BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of Duke Energy:
Ohio, Inc., for Approval :
to Continue its Cost : Case No. 14-1580-EL-RDR
Recovery Mechanism for :
Energy Efficiency Programs:
Through 2016. :

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PROCEEDINGS

before Ms. Christine M.T. Pirik, Deputy Director, and Mr. Nicholas Walstra, Attorney Examiner, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-A, Columbus, Ohio, called at 10 a.m. on Tuesday, July 7, 2015.

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On behalf of the Industrial Energy Users of Ohio.

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Tuesday Morning Session,
July 7, 2015.

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EXAMINER PIRIK: We will go on the record.

In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Continue its Cost Recovery Mechanism for Energy Efficiency Programs Through 2016, Case No. 14-1580-EL-RDR. My name is Christine Pirik. I am the Deputy Director with the Legal Department and with me is Examiner Walstra and we have been assigned to hear this case.

At this time we'll have the appearances on behalf of the parties. On behalf of the company.

MS. WATTS: Thank you, your Honor, and good morning. On behalf of Duke Energy Ohio, Amy B. Spiller and Elizabeth H. Watts, 139 East Fourth Street, Cincinnati, Ohio.

EXAMINER PIRIK: And then we'll start at this end.

MS. HUSSEY: Good morning, your Honors, on behalf of The Kroger Company, Rebecca L. Hussey, Carpenter Lipps & Leland LLP.

EXAMINER PIRIK: Thank you.

MR. SECHLER: Good morning, your Honor.

On behalf of the Ohio Manufacturers' Association, Joel Sechler, Carpenter Lipps & Leland LLP.

EXAMINER PIRIK: Okay.

MR. RINEBOLT: On behalf of the Ohio Partners for Affordable Energy, David C. Rinebolt and Colleen L. Mooney, P.O. Box 173, Findlay, Ohio.

MR. PRITCHARD: On behalf of the Industrial Energy Users of Ohio, Matt Pritchard, with the law firm McNees, Wallace & Nurick, 21 East State Street, Columbus, Ohio 43215.

MS. KERN: On behalf of the Ohio Consumers' Counsel Bruce J. Weston, 10 West Broad Street, Columbus, Ohio 43215, Kyle Kern and Mike Schuler, Assistant Consumers' Counsel.

MR. DOUGHERTY: Good morning. On behalf of Ohio Environmental Council, Environmental Law & Policy Center, and the National Resources Defense Council, Trent A. Dougherty, 1145 Chesapeake Avenue, Suite I, Columbus, Ohio 43212.

MR. BOEHM: Good morning, your Honor. On behalf of the Ohio Energy Group, I am David Boehm from the law firm Boehm, Kurtz & Lowery, 36 East Seventh Street, Cincinnati, Ohio 45202.

MR. ALLWEIN: Good morning, your Honors. On behalf of People Working Cooperatively, Christopher J. Allwein, 65 East State Street, Suite 1800, Columbus, Ohio 43215, and that is the firm of Kegler, Brown, Hill & Ritter.

MS. JOHNSON: Good morning, your Honor. On behalf of the staff of the Public Utilities Commission of Ohio, Attorney General Mike DeWine, Section Chief William Wright and Assistant Attorneys General Katie Johnson and John Jones, 180 East Broad Street, Columbus, Ohio 43215.

EXAMINER PIRIK: Thank you.

Ms. Watts.

MS. WATTS: Are you ready to proceed, your Honor?

EXAMINER PIRIK: Yes.

MS. WATTS: Would you like to mark any exhibits first, or do you want to just -- should I just call the first witness?

EXAMINER PIRIK: I think it may be beneficial if we go ahead and mark the Duke exhibits as well as the comments and reply comments.

MS. WATTS: Okay. Thank you, your Honor. Our first exhibit would be the application in this proceeding that was docketed with the Commission on September 9, 2014. That would be Duke Energy Ohio Exhibit 1. The comment -- the reply comments of Duke

Energy Ohio that were docketed with the Commission on January 9 of this year would be Duke Energy Ohio Exhibit 2. And the direct testimony of Timothy J. Duff would be Duke Energy Ohio Exhibit 3. And for right now, those are all the exhibits we have, your Honor.

EXAMINER PIRIK: The documents are so marked.

(EXHIBITS MARKED FOR IDENTIFICATION.)

MS. WATTS: Duke Energy Ohio would call Timothy J. Duff, please.

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TIMOTHY J. DUFF

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

DIRECT EXAMINATION

By Ms. Watts:

Q. Sir, would you state your name, please.

A. Timothy J. Duff.

Q. And your place of employment?

A. Duke Energy Business Services.

Q. And, Mr. Duff, do you have before you what's been marked as Duke Energy Ohio Exhibit 3?

A. Yes.

Q. And would you describe that document, please.

A. It is a copy of the direct testimony that was prefiled in this case.

Q. And did you prepare that testimony?

A. Yes.

Q. Do you have any additions or corrections to the testimony?

A. Not to my knowledge.

Q. Is it true and accurate to the best of your knowledge?

A. Yes.

MS. WATTS: Mr. Duff is available for cross-examination.

EXAMINER PIRIK: Thank you.

MS. JOHNSON: Your Honor, as a preliminary, we would like to make a motion.

EXAMINER PIRIK: What would the motion be?

MS. JOHNSON: Staff would like to move to strike a portion of the company's testimony.

EXAMINER PIRIK: Okay. Go ahead.

MS. JOHNSON: On page 7, line 9 through line 12, the sentence beginning "This inescapable reality" and ending "allows for banking."

EXAMINER PIRIK: Okay.

MS. JOHNSON: Your Honor, this witness is not a lawyer, and this sentence provides a legal conclusion. Furthermore, it is an incorrect interpretation of our Revised Code 4928.662.

EXAMINER PIRIK: Ms. Watts.

MS. WATTS: Yes, thank you, your Honor. Incorrect interpretation is in the eye of the beholder. Mr. Duff in the course of his employment is called upon to carry forward Ohio policy and regulation on a daily basis and his understanding of what the Revised Code Section is requiring the company to do is integral to the case and we don't believe that should be stricken.

MS. JOHNSON: Your Honor, legal arguments can be set forth by the attorneys and in legal briefs. It's not the place of an expert on the stand to be providing legal conclusions based off their own interpretation of the Revised Code.

EXAMINER PIRIK: Your motion will be noted for the record; however, it will be denied.

We'll start with cross-examination with Ms. Hussey.

MS. HUSSEY: Would you let me know if I am going to need a microphone.

EXAMINER PIRIK: Yes, you need a

microphone. Can you see the witness okay?

MS. HUSSEY: I can.

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CROSS-EXAMINATION

By Ms. Hussey:

Q. Can you see me, Mr. Duff?

A. Yes.

Q. Okay. Good morning, Mr. Duff.

A. Good morning.

Q. If you could turn your attention to your direct testimony at page 3, line 4.

A. Yes.

Q. You mention that the company's existing cost recovery mechanism has been in place since August, 2012; is that correct?

A. That's when the Commission order approving it came out, yes.

Q. Okay. And does that include Duke's shared savings mechanism?

A. Yes.

Q. And the shared savings incentive mechanism was most recently approved in Case No. 13-431-EL-POR; is that correct?

A. It was continued. I guess you could say it was approved. It was -- the Commission in their order in 11-4393, they weren't really looking at the incentive mechanism again. They were looking at the portfolio associated with the incentive mechanism but that's correct.

Q. Okay. Thank you. And at -- I'm sorry. Case No. 13-431 related to Duke's portfolio plan for years 2013 through '15; is that correct?

A. The portfolio plan actually went '14-'16.

Q. Okay. And page 4, lines 17 through 19, you state that "This shared savings incentive structure is extremely effective in aligning the Company's interests with customer interests."

A. Yes.

Q. Is that accurate?

A. I believe so.

Q. Okay. When making the statement, are you referring to a particular point in time during the existence of the incentive mechanism?

A. I am talking about it in general.

Q. Okay. Are you familiar with the company's application in Case No. 14-457 for recovery of its 2013 energy efficiency and demand response program costs --

A. I am.

Q. -- plus distribution new performance

incentives? You are, okay.

A. Yes.

Q. To your knowledge, as reported in that case, did Duke meet the 2013 energy efficiency benchmarks without the use of banked savings?

A. Duke Energy met the cumulative benchmark. The annual benchmark it fell short of which was projected in its portfolio plan at the time of approval.

Q. Okay. But for annual year 2013 would you agree that the company depended on banked savings to achieve 56,102 of the 181,368 megawatt-hour benchmark?

A. Subject to check, if you are taking that from the application, I would agree, but I don't have it in front of me, so I can't confirm it.

Q. Okay. Would you feel more comfortable taking a look?

A. Sure, if you are throwing out numbers.

Q. Sure.

MS. HUSSEY: Would you like me to make this --

EXAMINER PIRIK: Is it the application?

MS. HUSSEY: It is actually some revised workpapers with some correspondence attached from the application.

EXAMINER PIRIK: Yes.

MS. HUSSEY: I would like to have marked as Kroger Exhibit 1 the correspondence dated April 17, 2014, filed in Case No. 14-457-EL-RDR for Duke Energy.

EXAMINER PIRIK: The document is so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. And, Mr. Duff, if you could direct your attention to Attachment JEZ-1. It's Revised Attachment JEZ-1, page 1 of 10.

A. Yeah.

Q. And I wondered if you could verify those figures for me.

A. Can you repeat the question just so I can make sure I'm on the same page, please?

Q. Sure. I said would you agree in 2013 the company depended on banked savings to achieve 56,102 of the 181,368 megawatt-hour benchmark?

A. I don't see that number on here.

Q. Okay. That would exclude the use of shared savings to achieve the incentive mechanism?

A. Again, I don't -- I'm sorry. I don't see the number you are referencing.

Q. Okay. It would require you to do a calculation from the numbers that are present here?

A. Again, subject to check. You just asked me if the number was on there, and I said, no, it's not.

Q. Okay. You would agree that the mandate excluding mercantile that's listed on this page is listed as 181,368 megawatt-hours; is that correct?

A. That is the mandate that is calculated for the purposes of determining the company's shared savings incentive, correct.

Q. Okay. And also listed is the 2013 achievement from the shared savings portfolio. That's listed as 125,266 megawatt-hours; is that correct?

A. The 2013, the total claimed impacts is 210,388 because the approved stipulation allowed for banking for the purposes of meeting those mandates, yes.

Q. Okay. But the achievement from the actual shared savings portfolio is listed in the first line --

A. That's correct.

Q. -- 125,266, correct?

A. That's correct.

Q. Okay. Thank you. To your knowledge, did the Commission grant the company's request to recover the shared savings incentive for 2013 in Case No. 14-457?

MS. WATTS: Objection, your Honor.

EXAMINER PIRIK: Overruled.

A. I believe that -- I believe that case is pending rehearing currently, but the Commission's original order approved the methodology that would allow for the shared savings incentive to be claimed.

Q. The original case being? Which case are you speaking of?

A. 11-4393 as well as 13-431.

Q. Okay. And are you familiar with the recent finding and order issued in 14-457?

A. Somewhat, yes.

Q. And to your knowledge, in that case did the Commission grant the company's request to recover a shared savings incentive for 2013?

A. It said it was subject to modifications. That was some of the lack of clarity. The order actually acknowledged the shared savings mechanism approved in 11-4393 allowed for the accounting of banking, and then subsequently it said it didn't so there is some lack of clarity regarding what it said.

It didn't say one way or another. If banking is not used, then there would be no incentive.

Q. Okay. And to your knowledge, did the Commission outline whether banking was, in fact, proper in that particular case?

A. Again, we are not sure that there is -- what exactly the Commission's interpreting because they didn't say specifically what the modification was. It said that banking in one respect, but we believe there was some misunderstanding regarding what banking meant regarding what's being counted as bank. I believe it's a standard practice that was approved in the AEP stipulation as well as the DP&L stipulation that would allow for the counting of shared savings on the -- on the savings generated in a year -- in a year in which the previous year overcompliance was used to comply.

Q. Setting aside whether or not the Commission said that that shared savings mechanism was working properly, did they grant a shared savings incentive in 2013?

A. That's unclear. They said it was subject to modification.

Q. Okay. Are you familiar with the company's application in Case No. 15-534?

A. Yes.

Q. Okay. And that is an application to collect 2014 EE and DR program costs --

A. That's correct.

Q. -- et cetera? Okay. To your knowledge, in 2014 did Duke meet its energy efficiency benchmark without the use of bank savings?

A. No.

MS. HUSSEY: Okay. You have one additional document on the stand. I am not going to actually mark it. I just wanted you to know you have an extra one.

EXAMINER PIRIK: Yes, okay.

Q. Let's turn back to your testimony.

A. Sure.

Q. Page 4, line 18 --

A. Yes.

Q. -- carried over to the top of page 5, you testified that "Under a shared savings structure the Company's incentive is tied to the amount of net benefit generated from its programs, hence the Company is motivated to increase the net benefit." Is that accurate?

A. I believe so, yes.

Q. Okay. Would you say that the shared

savings incentive mechanism encouraged the company to increase the net benefit generated from its programs in 2013 and '14?

A. Definitely.

Q. Okay. And you stand by this position in spite of the fact that Duke's program savings alone achieved only 69 percent of the 2013 benchmark and 74.9 percent of the 2014 benchmark?

A. Yes, of the net benefit -- the company's portfolio actually achieved more than the portfolio -- than the rider filing approving what impacts would be obtained, and it did it at a lower cost so thereby both things actually increased the net benefits that was achieved in 2014 which benefits customers.

Q. And when were the projections filed that you are talking about?

A. They would have been filed in the '13 -- the 2013 rider case. I don't -- I forget the number. I apologize. 13-753 maybe.

Q. Okay. The shared savings incentive mechanism is not currently approved for use in 2016; is that correct?

A. That's why we are here today, yes.

Q. Okay. And the approved portfolio program that's currently in place was the program approved in Case No. 13-431 as we discussed previously?

A. Yes. 13-431 called for a review of the effectiveness of the mechanism before it would be continued in 2016.

Q. Okay. And to your knowledge, did the stipulation and opinion and order in that case explicitly include approval of the shared savings incentive mechanism approved therein for use by the company in 2016?

A. It said that it was -- that it ended it subject to review, at which time the company was to work with other parties to justify whether it was working or not, and then it was to notify the Commission, but it didn't bind the company nor parties to reach consensus.

Q. Okay. Doesn't approval of the use of a shared savings incentive in 2016 at this time change the portfolio plan?

A. No, I don't believe so.

Q. Doesn't it actually add the ability for Duke to earn a shared savings incentive in 2016 where no such ability existed before?

A. No. The approved portfolio explicitly called out a review of the mechanism to determine how the mechanism would be structured in '16 as a component of the approved portfolio plan.

Q. But as of the time it was approved, it was not approved for use in 2016; is that correct?

A. It was to be reviewed and reestablished.

Q. Okay. But it was not at that point approved for use in 2016. It was subject to later review.

A. It was subject to review as part of the approved portfolio, yes.

Q. Okay. Thank you. Could you turn to page 13 --

A. Sure.

Q. -- line 9.

A. Yes.

Q. You state that the company is proud of its ability to manage the associated portfolio program expenditures; is that correct?

A. Yes.

Q. Okay. And prior to your appearance here today, did you have the opportunity to review the direct testimony of OMA Witness Seryak filed in this case?

A. I did.

Q. Do you have a copy of that with you

today?

A. Not with me right now, no.

MS. HUSSEY: Your Honor, I think it may be appropriate at this time to have Mr. Sechler mark the OMA testimony as we will be referring to it.

EXAMINER PIRIK: That would be fine.

MR. SECHLER: We are certainly comfortable with it, your Honor. We have Mr. Seryak's testimony will be OMA Exhibit 1.

EXAMINER PIRIK: The document is so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. HUSSEY: Thank you.

Q. Would you please refer to Exhibit JAS-1 which is attached to Witness Seryak's testimony.

A. I have it.

Q. Okay. Thank you. And this exhibit appears to be a comparison of portfolio program costs per annual kWh saved for certain Ohio EDUs; is that accurate?

A. I believe that's what it is, yes.

Q. Okay. I would like to direct your attention to the dollars per kWh figures for 2013 and '14.

A. Yes.

Q. And I am just asking about how this appears here at first, so it appears the figures set forth in the exhibit indicate for '12, '13, and '14, Duke's costs for total energy saved were higher than the costs per annual kWh for AEP or DP&L based upon your review just looking at this exhibit here. Is that an accurate representation of what appears?

A. The -- I think the mathematics, the division, is correct. I think there may be some flaws in his calculations though in terms of how -- what numbers he used for the calculations.

Q. Okay. Independent of the figures that are presented on this chart.

A. The simple math of dividing the cost by the energy I agree with.

Q. Okay. So I'm sorry. My apologies. Independent of the figures that are presented herein, can you verify that Duke's program costs per annual kWh saved were higher than DP&L's cost or AEP's in 2013 and '14?

A. Based off of this exhibit, yes.

Q. What about independent of this exhibit?

A. I didn't -- I didn't perform the math, but I did find a couple of I think inconsistencies with the approach used by Mr. Seryak.

Q. If that is the case and Duke's costs were higher than either DP&L's or AEP's for 2013 and '14, would you be able to explain why those costs were higher than the costs of the other EDUs?

MS. WATTS: Objection, assumes facts not in evidence.

MS. HUSSEY: It's a hypothetical.

EXAMINER PIRIK: Overruled.

A. So energy efficiency costs are not static. I think actually Mr. Seryak kind of makes the point as your market is more mature, it's going to potentially cost more to acquire customers because you've gotten the customers that are more likely to participate. Energy efficiency costs generally have an increasing cost curve because of the fact that adoption is more expensive as you try and acquire customers.

Additionally, you have to look at the fact that codes and standards are changing over time, and so depending on how much of your programs are being driven by impacts incremental savings versus the cost of those incremental savings in advancing codes and standards can also cause energy efficiency costs to rise over time. Not knowing exactly what AEP's market penetration was for each year, it's very difficult for shallow analysis to simply look at a comparison of dollars per kWh between different companies in different markets with different histories to try and make any sort of comparison of what it means.

Q. Okay. So there is essentially what you are trying to say no simple explanation for why the costs for Duke's 2013 and '14 programs as reflected at least in this exhibit are higher than the other two?

A. That's correct, because I don't know the details behind AEP and DP&L's market conditions.

MS. HUSSEY: Okay. Thank you very much. No further questions.

EXAMINER PIRIK: Thank you.

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CROSS-EXAMINATION

By Mr. Sechler:

Q. Good morning, Mr. Duff.

A. Good morning.

Q. I would direct your attention to page 8 of your testimony, lines 5 through 8, discussing the passage of Senate Bill 310. Isn't it true that Senate Bill 310 became effective on September 12 of

2014?

A. I thought it was the 10th because of how it fell number of days but approximately September 12, 10.

Q. And then under Senate Bill 310 it allows a utility, including Duke, to file an amendment to its portfolio plan within 30 days of September 12; is that a fair statement?

A. I believe that's correct.

Q. Okay. So the deadline would have been, if I am doing the math correctly, October 12, 2014?

A. I believe that would be correct.

Q. And Duke could have filed an amendment or for an amendment up until October 12 of 2014; is that correct?

A. I believe in this application we requested -- we -- to have the clarity on what our mechanism would be in 2016 and reserved the right to try and file that application at a later date.

Q. Okay. But no actual amendment was filed by Duke by October 12 of 2014.

A. That's correct.

Q. If you would turn your attention then to it's Table 1 on page 4 of your testimony between lines 16 and 17.

A. Yes.

Q. I want to make sure I understand the chart and the company's position. Is Duke proposing that it gets an incentive for simply meeting each of the benchmarks, or does it -- or is Duke's proposal that it has to exceed each of the benchmarks to obtain incentives?

A. So the Duke's -- for the different -- for shared savings percentage it would need a different level of overcompliance with the annual benchmarks, and as we discussed earlier, the portfolio was designed and approved with banking included in it.

Q. Okay. For example, looking at -- looking at the table though, let's say hypothetically Duke meets 100 percent of its achievement level, exactly 100 percent, whether using bank savings or not, is it Duke's position it would get a 5 percent incentive for hitting it 100 percent exactly?

A. Therefore, it would be eligible to earn incentive.

Q. Okay. Do you know if any other utilities are eligible to earn similar incentives for meeting but not exceeding benchmarks?

A. I believe all -- I believe this same structure is in place for all of the Ohio EDUs.

Q. I believe early in your testimony in response to one of Ms. Hussey's questions that you said the parties had not reached -- the parties to the stipulation in the 11-4393 case had not reached consensus on extension of the program; is that accurate?

A. That's correct.

Q. Okay. So no agreement has been reached between the signatory parties to the stipulation about whether or not --

A. To date, no.

Q. And then I believe also in response to Ms. Hussey's questions regarding Mr. Seryak's preprepared direct testimony, you had mentioned what you believe are inconsistencies and/or flaws in his analysis.

A. Yes.

Q. Could you elaborate on those for me.

A. So one that popped out was Mr. Seryak took his information from DP&L's annual report, and when he recognized kWh impact in 2013, he recognized T&D projects. T&D projects are paid for outside of the rider, so he's taking credit for kWh and not including the dollars in his calculation which just showed me that he really didn't do a lot of analysis of what was included in the filing.

Q. Is that the extent of the details behind your --

A. That was the thought. I didn't do an extensive look. I didn't have a whole lot of time, but it stood out quickly he didn't do a lot of detailed research in his analysis.

MR. SECHLER: I believe that's all the questions I have at this time. Thank you.

EXAMINER PIRIK: Thank you.

Mr. Rinebolt.

MR. RINEBOLT: Your Honor, I would like to renew our motion to dismiss that was filed at the outset of this case. Would you like me to mark the motion or just leave it be?

EXAMINER PIRIK: No, I don't think you need to mark the motion. I think the Commission will take that under consideration once we have concluded the record here today.

MR. RINEBOLT: Very well. Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Rinebolt:

Q. Good morning, Mr. Duff.

A. Good morning, Mr. Rinebolt.
Q. Duke has had, and its predecessor Cincinnati Gas & Electric has had, energy efficiency programs for a long time. I think you guys like to talk about that; is that correct?
A. We've had efficiency programs of some sort or another for quite some time, yes.
Q. I believe they started in 1992. Can you -- okay.
MR. RINEBOLT: Can I try without it?
EXAMINER PIRIK: No. She's good with it.
Q. I'm interested in the vintage of the savings that were banked by the company. Is it your understanding that Senate Bill 310 and the regulations allowed the company to look back and capture savings that had been paid for years prior to Senate Bill -- the Senate Bill passing, 221?
MR. RINEBOLT: Is it me?
A. So I guess my understanding of Senate Bill 310 is it allowed for I believe a look back to 2006. I don't think it went further back than that.
Q. Okay. And --
A. I'm sorry, SB 221.
Q. Yes, SB 221.
A. I wanted to make sure I corrected it.

Q. You are allowed to look back to 2006. Do you know, if you know, were there -- were there energy -- was there energy efficiency that you banked from 2006 to 2009?

A. I believe so.

Q. All right. And if -- if you -- now, were those programs paid for in base rates or through a rider?

A. I really don't know. That was before my time.

MR. RINEBOLT: All right. Very well. That's all the questions I have, your Honor.

EXAMINER PIRIK: Mr. Pritchard.

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CROSS-EXAMINATION

By Mr. Pritchard:

Q. Good morning, Mr. Duff. My name is Matt Pritchard. I am with the Industrial Energy Users of Ohio.

A. Good morning. Nice to meet you.

Q. In Case 14-393 the case was resolved by way of a stipulation, correct?

A. That is correct.

Q. And that stipulation was ultimately approved by the Commission, correct?

A. That is correct.
Q. And that stipulation provided that the shared savings incentive for Duke will terminate at the end of 2015, correct?
A. I believe -- I believe it was actually the 13-431 case, but the 2015 date on it, you may be correct. It was one of the two, but it called for the review of it at the end of no sooner than third quarter of 2014 to judge whether or not it was working appropriately.
Q. If I showed you a copy of the stipulation of the 11-4393 case, would that refresh your recollection about what that provided?
A. Certainly.
MR. PRITCHARD: May I approach, your Honor? I don't plan to mark this as an exhibit.
EXAMINER PIRIK: That's fine.
A. Like I said, I think I remember where it is. Yeah, that it -- the incentive mechanism shall expire 2015 and be reevaluated by all interested parties no soon than 2014 to allow interested parties to assess the reasonable effectiveness of the incentive mechanism to consider whether or not they support it for future use for the remaining year of the five-year portfolio that has been proposed.

Q. Okay. And subsequent to the 11-4393 case, Duke filed an application to establish its current portfolio plan in Case 13-431, correct?

A. That's correct.

Q. And that case was resolved by a stipulation, correct?

A. That's correct.

Q. And that stipulation was approved by the Commission, correct?

A. That's correct.

Q. And this language about that the incentive mechanism shall expire at the end of 2015 was incorporated into the stipulation in Case 13-431, correct?

A. The approximate language, yes.

Q. And the Case 13-431 there's been no application to establish a new portfolio program for Duke since that case, correct?

A. No, because the portfolio itself is approved through '16. It was the recovery mechanism that was up for review to be associated with it in 2016.

Q. And the stipulation in 11-4393 -- well, let me back up a little bit. At page 3 of your testimony, lines 18 to 19.

A. Yes.

Q. Do you see the reference on line 18 that provides "all of the intervening parties reached a" stipulation -- sorry, "reached a stipulated settlement"?

A. I think it says with the exception of OEG prior to that; but, yes, I see the language.

Q. And the intervening parties, that language is referring to Case 11-4393, correct?

A. Yes.

Q. And are you aware of whether or not IEU-Ohio was an intervening party in that case?

A. I don't recall if they were or not.

Q. Turning to page 6 of your testimony -- actually, sorry, let's go to pages 9 and 10.

A. 9 and 10?

Q. Yes. The question beginning at the bottom of page 9 and continuing over to page 10.

A. Yes.

Q. As I understand your answer here, you indicate that if the company is not permitted to use banked savings, that Duke would -- and this is my phrasing, so you could correct me if I am wrong, would ramp up and ramp down the portfolio program as to maximize the savings in any given year; is that a fair characterization?

A. No. I think it's a little bit off, but essentially what I was saying was that when the portfolio is designed around benchmarks which are cumulative in nature, that if you -- if you are paying simply on annual without allowing the banking that counts for compliance to count for incentive, you send the perverse incentive of using -- of doing very little one year and relying on your compliance bank for compliance purposes which you are fully entitled to do building up pent up demand in the market and then have a huge access achievement the following year and then the next year ramp it down.

It's not an efficient way to run programs but that would be the incentive it would send to utilities to operate under. Since the compliance objectives are cumulative the incentive needs to be cumulative, and I think that that's where a lot of the confusion comes along. The only -- the only thing that's being banked are achievements for the purposes of determining your shared savings incentive level, not for determining the shared savings pool.

Q. Operating a portfolio program in an inefficient manner could create additional costs that customers have to bear.

A. Exactly, which is why I don't think that that's what the Commission is trying to incentivize.

Q. Okay. So an inefficient portfolio program you would agree could lead to an imprudent level of costs, correct?

A. Well, it could lead to costs that would not have been incurred otherwise.

Q. And if the Commission determined that the costs were imprudent, would you expect that the Commission might disallow the recovery of those costs?

A. Correct.

MR. PRITCHARD: Thank you. I have no further questions.

Back up a little bit. Duke had marked their reply comments as an exhibit in the case. IEU-Ohio has filed several pleadings in the case. I was not intending to mark them as exhibits. I don't intend to rely on them, but we can mark --

EXAMINER PIRIK: The only -- the only documents that we will be marking will be the comments and reply comments, and I see that IEU filed comments and reply comments. So at the conclusion of this witness, I will ask all the parties that filed comments and reply comments to mark them for the record, but other types of pleadings we don't need to mark.

MR. PRITCHARD: Okay. Then I have no further questions.

EXAMINER PIRIK: Okay. Ms. Kern.

MS. KERN: Thank you.

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CROSS-EXAMINATION

By Ms. Kern:

Q. Good morning, Mr. Duff.

A. Good morning, Ms. Kern.

Q. I don't know if this is going to work for me, so I am just going to try to go without it and let me know if you can hear me.

A. Definitely.

Q. I am Assistant Consumers' Counsel for the Office of the Ohio Consumers' Counsel. You say on page 6, line 17, of your testimony that Duke "should continue to have the ability to use banked impacts for establishing a level of achievement for the purposes of determining" -- "determining the level of its earned shared savings incentive"; is that correct?

A. That's correct.

Q. And banked savings are generally

described as energy efficiency savings from past years, would you agree?

A. So banked savings as we've defined since it was approved in 11-4393 and 99 -- 13-431 round one and reestablishing here banked savings were energy efficiency saving impacts that have never been used for compliance or for the purposes of determining a net benefit pool for shared shavings.

Q. But you would agree those savings came from a previous year, correct?

A. Previous overcompliance.

Q. Okay. So the company currently uses banked savings both to meet its annual compliance benchmarks and also to determine the level of shared savings for a given year; is that correct?

A. Yes, that was what the Commission -- the Commission approved in the stipulation, yes.

Q. And you state on page 9 -- page 9, line 22, that "If the Company is not permitted to use banked savings to determine its achievement for its shared savings incentive, Duke Energy Ohio will likely not be able to earn an incentive"; is that correct?

A. That's correct. The portfolio, which everybody that was a party to the portfolio case and the Commission reviewed, the portfolio was clearly short of what was -- what's the required benchmark because of the earlier overcompliance that had occurred. So going in we know -- and because of SB 310 the company can't add programs to supplement it now. So obviously if it knows it's short and it was approved to be short, it would be -- it would be not likely, I think is what I said, to earn incentive.

Q. Not likely, correct. And so it would be fair to say that the utility, Duke, will not meet the benchmark for 2016 without the use of banked savings.

A. That's correct.

Q. Thank you. You state on page 6, line 15, that "Just as the Company may rely on banked impacts to meet its annual compliance mandates, it should" have -- "it should continue to have the ability to use banked impacts for establishing a level of achievement for the purposes of determining the level of its earned shared savings." Did I read that correctly?

A. That's correct.

Q. Okay. And does Ohio law to your knowledge guarantee or require that a utility receive a performance incentive?

A. Not to my knowledge.

Q. And does Ohio law permit a utility to use banked savings for compliance purposes to meet the benchmark?

A. I believe it does explicitly allow that, yes.

Q. Okay. And to your knowledge, does Ohio law say anything about permitting the use of banked savings for determining the level of a shared savings award for a utility?

A. No. I believe that's the Commission's -- the Commission's interpretation.

Q. Okay. We'll get to that. You state on page 8, lines 5 through 8, that "The need to use banked impacts in 2016 has been exacerbated by the fact that the passage of Senate Bill 310 in 2014 means that the Company could not file applications with the Commission to add new programs to its portfolio after September 10, 2014," correct?

A. That's correct.

Q. Okay. But would you agree that Duke had the option under Senate Bill 310 to amend its energy efficiency portfolio and the programs offered to customers?

A. The option was there, but Duke had worked in good faith to negotiate with parties to have a portfolio in place through 2016, and it was Duke's intent to operate that portfolio with a shared savings mechanism. That's why we said that we reserve the right if the Commission changed the cost recovery and mechanism because the Commission's order actually canceled cost recovery as well but if -- if, in fact, there was no cost recovery or incentive mechanism and the company did reserve the right to file an amended plan because that would have changed the deal, but we negotiated in good faith to have a portfolio in place in 2016, and it was our intent to keep that portfolio in place.

Q. But generally just with your understanding of Senate Bill 310, you would agree with me that Duke had the option to amend, and amending could have included adding new programs.

A. It potentially could have, I believe, but it does -- we viewed the agreement to operate our existing portfolio was something we should stand by until we knew the cost recovery mechanism was going to change or not.

Q. Thank you. Are you aware that the PUCO previously held in FirstEnergy's energy efficiency portfolio case that FirstEnergy could only count savings for shared savings in the year those savings were generated?

A. And so that's -- I think that's the crux of the issue is that the -- that's correct. Duke is not counting savings in the shared savings calculation. It is simply using a cumulative nature to determine its achievement with mandates because the state's mandates are cumulative in nature.

And as I said before, AEP and DP&L have the same provision that says in years that they use previous overcompliance to comply with the mandates, that shared savings should only be calculated off the savings generated in that year and that's exactly what Duke Energy has done. It's just used a more transparent bank to show people where that bank is on an annual basis, and we have been doing so since the true-up of safe-a-watt.

Q. But isn't it true that -- sorry.

A. So I'll go.

THE WITNESS: Can you?

EXAMINER PIRIK: It's up to Karen.

Q. Isn't it true Duke is using those savings from past years in order to determine the incentive level that they reach for that current year?

A. Yes. Just as you determine your compliance level and your bank, we determine our incentive level and bank.

Q. Thank you. To your knowledge is Duke the only Ohio utility that uses banked impacts for purposes of calculating their shared savings incentive?

A. We are the only ones that have done it to date, but as I said before, I believe AEP and DP&L by their stipulation are both permitted to do so.

Q. Okay. If you turn to page 10 of your testimony, lines 4 through 6, you indicate that "If the Company is not allowed to utilize banked savings" to determine its -- "If the Company is not allowed to utilize banked savings determining its incentive, rather than motivating it to achieve as much energy efficiency as possible in a given year, it instead motivates the utility to have years with" exceedingly low -- "exceeding low achievement followed by a year with exceeding high achievement"; is that correct?

A. Yes.

Q. And we just established that to your knowledge Duke is the only utility that's using the banked impacts for purposes of calculating its --

A. That's not what I said. I said we are the only utility that has had to use its bank because of our exceedingly high overcompliance early. I believe AEP and DP&L both have the same capability per their stipulations.

Q. But they haven't had to; is that correct?

A. No, because they didn't overachieve at the high level that Duke did earlier on.

Q. Okay. And are you familiar with the portfolio -- annual portfolio filings that each utility makes each year?

A. Everyone has to make one, yes.

Q. Correct. And one of those requirements of the status reports is for a utility to report its compliance with the benchmarks; is that correct?

A. That's correct.

Q. And in your position as general manager for DEBS, do you review the annual status reports of the other utilities?

A. No, I do not.

Q. Okay. Are you familiar with whether the other utilities exceeded the benchmark for 2014?

A. I believe they did.

Q. Okay.

A. I'm not sure about FirstEnergy, but I know DP&L and AEP did.

Q. Okay. Duke has not had a hard dollar cap, a monetary hard dollar cap, on its shared savings incentive --

A. That's correct.

Q. -- is that correct? Okay. And to your knowledge, is Duke the only Ohio utility that does not have a hard dollar cap on its --

A. That's correct.

Q. Okay. And do you recall how much Duke earned for shared savings in 2013?

A. Well, that case is currently pending. We believe -- we believe we earned -- I believe it's approximately $12 million.

Q. Okay. And how about for 2013?

A. I think that's what you just asked me is '13.

Q. 2014, excuse me.

A. I believe it's approximately the same dollar value, in the $12 million neighborhood.

Q. Okay. And what about for '14?

A. Didn't you just asked me '14?

Q. I'm sorry. The filings don't -- they are in the following year so projections for '13 -- '15.

A. It's approximately $12 million -- for '15?

Q. '15.

A. I think it was around 8 or 9. I don't know for sure.

Q. All right. So would you agree to -- agree with me that for 2013, '14, and '15, Duke's projections for charging customers for shared savings would be around 32 million?

A. Approximately.

Q. Okay. Thank you. If you turn to page 11, line 8, of your testimony.

A. Yes.

Q. You mention the significantly excessive earnings test.

A. Yes.

Q. And to your knowledge the significantly excessive earnings test takes a look at the company's entire earnings and not just a portion --

A. That's correct.

Q. Okay. So you are not recommending that SEET be a cap for Duke.

A. No. SEET was a great discussion at the last time. I believe it was the staff that brought up the SEET on their confidence on why we didn't need to have a cap because they said if the company -- the company has to perform a SEET analysis, so if energy efficiency in an uncapped environment is leading to excessive earnings, it would show up in the excessive earnings test, so I thought that was a valuable point to note that during the period of time that we have historic actual data, the company has actually underearned its allowed return in total even with these "high earnings" that some witnesses have categorized as unnecessarily high.

Q. But you agree we are just looking at the company's energy efficiency portfolio in this case for 2016.

A. Correct. I was explaining why I used the context.

MS. KERN: Thank you. That's all the questions I have. Thanks.

EXAMINER PIRIK: Mr. Dougherty.

MR. DOUGHERTY: No questions.

EXAMINER PIRIK: Mr. Boehm.

MR. BOEHM: Yes, your Honor, thank you.

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CROSS-EXAMINATION

By Mr. Boehm:

Q. Good morning, Mr. Duff.

A. Good morning, Mr. Boehm.

Q. Just to -- you were just asked, Mr. Duff, in a sort of conclusory question, at first you identified what the shared savings were that you received in the various years, and then I think the question was so that your -- Duke's projected incentives for these years were about $30 million. Do you remember that question and answer?

A. Yes.

Q. Okay. But that isn't true, right? I mean, your projections were way lower than what you came out -- eventually asked for.

A. So Duke -- Duke projected an amount based off of the 7.5 percent shared savings percentage because we didn't know how our portfolio was going to perform, and we felt that it was prudent for customers to not say we were going to achieve the highest level. If you note in our actual performance that I highlighted in our direct testimony, we actually overperformed versus our projections.

Q. Well, we will get to that in a minute, but to clean up this question, those weren't -- the 30 million weren't your projections. Your projections were way lower than that. The 30 million is what you're asking for as incentive, right?

A. That was based off of the actual net benefits and the actual achievements, yes.

Q. Okay. Now, let's get to this question of actual net benefits and actual achievements. When you use the word "actual" as you have several times in your testimony, when you are talking about net benefits, you use in the same context the word "projections," okay? And it's confusing me. So let me see if I can give you an example of that and I want to make sure I understand. Sorry, I lost.

Well, let me get back to it in a minute. There is another thing I would like to clarify and it has to do with the Commission order of May 20 in 14-457. I thought, and correct me if I misheard, that you indicated that you thought that the Commission's order with respect to whether or not the company was allowed to use banked savings for incentive purposes, that that wasn't clear, right?

A. The exact -- again, there is a lot of confusion around what banked savings we are talking about. There were some people that made their contention in that case that the company was actually earning shared shavings on banked impacts and that is -- that is not correct. And so that's why I believe if you read the Commission -- the Commission's order up front, it talks about the fact that the mechanism was approved with banking and the kind of banking that we are approved with we think is consistent and so that's why we've asked for rehearing because we don't believe the order is clear with respect to exactly what it does to shared savings.

Q. So just between you and I, maybe we can agree that what the company is doing is that it has one account which keeps track of the -- of the excess in EE savings, and it uses that account to -- or can use that account in a subsequent year if it underachieves the mandate to bring the -- that year up to compliance, right?

A. You lost me a little bit there because we were talking -- are we talking about the incentive bank, or are we talking about the compliance bank?

Q. That's good. We will use the word compliance. That's the compliance bank, right?

A. So a compliance bank the law allows the utility to look at its cumulative achievement, that's correct.

Q. And then you have a separate bank or have been operating a separate bank that you call your incentive bank, right, or we'll call the incentive bank?

A. Yes. The 11-4393 and 14-431 are approved stipulations that allowed for the use of banking to determine the shared savings percentage, not upon which to calculate savings on.

Q. So the -- there is using the compliance bank to achieve your mandate and then there is using the incentive bank to get incentives; is that correct?

A. That's correct. There are two fundamentally different balances.

Q. Okay. And you don't think that the Commission's order in 14-457 was clear that they would let you use banking for compliance but not for incentives?

A. Again, that's why -- Mr. Boehm, that's why there is a pending request for a rehearing.

Q. Okay. Do you happen to have the order of the Commission in that case?

A. No, I don't.

Q. Do you mind if I read from it? And I will be happy to have your counsel correct me if I read something wrong, okay?

EXAMINER PIRIK: Could we turn the microphones back on. Mr. McNaughton is here. He is going to check the volume and see if he can fix the problem.

(Discussion off the record.)

Q. (By Mr. Boehm) I am reading here,

Mr. Duff, from the Commission's May 20 order Case No. 14-457. I am reading from the first full paragraph on page 5 of that order.

MS. WATTS: Mr. Boehm, just for the record I don't have a copy of it in front of me, but I trust that you will be able to read it just fine so.

MR. BOEHM: Thank you.

MS. WATTS: I want you to know I don't have one, so I can't correct you.

Q. Here is my reading of it then. Somebody can correct me. Mr. Duff --

A. I'm waiting.

Q. -- "As to Duke's use of banked savings, the Commission agrees with OMA and finds the company may only use the banked savings to reach its mandated benchmark." Is there anything about that sentence that you don't understand?

A. Yes, because OMA's contention about savings was with respect to counting shared savings on the savings. So you have to go back and look at what OMA said in the case, Mr. Boehm.

Q. Throw -- run that by me again.

A. So OMA in the case, their comments contended that Duke was calculating savings --

calculating shared savings on banked savings which is not correct. And so there is uncertainty. If you are relying on OMA's comments, OMA's comments were in -- were incorrect.

Q. Let me read the second sentence.

A. Certainly.

Q. "Therefore, the Commission finds Duke's use of banked savings to claim an incentive is improper." Is there something about that you don't understand?

A. Again, I'm not exactly sure what -- what they are saying. Obviously they are saying something is incorrect, but if they are relying on OMA, Duke isn't doing what OMA asserted it was doing.

Q. All they say is "Therefore, the Commission finds Duke's use of banked savings to claim an incentive is improper."

A. Yes.

Q. Do you find that ambiguous?

A. Yes, because they said it was based off OMA's comments.

Q. No, they didn't. That was in the first --

A. Exactly. Their finding is based off what OMA said.

Q. Whatever it's based off of that's what they said, right?

A. Mr. Boehm, you asked for my interpretation. I am telling you how I am interpreting it.

Q. Okay, okay.

MR. SECHLER: Your Honor, I am just going to lodge an objection to what OMA's comments meant or what OMA implied.

EXAMINER PIRIK: It will be so noted.

MR. SECHLER: It's beyond his capability.

EXAMINER PIRIK: It's noted.

Q. Let me read further on down the same paragraph, same page, "Thus, an order for the structure to continue to serve as a true incentive to Duke to exceed the benchmarks, the Commission finds the banked savings cannot be used to determine the annual savings achievement level." Is there something about that you don't understand?

A. Well, again, as I pointed out, what the Commission is saying they want to have accomplished would rely on banking because otherwise utilities would again not want to do more and more and more. There would be no interest. If you have -- if you are not motivated, Duke Energy would be in full

compliance to offer zero programs because of the high level of achievement that's already obtained. But it has a portfolio that it got approved by the Commission that was clearly lower than its mandates that it is operating to and is actually exceeding at a lower cost which is exactly what the Commission wants to do. Again, there's a lack of clarity in terms they say what they are trying to incentivize, and it doesn't seem to align with what they are saying so that's why we asked for rehearing.
Q. Isn't it true you just disagree with the order? You understand English; you just don't agree with the order, right?
A. Mr. Boehm, I gave you my interpretation.
Q. Okay. We'll move on. The net savings that you make calculations of you say is projected, right?
A. No. So when you -- can you refer to a specific line that you are talking about?
Q. When you come up -- when you say we are going to have net savings in X year of such and such, where does that number come from?
A. So the rider, if you are referring to projections that were referred to in my testimony, those were projections that were filed with the

Commission in the different rider proceedings.

Q. And who made the projections?

A. The company.

Q. Okay. And we know with respect to the projections that the company made about how much incentive payments they are going to get, they're pretty far off, weren't they?

A. No. I don't believe that's correct. I think if you look at the achievement, what we put in was actually lower because we were erring on the side of not collecting incentive from customers until we recognized what the actual level achievements were. The dollar values that were asked for for the shared savings incentive were truly lower, but everyone knew that the projections were clearly short of the mandated levels and had shared savings associated with them and not a single party raised that issue regarding those projections.

Q. Your projections, right?

A. Correct.

Q. So when you project -- when you project things and then you exceed the projections, you are kind of putting the rabbit in the hat and pulling it out, aren't you? I mean, if you are going to project something you want to --

A. Mr. Boehm --

MS. WATTS: I need to object to the characterizations Mr. Boehm has here. Perhaps he could clarify his question.

MR. BOEHM: I'll withdraw the analogy.

EXAMINER PIRIK: Thank you.

Q. The point is if -- if you are the company and you want to look good, right, you project things, and then you exceed those projections, right?

A. No, Mr. Boehm.

Q. You don't?

A. Every single party has an ability to intervene in those. Those are publicly filed and can take comments and can issue comments regarding the projections so, if they like, just as the portfolios that are approved are based off projections that everybody takes issue with. It's not just the company putting it forth. We put forward what we believe can be achieved.

Q. And with respect to those intervenors, they would have to have a pretty acute knowledge of Duke and its programs to --

A. I believe.

Q. -- really argue with your projections, wouldn't it?

A. Mr. Boehm, we run a collaborative on a quarterly basis that goes through the detailed performance of those programs, and a lot of the individuals that are parties in this room attend those collaboratives and I think could definitely have input into the projections.

Q. Just for the record on your projected annual dollar incentives we just had I think an indication that they were all around $12 million what you got. There's a response to an OCC second set of interrogatories August 23, 2013, where you set out what the actual dollar incentive -- not actual, what the projected annual dollar incentives are. Didn't you answer that in OCC's response?

A. August of when?

MS. WATTS: Mr. Boehm, I object. If you have got an exhibit you want to put before Mr. Duff.

MR. BOEHM: Yeah, I think I do.

As it turns out, I don't have.

Q. You would find it as an attachment to the direct testimony of Wilson Garcia -- Wilson Gonzalez that was filed in this case.

A. I don't have it in front of me.

Q. It's Attachment 1.

EXAMINER PIRIK: And that document hasn't been marked yet so I would ask Ms. Kern if she would mark it and we could appropriately respond to it as an exhibit number.

MS. KERN: Sure. I would like to mark as OCC Exhibit 1 the direct testimony of Wilson Gonzalez.

EXAMINER PIRIK: The document is so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. KERN: Your Honor, I have copies of that attachment if it would be helpful.

EXAMINER PIRIK: I think it would be helpful, especially for the witness.

MR. BOEHM: Thank you, counsel.

Your Honor, I am not sure if we should mark this as an OCC or OEG exhibit or how you want to handle it. As I already said, it will be in the record when counsel moves for -- identifies the testimony of Mr. Gonzalez.

EXAMINER PIRIK: I think in order so it's not confusing, if we just have one document that refers to the same thing, I think if you refer to the attachment to his testimony.

MR. BOEHM: Okay. I'll mark it OEG Exhibit 1.

EXAMINER PIRIK: No. I would refer to Attachment 2 to OCC Exhibit 1.

MR. BOEHM: Thank you.

Q. (By Mr. Boehm) For 2013, this -- this exhibit shows that you projected $5,000,903 and -- $5,903,534, right? And I think you indicate you actually got about 12 million, right?

A. The exhibit you have in front of me actually has for 2013 11,364,000.

MS. KERN: Is he referencing Exhibit -- Attachment 1?

Q. Which exhibit?

A. The one that was --

MS. KERN: This is Attachment 2. I thought he said Attachment 2.

MR. BOEHM: I'm sorry, it's Attachment 1.

MS. KERN: Sorry, apologize. Scrap that.

EXAMINER PIRIK: Now, I think the witness needs to have that attachment.

MR. BOEHM: I apologize, Mr. Duff.

MR. SCHULER: Your Honor, perhaps we can make Mr. Gonzalez's testimony available to the witness and a copy to the court reporter.

EXAMINER PIRIK: That would be fine.

MS. KERN: We have extras of that.

MR. BOEHM: That would be grand. Thank you.

Q. (By Mr. Boehm) I'll give you a minute there, Mr. Duff. It's Attachment 1.

A. Yes. Now, I have it.

Q. You don't disagree with these numbers, do you?

A. No. We provided them.

Q. Okay.

A. And they were publicly filed in the riders. That's where they came from.

Q. Okay. These are all considerably lower than the numbers that you gave us as far as what -- what Duke actually got or is asking for; is that right?

A. These were projected off of the impacts, costs, and net benefits that were included in the rider and approved in 13-753, I believe, and, again, the company did not feel it was prudent to estimate the highest level of shared savings until it knew what its actual achievement was.

Q. Doesn't this give us some idea of what the -- how the pro -- the company's projection process is going?

A. No.

Q. It doesn't.

A. No. This is about dollars. This is in the customers' best interests. Until you know your performance it would be -- it would be somewhat egregious to just automatically assume you are going to get the highest level.

Q. Which part is for the company's best interests, the 12 million or the 5,9?

A. The net benefits that were achieved was greater than what was projected so that benefits customers. The percentage doesn't -- the percentage is what the percentage is. It is the net benefits.

Q. Let's move on to another matter, to the Table 1 on page 4 of your testimony.

A. Yes, sir.

Q. Okay. And we see there the Commission-approved target for Duke's annual -- "Achievement of Annual Target" I think is how it's captioned, and then you have "After-Tax Shared Savings," correct?

A. That's correct.

Q. Okay. Now, let's assume -- let's assume that we calculate that on -- on before tax. What -- what would that number be?

A. So you would --

Q. '13 would be what?
A. It would be approximately 20 percent.
Q. 20 percent.
A. Again, the after-tax percentages are standard across all the utilities, Mr. Boehm.
Q. For rate cases.
A. No, for the shared savings incentive structure.
Q. But just so everybody knows what the ratepayers pay, do they pay the 13 percent, or do they pay the 20 percent?
A. They pay the pretax amount.
Q. 20 percent in this case.
A. Yeah.
Q. So it's actually for the company's best interests. If the company were going to use banked savings to reach incentives, it's actually in the company's best interest to make sure that they report shared savings at the highest number that they can, over 100 -- I'm sorry, that they report or use their banks if you were going to use it for achievement to be as close to 115 percent of the target as possible, right?
A. That's -- that's the highest level of achievement.

Q. Right. So if you had -- if you had the discretion, you wouldn't report 130 percent; you would only report 115 percent, right?
A. Actually, Mr. Boehm, you're incorrect.
Q. Okay. Wouldn't you want to save that extra incentives for next year?
A. Not if you claimed shared savings on it. The stipulation did not allow for it to happen, and it does not happen.
Q. I am talking for incentives.
A. That's exactly what I am talking about.
Q. Explain --
A. I think all you need to do is look at 2012, Mr. Boehm. The company actually exceeded -- exceeded the mandates by 31 percent.
Q. Right.
A. But because it claimed shared savings on that full 31 percent, it was unable to bank any of that additional overcompliance.
Q. Okay.
A. The company has not double counted, and your question was wrong.
Q. I didn't ask if you were double counting. I was asking you essentially if you were gaming the system.

A. No, no, to the exact answer I just told you.

Q. But in a year where you don't achieve -- in a year where you don't achieve the mandate number, right, or where you don't achieve the incentive number, you use savings from previous years, right?

A. That's what was approved in the stipulation, yes.

Q. Approved in the stipulation. But that's now what the Commission has told you you can't do any more, right?

A. Again, that's pending rehearing, yes, Mr. Boehm.

Q. On pages 8 to 9, you begin to explain how you used the incentive bank less than the compliance bank, and then you say this significantly lower balance is driven by three main factors that affect the calculation of the two banks. First, during safe-a-watt mechanism the company needed to exceed its annual compliance benchmarks by 25 percent in order to earn 15 percent return on its program costs which led to a reduction in the incentive bank of 82,125; is that right?

A. That's what it says.

Q. Okay. Is the company complaining that

that was somehow unfair?

A. No. It's stating a fact.

Q. Okay.

A. But for the record AEP only had overachieved by 15 percent to earn the same 15 percent.

Q. Okay. How long -- you used to be involved in the rate cases, didn't you?

A. No.

Q. Okay. Do you know whether or not when there were rate cases companies typically came in and asked for 15 percent rate of return?

A. Again, Mr. Boehm, I answered your question. I wasn't involved in the rate cases.

Q. Okay. I would like to know on page 10 when you are explaining the unfairness, I guess, of not being able to use banked savings for both clients and incentives, you say in the one sentence beginning on line 8 "Since a utility has the ability to use banked impacts for compliance, it can remain in compliance in a year that it has little to no actual customer participation by using banked impacts and then the following year capitalize on pent up customer demand and drastically exceed its annual benchmark; thereby allowing it to earn a high incentive and replenish its compliance bank for the next year." You say "This operating pattern is highly inefficient and does not lead to the optimal outcome for" -- "for customers." Do you have -- do you have a pent up demand from your customers? In other words, if you don't have much energy efficiency one year, is there some sort of groundswell of demand that by God we have a lot of energy efficiency the next year?

A. Generally when you first offer a new program or if there is interest, if you remove a program from the market, yes, then there will be pent up demand.

Q. And you can control this, you think?

A. By having a program or not having a program, by marketing it, by not marketing it. There is a number of things you can.

Q. Aren't you obliged by law to market it?

A. We do market it.

Q. Aren't you obliged to reach mandates?

A. No, Mr. Boehm, but we would be in full compliance with the mandates. That's the whole point. Compliance mandates and incentive mandates are fundamentally intertwined since compliance allows for a cumulative nature or banking and then incentive needs too so they are on an equal footing so you don't have that disconnect of, hey, I can be in full compliance because I can bank, but for incentive I can't use bank. It puts them out of whack. That's the whole purpose of that testimony.

Q. Somehow it seems to me the problem there is using banking for compliance.

A. Is that a question?

Q. Yes. Is it?

A. You said the problem is; you didn't ask me a question.

Q. The reason this -- the reason this lacking symmetry exists is because you can use banking for compliance, right?

A. Banking for compliance and banking for incentive we'll put together because, yes, if you -- if compliance wants to overachieve early, then in order to continue a synced up incentive, they need to be aligned with respect to banking.

Q. And you say banking for compliance and banking for achievement were put together because, and you gave me a reason. Who was it that put them together?

A. The stipulation and the Commission's approval of that stipulation.

Q. And you think that the stipulation said you were allowed to use banking for incentives.

A. If you look, I believe it's finding 3 of the Commission's order in that 15 -- in the 14-1580 case it explicitly says the company was allowed to use banking in its mechanism which is, again, Mr. Boehm, why I pointed out there is some inconsistencies.

EXAMINER PIRIK: I just want to be sure we're clear. You are talking --

THE WITNESS: The May 20 finding, No. 3 in the Commission's May 20 order that was earlier referenced.

EXAMINER PIRIK: Okay. In which case?

THE WITNESS: 14-1580. Or, I'm sorry, what's the -- it was the 14-457, I'm sorry, 14-457.

Q. (By Mr. Boehm) I am going to hand that to you, and I would like you to read that to me, please.

A. Sure, sure.

MR. BOEHM: Will the record reflect I am showing the witness the May 20 order in 14-457.

EXAMINER PIRIK: Thank you.

A. "The cost is approved" -- "The cost recovery mechanism as approved encourages Duke to seek energy savings through a tiered savings incentive structure. If Duke exceeds the mandated annual benchmark, it is entitled to a percentage of shared savings depending on how it" -- "how far it surpasses the benchmark. Further, Duke is permitted to bank energy savings that are not used toward the benchmark or shared savings in a given year" which is exactly what the company has done.

Q. It doesn't say incentives; it says the benchmark.

A. For shared savings.

Q. For shared savings. It doesn't say incentive, does it?

A. It's discussing the incentive mechanism, Mr. Boehm, clearly. The whole paragraph is about the cost recovery mechanism, and it specifically says Duke is permitted to bank this energy savings that are not used toward the benchmark or shared savings in a given year.

Q. We just read English differently, Mr. Duff. We are going to have to brief that, okay?

A. Is that a question, Mr. Boehm?

Q. I'm sorry. No, that isn't a question. No, it isn't.

A. Okay.

Q. Oh, turn to page 14 of your testimony.

A. Page 14, you said?
Q. Yes. Here is where we talk about actual and projections -- projected. On line 10 you say "In 2012, the Company delivered the actual incremental energy savings from the Company's portfolio of programs at a cost" -- well, first of all, at a cost of essentially 9.7 cents -- I'm sorry, yeah, "9.7 cents per kWh, which was equivalent to a 15.3 percent savings on the cost of every incremental kWh energy savings achieved compared to projections," okay? So that's what we're -- what you're boasting about here, that you meet your projections, right?
A. That were approved by the Commission, yes.
Q. Okay. And you're saying that the energy savings according to your calculations cost 9.7 cents per kWh, right?
A. That's the math, yes.
Q. Okay. Do you know whether or not that was anywhere near what the market price of power was around that time?
A. I don't know.
Q. You think it might have been as high as 9.7 cents per kWh?
A. Again, Mr. Boehm, this is just -- this is

just one metric to show how the company was able to get more achievement at a lower cost.

Q. Compared to your projections.

A. Energy efficiency also delivers other avoided costs beyond just pure energy.

Q. Further on you say "In 2013, the Company delivered the actual incremental energy savings from the Company's portfolio of programs at a cost of 16.3 cents per kWh."

A. That's -- that's correct.

Q. Right? Now, do you know whether or not around that time that power on the marketplace was around 16 cents a kWh?

A. Mr. Boehm, I already said I am not an expert on market power prices.

Q. Okay. Further on you are saying you did it at 17 -- 17.2 cents. And the same thing, you don't know --

A. It's the same math that Mr. Seryak -- it's the same math that Mr. Seryak provided. It's simply dividing the total program costs by the total kWh achievement.

MR. BOEHM: I have no further questions, your Honor.

Thank you, Mr. Duff.

THE WITNESS: Thank you.

EXAMINER PIRIK: Mr. Allwein.

MR. ALLWEIN: I have no questions, your Honor. Thank you.

EXAMINER PIRIK: Staff.

MS. JOHNSON: Yes, staff has a few questions.

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CROSS-EXAMINATION

By Ms. Johnson:

Q. Okay. I am just going to have you kind of try to explain to me these compliance banks versus the incentive banks here. So on -- in your testimony on page 8 and page 9, at the bottom of page 8, you refer to a compliance bank, and you refer to it several times here today. Could you explain to me exactly what you mean by a compliance bank versus an incentive bank?

A. So there -- the compliance bank is consistent with SB 221. It's simply looking at what the achievement consistent with how SB 221 is versus the annual benchmarks. That's fundamentally different from the incentive benchmarks because of the stipulation. As I discussed in my testimony, ours is fundamentally different than other utilities.

As part of that stipulation, we actually don't count the mercantile impacts in our achievements for determining your achievement level. We back it out of the three-year baseline, so it's not the same baseline, it's not the same benchmark, and the achievement levels that you will see are different. Additionally, your achievement level doesn't necessarily include base rate impacts that you see in the compliance -- in compliance with SB 221.

Q. By achievement level are you saying the benchmarks, the annual benchmarks?

A. Yes, the annual benchmarks for 221.

Q. So how does the company accumulate banked savings in its compliance bank and how does it accumulate them in the incentive bank?

A. So in the compliance bank it is based off of your level of performance versus the annual SB 221 mandates which are now on freeze, right, so essentially when SB 310 came in, it said once you get through 2014 I think you are at 4.2 percent, that you're done. Well, cumulatively we are well below 4.2 percent, so we have a bank of impacts that you can use until you get out to year 2025, I think we are supposed to be at 22 percent.

So if you think about it, it's a fairly

simple concept. If we achieved hypothetically 22 percent in 2010, you -- even though you blew by the annual mandate, you wouldn't have to do anything else to hit the compliance number in 2025. Let's say you did very little in 2010. 2011 you did 21.9 percent. Based off how -- my read of the law, essentially until you get to 2025, you wouldn't have to get that incremental .1 percent because it's not required by law.

Q. And you are talking that if you overachieve over your mandate by 22 percent you are saying.

A. No. It's not overachieving of your mandate. It's the total cumulative mandate is 22 percent over that period. So once you get to 22 percent you've met the mandate.

Q. Right. Okay. So I am going to run through just an example, see if you can explain it to me.

A. Sure.

Q. Let's say the mandate requires the company to have 100,000 megawatt-hours of savings in a year, and the company has to achieve 115,000 megawatt-hours to maximize its shared savings. And then in that year the company actually achieves

200,000 megawatt-hours of savings. Can you explain to me what portion of that would go to the mandate, what portion to the shared savings, what to the incentive bank, and what to the compliance bank?

A. Sure. So the full 200, the overcompliance of 200 versus the 100, that would -- that would go into your overcompliance bank with SB 221.

Q. And to the -- and to the compliance bank.

A. Yes, the compliance bank.

Q. The full 200,000.

A. Yeah, the 100,000 overcompliance.

Q. I'm sorry, okay.

A. The difference between those two. The incentive bank, depending on whether the utility recognized shared savings on it, if it recognized shared shavings on the 200, then its incentive bank would grow by zero. If it recognized just 115, then it would -- and the shared savings associated with it, then it would only -- then it would bank 85 for its incentive bank.

Q. Okay. So let me just make sure I get this. So if the company recognized the shared savings incentive, then they would carry forward zero in the bank.

A. Correct, as the example I gave to Mr. Boehm on 2012.

Q. But if they recognize no incentive, they would carry 85 through their incentive bank.

A. In their incentive bank. And so just to be clear, there's no net benefits associated with that that are ever carried forward. It's only for the purposes of determining your achievement level to get that shared savings percentage.

Q. Okay, okay. Now, I am going to ask you to explain how the company withdraws from each bank.

A. Sure.

Q. Again, so an example the mandate requires 100,000 megawatt-hours. The company must achieve 115,000 megawatt-hours to maximize shared savings. But this time the company achieves 85,000 megawatt-hours. Now, how would the company pull from the compliance bank and the incentive bank then to satisfy that?

A. Okay. So in order to meet compliance, assuming you had the necessary 15 in your bank, then you would use 15 from your compliance bank and that would -- that would be -- you would hit your compliance. If you sought to hit the highest level of overachievement, you would use 30 from your incentive bank so fundamentally there would now be a disconnect in the balance. As I said, in reality it's more complex than that because the -- because of the stipulation and the fact that parties wanted mercantile treated a certain way, there's a fundamental disalignment between the benchmark levels because of that whole mercantile and the banking out of load, but fundamentally it's the same concept. You've got -- if you have -- once you use those achievements they're gone so it's a -- the bank -- and that's where Duke thinks it's been very transparent about both its overcompliance that was necessary under safe-a-watt of 25 percent in order to earn its 15 percent on program costs and then also during its shared savings mechanism. We track that bank on an annual basis so people know what the bank level is.

Q. Okay. And so when did the company start this bank? When did the bank begin?

A. The bank has -- was established by SB 221.

Q. Okay. Both the incentive bank and the compliance bank?

A. So the banks were identical until the safe-a-watt true-up. And I apologize. I don't remember -- I want to say it's 12-1857, but I don't remember the exact case for the safe-a-watt true-up. But in that case we ex -- we explained for the first time you are going to have a different bank balance because the company had to overcomply by 25 percent in order to reach its 15 percent program costs.

It did so so at that time the bank balances started to differ and this is actually a really clear exhibit. It's JEZ -- one of Jim Ziolkowski's exhibits that says remaining bank eligible for incentive. And then from that point forward we have been tracking it. Now, again, even though there was significant overcompliance in 2012, because of the fact we recognize shared savings on it, the bank didn't -- the bank didn't increase for -- for incentives. It -- but it did for compliance.

So, again, there are three kinds of major points of difference but the first time the bank balance differed was when we got to the end of safe-a-watt where we had to have 25 percent overcompliance.

Q. No other Ohio EDU currently uses the system of -- the methodology for banking that Duke currently uses; is that correct?

A. I don't necessarily believe that's the case. I don't believe it's as transparent as we have made it; but, again, my reading of the stipulation it clearly says that shared savings is calculated based off the savings generated in the year -- in a year in which previous overcompliance is used to comply.

Q. Well, I'm sorry, what stip? You said the stipulation.

A. In both AEP and DP&L's stipulation that were approved by the Commission.

Q. Okay. So you're saying that the stipulations approved in the DP&L and AEP case both set forward similar methodologies; is that correct?

A. I believe it allows for the same banking, yes.

Q. But neither of those companies have currently attempted to utilize the methodology.

A. Well, I would say they haven't had the issue of the significant overcompliance early which has led to undercompliance as part of their approved portfolio plans the way Duke has.

Q. Is it your understanding those stipulations have set forth the same methodology you just passed to me including incentive bank versus a compliance bank and --

A. It's different language but it's the same principle.

Q. Okay. In your testimony on page 8 you refer to a cumulative benchmark during the period of 2009 to 2014. Is it the company's understanding it has to reach cumulative -- I'm sorry, let me rephrase that.

How does the company believe that it needs to meet cumulative benchmarks? In what way?

A. As I stated, the energy efficiency mandate was set, was frozen at the cumulative number at the end of 2014 which was 4.2 percent.

Q. Okay. So there's a cumulative number required by Senate Bill 221 at the end of 2025 --

A. It's the sum so essentially you could look at the -- and all of the -- all of the SB 221 annual reports you really look at it as there is an annual, but the true compliance is based off of are you where you need to be in total adding up all of the different annual ones because they ramp up to that 22 percent. It is not a static number.

Q. The statutory requirement is an annual one, correct, until 2025?

A. No. I believe it's -- I believe it's an annual number that's required but -- and that's why it calls out banking because it recognizes if you overachieve early, you are still in compliance because you are allowed to bank.

Q. Okay. But the only time that Senate Bill 221 mentions cumulative -- a cumulative benchmark is at -- in the year 2025.

A. That's correct, except for SB 310 which clearly cut off the fact that it's a cumulative achievement amount.

MS. JOHNSON: Okay. One moment, your Honor, please.

Just a few more questions, your Honor, thank you.

Q. Are you familiar with the opinion and order in Case No. 11-4393?

A. Yes.

Q. The Commission doesn't specifically approve a methodology for applying banked savings toward shared savings in that opinion and order, does it?

A. No.

Q. Okay. And it doesn't approve a specific methodology, does it?

A. No. The methodology was specifically laid out in my testimony and then referenced in

OCEA's comments which was what was used as the basis for the stipulation the Commission approved.
Q. And similarly the stipulation in that Case No. 11-4393 did not mention a particular methodology for applying banked savings toward shared savings.
A. In the --
Q. I'm sorry, in the 11-4393.
A. You asked me the 11-4393. Were you going to the 14-431?
Q. Yes, sorry.
A. It did not but my testimony reiterated how the banking was done and there was no change going forward in the 14-431 case.
Q. And just to close things up here, the opinion and order in Case 13-431 similarly did not approve a specific methodology for how banked savings were to apply toward shared savings.
A. No, other than the fact we had explained how it was and we've shown -- we've had that mechanism shown in all of the annual rider filings so until the -- until the 14-457 case we never knew it was an issue.
Q. In those annual rider filings and the various, you know, testimonies you filed in various

cases, did you specifically set forth the methodology including the incentive bank?

A. We differentiated the two banks, yes.

Q. The two banks and how they interacted?

A. It was explicitly called out we were not going to be recognizing any of the impacts associated with the banked achievement. It would only be used for the purposes of determining achievement level.

MS. JOHNSON: Nothing else, your Honor.

EXAMINER PIRIK: Thank you.

Ms. Watts.

MS. WATTS: Your Honor, may we take a brief break?

EXAMINER PIRIK: Why don't we do that. We will just stay here while you step out and confer.

(Recess taken.)

EXAMINER PIRIK: Ms. Watts.

MS. WATTS: Thank you.

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REDIRECT EXAMINATION

By Ms. Watts:

Q. Very briefly, Mr. Duff, you were asked a couple of questions earlier about whether Duke Energy has a cap on its shared savings incentive. Do you recall those questions?

A. Yes.

Q. And the company does not have a cap, correct?

A. That's correct.

Q. Do any of the other utilities in Ohio have caps?

A. Yes.

Q. And why is it that Duke Energy's is different?

A. Well, Duke Energy argued that successfully and parties agreed and the Commission approved it regarding the cap, that the cap wasn't necessary because increasing the incentive meant that greater net benefit was being generated and customers were keeping 87 percent of the after-tax amount on it. And so that was what the Commission used as justification for there not being a cap.

Now, while there are caps on the other utilities, I think it's important to note that if you look in proportion, AEP, for example, has a $20 million after-tax per year cap, and they are currently running that through 2016. I believe that $20 million when grossed up is approximately $30 million a year. If you look at Duke as a proportion of AEP's size, it's slightly less than

50 percent meaning that Duke's, as Mr. Boehm pointed out, approximately $12 million a year incentive that it has earned is -- would fall below a cap that's equivalent to AEP.

I also think it's important to point out the fact that AEP's cap is probably the most applicable to Duke because in the Commission's order establishing the $10 million cap on FirstEnergy, they pointed out that AEP has decoupling which Duke does as well which is justifying AEP's 20 million cap versus FirstEnergy's 10 million cap.

Q. Thank you. And on page 4 of your testimony, the table that demonstrates what after-tax shared savings incentive levels a company is entitled to.

A. Yes.

Q. Is that table more or less identical for all the investor-owned utilities?

A. I believe it is consistent across all investor-owned utilities.

MS. WATTS: I have nothing further, your Honor. Thank you.

EXAMINER PIRIK: Thank you.

Ms. Hussey.

MS. HUSSEY: No questions, your Honor.

EXAMINER PIRIK: Mr. Sechler.

MR. SECHLER: Nothing further, thank you.

EXAMINER PIRIK: Mr. Rinebolt.

MR. RINEBOLT: No, thank you, your Honor.

EXAMINER PIRIK: Mr. Pritchard.

MR. PRITCHARD: Just a brief clarification.

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RECROSS-EXAMINATION

By Mr. Pritchard:

Q. I believe in your response to your counsel's question on why Duke doesn't have a shared savings cap --

A. Yes.

Q. -- you indicated that the parties agreed with Duke's argument for no cap.

A. No. I said that the company has put that position forward, and then the parties agreed regarding no cap in the stipulation with the exception of OEG who is not a party to that stipulation.

Q. And, again, you are referring to the parties to the prior case and not this case.

A. Yes, the one that established the mechanism, Mr. Pritchard.

Q. And that would be Case 11-4393?
A. 11-4393, yes.
MR. PRITCHARD: Thank you. That's all.
EXAMINER PIRIK: Ms. Kern.
MS. KERN: No questions.
EXAMINER PIRIK: Mr. Dougherty.
MR. DOUGHERTY: No questions.
EXAMINER PIRIK: Mr. Boehm.
MR. BOEHM: No questions, your Honor.
EXAMINER PIRIK: Mr. Allwein.
MR. ALLWEIN: No questions, your Honor, thank you.
EXAMINER PIRIK: Ms. Johnson.
MS. JOHNSON: No questions, your Honor.
EXAMINER PIRIK: Thank you very much, Mr. Duff.
THE WITNESS: Thank you.
EXAMINER PIRIK: I think what we are going to do is go ahead and mark the comments that everyone has provided and then we'll go through and admit exhibits at this point in time and then we will take our lunch break and then we will convene with the intervenor witnesses after lunch.
So prior to moving admission of any exhibits why don't we go ahead and mark all of the

comment exhibits. Start with -- I am just going to go down the list I have. Staff, I have you have reply comments.

MS. JOHNSON: Yes. Staff would not like to introduce those into the record.

EXAMINER PIRIK: It's our practice that we do mark the comments for exhibits, so I am asking you to mark them as an exhibit.

MS. JOHNSON: Okay. Then it will be Staff Exhibit 1.

EXAMINER PIRIK: Okay. OCC.

MS. KERN: Yes, your Honor. OCC would like to mark the comments filed in this docket as OCC Exhibit 2 and the reply comments by OCC as OCC Exhibit 3.

EXAMINER PIRIK: OMA.

MR. SECHLER: Yes, your Honor. OMA would mark its initial comments as OMA Exhibit 2 and its reply comments as OMA Exhibit 3.

EXAMINER PIRIK: OEG.

MR. BOEHM: Your Honor, we would mark our comments as OEG Exhibit No. 2. My memory is we didn't file reply comments.

EXAMINER PIRIK: No, I believe you did.

MR. BOEHM: Did I? Okay. Then that

would be OEG 3. Hard to keep these cases straight.

EXAMINER PIRIK: OPAE.

MR. RINEBOLT: OPAE would request to mark its initial comments as OPAE Exhibit 1. In the interest of brevity we did not file reply comments.

EXAMINER PIRIK: I think you did.

MR. RINEBOLT: I did? Okay. Well, then I got a 2.

EXAMINER PIRIK: Let me double-check just to be sure.

MR. RINEBOLT: I will pull it up, your Honor.

EXAMINER PIRIK: Yes, you did.

MR. RINEBOLT: I did, okay. Thank you.

EXAMINER PIRIK: So that would be marked as OPAE Exhibit 2?

MR. RINEBOLT: Yes, please.

EXAMINER PIRIK: Kroger.

MS. HUSSEY: Thank you, your Honor. Kroger would like to mark its initial comments as Kroger Exhibit 2 and its reply comments as Kroger Exhibit 3.

EXAMINER PIRIK: Mr. Allwein.

MR. ALLWEIN: Your Honor, I believe that People Working Cooperatively only filed reply comments --

EXAMINER PIRIK: That's correct.

MR. ALLWEIN: -- on January 9, so I would move to have those submitted as People Working Cooperatively Exhibit 1. Thank you.

EXAMINER PIRIK: IEU.

MR. PRITCHARD: Yes, your Honor. I would like to mark IEU's initial comments as IEU Exhibit 1 and our reply comments as IEU Exhibit 2.

EXAMINER PIRIK: OEC?

MR. DOUGHERTY: Yes. I would like to mark the joint comments of OEC and NRDC and ELPC as can I say Environmental Advocates?

EXAMINER PIRIK: Yes.

MR. DOUGHERTY: Exhibit 1 and our January 9 reply comments as Environmental Advocates Exhibit 2.

(EXHIBITS MARKED FOR IDENTIFICATION.)

EXAMINER PIRIK: Thank you.

Then just to be clear we won't be providing copies of the comments and reply comments to the court reporter because all of them were filed in the docket. The initial comments that have just been marked by the parties were filed on December 5, and the reply comments were filed on January 9.

So with regard to let's start with Duke's exhibits first as far as moving and admitting.

MS. WATTS: Yes, thank you, your Honor. We would move Duke Exhibits 1, 2, and 3 at this time.

EXAMINER PIRIK: Are there any objections?

Hearing none those exhibits shall be admitted into the record.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER PIRIK: With regard to Kroger Exhibit 1.

MS. HUSSEY: Yes. Kroger would move to admit Exhibit 1 which is the correspondence dated April 17, 2014, filed in Case No. 14-457-EL-RDR by Duke Energy.

EXAMINER PIRIK: Are there any objections?

MS. WATTS: No objections.

EXAMINER PIRIK: It shall be admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER PIRIK: Now with regard, I am going to take them as a group, is there any objection to admitting the comments filed and/or reply comments filed by staff, OCC, OMA, OEG, OPAE, People Working

Cooperatively, Kroger, IEU, OEC, NRDC, and ELPC? Are there any objections?

MS. WATTS: No objections.

EXAMINER PIRIK: Hearing none those comments and reply comments will be admitted into the record.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER PIRIK: We'll withhold moving OMA Exhibit 1 and OCC Exhibit 1 until those witnesses have actually had an opportunity to take the stand.

Is there anything else we need to do before we recess for a lunch break?

MR. BOEHM: I was wondering, your Honor, as a matter of housekeeping if we could get an idea what the order of witnesses is -- are. My client, I think pretty much he has got to get back to Atlanta today and there is rain coming.

EXAMINER PIRIK: Examiner Walstra is going to take the afternoon session, so I will let him figure out what the order is going to be. We can go off the record.

(Discussion off the record.)

(Thereupon, at 11:59 a.m., a lunch recess was taken.)

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Tuesday Afternoon Session,
July 7, 2015.

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EXAMINER WALSTRA: We'll go back on the record.

And I believe we are going to go with OEG's witness.

MR. BOEHM: Yes, please.

EXAMINER WALSTRA: Mr. Boehm, go ahead.

MR. BOEHM: Thank you, your Honor. I would call as the Ohio Energy Group's witness Mr. Stephen Baron.

(EXHIBIT MARKED FOR IDENTIFICATION.)

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STEPHEN J. BARON

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

DIRECT EXAMINATION

By Mr. Boehm:

Q. Mr. Baron, do you have in front of you a document that's been marked as Ohio Energy Group Exhibit No. 1?

A. Yes, I do.

Q. And is that your testimony and exhibits prepared for this case?

A. Yes.

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

A. Yes, I do. The first one is basically a clarification. It's on page 6, Table 1. This table utilizes data from the Commission's Electric Customer Choice Switch Rates website, and I have now been informed that the -- what I had believed was quarterly kilowatt -- megawatt-hour data may not be. It may be monthly data. But the -- in looking at Mr. -- Staff Witness Scheck's table, the relationship that I've derived from this Table 1, the 38.6, appears to be consistent with his annual data, so it's really just a question of characterization. The ratio which is what I really relied on is -- is the same, roughly the same.

The second correction that I have is on page 8 at lines 1 to 2, based on reading Mr. Gonzalez's testimony, I now understand that the OCC's position is not to use a -- their recommendation was not -- did not include a tax gross up, and so the sentence beginning "As I showed previously" should be stricken from my testimony because they are not comparable comparisons. The 10 million cap for FirstEnergy was an after-tax amount --

Q. Okay.

A. -- and the 3.9 million would not be.

Q. Okay.

A. And, finally, I just wanted to clarify with regard to my testimony I never said one -- I didn't clarify this in the testimony, that OEG's proposed cap is an after-tax cap. Neither the comments nor my testimony specifically stated that, and I now want to clarify that it is an after-tax cap.

Q. Are there any other changes, Mr. Baron?

A. Not that I am aware of.

Q. Now, with those corrections and clarifications, Mr. Baron, is the testimony you presented here as OEG Exhibit No. 1 true and correct to the best of your knowledge and belief?

A. Yes.

MR. BOEHM: Thank, your Honor. I submit the witness for cross-examination.

EXAMINER WALSTRA: Thank you. Starting with Ms. Hussey.

MS. HUSSEY: No questions, your Honor.

MR. SECHLER: No questions, your Honor.

MR. RINEBOLT: No questions, your Honor.

MR. PRITCHARD: No questions.
MS. KERN: No questions.
MR. DOUGHERTY: No questions.
MR. ALLWEIN: No questions, your Honor.
MS. WATTS: Look how efficient that was. Yes, thank you, your Honor. I do have some questions.

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CROSS-EXAMINATION

By Ms. Watts:

Q. Good afternoon, Mr. Baron.
A. Good afternoon.
Q. Sir, you began your testimony on page 2 by saying as a threshold matter OEG believes there is no need for an incentive for compliance with state EE mandates, correct?
A. Yes.
Q. So essentially in OEG's best case scenario there would be no incentive mechanism.
A. That is correct. And I believe that's a position that OEG has consistently taken in Duke cases as well as for other utilities.
Q. And may I say I think OEG is the only party that has been that consistent.
A. Thank you. Mr. Boehm gets the credit for

that.

Q. He does. And but you acknowledge, however, that the Commission's rules provide that incentive may be provided for, correct?

A. Yes.

Q. Okay. Going back all the way to your testimony in the 11-4393 case -- and do you remember which case that was?

A. I -- I -- this was -- I don't remember by designation the case number so.

Q. Okay.

A. You may be able to refresh my memory.

Q. Our discussion about consistency will help here. I want to establish positions that are fairly similar in that case as it is in this case.

A. I believe it would be, yes.

Q. Okay. Are you familiar with the details of SB 221 and SB 310?

A. I -- generally over the years I have been involved in a number of procedures in Ohio that related to implementation of various aspects of SB 221. I'm not familiar with SB 310 other than reading references to it in Mr. Duff's testimony.

Q. Okay. I am going to ask you one element of SB 310, and you can tell me whether you are

familiar with that or not. Were you aware that SB 310 had a provision in it that allowed a utility to either amend its portfolio after the enactment of the law or continue its existing portfolio?
A. I -- I have been made aware of that through certainly some of the cross-examination this morning.
Q. Okay. And so based on what you've learned this morning or otherwise, it's your understanding that Duke Energy has opted to continue its existing portfolio, correct?
A. That's my understanding from Mr. Duff's testimony.
Q. Okay. And so as a result of that, is it also your understanding then that OEG members would not then be permitted to employ the new opt-out provisions of SB 310 until the conclusion of the company's portfolio?
A. I'm not familiar with that.
Q. Okay. And, sir, you are recommending a cap of 3 percent or 1 million, correct?
A. Yes, the lesser of either of those two.
Q. And do you have any comparisons or analyses where you've compared that to other utilities in Ohio?

A. I am aware of from -- of the caps that the Commission has allowed either by approving a stipulation or through a direct order of a litigated proceeding of various caps, and I think Mr. Scheck has a table showing the -- a number of the utilities -- or maybe all of them what the current caps are for after-tax incentives.

Q. But you didn't refer to those -- you didn't use the other caps that are established for other utilities in arriving at the cap that you are recommending here.

A. No, no. OEG consistent with my position and OEG's position that there really does not need to be an incentive mechanism to achieve optimal results, OEG's recommendation in this case is for what I would consider -- acknowledge is a very, you know, relatively low incentive cap.

Q. Okay. Let me just ask a follow-up to your -- your discussion there. You mentioned optimal results. In your definition what would constitute optimal results?

A. My definition of optimal results would be achieve energy efficiency at least at the benchmark level, and to the extent that it can be economically beneficial for customers to achieve higher levels of energy efficiency, that may be appropriate. There may be other aspects that have to be considered though in making that determination as to how far above a -- the benchmark or mandatory statutory required level should be pursued.

Customer impacts, for example, is one of the factors that should be considered. And so I haven't done an analysis of that but that would be the type of information that the Commission as the ultimate authority would be -- would and should evaluate in determining the most appropriate strategy. Achieving the maximum energy efficiency is not necessarily the optimal strategy.

Q. Okay. So let's -- let's talk about energy efficiency as it is carried forward in Ohio. So in Ohio utilities are entitled to recover program costs, correct?

A. Yes.

Q. And they are entitled to recover lost distribution revenues, correct?

A. Yes. Certainly Duke is entitled -- is permitted to recover those.

Q. Okay. And then in addition to that they are entitled to or may be entitled to an incentive mechanism of some sort, correct?

A. Yes. It's my understanding that the statute permits that, yes.

Q. Incentive mechanisms can be fashioned in a number of different ways, correct?

A. Certainly.

Q. Okay. The lost distribution revenues that utilities are entitled to receive is compensation that recovers the revenue lost essentially because the utility is selling less energy, correct?

A. That's the underlying theory. From my personal viewpoint and experience, I'm -- I don't support that but that is the underlying theory.

Q. Understood. And the incentive that Duke Energy Ohio is entitled to receive, and we can agree to disagree with respect to when and how long that shared savings mechanism will continue and so forth, but the existing shared savings mechanism under which the company is operating, are you able to describe the calculation of that mechanism?

A. I'm generally familiar with it. I haven't gone in and looked at the workpapers, for example, that calculate the present value of the avoided cost savings versus the program expenses which is the -- which were the two elements, net present value of that difference that forms the total savings, and I have seen schedules that show the determination, for example, in Duke of the achieved sharing percentage and how that carries through with in terms of applying the 20 percent grossed up sharing factor to the total savings. I'm generally familiar with that, but I haven't gone and looked at the detail underlying the numbers.

Q. Okay. And are you familiar with how avoided cost is formulated for Duke Energy Ohio's purposes?

A. I haven't -- I have not looked at that specifically. I am familiar with avoided cost calculations, and it's my understanding that this -- it would be calculated for the avoided costs over the life of this -- that the savings would actually materialize, but I haven't gone in and looked at the calculations themselves.

Q. Would you say that you are generally familiar with the concept of avoided costs as it's applied generically to energy efficiency achievement?

A. Generally, yes. I mean, it may be that different utilities use different methods or certainly regulators may proscribe or prescribe different methodologies, but generally I am familiar, yes.

Q. Okay. In the calculation generically speaking for avoided costs can include the equivalent of generation that's being avoided, correct?

A. Generally, certainly in a utility that would be, let's say, an integrated utility, it would -- it would usually reflect avoided capacity costs, avoided energy costs.

Q. Okay. It might also include transmission and distribution capacity, correct?

A. It could. It doesn't always include T&D. Certainly there are -- my -- my experience is that there's -- there's probably less foundation to support that, but certainly I'm aware that is used.

Q. Okay. And it can also include ancillary services?

A. Ancillary if those are -- if that's a legitimate benefit, certainly in a market like PJM, and that Duke participates in, if energy efficiency provides ancillary services, benefits in the sense of reduced load and, therefore, freed up ability to sell ancillary services, that would be a benefit, yes.

Q. And do they sometimes include environmental externalities or considerations?

A. I'm aware in some jurisdictions

environment externalities could be included in that calculation.

Q. Okay. With respect to those items that we have just discussed, you're not aware of which of those are taken into account with respect to Duke Energy Ohio's avoided cost calculation, correct?

A. That's correct. I've not investigated. I am not challenging Duke's calculation of its avoided costs, so I didn't really focus on that.

Q. Okay. Appreciate that. At the bottom of page 4 of your testimony you state that "There is no evidence that the Company will refuse to engage in cost-effective EE-PDR" and that's a reference to our rider I believe you are making, correct?

A. Yes, energy efficiency and peak demand response.

Q. Peak demand reduction, okay. "Beyond the statutory benchmark level if shareholders do not receive an additional incentive to do so," do you recall that statement in your testimony?

A. Yes.

Q. In the absence of an incentive, what would motivate the company to continue to offer energy efficiency programs once it's exceeded the mandates?

A. The same motivation that would -- that would have motivated the company to engage in least cost planning when it was an integrated company, the same motivation that motivates Duke to engage in -- in least cost distribution planning, engaging in programs like tree trimming to reduce distribution outages up to a certain level where obviously they are not going to spend -- Duke -- it may not be prudent to spend a million dollars on tree trimming or other programs, but it's some reasonable level.

Those same types of motivations as a -- as a -- as a utility that has an obligation to serve and in my view at least cost which means recognize some optimal strategies and planning the system and incurring costs, those same motivations could apply and in my view would apply in the case of energy efficiency without an incentive.

Certainly the biggest argument the utilities have used in other jurisdictions that I have been involved in is that we lose money if we encourage customers to use less. Well, in Duke's case the company is entitled to lost distribution revenues. Duke is -- has divested generation, so it's a market environment in Ohio. I don't see any ration -- any reason why the company wouldn't engage, what the disincentive is to engage in a reasonable level of energy efficiency above the benchmark without an incentive.

Q. On page 5 of your testimony, you mention that FirstEnergy is the most relevant comparison utility since it was established by the Commission in a litigated proceeding rather than a settlement. Do you recall that statement?

A. Yes.

Q. Why do you believe that it makes a difference when it's litigated or stipulated?

A. Because in a set -- in a stipulation parties -- there are a whole host of issues that generally would enter into a stipulation, and it's not transparent as to whether the particular metric that we are looking at in this case, say AEP's $20 million cap was agreed to by the parties in exchange for some other factor that AEP took perhaps a lower amount on, whereas, in a litigated proceeding the assumption is that the just and reasonableness of individual elements like FirstEnergy's cap can stand on its own.

Q. I am going to call your attention back to the 11-4393 case. Do you recall testifying in that case?

A. I -- I don't -- I recall testifying. I can't tell you that's the case number, but I do recall being -- testifying and being cross-examined.

Q. Okay. By virtue of the fact you actually testified in that case, is that not by definition a litigated proceeding?

A. Yes, I would agree, unless it settled after I left.

Q. Not so far as I recall. Sir, are you aware of changes FirstEnergy has made to its portfolio?

A. I have not evaluated that, no.

Q. Okay. And do you have any knowledge as to where FirstEnergy stands in relation to its compliance with the mandates?

A. I have not made that evaluation either.

Q. Okay. On page 6 you provide a comparison that shows that Duke's incentive cap compared to FirstEnergy's should be about 3.9 million, but then on page 7 you recommend a cap at 3 percent or spending 1 million, and I am wondering how you reconcile those two.

A. Yes. I was really just providing that information, the 3.9 million, to contrast to what the company has projected for 2014, 12.9 million, and to really explain that or to illustrate that, a cap in my view is required.

Q. Did you do any research with respect to the shared -- to shared saving mechanisms for utilities outside of Ohio?

A. I have -- I did not do any specific research for this testimony. I have been involved in proceedings over the years in some other jurisdictions where this issue was addressed, but I did not rely on that specifically for a recommendation.

Q. So no particular national analysis so far --

A. That's correct.

Q. Okay. And so your first -- your first most favorite position is no incentive.

A. Yes.

Q. And your fallback position from that would be either a 3 percent cap or $1 million?

A. Yes.

Q. Okay. And then your next position is that if the Commission doesn't like either of those two, they should accept OCC's recommendation, correct?

A. That's correct. And I -- obviously I

need to point out that the -- the OCC recommendation that I reference in my testimony was based on my review of OCC's comments, and upon reviewing Mr. Gonzalez's testimony in this case, OCC's recommendation is, I think, a 5 percent expenditure cap.

Q. So which are you supporting?

A. I haven't made an evaluation of OCC's proposal in this case, so at this point it would be the -- I would stick with my testimony as a fallback position, though that's not to say that OCC's recommendation in this case of a 5 percent expenditure cap is not more appropriate. In fact, it's closer to OEG's position for a 3 percent cap.

Q. I would have expected you to respond whichever is lower. No such luck.

A. Mr. Boehm may have expected that as well. He's free to take a different position on brief.

Q. Your -- your recommendation is that the incentive should be tied to only achievement over the benchmark, correct?

A. Yes.

Q. For any incentive.

A. That's correct.

Q. I didn't put that to you very well. So we understand one another?

A. Yes. The reference -- the point that you are referencing is that the mechanism that the company currently is proposing once the achievement level -- let's say the 13 -- 15 percent above the benchmark achievement level has been reached, then that sharing mechanism -- the sharing percentage, the 13 percent or 20 plus percent grossed up, applies to the entirety of the savings, not just the amount that is in excess of the mandatory benchmark, and it -- it seems to me that the appropriate sharing mechanism should be applied only to the portion of those net benefits that are in excess of what's required by the statute anyway.

Q. Okay. And other than that nuance that you're recommending there that the shared savings incentive be tied to the portion over the mandates, is there any other detail to the calculation that you would want to offer in terms of how that incentive should specifically be calculated?

A. Well, I've looked at -- I haven't done a specific calculation, but if you -- if you assume that the -- let's take the company's 2014 calculation for a true-up. The estimated savings, total savings, are about $64 million. And if you assume there's a lineal relationship between that 64 million and the kilowatt-hours, then about 55 million of that would be associated with 0 to 100 percent compliance, and about 8.8 million of that would be associated with the overcompliance, the extra portion. And so now we -- so basically the company's calculation for 2014 is that there was a net benefit of about 8.8 million of savings by -- that was produced by overachieving relative to the benchmark and that represents about -- well, the shared savings that the company is asking for is 12.9 million. On a revenue requirement basis it's about 8.3 million after tax.

So basically the company is asking for 8.3 million of -- of the 8.8 million of extra benefits that it achieved. That's about 95 percent and so that's really -- I think if you were to apply a methodology, I think it would be reasonable to use something like I've just done which is assume a linear relationship between the total savings and the kilowatt hours, and the company, if the Commission approves the continued incentive sharing, it should be limited to the benefits achieved in excess of those that would be produced by achieving the benchmark anyway.

Q. So that recommendation that you are

making in that calculation, are you aware of any other Ohio utility that calculates a shared savings incentive in that way?

A. No, I'm not.

MS. WATTS: One moment, please, your Honor.

I have nothing further. Thank you.

EXAMINER WALSTRA: Thank you.

Staff.

MR. JONES: No questions, your Honor.

EXAMINER WALSTRA: Any redirect?

MR. BOEHM: If I could have one minute, your Honor.

EXAMINER WALSTRA: Sure.

(Discussion off the record.)

MR. BOEHM: Your Honor, we have no redirect.

EXAMINER WALSTRA: Thank you. Then you may step down.

MR. BOEHM: And thank you once again for the accommodation for my witness's travel plans. Appreciate that, everyone.

THE WITNESS: And thank you from myself as well.

EXAMINER WALSTRA: Mr. Boehm, would you

like to move your exhibit?

MR. BOEHM: Excuse me. Yes, thank you. At this time I would like to move the introduction of Ohio Energy Group Exhibit No. 1.

EXAMINER WALSTRA: Any objections?

Ms. Watts? Ms. Watts, any objection?

MS. WATTS: I'm sorry, no objections.

EXAMINER WALSTRA: It will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. BOEHM: Thank you.

EXAMINER WALSTRA: Next, we will go with OCC's witness. Ms. Kern.

MR. SCHULER: Thank you, your Honor. At this time OCC calls Wilson Gonzalez.

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WILSON GONZALEZ

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

DIRECT EXAMINATION

By Mr. Schuler:

Q. Good afternoon, Mr. Gonzalez. Can you state your full name and business address for the record, please.

A. Yes. My name is Wilson Gonzalez. Business address is 450 Whitney Avenue, Worthington, Ohio 43085.

Q. Do you have before you what was previously marked as OCC Exhibit 1?

A. Yes.

MR. SCHULER: I believe, your Honors, we have already passed that out to the Bench and court reporter, correct?

EXAMINER WALSTRA: Yes.

Q. Do you recognize OCC Exhibit 1 to be your direct testimony, exhibits, and attachment that was filed in this action on June 30, 2015?

A. Yes, I do.

Q. And was your testimony -- your direct testimony prepared by you or under your direct supervision or control?

A. Yes, it was.

Q. Do you have any additions, corrections, or deletions to that document?

A. No, not to my knowledge.

Q. If I were to ask you the same questions today that are posed in your direct testimony, would your answers be the same?

A. Yes.

MR. SCHULER: Your Honor, at this time I would tender Mr. Gonzalez for cross-examination.

EXAMINER WALSTRA: Thank you. Cross, Ms. Hussey.

MS. HUSSEY: No questions.

MR. SECHLER: No questions.

MR. RINEBOLT: No questions, your Honor.

MR. PRITCHARD: No questions.

MR. DOUGHERTY: No questions.

MR. BOEHM: No questions, your Honor.

MR. ALLWEIN: No questions, your Honor.

MS. WATTS: Gotta love it. Thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Watts:

Q. Good afternoon, Mr. Gonzalez.

A. Good afternoon, Ms. Watts.

Q. I am going to start off by just making sure I understand the contentions that you are raising in your testimony, okay? Your first contention is that the Commission should impose a 5 percent of program spend cap on shared savings, correct?

A. That is correct.

Q. And your next contention, which has subparts to it, is that the incentive should be based on the technical -- I'm sorry, the total resource cost test and not the utility cost test. That would be part one, correct?

A. That's correct.

Q. And the next part is that they should be -- the incentive should be net rather than gross program savings?

A. That's correct.

Q. And your last part of that second contention is that it should be calculated on a pretax basis.

A. That's correct.

Q. Okay. And then, finally, you maintain that the company should not be permitted to count banked savings in the calculation of its shared savings incentive; is that correct?

A. That's correct, but my testimony is very specific to 2016. So in all these recommendations in my testimony, you know, 2016 to me was a clean page. We are starting with a clean page, you know. We have the experience of, you know, the first two portfolios and the different types of incentive mechanisms. We have experience in that, and we know how much it has cost customers, so I think my recommendations are starting from a clean place in 2016 as my understanding of the stipulation mentioned and, in fact, I would go further and say that it's -- I would hope that we would use this case to think about incentive mechanisms for other companies going forward in Ohio.

Q. Thank you. In preparing your testimony for this proceeding, you had not reviewed OCC's comments, correct?

A. I will -- I will say I had reviewed OCC's comments. I know that yesterday you asked me that, and as happened across the table today, many witnesses have misapplied certain cases and case numbers. There's six cases going on at any one time so I misspoke. I have read -- I had read their comments in this particular case.

Q. So even though in your deposition yesterday you said you had not, in fact, you had read it.

A. Yes. It was clearly that I wasn't clear. I wasn't -- but after the fact, I went home and I read it and I said, yeah, I have read these.

Q. Okay. So in OCC's comments OCC recommended a 13 percent cap on program -- on program spend cap; isn't that correct?

A. OCC did recommend a 13 percent. I was not under -- you know, I wasn't advising OCC. My contract started after that, so my recommendations are my recommendations based on my assessment of the company's history and assessment of the incentive mechanisms as they exist in Ohio.

Q. Okay. But you are appearing here today on behalf of OCC, correct?

A. That's correct.

Q. And so which is OCC's recommendation now? Is it 5 percent or 13 percent?

A. I would argue that my position OCC can -- you know, I'm testifying, you know, for OCC, but it's my recommendation OCC can either adopt that recommendation in their brief or they can, you know -- they are free on brief to -- to adopt --

Q. So you're saying in your testimony here today you may testify to something that OCC itself may not agree with?

A. No, I am not saying that at all. I am saying they have a right to form on briefing, you know -- their brief is what speaks for OCC. However, I would go further and say that to the extent that I -- my testimony was filed at 5 percent, I would be confident in saying that would be the new OCC position based on more information.

Q. But, in fact, you don't know that as you sit here today.

A. We haven't written a brief so I don't know.

Q. So you don't really know what OCC's position is until you see the brief?

A. No. I'm just saying I believe that OCC has a right in their brief to promote or support my testimony and the testimony in all its elements.

Q. Or not.

A. I think -- I think that's the case with every -- of every party here. I don't think it's any different.

Q. So, Mr. Wilson, on page 6 of your testimony -- Mr. Gonzalez, I'm sorry, page 6 of your testimony you recommend that the Commission reject the company's request to extend its current shared savings mechanism into 2016. Do you see that?

A. Yes, I do.

Q. Does that mean your preferred outcome would be no shared savings mechanism?

A. No. That doesn't follow. My preferred mechanisms would be, like I said, have a clean piece of paper and, now, let's come up with a shared savings or incentive mechanism that makes sense for both the company and for consumers. So I would say that the Commission should consider a shared saving mechanism along the lines of my recommendations.

Q. Okay. And you will agree with me that the Commission's rules provide that a shared saving mechanism may be -- a company may have a shared savings mechanism, correct?

A. I stated in my testimony that it's permissive, and the definition of shared savings around the country varies. You know, there's many shared savings-type mechanisms and Ohio is just one of many so it doesn't necessarily follow that it has to be restructured in the same way.

Q. Okay. So actually in point of fact there are a lot of different incentive mechanisms of which shared savings is one, correct?

A. Yes, you can say that's correct.

Q. Okay. On page 6 of your testimony, item 3 on line 16, you recommend that the Commission prohibit the company from using banked savings to attain its incentive. If the company is not permitted to use the bank in 2016, is it your understanding that it would be ineligible to achieve any incentive?

A. Yeah, I believe that was my

understanding, and I think it was reaffirmed by the discussion this morning, but as I told you yesterday, I think that's -- the company was aware of that risk. The company rolled the dice in assuming that they would be eligible for the same type of incentive mechanisms, so I think, as was pointed out earlier, the company had -- had a chance to modify its portfolio and programs after the 310 so I think that's -- you know, that's a call the company made.

Q. So after SB 310 modified its portfolio, it would be then enacting the terms of 310 and starting from scratch, correct? It would have a new whole portfolio, a whole new cost recovery mechanism.

A. I would say from a layman's perspective I don't want to, you know, comment on that particular law, but my understanding would be that the company would be able to modify its portfolio. It doesn't necessarily have to start from scratch, just modify some programs or some part of it.

Q. Or it could start from scratch.

MR. SCHULER: Objection, your Honor, to the extent it calls for a legal conclusion.

EXAMINER WALSTRA: Overruled.

MR. SCHULER: And also objection as it has been asked and answered already.

EXAMINER WALSTRA: He can answer if he knows. We will take into consideration his background.

A. I am trying to recall. I know there's -- it can be modified to the extent of whether you can start from zero or not.

Q. Do you recall any restriction on starting from zero?

A. No.

Q. Okay. And it's your understanding and I -- just to be clear I think you more or less said this, the company -- that Duke Energy Ohio opted to continue its existing portfolio, correct?

A. Yes, they did.

Q. Now, let's talk for a minute about the total resource cost test versus the utility cost test. You are recommending that the Commission apply the total resource cost test with respect to the incentive mechanism, correct?

A. Could you point me to my testimony? Yes, that is correct.

Q. That's one of your recommendations, correct?

A. One of my recommendations to try to align the utility incentive with a more reasonable calculation of net benefits.

Q. Right. I think actually it appears at lease once on page 10, lines 13 through 16, where you explicitly say that.

A. Thank you for bringing that to my attention.

Q. Are you aware of any other Ohio utility that's required to use the total resource cost test versus the utility cost test?

A. I believe three of the Ohio utilities through settlement settled on the utility cost test, but like I stated earlier, this is a new -- we are looking towards the future and not towards the past.

Q. So this is the Wilson Gonzalez best case scenario; is that what we understand?

A. No. I think this is the Wilson Gonzalez shared savings mechanism for consumer protections.

Q. Okay. On page 14 you state that the incentive levels -- that Duke Energy Ohio's incentive levels are exorbitant relative to program size and relative to other Ohio utilities. Do you see that?

A. What page did you say?

Q. 14.

A. 14.

Q. Line 7.

A. Yes, yes. And that's -- like we just talked about, every decision point on your shared saving mechanism where there is a decision to be made it always favors the utility.

Q. Let's talk for a minute about AEP. Are you aware of how much incentive AEP has made in recent years on its energy efficiency?

A. Yeah, generally. We go to the collaborative and they report.

Q. And can you tell me what that's been?

A. I want to say at least, you know, one of their filings it was in the $90 million over three years.

Q. Over three years so that's approximately $30 million a year, correct?

A. Yeah.

Q. And what is Duke Energy Ohio's relative size with respect to the -- the load served, kilowatt-hours sold, compared to AEP?

A. I'm not familiar with that. I'm sure that's in the staff exhibit. Or from customers AEP has about 1.8 million and Duke has 700,000 maybe.

Q. Right. So Duke is somewhere, let's say, slightly less than 50 percent of AEP? Can we agree to that sizewise?

A. Less than 50 percent of AEP.

Q. So if AEP is making $30 million a year, then if you were doing something comparative here, you would say Duke Energy would be entitled to make about $15 million a year.

A. About how many?

Q. 15.

MR. SCHULER: Objection, based on facts not in evidence.

A. I would say --

EXAMINER WALSTRA: Hold on. Overruled. You can go ahead.

A. I think my review of the information is that even when you look at AEP's incentives, they don't -- they don't serve past the 48, 49 percent, over 50 percent program costs that -- that Duke incentives have so even though -- I'm not -- I'm not disagreeing with you. I think that the incentives of AEP are also excessive, and I wouldn't want to use that as -- as a benchmark going forward.

Q. Okay. But you've stated that Duke Energy Ohio's incentive is exorbitant relative to other -- other Ohio utilities, and I am trying to understand how that is, so given what we've just discussed in --

MR. SCHULER: Objection, your Honor. I

believe that mischaracterizes his testimony. That was just one component.

EXAMINER WALSTRA: He can clarify if it's not correct.

A. Yes. I would say that I used the word exorbitant and excessive in my testimony. And that in terms -- here in terms of relative to other companies, I think if you look at over the years, that we could start with DP&L, DP&L had no incentives in their first portfolio, so obviously your incentive was exorbitant relative to DP&L in their first portfolio. FirstEnergy had no incentive in their first portfolio, three-year portfolio, so your incentives during that period were exorbitant relative to FirstEnergy.

And with respect to the second portfolio FirstEnergy and DP&L were approved incentive mechanisms. Your incentives as a percentage of probative costs were also larger than the DP&L and AEP.

Q. And do you have anything in your testimony to demonstrate that?

A. Yeah. I state, if you look at the bottom, indirectly if you looked at the FirstEnergy's $10 million a year the company compared to do and so

I think in that particular case, you know, you could -- again, it's just a basic calculation, and I think it's also borne out if you look at the staff exhibits when they are looking to normalize Duke's incentive relative to the companies. It's not 12 -- it's not at the high incentive levels that appear in my tables in projections.

Q. You don't have a specific analysis for it?

A. It's an analysis -- it's just looking at that number and looking at what -- knowing what the companies spend, I make that determination. I know what the company spent on energy efficiency.

Q. Is it fair to say you think all utility incentives are exorbitant?

A. I would say that the utilities -- I would say that all the utilities in Ohio, I believe, have incentives that are above what -- above what is, I would say, in the public interest, but Duke especially over the years has been the utility with consistent incentive mechanisms and I would say the highest percentagewise or prorate for the most part.

Q. So let's back up a minute. At one point you compared Duke Energy to FirstEnergy, correct?

A. Yes.

Q. You are aware, are you -- are you aware that FirstEnergy filed to amend its portfolio subsequent to SB 310?

A. Yes. AEP did -- I'm sorry. FirstEnergy did amend their portfolio subsequent to 310; the three other Ohio utilities didn't.

Q. And do you know how it changed its portfolio?

A. My understanding is that they terminated and closed some programs out.

Q. Okay. Does FirstEnergy have a decoupling mechanism?

A. FirstEnergy, so they have like a lost revenue recovery.

Q. Okay. But does it also have a decoupling mechanism?

A. I am not aware of them having a decoupling mechanism.

Q. And, sir, on page 15 of your testimony you reference a study entitled "Carrots for Utilities: Providing Financial Returns for Utility Investments in Energy Efficiency." Do you see that reference?

A. Yes, I do see that reference.

Q. And that -- that study that you reference for authority here is one which you helped author, correct?

A. I wouldn't go as far as helped author, but I did give my review and opinions on it.

Q. So you had some authorship in it, some ownership.

A. You define ownership broadly.

Q. Okay. And that report states that utilities generally -- generally are not incentivized to pursue energy efficiency absent some incentive mechanism, correct?

A. Can you point me to that page?

Q. I'm just asking you generally if the report draws that conclusion.

MR. SCHULER: Your Honor, I would request if she is going to ask him to recall a report that's roughly 100 pages, that she place it before the witness.

Q. Mr. Gonzalez, do you have -- do you need to have a copy of the report in order to answer that question?

A. I would like to see it because I think -- I think the report is nuanced in how it tries to derive impacts from energy efficiencies.

MS. WATTS: May I approach, your Honor?

EXAMINER WALSTRA: You may.
A. Are you going to direct me to a certain page?
Q. I was not. I think you and I had this discussion yesterday, so I was hoping you would recall that.
A. Okay. Hold on.
MR. SCHULER: Can I have the prior question read back again, please.
(Record read.)
MR. SCHULER: Again, your Honor, I maintain an objection. By my count of the exhibit it's 91 pages. If Ms. Watts could perhaps point him to a specific page or summary or something.
EXAMINER WALSTRA: If the witness knows, he can answer. But we certainly don't expect him to read the whole thing right now.
MR. SCHULER: Thank you, your Honor.
A. I think the report is nuanced so if -- if it makes that type of statement some place, it might say something else somewhere else, but I would -- I mean, the report that says there's wide agreement among industry experts that shareholders' incentives influence utility decision making, you know, in the report. However, that's generally. In Ohio DP&L or

FirstEnergy both exceeded the mandates without any incentives so, you know, these are general -- this is a general observation but.

Q. Is it your testimony that AEP and DP&L have no incentive mechanisms?

A. No. I said FirstEnergy and -- as I mentioned earlier, FirstEnergy and DP&L exceeded the benchmarks without an incentive mechanism, yes, in Ohio and DP&L significantly so. So --

Q. What period of time was that?

A. You can make a general statement in the report but, you know, the other -- the other case you could say is there's -- as Mr. Baron was mentioning, there is an energy efficiency resource standard in many states. Yeah, that could be the biggest impact on whether the utilities undertake energy efficiency. It doesn't help the incentive mechanism.

Q. Would you agree with me that generally an incentive mechanism is a reasonable way to incentivize an investor-owned utility to pursue energy efficiency?

THE WITNESS: Could you read that back? She had the word incentive twice in there so it kind of threw me off, please.

(Record read.)

A. Incentives -- the purpose of incentives are to get companies to undertake an action you want them to undertake.

Q. And there are different types of incentives applied in various ways across the states in -- across the United States, correct?

A. Yes, I believe there are different types of shared savings, program -- percentage of program costs, rate of return, but I would say the shared savings approach used in Ohio is very prevalent in states that have vertically-integrated utilities. When you look at states that are deregulated, the incentive levels -- the incentive mechanisms are different, and the levels of the incentives as a percentage of program costs are much lower.

The other thing is some of the shared savings incentives in other -- other states when you look at them and they may be perceived as very high but those particular states may not have a decoupling mechanism or a lost revenue adjustment mechanism, you know, so the company is not being made whole in that way so that might explain why some of the incentives may be higher.

Q. And you advocate that a cap on shared savings is most frequently based on percentage of program spend, correct?

A. Yes. That's -- that was my reading of the ACEEE report and my experience in the field.

Q. And the ACEEE report is that article that you referenced in your testimony which I just handed you.

A. Yes.

Q. And so your representation there that a cap on shared shavings is most frequently based on percentage of program spend is essentially -- you are essentially supporting that with that article, correct?

A. Well, I would say with this article, and I know they have updated this article in May of this year, and I believe that study indicates that the percentage -- the cap -- using the percentage of the program cap is still prevalent. And even when you don't use that, when you look at the awards in that manner, the deregulated states or states where the companies have no generation fall under much lower than states that are vertically integrated and have shared savings mechanisms.

Q. And, Mr. Gonzalez, I can't resist this, you did not know that report existed until I gave it to you yesterday; is that correct?

A. Yes. It was a really good read overnight.

Q. You read it overnight, okay.

A. I don't think it was available in the publication until after my testimony had been filed.

Q. In preparation for your testimony did you review in detail each of the incentive mechanisms for the other Ohio investor-owned utilities?

A. I would say yes. I also lived them. So I was -- unlike Witness Duff I was involved in all the other utility cases.

Q. Are you aware of any other Ohio utility that calculates its incentive mechanism on a pretax basis?

A. No. That's the past history of Ohio.

Q. And are you aware that Duke Energy Ohio currently operates under a calculated shared savings based on net benefits?

A. Yes, but it's the utility benefits. As I point out in my testimony, it's not -- it doesn't account -- the -- the hundreds of millions of dollars of customers pay out of their own pocket as the total resource cost does, and in other states and other jurisdictions, you know, both the utility cost test and the total resource cost test is used and in some

jurisdictions a weighting of both are used.
Q. Is it true that -- am I correct in recalling that OCC was a member of the sort of a consortium of Ohio Consumer Energy Advocates, OCEA, that intervened and stipulated settlement in the 11-4393 case?
A. I believe OCC filed comments along with the OCEA. Yes, we filed comments.
Q. In fact, that group joined in the stipulation, correct?
A. Yes, we did.
Q. And that was true also in the 13-431 case, the next portfolio proceeding, correct?
A. I know we signed onto that stipulation. I don't know if we were part of OCEA at that time or not.
Q. All right. You contend that Duke Energy's incentive is higher than projected. Have you done any analysis to understand why that is so?
A. Well, I contain two tables in my testimony that indicates and based on Witness Duff's testimony in 11-4393 case, I think that was discussed somewhat this morning with respect to the company's projections being more conservative and so on, but you can interpret that the way you want. The fact is

that when you put those two numbers together, the projections are --

Q. Sure. My question is if you have -- have you done any analysis to understand why that is the case?

MR. SCHULER: Could I have not that question, the one before that question, reread, please.

(Record read.)

MR. SCHULER: Thank you.

A. I would say I haven't done a rigorous analysis, but like all the other utilities of Ohio, the fact that Duke has shared savings that existed prior to the -- had banked savings prior to the -- to SB 221 and the fact that there was a bonanza on CFLs and lighting was really what spurred the tremendous compliance that all companies did, it's not surprising.

Q. So, again, have you done any particular analysis as to why that is so or are you speculating?

A. I don't think it's speculation because I have been in enough portfolio meetings and collaborative meetings where it's clear all the utilities exceeded their benchmarks through the strength of light.

Q. So is it your testimony that that is, in fact, why Duke Energy's portfolio is -- has outperformed its -- its projections?

A. I would say that's one of the reasons.

Q. Has the net benefit generated -- generated been higher or low -- lower than projected?

A. I would say the net benefits have to be higher. If you exceed it, it's the utility that benefits.

Q. And you stated a moment ago that Duke has always elected to do things that maximize its incentive. If you were aware that Duke calculates shared savings on the net benefit associated with net savings rather than gross, should that increase or decrease the incentive?

THE WITNESS: Can you reread that question. I had a couple of terms in there.

(Record read.)

A. I'm having trouble with the question. Are you saying that Duke Energy uses net energy efficiency savings to calculate its shared savings approach as opposed to being a net because its net of cost? Which one are you referring to?

Q. I am asking you about the benefit associated with net savings. Should it -- would that result in a higher or lower benefit?

A. So is that related to my testimony where I say net to gross?

Q. Yes.

A. Yeah. It's my understanding that all the utilities in Ohio calculate -- you know, use the technical reference manual as a guide for calculating energy savings, and I think generally that's what Ohio utilities do. You may have -- you may have an evaluation report from Tech -- Tech Works or whatever that may based on the evaluation use some updated figures, but you also use -- I have looked at those tech reports, and sometimes you do take the gross savings estimates of the technical reference manual.

Q. And if Duke Energy Ohio calculated it based on gross rather than net, would that change your opinion?

A. I'm saying that I think generally most companies including Duke use gross savings and that's because the Commission -- the Commission allows you to do that, you know. It's something we debated in the rules.

Q. But let me ask you the opposite question, if Duke Energy Ohio calculated it on net, would that change your opinion?

A. If Duke calculated savings 100 percent on net -- on net savings using free riders and free drivers, spillovers, the whole thing, that would -- that would make a difference, correct, yes. But I want to point to my testimony on this issue where the Commission has stated -- okay. I guess my discussion starts on page 25, but I talk about the Ohio Technical Reference Manual, but I quote a Commission -- or I cite to a Commission order where they state the PUCO has stated where an energy efficiency program is implemented by a utility and customers have already taken the steps promoted by the program, the net shavings methodology may be more appropriate.

So I think in that case the Commission early on was saying, you know, we are getting started. We are off -- you know, this legislation just passed. We have to implement programs quickly. We use it for a gross savings commission. That's not -- that's not the norm -- not necessarily the normal in other places, and I think all the utilities have benefited from that -- from that I guess rule.

Q. Do you happen to know whether Duke Energy has a decoupling mechanism?

A. Yes, I am aware that Duke Energy has a decoupling mechanism which I think is -- Witness Baron pointed out they are being made whole on lost revenues. They are recovering program costs plus they are getting a large incentive.

Q.   So one way to achieve a higher level of incentive is to deliver more energy efficiency, correct?

A.   I would say generally speaking, you know, you know, you could make that general statement, but as I pointed out, utilities in Ohio have exceeded the benchmark without incentives so it's -- you know, it's case specific. And in states with energy efficiency resource standards, that may be the biggest rivalry, utilities exceeding benchmarks.

Q.   Another way to deliver energy efficiency to achieve a higher level is to deliver energy efficiency at a lower program cost, correct?

A.   To the extent that you net, yeah, because you are netting the cost out so our costs are lower, everything else being equal.

Q.   But you've not performed any analysis to determine which of those was the case with respect to Duke Energy Ohio, correct?

A.   No, but I believe that the testimony in this case and in other cases the company has indicated that they've had a projection of what the cost was in the budget and they have produced at a lower cost.

Q. On page 7 of your testimony in your description of Duke Energy Ohio's incentive you state that "If Duke does not meet the annual benchmark, it receives no incentive and is subject to a penalty." Do you see that?

A. Let me get to there. Make sure.

Q. It starts at line 16, page 7.

A. That's right.

Q. Is it your understanding if the company fails to achieve its annual benchmark in any given year, that it's subject to penalty?

A. Yes. Forfeiture I think the language is in the statute, talks about a forfeiture.

Q. Do you know what -- I think we talked about this previously. I am just going to ask you again if you recall what AEP's pretax shared savings incentive was for 2012, '13, '14.

MR. SCHULER: Objection, asked and answered.

EXAMINER WALSTRA: Overruled.

A. I believe -- I believe it was 20 million per year pretax.

Q. How would your recommended hard cap of 50 percent of programs spent or $1.8 million compare with the Ohio utilities right now?

MR. SCHULER: Objection. How it would compare seems a bit ambiguous given the complexity of this matter.

EXAMINER WALSTRA: If he knows, he can answer. If he needs clarification, he can ask for that.

A. I believe the legacy portfolio caps established in other cases are higher than my recommendation, but like I said earlier, this is -- we are entering into the new portfolio period. A lot of organizational changes have happened in the industry. The companies -- the companies are now -- have not divested but have corporately separated their generation assets, so it's a different landscape now. So just because other utilities may have a higher cap, the AEP cap was established in 11 -- in a case that was filed in 2011 or 2015 going on and discussing incentive mechanisms for 2016, a lot has happened and I think we should try to take into account, you know, what has happened with the utility industry.

Q. And do you know, Mr. Wilson --

Mr. Gonzalez, sorry, whether Duke Energy Ohio's avoided costs are calculated based on forward market prices or not?

A. We talked about this yesterday. I recall the original discussions we had at your office, and I could recall Dick Stevie saying avoided costs should reflect market prices.

Q. So it's your belief the avoided cost calculation is done on forward market prices.

A. I believe so but if it was done another -- you know, based on the utility-specific generating assets, you know, those are two ways that you can calculate the avoided cost.

Q. But you're not sure which one Duke Energy Ohio --

A. I am not sure at this point. I am sure at one point I did. But to me it -- the fact that the utility has no generation assets, either way you -- you calculate it would probably be -- would not be correct for an incentive mechanism report for the purposes of calculating the avoided cost.

MS. WATTS: Thank you, your Honor. I have nothing further.

EXAMINER WALSTRA: Thank you.

Staff.

MS. JOHNSON: Staff has no questions.

EXAMINER WALSTRA: Redirect?

MR. SCHULER: Could we have a moment, your Honor?

EXAMINER WALSTRA: Sure.

MR. SCHULER: Thank you.

(Discussion off the record.)

EXAMINER WALSTRA: Go ahead.

MR. SCHULER: Thank you, your Honor.

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REDIRECT EXAMINATION

By Mr. Schuler:

Q. Mr. Gonzalez, do you recall Ms. Watts asking you about OCC's comments that were filed in this matter?

A. Yes, I do.

Q. And she specifically referenced OCC's position in the comments about a cap being at 13 percent of the program costs. Do you recall that?

A. Yes, I do.

Q. And you stated in your testimony that you recommend a cap of 5 percent of program costs, correct?

A. Yes.

Q. Could you explain the reason for the

difference between your recommendation and what OCC filed in its comments?

A. Yes. My recommendations were based on the structural change that has taken place in the industry which I pointed out earlier in which the utility as opposed to their first -- their first filings of portfolio filings, the companies were not corporately separated from their assets. They were providing the generation to customers, whereas, now, as Mr. Baron also pointed out, the utilities have no profit interest in generation. So why should we -- why do they need as large an incentive as they did in the past or as large an incentive as the report states vertically-integrated utilities have but not utilities that have either divested or corporately separated their generation assets.

Q. And Ms. Watts also asked you a question about how avoided costs are calculated for Duke's shared savings mechanism, correct?

A. That's correct.

Q. And you are familiar with how -- how the avoided costs are calculated?

A. Well, I stated earlier I understand how avoided costs are calculated. They could either be calculated on market base or under a market base or under a traditional vertically utility-specific avoided costs.

Q. Is it your understanding that Duke's shared saving mechanisms of avoided costs are calculated based on avoided generation costs?

A. Yes. If you look at my -- actually if you look at my testimony on page 19, starting below line 11, there is a table that indicates that the majority of the avoided costs net benefit is -- comes from generation, capacity, and energy. And so I think that leads -- by using those metrics it leads to an overestimation of the avoided costs that the company in itself should have an opportunity to earn an incentive on.

MR. SCHULER: I have no further questions, your Honor. Thank you.

EXAMINER WALSTRA: Thank you.

Any recross?

MS. HUSSEY: No, your Honor.

MR. SECHLER: No, your Honor.

MR. PRITCHARD: No, your Honor.

MR. DOUGHERTY: No, your Honor.

MR. BOEHM: No, your Honor.

EXAMINER WALSTRA: Ms. Watts.

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RECROSS-EXAMINATION

By Ms. Watts:

Q. Mr. Gonzalez, is it your testimony then when OCC filed its comments it did not take corporate separation into account?

MR. SCHULER: Objection. Mr. Gonzalez I think has previously testified he is here as a consultant, not as an employee of OCC.

MS. WATTS: Your Honor.

MR. SCHULER: For him to speak to OCC's position as an office I believe is outside the scope of his ability.

EXAMINER WALSTRA: I think he can testify as to what he knows based on his previous testimony.

A. As I mentioned earlier, I wasn't even in the office when that -- I wasn't there so.

EXAMINER WALSTRA: You can testify to what you know.

THE WITNESS: Yeah. No.

Q. So, in fact, you were not -- you do not know whether that accounts for the difference between OCC's recommendation and that which appears in your testimony, correct?

A. I know what appears in my testimony, and I have just spoken what I think the lower band of --

the lower band of company cap, the lower cap rates that I recommended. I am aware of that. I state the reasons in my testimony. What OCC used to calculate, you know, I don't know. I wasn't there.

Q. Okay. I appreciate that. And could you point me again, because I didn't catch the page reference, the second question your counsel asked you related to avoided costs, and you referred to somewhere in your testimony. I didn't catch it. Could you show me that again?

A. Yes. It's the -- on page 19 after line 11 where I point out that Duke is a wires company, all right? Duke Energy of Ohio is a wires company. It's an electric distribution company so there are these avoided costs of any transmission and distribution that the utility avoids, not generation because you have no generation plant. So that's the point I was making. It's a significant point.

Q. So it's your testimony that even forward market prices should not be calculated into avoided costs; is that what you are saying?

A. I'm saying I am making a distinction between -- I am glad you asked that question because what I am saying is for incentive purposes there should be less weight given to the generation but for compliant -- for net benefits and the total resource cost test you should use avoided costs with generation included because of the real savings that customers see.

MS. WATTS: I see. Thank you. I have nothing further.

EXAMINER WALSTRA: Okay. Staff.

MS. JOHNSON: No, your Honor.

EXAMINER WALSTRA: Thank you, Mr. Gonzalez.

THE WITNESS: Thank you.

EXAMINER WALSTRA: Would you like to move your exhibit?

MR. SCHULER: At this time OCC would move to admit OCC Exhibit 1 into evidence.

EXAMINER WALSTRA: Any objections?

Hearing none it will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. SCHULER: Thank you, your Honor.

EXAMINER WALSTRA: OMA.

MR. SECHLER: Before our witness could we have a brief 5-minute break?

EXAMINER WALSTRA: That's fine. We'll take a 10-minute break.

(Recess taken.)

EXAMINER WALSTRA: We're back. You can go ahead, Mr. Sechler.

MR. SECHLER: OMA calls John Seryak.

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JOHN SERYAK

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

DIRECT EXAMINATION

By Mr. Sechler:

Q. Mr. Seryak, could you give your full name and business address to the Commission.

A. John A. Seryak, 3709 North High Street, Columbus, Ohio 43214.

Q. And do you have in front of you a document marked OMA Exhibit 1?

A. Yes.

Q. And what is -- what is that document?

A. That's my written direct testimony on this case on behalf of OMA.

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

A. I do not.

Q. And if I were to ask you the same questions that appeared in your direct testimony today, would your answers be the same?

A. Yes.

MR. SECHLER: Your Honor, OMA would move for admission of Mr. Seryak's testimony, subject to cross-examination.

EXAMINER WALSTRA: Thank you.

Ms. Hussey.

MS. HUSSEY: No questions, your Honor.

EXAMINER WALSTRA: Mr. Rinebolt.

MR. RINEBOLT: No, your Honor.

EXAMINER WALSTRA: Mr. Pritchard.

MR. PRITCHARD: No questions, your Honor.

MS. KERN: No questions, your Honor.

EXAMINER WALSTRA: Mr. Dougherty.

MR. DOUGHERTY: I am going to pump up the brakes on this real quick. I have a couple of questions.

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CROSS-EXAMINATION

By Mr. Dougherty:

Q. Mr. Seryak, I want to look at your Exhibit JAS-1, that table, and just to clarify exactly what some of these numbers represent. You have here for each year 2012, '13, and '14 costs per kilowatt-hour saved; is that correct?

A. That's correct.

Q. And are those costs represented here the costs for the first year of savings only for those measures?

A. Yes. That's for -- it's not lifetime savings. It's per kilowatt-hour saved for one year annual savings.

Q. So it's not for lifetime savings?

A. Correct. My understanding is first year savings.

Q. Okay. And how would you calculate those lifetime savings?

A. Different measures or projections that are part of each utility's portfolio would have different measured lifetimes. And so that could range depending on the technology or the program type from a few years up to 15 or 20 years so it's probably -- for each utility's evaluator they probably have a number of different measure lives that are appropriate for the technology or project type that they multiply annual savings to get lifetime savings.

Q. So it would be fair to say that if we -- if this table was calculated for the lifetime savings, that that dollar value per kilowatt-hour would be lower than what is represented on this.

A. Yes, it would be much lower.
MR. DOUGHERTY: Thank you. That's all the questions I have.
EXAMINER WALSTRA: Thank you.
Mr. Boehm.
MR. BOEHM: No questions, your Honor, thank you.
EXAMINER WALSTRA: Mr. Allwein.
MR. ALLWEIN: No questions, thank you, your Honor.
EXAMINER WALSTRA: Ms. Watts.
MS. WATTS: Yes, thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Watts:
Q. Good afternoon, Mr. Seryak.
A. Good afternoon.
Q. I would like to start off today with just a little bit about your background, please.
A. Sure.
Q. You are an engineer, correct?
A. That's correct.
Q. And you are licensed as an engineer in Ohio?
A. That's right.

Q. And you are presently involved with two firms, correct?
A. That's correct.
Q. And one is called Go Sustainable and one is called RunnerStone. Do I have --
A. Go Sustainable Energy and the other is RunnerStone, that's correct.
Q. And you were instrumental in creating both of those firms, correct?
A. That's right.
Q. And Go Sustainable has approximately 12 employees?
A. Yes.
Q. And RunnerStone has two employees.
A. Correct.
Q. And RunnerStone is a firm that you formed in order to provide consulting with respect to energy policy, correct?
A. Close, regulatory policy and wholesale market matters as it -- in regards to customer-sited resources which would include energy efficiency, demand response, CHP, and other forms of distributed generation.
Q. Okay. And when did you found RunnerStone?

A. I believe last year, I am going to say October. It might have been a different month but last year, 2014.

Q. Okay. And RunnerStone is on a retainer with OMA, correct?

A. That's right.

Q. And is OMA RunnerStone's only client right now?

A. No.

Q. Okay.

A. Well, let me rephrase. Yes, Runner -- right now at this moment but RunnerStone has had other clients.

Q. Okay. And OMA so far as you know did not do any discovery in this case, correct?

A. I'm not sure which -- like if they did or did not do discovery.

Q. Okay. But you have not seen any discovery.

A. I may -- I might have. If you give me specific examples of discovery documents, I could tell you if I reviewed them or not.

Q. But as you are sitting here right now, you don't recall having seen them.

A. I don't recall. That would be the fair response.

Q. That would be true either with OMA discovery or any other party discovery, correct?

A. Yes.

Q. Okay. Other than what can be found in your testimony, you have not done any studies or analyses for this proceeding, correct?

A. Correct.

Q. And your testimony indicates that you have participated extensively in utility energy efficiency collaboratives; but, in fact, you have never attended a Duke Energy Ohio collaborative, correct?

A. That's right.

Q. And your testimony in this case is entirely limited to a recommendation to the Commission with respect to the continuation of Duke Energy Ohio's cost recovery mechanism for 2016, correct?

A. No. It's restricted to the continuation of Duke's shared savings mechanism.

Q. Okay. Thank you for that correction. And you have two major contentions in this case, and you tell me if this is correct. One is that Duke Energy Ohio's shared savings mechanism is too costly on a cost per kWh basis, correct?

A. No.

Q. How is that --

A. I can state my two major contentions --

Q. Okay. Please do.

A. -- if you prefer. My two major contentions are, one -- well, reference my testimony. That my contentions are that Duke is using banked savings to set the shared savings tier or is trying to. I don't think that's allowed, and I don't think -- I think the Commission has ruled on it that it's not allowed, but for the extension of a -- if the Commission would decide to extend the shared savings mechanism to 2016, I don't think the existing shared savings mechanism should be allowed that Duke is trying to use, explicitly using the banked savings.

My second point of contention is that the existing shared savings mechanism isn't effective for another reason which is that it is not producing cost effective programs, so the program delivery is more costly than we see in peer utilities, and so the shared savings mechanism isn't properly incenting the utility to deliver cost effective programs. For that reason I am recommending that the existing shared savings mechanism not be extended.

Q. Okay. Thank you for that clarification. I think I have a better understanding. Are you interested in incentivizing Duke Energy Ohio to comply with the state mandates or to go beyond what those mandates may require?

A. Can you rephrase?

Q. Sure. With respect to any kind of incentive mechanism, would you think ideally that it would be designed to incentivize the company to reach the mandates or to go beyond the mandates?

A. Well, ideally -- what I think should be ideally in a shared savings mechanism is vastly different than what you have or, in fact, other utilities have. I think it would be difficult to address my ideal shared savings mechanism recommendation in this case. I think multiple other witnesses brought up points of merit, whether TRC versus UCT should be used, OMA has made comments in the past about and stands behind this to say if efficiency capacity is not bid into the PJM market, not all of the avoided costs are achieved and are not going in the shared savings pool.

So broadly speaking I think the shared savings mechanism ideally needs to be revisited probably ideally in a collaborative, you know, technical workshop process. In this specific case, which I think is unique, I think it's appropriate to say the existing mechanism is not working and should not be extended. I'm not prepared nor do I think anyone is here prepared to have compiled an ideal recommendation on what shared savings should be.

Q. Okay. And your analysis in this case, at least to the extent you've provided any actual numeric analysis, is based on Exhibit JEZ-1 which was submitted in the company's rider proceeding for cost recovery for 2014, correct?

A. Yes.

Q. And you haven't compared this cost per kWh to utilities outside of Ohio, correct?

A. That's correct.

Q. And would you agree with me that on a program-by-program basis that cost per kWh will vary?

A. It can.

Q. And so some energy efficiency gains can be less expensive than others, correct?

A. That's right.

Q. But you have not done a program-by-program analysis in your review of Duke Energy's portfolio, have you?

A. No.

Q. Are you generally aware that Duke Energy offers mercantile programs custom and prescriptive?

A. Yes.

Q. But other than that you don't have any specific knowledge of other -- of each of the Duke Energy Ohio programs offered, correct?

A. I mean, I may have some specific -- I do have more specific knowledge. I don't want to say I have comprehensive and that I could repeat everything that's offered, say, on the Duke website. I generally go to the website. I do -- besides general outlines there probably are some details and specifics I'm aware of, just not all of them.

Q. Okay. Can we agree that the law allows Duke Energy Ohio to count banked energy savings for purposes of measuring its compliance towards the mandates?

MR. SECHLER: I would object just to the extent it calls for a legal conclusion.

THE WITNESS: Yes.

EXAMINER WALSTRA: He can answer. We will consider his background.

A. Thank you. Not being a lawyer my understanding is that banked savings can be counted towards compliance with the cumulative benchmark.

Q. Okay. And are you aware where Duke Energy Ohio stands with respect to its achievement toward the mandates for 2012, '13, and '14?

A. With the annual benchmarks or cumulative?

Q. Cumulative.

A. With the cumulative. My understanding is you are in overcompliance on cumulative savings.

Q. Okay. And do you have an idea how much in overcompliance?

A. I don't have that information in front of me.

Q. Okay. And it's your contention that the company must continue to offer energy efficiency programs even if it's already in an overcompliance status, correct?

A. Yes.

Q. And what are you basing that on?

A. The company chose to extend its efficiency programs.

Q. And so -- so you believe that with that extension comes a responsibility to run the programs even in an overcompliance status?

A. Oh, yes, yes. If you are to pick and choose whether you could or couldn't run programs, picking and choosing how you are going to do that would have been an amendment. Duke didn't file an amendment, Duke filed an extension so, you know, OMA as well as the other constituent parties here did not because the utility was allowed to choose an extension at its sole discretion, you know, that took away a consumer and customer voice. And so, yes, you are, I believe, obliged to extend your programs and operate them how you -- how they had been approved.

Q. Okay. And I do understand you are not a lawyer, but do you have any reference for -- have you seen that anywhere in law or regulation, that requirement?

A. Yes. You know, I sat through way too many Senate Bill 58 and Senate Bill 310 hearings. I met with legislators. I was in the various rooms with the utilities and other parties debating the makeup of that bill so there are parts of Senate Bill 310 that I feel I am intimately familiar with. I know the language that the utilities have the choice at their sole discretion. I think it's the utility's sole discretion, and so if a utility wanted to do different things than what was in their amend -- or their approved portfolio plan, they would have had to file an amended plan. Duke didn't.

Q. And, again, just to be clear your contention is that the company would be required to continue to run energy efficiency programs even in an overcompliance status?
A. Yes, because you extended a plan that you filed with the Commission and was approved with other stakeholder involvement saying Duke would offer programs and produce savings in these years. So that plan was extended. That's expected of Duke.
Q. Now, you're recommending a cap in your testimony, correct?
A. I believe, you know, if the Commission should decide to extend or have a shared savings mechanism, it would be proven prudent to have a cap in place.
Q. But you are not recommending a particular level of that cap, correct?
A. I am not.
Q. Okay. Have you done any research with respect to cost recovery mechanisms for other utilities in Ohio?
A. I'm generally aware. I have not done any body of research. I am somewhat familiar with -- with the cost recovery mechanisms for the other utilities.

Q. Okay. And are you knowledgeable about cost recovery mechanisms generally or even incentive mechanisms outside of Ohio?

A. Yes.

Q. Okay. And do you know when Duke Energy first began offering energy efficiency programs?

A. I do not know the specific date. I know that it was prior to the passage of Senate Bill 221. That's my understanding.

Q. But you don't know how long prior?

A. That's correct.

Q. Only that it was prior. Okay. Have you performed any analysis to understand what might cause the difference in the cost of kWh between the utilities?

A. I have not yet. I'll put emphasis on yet. I think it warrants taking a look at, but between when we filed this testimony and now, I haven't dug deeper into the causes of that difference.

Q. Pardon me. Did your analysis in this case account for the impact and costs of programs that were recovered outside of the company's EE rider?

A. It didn't.

Q. Do you know whether or not Duke Energy Ohio's energy efficiency programs are cost effective?
A. My understanding is that they are cost effective.
Q. And that's based on the UCT test, correct, the utility cost test?
A. Oh, again, I don't have the information in front of me. I believe generally the utilizing the UCT -- both the UCT and TRC are looked at for cost effectiveness. My recall is that probably -- the programs in the portfolio probably pass both of those tests. If they didn't, I think there would have been probably -- the portfolio probably wouldn't have been approved.
Q. Did you do any analysis to understand how the company's actual cost per kWh compares to the projections approved in the company's annual rider filing?
A. No.
Q. Has the company's actual -- have -- have the company's actual costs been higher or lower than projected than the amount approved in the annual rider filings?
A. I don't know exactly.
Q. Do you know if the actual energy savings

have been higher or lower than projected?
A. I don't know for sure.
Q. And you did not review the company's filing in order to determine whether its approved portfolio of programs was projected to deliver energy savings that would exceed the annual benchmarks in '13, '14, '15, '16, did you?
A. No.
Q. Is the company legally able to add new programs to its portfolio that would allow it to increase its energy of savings over the next year?
MR. SECHLER: Objection. Calls for a legal conclusion.
EXAMINER WALSTRA: Overruled. If you know, you can answer.
A. You know, I'm not sure about that.
Q. Okay. So you've testified that you had intimate involvement with SB 310.
A. Yes.
Q. And subsequent to SB 310 if the company opts to continue its existing portfolio, is it -- is it your understanding that the company may add programs to that portfolio?
A. You know, there's a difference that I am thinking through here between programs and measures

and the types of projects, so often you can include new technologies within the custom program. A whole new type of program with a budget -- with a new budget to it I think probably would not, would constitute an amendment, would not be part of an extension.

Q. So if the company were to attempt to add programs including a budget associated with it as you've discussed, that would trigger the elements contained in SB 310, correct?

A. That's my understanding except that that would have had to have been done in the timeline to file an amendment.

Q. And as you sit here today, you would not be able to explain in detail how the company calculates its shared savings incentive, correct?

A. What we reviewed was the company's exhibit that has a shared savings pool. I think there is a question of merit which is how are those shared savings calculated, what are the measured lifetimes, what are the assumptions of avoided costs. That's not transparent in Duke's filing so I haven't been able to analyze that.

Q. And OMA did not request any discovery related to how to calculate that, correct?

A. We haven't got to that point.

Q. And you have not in detail reviewed the company's market potential study, correct?

A. That's correct.

Q. So you're not -- as you sit here today, you are not knowledgeable about when that study would predict the company would reach a saturation point such that it would not be able to achieve any efficiency sufficient to meet the mandates?

A. I'm not familiar with the conclusions of this study.

Q. Okay. Do you know whether the Commission reviews a company's filing based on a cost per kilowatt-hour basis?

A. I do not know. I believe there is many factors the Commission takes into consideration. I don't know what weight they give the cost per kilowatt-hours.

Q. Looking at your Exhibit JAS-1 to your testimony --

A. Yes.

Q. -- you heard Mr. Duff in his testimony explain that DP&L does not include transmission and distribution costs in its -- in its details. Did you hear that testimony?

A. If you could maybe clarify. I think he said for the year 2013 specifically.

Q. Right.

A. I heard that. I heard him say that.

Q. And do you agree that's something that was omitted from your analysis?

A. No, no. I think that's a red herring. I think it's a way to misconstrue the data I presented. DP&L did claim distribution savings in 2013. Those savings were in the number they presented in their measurement and verification report. And then they have a cost that's presented and that what I did was take cost that was presented by the utility's EM&V reports, rider filings, and divide by the kilowatt-hours they are claiming.

So I am looking at the -- in this exhibit I am looking at the, you know, the symptom that's presenting itself, if you will. What's ill -- and what we can clearly see Duke's numbers are higher. Now, you might start to go into diagnosis, and I have an issue with Witness Duff in what he did is he went in trying to somehow illustrate that maybe this doesn't suggest that there's -- that this is a symptom that needs addressed by saying, well, let's explain it all away with T&D. However, DP&L in 2014 where they are still much lower than Duke, did they count T&D savings on energy efficiency in 2014? They didn't which is why I think Duff cherrypicked 2013. You know, so the conclusion that DP&L is delivering really cost effective programs, I think, you know, it warrants a dive into why Duke's costs are so high. I think taking a very surface level dip into T&D and cherrypicking the information out, you know, just doesn't -- doesn't warrant that there -- to dissuade this exhibit that Duke's costs are much higher.

Q. So Mr. Duff did refer to 2013, but you don't know, in fact, whether that error persists in 2012 and 2014 as well.

A. My understanding is that DP&L did not claim energy efficiency savings from T&D in 2014.

Q. Okay. Again, that's only -- your response that you just gave is only true if you don't consider -- if you are not measuring the energy savings versus the cost to achieve?

A. Can you say that again?

Q. Well, if you take DP&L's energy savings that's represented in that chart that you have attached to your testimony, it does not -- it's not compared against total costs because they omit the cost of T&D in their total costs, correct?

A. For that one year.
Q. So far as you know.
A. So far as I know.
MS. WATTS: Okay. Thank you. I have nothing further, your Honor.
EXAMINER WALSTRA: Thank you.
Staff.
MS. JOHNSON: Staff has no questions. Thank you.
EXAMINER WALSTRA: Any redirect?
MR. SECHLER: May I have a moment, please?
EXAMINER WALSTRA: Sure.
(Discussion off the record.)
EXAMINER WALSTRA: Are you ready?
MR. SECHLER: I am, your Honor. I do have two brief follow-ups on redirect.
EXAMINER WALSTRA: Sure. Go ahead.

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REDIRECT EXAMINATION

By Mr. Sechler:
Q. Mr. Seryak, you have been here for the entire proceeding here today; is that correct?
A. That's correct.
Q. And that's including Mr. Duff's

testimony --

A. That's correct.

Q. -- earlier this morning? In your opinion does the fact that Duke had EE programs before SB 221 and the stipulation case 11-4393, does that impair their ability to meet and exceed EE benchmarks currently and going forward?

A. No, I don't think so. I think, you know, part of Duff's testimony was getting at that because Duke achieved efficiency in earlier years that that's a reason to not expect or require Duke to meet the annual benchmark --

MS. WATTS: Objection, mischaracterization of Mr. Duff's testimony.

THE WITNESS: Maybe I will rephrase and say I do not think that Duke offered programs in early years and impairs their ability to meet and exceed the annual benchmark.

Q. And do you recall during Mr. Duff's testimony this morning there was at least an implication by him that your testimony could be construed that -- to mean that the cost of EE can increase over time, i.e., used the term increasing cost curve at one point. Is his testimony an accurate characterization of your testimony in that regard?

A. No. In fact, I don't think it's an accurate characterization of the body of work of the costs of energy efficiency. Oftentimes costs go down a little bit with economies of scale depending on how much is achieved and I think that's relevant to the costs we see in Duke's savings on a per kilowatt-hour basis. So there may be lower unit costs with -- if they had actually met their annual benchmark and exceeded it.

MR. SECHLER: Thank you. No further questions from me.

EXAMINER WALSTRA: Thank you. Any recross?

MS. HUSSEY: No questions.

EXAMINER WALSTRA: Mr. Rinebolt.

MR. RINEBOLT: No, your Honor.

MR. PRITCHARD: No, your Honor.

MS. KERN: No, your Honor.

MR. DOUGHERTY: No, your Honor.

MR. ALLWEIN: No, your Honor, thank you.

MS. WATTS: No, your Honor.

MS. JOHNSON: No, your Honor.

EXAMINER WALSTRA: Thank you. You may step down.

MR. SECHLER: And, your Honor, then OMA would move for admission into evidence OMA Exhibit 1.

EXAMINER WALSTRA: Any objections?

MS. WATTS: No objections.

EXAMINER WALSTRA: It will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. SECHLER: Thank you, your Honor.

EXAMINER WALSTRA: Staff, are you ready to call your witness?

MS. JOHNSON: Yes. We would like to call Staff Witness Gregory Scheck.

(Witness sworn.)

EXAMINER WALSTRA: Thank you. You may be seated.

(EXHIBIT MARKED FOR IDENTIFICATION.)

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GREGORY SCHECK

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

DIRECT EXAMINATION

By Ms. Johnson:

Q. Good afternoon, Mr. Scheck. Would you please state your name and business address for the record.

A. Yes. My name is Gregory Scheck, and my

business address is 180 East Broad Street, Columbus, Ohio.
Q. And did you prefile direct testimony in this case?
A. Yes, I did.
Q. Is that testimony in front of you?
A. Yes.
Q. And is that testimony marked as Staff Exhibit No. 2?
A. Yes.
Q. And if I asked you the same questions contained in your testimony today, would your answers be the same?
A. Yes.
Q. Would you like to make any additions, modifications, or deletions to your testimony?
A. No, I do not have any changes to my testimony.
Q. Mr. Scheck, did you assist in preparing reply comments in this case?
A. Yes.
Q. And you are aware that these reply comments were previously introduced into the record in this case?
A. Yes.

Q. Do you have any modifications that you would like to make to those reply comments?

A. Yes, I do.

MS. WATTS: Your Honor, pardon me. I'll object to this because I am not aware of any procedure where it would be appropriate to change reply comments by a witness on a stand. If he wants to testify to something that's different than what's in the comments, that would be I think acceptable, but to actually alter the comments that have been filed in the record for some period of months now is -- seems to me entirely inappropriate.

EXAMINER WALSTRA: Ms. Johnson.

MS. JOHNSON: Your Honor, these comments were not previously in the record and they weren't until today and now that they are, staff would like to make sure those are accurate when they are introduced -- as they are introduced into the record.

EXAMINER WALSTRA: You can explore on direct but we will let the comments be in the record but you can explore them through direct.

MS. JOHNSON: In direct, okay. One moment, please, your Honor.

Q. (By Ms. Johnson) Okay. Mr. Scheck, on page 4 of the reply comments that staff filed in this case, there's a sentence that begins "While the stipulation" and ends with "the approval in 2015 for use in 2016." Would you please read that sentence for me.

A. As originally filed?

Q. Yes, please.

A. The sentence says "While the stipulation in the most recent Duke EE portfolio plan case states that all of the cost elements regarding its EE programs would expire at the end of 2015, the stipulation further provides that," in quotes, "'in the event no such agreement is reached, interested parties may seek the Commission's approval in 2015 for use in 2016.'"

Q. Is there an end quote there?

A. End quote.

Q. Okay. Thank you. And could you explain to me how you would like to modify that sentence?

A. Yes. Actually the word starting with "approval" toward the end of that sentence where it says "approval in 2015 for use in 2016" should be stricken and instead the words should be inserted "determination of whether an incentive mechanism should be implemented for the remainder of the portfolio plan period" and then in parentheses "for the year 2016."

MS. WATTS: And, your Honor, I object because, No. 1, I still think he is trying to change comments that have been part of the record. If not in the record in this hearing, nonetheless in the record such that the company has relied upon representations in those comments.

And the other problem is I don't have a copy of them with me, so I can't really even think about whether the change is appropriate. Mr. Scheck wants to explain on direct examination, or on cross-examination for that matter, why he wishes to now change this -- these statements in the comments, I think that would be fine. But to actually try and change the substance of the comments in this proceeding is inappropriate.

EXAMINER WALSTRA: I think that is something you can explore on cross. Certainly he has opened it up to that so we'll -- something you can explore of the other parties.

MS. WATTS: I still have a problem. I don't have a copy of them, so I don't have anything to use, but I will do my best if I need to.

EXAMINER WALSTRA: Do you have a copy, Ms. Johnson?

MS. JOHNSON: I have a copy of my own I can provide to Ms. Watts, but I -- just as a caveat, it's marked up a little bit but. Mr. Jones may also have a copy.

MR. JONES: I will check here.

EXAMINER WALSTRA: Thank you.

MS. HUSSEY: I have an extra copy.

MS. WATTS: I don't need it until it's my turn.

(Record read.)

EXAMINER WALSTRA: We'll go back on the record.

Do you want to clarify your objection?

MS. WATTS: Sure, thank you, your Honor. My understanding is what staff is attempting to do is merely make the quote accurate on this page because evidently when it was originally produced, it was abbreviated in some way and didn't include the entirety of the quote, and it's in quotation marks, so it's right out of the stipulation, I think, so I have no problem with that, although I would state that ordinarily changing reply comments in a hearing subsequent to the time the reply comments have been filed strikes me as being a little bit irregular. But for purposes of just correcting this quote, I'm fine with that.

EXAMINER WALSTRA: Thank you. Is that your understanding, Ms. Johnson?

MS. JOHNSON: Yes. That's what staff was doing, correcting the abbreviated quotation.

EXAMINER WALSTRA: Okay. You may proceed with your direct.

MS. JOHNSON: Okay. Mr. Scheck is open for cross-examination.

EXAMINER WALSTRA: Thank you.

Ms. Hussey.

MS. HUSSEY: No questions, your Honor.

EXAMINER WALSTRA: Mr. Sechler.

MR. SECHLER: No questions, your Honor.

EXAMINER WALSTRA: Mr. Rinebolt.

MR. RINEBOLT: Just a minute, if I may.

No questions, your Honor.

EXAMINER WALSTRA: Ms. Pritchard.

MR. PRITCHARD: No questions, your Honor.

MS. KERN: No questions, your Honor.

MR. DOUGHERTY: No questions, your Honor.

MR. BOEHM: No questions.

EXAMINER WALSTRA: Mr. Allwein.

MR. ALLWEIN: No questions, your Honor.

EXAMINER WALSTRA: Ms. Watts.

MS. WATTS: Yes. Disappointed Mr. Rinebolt didn't have any questions. I was getting really excited there, David. I thought you might have something for us.

MR. RINEBOLT: No. Sorry to disappoint you.

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CROSS-EXAMINATION

By Ms. Watts:

Q. Good afternoon, Mr. Scheck. I had good morning on all of my cross-examinations, and I was hoping we would be done in the morning, but I apparently was a little overoptimistic.

Other than your lawyer can you tell me what other staff members had input into the writing of your testimony?

A. It was reviewed by management.

Q. And who would that include?

A. Let's see, it would have included -- well, for certain Doris McCarter, would have included Christina Schaeffer, probably Patrick Donlon.

Q. Okay.

A. Maybe Teresa White but I'm not sure.

Q. Now, staff supports what it understands the Commission to be that the company should not be permitted to count banked savings to claim its shared savings incentive, correct?

A. They should be able to use past or historical banked savings for a future year shared savings incentive, but they could use anything earned in the current year for that year's incentive.

Q. Okay. And staff believes the Commission imposed a cap on shared savings, correct?

A. Staff is recommending a cap.

Q. Okay. And these are the two recommendations and there are no others, correct?

A. Yes, at this time.

Q. Okay. If Duke Energy Ohio is not able to use banked savings to claim an incentive, would you expect the company to be entitled to any incentive in 2016?

A. To the extent that if the company overachieved the prescribed benchmark, then, yes, it could in my view, that it should be allowed or permitted to get a shared savings.

Q. And do you review the company's rider applications?

A. I haven't recently. In the past I did look at some of the rider applications depending on what it was. It depends on the nature of the rider or what was in the rider. I looked at impacts primarily.

Q. Okay. And so you understand that the company has overachieved with respect to compliance, correct? Compliance with the mandates.

A. It has overachieved through the year 2012 but subsequent to that not -- not on an annual basis.

Q. Now, just to be clear we are talking about compliance, not incentive.

A. Yes. The company has reached an annual compliance for every year through 2012. That did not reach -- I don't believe it reached compliance in 2013 even though it used bank to reach that level of compliance, and I would think that the same was for 2014.

Q. Okay. So it used bank to reach compliance for '13 and used bank to reach compliance for '14, and counting bank it's in an overcompliance status, correct?

A. Yes, that is correct. It had built up a large compliance bank from earlier years.

Q. Okay. And its incentive is based upon an initial calculation of what his -- it has achieved for a given year, correct?

A. Could you restate that question again?

Q. So in order to calculate the shared savings incentive for a particular year, the first thing you have to do is figure out where the company is vis-a-vis compliance with the mandates; isn't that correct?

A. Yes, in terms of in that current year. Staff's position -- or recommendation, I should say, is that you can borrow from any bank that you've earned previously to reach compliance, but any historical bank cannot be used to earn a future year's shared savings.

Q. Okay. And so given your understanding that the company is not in -- it has not met the compliance mandates without counting the bank for 2013 and '14, would you expect it to be able to earn an incentive in '15 or '16?

A. Based on its projections, probably not unless the programs perform better than expected which they have actually done.

Q. And the cap that staff recommended is based upon a weighted average from results of FirstEnergy, AEP, and DPL's approved shared savings cap, correct?

A. Yes, based on I just used the year 2013 at the time. I didn't have the data for the status reports for 2014, but it probably wouldn't be a whole lot different.

Q. Are there any difference in the incentive mechanisms between the four electric distribution utilities in Ohio?

A. Can you further elaborate what you mean by that?

Q. I'm looking for your knowledge on this. I am wondering -- let me ask a foundational question. Are you familiar with the incentive mechanisms for each of the Ohio electric distribution utilities?

A. Yes, to a point. I do understand the tiered mechanism.

Q. Okay. And so based on that understanding, do you know of any differences in the way in which those incentives are calculated?

A. Well, I know for sure that FirstEnergy would not use any historical bank for shared savings. To me it's unclear in the stipulations for both DP&L and for AEP if they could use banked -- historical bank for future shared savings.

Q. And why is it clear that FirstEnergy does not use any historical savings?

A. I think they are actually prohibited by Commission order.

Q. And do all of the companies perform evaluation, measurement, and verification in the same way?

A. Can you further clarify what you mean by use it in the same way?

Q. I don't have any further clarification. I am looking for your understanding.

A. Well, depending on the program and how each utility wants to evaluate it, obviously they are pretty similar. There may be some variances from one program to the next depending on the data they have, the cost of achieving impact data, some rely upon the Commission's technical reference manual which is still in a draft form but that seems to be the highest or the most common looked at in terms of the evaluation and measurement. Now, others may use different methods to evaluate the various programs, but engineering methods or statistical methods are primarily applied.

Q. So the Commission has issued in its decision saying if you rely on the technical reference manual, it can constitute sort of the safe harbor for a utility; is that correct?

A. Yes, they have stated that previously.

Q. And do you know whether Duke Energy Ohio relies on those values for its EM&V?

A. I think they do for some of it, and they also rely on I believe tech market reports for evaluating the balance.

Q. Did any of the other Ohio utilities engage in energy efficiency for its customers prior to SB 221?

A. Well, actually all the companies did engage in energy efficiency prior to Senate Bill 221. There was I would define as the first generation of energy efficiency in Ohio which commenced somewhere in the early '90s and ceased probably around the end of '95; but Duke, at that time Cincinnati Gas & Electric, did continue to offer a number of programs for residential customers continuously since that period of time and then file for an application originally it was in '06, refiled in '07, was approved in '07 for about I think 10 programs that were residentially based in '07, in 2007.

Q. Thank you. Now, you would agree with me that the company's current cost recovery mechanism including its shared savings incentive was originally approved by the Commission in the 14-393 case, correct?

A. I would say there was approval of the portfolio plan with respect to shared savings. It was unclear at least to staff as to what that meant in terms of the use of banked savings or shared savings or at least there was no methodology produced. There was Tim Duff's testimony in 11-4393 which had a couple of lines referring to the use of it and also in the -- the 13-431 case it was all -- I think it might be word for word repeat of the same in the 11-4393 case.

Q. Okay. I'm not asking about the details of that mechanism. I am just asking if it's true that the cost recovery mechanism was approved in that 4393 case.

A. I would say there was a cost recovery mechanism approved. As to the application of shared savings, I think that's very unclear.

Q. Okay. And would you agree with me then that it was extended -- that cost recovery mechanism was extended for another two years through the 431 case?

A. Yes. It would be for the two remaining, leaving '16 open, for '14 and '15, yes, that's correct.

Q. Okay. And staff was a signatory to the stipulation in both of those cases, correct?

A. Yes.

Q. Now, you are -- is it fair to say that you have some familiarity with what we have been referring to as SB 310?

A. Yes, even though I didn't work on it that closely but I do have some -- somewhat familiar with it.

Q. And is it also your understanding that the FirstEnergy companies have altered their portfolio subsequent to the enactment of SB 310?

A. Yes. I would use the word amended though. They did file and did receive approval for amending their portfolio plan which they are permitted to do.

Q. And do we agree that Ohio law permits a utility company to count banked energy impacts for purposes of compliance measurements?

A. Not in Senate Bill 221 but, yes, in Senate Bill 310.

Q. So it's your testimony that there is no provision in SB 221 to count banked energy impacts?

A. That was, I believe, Commission rule.

Q. So given what you've recognized that the company is in an overcompliance position with respect to the mandates but may not have an incentive mechanism going forward, would you expect that the company would discontinue its energy efficiency programs in the next year?

A. I would hope not. Of course, that's a corporate decision by Duke. I don't think it would do its customers any favors by cutting off the programs and that the study committee decided to reinstate the benchmarks subsequent to 2016, then you have to restart all over again, those costs are very high, customer satisfaction probably goes down.

I should say staff is familiar with another company essentially running out of funds, if you will, and ceasing programs or putting customers in long lines to get a rebate which led to a lot of complaints, maybe not formal complaints but certainly a lot of complaints.

Q. Okay. So we agree there is a lot of unknowns in the near-term.

A. Yes. It doesn't mean that the company -- even the company-approved programs could not -- I mean could still exceed its benchmark if they perform really well.

Q. And we further agree that absent an incentive and in the status of overcompliance one possible outcome might be for the company to discontinue its programs.

A. I didn't say absent. It would be absent an incentive. There is still an incentive there for every current year, at least for '14 and '15. The Commission will have to decide about '16, but if the Commission decides it's appropriate to have shared savings incentive for '16 for overcompliance for that current -- for that year 2016, then I think the company would have an opportunity to earn an incentive for those years.

Q. Mr. Scheck, did you examine the company's projections with respect to shared savings that have been filed in other -- in rider proceedings, for example?

A. Could you restate that question again?

Q. Sure. Did you examine any of the projected shared savings that are shown in any of the company's filings with respect to this rider case?

A. I am trying to recall, but I think they did show shared savings for a number of years in the portfolio plan. It was unclear to me how they got there in terms of the methodology, how it was done.

Q. And did you issue any data requests to try to understand that?

A. No, I did not.

Q. So returning again to your testimony about -- you gave us a very knowledgeable history of the company's energy efficiency programs over time, and you indicated that there was a period of years where other utilities sort of ceased pursuing energy efficiency while Duke continued -- Duke sort of had a continuous progression; is that a correct characterization of your testimony?

A. Well, it's not in my current testimony, to say the least, but to say that I am knowledgeable that Duke did have energy efficiency programs for 23, 24 years, yes, it had them.

Q. Okay. And so when SB 221 was enacted, Duke Energy Ohio was uniquely situated in that it would have had more banked impacts than any other Ohio utility, correct?

A. That would depend how far back you could count from. It would be my understanding this -- this is the way I thought of it was that a company could count mercantile -- historical mercantile savings back to 2006. But in terms of the credits that Duke would have received would have started in 2007 when they started up those programs prior to when Senate Bill 221 went into effect January 1 of 2009. So I don't believe they would have been permitted to get credits prior to 2007 back to whenever. But rather starting around somewhere in the middle of 2007, they did start I think about 10 programs; and, yes, they were allowed to get some value for that.

Q. Right. And I guess my question to you was would not it -- would it not have been true that Duke Energy Ohio would have had more banked impacts at the outset of 221 than other Ohio utilities?

A. I'm sorry. Restate the question again.

Q. Sure. Would it not be the case beginning with the enactment of SB 221 that Duke Energy Ohio having already initiated its energy efficiency programs would have had more banked impacts at the start than other Ohio utilities?

A. Yes.

Q. Is it possible then that that's why Duke Energy Ohio's cost recovery mechanism was designed differently than other utilities?

A. Could you further explain what you mean by cost recovery mechanism?

Q. Sure. Well, strike that question. I don't know if I can do that because I think you and I have a difference of opinion about what that looks like so I'll strike that question.

Would you agree with me that the law allows for banking for compliance purposes?

A. Senate Bill 310 does. I don't believe Senate Bill 221 does. As I stated previously, I believe that was established by Commission rule.

Q. Okay. And so let's -- let's -- taking your contention, let's say as it's established by Commission rule, why is that -- why did the Commission seek -- see it appropriate to make such a rule?

A. Well, the Commission tries to balance the interests of both the utilities as well as its customers, therefore, thereby permitting the bank of what I would call early energy efficiency with lower benchmarks and lower approved to capture. Building up a big bank in my mind would be very useful starting probably in the years 2019 when the -- the Senate Bill 221 requirements went from 1 percent of the sales for the pre -- prior -- normalized savings for the prior three years to 2 percent.

Now, many people may think 1 percent, 2 percent, what's the difference. Actually it is a very large difference. 2 percent is an increase of 100 percent over the prior year and not only that it goes all the way through 2025.

So in my mind there was a reason for having the bank by acquiring what I call very low-cost energy efficiency by gathering up all the low lying energy fruit, putting it in the bank, and then when you run into a situation down the road where you just can't get enough would be cost effective, or you could pull from the bank and meet the compliance.

Q. So it's logical then when you are engaging in the design and development of energy efficiency programs, to design them such that you would get the most energy efficiency impact for the dollar, in other words, you would pursue what you are referring to as the low hanging fruit first.

A. Yes. Normally that's how you would proceed and obviously that is what is out there and over time it's more difficult to do as I think a couple of witnesses, at least one, I can't remember who mentioned that, it may have been Tim, that the standards change over time, federal standards, raise the baseline, so the value of compact fluorescent today isn't the same as it was three or four years ago.

Q. Right. So as time progresses, it becomes more costly and more difficult, correct?

A. In general that is the case. I think John Seryak mentioned some costs due to market development actually drop over time. CFLs is a great example. I mean, buying my first CFL was probably about $12, and it wasn't very good. You can buy them for, you know, very low cost today. And then I think the application is similar to LEDs. The price of LEDs are dropping as well so, yes, in terms of new technology that's untried it's much more expensive. As it gets better developed and better made and customers are accustomed to it, then the prices usually drop as you have economies of scale in making those particular products or equipment.

Q. Mr. Scheck, do all of the Ohio utilities report banked balances in their annual status filings?

A. I believe they do.

Q. Okay. And do you think it's fair to assume that given the difference in understanding about how the cost recovery mechanism works, that Duke Energy Ohio designed its portfolio around its understanding of how that cost recovery mechanism would work?

A. Can you restate that again?

Q. Sure. You have heard Mr. Duff testify today, and correct me if you heard something different, but I believe what he testified to was the company's understanding was that it would be permitted to count banked energy savings in order to calculate its achievement and thereafter to calculate what it was entitled to in terms of an incentive?

A. I believe that's what Mr. Duff said.

Q. Okay. And do you believe that the company then designed its portfolio to accommodate that particular mechanism?

A. I'm not 100 percent sure. I mean, it's possible that's the case even though I still think it has not been resolved yet as to what to do or how to apply, if anything, an overcompliance for future years' shared savings. And the reason I say that is because the Commission has spoken previously back in 2011. I have testified previously on this issue. And the staff's thinking on this matter is that companies should be motivated each and every year to reach its compliance level and exceed it for each and every year until such time it can no longer do it.

Is the company making its best efforts to do that? I don't think it is. I think it could do a lot more. I look at the dollars spent today for the three years and it's in the 20 some millions and they are roughly half the size of AEP so you can say, well, they are spending their money very efficiently, but AEP's approved plan was 274 million for three years. That's over 90 million a year and yet it's only double the size. They are putting a lot more effort into reaching their benchmarks and they -- basically they are stating they will reach their benchmarks, DP&L will reach their benchmarks, so Duke's I guess presumption is, well, we have done all this early energy efficiency so there is no more to get, and I think there is more to get. I think they need to have rethought that when they filed the plan. In my mind I was like, okay, they just want to reach the benchmarks and leave it at that and we will resolve the shared savings issue later and that's where we are today.

Q. Okay. And I understand that perspective, and I guess what I am trying to understand from you is hasn't that perspective changed over time?

A. I'm sorry, the perspective of what?

Q. Of what you -- your -- you just laid out your perspective of what Duke's view is. And I am just wondering if staff's understanding has changed over time.

A. I'm sorry, with respect to what?

Q. Okay. Let me back up here. It's been a long day. The company -- well, let me strike that.

You testified that the company continued to engage in energy efficiency during a period of time when other utilities were not so doing, correct?

A. That is correct, even though I believe the ramp up really started in '07 when they were approved for the 10 programs, and the amount spent, if I recall, wasn't that high. Yes, it was early -- it was an early adoption, probably anticipated there might be some mandate, started early, was able to acquire a lot of banked savings through the safe-a-watt program and did very well.

But relatively speaking how much has the company spent on program cost rebates and EM&V relative to everybody else, I don't know there is that big of a difference. I think AEP has probably spent quite a bit more starting in -- actually I think they started late '08, they took a jump somewhere in '08, but to say that the company has -- since it started earlier it's exhausted a lot of the low hanging fruit, therefore, it doesn't need to apply itself as a list, they wouldn't meet the benchmarks in the plan, were basically four years, I think that burden is up to the company to do it.

That means at the present time to earn an incentive for each and every year, they need to really think about their programs, where they are missing it. If I recall, there were a couple of programs. One was Duke was a late adopter in the appliance turn in. They were the last ones and I think that was a recommendation of staff and others where are you at on this. Finally did get onboard. It was a big winner.

There was some other programs as well. I am trying to remember. I think Dillon recommended doing something with the data centers so these are things that Duke started to do but maybe not now the leading adopter of those so that's my response to that. So sort of sitting back and saying, well, we will just continue to collect low hanging fruit, I don't think that's the right response.

Q. Okay. So, now, you are recommending that banked energy savings not be used to calculate an incentive, correct?

A. That is right.

Q. So in the absence -- if the company is in an overcompliance status for the mandates and ultimately believes that it cannot achieve sufficient energy savings in a given year in order to kick in the incentive, it might have the perverse incentive of discontinuing the programs completely, correct?

A. Well, I disagree because if you are in the extension, I will call it, of mode in terms of you are still under Senate Bill 221 in terms of there is a stick which means for noncompliance there is a stick of if you -- if you don't comply in a given year, then you can see a REC penalty. I don't know if that answers your question, but I am trying the best I can.

Q. But we've agreed that the company is in an overcompliance status with respect to the mandates, correct?

A. Yes. I don't know how long that will last, but at some point the company will have to do something.

Q. Right. But so far as at least to the extent it lasts, it doesn't otherwise have an incentive to engage in energy efficiency.

A. To the extent they want to do more, and I think they can, relatively speaking then I think they should and then that would incentivize them each and every year to reach and exceed the benchmark and essentially rely on past savings to exceed the benchmark and earn an incentive because to me that causes that behavior which is, okay, well, we don't have to do anything because we banked so much -- so much energy efficiency that we can rest on it for four or five years and just borrow from the bank and get a return.

Q. I think I got lost in there somewhere, Mr. Scheck. What exactly was the ultimate point you were making there?

A. I think the way you were indicating was if the company can't earn a return, which I think it can, I think that's an incorrect presumption, that the company, if it applied itself, could earn a return each and every year through 2016 if it wanted to. It made a business decision not to do that, assuming that they would get a shared savings incentive for each and every year, but that ultimately is up to the Commission.

Q. Right. And the shared savings incentive goes away and the company has overcomplied for purposes of the mandate, then there is no incentive for engaging in energy efficiency, correct?

A. No, because you are assuming that your current programs can't reach the mandate and exceed it.

Q. And the company is not able to add

additional programs other than kicking in the parameters of SB 310, correct?

A. My interpretation that's a legal interpretation of terms of what is an amendment versus what I would believe to be a modification, and I believe that you substantially alter your portfolio probably in an amendment stage, but I think the date for that has passed. I think it was September 12 you had to file something. But that date, 2014, so I think that date has passed.

MS. WATTS: I have no further questions.

EXAMINER WALSTRA: Thank you. Any redirect?

MS. JOHNSON: Can we have a moment, your Honor?

EXAMINER WALSTRA: Sure.

MS. JOHNSON: Thank you.

(Discussion off the record.)

EXAMINER WALSTRA: Go ahead.

MS. JOHNSON: Staff has no redirect. Thank you.

EXAMINER WALSTRA: Thank you, Mr. Scheck. You may step down.

MS. JOHNSON: Sorry, your Honor. Oh, did you have cross-examination?

MR. RINEBOLT: I have a couple of questions.

EXAMINER WALSTRA: If there's no redirect, then there's no.

MR. RINEBOLT: Okay.

THE WITNESS: Is that allowed?

EXAMINER WALSTRA: You're good.

MS. JOHNSON: Your Honor, at this time staff would like to move for the admission of Staff Exhibit No. 2 which is the testimony of Greg Scheck.

EXAMINER WALSTRA: Any objections?

MS. WATTS: No objections.

EXAMINER WALSTRA: Thank you. It will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER WALSTRA: Now, we can discuss a briefing schedule. We'll go off the record.

(Discussion off the record.)

EXAMINER WALSTRA: Go back on the record.

We will set initial briefs due August 21, 2015; with replies due on September 8, 2015. And the Commission will make its decision after that.

Anything else?

MS. WATTS: That's all, your Honor. Thank you very much.

EXAMINER WALSTRA: All right. Thank you.

(Thereupon, the hearing was concluded at 4:09 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, July 7, 2015, and carefully compared with my original stenographic notes.

____
Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6065)

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