohio Exhibit 8 that he

1 sponsored, shows that within the ESP term there's a
2 positive credit projected based on all the best
3 information we have, and so that's about \$8 million.
4 For OVEC, over the full term of OVEC, it's about 400
5 million, and the second figure is from OMAEG Exhibit
6 3, but that's for OVEC.

7 In the affiliate PPA, we filed our
8 separate case, we project significant benefits. We
9 look for performance and other things that may happen
10 to make that even better in the near future, but all
11 those details and all that data would be -- we hope
12 we're the given a chance to proceed with that case
13 and add it into the PPA Rider, so it depends on those
14 factors.

15 COMMISSIONER TROMBOLD: So you mention
16 this \$8 million. So what does that come out to be
17 per customer this way?

18 MR. NOURSE: Not a lot. Not a lot. But,
19 again, I would view this as not a three-year
20 decision. This is a long-term decision, and
21 \$400 million is a lot of money. And, again,
22 Mr. Allen's testimony -- I'm pulling it up here. He
23 actually put it in an exhibit on rebuttal that talked
24 about if the affiliate PPA is granted, for every
25 \$5 of a market power increase, there would be a \$2.39

1 offset by virtue of the affiliate PPA and the PPA
2 Rider.

3 So, you know, it gives you an idea if
4 there is a market price spike, it's going to be
5 cushioned. It's going to be watered down for
6 customers that are served under the PPA Rider.

7 COMMISSIONER TROMBOLD: Okay, thanks.

8 Thank you, Mr. Chairman.

9 CHAIRMAN JOHNSON: I have one or two more
10 questions here.

11 MR. NOURSE: Certainly.

12 CHAIRMAN JOHNSON: So have you looked to
13 alternatives to the PPA proposal that may address
14 many or most or some of the concerns?

15 MR. BOUKNIGHT: I'm not sure what you
16 mean by alternatives, but this proposal is something
17 that AEP can bring together resources and put on the
18 table as a commitment if it's accepted.

19 CHAIRMAN JOHNSON: Uh-huh. Well, what I
20 mean, what if it wasn't accepted? I mean, are there
21 other areas that you've looked at as alternatives to
22 this PPA?

23 MR. NOURSE: I'm not aware --

24 CHAIRMAN JOHNSON: Is that too hard of a
25 question?

1 MR. NOURSE: Well, I'm not aware of any
2 satisfactory alternatives that would achieve all the
3 same things that this proposal would achieve. If you
4 have something specific, I can try to answer.

5 CHAIRMAN JOHNSON: Well, in the
6 reasonable rate statute, is there anything there that
7 would at least be a short, you know, maybe not a
8 15-year, but a shorter-term answer to your issues?
9 I'm just -- I don't know that I have anything
10 specifically in mind. I'm just -- you know, I'm
11 wondering whether is this it?

12 MR. NOURSE: Well, I mean, I think this
13 is the best thing we can come up with. But in terms
14 of a reasonable-arrangement-type example or solution,
15 certainly that's available for individual customers
16 or a group of customers, typically large industrial
17 customers. The Commission can approve those kinds of
18 deals that, of course, everybody else pays for so
19 it's a net-neutral proposition for the utility. But,
20 again, with this proposal we see it as a net benefit
21 for customers if you view it as a long term.

22 So the other problem with kind of the
23 one-off model or a group of customers or a subset is
24 that it doesn't provide the stability for AEP to make
25 the commitment that it would be making because there

1 would be too much uncertainty if the load that would
2 be served would be fluctuating, or it might be big
3 today, small tomorrow. Then that's a whole different
4 model with a whole different set of financial risks,
5 and, you know, I can't say whether AEP's management
6 would accept anything else other than what we are
7 proposing today.

8 CHAIRMAN JOHNSON: Okay.

9 Are there any other questions?

10 Maybe like one question more. Then we
11 will move on here.

12 COMMISSIONER HAQUE: Let me follow up
13 with the Chairman's question with a similar question
14 but sort of placed within the legal context, and this
15 might be a question for either you or Mr. Bouknight.
16 I'm not sure.

17 MR. NOURSE: Okay.

18 COMMISSIONER HAQUE: But to sort of put a
19 bow around the question that the Chairman just asked,
20 so Nazarian and PPL, my first question is if this
21 body does determine that -- if this body does
22 determine that it has the authority and should, in
23 fact, evaluate the federal preemption issues
24 associated with the PPA Rider, so that's one
25 assumption. And the second assumption is the

1 question I teed up for you, which was not a great
2 question. But if this body also finds Nazarian and
3 PPL, despite not being Ohio-based cases, to be
4 influential in making our decision, the first
5 question I have is if we then find that the PPA Rider
6 does, in fact, impact wholesale electric prices, is
7 there any way out of this legal conundrum for your
8 company?

9 MS. BAHNSON: Well, you got a set of
10 assumptions there that I have trouble getting all the
11 way through.

12 COMMISSIONER HAQUE: Understood, but just
13 adopt them. Just adopt them, and then for my
14 benefit, based upon Nazarian and PPL -- then I'll ask
15 the follow up, which is really the question the
16 Chairman asked. Based on Nazarian and PPL, if this
17 body finds that the PPA Rider mechanism impacts
18 wholesale electric prices, based on your reading of
19 Nazarian and PPL, is there a way for AEP to possibly
20 come out on top of this particular piece of legal
21 scrutiny?

22 MR. NOURSE: Yes, sir, there is. Both
23 cases, both the Third Circuit and Fourth Circuit, go
24 out of their way to say incidental impacts on
25 wholesale prices are not something that these cases

1 reach. And these cases literally involve replacing
2 with a state-determined rate a federal rate.

3 Now, if the PPA Rider has some impact,
4 and it could have some incidental impact on wholesale
5 prices, I think one of the parties has pointed out,
6 that Ohio Power might have somewhat different bidding
7 incentives than a generator might have in the market,
8 which is not different than other people in PJM have
9 right now.

10 For example, you have Dominion down the
11 road. What they do is they have all of their own
12 generation. They bid it all into the PJM pool and
13 buy all of their requirements out of it. That
14 probably has an incidental impact on prices in the
15 wholesale market.

16 But I don't think Nazarian or Hanna
17 reaches that. If Dominion has been doing this for
18 20,000-some megawatts of generation for some time, it
19 seems to me quite improbable that any court is going
20 to find a preemption problem with a fraction of the
21 amount of generation in this arrangement.

22 COMMISSIONER HAQUE: Okay. So the
23 follow-up then, associated with the Chairman's
24 question, is that both of those cases suggest other
25 mechanisms through which this type of mechanism could

1 be -- well, actually it's not this type of mechanism,
2 but other ways to effectively incent generation can
3 exist within the marketplace without impacting
4 wholesale electric prices.

5 And I think, you know -- not to imply
6 that's where you were going, Mr. Chairman.

7 But if I was to put sort of a legal
8 construct around what the Chairman was asking about,
9 has AEP -- are there other ways? Look, I'm probably
10 speaking out of turn now, but I very much view this
11 as there's a legal side of this case and then the
12 policy piece of this case. The policy piece of this
13 case will have to be decided by this body, and the
14 legal piece of this case will also, obviously, have
15 to be decided by this body, but is a little more
16 technical in nature.

17 So from a policy perspective, if it is
18 this Commission's desire to do something to ensure
19 that we have enough gen in this state but legally we
20 can't do it this way, have there been any -- based on
21 the Nazarian and, I'm calling it PPL, but Hanna case,
22 other mechanisms that you have evaluated to ensure
23 that this -- to put in front of us to say, okay, you
24 can do it this way?

25 MR. BOUKNIGHT: Well, the Nazarian and

1 Hanna case don't say that you can do these other
2 things and they will not affect the wholesale market.
3 They would affect the wholesale market.

4 COMMISSIONER HAQUE: But that's your
5 interpretation, right?

6 MR. BOUKNIGHT: I'm sorry?

7 COMMISSIONER HAQUE: That's your
8 interpretation.

9 MR. BOUKNIGHT: I don't think that's
10 debatable.

11 COMMISSIONER HAQUE: I don't think the
12 courts actually say that.

13 MR. NOURSE: I don't think that's
14 debatable. I think that if the state were to
15 incentivize, just were to simply hand some money over
16 to somebody to build a new generating unit and
17 everything else equal, increased supply is going to
18 effect prices in the market, so I don't think they
19 said that.

20 I think that what they said was that
21 those are not the kinds of intrusions upon FERC's
22 jurisdiction that would justify a preemption finding.
23 You're not taking a state price and replacing a
24 wholesale price, a FERC-determined wholesale price
25 with a state price as you were in those cases.

1 You're having an incidental impact, but these are
2 things that you can do because you're not crossing
3 the line of replacing one price with another.

4 COMMISSIONER HAQUE: Okay, thank you.

5 CHAIRMAN JOHNSON: Commissioner Lesser.

6 COMMISSIONER LESSER: Thank you.

7 I'm not sure who wants to answer this.

8 We have discussed one side of the equation, the cost
9 side. The other side is the revenue side which would
10 result from the selling of the energy in the capacity
11 auction.

12 My question is what assurances do we have
13 either that could be part of this case or already in
14 existence that AEP would maximize those revenues in
15 regard to energy capacity; and, number two, if the
16 state of Ohio felt that AEP was not maximizing those
17 revenues, what would be our remedies?

18 MR. NOURSE: Well, I think two sides to
19 that equation are the costs and the revenues, so the
20 net risk on AEP Ohio, the cost side we already talked
21 about. There's a risk. You want to minimize costs
22 and manage the contract as best we can.

23 On the revenue side, I mean, the revenue
24 is PJM revenue, and, you know, all the capacity,
25 energy, ancillary service will be liquidated through

1 the PJM markets. And so, you know, if you're asking
2 about dispatch decisions or how the units are bid
3 into the market --

4 COMMISSIONER LESSER: Yes, that's
5 correct.

6 MR. BOUKNIGHT: -- whether there's
7 ability to review that, the answer is yes. The
8 contract for the affiliate PPA provides that AEP Ohio
9 will be directing the dispatch and making those
10 decisions, so, again, that would be something that
11 this Commission could certainly review and, for lack
12 of a better term, second-guessing AEP Ohio.

13 COMMISSIONER LESSER: As an incidental
14 part of that question is what if as part of an order
15 or stipulation or some aspect of this case the
16 Commission wanted AEP to in regard -- in its best
17 efforts to make sure that any plant that came in
18 under the PPA would be eligible under the PJM
19 Performance Incentive Proposal?

20 MR. NOURSE: Yeah. I think -- I guess
21 under your question you would see, hypothetically,
22 the PPA -- the affiliate PPA being deemed prudent by
23 the Commission as step one. And then step two
24 probably down the road, the pay for performance,
25 that's hard to say.

1 COMMISSIONER LESSER: It is hard to say.

2 MR. NOURSE: Performance would be
3 effective later and all the rules that go with it
4 that would be finalized, the penalty side and all the
5 rest of it.

6 You know, I guess it hits me as I'm not
7 sure you could determine that as an absolute before
8 you see the final rules and understand the impact. I
9 know one criticism is that if you don't show up when
10 you're committed to show up, the penalties, depending
11 where they end up, would be somewhat prohibitive or a
12 disincentive to commit that next megawatt into that
13 program.

14 COMMISSIONER LESSER: I guess it's
15 possible from a Commission point of view. Our
16 concern would be that these units would be maintained
17 to a level that they would be able to perform and be
18 eligible.

19 MR. NOURSE: I think you certainly -- I
20 would say you would have a unique ability to do that
21 being under a cost-based regime, being under
22 regulatory oversight, so things like that that would
23 enhance revenue would be unique opportunities for
24 this context. Another favorable feature of this
25 regulatory tool is that it can only be done in ESP.

1 There may be a similar effect with carbon
2 regulation, too, to make sure that heat rate
3 improvements are one of the key building blocks that
4 can give more flexibility for the state of Ohio, so I
5 see a similar outcome there.

6 COMMISSIONER LESSER: Thank you,
7 Mr. Chairman.

8 CHAIRMAN JOHNSON: Any other questions?
9 Commissioner Trombold, one more.

10 COMMISSIONER TROMBOLD: Mr. Nourse, can
11 you talk a little bit more about the reconciliation
12 rider and the effect that has with the one-year lag
13 which you are proposing, I understand?

14 MR. NOURSE: What we proposed at the
15 outset that it be a one-year reconciliation update,
16 just to be practical. But also Mr. Allen testified
17 the company is open to doing something more
18 frequently if the Commission sees a benefit. If you
19 want to tighten up and eliminate some of that lag,
20 we're open to that. It's just a matter of, like any
21 other filing, with our fuel filings, historically
22 we've done those quarterly, and then there's an
23 annual audit process, so something like that might be
24 perfectly fine. It would partially eliminate the
25 lag.

1 COMMISSIONER TROMBOLD: Thank you.

2 Thank you, Mr. Chair.

3 CHAIRMAN JOHNSON: Thank you very much.

4 EXAMINER PARROT: FirstEnergy Solutions.

5 MR. HAYDEN: Good afternoon,

6 Mr. Chairman, Commissioners. My name is Mark Hayden.

7 I'm here today on behalf of FirstEnergy Solutions.

8 Joining me today is David Swartz from the law firm of

9 Latham & Watkins. We appreciate the opportunity to

10 be here today to speak on this very important matter.

11 I'm going to speak on state legal matters related to

12 the PPA Rider, and Mr. Schwartz is going to speak on

13 the federal matters.

14 But first, let me assure you, there is

15 plenty of legal authority out there, whether it be a

16 state statute or Commission precedent, which gives

17 this Commission the ability to approve the PPA Rider.

18 In fact, in many respects this issue has already been

19 resolved.

20 While there are many public policy

21 benefits to the PPA Rider which Mr. Nourse spoke of

22 previously and there are other applicable sections of

23 the statute, the focus of my comments today is going

24 to be on one particular portion of the statute which

25 is clearly relevant for our purposes.

1 4928.143 is obviously the ESP portion of
2 to statute. (B) (2) lists nine categories of items
3 which may be included as part of the ESP. (B) (2) (d)
4 is one of those categories that includes various
5 criteria.

6 Before I get into the test under
7 4928.143 (B) (2) (d), I would note that according to the
8 Commission language of (B) (2) (d), it is extremely
9 broad and affords the Commission considerable
10 latitude in authorizing allowable charges.

11 Now, fortunately, the test under
12 (B) (2) (d) is very simple and straightforward, a
13 three-part test. One is a term, condition, or
14 charge; two, that relates to one of several subjects
15 listed in the statute, but for purposes of today, I'm
16 going to focus on bypassability and Default Service;
17 and, three, that has the effect of the stabilizing or
18 providing certainty regarding retail service.

19 The PPA Rider is authorized under
20 (B) (2) (d). First, it is a term, condition, or charge
21 as implemented through the retail rider. The
22 Commission has found similar stability charges to be
23 a term, condition, or charge in prior orders.

24 Second, it does relate to both
25 bypassability and Default Service. Consistent with

1 previous Commission orders, it relates to
 2 bypassability because it is a rider that will benefit
 3 both shopping and nonshopping customers. It is also
 4 related to Default Service because the rider operates
 5 as a rate mitigation mechanism to reduce the impact
 6 of increasing and volatile pricing. The Commission
 7 found in AEP's last ESP that a rider which promotes
 8 rate stability in this manner relates to Default
 9 Service.

10 Third, and perhaps most importantly, it
 11 would have the effect of stabilizing or providing
 12 certainty regarding retail service. And while
 13 certainly this is a fact-intensive determination, you
 14 will see that there is plenty of evidence in the
 15 record at this point which demonstrates the rider
 16 operates counter to market prices and stabilizes
 17 prices for customers.

18 This Commission has already determined
 19 that a charge that promotes price stability in this
 20 manner satisfies this portion of the test; therefore,
 21 the PPA is authorized under (B) (2) (d).

22 At this point I will turn the remainder
 23 of my time over to Mr. Schwartz.

24 MR. SCHWARTZ: Good afternoon. I'm Dave
 25 Schwartz from the law firm of Latham & Watkins. I'm

1 here to talk about preemption. Some parties argue
2 that the PPA Rider is preempted because FERC either
3 occupies the field of authority over wholesale power
4 contracts or because the PPA Rider conflicts with
5 FERC's authority. Neither is the case.

6 This Commission, not FERC, reviews and
7 approves utility purchases. The parties arguing for
8 preemption cite the recent Fourth Circuit and Third
9 Circuit cases; however, the New Jersey and Maryland
10 programs in those cases were preempted not because
11 they had an impact on the markets but because they
12 required the parties to enter into wholesale power
13 contracts and set the price for those contracts as
14 well as the amount purchased; parties, amount, price.

15 The PPA Rider, on the other hand, does
16 not require a wholesale sale and does not set the
17 price or amount. Again, this Commission is just
18 being asked what it always does, review and approve
19 utility purchases.

20 The Third Circuit clarified that there's
21 a presumption against preemption, the Third and
22 Fourth Circuits explained their actions were specific
23 to the New Jersey and Maryland programs. Both
24 clarified that states were free to provide whatever
25 incentives they want to utilities and generators.

1 Some claim the PPA Rider is a subsidy.
2 It is not the case. But from a federal preemption
3 perspective, you should know that the Third and
4 Fourth Circuits went so far as to say that even
5 direct subsidies would not run afoul of FERC's
6 authority.

7 Mr. Haque, you asked questions about the
8 impacts on markets. The Third Circuit clarified that
9 the law of supply and demand is not the law of
10 preemption. "When a state regulates within its
11 sphere of authority, the regulation's incidental
12 effect on interstate commerce does not render the
13 regulation invalid. Accordingly, we do not view"
14 New Jersey's program's "incidental effects on the
15 interstate wholesale price of electric capacity as
16 the basis of its preemption problem." And the Court
17 goes on to say that, otherwise, much state action and
18 regulation over generation would be superseded.

19 You have the authority to review and
20 approve the PPA Rider. Whatever you decide to do
21 with respect to the PPA Rider is in your discretion,
22 but it certainly will not be preempted by the federal
23 level.

24 Thank you. We are here to answer any
25 questions you may have.

1 CHAIRMAN JOHNSON: Questions.

2 Commissioner Lesser

3 COMMISSIONER LESSER: Thank you.

4 Mr. Hayden, in the 4928.143(B)(2)(d)
5 Default Service, do you believe Default Service is
6 the same as the POLR responsibility?

7 MR. HAYDEN: Well, I can tell you that,
8 you know, the terminology is generally used
9 interchangeably, I think. Default service as it's
10 used under the statute in this particular
11 circumstance is applicable. As I stated, the PPA
12 Rider is applicable to that portion of the statute.

13 COMMISSIONER LESSER: I don't understand.

14 MR. HAYDEN: Well, I don't know whether
15 from a legal standpoint, you know, the terminology
16 used in (B)(2)(d) is certainly Default Service.

17 COMMISSIONER LESSER: Then tell me what
18 Default Service is.

19 MR. HAYDEN: Default service is providing
20 service to customers who do not shop, generation
21 service to customers who do not shop.

22 COMMISSIONER LESSER: And that would
23 apply to shopping customers who stop shopping during
24 that period of time?

25 MR. HAYDEN: Customers who discontinue

1 shopping and then go back to the utility would be
2 provided Default Service, yes.

3 COMMISSIONER LESSER: And for purposes of
4 our statute, that would be the SSO?

5 MR. HAYDEN: That would be, yes.

6 COMMISSIONER LESSER: And so then tell me
7 how the PPA impacts the SSO.

8 MR. HAYDEN: Well, as I understand the
9 applicability of the rider under the circumstances,
10 it's going to be applied to all customers, whether
11 shopping or nonshopping, so as it pertains to the
12 this proposal if -- you're going to basically net the
13 costs and the revenues with respect to the OVEC
14 piece, and depending on what market revenues are at
15 that point in time and what costs are at that point
16 in time, it will either be a charge or a credit to
17 all customers, including shopping and nonshopping
18 customers.

19 COMMISSIONER LESSER: So you believe this
20 financial impact of which you're describing on the
21 SSO is enough to meet the statutory authority test?

22 MR. HAYDEN: Absolutely. There's no
23 indication in the statute, Commissioner Lesser, of
24 order of magnitude. It simply states with respect to
25 Default Service, its applicability. So in these

1 circumstances it is a rate mitigation mechanism for
2 customers to mitigate the increasing prices and
3 volatility.

4 COMMISSIONER LESSER: Okay.

5 Mr. Schwartz.

6 MR. SCHWARTZ: Yes, sir.

7 COMMISSIONER LESSER: I was confused when
8 I read the Nazarian and Hanna cases, and you have the
9 appellate court, because they declared field
10 preemption, but they said it only applied to the
11 particular facts of those cases, which doesn't seem
12 to make sense in regard to field preemption.

13 Could you please, at least from your
14 point of view, tell me what the field preemption
15 applies to?

16 MR. SCHWARTZ: Of course. Field
17 preemption applies to the places where FERC occupies
18 and has the exclusive authority to regulate. So an
19 example, and the example used in both the Nazarian
20 and -- we can call it Hanna. We can call it Solomon
21 cases. They are called different things.

22 But the example that they use there and
23 the facts of that case is that FERC has the exclusive
24 authority to regulate the rates, terms, and
25 conditions for a wholesale sale, so the field is a

1 wholesale sale. So when a court looks to see if
2 somebody is preempted by that field, the court would
3 first have to determine that what is being regulated
4 by the state commission, in that instance, is a
5 wholesale sale. What is before you now is not a
6 question to regulate a wholesale sale but rather
7 utility purchases.

8 COMMISSIONER LESSER: So if the state of
9 Ohio, if this Commission decided it wanted to approve
10 some form of a PPA, how would you advise us to avoid
11 the field preemption? What are the core principles
12 we would need?

13 MR. SCHWARTZ: Absolutely. Now, the most
14 important thing to remember is that what is before
15 you now is not the sell side of that transaction.
16 What is before you is the buy side and, as
17 Mr. Bouknight said, the retail rate treatment of that
18 arrangement. People do this all the time. So every
19 time a utility makes any purchase and incurs any
20 costs, you have the ability to take a look at that.
21 That is within your exclusive authority and is
22 statutorily permitted in the state of Ohio.

23 As long as you stay on the buy side and
24 talk about the impacts on retail customers, which is
25 within your authority, then you are in very safe

1 waters with respect to federal preemption.

2 Where New Jersey and Maryland got in
3 trouble is they established a scheme that required a
4 wholesale sale. They required the sale, and they
5 required who the parties would be to that sale, what
6 the price would be, and what the amount would be.
7 That is not presently before you.

8 COMMISSIONER LESSER: Thank you,
9 Mr. Chairman.

10 CHAIRMAN JOHNSON: Other questions?

11 No other questions.

12 COMMISSIONER HAQUE: I have a question.

13 CHAIRMAN JOHNSON: Go ahead.

14 COMMISSIONER HAQUE: Mr. Hayden, please.

15 So the concepts of bypassability and
16 Default Service under .143(B)(2)(d), the trouble I
17 have with this is that won't every charge that this
18 Commission sees relate to bypassability or Default
19 Service?

20 I'm taking up -- if you read the
21 briefing, which I'm sure you have, I'm taking up the
22 staff's position of that interpretation of the charge
23 just simply relating to those who take from the SSO
24 and whether the charge is bypassable or
25 nonbypassable. But it doesn't specifically within

1 sort of the subject matters of bypassability and
2 Default Service delve into anything specific other
3 than the charge itself being bypassable or Default
4 Service. The staff briefing says this leads to an
5 absurd result, that classifying this charge as
6 passing scrutiny under .143(B)(2)(d) simply because
7 it applies to Default Service and simply because it
8 is nonbypassable, that leads to an absurd result.

9 Can you comment on that?

10 MR. HAYDEN: Yes. Commissioner Haque, I
11 don't agree it leads an absurd result. My sense is
12 that's exactly what the General Assembly had in mind
13 when that was drafted because certainly in other
14 portions of the statute, there are terminologies that
15 speak to nonbypassable and bypassable. Certainly the
16 General Assembly had that in mind and understood that
17 distinction. The fact that it was written the way it
18 was, it says what it says, and I think that is what
19 the legislature had in mind.

20 I would further note there was no
21 language in this statute, nor should there be read
22 any language in the statute, that just because it
23 applies to shopping customers, that it can't be
24 related to bypassability. That exclusivity language
25 or that specific type of language is not contained in

1 the statute as it stands today. In fact, I think the
2 Commission had it right when they issued their orders
3 in the DP&L case; and that is it seems to be in
4 conflict with staff's position now, but that's the
5 essence of what has been stated previously.

6 COMMISSIONER HAQUE: Okay.

7 Mr. Schwartz, so from the Nazarian case,
8 and this is -- you distinguish this case, the case we
9 have pending before us, from Nazarian and Hanna. I
10 understand those distinctions. But I'm reading from
11 the Nazarian case, and when the appellate court in
12 that case gets into their holding they say, "Applying
13 these principles, we conclude that the Generation
14 Order" -- meaning the order from the Commission --
15 "is field preempted because it functionally sets the
16 rate that CPV" -- who is the generator in that
17 instance -- "receives for its sales in the PJM
18 auction."

19 Isn't that what these cases are about?

20 MR. SCHWARTZ: No, Commissioner, they're
21 not. The cases have that impact, that they impact
22 the rate to the market, and that's what FERC was
23 primarily worried about. But that case, the Nazarian
24 case, also has very specific language on the points
25 we are talking about here. That case specifically

1 says "Our conflict preemption ruling is narrow and
2 focused upon the program before us... not every state
3 regulation that incidentally affects federal markets
4 is preempted."

5 They go on to say that the most important
6 aspects of the Nazarian case, as was the case with
7 Hanna/Solomon, was the fact that it required a
8 wholesale sale. It required a contract. It required
9 prices to be established. It required parties to bid
10 and clear into the markets, and it required the
11 amount to be sold.

12 If you are in that world and you also
13 observe that it's interfering with the market, then a
14 court would find that it's preempted. That's not the
15 world we're in now, and in our view, there really
16 isn't an impact on the market here. There certainly
17 was in Nazarian.

18 But even if someone were to find that
19 there is some incidental impact here, it would be
20 completely consistent with Nazarian and Solomon to
21 find that these -- that this program is not
22 preempted.

23 COMMISSIONER HAQUE: Thank you.

24 CHAIRMAN JOHNSON: Okay.

25 EXAMINER PARROT: Ohio Consumers'

Counsel.

MS. GRADY: Thank you, Chairman Johnson,
Commissioners Attorney Examiners.

I am here for the Ohio Consumers' Counsel
to make consumer recommendations on behalf of AEP's
1.2 million residential customers. To make the best
use of the PUCO's time, the stakeholders opposing
AEP's plan have worked cooperatively to provide
comprehensive and nonredundant points today.

As part of that, I am providing the
introduction and overview of the positions of the
opposing stakeholders. You have an opportunity to
make a competitive market work for the benefit of
Ohio consumers who must make ends meet in their daily
lives and for Ohio businesses who must compete in the
local and global marketplace. We have
recommendations today to help you do that.

The Consumers' Counsel recommendation is
that you deny AEP's proposal for the Power Purchase
Agreement. The seven stakeholders speaking after me
also recommend that you deny it. It's a bad deal for
customers, and it's just the latest symptom of a bad
framework for electric service, that being the
Electric Security Plan.

Electric utilities continue to use the

1 Electric Security Plan as an opportunity for
2 government-sanctioned subsidies instead of relying on
3 a competitive electric market to serve customers.

4 So our recommendation is to make this
5 Electric Security Plan look like a Market Rate Offer
6 that is in the 2008 law. A Market Rate Offer would
7 not allow a purchase power rider because the rider is
8 contrary to competitive markets.

9 Let's focus for a moment on what's really
10 at issue here. AEP wants to guarantee profits on its
11 power plants, but guaranteed profits are contrary to
12 the market. But it gets worse. AEP wants its
13 million Ohio customers to fund that guarantee, but
14 under Ohio law the market and not government
15 regulators should determine whether these plants make
16 or lose money.

17 This is a subsidy. Ohio law prohibits
18 this subsidy. Ohio law protects customers from
19 paying this subsidy.

20 This is the latest charge in the
21 succession of industry proposals seeking government
22 protection from competitive markets. The competition
23 doesn't work that way, and these anticompetitive
24 proposals have been very costly to customers over the
25 last few years. In fact, customers have paid and are

1 still paying AEP part of a \$1 billion subsidy for
2 stability and capacity charges.

3 There are two problems that you can solve
4 by saying no to this proposal. One problem is
5 customers paying ever higher subsidies. The other
6 problem is that these regulatory interventions into
7 the market are destructive of competitive markets, so
8 by allowing the subsidies we are delaying or
9 impairing the ability of markets to function for the
10 benefit of customers.

11 In recent years the markets would have
12 provided customers with historically low electric
13 prices. Those low prices were largely delivered by
14 FirstEnergy and Duke to their customers through the
15 competitively bid Standard Services Offer, but
16 customers of this utility, AEP, were denied or
17 delayed in receiving market prices.

18 AEP's proposal here will add to the
19 subsidies that customers already pay. It will
20 further increase rates, rates that are already the
21 highest in the state.

22 Here's a brief list of the violations of
23 law that you should reject. First, there is no place
24 for this subsidy under Ohio law. AEP's charge does
25 not fit. It is not allowed as part of the Electric

1 Security Plan despite what you've heard evidence to.

2 Second, AEP's charge violates Ohio law
3 that prohibits subsidies from being collected from
4 ratepayers.

5 And, third, the PUCO has no jurisdiction
6 to approve the charge because its decision will
7 impact wholesale rates.

8 Not only is AEP's charge violating Ohio
9 law but it also is bad public policy. Dr. Choueiki
10 of the PUCO staff testified that AEP's charge is
11 contrary to the plan of the General Assembly and
12 reverses the progress made to a functioning
13 competitive market. He testified that the risks and
14 benefits associated with Ohio Power plants should
15 remain with investors and not be shoved onto
16 customers of AEP.

17 We agree. What we need now is for
18 government regulators to stand up for markets and to
19 say no to utility riders. The General Assembly
20 decided that Ohioans' electricity will be provided
21 through markets. It is time to let that happen.

22 Thank you.

23 CHAIRMAN JOHNSON: Questions.

24 COMMISSIONER HAQUE: Ms. Grady, thank you
25 very much. From the OCC lens, it seems to me in this

1 case there are three true cost projections. You have
2 AEP's Ohio cost projection, your witness,
3 Mr. Wilson's cost projection, and IEU's cost
4 projection. If I'm summarizing this correctly, AEP's
5 cost projection is net benefit and yours and IEU's
6 cost analyses show a net loss for customers going
7 forward.

8 MS. GRADY: That is correct.

9 COMMISSIONER HAQUE: So from the OCC's
10 position, if Witness Wilson had come out on this
11 particular proposal and said that this is actually
12 going to result in a net benefit for consumers, would
13 OCC be against the proposal?

14 MS. GRADY: I believe, Commissioner
15 Haque, that we would be because there is no statutory
16 basis for this proposal. It is not a charge that's
17 permitted under 4928.143(B)(2)(d). It's not related
18 to bypassability. It's not related to Default
19 Service. As was mentioned, if we conclude that that
20 charge was related to Default Service or
21 bypassability, we will end up with an absurd result.
22 The staff brief was right on this point.

23 In terms of the stability charge, it does
24 not provide stability. Even the company's witness,
25 Mr. Allen, pointed out that the effect of the OVEC

1 transaction was -- we are speaking only of the OVEC
2 transaction here because that is the only transaction
3 that is presented in this case. The effect of that
4 transaction is a mere 35 cents a megawatt-hour on a
5 customer's bill. That is not going to stabilize or
6 provide certainty to a customer.

7 And the other problem with the arguments
8 about stability is that the company assumes that the
9 rider functions in the opposite way of the market.
10 But with the lag in recovery, the rider can function
11 in the same direction as the market, and that's what
12 the testimony of OCC Witness Wilson testified.
13 Mr. Wilson testified that it is likely this will go
14 in the same direction as the market, and, therefore,
15 there is no stability.

16 COMMISSIONER HAQUE: Thank you.

17 CHAIRMAN JOHNSON: Okay.

18 MS. GRADY: Thank you very much.

19 MR. DARR: Mr. Chairman, members of the
20 Commission, my name is Frank Darr. I'm here on
21 behalf of the Industrial Energy Users of Ohio. IEU
22 is an organization of large industrial energy
23 consumers that spend collectively \$3 million per year
24 to obtain electricity and natural gas and employ
25 250,000 people in this state.

1 First, one clarification. You have been
2 offered a statement with regard to the nature of the
3 rider. I would suggest to you that the nature of the
4 rider is very simple. It guarantees AEP Ohio that it
5 will never suffer a loss on its OVEC entitlement.

6 The OVEC entitlement contract, the
7 intercompany agreement, sets a cost that AEP Ohio is
8 required to pay. It then turns around and sells that
9 power it receives from OVEC into the PJM markets,
10 both capacity and energy. To the extent that
11 capacity revenue and energy revenue is short in any
12 year, they will recover that amount through the
13 proposed rider. To the extent they are long, they
14 will rebate that back.

15 What we are talking about here is, in
16 fact, the sell side of the transaction, contrary to
17 some representations that were made.

18 Now, moving on to the legality, which is
19 what I was tasked to do, first of all, you need not
20 entertain or mire yourself in arguments about policy,
21 whether it was good or bad or whether one particular
22 set of prognostications is correct or not. Initially
23 the question is, do you even have jurisdiction to
24 reset the price that AEP Ohio is collecting for the
25 sale of this power into the market? And the answer

1 to that is no. This is a wholesale transaction.
 2 Your jurisdiction authority rests solely on retail
 3 transactions, and in the statute 4905.02 and .03, it
 4 specifically provides that your regulatory authority
 5 applies to an electric light company when it provides
 6 service to consumers, not to PJM, not in the FERC
 7 transactions. Those are separate. So, first of all,
 8 you have to jump that hurdle.

9 The second hurdle you have to jump before
 10 you even get to the question whether or not this can
 11 be included in an ESP is the prohibition contained in
 12 4928.02(H). Now, despite Mr. Nourse's representation
 13 that this only applies to uncompetitive subsidies, if
 14 you actually read the statute it says you shall
 15 prohibit, you are prohibited from authorizing a rider
 16 that allows for the collection of generation-related
 17 costs through a transmission or distribution rate.

18 Isn't that exactly what is happening
 19 here? In fact, the Supreme Court has already held
 20 twice, not once but twice, that the Commission
 21 doesn't have the authority to allow this sort of
 22 collection, first, in the IEU case involving the IGCC
 23 contracts and, secondly, in the case involving AEP's
 24 attempts to cover deferred fuel costs, and more
 25 recently in 2012, this Commission held in the Sporn

1 5 case that you could not authorize the collection of
2 closure costs associated with the Sporn 5 unit. Why?
3 Because it was prohibited under Section 4928.02(H).

4 By the way, in that decision you also
5 concluded that neither Sections (B)(2)(a), (e), or,
6 not surprisingly, (d) allowed that recovery either.
7 That is, you read those statutes in to eliminate any
8 conflict between them and concluded that you could
9 not authorize that rider.

10 Third, you also have to get around the
11 prohibition -- again, the word is "prohibition" -- on
12 the recovery of stranded costs. Specifically here
13 you are being asked to allow AEP Ohio to recover
14 out-of-market costs. Those are by definition costs
15 that are above the market rate that can be collected.
16 You do not have the authority to do that, and they
17 don't have the authority to ask you to do that. A
18 transition rider is now not permissible under Ohio
19 law, under Section 4928.38.

20 Finally, with regard to the PPA Rider, I
21 would point you to staff's brief. The staff
22 addressed exactly the kinds of questions with regard
23 to whether or not the PPA Rider could be authorized
24 as a term under (B)(2)(d). It pointed out the
25 absurdity of the argument that this could be approved

1 as a bypassable rider because it would allow any
2 rider to come into it, and that is clearly wrong.

3 Second, it addressed the issue of service
4 and what the Commission meant when it approved the
5 riders for -- the default riders for Dayton and AEP
6 in the ESP II case and strictly confined the
7 operation of those riders to those particular facts.

8 You do not have to entertain or bog
9 yourself down in policy arguments or questions about
10 whether or not this thing is going to work or not.
11 You don't have the legal authority to approve it in
12 the first place. Take advantage of that and do what
13 the law requires you to do, which is deny approval of
14 this rider.

15 I'm available to answer questions.

16 CHAIRMAN JOHNSON: Commissioner Trombold.

17 COMMISSIONER TROMBOLD: Okay, Mr. Darr,
18 I'm going to ask you to put aside your legal argument
19 for just a moment. I know that is probably hard. I
20 heard you loud and clear what you were saying.

21 MR. DARR: And I think we've made that
22 argument a few times before, too.

23 COMMISSIONER TROMBOLD: So if you look at
24 policy side, I guess I'm kind of interested in what
25 your members think about this notion of market

1 stability and volatility and how that affects
2 economic development. You know, how do they best
3 manage that? Are there other ways? Can you talk a
4 little bit about that?

5 MR. DARR: Certainly. Commissioner, they
6 are all for stability because they have to make
7 budgets and they have to live by those budgets. When
8 you interject or introduce volatility into the energy
9 prices, whether it's constantly rising prices, like
10 they've faced over the last few years with AEP, or
11 the volatility associated with market prices, that's
12 a risk for them.

13 The question you really asked, how do
14 they manage that risk? The way they manage that risk
15 is they either sign up for the SSO, which is
16 inherently stable because of the way the SSO is bid,
17 or in the alternative, they go out and get a
18 fixed-price contract. And customers that are
19 represented, that are part of the IEU group, they can
20 go out and get a fixed-price contract, or they can
21 play the market. But that's their choice.

22 The problem that we have here with regard
23 to this rider is it doesn't solve that problem for
24 our customers. In fact, it injects a new level of
25 price risk that otherwise wouldn't be there. Think

1 about what is happening here. They are not receiving
2 any power from OVEC. They are not bidding on that
3 power. They are not making a decision between that
4 power and an SSO.

5 What they are being required if this
6 rider is approved is to pick up price risk that
7 otherwise would be on AEP Ohio. So if you approve
8 this rider, it does exactly the opposite of the
9 alleged -- I stress the word "alleged" -- purpose of
10 the rider. It injects risk where there wouldn't be
11 any otherwise. So what's happening is you're making
12 it worse for the customer, making it harder for that
13 customer to decide, okay, what is my energy cost?
14 What do I have to budget for? How do I move forward?

15 And in that regard you make it less
16 likely for a new customer to come into the state
17 because you've made it really hard for them.

18 COMMISSIONER TROMBOLD: Okay. I hear
19 what you are saying. So when you talk about risk,
20 even if there's a credit, you still view that as a
21 risk.

22 MR. DARR: Absolutely. Now, no one is
23 going to argue that we don't want lower prices, but
24 that's not what you are being promised here.
25 Remember what the bidding was at the hearing, the

evidence. The bidding was a range of \$8 million of credit, which, by the way, works out to 7 cents a megawatt-hour on average. To get the kilowatt-hour effect of that, divide that by 1,000.

On the other side you have an estimate of a \$116 million charge. You know, quite honestly, AEP came in and said -- first witness, by the way -- said all these estimates were based upon AEP's numbers. He said all these estimates are reasonable, and, by the way, they're all wrong. That was his testimony.

So we are left with this situation where you're being asked to do something where the range is so great, I can't tell you on a going-in basis that it is going to result in lowering prices, which certainly is an outcome we would like to have. But based on the evidence we have, A, I don't think it's going to happen because the company's own numbers suggest that, at least in the short run, the ESP is going to be a cost.

And, second, I'm not sure anybody can trust the numbers just because of the very nature of what we are trying to predict here. In particular, the rebuttal testimony that was presented didn't take into account the fact that there might be changes in

1 cost. It assumed all costs stayed the same.

2 Who would make a business decision on
3 that basis? I certainly would not. I can't assume
4 that prices are going to stay flat or my costs are
5 going to stay flat. I have to assume there is some
6 variation here, but that's the working assumption you
7 are being asked to buy into through the evidence
8 presented by AEP Ohio.

9 COMMISSIONER TROMBOLD: Thank you.

10 MR. DARR: Thank you.

11 CHAIRMAN JOHNSON: Commissioner Haque.

12 COMMISSIONER HAQUE: Thank you,
13 Mr. Chairman.

14 Mr. Darr, so 4928.02(H), okay, does the
15 charge need to be tariffed or somehow formally
16 classified as a distribution rate?

17 MR. DARR: Not according to your prior
18 decisions, your Honor. Your prior decision in the
19 Sporn case said this rate operates because it's
20 nonbypassable as a distribution rate.

21 COMMISSIONER HAQUE: So the mere fact
22 that it is nonbypassable is the equivalent, based on
23 your interpretation of precedence, to be a
24 distribution charge?

25 MR. DARR: Actually, I think I'll read

1 back the exact language of the decision,
2 Commissioner.

3 COMMISSIONER HAQUE: Okay.

4 MR. DARR: There was an equivalence drawn
5 between the fact that it was nonbypassable,
6 generation-related, a generation-related,
7 nonbypassable charge that would have the effect of
8 being the same as a distribution rate because its
9 applicable to all customers, just as a distribution
10 rate would be. So that equivalence was drawn, and
11 the Commission held in the Sporn case that it was a
12 violation of (H), 4928.02(H).

13 CHAIRMAN JOHNSON: Any other, questions?

14 COMMISSIONER LESSER: Thank you,
15 Mr. Chairman.

16 Frank, I'm trying to understand. Well,
17 first of all, you're saying based on that case
18 precedent that now and forever the Commission must
19 consider 4928.02 state policy as mandates on the
20 Commission; is that correct?

21 MR. DARR: Most of the provisions allow
22 you to ensure a particular outcome, and those have
23 been interpreted as not being mandates. And,
24 actually, the Supreme Court speaks to that effect.
25 The one exception to that, though, had been (B)(2)(h)

1 and the provision with regard to prohibition of
2 generation-related costs through distribution rates.
3 And the language is very specific. It literally
4 says -- I'll read it to you. I brought it up with
5 me.

6 COMMISSIONER LESSER: Prohibiting the
7 recovery.

8 MR. DARR: Prohibiting the recovery,
9 yeah.

10 COMMISSIONER LESSER: Let me ask you, are
11 you all -- any rider that would -- other than an
12 infrastructure, any rider which would be authorized
13 under 4928.143 on a nonbypassable basis you then are
14 saying is prohibited?

15 MR. DARR: No. No. There's some
16 specifically allowed. Specifically under (B) and (C)
17 those riders are nonbypassable by law. A rider
18 authorized under .144 is nonbypassable by law. There
19 are also specific riders that are bypassable by law,
20 for example, the Alternative Energy Rider has to be
21 bypassable. There are specific instances.

22 The question is how do you make Section
23 (B) (2) (d) coherent with the requirements of, for
24 example, .02(H)? The Commission answered that
25 question and answered it very clearly in the Sporn 5

1 case. The Supreme Court answered that question, but
2 those cases predate 221, but the analysis is the
3 same. If you are going to authorize the rider and
4 it's generation-related, you have a problem here with
5 (B)(2)(d) because it says, very specifically, you are
6 prohibited from allowing that recovery on,
7 effectively, a nonbypassable basis.

8 COMMISSIONER LESSER: So do you
9 believe -- there's a number of different policies in
10 the statute. Do you believe (H) has greater
11 authority than any other policy?

12 MR. DARR: I don't know that I would
13 describe it as greater authority. It directs you to
14 do something different.

15 COMMISSIONER LESSER: I'm not going to be
16 vague about this. Let me give you an example. (C)
17 says, "Ensure diversity of electric supplies and
18 suppliers." If this Commission found that diversity
19 of supply is a policy of the state of Ohio and
20 something for us to encourage, do you believe (H)
21 would still overrule that?

22 MR. DARR: I think you have to read it in
23 such a way that you give effect to all provisions of
24 the law, and that's pretty much black book
25 requirement of interpretation, so you can't allow one

1 section to trump effectively another section.

2 In this case, though, what happens is
3 that the prohibition is very specific to this
4 situation, and it would, in effect, control, and
5 there are multiple ways of ensuring diversity of
6 supply.

7 One of the questions that came to mind
8 when Mr. Schwartz was talking, for example, one of
9 the exceptions that has been recognized by courts on
10 the East Coast is that attempts to, for example,
11 encourage the development of wind power, which may or
12 may not effect the wholesale market, is an area which
13 is within the state's jurisdiction because it has
14 certain controls over generation wind services.

15 COMMISSIONER LESSER: Well, Frank, other
16 ideas are interesting, but the court always has to
17 face what's before it, and if the Commission chooses
18 certain alternatives, that's what the court would
19 determine.

20 MR. DARR: Right.

21 COMMISSIONER LESSER: Go ahead.

22 MR. DARR: In this situation you have a
23 very specific declaration by the legislature that
24 says, here's the result that we require. Not only do
25 you have that declaration, but you have two Supreme

1 Court cases that bind you to that result and your own
2 precedent, for that matter. There has to be some
3 explanation, then, as to why you would vary from that
4 precedent.

5 COMMISSIONER LESSER: And on a different
6 matter, you are also saying that PPA is not
7 authorized because it does not come within the impact
8 on Default Service within that statute?

9 MR. DARR: Right. I'd agree. As I
10 indicated during my opening remarks, I agree with the
11 staff what is happening here is that you have a rider
12 that applies to all services including not exclusive
13 to the Default Service. The statute itself, the way
14 it is set up, it says you may institute charges for
15 -- and then gives the laundry list. Default service
16 is one of the laundry-list items, as is Standby
17 Service, as is Backup Service.

18 Is this related to Default Service? The
19 answer is sort of, but only in a very tangential
20 sense. And that is the point of staff in its
21 arguments when it limited the scope of (B)(2)(d), the
22 way they argued that the Commission -- or indicated
23 that that is what the Commission intended when it
24 approved the riders in the Dayton and AEP II case.

25 COMMISSIONER LESSER: But what you're

1 saying -- and, again, I'm just trying to understand.

2 MR. DARR: Sure.

3 COMMISSIONER LESSER: If the Commission
4 found it had more than an insubstantial impact on
5 Default Service, if the Commission found that,
6 perhaps, mitigation of price volatility was a major
7 factor in the interest of the state of Ohio, then
8 that would be an impact on Default Service that would
9 give the Commission authority.

10 MR. DARR: I think you would have to go
11 -- let me think about that for a second. I think
12 what you would have to find, according to your prior
13 decisions, is that it is -- there is a clear nexus
14 between the rider and the delivery of the Default
15 Service. I believe that's what the staff is arguing,
16 and given the limitations of the decisions, the
17 language that's used in the DP&L case and the ESP
18 case that the staff relied on, which, obviously, you
19 are all familiar with, that would be the kind of
20 nexus that would be required before you could draw
21 the conclusion that (B) (2) (d) met that requirement,
22 and then you still would have to go on this.

23 And this is one of the things I pointed
24 out in the brief of IEU. You also would have to find
25 that this thing provided certainty and stability in

1 the delivery of retail electric service. Now you got
2 a whole other problem. Inasmuch as I indicated to
3 Commissioner Trombold, all this thing does is inject
4 new risk that wasn't there before.

5 COMMISSIONER LESSER: Thank you.

6 Thank you, Chairman.

7 CHAIRMAN JOHNSON: At this time I would
8 like to take a break, about ten minutes or so. We
9 will start back at ten after 4:00. We thank you for
10 your presentations.

11 Let me say this first. When we come
12 back, different groups will be allotted --
13 intervenors have been allotted five minutes, and we
14 will hold them to the five minutes. And also the
15 rebuttal of ten minutes, we will hold -- there will
16 still be questions from the Commissioners, of course,
17 but on your presentations, we will hold you to the
18 ten minutes for the rebuttal, and so that way,
19 hopefully, we can still get all the information but
20 yet end in some sort of a timely manner. Thank you.

21 (Recess taken.)

22 EXAMINER SEE: The next presenter is
23 Constellation NewEnergy, Inc. and Exelon Generation
24 Company.

25 MR. SETTINERI: Thank you, Mr. Chairman

1 commissioners. My name is Mike Settineri on behalf
2 of Exelon Generation Company.

3 Today I'm going to address the federal
4 preemption issue. To make full use of my five
5 minutes, I am going to jump straight to a couple
6 points that were made earlier.

7 Commissioner Haque asked about the
8 Nazarian case. I believe that case is fully on point
9 to the federal preemption issue, and the reason why
10 is in that case you had a PJM market participant who
11 is receiving a guaranteed amount of revenue from the
12 PJM sales, and that revenue then, the difference in
13 revenue received and the revenue requirement that was
14 guaranteed by the state commission order was then
15 being transferred to a third party, which were the
16 ratepayers. So that case is actually fully on point.

17 Another piece, Chairman Johnson, you
18 mentioned what other alternatives are there? Well,
19 the Fourth Circuit in its decision said look at tax
20 subsidies, other incentives provided by the state.
21 And that goes to a point Mr. Darr made earlier.

22 As you all know, this Commission only has
23 the authority as has been expressly granted to it by
24 the General Assembly, and I don't believe that the
25 General Assembly has granted this Commission the

1 authority to go ahead into a PJM transaction through
2 a rider. We are not talking about the contract
3 between OVEC and AEP Ohio. We are talking about the
4 sale in PJM where this rider will act to guarantee a
5 revenue stream to the market participant and then
6 bring in a third party to make up the losses or
7 receive the gains.

8 So for that reason alone this Commission
9 can avoid the federal preemption issue by finding it
10 does not have the authority. It is the General
11 Assembly that would have that authority.

12 Now, if the General Assembly made such an
13 authority, we now are back to the federal preemption
14 issue. I will start at a high level. The federal
15 preemption, we have two types of federal preemption.
16 We have field preemption where Congress has passed a
17 statutory scheme that so dominates a field, that any
18 attempt by the state to regulate or act within that
19 field would be preemptive.

20 And we have conflict preemption where
21 Congress has passed statutes or statutory schemes,
22 and the state act actually conflicts with an
23 expressed statute or acts in a way to frustrate the
24 goal of intent of the federal scheme as conflict
25 preemption.

1 What I'm focused here today on, though,
2 is field preemption, and it's field preemption
3 because the Federal Power Act has given FERC the
4 statutory authority to regulate the sale of electric
5 energy at wholesale in interstate commerce.

6 And we have a template. We have two
7 federal circuit cases, one of which just came down in
8 September. That's the Solomon case, 766 F.3rd 241.
9 We have a template of federal preemption, and it's
10 really how you frame the cases that matter here.

11 We've heard discussion of framing the
12 cases as looking at it as a generator contract
13 between a generator and a utility that's setting the
14 rate for the PJM transaction. But when you look at
15 the Nazarian case, as Commissioner Haque indicated,
16 it's not -- it's a functional result. At the end of
17 the day, that market participant -- in this case it's
18 AEP Ohio -- is going to have a guaranteed amount of
19 revenue in its bank account that will be equal to the
20 cost of the OVEC entitlement, but the loss on those
21 sales, the difference between the OVEC entitlement or
22 the gain is going to go to a different bank account,
23 that of the ratepayers, and it will be a deduct. So
24 that's why the Nazarian case is on point here.

25 AEP Ohio, when I was looking at their

1 brief, one thing jumped out at me was a portion of
2 the brief that indicated that the OVEC cost
3 entitlement, recovery of that cost, is part of the
4 status quo, I believe through the Fixed Cost Rider.

5 What we have here isn't just a cost it
6 recovers. It is not the cost of the OVEC entitlement
7 that is being recovered. It is the gains, really,
8 the loss that would be incurred in the PJM market.
9 So we are not talking, again, about the contract
10 between OVEC and AEP Ohio. We are talking about AEP
11 Ohio's transactions in the wholesale markets that
12 this rider, which would be a state act, would then
13 affect at the end of the day what the market
14 participant is actually receiving on those
15 transactions, so for that reason it will be federal
16 preemption of Rider PPA.

17 I'd also like to point out there was some
18 conversation about other contracts being looked at.
19 I would remind the Commission of the FERC prohibition
20 on affiliate transactions and how that would come
21 into play if other contracts are engaged in,
22 especially when you have -- what I've heard today
23 from Ohio Power is this falls under the generation
24 side, not the distribution side. So then the
25 question becomes you actually do now have captive

1 customers because this is on a nonbypassable system.

2 Time is up. Thank you very much.

3 CHAIRMAN JOHNSON: Thank you.

4 Questions?

5 Commissioner Lesser.

6 COMMISSIONER LESSER: Thank you.

7 Let me ask you a question. You just
8 described the PPA as being subject to preemption,
9 field preemption.

10 MR. SETTINERI: Correct.

11 COMMISSIONER LESSER: 4928.143(B)(2)(c),
12 if you don't have it in front of you, it calls for,
13 "the establishment of a nonbypassable surcharge for
14 the life of an electric generating facility that is
15 owned or operated by the" EDU, "surcharge shall cover
16 all costs."

17 And it says, "As a condition of the
18 continuation of the surcharge, the electric
19 distribution utility shall dedicate to Ohio consumers
20 the capacity and energy and the rate associated with
21 the cost of that facility."

22 Are you then also saying that section is
23 also preemptive?

24 MR. SETTINERI: Well, I'm not familiar
25 with that section.

1 COMMISSIONER LESSER: How would this
2 differ? This is a nonbypassable surcharge that you
3 collect the cost of the facility, and you set off the
4 capacity and the energy to the cost of that facility.

5 MR. SETTINERI: Well, here we have -- the
6 PPA actually picks up the losses from the wholesale
7 markets.

8 COMMISSIONER LESSER: Well, in this case
9 if the costs were more than the energy and capacity,
10 the ratepayers would be picking that up in the
11 surcharge.

12 MR. SETTINERI: Again, I'm not familiar
13 with that section of the statute. But going back to
14 the Nazarian case and looking at what we have here,
15 we have a market participant engaging in sales with
16 the revenue stream flowing back, and we have state
17 action that is going to set the amount of revenue
18 that market participant actually gets to receive, and
19 that fits squarely within the Nazarian case.

20 COMMISSIONER LESSER: I'm just trying
21 to -- as we have all been talking about alternatives,
22 this is one of the alternatives that the General
23 Assembly has given us for a new facility, and I'm
24 hearing you saying it's preempted, and that concerns
25 me.

1 MR. SETTINERI: I'm not addressing that
2 squarely, Commissioner. I'm not familiar enough to
3 address that here. I may let another party do that.

4 COMMISSIONER LESSER: Okay.

5 MR. SETTINERI: I am addressing how in
6 this situation the PPA does fit within the Nazarian
7 case, and also noting that the Fourth Circuit gave
8 suggestions on how states can incentivize generation
9 through subsidies, tax breaks, et cetera. And that
10 would be something left to the General Assembly.

11 COMMISSIONER LESSER: Well, as we were
12 talking about alternatives, you told us all the
13 things we can't do. Can you tell us something that
14 we can do under our retail jurisdiction to
15 incentivize either existing generation or new
16 generation?

17 MR. SETTINERI: I'm not aware, but,
18 again, I think another party would be better suited
19 to answer that.

20 COMMISSIONER LESSER: Thank you.

21 CHAIRMAN JOHNSON: Other questions?

22 COMMISSIONER HAQUE: Mr. Chairman.

23 CHAIRMAN JOHNSON: Commissioner Haque.

24 COMMISSIONER HAQUE: Thank you very much
25 for your presentation.

1 So my response to you would be I'm pretty
2 sure we would get challenged on preemption grounds on
3 that statute, too.

4 COMMISSIONER LESSER: Thank you for your
5 counsel.

6 COMMISSIONER HAQUE: While you don't know
7 the answer to that, let me provide one, my friend,
8 Commissioner Lesser, an answer to that, too.

9 So you've heard some parties distinguish
10 this case from the Nazarian/Hanna cases, specifically
11 this concept of the buy side versus sell side. Can
12 you comment on that a little bit?

13 MR. SETTINERI: Sure. You know, you
14 could say the buy is Ohio Power from OVEC, in a
15 sense, although my understanding is that Ohio Power
16 owns part of the entitlement. But this is a
17 supply-side transaction. I think the Fourth Circuit
18 made that clear in its decision. I believe it
19 references the supply side.

20 We are in the PJM markets, and we have a
21 market participant supplying into that market, and
22 that's the side of the transaction that would be
23 preempted, and that's the piece that needs to be
24 looked at, and that's why the PPA falls within the
25 Nazarian case, and I think that's a really good case

1 for federal preemption on this issue.

2 COMMISSIONER HAQUE: Have you analyzed
3 the interstate versus intrastate, because, actually,
4 one of the items that could conceivably prevent the
5 preemption under (C) is that that power is supposed
6 to be directed towards Ohio consumers, whereas this
7 power could be interstate in nature. Have you looked
8 at that issue? Is that issue relevant to this case?

9 MR. SETTINERI: I have not looked at that
10 issue, Commissioner.

11 COMMISSIONER HAQUE: No further
12 questions. Thank you, Chair.

13 CHAIRMAN JOHNSON: Any other questions?
14 Thank you very much.

15 MR. SETTINERI: Thank you, sir.

16 CHAIRMAN JOHNSON: Thank you for staying
17 within the five minutes.

18 EXAMINER SEE: Appalachian Peace and
19 Justice Network, Ohio Partners for Affordable Energy.

20 MR. SMALZ: Chairman Johnson and
21 Commissioners, I represent the Appalachian Peace and
22 Justice Network, which is a social justice coalition
23 in Appalachian Ohio with over 200 members. Many of
24 them are low-income residents and ratepayers.

25 I'm also speaking on behalf of Ohio

1 Partners for Affordable Energy or OPAE because we
2 filed joint post-hearing briefs in this case.

3 We definitely oppose the purchase
4 charge -- the Power Purchase Agreement Rider/subsidy
5 because it is illegal and because it is a bad deal,
6 practically speaking, for Ohio consumers.

7 It's illegal, as IEU's counsel pointed
8 out, because the Commission has no jurisdiction, no
9 authority to approve such a scheme in the first
10 place. However, it is also illegal because it
11 clearly contravenes several statutory policy factors
12 in Section 4928.02 of the Revised Code.

13 And I should remind the Commission that
14 those statutory policy factors are not just
15 aspirational. They aren't just a broad statement of
16 legislative purpose. Both the Supreme Court and this
17 Commission have held that those statutory policy
18 factors can and do create binding legal duties,
19 obligations, and limitations.

20 In fact, to quote the Commission from its
21 first ESP -- from the FirstEnergy ESP order in 2009,
22 "The Commission believes that the state policy
23 codified in Chapter 4928 sets forth important
24 objectives which the Commission must keep in mind
25 when considering all cases filed pursuant to that

chapter of the code. Therefore, in determining whether the ESP meets the requirements of Section 4928.143, the Commission takes into consideration the policy provisions of Section 4928.02, and we use these policies as a guide in our implementation of Section 4928.143."

In reviewing the policy factors in 4928.02, it is clear at least four of those factors are directly impacted or would be directly impacted by the proposed PPA.

First, (A), which among other things ensures the availability to consumers of, quote, unquote, "reasonably priced retail electric service."

(B) "Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs."

(H), which has already been mentioned by IEU's counsel, which prohibits both anticompetitive subsidies, which is basically what the PPA is, but also, more importantly, flatly prohibits the recovery of any generation-related costs through distribution rates.

And I should also point out to the

1 Commission that under traditional rules of statutory
2 construction, a more specific statute normally
3 controls, normally trumps any other statute that is
4 not as specific. And here we have as specific of
5 statute as you can possibly want, an absolute
6 prohibition against the recovery of
7 generation-related costs through distribution rates.

8 And, by the way, in the Elyria Foundry
9 case, the 2007 Ohio Supreme Court case, it was that
10 very provision which the Supreme Court cited in
11 rejecting increased deferral costs requested by
12 FirstEnergy. The Supreme Court held in that case
13 that those increased deferral costs violated the
14 prohibition against anticompetitive subsidies, and
15 we're dealing with the same issue here before the
16 Commission in the AEP case.

17 And last but not least, policy factor (L)
18 requires the Commission to protect at-risk
19 populations. At-risk populations include low income,
20 elderly, medically vulnerable. In many cases the
21 elderly or medically vulnerable are also low income
22 or dependent on modest fixed incomes. Those are the
23 very customers who are most likely to be struggling
24 to pay their bills, the most likely to have to choose
25 between paying their utility bills and paying for

1 other necessities of life such as food, shelter, and
2 medicine. They have the highest energy burden. Even
3 if they are on PIPP, they are paying 12 percent of
4 their income, which is more than what more affluent
5 households pay for their utilities.

6 And then, of course, also they are
7 covered by the requirement that the Commission ensure
8 reasonably priced service. With respect to that more
9 general factor, I should point out that the rider is
10 clearly an increased charge. It's going to cost
11 ratepayers up to \$116 million. That may not seem
12 like a tremendous amount of money to some people, but
13 it really is significant, and residential customers
14 and low-income customers especially are going to feel
15 that burden.

16 EXAMINER SEE: Mr. Smalz, you are out of
17 time.

18 MR. SMALZ: Thank you. Happy to answer
19 any questions.

20 CHAIRMAN JOHNSON: Any questions?

21 COMMISSIONER TROMBOLD: Just to
22 reiterate, so the position that you've conveyed is
23 that, in essence, the costs outweigh the benefits,
24 even if there would be a credit back to the customers
25 you represent?

1 MR. SETTINERI: Yes. We're convinced the
2 costs clearly outweigh the benefits. It's going to
3 result in higher rates for AEP's customers. It
4 already has the highest rates. It already has high
5 rates of disconnections, a large number of customers
6 on PIPP, a large number of customers on extended
7 payment plans, and they're going to be even more
8 economically distressed customers if we allow AEP's
9 already very high rates to go up even higher.

10 CHAIRMAN JOHNSON: Wouldn't some of the
11 areas that they're talking about trying to protect,
12 Ohio Power, AEP is trying to protect, aren't they
13 located in your area of the state, some of the --
14 maybe some of the coal mines, maybe some of the
15 coal-powered plants? I mean, it sounded like they
16 were just trying to protect these areas.

17 MR. SETTINERI: Well, I don't think
18 that's AEP's objective. Their objective is to ensure
19 they don't incur any losses from these plants. They
20 wouldn't be fighting so desperately to preserve this
21 subsidy if they weren't fearful of losing money
22 otherwise.

23 But more directly, yes, some of the coal
24 mines are in Appalachian, Ohio, but it is also true
25 that some of the highest-poverty customers with the

1 most economically distressed ratepayers are located
2 in those counties.

3 It's also true that there are a number of
4 counties and cities in AEP's service territory
5 outside of southeastern Ohio that have much higher
6 poverty levels than the state average. Those would
7 include Allen, Franklin, Hardin, Highland and Ross
8 Counties, and there are also major cities, such as
9 Columbus, Canton, and Lima, which have very high
10 poverty rates, in the case of Columbus, 22 percent,
11 Canton 31 percent, Lima 36 percent. These are 2013
12 figures.

13 So there are a lot of customers
14 throughout the territory, including economically
15 distressed, low-income customers who are going to be
16 harmed by these cost increases, both in southeastern
17 Ohio and in other rural counties and in the major
18 cities served by AEP.

19 CHAIRMAN JOHNSON: Thank you.

20 Commissioner Haque.

21 COMMISSIONER HAQUE: Mr. Smalz, you said
22 you are convinced this will end up in a net detriment
23 to your consumers. How are you convinced? There are
24 three cost analyses that are within the record of
25 this case. All three provide different numbers, and

1 one of those, which is AEP Ohio's, states there will
2 be a credit to the consumers. How are you convinced?

3 MR. SMALZ: Okay. First of all, the
4 weight of the evidence, the analyses done and
5 presented in testimony by both OCC and IEU, suggest
6 that it will be a cost, a significant cost to
7 consumers. The OCC witness, Witness Wilson,
8 testified that it will come to -- the cost will
9 amount to \$116 million.

10 It's true there's a range of estimates,
11 but it's hard to give much credence to AEP's estimate
12 because they presented three different estimates
13 during the course of the case. They started out
14 saying that it will cost consumers \$32 million in
15 their direct testimony. Then on cross-examination, I
16 think it was Witness Allen testified that it would be
17 a wash. Then on rebuttal testimony, Witness Allen
18 said, Oh, it will actually benefit customers to the
19 tune of \$8 million. Their estimates are all over the
20 map. I don't think we can attach much credibility to
21 their numbers.

22 COMMISSIONER HAQUE: Thank you.

23 CHAIRMAN JOHNSON: Any other questions?

24 Thank you very much.

25 MR. SMALZ: Thank you.

1 EXAMINER SEE: The next presenter is
2 Retail Energy Supply Association.

3 MS. PETRUCCI: Good afternoon, Chairman
4 Johnson, Commissioners, Attorney Examiners. I'm
5 Gretchen Petrucci. I'm here on behalf of the Retail
6 Energy Supply Association. RESA is a trade
7 association composed of 21 competitive suppliers,
8 more than half of whom are actively operating in
9 Ohio. They employ hundreds of Ohioans and are
10 developing more and more product offerings for
11 Ohioans.

12 Earlier today we heard AEP claim that
13 this rider is going to preserve and advance
14 competition. RESA opposes the Power Purchase
15 Agreement proposal. In addition members --
16 individual members of RESA, which are IGS and Direct
17 Energy, also who filed briefs in this matter, also
18 oppose the Power Purchase Agreement proposal.

19 We believe that the proposal is going to
20 harm the competitive market. Just earlier today we
21 also heard AEP admit that this rider is going to be a
22 limitation on shopping. Not only is it going to be a
23 limitation, but it's going to be a limitation for
24 years because AEP has proposed this to be a long-term
25 proposition.

1 As a result, the rider is going to
2 adversely affect the decisions made by shopping
3 customers. The shopping customer will no longer pay
4 just the supplier's charges for generation. If this
5 rider is approved, shopping customers will
6 potentially pay for years for OVEC generation costs.
7 These costs are not related to the energy that is
8 actually used by the shopping customer. It's simply
9 a hedge to provide AEP with revenue stability,
10 revenue stability it doesn't currently have with
11 respect to the OVEC entitlement.

12 As a result, it's going to impair the
13 bargain that the shopping customer thought it had
14 when it decided to shop. Shopping customers who have
15 fixed-rate customers will not have the certainty of
16 their generation costs because this rider will be an
17 additional cost, potentially, and it's going to
18 fluctuate. AEP acknowledged they propose to have it
19 fluctuate. As a result, those shopping customers
20 with fixed rate contracts don't have the certainty
21 they bargained for.

22 We also had to acknowledge that the
23 shopping customers are going to pay under this
24 proposal for years for generation that AEP was
25 supposed to divest. As a result, the rider is not

1 going to be a hedge for customers. It's going to
2 effectively alter their choices. By mandating a
3 shopping customer in AEP Ohio's service territory to
4 pay AEP's generation costs is effectively
5 substituting AEP's choices for the choices that the
6 shopping customer has made.

7 Moreover, shopping customers don't want
8 to buy AEP Ohio's generation. To require the
9 shopping customers to do so is completely contrary to
10 the competitive market construct in Ohio. The basic
11 tenant of the restructuring in Senate Bills 3 and
12 221 is economic freedom. A customer would be free to
13 buy at fixed prices, variable prices, or generate
14 electricity themselves, or buy some other option to
15 match their needs.

16 If the proposed rider is approved, the
17 customer who locked in its generation at 6 cents a
18 kilowatt-hour will then pay that 6 cents a
19 kilowatt-hour during the time this rider is in effect
20 but then also pay an unknown amount under the rider;
21 and, therefore, the bargained-for certainty that the
22 customer had is lost.

23 A customer who bought power with an index
24 and then integrated the risk associated with that
25 into their business plan also has a new

1 unbargained-for risk because of this rider.

2 Many customers have already hedged the
3 risks either by buying under the various different
4 types of contracts or buying options or installing
5 generation. That planned hedge will be affected by
6 Rider PPA.

7 As you heard earlier, this proposal is
8 not a good deal, and, quite frankly, customers don't
9 want to sign up for and pay losses for potentially an
10 opportunity to have profits related to two coal
11 plants that were built in the 1950s and when we know
12 there are upcoming environmental controls that will
13 have an impact as well.

14 For all these reasons -- my time is up --
15 Rider PPA is a proposal we request that the
16 Commission reject.

17 CHAIRMAN JOHNSON: Thank you very much.

18 Questions of the witness?

19 Commissioners Lesser.

20 COMMISSIONER LESSER: I'm really looking
21 at the statutory side, and Senate Bill 3 allowed EDUs
22 to divest without approval. Actually, 221 switched
23 that back, I believe, to it required Commission
24 approval; is that correct?

25 MS. PETRUCCI: I'm not sure. I'm sorry.

1 COMMISSIONER LESSER: Take my word for
2 it.

3 MS. PETRUCCI: Okay. We shall.

4 COMMISSIONER LESSER: It was actually the
5 Commission that ordered the EDUs to divest, but the
6 statutory authority actually switched over, and
7 Senate Bill 3 declared generation competitive and
8 called for unbundling, but then in 221 it created
9 some means for cost recovery for environmental, for
10 new facilities. So, in a sense, from a statutory
11 point of view, from my point of view, 221 created
12 more of a hybrid and a balancing, putting the
13 authority to the Commission to try to balance, to
14 encourage competition while also trying to follow
15 those enumerated policies of the state of Ohio.

16 MS. PETRUCCI: Well, it's very clear, and
17 AEP has repeatedly told you, the costs associated
18 with the OVEC entitlement that would be charged under
19 the rider are generation. And the marketplace
20 currently that exists is allowing customers to choose
21 who they want to buy their generation from. If this
22 rider were put into place, customers would be able to
23 choose still; however, they also have to pay AEP for
24 its generation costs, and that's not what was
25 intended when this new competitive market was put

1 into place.

2 COMMISSIONER LESSER: You know, as I
3 discussed with some of the others, the Commission
4 implemented 4928.143(B)(2)(c) for a new facility,
5 which would have the same impact, would it not?

6 MS. PETRUCCI: The shopping customer --
7 only if it was determined to be part of the company's
8 distribution rates.

9 COMMISSIONER LESSER: It says
10 nonbypassable.

11 MS. PETRUCCI: It would have to be
12 allowed by the Commission first, and the Commission
13 has to evaluate whether that would be appropriate or
14 not. That's not happening here.

15 COMMISSIONER LESSER: Thank you.

16 CHAIRMAN JOHNSON: Commissioner Haque.

17 COMMISSIONER HAQUE: Ms. Petrucci,
18 wouldn't this just be another nonbypassable rider
19 that shopping customers would have to deal with? And
20 so my real question is functionally, how does this
21 affect the competitive market at all?

22 MS. PETRUCCI: It would end up requiring
23 a shopping customer to pay for generation that
24 they're not using, and it's above and beyond the
25 generation that they have chosen to purchase from a

1 competitive supplier. It's not going to be the
2 energy that goes directly to the customer. The AEP
3 customer is not getting that energy. It's going into
4 the PJM market.

5 COMMISSIONER HAQUE: But functionally
6 does it change anything with respect to the
7 competitive market? You still have retail suppliers
8 out there. They are still able to go out. They're
9 still able to sign up customers. You can offer fixed
10 rates. You can offer variable rates, but you would
11 have Rider PPA hanging out there, but they'd have to
12 pay for it, just like you had stability riders that
13 shoppers and nonshoppers alike had to pay for.

14 MS. PETRUCCI: It has two different
15 effects. In one respect, and as AEP just told us
16 earlier, it's a limitation on shopping.

17 COMMISSIONER HAQUE: How so?

18 MS. PETRUCCI: Because it creates an
19 additional charge, potentially, if we -- I'm not
20 going to go into the projections -- potentially some
21 credit. That is on top of what the customer has
22 already planned for itself. If the customer has
23 taken the effort to choose either a fixed-rate
24 contract or a variable contract with an index and
25 worked that all out, this changes it for the

1 customer, and it has -- it's that uncertainty that it
2 creates that's problematic.

3 I think Mr. Darr said a lot of this --
4 I'm sorry if I'm repeating him, but he reflected this
5 as well. The customers in Ohio that are wanting to
6 shop are taking the time and effort to figure out
7 what works for their needs, and this particular rider
8 is adding on top of it something that is not within
9 their choice.

10 COMMISSIONER HAQUE: Thank you.

11 CHAIRMAN JOHNSON: Any more questions?

12 Thank you very much.

13 MS. PETRUCCI: Thank you.

14 EXAMINER SEE: Kroger Company.

15 MR. YURICK: Mr. Chairman, members of
16 Commission, Attorney-Examiners, staff, my name is
17 Mark Yurick. I am with the Taft law firm. I
18 represent the Kroger Company. I will attempt to be
19 neither redundant nor superfluous, and if I am
20 either, I'll attempt to do so succinctly.

21 I would like to address more of the
22 policy side of the argument. As noted by some of my
23 esteemed colleagues, the original request for a PPA
24 Rider in this case was made in a fairly narrow
25 context, which was to allow AEP to sell its OVEC

1 entitlement into PJM auctions and reflect the
2 difference between the cost of that production and
3 the sale price as a charge if costs exceed the
4 proceeds, and as a bill credit if there was a profit
5 to be made on the output.

6 This is the context, again, which the
7 rider was discussed in the AEP SSO case before you,
8 and even in this relatively modest form, nearly all
9 intervening parties joined the staff of the PUCO in
10 challenging the rider on the bases that have been
11 outlined by the other intervenor and in the briefs in
12 the SSO case.

13 However, at least in this context, since
14 AEP could not transfer the OVEC entitlement to its
15 generation subsidiary without the consent of the
16 other OVEC participants, which permission was not
17 forthcoming, there seemed to be some rational
18 argument for, quote, making the best out of a bad
19 situation. AEP was stuck with this OVEC output and
20 had to come up with a proposal that at least had the
21 theoretical possibility of helping some distribution
22 customers somewhat in the distant future if prices
23 rose dramatically.

24 As I'm sure the Commissioners are more
25 than fully aware, if there were easy answers to these

1 things, we would all be doing them. The only problem
 2 with that is AEP, I think, solely focused on the
 3 pricing side and did not at all discuss costs or
 4 forecast for costs, and I would suggest that if
 5 prices for energy and power were to rise
 6 dramatically, variable costs would also likely
 7 increase sharply, which really differentiates the
 8 workings of the PPA Rider from what would be
 9 considered a true hedge. Also, to even get a
 10 measurable benefit, really, the forecast would have
 11 to carry on, as has been said, very far into the
 12 future.

13 In reviewing the transcript of the
 14 proceedings, the Commission may feel in this very
 15 limited context the PPA Rider might act as sort of
 16 balancing mechanism to level out the risks of a
 17 volatile market pricing, and since AEP is stuck with
 18 OVEC, distribution customers might as well get some
 19 theoretical future benefit from the output.

20 Again, however, it should be stressed
 21 that the PPA really is not any kind of financial
 22 hedge as that term is commonly understood. It
 23 actually rises with prices, which it is meant to
 24 counteract. And, again, the costs, the inputs in
 25 producing that power I suggest would likely go up as

1 well.

2 There's also the point I think that goes
3 to some of the questions that Commission Lesser was
4 asking and Commissioner Trombold. Most sophisticated
5 customers, my client included, would rather rely on
6 their own hedging strategies, and they do, in fact,
7 engage in fairly sophisticated hedging strategies,
8 either with consultants or with marketers, to make
9 certain that they have price certainties.

10 And even in this limited context of the
11 OVEC entitlement, I think it's important to note that
12 AEP appears to assume that all of its customers are
13 not interested in price certainty. Quite the
14 contrary, most, if not all, sophisticated customers
15 are extremely interested in price certainty and
16 engage in their own sophisticated hedging strategy,
17 and most, if not all, of these sophisticated
18 customers shop for generation.

19 The OEG witness, if you look at his
20 testimony, who is basically the sole intervening
21 witness who was not completely opposed to the PPA
22 Rider, admitted he would have no problem making the
23 PPA Rider bypassable so that sophisticated customers
24 who chose to shop for their own -- shop and engage in
25 their own hedging strategies would be free to do so.

1 I really wanted to make the point that if
2 the Commission were to allow the PPA Rider, even in
3 the limited context of AEP's request in the SSO case,
4 that decision will likely set a precedent for more
5 generation-based PPA Riders.

6 That's really all I had to say anyway.
7 I'm happy to answer any questions of the
8 Commissioners.

9 CHAIRMAN JOHNSON: Questions?

10 Commissioner Lesser.

11 COMMISSIONER LESSER: So you're saying
12 that sophisticated customers have the ability to do
13 their own hedging?

14 MR. YURICK: Correct.

15 COMMISSIONER LESSER: And, in a sense,
16 they are making the decision to pay something in
17 addition to the generation costs in order to mitigate
18 volatility?

19 MR. YURICK: They may be, yes. They may
20 be. There are various financial hedging strategies
21 that they engage in, and they may be willing to pay a
22 higher cost out into the future if they're guaranteed
23 a stable price in the near term.

24 COMMISSIONER LESSER: Then does the
25 Commission have the obligation to look out for those

1 nonsophisticated customers and try to mitigate
2 volatility for them? I'm just talking policy, not
3 law.

4 MR. YURICK: Really, from a policy
5 perspective, I'd leave that to the Commission. What
6 I can say from my client's perspective, which I am
7 familiar with, that most sophisticated customers
8 would much rather rely on their own decision-making
9 processes to determine whether or not a particular
10 hedging strategy benefits them and their internal
11 policies.

12 As you know, in all fairness to the
13 question, and I'm trying to answer your question
14 honestly, I'm not prepared to answer what the
15 Commission's obligations would be to the general
16 public to come up with a mix of generation.

17 COMMISSIONER LESSER: That's fair. Thank
18 you.

19 CHAIRMAN JOHNSON: Other questions?
20 Thank you very much.

21 MR. YURICK: Thank you.

22 EXAMINER SEE: Environmental Law and
23 Policy Center, Ohio Environmental Council, and
24 Environmental Defense Funds.

25 MS. FLEISHER: Chairman, Commissioners

1 Madeline Finnegan for the environmental intervenors.

2 Good evening, I think we are into at this point.

3 My fellow intervenors have talked to you
4 a lot about why you don't have the legal authority to
5 approve AEP's attempt to shift risk onto their
6 ratepayers without any ability to reject it. I want
7 to talk to you about a different issue, which is why
8 the risks are so big here and why this is just a bad
9 bet for AEP's customers.

10 And a big driver of that risk is the
11 environmental costs, and what AEP has failed to do
12 here is show it's addressed in any wholesale or
13 adequate way what those costs will be, and that's
14 really important because whether this will function
15 as a hedge and whether it will in the end provide any
16 net benefit to customers depends a lot on whether
17 your costs are going to eat up any benefit that you
18 get from market prices.

19 And in this case there's a large
20 potential for those costs to be high for the OVEC
21 plants going forward. There's numerous environmental
22 regulations coming down the pike, carbon regulations,
23 which are probably the most prominent, but there's
24 also ozone, coal ash, mercury, cross-state air
25 pollution, steam electric effluent limitation

1 guidelines.

2 AEP simply has no record of evidence that
3 they considered what these costs will be and how
4 they'd affect the function of this purported hedge.
5 As Mr. Nourse said, they are relying on the track
6 record of the OVEC plants, but the track record has
7 no bearing on what will happen under these new
8 regulations.

9 And I think the case in point here is the
10 carbon regulations where Mr. Vegas testified on
11 behalf of AEP that at this point we don't know what
12 the cost of those are going to be, and that's just
13 not enough for the Commission to approve this rider
14 and make AEP's customers take that chance. You guys
15 don't know. AEP has said it.

16 It's also contrary to the competitive
17 framework under SB 221 and SB 3, and in this case in
18 a way that has removed any ability for competition to
19 provide some reassurance on the cost front. AEP
20 didn't conduct any sort of RFP or even any review of
21 other plants that might be able to provide a hedge,
22 if that's really what you're looking for, plants that
23 could have lower environmental costs. Again, we just
24 don't know.

25 And in the end, you're going to end up

1 with a bet that's being forced onto AEP's customers,
2 and a bet that all odds are is a bad one because the
3 world is not as it has been for OVEC's history.
4 Environmental costs may not be what they have been,
5 and it shouldn't be the customers' job to shoulder
6 those unknowns.

7 I guess the only other point that I'd
8 like to make if by any chance it does turn out this
9 is good bet, AEP has the unilateral right to
10 terminate the ESP and take back the benefits for
11 themselves. So they can say what they want about
12 what they might do, but the fact is there is nothing
13 in the ESP that allows the Commission to step in and
14 say, Hold on, you can't do that. You got to give the
15 good stuff along with the bad to your customers.

16 And so I think in the end, this is a
17 lose-lose for customers. Costs could be high. They
18 could lose if costs aren't high because the benefit
19 could all go to AEP. And in the end, I'll just refer
20 to Mr. Vegas' testimony, we don't know.

21 I'm happy to answer questions.

22 CHAIRMAN JOHNSON: Questions?

23 Commissioner Haque.

24 COMMISSIONER HAQUE: What do you mean by
25 environmental costs?

1 MS. FLEISHER: So there can be capital
2 compliance costs in terms of having to install new
3 pollution control technologies, for example, coal ash
4 might be a good example. You have to install a
5 retention pond, build dams and so forth. Those would
6 be in the millions of dollars.

7 And then there's, of course, variable
8 costs. You know, if you're treating at the
9 smokestack, that requires chemicals for treatment,
10 filters and, again, no one has looked to this. I
11 mean, it's almost shocking that there hasn't been an
12 attempt to say, okay, this is how much it will take
13 for us to comply with the coal ash rules. This is
14 how much it will cost to reduce our sulfur dioxide
15 and nitrous oxide emissions going forward, and that's
16 what customers can expect. They don't know what to
17 expect.

18 COMMISSIONER HAQUE: So your point is, is
19 that when the OVEC costs are established by whatever
20 body, that those costs could be through the roof
21 because of potential environmental compliance that
22 has to be met?

23 MS. FLEISHER: Yes.

24 COMMISSIONER HAQUE: But can I argue the
25 alternative? So what is the alternative then? We

1 would then effectively let part of this discussion,
2 part of the policy discussion associated with this,
3 what has to be associated with this, is the concept
4 of reliability. So the flip side of that is what?
5 We allow for generation that is potentially needed in
6 Ohio to go by the wayside because of potential -- the
7 impact of environmental costs?

8 MS. FLEISHER: Well, I want to be careful
9 to stay with what is within the record here. But
10 also, again, I think what it comes down to is that's
11 a conversation you can have, if you know -- have some
12 idea what might happen. Maybe environmental costs
13 will be so high that they would cause OVEC to have to
14 close. I don't think anyone has suggested that
15 that's necessarily going to happen or is even a
16 strong possibility.

17 You know, I don't want to go too far down
18 the hypothetical route here of things that haven't
19 been explored in the briefing. But, again,
20 reliability, you are going to have for preemption
21 issues. There are reliability must-serve agreements,
22 if that's something that FERC determines is required.
23 I just think we can't even get that far if we don't
24 know what the environmental costs are, and we're not
25 able to have a full conversation about what all the

1 reliability issues are.

2 COMMISSIONER HAQUE: Fair enough.

3 CHAIRMAN JOHNSON: Commissioner Lesser.

4 COMMISSIONER LESSER: Thank you.

5 Can you tell me what your understanding
6 is as to AEP's ability and when they would have that
7 ability to terminate?

8 MS. FLEISHER: As when to terminate,
9 close the plant?

10 COMMISSIONER LESSER: The PPA.

11 MS. FLEISHER: Terminate the PPA. As I
12 understand it, AEP's has proposed an early
13 termination provision where two years into the ESP,
14 they could call off the ESP, including the fact that
15 customers would have any credits flow through from
16 the PPA and could seek some new arrangement before
17 the Commission.

18 COMMISSIONER LESSER: Okay. My other
19 question is in regard to the PPA, we have spent a lot
20 of time with 111(d), with the carbon regulation. If
21 a PPA was being used for building block two gas
22 plants or wind farms or solar facilities, would you
23 have the same objection?

24 MS. FLEISHER: In terms of -- I think I
25 would have the same concern about knowing what the

1 costs of that would be, and, you know, what is your
2 certainty it will, in fact, do what it is designed to
3 do.

4 You know, it is one thing to say, do we
5 agree with the idea of hedging as a concept or a PPA
6 as a concept. That's not really what I'm trying to
7 address. What I am trying to address is if you want
8 to do that, is this the way to do that? Has AEP gone
9 through the sort of competitive vetting that you
10 would want in a serious analysis to say we can be
11 confident that this is going to deliver what we
12 promised.

13 And you can do that in many ways. In the
14 SSO you have competitive bidding to be sure you're
15 getting the best deal for your customers. Was that
16 mechanism used here? No. Was anything looked at
17 besides the OVEC plants? No.

18 CHAIRMAN JOHNSON: Thank you very much.

19 MS. FLEISHER: Thank you.

20 EXAMINER SEE: Ohio Manufacturers
21 Association Energy Group.

22 MS. BOJKO: Thank you, Mr. Chairman
23 Commissioners, Attorney-Examiners, Legal Director.
24 My name is Kim Bojko. I'm with Carpenter, Lipps &
25 Leland, and I'm here on behalf of the Ohio

1 Manufacturers Energy Group. The Energy Group is a
2 subset of 1,400 OMA member companies that focus on
3 energy issues and who have facilities located in
4 AEP's territory.

5 Consistent with most of the intervening
6 parties you have heard from today plus staff, OMA
7 opposes the adoption of a Power Purchase Agreement
8 Rider. And as you have heard by the opponents today,
9 Ohio and federal law do not permit the Commission to
10 authorize the rider. The Commission does not have
11 statutory authority to regulate wholesale markets,
12 and approval of the PPA is preempted by the Federal
13 Power Act.

14 Additionally, the Ohio Electric Security
15 Plan statute does not authorize this type of rider.
16 It is not contained within the list of items
17 permitted in an ESP. So while it may be the
18 preferred option, as mentioned by AEP, the Commission
19 still has to follow the law.

20 Now, Ohio law also prohibits the
21 collection of additional transition revenues, as
22 you've heard today. Now, this Commission is charged
23 with advancing the state's energy policies, and the
24 Commission's stated mission is to assure access to
25 adequate, safe, and reliable utility services at fair

1 prices while facilitating an environment that
2 provides competitive choices.

3 Now, the PPA is contrary to this mission,
4 and it is contrary to state policy. It's an unlawful
5 subsidy. It unfairly and unreasonably increases the
6 cost of electricity to customers. It eliminates or
7 it unwinds the customers' choices that they have
8 already made, and it frustrates the competitive
9 markets. It subsidizes one generator over another
10 generator. That's anticompetitive behavior.

11 Now, Staff Witness Choueiki said it best.
12 He stated it took over a decade for the Commission to
13 transition the four Ohio EDUs to a fully competitive
14 retail electricity market. Granting a PPA Rider is a
15 move in the opposite direction.

16 Let's talk about the second leg of the
17 stool mentioned by AEP. Contrary to AEP's claim, the
18 rider does not provide reliability or stability.
19 First, PJM is the entity in charge of reliability for
20 the region, not AEP, not this Commission.

21 Second, several projections, including,
22 by the way, one projection of AEP's during the course
23 of the SSO hearing, indicated that the rider would,
24 in fact, result in an increase to customers' bills
25 over the term of the ESP.

1 Now, the only party that the rider will
2 bring certainty to in this case is AEP, and if it is
3 such a great deal, why doesn't AEP keep it?

4 And for those customers that actually
5 sought out stability and certainty in their
6 generation prices by entering into a fixed-price
7 contract, their bills will increase. They will no
8 longer be stable or certain.

9 And, Commissioner Lesser, you asked what
10 about the other customers? Well, the other customers
11 also have a fixed price contract. It's called the
12 Standard Service Offer, which was competitively bid,
13 and, by the way, isn't supplied by AEP or isn't
14 supplied by the OVEC generating units or other PPAs
15 that may be brought into this. Also, the rider is
16 unjust and unreasonable.

17 So AEP is asking this Commission to shift
18 the risk from the utility customers to -- I'm
19 sorry -- shift the risk from the utility to customers
20 for unknown and unlimited costs.

21 Well, you talked a lot about the review
22 of the Commission in this case. Well, I took a look
23 at AEP's brief on page 4, and it basically says that
24 the Commission doesn't have jurisdiction to look at
25 the prudence of the costs. It says the Commission

1 will perform a financial audit to confirm that costs
2 were proper and that they were incurred and passed
3 through in the right manner. It also says that if it
4 has a complaint or any concerns, it has to go to FERC
5 to work those out.

6 Now, the rider is also not an appropriate
7 economic development tool for this Commission to use.
8 I'm glad to hear that today AEP states that economic
9 development has nothing to do with the OVEC units,
10 which is what is in the case before you.

11 And if we look beyond the case that is
12 before us today and allude to any expanded PPA, it
13 also does not provide the economic development
14 benefits that they suggest. The Commission needs to
15 look to the companies and the customers who are
16 paying for these increased costs and determine how
17 these costs will affect their businesses in Ohio and
18 the ability that they will have to retain their own
19 jobs in Ohio. The higher the electric rates, the
20 less Ohio businesses have to invest in Ohio's
21 economy. The higher the electric rates, the less
22 attractive Ohio is to businesses that are looking to
23 locate or expand in Ohio.

24 Thank you. I'll be happy to answer any
25 questions.

1 CHAIRMAN JOHNSON: Thank you.

2 Questions?

3 Hearing none, thank you.

4 MS. BOJKO: I have a perfect answer to
5 Commissioner Lesser that I thought for sure he would
6 ask me about (B) (2) (c).

7 CHAIRMAN JOHNSON: Thank you very much.
8 Next.

9 EXAMINER SEE: Is counsel present for the
10 Ohio Hospital Association?

11 Let the record reflect Ohio Hospital
12 Association counsel is not present.

13 Natural Resources Defense Council?

14 Let the record reflect that Natural
15 Resource Defense Council is not present.

16 Ohio Energy Professionals Association?

17 Let the record reflect counsel for Ohio
18 Professional Energy Association also is not present.

19 Counsel for EnerNOC, Incorporated has
20 informed the Attorney-Examiners they were not
21 speaking today.

22 Next, Ohio Energy Group.

23 MR. KURTZ: Thank you, Mr. Chairman,
24 Commissioners. The OEG represents the largest
25 industrial customers on the AEP system. We support

1 the PPA with at least two important modifications.

2 First of all, let me say that this case
3 is not about competition versus regulation. It's
4 really about whether or not this State Commission
5 stays in the business of regulating generation or
6 whether you cede all jurisdiction to the FERC and
7 PJM.

8 The PJM market for capacity is highly
9 regulated. It is very much administratively
10 determined. It is not a competitive market.
11 Everything you read about PJM and what they are
12 doing, capacity performance, is intended to increase
13 the price of capacity because PJM realizes they're
14 not getting new generation built.

15 What that means for the PPA is these
16 fully environmentally compliant resources, brand new
17 scrubbers, SCRs for NOx control, meet the MATS
18 requirements will be good, long-term assets.

19 The evidence shows the PPA is going to be
20 a credit -- the most reliable evidence -- is going to
21 be a credit for consumers over the short and long
22 term, so that's one reason we support it.

23 We also, more fundamentally, think it is
24 important for the state to stay in the business of
25 regulating generation. You should not cede

1 jurisdiction completely to FERC because the states
2 that have done that very often are sorry.

3 The OVEC structure hasn't really been
4 clear. OVEC is here. They sell power to AEP Ohio
5 and the 12 or 13 other owners of OVEC at the
6 FERC-approved cost-of-service rate. That's a
7 wholesale transaction. FERC approves it.

8 AEP Ohio gets that energy and capacity.
9 Now they have to do something with that energy and
10 capacity with or without the PPA. They're going to
11 sell it into the PJM market, and it's either going to
12 make money or it's not going to make money. That
13 earnings loss or benefit will be with the utility,
14 and you're going to have to regulate those earnings
15 on losses one way or the other, just like the other
16 state commissions that have utilities that own OVEC,
17 they regulate those earnings.

18 So what the PPA does is at the retail
19 level, unlike New Jersey and Maryland, at the retail
20 level it says we are going to credit or charge
21 consumers for the losses or the benefits that AEP
22 gets. That's a retail transaction.

23 Where New Jersey and Maryland got into
24 trouble, among other things, they reached way up here
25 and looked at the transaction between the utility and

1 the third-party power developer, and that's a
2 wholesale transaction.

3 So the PPA does -- you regulate OVEC
4 profits and losses right now, as do all the other
5 state commissions who have OVEC owners, Kentucky,
6 West Virginia, Virginia, and there's no preemption
7 there, so this is a purely retail rider, the PPA.

8 The PPA is not a subsidy if it's a
9 charge, and it's not an anti-subsidy if it's a
10 credit. What it is is it's a financial hedge. It's
11 a financial limitation on shopping that stabilizes
12 rates. That's how we get the legal authority under
13 (B) (2) (d) for this Commission to approve the
14 transaction.

15 It's a financial limitation because, in a
16 sense, what will happen under this rider is that
17 consumers will shop for 100 percent of their power.
18 It won't affect anything on the competitive market.
19 They will buy all of their needs from the SSO. All
20 the physical supply will be exactly as it is right
21 now. It's competitively neutral. But you will have
22 this charge on the side, this financial transaction,
23 that will give you a portion of your power bill at
24 cost of service. That's how it's a financial hedge.

25 The evidence is about 5 percent of

1 OVEC -- the PPA would make 5 percent of your power
2 bill cost of service, but you still have to buy
3 100 percent at the market. That's why it's, in a
4 sense, the best of both worlds. It maintains the
5 competitive benefits that people receive. It does
6 provide a hedge, and it keeps this Commission in the
7 generation business. There's really not a preemption
8 issue here.

9 The two most important modifications that
10 we think you should make if you approve this
11 agreement is skin in the game. You ought -- instead
12 of it being 100 percent or zero, AEP should retain
13 10 percent, 20 percent of the benefits or losses of
14 this transaction.

15 What does that do? It makes it
16 self-policing. They have every incentive in the
17 world to maximize revenue, reduce expenses. It's
18 self-policing. It puts them in the same boat as
19 customers.

20 The other important change should be it
21 should go about nine, ten years, and that way you
22 don't get caught -- it's the right length so you
23 don't get caught up in the 111(d) carbon rules
24 because they transition in beginning 2020, and they
25 don't fully become effective until 2030.

1 So that's what I'd like to say. If there
2 are any questions.

3 CHAIRMAN JOHNSON: Okay. Any questions?
4 Mr. Haque.

5 COMMISSIONER HAQUE: Mr. Kurtz, thank you
6 for your presentation.

7 So your clients are similarly situated to
8 IEU's clients, OMA's clients, and one of the items
9 that they have discussed, among many others, for
10 being in opposition of the PPA Rider is this concept
11 your clients having fixed-rate contracts with CRESSs,
12 and then the PPA Rider basically being an add-on or
13 potential -- you know, it's an interesting position
14 for you to take, that this is a limitation on
15 customer shopping, while at the same time your
16 customers, I'm sure, are out there shopping and
17 trying to obtain the benefit of whatever supplier
18 contract they enter into.

19 MR. KURTZ: It is a financial limitation
20 on shopping. Physically, 100 percent of the power
21 will be procured exactly as it is today for all
22 customers, SSO or CRES providers. That's why it's
23 competitively neutral. It does not adversely affect
24 the competitive market. It's a financial transaction
25 on the side that basically gives all customers

1 5 percent of their power cost of service, 95 percent
2 whatever market deal that they want to make, and it
3 perpetuates sort of the hybrid scheme that
4 221 envisioned for this state. It is not Senate Bill
5 3.

6 COMMISSIONER HAQUE: Specifically, why is
7 this good for your clients?

8 MR. KURTZ: Because it keeps this
9 Commission in the generation business. That's the
10 biggest thing, and we don't want this Commission to
11 cede all of your rate-making authority to the FERC
12 and to PJM where you go hat in hand as an intervenor
13 at FERC and say, Dear FERC, please change your rules
14 for this and that.

15 We think it's very important for the
16 heavy and manufacturing base in Ohio to able to come
17 to this Commission for generation it issues. That's
18 the reason industry grew in Ohio. AEP Ohio had the
19 lowest electric rates for decades, and it spawned
20 manufacturing. We don't want to see the state of
21 Ohio get out of the generation business, and we think
22 221 kept you in the generation business, and that's a
23 good policy.

24 COMMISSIONER HAQUE: I would just say I
25 appreciate the vote of confidence. Thank you. In

1 all seriousness, thank you.

2 CHAIRMAN JOHNSON: Commissioner Trombold.

3 COMMISSIONER TROMBOLD: Thank you,
4 Mr. Chairman.

5 Could you talk a little bit -- I thought
6 I recalled something about an opt-out provision in
7 your comments. Could you discuss that a little bit
8 more?

9 MR. KURTZ: What we said was for the
10 sophisticated large consumers -- this is what
11 Mr. Yurick was talking about -- that can self-insure
12 should have the ability to self-insure. Now, that is
13 a policy matter that pales in comparison to the
14 larger picture of this Commission staying in the
15 generation business.

16 I'll parrot what our witness said on the
17 stand. Basically, it's more important that this
18 Commission stay in the generation business that it is
19 that sophisticated customers have that option.

20 COMMISSIONER TROMBOLD: All right. Thank
21 you.

22 CHAIRMAN JOHNSON: Thank you very much.

23 EXAMINER SEE: We will now have rebuttal
24 from AEP Ohio.

25 MR. BOUKNIGHT: Thank you very much.

1 I would like to respond briefly to the
2 argument of the counsel for Constellation Power.

3 He suggested that the Nazarian and Hanna
4 cases fit the fact situation here. They just don't.
5 Here's what the Hanna and Nazarian cases were. The
6 state set a price. And I'll give you illustrative
7 numbers but they're not far off. \$300 per day for
8 megawatt capacity.

9 Then you're obligated to go and bid into
10 the PJM market, and if the number turns out to be
11 160, you get a check for \$140. What the court said
12 is that what you've done is you've substituted a
13 state-determined price, \$300, for the PJM market
14 price of \$160.

15 Now, it's a fact in both of those
16 situations that that \$140 was to be passed through to
17 retail customers. That played no role whatsoever in
18 the decision of the case, as would be apparent if you
19 sit down and read them.

20 Other than the cases that I told you
21 about this morning, things like the Grand Gulf
22 situation, I simply don't know of any cases where a
23 state commission has been found to have been
24 preempted because of the retail treatment that it
25 chose to give a wholesale power contract. If there

1 is such a case, it is not Nazarian or Hanna.

2 I'll be happy to answer any questions
3 when Mr. Nourse finishes. Thank you.

4 MR. NOURSE: Your Honor, let me try to
5 address a couple of the statutory issues first. With
6 respect to the ESP statute in (B) (2) (d), there's been
7 a lot of talk about the default and the bypassability
8 and the limitation on shopping language in the middle
9 of that section.

10 But the reality is if you read the whole
11 section together, it talks about terms or conditions
12 or charges relating to any of those categories. And
13 I think the "relating to" is very significant, and so
14 we certainly believe that this does relate to Default
15 Service, and Default Service is not just nonshopping
16 service, and that if -- if you don't like that, there
17 are two other categories. It does fit into
18 bypassability and limitations on shopping.

19 Now, the use of the term "absurd" has
20 been used. My view is that it's absurd to read this
21 language out of the ESP statute and completely
22 discard it and say the Commission doesn't have
23 authority to do these. And, frankly, it conflicts
24 with what the Commission just said in the ESP II case
25 and is defending at the Ohio Supreme Court.

1 I think, again, as I stated at the
2 outset, this is a policy case. There is clear legal
3 authority, which segues into my second statutory
4 argument that's been raised here about .02(H), the
5 policy against anticompetitive subsidies.

6 You know, I would submit, I think,
7 Commissioner Lesser, not knowing what your position
8 is, and I thought you had a really good question
9 about (B) (2) (d) and (B) (2) (c). Those are the
10 provisions that allow an electric utility to build
11 generation. Those provisions were enacted after the
12 cases that Mr. Darr cited. They were pre-221 cases,
13 and the Supreme Court was interpreting Senate Bill 3,
14 an entirely different regime.

15 If you read .02(H), the prohibition in
16 there, as including a nonbypassable charge under
17 (B) (2) (b) and (c), that utility-owned new capacity,
18 you would also say under that reading that .02(H)
19 invalidates it. And, once again, you would be
20 writing out all of those provisions, all of which
21 give the Commission significant flexibility in an ESP
22 compared to a pure market-rate option.

23 With respect to the Sporn 5 case, I think
24 that was a materially different situation. We were
25 asked for closing costs at the end of the service

1 life. There wasn't going to be any future generation
2 service, like here. Here we're providing a
3 generation service. We are charging a generation
4 rate as part of an ESP, and it certainly doesn't run
5 afoul of the .02(H) prohibition. It's not a wires
6 charge. It's a generation charge.

7 And, finally, I'd like to address the
8 rate impacts arguments that Mr. Darr, Mr. Smalz --
9 I'm not going to yell at you, but I feel equally
10 passionate about our case that we presented, and the
11 evidence we presented was in direct testimony.
12 Mr. Allen did not wait until rebuttal, as was
13 suggested wrongly. In Exhibit 8A, which was on
14 direct testimony, he made the calculation of the
15 benefit, the benefit during the term of the ESP, and
16 a much larger benefit over the term of OVEC.

17 Certainly you can look to our briefs.
18 I'm not going to repeat all the flaws in
19 Mr. Murray's, Mr. Wilson's testimony. They took
20 AEP's information, manipulated it in ways that are
21 fundamentally flawed. We have briefed that issue.

22 But as to the three -- they also claim we
23 just threw out three different numbers. That's
24 false. We had different runs that had different
25 parameters, different assumptions. In discovery we

1 were asked to give all the runs we had. We gave them
2 all three runs. That doesn't mean those were things
3 that we were standing behind in testimony. We stood
4 behind one number, one set of analysis in testimony.
5 You can weigh the evidence. We briefed the other
6 evidence so I won't go any further on that.

7 I want to say one more point about the
8 environmental attorney. Ms. Fleisher made a
9 statement we were relying on the track record, and
10 while we are relying on the track record to say that
11 those are stable costs, that's not the state of the
12 record. We didn't just rely on the track record.

13 The carbon regulation, we put in a
14 \$15 per ton assumption, which may be a lot more
15 expensive than it turns out to be. We reflected all
16 environmental costs. Those plants are
17 environmentally compliant with all known
18 environmental compliance requirements, and all the
19 costs for all those requirements were in our numbers.
20 So it's absolutely false and conflicts with the
21 evidence to say that this was not fully explored or
22 that we simply relied on a track record. That's
23 incorrect.

24 Your Honors, I want to thank you. I hope
25 this has been helpful. I appreciate the dialogue,

1 and we are here to answer any questions you may have.

2 CHAIRMAN JOHNSON: Commission Lesser.

3 COMMISSIONER LESSER: The termination
4 provision that was mentioned, can you address that?

5 MR. NOURSE: There is no -- well, first
6 of all, I mean, I'll say the specifics of the PPA
7 contract we provided in discovery in the other case,
8 we've given everybody. We put it on the table, all
9 of the provisions that we are proposing.

10 But there is no -- there is no
11 termination clause that would just allow us to
12 unilaterally terminate, and there was something said
13 about two years, and that's not -- that's not the
14 case.

15 The early termination provision I'm
16 familiar with is based on a disallowance, substantial
17 and/or ongoing disallowance of costs, so if the
18 Commission just determines five, ten years from now
19 it's a bad deal or a future Commission, none of you
20 five would do that. But that's what it is all about.
21 If we are not getting cost recovery, we would end the
22 deal. That's what that is.

23 CHAIRMAN JOHNSON: Commissioner Haque.

24 COMMISSIONER HAQUE: I will ask my, I
25 think, one policy question of the day. So as many of

1 you know, I was deeply engrained in 111(d) comments
2 that the Commission submitted. I actually got a 111
3 tattoo afterwards.

4 MR. NOURSE: I'm not sure I want to see
5 that.

6 COMMISSIONER HAQUE: The policy question
7 is this. So let us assume -- we have no idea if
8 111(d) withstands legal challenge. Let's assume that
9 it does. 111(d) -- and I'm actually stealing this
10 from Commissioner Lesser. He and I had a
11 conversation so I will give him appropriate credit.

12 111(d) is as close to a national energy
13 policy as we've seen. So 111(d), and, actually,
14 111(b), which has the effect, if you read the
15 critique of 111(b), of effectively eliminating
16 construction of coal plants going forward. If this
17 is the national energy policy and the state of Ohio
18 has a tremendous supply of natural gas under its
19 soil, why would we do this? Why do we do this?

20 MR. NOURSE: I don't have a 111 tattoo,
21 but I will do my best based on my understanding.

22 First of all, we don't know what the
23 requirements are going to be, but based on the
24 proposal, building block number one is heat rate
25 improvements. So if the national policy in fact is

1 that no new coal plants will be built, I would
2 personally say then you need to treat the existing
3 ones like gold.

4 And so, you know, relative to the
5 compliance plan of Ohio, whatever it ends up being, I
6 would say two things about why you are going to do
7 this in the context of 111(d). First of all, we
8 don't know, the other building blocks, like energy
9 efficiency and -- I told you I wasn't an expert.
10 What is the other building block?

11 COMMISSIONER HAQUE: Renewables.

12 MR. NOURSE: Renewables, those may be
13 very, very expensive if you had to put all your chips
14 on those, and you may not even have enough to satisfy
15 the hurdle that Ohio will have to get over. So I
16 would say to preserve flexibility, to not close doors
17 that may be very much needed and may lower the
18 overall cost.

19 What we are asking for in this case is
20 really a free option. We are saying keep OVEC in
21 rates and consider our PPA filing. You know, we
22 don't want you to judge that at this point. We want
23 you to look at the facts. Give us a chance to prove
24 our case. But in order to do that, you have to
25 approve the PPA Rider in this ESP case and put OVEC

1 in, which is largely status quo.

2 COMMISSIONER HAQUE: Okay.

3 CHAIRMAN JOHNSON: We have touched upon
4 this a little bit today. Has AEP Ohio proposed the
5 most oversight possible under federal law of the
6 generation costs to be passed along to customers
7 under the PPA?

8 MR. NOURSE: You know, Chairman, I
9 believe we tried to do that, and, you know, the OVEC
10 contract is a legacy contract. AEP Ohio is one of
11 two dozen owners, so, you know, we are not going to
12 be able to change that, you know, open or close
13 those.

14 But it is status quo. They have been --
15 those costs are reviewed by lots of regulators, and
16 it has been rates the last two years. There hasn't
17 been any prudence issues there.

18 With respect to the affiliate PPA, we
19 really tried to maximize your visibility and your
20 review of costs through the provisions that we were
21 able to craft and negotiate, and those provisions
22 allow for -- as I briefly mentioned earlier, you
23 know, AEP Ohio can veto a capital investment, and
24 you'll be able to review that. You'll be able to
25 determine whether that was prudent or not. Or they

1 can approve a capital investment. AEP Ohio can veto
2 a new coal contract or approve it. You know, that
3 will be a decision that's reviewable by this
4 Commission for prudence. AEP Ohio is on an operating
5 committee and will have additional input into fuel
6 costs and O&M costs.

7 And, again, beyond all that, you know,
8 these plants were built for Ohio. They have served
9 Ohio their entire economic lives, and we are asking
10 that they finish their economic lives in the same
11 fashion, to serve Ohio, protect against adverse
12 economic development impacts of closing those plants.

13 CHAIRMAN JOHNSON: Any other questions?

14 Thank you very much.

15 MR. NOURSE: Happy holidays.

16 CHAIRMAN JOHNSON: Let me just say that
17 on behalf of the Commission, this has been -- not
18 only the Commission, but the staff. This has been a
19 great exercise, and we appreciate all the people that
20 have participated in it.

21 And at this time is there any business to
22 come before the Commission or anybody of the staff
23 want to say anything?

24 We are hereby adjourned.

25 (The meeting adjourned at 5:28 p.m.)

- - -

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, December 17, 2014, and carefully compared with my original stenographic notes.

Rosemary Foster Anderson,
Professional Reporter and
Notary Public in and for
the State of Ohio.

My commission expires April 5, 2019.

(RFA-77318)

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Case No(s). 13-2385-EL-SSO, 13-2386-EL-AAM

Summary: Transcript in the matter of the Ohio Power Company hearing held on 12/17/14 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.