

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application of Ohio Edison:
Company, The Cleveland :
Electric Illuminating :
Company, and The Toledo :
Edison Company for : Case No. 14-1297-EL-SSO
Authority to Provide for :
a Standard Service Offer :
Pursuant to R.C. 4928.143 :
in the Form of an Electric:
Security Plan. :

- - -

DEPOSITION

of Santino L. Fanelli, taken before me, Karen Sue
Gibson, a Notary Public in and for the State of Ohio,
at the offices of FirstEnergy Corporation, 76 South
Main Street, Akron, Ohio, on Wednesday, January 28,
2015, at 8:30 a.m.

- - -

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17 On behalf of the Residential Consumers of
18 Ohio Edison Company, The Cleveland
19 Electric Illuminating Company, and The
20 Toledo Edison Company.

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18 On behalf of the Ohio Manufacturers'
19 Association Energy Group.

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On behalf of the Nucor Steel Marion, Inc.

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On behalf of the Environmental Law &
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ALSO PRESENT:

Ms. Doris McCarter, Staff (via speakerphone)
Ms. Tammy Turkenton, Staff (via speakerphone)

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Wednesday Morning Session,

January 28, 2015.

- - -

SANTINO L. FANELLI

being by me first duly sworn, as hereinafter
certified, deposes and says as follows:

CROSS-EXAMINATION

By Mr. Mendoza:

Q. Good morning. My name is Tony Mendoza.
I represent Sierra Club in this proceeding. Could
you please state your full name for the record.

A. Santino Fanelli.

Q. Okay. And what is your business address,
Mr. Fanelli?

A. 76 South Main Street, Akron, Ohio 44308.

Q. Thank you. And I would like to deal with
two definition issues to speed things up as we go.
If during this deposition I refer to the Ohio Edison
Company, The Cleveland Electric Illuminating Company,
and The Toledo Edison Company collectively as "the
companies" or "the Ohio EDUs," will you understand
what I mean?

A. Yes.

MR. KUTIK: Did you say EDUs?

1 MR. MENDOZA: Yes, EDUs.

2 A. Yes.

3 Q. Thank you. And if I refer to FirstEnergy
4 Solutions as "FES," would you understand what I mean
5 in that case?

6 A. Yes.

7 Q. Okay. Thank you. And I just want to
8 talk briefly about your educational background,
9 Mr. Fanelli. Where did you go to college?

10 A. John Carroll University.

11 Q. And when did you graduate?

12 A. 2004.

13 Q. And what was your major?

14 A. Mathematics.

15 Q. And do you have any advanced degrees,
16 Mr. Fanelli?

17 A. Yes.

18 Q. And where did you earn those and in what
19 area?

20 A. I earned a Master of Science Degree in
21 operations research from Rutgers University.

22 Q. Okay. Thank you. And after college, I
23 understand that you joined FirstEnergy Service
24 Company; is that correct?

1 A. Could you please rephrase the question?

2 Q. I understand that after you graduated
3 from college, you were hired by FirstEnergy Service
4 Company; is that correct?

5 A. Yes.

6 Q. And when you started, did you do a
7 three-year rotation among different departments
8 within FirstEnergy Service Company?

9 A. Yes.

10 Q. And would you say from that experience
11 you got a general sense of the overall business of
12 FirstEnergy Service Company?

13 A. Could you please rephrase the question?

14 Q. Sure. I just want to know if you got a
15 general -- from your experience in working in those
16 different departments, which I think you refer to in
17 your written testimony, would you say you have a
18 general sense of the overall business of the
19 FirstEnergy Service Company?

20 A. Could you clarify what you mean by
21 business?

22 Q. I just want to know if you have a sense
23 of what FirstEnergy Service Company, it's general,
24 you know, the work that the people there do, the

1 general operation of the company.

2 A. I have a general understanding of
3 FirstEnergy Service Company.

4 Q. Okay. Very good. And am I correct that
5 your current position is manager of revenue
6 requirements in the rates and regulatory affairs
7 department; is that correct?

8 A. Yes.

9 Q. Okay. And as manager of revenue
10 requirements, what are your responsibilities
11 generally speaking?

12 A. Responsible for supporting rates and
13 regulatory affairs activities on behalf of the
14 companies.

15 Q. And when you say the companies, which --
16 you are referring to the Ohio EDUs that we referenced
17 earlier; is that right?

18 A. Correct.

19 Q. Okay. And are there other companies
20 outside Ohio that you support as well, other
21 FirstEnergy entities outside Ohio that you support as
22 well?

23 A. I'm sorry. Could you restate the
24 question?

1 Q. Do you support any of the FirstEnergy
2 entities aside -- other than the Ohio EDUs that we've
3 referred to earlier?

4 A. From time to time I may be asked to
5 provide support.

6 Q. Okay. And do you have any people who
7 report to you?

8 A. Yes.

9 Q. And how many people?

10 A. Three.

11 Q. And could you give me the names of those
12 people, please.

13 A. Joanne Savage, Peter Blazunas, and Rick
14 Pajevic.

15 MR. KUTIK: Could you spell the last two
16 names for the court reporter, please.

17 THE WITNESS: Sure. Blazunas,
18 B-L-A-Z-U-N-A-S, and Pajevic, P-A-J-E-V-I-C.

19 Q. Thank you. And who do you report to,
20 Mr. Fanelli?

21 A. Director of rates and regulatory affairs.

22 Q. And what is that person's name?

23 A. Eileen Mikkelsen.

24 Q. Okay. And do you know who Ms. Mikkelsen

1 reports to?

2 A. Yes.

3 Q. And who is that person?

4 A. Vice president of rates and regulatory
5 affairs.

6 Q. And what is the vice president's name,
7 that vice president?

8 A. Bill Ridmann.

9 Q. Thank you. And you are currently
10 employed by FirstEnergy Service Company, correct?

11 A. Yes.

12 Q. And are you a shared services' employee
13 or a regulated entities' employee, or a competitive
14 markets' employee?

15 A. Shared services.

16 Q. Okay. And when you were supporting --
17 you mentioned earlier you provide support for the
18 Ohio EDUs, and when you do that, what type of support
19 do you provide them? What type of work do you do on
20 behalf of the Ohio EDUs?

21 A. Provide support for rates and regulatory
22 affairs activities in the state of Ohio.

23 Q. And does that involve -- you know, can
24 you give me examples of how you do that? Does that

1 involve interacting with state agencies? Customers?
2 With other businesses?

3 MR. KUTIK: Objection.

4 A. Could you please rephrase the question?

5 Q. I just want to know a little bit more
6 about what you mean by providing support in
7 regulatory affairs.

8 MR. KUTIK: So your question is?

9 Q. So my question is could you tell me more
10 about what the work is that you do.

11 A. I'm involved in the preparation of
12 regulatory filings at the state commission of Ohio.

13 Q. Okay. And do you also provide any
14 support for FES, for FirstEnergy Solutions
15 Corporation?

16 A. From time to time I may be asked at the
17 request of counsel to provide support for FES.

18 Q. And that would be FES's counsel would
19 contact you with -- asking for support?

20 MR. KUTIK: Objection.

21 A. Could you please rephrase the question?

22 Q. You said at the request of counsel, you
23 would from time to time provide support. I am
24 wondering what -- counsel for which entity would

1 request your support.

2 A. FES.

3 Q. Okay. And, Mr. Fanelli, are you familiar
4 with the proposed agreement under which FES would
5 sell its capacity, energy, and ancillary services
6 from certain generation units to the Ohio EDUs?

7 A. Yes.

8 Q. And is it your understanding that -- that
9 the generating assets that are the subject of that
10 proposed agreement are the Sammis coal-fired plant,
11 the Davis plant -- Davis-Besse nuclear plant, and
12 FES's share of the OVEC plants; is that your
13 understanding?

14 A. Yes.

15 Q. And if I refer to that agreement as the
16 proposed transaction, will you understand what I
17 mean?

18 MR. KUTIK: Do you mean the proposed
19 agreement?

20 Q. The proposed agreement or proposed
21 transaction, you will understand what I mean?

22 A. Yes.

23 Q. Okay. And when did you first learn about
24 the proposed agreement?

1 A. I don't remember.

2 Q. Do you recall if you learned of the
3 proposed agreement -- scratch that.

4 Do you recall who you heard about the
5 proposed agreement -- which person told you -- first
6 told you about the proposed agreement?

7 MR. KUTIK: So your question is which
8 now?

9 MR. MENDOZA: Yes.

10 MR. KUTIK: So the question is what? You
11 have asked us several, so I will object as compound.

12 Q. Do you recall the name of the person that
13 first told you about the proposed agreement?

14 A. No.

15 Q. And so you refer to the proposed
16 agreement, of course, in your written testimony in
17 this case, and I think we can agree that was filed in
18 August. So you must have heard about the agreement
19 before then, correct?

20 A. I'm sorry. Do you have a specific
21 reference in my testimony?

22 Q. Sure. If you look at page 8 at the top
23 on line 1, you talk about the proposed rider RRS.
24 And we haven't talked about rider RRS yet, but is it

1 your understanding that rider RRS is the regulatory
2 mechanism by which the Ohio EDUs will either charge
3 or credit their customers based on how the proposed
4 agreement -- how the costs or the expenses of the
5 agreement turns out in a given year?

6 A. I'm sorry. Could you please rephrase?

7 Q. Is it your understanding that rider RRS
8 is related to the proposed transaction we have been
9 talking about?

10 A. Yes.

11 Q. Okay. And so your testimony refers to
12 rider RRS, correct?

13 A. Yes.

14 Q. Okay. And so it's fair to say that you
15 had heard of the proposed transaction before you
16 drafted this testimony, correct?

17 A. I was aware of it as I was drafting my
18 testimony.

19 Q. Okay. And we can agree that August is
20 about half a year ago, right?

21 MR. KUTIK: We'll stipulate to that.

22 Q. Very good. And so you are telling me you
23 don't have any recollection of who told you about the
24 proposed transaction; is that correct?

1 MR. KUTIK: Well, I'll object as asked
2 and answered. He told you he doesn't remember.
3 Trying to browbeat him at this part this early in the
4 deposition is a bad start to the day.

5 MR. MENDOZA: Very good.

6 Q. And what is your understanding to why FES
7 offered to enter into this agreement?

8 A. It's a business decision.

9 Q. And you don't have any further
10 understanding of what -- why they sought to enter the
11 agreement? I mean, obviously it was a business
12 decision. They are a business but what -- what
13 was -- what was their purpose or their goal for
14 seeking this agreement with the companies?

15 A. I don't know FES's goal.

16 Q. Okay. And what is your understanding of
17 why the companies were considering accepting the
18 offer of the PPA with FES?

19 A. Because of the benefits to their
20 customers.

21 Q. Okay. And when you first heard about the
22 proposed transaction, were you given any details
23 which plants this transaction might include?

24 A. I don't remember.

1 Q. When you first heard about the proposed
2 transaction, were you given any details about the
3 likely timeframe for the agreement?

4 A. I don't remember.

5 Q. Okay. Let's take a look at page 6 of
6 your testimony. Do you see at lines 1 and 2 where
7 you refer to the companies' most recent long-term
8 financial forecast?

9 A. I do.

10 Q. Okay. And when was that forecast
11 developed?

12 A. Summer, 2014.

13 Q. And was that forecast produced under your
14 direction?

15 A. No.

16 Q. And was it -- was it produced by you?

17 A. Would you please rephrase?

18 Q. Did you have a role in creating this
19 forecast that you refer to in your testimony?

20 A. Yes.

21 Q. And what was that role?

22 A. To provide the regulatory assumptions
23 related to the proposed ESP and make sure that they
24 were incorporated.

1 Q. So -- but my -- I appreciate that. My
2 question though is directed at who were the people
3 that were involved in creating it. I am wondering if
4 either you or the three people that you directly
5 supervise were involved in creating this forecast.

6 A. Could you restate the question, please?

7 Q. I'm not clear on which part is unclear
8 but --

9 MR. KUTIK: It was compound but go ahead.

10 Q. I want to know who created the forecast,
11 and so my question is did the people below you who
12 you supervise create it? You told me that they did
13 not. And my next question is were you involved in
14 creating it? And I don't know if I understood your
15 answer in that regard.

16 MR. KUTIK: Well, you mischaracterized
17 his testimony so. Could you read the question part
18 of his last colloquy there.

19 (Record read.)

20 MR. KUTIK: Do you understand the
21 question?

22 THE WITNESS: I don't, I'm sorry.

23 Q. Okay. So who created this most recent
24 long-term forecast?

1 A. It's a collaborative effort to prepare
2 the long-term forecast.

3 Q. A collaboration involving which
4 individual people?

5 A. I don't know each individual who
6 contributed to the forecast.

7 Q. Do you know the names of any of the
8 people who contributed, who collaborated in creating
9 that forecast?

10 A. Yes.

11 Q. Can you tell me -- can you tell me the
12 names of the people that you know of that were
13 involved in creating this forecast?

14 A. I was involved.

15 Q. Anyone else?

16 A. Yes.

17 Q. And what are the names of the other
18 people who are involved?

19 A. Our long-term planning group coordinates
20 the preparation of the forecast, but I don't know
21 each individual's name who supported that effort --

22 Q. Do you know any --

23 MR. KUTIK: Let him finish his answer.

24 Could you read his answer so you can make sure you

1 have it all.

2 (Record read.)

3 MR. KUTIK: Is that the end of your
4 answer?

5 THE WITNESS: No.

6 A. Supported that effort for purposes of
7 this case.

8 Q. Okay. And do you know any of the
9 individuals in the long-term planning group who did
10 support the effort for this case?

11 A. Yes.

12 Q. And could you tell me those names,
13 please.

14 A. Tom Pesich was my primary contact and
15 that's who I dealt well.

16 MR. KUTIK: Could you spell that name for
17 the court reporter.

18 THE WITNESS: P-E-S-I-C-H.

19 Q. And is Mr. Pesich an employee of
20 FirstEnergy Service Company?

21 A. I don't know.

22 Q. Okay. And what was the purpose -- excuse
23 me. What did the companies use this most recent
24 long-term financial forecast for?

1 A. In this case it was used to comply with
2 the filing requirement.

3 Q. Which filing requirement is that?

4 A. The requirement to file projected
5 financials as part of the ESP application.

6 Q. And was this financial forecast relied on
7 by the companies as they considered the proposed
8 transaction with FES?

9 A. I don't know.

10 Q. Okay. Let's look at page 5, lines 8
11 through 20 of your testimony. Do you see where you
12 refer to projected financial statements?

13 MR. KUTIK: I'm sorry, what was the
14 reference?

15 MR. MENDOZA: Excuse me, 18 through 20.

16 MR. KUTIK: 18 through 20.

17 A. I see the reference.

18 Q. Okay. Am I correct the companies
19 provided these projected financial statements for the
20 three years of the proposed ESP?

21 A. Yes.

22 Q. And not for the years thereafter,
23 correct?

24 A. Correct.

1 Q. Were you involved in preparing those
2 financial statements?

3 A. Could you please rephrase?

4 Q. Which part of the question did you --
5 were you having trouble with?

6 A. I am not sure I understand what you mean
7 by "involved."

8 Q. Did you play a role in the creation of
9 those financial statements?

10 A. Yes.

11 Q. And what was that role?

12 A. To provide regulatory assumptions
13 associated with the proposed ESP IV to be
14 incorporated into the projections.

15 Q. Okay. And some of those assumptions
16 involved the expenses and revenues associated with
17 rider RRS, correct?

18 A. Yes.

19 Q. And where did those -- those particular
20 assumptions related to rider RRS, where did those
21 estimates of expenses and revenues come from?

22 A. Testimony of other witnesses of the
23 companies.

24 Q. And which witness was that?

1 A. Mr. Ruberto.

2 Q. And you relied entirely on Mr. Ruberto's
3 numbers regarding rider RRS, correct?

4 A. Could you please rephrase?

5 Q. Sure. Did you -- you did not create your
6 own estimates of expenses and revenues for rider RRS,
7 did you?

8 A. I did not.

9 Q. And you did not modify Mr. Ruberto's
10 numbers in any way, did you?

11 A. No.

12 Q. Did you do anything to verify or review
13 the reasonableness of Mr. Ruberto's numbers?

14 A. Yes.

15 Q. So you did verify or review the
16 reasonableness of those numbers; is that right?

17 A. I reviewed the numbers.

18 Q. And so -- as you reviewed them, how did
19 you -- well, what was the purpose of your review of
20 those numbers?

21 A. Mathematical accuracy.

22 Q. Mathematical accuracy. And do you have
23 any opinion on the reasonableness of Mr. Ruberto's
24 estimates?

1 A. Yes.

2 Q. And what is that opinion?

3 A. They are reasonable.

4 Q. And what is the basis of your opinion
5 that they are reasonable?

6 A. My experience and professional judgment.

7 Q. Anything in particular about the
8 particular estimates and numbers provided by
9 Mr. Ruberto or your review of them?

10 MR. KUTIK: Objection.

11 A. Could you please rephrase?

12 Q. Sure. Aside from your general experience
13 is there anything in your -- anything about those
14 particular estimates or your review of them that gave
15 you confidence that they were reasonable?

16 A. Yes.

17 Q. And what is that?

18 A. In my review of Mr. Ruberto's testimony I
19 agreed that the costs that were included in the
20 transaction were reasonable based on my experience.

21 Q. And what were those costs?

22 MR. KUTIK: Objection.

23 A. Could you please rephrase?

24 Q. You said that you thought the costs that

1 he included in his estimates were reasonable, and I
2 am just wondering what those costs related to.

3 A. I'm referring to the cost components that
4 are included.

5 Q. And do you have any experience in
6 reviewing the costs of generation units?

7 A. Yes.

8 Q. Do you have experience with projecting
9 the future costs of generation units?

10 A. Could you please rephrase?

11 Q. We discussed financial forecasting
12 earlier. Another type of forecasting would be
13 forecasting the costs of the operation of a
14 particular generation unit. Some witnesses in this
15 case have provided that type of forecasting. And I
16 am wondering if you have yourself worked on forecasts
17 of the costs for operating or just costs in general
18 for future costs for a generation unit.

19 A. I'm sorry. I had a tough time following
20 that.

21 Q. When you were reviewing the costs that
22 Mr. -- the cost figures that Mr. Ruberto provided
23 you, how far ahead of -- when did you do that? You
24 filed your testimony on, let's see, on August 4 and I

1 am wondering when would you have reviewed that cost
2 information.

3 A. In my prior response I believe I said I
4 reviewed the cost components.

5 Q. Okay. And do you remember when you did
6 that?

7 A. As I was preparing my testimony.

8 Q. And how -- how long did you spend working
9 on your testimony? How many days?

10 MR. KUTIK: Objection.

11 A. Could you please rephrase?

12 Q. Sure. How many days did you spend -- how
13 many days did it take you to write your testimony?

14 A. I don't remember.

15 Q. What experience do you have reviewing
16 generation costs generally?

17 A. Could you please rephrase?

18 Q. Sure. In the work that you do for
19 FirstEnergy Service Corporation, do you review -- I
20 think you told me you have reviewed the costs of
21 generation. I am wondering what -- what experience
22 you have in reviewing generation costs.

23 A. The companies have recovery mechanisms
24 for generation-related costs, and I am involved in

1 the preparation of those recovery mechanisms.

2 Q. Okay. Let's turn to line 3 on page 6.

3 Do you see your reference to --

4 MR. KUTIK: I'm sorry, you said page 6?

5 MR. MENDOZA: Yes.

6 Q. Do you see your reference to a financial
7 forecasting tool on line 3?

8 A. Yes.

9 Q. And, first of all, you state this is a
10 new forecasting tool. When was it created or
11 acquired by the companies?

12 A. I don't know.

13 Q. So you know it's new, but you don't know
14 when it was acquired.

15 MR. KUTIK: Objection, asked and
16 answered.

17 Q. And what is this forecasting tool used
18 for?

19 MR. KUTIK: Before he answers that, it
20 appears there have been about three new people that
21 have joined us in the last 20 minutes or 25 minutes.
22 Could they identify themselves, please?

23 MS. TURKENTON: Tammy Turkenton for
24 staff. Apologize for interrupting.

1 MR. KUTIK: Thank you. No problem.

2 Anyone else?

3 MS. GRADY: Maureen Grady from Ohio
4 Consumers' Counsel.

5 MR. KUTIK: Anyone else? Thank you.

6 Q. So we're talking about this financial
7 forecasting tool, Mr. Fanelli. What is the
8 forecasting tool used for?

9 A. It's used to develop the financial
10 forecast.

11 Q. And can it project the profitability of a
12 particular generation unit?

13 A. Could you please rephrase the question?

14 Q. Can it project the revenue of a
15 particular generation unit?

16 A. I don't know.

17 Q. And can it project the costs that a
18 particular generation unit will incur?

19 A. I don't know.

20 Q. Can it project the dispatch of a
21 particular generation unit?

22 A. I don't know.

23 Q. And is this financial forecasting tool a
24 Microsoft Excel spreadsheet?

1 A. No.

2 Q. Okay. In your original testimony you
3 stated that the proposed transaction has a net
4 present value of \$808 million and I am referring to
5 if it's helpful page 8, lines 10 -- line 10, excuse
6 me. Is that correct in your original testimony you
7 referred to a net present value of \$808 million?

8 A. Yes.

9 Q. And that net present value figure was
10 later revised in an errata filing, correct?

11 A. Yes.

12 Q. Are you offering any opinion on the
13 reasonableness of the projection that the proposed
14 transaction will have a net impact of about
15 \$808 million?

16 MR. KUTIK: Can I have the question
17 reread.

18 (Record read.)

19 MR. KUTIK: Objection.

20 Q. I'll rephrase. Are you offering any
21 opinion on the reasonableness of the projection that
22 the proposed transaction has a net present value of
23 about 800 million for the proposed term?

24 MR. KUTIK: Objection. That's not his

1 testimony.

2 A. Could you please rephrase?

3 Q. I'm asking you if you have an opinion on
4 the reasonableness of the net present value figure
5 for the proposed agreement.

6 A. Yes.

7 Q. And what is your opinion?

8 A. The net present value of 770 million is
9 reasonable.

10 Q. And what is the basis of your opinion
11 that it is reasonable?

12 A. My review of Mr. Ruberto's testimony and
13 my professional judgment.

14 Q. Did you review anything aside from
15 Mr. Ruberto's written testimony to reach your
16 opinion?

17 A. Yes.

18 Q. And what else did you review?

19 A. The attachment to Mr. Ruberto's
20 testimony.

21 Q. And was there anything else that you
22 reviewed in reaching your opinion?

23 A. Yes.

24 Q. And what else did you review?

1 A. Mr. Lisowski's workpapers.

2 Q. Anything else that you reviewed?

3 A. I don't remember.

4 Q. Okay. And are you aware that the
5 companies have engaged a person by the name of Judah
6 Rose to provide testimony in this proceeding?

7 A. Yes.

8 Q. And have you reviewed Mr. Rose's
9 testimony?

10 A. I don't remember.

11 Q. Okay. And are you aware that Mr. Rose
12 has provided electric energy price and other
13 forecasts in his testimony?

14 A. Could you please rephrase?

15 Q. Are you aware that Mr. Rose provided an
16 energy price forecast in his testimony?

17 A. Yes.

18 Q. And are you offering any opinion on the
19 reasonableness of Mr. Rose's price forecast?

20 MR. KUTIK: Objection.

21 A. Could you please restate the question.

22 Q. Are you offering an opinion on the
23 reasonableness -- reasonableness of Mr. Rose's energy
24 price forecasts?

1 MR. KUTIK: That's the same question.

2 I'll object. His testimony is what it is. It is
3 right here in this document you have been referring
4 to.

5 Q. You can answer the question.

6 A. I have no reason to conclude it is not
7 reasonable, but I haven't conducted a full analysis.

8 Q. Okay. And what is the basis of your
9 opinion that it is not unreasonable?

10 MR. KUTIK: Objection, mischaracterizes
11 his testimony.

12 A. Could you please rephrase?

13 MR. MENDOZA: Could I hear his answer to
14 the previous question read back, please.

15 (Record read.)

16 Q. And what is the basis of your analysis
17 that it is not reasonable?

18 MR. KUTIK: That's not his opinion. That
19 mischaracterizes his testimony.

20 Q. What is the basis of the opinion that you
21 just stated there about Mr. Rose's electric price
22 forecast?

23 A. Other witnesses.

24 Q. Conversations you've had with other

1 witnesses?

2 A. Could you please rephrase?

3 Q. I'm trying to get at the basis of your
4 opinion about Mr. Rice -- Mr. Rose's, excuse me,
5 price forecast. And you answered that other
6 witnesses had informed your opinion in some way. And
7 I wanted to know whether that was through reading
8 their testimony or talking to them or something else.

9 MR. KUTIK: Objection.

10 A. I'm sorry. I don't understand the
11 question.

12 Q. Did you do any analysis of Mr. Rose's
13 price forecasts beyond looking at what other
14 witnesses have done?

15 A. For purposes of my testimony I was
16 relying on other company witnesses.

17 Q. Okay. Thank you. And I think we've
18 already referred to it, but you are aware that Jason
19 Lisowski has submitted testimony on behalf of the
20 companies in this proceeding?

21 A. Could you please rephrase?

22 Q. Sure. Are you aware that Jason Lisowski
23 has submitted testimony in this proceeding?

24 A. Yes.

1 Q. Okay. And are you also aware that
2 Mr. Lisowski's testimony provides cost and revenue
3 projections for the plants at issue in this
4 proceeding -- in the proposed transaction? Excuse
5 me.

6 A. Yes.

7 Q. And have you reviewed Mr. Lisowski's
8 testimony including his workpapers?

9 A. I've reviewed the workpapers. I don't
10 remember --

11 Q. And can you --

12 MR. KUTIK: Excuse me.

13 Q. I apologize.

14 A. That's okay. I've reviewed
15 Mr. Lisowski's workpapers. I don't remember if I've
16 reviewed the entirety of his testimony.

17 Q. And can you tell me what those workpapers
18 show?

19 MR. KUTIK: Well, they are confidential,
20 as I understand it.

21 Q. Without revealing any of the figures in
22 them, can you tell me what the workpapers generally
23 show?

24 A. Yes.

1 Q. And what would that be?

2 A. Projected revenues and expenses.

3 Q. And are you offering any opinion on the
4 reasonableness of Mr. Lisowski's projections of
5 revenues?

6 MR. KUTIK: Objection. His testimony is
7 what it is.

8 A. I have no opinion.

9 Q. Okay. Thank you.

10 MR. KUTIK: Before we go to the next one
11 why don't we take a break.

12 MR. MENDOZA: Okay.

13 (Recess taken.)

14 Q. Let's turn to page 6, line 17 through 20
15 of your testimony, Mr. Fanelli. Am I correct that
16 you testify about the so-called ESP versus MRO test?

17 A. Yes.

18 Q. And that test is set out in a part of the
19 Ohio Revised Code, correct?

20 A. Yes.

21 Q. And are you familiar with the Ohio
22 Revised Code Section 4928.143?

23 A. Certain sections, yes.

24 Q. Okay. And you aren't a lawyer, are you,

1 Mr. Fanelli?

2 MR. KUTIK: We'll stipulate he is not a
3 lawyer.

4 MR. MENDOZA: Very good.

5 Q. What is the basis of your ability to
6 testify to this topic?

7 MR. KUTIK: Objection.

8 A. Could you please rephrase the question?

9 Q. Sure. How did you come to form an
10 opinion about the sections of this statute that you
11 are familiar with?

12 MR. KUTIK: Objection, mischaracterizes
13 his testimony.

14 A. I don't remember the question, I'm sorry.

15 Q. Okay. Let me step back a second. And so
16 you haven't reviewed all of Section 4928.143,
17 correct?

18 MR. KUTIK: Objection, mischaracterizes
19 his testimony.

20 A. Could you repeat the question, please.

21 Q. I think you told me earlier that you were
22 familiar with some sections of this particular
23 statute. And I am wondering if that means you are
24 not familiar with some of the other sections of

1 4928.143.

2 A. I don't remember all the subsections of
3 4928.143.

4 Q. Okay. And looking specifically at line
5 19 on page 6, do you see the phrase "more favorable
6 in the aggregate"?

7 A. Yes.

8 Q. And would you agree with me, subject to
9 check, that language is in the statute that you've
10 cited to?

11 MR. KUTIK: Well, I object. This isn't a
12 memory test. If you have the statute, show him the
13 statute.

14 MR. MENDOZA: I don't think it's
15 necessary but.

16 MR. KUTIK: Well, what's the relevance of
17 your question?

18 Q. Okay. Throughout your testimony, and we
19 can -- I can give you an example at the top of
20 page -- excuse me, on page 8, line 15, would you
21 agree with me -- excuse me. Throughout your
22 testimony you refer to what you call "benefits" of
23 the proposed ESP; is that right?

24 A. Could I have that specific reference

1 again?

2 Q. Sure. Page 8, line 15.

3 A. I see the reference.

4 Q. Very good. And I am curious where you
5 got -- I am curious if the benefits relate to the
6 test you referred to, the statutory test that we were
7 just discussing, the MOR versus the ESP?

8 MR. KUTIK: The MRO?

9 MR. MENDOZA: Thank you.

10 MR. KUTIK: So your question is what
11 again?

12 Q. Do the benefits that you describe in your
13 testimony relate to that statutory test in any way?

14 MR. KUTIK: Objection.

15 A. I'm sorry. I don't understand the
16 question.

17 Q. Okay. How do the purported benefits of
18 the ESP relate to the more favorable in the aggregate
19 standard is my question?

20 A. Benefits are identified to aid in the
21 determination of whether the ESP is more favorable in
22 the aggregate than the expected results of an MRO.

23 Q. Thank you. And when applying the
24 standard, the Commission must also consider the harms

1 or costs, if any, of the proposed ESP; isn't that
2 right?

3 A. I don't know what the Commission would
4 use to determine.

5 Q. To determine what?

6 A. To make the determination whether an ESP
7 is more favorable than an MRO.

8 Q. You don't know what they would use to
9 determine it? Okay. So you -- so they would --
10 we've already discussed that they would consider
11 benefits of the proposed ESP, is that right, in
12 making that determination?

13 A. I think that mischaracterizes my prior
14 response.

15 Q. Okay. So remind me again how benefits --
16 the benefits that you describe relate to the more
17 favorable in the aggregate standard.

18 A. I'm identifying benefits to aid in the
19 determination of whether the ESP is more favorable in
20 the aggregate than an MRO.

21 Q. Okay. And don't you think you making
22 that more favorable in the aggregate determination,
23 doesn't it logically follow that the Commission must
24 also consider the harms or costs, if any, of the

1 proposed ESP?

2 A. I don't know what the Commission would or
3 would not consider. The test is an in the aggregate
4 test.

5 Q. Okay. When applying that standard, do
6 you think the Commission would also consider the
7 benefits, if any, of the MRO?

8 A. I don't know what the Commission would or
9 would not consider. The test is in the aggregate
10 test.

11 Q. Do you think the Commission would
12 consider the benefits of the proposed ESP?

13 A. I don't know what the Commission would
14 have not considered in this particular case. In
15 prior cases the benefits of the ESP were recognized.

16 Q. Okay. So let's look at page 10 of your
17 testimony, lines 1 through 2. And do you see where
18 you write "For these reasons, the proposed ESP is
19 more favorable than an MRO on a qualitative basis"?
20 And so am I correct here that you're making a
21 conclusion here that the proposed ESP is, in fact,
22 more favorable than the result of an -- would be
23 under an MRO?

24 A. In this particular reference I am

1 concluding that the ESP IV is more favorable than an
2 MRO on a qualitative basis.

3 Q. And when you reached that conclusion, did
4 you consider any benefits of the MRO?

5 A. Could you please rephrase the question?

6 Q. Sure. And actually I think I gave you
7 the incorrect reference. Let's look a little bit
8 further down on the page to lines 5 through 7 and you
9 say that "the proposed ESP IV is more favorable in
10 the aggregate than the expected results that would
11 otherwise apply under an MRO." Do you see that?

12 A. I do.

13 Q. Okay. And so I was asking you generally
14 speaking if the Commission when making this statutory
15 test would consider the benefits of the proposed ESP;
16 the harms or costs, if any; the benefits of the MRO;
17 and the harms or costs, if any, of the MRO. But I am
18 wondering if you considered only the benefits of the
19 proposed ESP when you made this conclusion here on
20 lines 5 through 7.

21 A. I looked at the proposed ESP compared to
22 an MRO in the aggregate.

23 Q. Okay. And did you -- but specifically
24 did you consider any costs or harms of the proposed

1 ESP when you made that conclusion?

2 A. Could you please explain what you mean by
3 costs or harms?

4 Q. So you talk about benefits, right --

5 A. Yes.

6 Q. -- of the proposed ESP? And so benefits
7 are a good thing. The corollary is that there would
8 be -- there could be the opposite of benefits which
9 would -- we could agree on a word, but I'll just call
10 them harms or detriments or costs. And I am
11 wondering if you considered any -- and you can use
12 whatever word you like but any of the bad things that
13 might result from a proposed -- from this proposed
14 ESP when you made this determination.

15 MR. KUTIK: Objection.

16 A. I looked at the ESP compared to an MRO in
17 the aggregate.

18 Q. Okay. I am trying to get -- I am trying
19 to get at the analysis that you did in making that
20 determination in the aggregate. And, okay, so, first
21 of all, maybe step back a second. Could you tell me
22 what an MRO is?

23 A. Yes.

24 Q. Would you tell me what that is just

1 generally speaking.

2 A. A market rate offer.

3 Q. And so would it be fair to say that would
4 be a more market-based approach to supplying the load
5 of the Ohio EDUs; is that right?

6 MR. KUTIK: Objection.

7 A. I'm sorry. Could you please rephrase the
8 question?

9 Q. Could you just explain what an MRO is.
10 You've told me what the acronym stands for, but could
11 you tell me what -- what one is, an MRO?

12 A. An MRO is a standard service offer that
13 contemplates 100 percent market-based pricing for SSO
14 service.

15 Q. I apologize. Thank you. And would it be
16 fair to say at least as a theoretical matter that an
17 MRO could have benefits for the customers of the Ohio
18 EDUs?

19 MR. KUTIK: Objection.

20 A. I don't know.

21 Q. Okay. So in making -- so we know you
22 considered the benefits of the proposed ESP. Is
23 there anything else you considered -- besides the
24 benefits of the ESP is there anything else that you

1 considered in making this determination that the
2 proposed ESP IV is more favorable in the aggregate
3 than the expected results that would otherwise apply
4 under an MRO?

5 MR. KUTIK: Objection.

6 THE WITNESS: Could I please have the
7 question reread or restated, please?

8 (Record read.)

9 A. I considered the ESP in the aggregate as
10 compared to an MRO.

11 Q. So what does -- so if you are comparing
12 the two, doesn't that mean you would have also
13 considered the benefits of the MRO?

14 A. I'm sorry. I don't know what you mean by
15 benefits of an MRO.

16 Q. Okay. Let's take a look at page 7, lines
17 1 through 3 of your testimony.

18 A. I see the reference.

19 Q. Okay. And do you see on line 1 where the
20 words "quantitative" and "qualitative" appear?

21 A. Yes.

22 Q. Can you explain to me generally speaking
23 the difference between a quantitative benefit and a
24 qualitative benefit in the context of the ESP versus

1 MRO test?

2 A. Yes.

3 Q. And would you tell me what that
4 difference is generally speaking?

5 A. Quantitative factors are those that can
6 be quantified.

7 Q. Is a qualitative benefit a benefit that
8 can't possibly be quantified?

9 MR. KUTIK: Objection.

10 A. Could you please rephrase?

11 Q. Is a qualitative benefit a benefit that
12 can't be quantified?

13 A. I don't know.

14 Q. Okay. Is a qualitative benefit a benefit
15 that could be quantified but which the applicant, for
16 whatever reason, did not quantify?

17 MR. KUTIK: Objection. Could you please
18 rephrase the question?

19 Q. Okay. Let me try it again. Is a
20 qualitative benefit one that could be quantified but
21 which the applicant, for whatever reason, did not
22 quantify?

23 MR. KUTIK: Objection.

24 A. I don't understand the question.

1 Q. In your testimony you state that the
2 proposed ESP offers qualitative benefits, right?

3 A. Yes.

4 Q. Do you think the Commission must also
5 consider qualitative harms or costs in the MRO versus
6 ESP test?

7 A. I don't know what the Commission would or
8 would not consider. The test is an in the aggregate
9 test.

10 Q. Why are you offering qualitative benefits
11 in your testimony?

12 A. Consistent with Commission precedents
13 qualitative benefits contribute to the determination
14 of whether an ESP is more favorable in the aggregate
15 than an MRO.

16 Q. Okay. And do you think it logically
17 follows that qualitative harms or costs should be
18 considered in making that determination?

19 A. The test is an in the aggregate test so
20 all factors should be considered.

21 Q. Including harms and costs, right?

22 A. I'm still struggling with the use of the
23 term "costs and harms," I'm sorry.

24 Q. What is the opposite of the word benefit

1 to you?

2 A. Detriment.

3 Q. I agree that's a good opposite. And do
4 you think that the Commission should consider
5 detriments either qualitative or quantitative for
6 either an ESP or an MRO as its making this better in
7 the aggregate analysis?

8 THE WITNESS: Could you please read the
9 question back to me.

10 (Record read.)

11 MR. KUTIK: Objection.

12 Q. How about I rephrase that?

13 A. Thank you.

14 Q. So we agree the Commission should
15 consider benefits, and I am wondering if in making
16 the more favorable in the aggregate determination,
17 the Commission considers detriments of the proposed
18 ESP.

19 A. I'm sorry. The question is?

20 Q. Should the Commission consider detriments
21 of the proposed ESP?

22 A. All factors that contribute to
23 determining whether the ESP is more favorable in the
24 aggregate than an MRO --

1 Q. Okay. And --

2 MR. KUTIK: Let him finish his answer.
3 Could you read his answer so he can figure out where
4 he was.

5 (Record read.)

6 A. Should be considered.

7 Q. Okay. And when you say all factors, does
8 that include anything other than benefits?

9 MR. KUTIK: Had you finished your prior
10 answer?

11 THE WITNESS: Yes.

12 MR. KUTIK: Okay. Can you read the
13 question, please?

14 THE WITNESS: Thank you.

15 (Record read.)

16 A. It could if there are any.

17 Q. Okay. And did you describe any
18 detriments of the proposed ESP in your testimony?

19 A. The testimony speaks for itself.

20 Q. Okay. And so is it -- okay. I've read
21 your testimony. I didn't see any discussion of any
22 detriments of the proposed ESP.

23 MR. KUTIK: Mischaracterizes his
24 testimony but go ahead.

1 MR. MENDOZA: Well, I was trying to ask
2 him about it.

3 MR. KUTIK: Go ahead.

4 Q. Let's assume that the Commission does
5 have to consider detriments to the proposed ESP. We
6 don't know but let's assume that they do. And it
7 also appears that you didn't describe any detriments
8 to the proposed ESP, so isn't your analysis
9 incomplete then?

10 MR. KUTIK: Mischaracterizes his
11 testimony.

12 A. Could you please rephrase the question?

13 Q. Sure. If there are any proposed
14 detriments of the ESP, I am asking you to assume that
15 is your analysis because you didn't consider them,
16 right?

17 MR. KUTIK: Objection, mischaracterizes
18 his testimony.

19 THE WITNESS: Could I please have the
20 question again.

21 (Record read.)

22 Q. How about I rephrase that?

23 A. Thank you.

24 Q. If there are any detriments to the

1 proposed ESP, that's an assumption, isn't your
2 analysis incomplete because you didn't include any in
3 your testimony?

4 MR. KUTIK: Objection. He describes
5 costs. He describes benefits. You have blatantly
6 mischaracterized his testimony, and I am going to
7 instruct him not to answer.

8 MR. MENDOZA: Does he describe any
9 qualitative costs of the proposed ESP anywhere in his
10 testimony?

11 MR. KUTIK: You didn't say qualitative
12 cost, did you? That's not what you said; isn't that
13 true?

14 MR. MENDOZA: It's true.

15 MR. KUTIK: So you agree you
16 mischaracterized his testimony.

17 MR. MENDOZA: I do not at all.

18 MR. KUTIK: I think the record will stand
19 as it is.

20 MR. MENDOZA: No, no, no.

21 MR. KUTIK: You tried to mischaracterize
22 the testimony and browbeat the witness. Continue.

23 Q. Does your testimony include any
24 qualitative detriments of the proposed ESP?

1 MR. KUTIK: Objection, assumes there are
2 any. You didn't ask him that question, did you?

3 MR. MENDOZA: We haven't gotten to that
4 yet.

5 MR. KUTIK: Okay. So you've assumed
6 facts. Objection. It's called laying a foundation.

7 THE WITNESS: Could I have the question
8 again?

9 Q. I'll rephrase. Does your testimony
10 describe any qualitative detriments of the proposed
11 ESP?

12 A. No.

13 MR. MENDOZA: Could I have my question
14 read back, please.

15 (Record read.)

16 MR. MENDOZA: Okay. Thank you.

17 Q. And do you consider any of the
18 qualitative benefits of -- that would be achieved
19 under an MRO?

20 MR. KUTIK: Objection, assumes there are
21 any.

22 THE WITNESS: Could I have the question
23 again, please?

24 Q. I'll rephrase.

1 A. Thank you.

2 Q. Does your testimony include any
3 description of qualitative benefits of the -- that
4 would be achieved under an MRO?

5 A. The phrase "qualitative benefits that
6 would be achieved under an MRO" does not appear in my
7 testimony.

8 Q. Is there any description of qualitative
9 benefits that would apply under an MRO at all?
10 Putting aside the exact phrasing of my question, are
11 there -- is there any description of qualitative
12 benefits of an MRO?

13 A. No.

14 Q. Okay. Switching gears a little bit the
15 proposed term of the ESP at issue is three years,
16 right?

17 A. Yes.

18 Q. And did the Commission, in your opinion,
19 consider benefits or detriments either qualitative or
20 quantitative that materialize beyond the term of the
21 ESP, i.e., after the three-year term?

22 MR. KUTIK: Objection.

23 A. Could you please rephrase the question?

24 Q. Sure. Can the Commission consider

1 benefits that materialize beyond the three-year term
2 of the ESP?

3 MR. KUTIK: Objection.

4 A. Is your question in the context of the
5 ESP versus MRO in the aggregate test?

6 Q. It is, yes.

7 A. Could I have the question again, please?

8 Q. Why don't I rephrase. Did the Commission
9 consider benefits in making the -- in the aggregate
10 determination that appear beyond the term of the ESP
11 itself?

12 MR. KUTIK: Objection, incomplete
13 hypothetical.

14 A. I'm sorry. I don't understand.

15 Q. So let's say -- let's say there was a
16 benefit that would occur 10 years from now, right?
17 And we agree that's after -- that's beyond three
18 years, right?

19 MR. KUTIK: Objection.

20 Q. Could the Commission consider a benefit
21 that occurred 10 years from now -- a purported
22 benefit of the ESP, could the Commission consider
23 that benefit?

24 MR. KUTIK: Objection, incomplete

1 hypothetical. Assumes facts.

2 A. The Commission has considered provisions
3 that extend beyond the specific term of the proposed
4 ESP for purposes of the ESP versus MRO in the
5 aggregate test.

6 Q. And what instances are you referring to?

7 A. Referring to one of the companies' prior
8 ESP cases.

9 Q. And is it the one --

10 MR. KUTIK: I'm sorry. Did you finish
11 your answer?

12 THE WITNESS: Yes.

13 Q. And is that prior ESP case that you are
14 referring to, is that the one that is cited on
15 your -- in your written testimony on page 8 and lines
16 3 through 6?

17 A. Yes.

18 Q. Are you aware of any other precedent for
19 considering benefits outside the three-year term?

20 A. I don't remember any others as I sit
21 here.

22 Q. Okay. Thank you. And as the Commission
23 applies this more favorable in the aggregate test
24 that we have been discussing, the Commission may only

1 consider benefits that occur within the state of
2 Ohio, correct?

3 MR. KUTIK: Objection, incomplete
4 hypothetical.

5 A. Could you please rephrase the question?

6 Q. Referring to the statutory test we have
7 been talking about, the ESP versus MRO test, the
8 Commission can only consider the benefits or
9 detriments that occur inside the state of Ohio; isn't
10 that right?

11 MR. KUTIK: Objection, same basis.

12 A. I don't know.

13 Q. Do you think the Commission would
14 consider benefits that occur in Indiana?

15 MR. KUTIK: Objection, same basis.

16 A. Is there a specific reference in my
17 testimony that's the basis for this question?

18 Q. You're testifying about the application
19 of the ESP versus MRO test, correct?

20 A. Yes.

21 Q. So I am asking you questions about how
22 the Commission would apply that test to this case.
23 And I am not sure if you know, but some of the
24 generation unit -- one of the generation units is

1 located in another state. And I am wondering if
2 benefits associated with the operation of that
3 generation unit specifically could be considered by
4 the Commission when it performed this statutory
5 analysis.

6 A. I don't know what the Commission would or
7 would not consider. My expectation would be that
8 they would consider all terms that they deem relevant
9 for purposes of determining whether the ESP is more
10 favorable in the aggregate than an MRO.

11 Q. In your opinion would they deem benefits
12 outside Ohio relevant to that determination?

13 MR. KUTIK: Objection, incomplete
14 hypothetical.

15 A. I don't know.

16 Q. Okay. And when -- comparing the MRO
17 versus ESP, did you consider any benefits of the MRO?

18 MR. KUTIK: Objection, asked and
19 answered. Also assumes facts.

20 A. I considered the ESP in the aggregate as
21 compared to an MRO.

22 Q. Okay. Let's talk about quantitative
23 benefits now. In your testimony you refer to I think
24 two quantitative benefits, and you should let me know

1 if there are others, but one of them is the credit
2 that the companies project for rider RRS, and as
3 we've discussed, that's about \$800 million in the
4 present value, \$770 million net present value; and
5 the other one is economic development funding. And
6 putting aside the figures, am I correct that those
7 are the two types of quantitative benefits you
8 identified for the proposed ESP?

9 MR. KUTIK: I don't think that accurately
10 characterizes his testimony given the stipulation
11 amendment. He can answer.

12 THE WITNESS: Could I have the question
13 reread, please.

14 Q. How about I rephrase? One of the
15 quantitative benefits that you've identified is the
16 credit that the company is projecting with respect to
17 rider RRS; isn't that right?

18 A. The estimated net credit, yes.

19 Q. Thank you. And another quantitative
20 benefit you identified relates to economic
21 development funding; is that right?

22 MR. KUTIK: Same objection.

23 A. Yes.

24 Q. Okay. And is there another quantitative

1 benefit of the proposed ESP that you identify in your
2 testimony?

3 A. Those are the two that I address as
4 having an incremental quantitative impact for
5 purposes of the ESP versus MRO in the aggregate test.

6 Q. Okay. And as we are sitting here today,
7 can you think of any other quantitative benefits of
8 the proposed ESP?

9 MR. KUTIK: I'll object. As you know,
10 Ms. Mikkelsen is sponsoring testimony with respect to
11 additional benefits of the stipulation. To ask this
12 witness questions about an issue that should be
13 addressed with Ms. Mikkelsen is unfair and improper
14 so I object.

15 MR. MENDOZA: I am asking if he
16 personally has --

17 MR. KUTIK: I made my objection, counsel.
18 It's an improper question.

19 Q. You can answer.

20 MR. KUTIK: If you can.

21 THE WITNESS: Could I have the question
22 again, please?

23 Q. I'll just rephrase.

24 A. Okay.

1 Q. Can you think of, sitting here today, any
2 quantitative benefits of the proposed ESP aside from
3 the two we've just discussed?

4 MR. KUTIK: And aside from
5 Ms. Mikkelsen's.

6 A. Aside from those addressed in
7 Ms. Mikkelsen's supplemental testimony, no others
8 come to mind at this time.

9 Q. And as we've already discussed, you are
10 not yourself projecting the amount of credit
11 associated with rider RRS, are you?

12 MR. KUTIK: Objection. Let me finish.
13 Mischaracterizes his testimony. Thank you, counsel.

14 MR. MENDOZA: Okay. And I would
15 appreciate it if you would not, you know, rephrase my
16 questions for your witness.

17 MR. KUTIK: I am not rephrasing. I am
18 stating an objection, and when you state a question
19 that is improper, you shouldn't be putting it to the
20 witness. This is not to set traps for improper
21 questions, counsel. And to sniff and huff when you
22 ask improper questions and called on it is improper
23 as well. So ask your next question, please.

24 Q. And as we've already discussed,

1 Mr. Fanelli, you are not yourself projecting the
2 amount of credit associated with rider RRS, are you?

3 MR. KUTIK: Objection, mischaracterizes
4 his testimony.

5 A. As stated in my testimony, that number
6 came from Mr. Ruberto.

7 Q. And so you are adopting Mr. Ruberto's
8 number, correct?

9 A. What do you mean by adopting?

10 Q. I think we can move on. You note that
11 the companies are committing to provide up to \$3
12 million in economic development funding as part of
13 the ESP; isn't that right?

14 A. Yes.

15 Q. Could you briefly describe those economic
16 development programs for us.

17 A. I'm not aware of specific programs that
18 are proposed as part of this ESP.

19 Q. Do you have any general sense of what
20 that economic development funding would go to?

21 A. That is addressed in the application and
22 in Ms. Mikkelsen's testimony. I am not comfortable
23 speaking to it without having that in front of me.

24 Q. Fair enough, Mr. Fanelli. You note on

1 lines 18 and 19 that the cost of these --

2 MR. KUTIK: What page are we on?

3 MR. MENDOZA: Same page.

4 MR. KUTIK: What page?

5 MR. MENDOZA: Page 7.

6 Q. And you note that the costs of these
7 programs be borne by shareholders, not by customers
8 of the Ohio EDUs; is that right?

9 MR. KUTIK: May I have the question read,
10 please.

11 (Record read.)

12 A. Yes.

13 Q. Okay. And if the ESP is denied, will
14 these programs end?

15 MR. KUTIK: Objection, assumes facts.

16 A. I am not aware that there are specific
17 programs being proposed.

18 Q. Okay. So you refer to \$3 million for
19 economic development funding in your testimony, and I
20 want to know if the proposed ESP is denied, will that
21 \$3 million of funding or spending not occur?

22 MR. KUTIK: Objection, incomplete
23 hypothetical.

24 A. I am not aware of a circumstance where

1 that commitment would be made outside of this ESP.

2 Q. But you don't know.

3 MR. KUTIK: Objection.

4 A. Same answer.

5 Q. So the --

6 MR. KUTIK: All right. Why don't we take
7 a break?

8 MR. MENDOZA: I have another question
9 related to that.

10 MR. KUTIK: We are going to take a break.

11 (Recess taken.)

12 Q. Mr. Fanelli, we were talking about this
13 \$3 million in economic development funding. Do you
14 recall that? And I want to know if the 3 million
15 economic development would occur under the MRO. Do
16 you have an opinion on that?

17 A. Yes, I have on opinion.

18 Q. And what is that opinion?

19 A. No.

20 Q. It will not occur under the MRO.

21 A. Correct.

22 Q. And how did you form that opinion?

23 A. Because that is a commitment made as part
24 of this ESP.

1 Q. It's a commitment that you wouldn't fund
2 those programs if the ESP is denied; is that what you
3 are saying?

4 MR. KUTIK: Objection, mischaracterizes
5 his testimony.

6 THE WITNESS: Could I have the question
7 reread?

8 Q. I can rephrase.

9 A. Thank you.

10 Q. So I think we all understand that if the
11 proposed ESP is approved, the 3 million of spending
12 would occur. We all agree on that. What I am trying
13 to find out is how you know that it wouldn't occur if
14 the ESP were denied.

15 MR. KUTIK: Objection, asked and
16 answered.

17 A. The 3 million is a commitment made
18 specifically as a provision of this ESP.

19 Q. Do you have an opinion as to whether that
20 funding would occur under the MRO, under an MRO?

21 MR. KUTIK: Objection, asked and
22 answered.

23 A. Yes.

24 Q. And your opinion is?

1 A. No.

2 Q. And what is the basis for that opinion?

3 MR. KUTIK: This is the third time you
4 have asked that question. This will be the last
5 time. Go ahead.

6 Q. You can answer the question, Mr. Fanelli.

7 A. The basis is the \$3 million is a
8 commitment made specifically as part of this ESP.

9 Q. Okay. Let's turn to page 7 and I'm
10 referring to Footnote 2. You've cited cases where
11 the Commission in the past has weighed so-called
12 qualitative benefits; is that right?

13 A. Yes.

14 Q. Okay. And how is the Commission supposed
15 to weigh such benefits assuming this existing
16 quantitative loss during the ESP period?

17 MR. KUTIK: Objection, mischaracterizes
18 his testimony. Assumes facts.

19 A. I don't understand the question.

20 Q. Could the Commission approve an ESP under
21 Ohio law if the quantitative considerations showed a
22 net loss to customers but there were qualitative
23 benefits?

24 MR. KUTIK: Well, I will object to asking

1 this witness. Commission precedent is what it is.

2 A. I can't say what the Commission would or
3 would not consider. In prior cases they have taken
4 into consideration both quantitative and qualitative
5 factors.

6 Q. Okay. Let's turn to page 9, line 1 of
7 your testimony. And you might have to look back to
8 page 8 to see you are talking about qualitative
9 benefits in this section. But on line 1 there of
10 page 9 you refer to reliable electric generation as a
11 qualitative benefit of the proposed ESP; is that
12 correct?

13 A. Yes.

14 Q. And can you explain how approval of the
15 ESP could increase the reliability of generation?

16 THE WITNESS: Could I have the question
17 reread again?

18 Q. I can rephrase it.

19 A. Thank you.

20 Q. Can you explain how approval of the ESP
21 would increase generation reliability?

22 MR. KUTIK: Objection, mischaracterizes
23 his testimony.

24 A. I don't see a reference to increased

1 reliability.

2 Q. Okay. You say that it will help assure
3 adequate, reliable electric generation; is that
4 right?

5 A. Yes.

6 Q. And so how would the proposal of the ESP
7 assure adequate, reliable electric generation?

8 A. Through the economic stability program.

9 Q. Are the companies' responsible for
10 generation reliability?

11 MR. KUTIK: Objection.

12 A. Could you please rephrase?

13 Q. Sure. Is it the companies -- and I am
14 referring to the Ohio EDUs, is it the companies'
15 responsibility to assure generation reliability?

16 MR. KUTIK: Objection.

17 A. I don't understand what you mean by
18 responsibility in this context.

19 Q. Do you consider PJM interconnection
20 authoritative in the area of reliability?

21 MR. KUTIK: May I have the question read,
22 please.

23 (Record read.)

24 MR. KUTIK: Objection.

1 A. Could you please rephrase?

2 Q. Do you consider PJM interconnection an
3 authority in the area of reliability of generation?

4 MR. KUTIK: Objection.

5 A. I don't know.

6 Q. Okay. So you don't know if it's PJM's
7 responsibility to assure reliability in the service
8 area of the Ohio EDUs?

9 MR. KUTIK: Objection, mischaracterizes
10 his testimony.

11 THE WITNESS: Could I have the question
12 reread?

13 Q. I'll rephrase.

14 A. Thank you.

15 Q. Is PJM responsible for assuring
16 reliability in the service area of the Ohio EDUs?

17 A. PJM is involved in assuring reliable
18 generation.

19 Q. Do you have any reason to believe that
20 PJM will fail to meet that obligation?

21 MR. KUTIK: Objection.

22 A. I don't know.

23 Q. If rider RRS is denied, will the Sammis
24 plant retire?

1 A. I don't know.

2 Q. If rider RRS is denied, will the
3 Davis-Besse plant retire?

4 A. I don't know.

5 Q. If rider RRS is denied, will either of
6 the two OVEC plants retire?

7 A. I don't know.

8 Q. Have you spoken with anyone within
9 FirstEnergy Corporation about whether any of these
10 plants will retire if rider RRS is denied?

11 MR. KUTIK: Objection.

12 A. Could you please rephrase?

13 Q. Have you spoken with anyone about whether
14 any of these plants will retire if rider RRS is
15 denied?

16 A. I don't remember.

17 Q. Have you seen any analysis of whether the
18 plants would retire if rider RRS is denied?

19 A. Could you please rephrase the question?

20 Q. Sure.

21 A. Thank you.

22 Q. Have you seen any evaluation of whether
23 the plants would retire if rider RRS is denied?

24 A. What do you mean by evaluation?

1 Q. Have you seen any document that describes
2 whether the plants would retire if rider RRS is
3 denied?

4 A. I don't remember.

5 Q. Okay. Are you aware that the owner of a
6 generation unit must notify PJM if the owner intends
7 to retire the unit?

8 A. I'm not familiar with that process.

9 Q. Sir, are you familiar -- is it your
10 understanding that PJM conducts an analysis of the
11 reliability impacts of a proposed retirement?

12 A. I don't know.

13 Q. Okay. So is it fair to say that when you
14 discuss reliability in your testimony, you are not
15 considering PJM's involvement in maintaining
16 reliability?

17 MR. KUTIK: Objection.

18 THE WITNESS: Could you reread the
19 question, please.

20 Q. I'll rephrase.

21 A. Whichever.

22 Q. So in your testimony you talk about
23 adequate reliable electric generation. And I am
24 wondering if you considered -- when you were drafting

1 your testimony if you considered PJM's responsibility
2 or involvement in maintaining reliability?

3 MR. KUTIK: Objection.

4 A. I'm relying on my review of other
5 witnesses' testimony.

6 Q. Okay. And the other witness testimony,
7 did anyone describe PJM's involvement in maintaining
8 reliability?

9 A. I don't remember.

10 Q. Okay. And do you know if FES has
11 notified PJM of its intent to retire any of the
12 Sammis units?

13 MR. KUTIK: May I have the question read,
14 please.

15 (Record read.)

16 A. I don't know.

17 Q. Okay. And would it be the same answer
18 for the Davis-Besse plant and the OVEC units?

19 A. My answer would be the same.

20 Q. Okay. Thank you. And then let's --
21 staying on page 9, looking at line 2, do you see
22 where you use the phrase "more stable prices"?

23 A. Yes.

24 Q. Okay. And this is in the discussion of

1 qualitative benefits of the proposed ESP; is that
2 right?

3 A. Yes.

4 Q. Okay. And, first of all, why is
5 volatility a qualitative benefit instead of a
6 quantitative benefit?

7 A. I'm sorry. Could you please rephrase.

8 Q. Wondering why you included -- I'm sorry.
9 I think I misspoke. I'm wondering why you included
10 more stable prices in the qualitative part of your
11 testimony.

12 MR. KUTIK: And your question is?

13 Q. Why is it a qualitative benefit in the
14 proposed ESP as opposed to a quantitative benefit?

15 A. The notion of stability is qualitative.
16 The impact of stability could be quantified.

17 Q. Okay. And so it is possible to quantify
18 the impact of a -- of a proposal on stability; is
19 that right?

20 MR. KUTIK: Objection.

21 A. Could you please restate the question?

22 Q. I'm wondering if it's possible to
23 quantify the impact of a proposed -- of a proposal on
24 price stability.

1 MR. KUTIK: Objection, incomplete
2 hypothetical.

3 A. I don't understand the question.

4 Q. Okay. So let's say there is a proposal
5 that has been alleged or asserted will increase price
6 stability. And I am wondering if you can quantify
7 the effect that proposal would have on the stability
8 of prices.

9 MR. KUTIK: Same objection.

10 A. I don't know. I am not able to make that
11 determination based on that hypothetical.

12 Q. Okay. Are you aware starting in the late
13 1990s Ohio began a transition away from a regulated
14 electric system to a market-based system for electric
15 generation?

16 MR. KUTIK: May I have the question read,
17 please.

18 (Record read.)

19 A. Generally, yes.

20 Q. Okay. And would you agree that some
21 change in price over time is a normal aspect of a
22 competitive market?

23 A. I don't know.

24 Q. Did you or anyone within the companies or

1 FirstEnergy Service Company analyze the extent to
2 which the Ohio EDUs' customers are impacted by price
3 instability?

4 MR. KUTIK: Objection.

5 A. Could I have the question again, please?

6 Q. I'll rephrase. Did you analyze the
7 extent to which the customers of the Ohio EDUs are
8 impacted by price instability?

9 MR. KUTIK: Objection.

10 A. Which instability are you referring to?

11 Q. So I'm looking at your testimony on page
12 9, and you talk about how the proposed ESP would
13 achieve more stable prices over the near and longer
14 term, okay? And so I am asking you in the context of
15 that testimony did you analyze the extent to which
16 customers are exposed to price instability?

17 A. I reviewed the testimony of others who
18 address that topic.

19 Q. Did you analyze the extent to which rider
20 RRS would reduce price instability?

21 A. What do you mean by analyze?

22 Q. Did you evaluate or otherwise assess the
23 impact that rider RRS if approved would be on price
24 instability?

1 A. I reviewed the testimony of others on
2 that topic.

3 Q. And I apologize. Were you going to
4 continue?

5 A. I was finished. Thank you though.

6 Q. I apologize. And which witness are you
7 referring to or witnesses?

8 A. I'm referring to Mr. Strah's testimony.

9 Q. And I gather -- did you yourself prepare
10 any estimate of the effect on volatility that rider
11 RRS would have?

12 A. Other than my review of Mr. Strah's
13 testimony I did not conduct an independent
14 evaluation.

15 Q. Okay. Are you aware of any means that
16 the Ohio EDUs presently employ that have the effect
17 of reducing price instability?

18 MR. KUTIK: Objection, assumes facts.

19 A. Could I please have the question again?

20 Q. I can rephrase.

21 A. Thank you.

22 Q. Are you aware of any means that the Ohio
23 EDUs employ that have the effect of reducing
24 volatility today?

1 A. Yes.

2 Q. And what are those means or mechanisms of
3 which you are aware?

4 A. In the near term we have mechanisms that
5 smooth out impacts over time.

6 Q. And what are those?

7 A. Rider AER.

8 Q. Okay. And then also on page 9 looking at
9 line 3, you offer economic development and job
10 retention as a qualitative benefit of the proposed
11 ESP; is that right?

12 A. Yes.

13 Q. And all of these benefits apply only if
14 the plants at issue would retire if RRS is denied;
15 isn't that correct?

16 A. Could you please rephrase the question?

17 Q. Sure. So, again, we are thinking about
18 this in the context of the MRO versus the ESP test,
19 and you've offered various purported qualitative
20 benefits of the proposed ESP. And I am asking you if
21 this specific benefit, the economic development and
22 job retention benefit, would apply only if the plants
23 at issue would retire if rider RRS is denied?

24 A. No.

1 Q. Okay. So how do they apply otherwise?

2 A. Through the economic stability program.

3 Q. So if the -- if those plants continue to
4 operate regardless of whether -- let's just take one
5 plant, for example. If the Sammis plant continues to
6 operate regardless of whether rider RRS is approved
7 or denied, wouldn't those benefits apply equally to
8 both the MRO and the ESP?

9 THE WITNESS: Could I have the question
10 again, please?

11 (Record read.)

12 A. I'm sorry. I don't understand. I am not
13 able to formulate a response.

14 Q. Okay. So you're -- we're talking about
15 qualitative benefits of the proposed ESP, and one of
16 them that you've asserted is economic development and
17 job retention. Why don't we talk about the job
18 retention part of it. So if rider RRS is denied and
19 the Sammis -- and the Sammis plant does not close,
20 wouldn't those jobs still exist?

21 A. I don't know if Sammis would or would not
22 close.

23 Q. Okay. Did you do your own analysis of
24 the economic development and job retention effects of

1 the proposed ESP?

2 A. I reviewed the testimony of other
3 witnesses, agreed with it, but did not conduct an
4 analysis independent of that.

5 Q. Okay. And which witness or witnesses are
6 you referring to?

7 A. In regards to economic development and
8 job retention?

9 Q. Yes, I apologize for interrupting,
10 economic development and job retention.

11 A. Witnesses Strah and Murley.

12 Q. Okay. And then, okay, so turning back to
13 page 7, if you will, and I am looking at lines 9 and
14 10, where you say there is no quantifiable difference
15 related to the resulting SSO pricing between the
16 proposed ESP and MRO. Do you see that language?

17 A. I do.

18 Q. Again, I am wondering did you attempt to
19 quantify the difference?

20 A. There is no difference.

21 Q. It says there is no quantifiable
22 difference, and I am wondering if you attempted to
23 quantify it.

24 MR. KUTIK: Objection, asked and

1 answered.

2 A. There is no quantifiable difference so
3 there was nothing to quantify.

4 Q. Okay. Is there a qualitative difference
5 between that pricing?

6 MR. KUTIK: Objection.

7 Q. Let me move on from that one actually,
8 Mr. Fanelli. I think we discussed earlier that --
9 well, are you -- are you aware that Ohio has been
10 transitioning from a regulated electric generation
11 system to a market-based system over the last 15
12 years or so?

13 MR. KUTIK: Objection, asked and
14 answered.

15 A. I'm generally aware.

16 Q. Thank you. And do you consider
17 guaranteed cost recovery for a particular generation
18 unit to be consistent with that Ohio policy?

19 MR. KUTIK: Objection, assumes there is
20 guaranteed cost recovery.

21 A. Could you please rephrase the question?

22 Q. Sure. Do you consider -- if a plant were
23 able to recover all -- were guaranteed to recover all
24 the costs of generation for that unit, would that be

1 consistent with the Ohio policy?

2 MR. KUTIK: Objection. There is no
3 proposal in this case for a plant to be guaranteed to
4 recover all of its costs so not only is it an
5 incomplete hypothetical, it's irrelevant and it also
6 assumes facts not in evidence and never will be in
7 evidence.

8 A. I don't know. I am not able to formulate
9 a response based on that hypothetical.

10 Q. Okay. Are the companies' customers
11 currently exposed to the operational risk from any
12 specific generation unit?

13 MR. KUTIK: Objection, incomplete
14 hypothetical. I will withdraw that objection. I
15 will just object.

16 A. Could you please rephrase?

17 Q. Why don't we talk about a specific plant.
18 If, for example, the costs of the Sammis plant for
19 2015 are higher than projections, are the companies'
20 customers currently exposed to such higher costs?

21 MR. KUTIK: Objection.

22 A. I don't know.

23 Q. Okay. Let me try a more concrete
24 example. Let's -- let's assume that a catastrophic

1 accident occurred at the Sammis plant today. Would
2 the cost of repairs be borne by the companies'
3 customers?

4 MR. KUTIK: Objection.

5 A. I don't know.

6 Q. Can you think of any way that FES, which
7 is the operator of the Sammis plant, could require
8 The Toledo Edison Company's customers, for example,
9 to pay for the repair of the Sammis plant if the
10 accident that caused those repairs to be necessary
11 occurred today?

12 MR. KUTIK: Objection, incomplete
13 hypothetical.

14 A. I don't know. I don't understand the
15 question.

16 Q. I'm wondering who would pay for the -- if
17 there was an accident at the Sammis plant or any of
18 the plants that are covered by rider RRS but we are
19 just -- for the purpose of the hypothetical, we are
20 focusing on just one of them, if there were an
21 accident at the Sammis plant, given your experience
22 for several years at FirstEnergy Service Company and,
23 I guess, working in the electric business generally,
24 who is going to bear the cost of paying for those

1 repairs if the accident occurred -- if the damage
2 occurred today?

3 MR. KUTIK: Objection, incomplete
4 hypothetical.

5 A. I don't know.

6 Q. Okay. Let's switch gears a bit. If I
7 refer to the EDU team in the context of the proposed
8 transaction, will you know what I am referring to?

9 A. Could you clarify what you mean by the
10 proposed transaction?

11 Q. Sure. I am talking about the proposed
12 power purchase agreement between FES and the Ohio
13 EDUs.

14 A. In that context I'm familiar with the
15 term EDU team.

16 Q. Okay. Thank you. Were you involved in
17 the EDU team in any way?

18 A. Could you please rephrase?

19 Q. Why don't we step back a second. When
20 did you first hear about -- do you recall when you
21 first heard about the existence of an EDU team?

22 A. Yes.

23 Q. And can you tell me around when that was?

24 A. Around May of 2014.

1 Q. Okay. And do you recall who told you
2 about the existence of the EDU team in May, 2014?

3 A. Yes.

4 Q. And who was that person?

5 A. My director.

6 Q. And that's Ms. Mikkelsen; is that right?

7 A. Yes.

8 Q. Okay.

9 MR. KUTIK: Just to be clear you need to
10 wait until he finishes his question before you
11 answer.

12 Q. And then I posed this question earlier,
13 but then we stepped back a second. Were you involved
14 in the work of the EDU team in any way?

15 A. Could you please rephrase? I am not sure
16 what you mean by "involved."

17 Q. How about this, were you involved in
18 setting up and creating the EDU team?

19 MR. KUTIK: Well, I'll object. He said
20 he didn't understand what you meant by the word
21 "involved," and then you asked him a question "were
22 you involved."

23 Q. Did you participate in any EDU team
24 meetings?

1 A. No.

2 Q. And so I think that means you didn't
3 attend any EDU team meetings; is that right?

4 A. Yes, that's right.

5 Q. Okay. And even though you didn't attend
6 those meetings, did you have any knowledge of the
7 negotiations between the EDU team and a team that was
8 set up for FES to negotiate the transaction?

9 THE WITNESS: Could you reread the
10 question, please.

11 Q. I can rephrase.

12 A. Thank you.

13 Q. Do you know any particular aspects of the
14 nego -- well, first of all, were you aware the EDU
15 team negotiated with a team set up to represent FES?
16 Were you generally aware of that?

17 A. Yes.

18 Q. Okay. And do you know any particular
19 aspects of the negotiations that were contentious?

20 MR. KUTIK: Objection.

21 A. Could you rephrase the question, please?

22 Q. I'm curious to know if you -- even though
23 you didn't attend these meetings if you had heard
24 from someone else about the substance of the

1 negotiations.

2 A. No. Not participating in those meetings
3 I was not aware of the substance of the negotiations.

4 Q. Fair enough. Are you aware that the EDU
5 team and the FES team reached an agreement on a draft
6 term sheet for the proposed transaction?

7 A. Yes.

8 Q. Okay. And did you have any involvement
9 in the drafting of that term sheet?

10 A. Could you clarify what you mean by
11 "involvement"?

12 Q. Did you participate in creating any of
13 the text of the draft term sheet?

14 A. I was asked to provide feedback on one
15 specific aspect of the term sheet.

16 Q. And what was that? What specific aspect?

17 A. I was asked to review the calculation of
18 income taxes as stated in the term sheet.

19 Q. And who asked you for that input?

20 A. Ms. Savage.

21 Q. And aside from that issue of income
22 taxes, do you have any opinions regarding the
23 provisions of the turn sheet -- term sheet?

24 MR. KUTIK: Objection.

1 A. I am not offering any opinion on the term
2 sheet.

3 Q. Okay. And so do you know if under this
4 proposed agreement FES would be able to terminate the
5 agreement before May 31, 2031?

6 A. By agreement are you referring to the
7 term sheet?

8 Q. I'm referring to the pro -- the
9 proposed -- the proposed agreement, the proposed
10 price power purchase agreement.

11 MR. KUTIK: You really haven't answered
12 his question. If he can answer the question, go
13 ahead but I object.

14 A. I don't understand the question.

15 Q. Okay. So we agree that a draft term
16 sheet is not a contract, correct?

17 MR. KUTIK: Well, assuming you are not
18 asking his legal opinion. If you are, I will object.

19 A. A draft term sheet is a draft term sheet.

20 Q. Agreed. And so if the proposed agreement
21 becomes -- if the proposed agreement is approved by
22 the Commission, would FES be able to terminate the
23 agreement before May 31, 2031?

24 MR. KUTIK: Objection, mischaracterizes

1 the proposal. There is nothing in the proposal that
2 requests the Commission to approve the proposed
3 transaction.

4 Q. If rider RRS is approved and the
5 companies' enter into the proposed agreement with
6 FES, would FES be able to terminate the agreement
7 before May 31, 2031?

8 MR. KUTIK: Objection, incomplete
9 hypothetical.

10 A. I don't know.

11 Q. Okay. By the time you first heard about
12 the EDU team in May, 2014, had you already heard
13 about the proposed transaction?

14 THE WITNESS: Would you reread the
15 question, please.

16 (Record read.)

17 THE WITNESS: I'm sorry. Could you read
18 that one more time? I apologize.

19 Q. How about I just rephrase it? You said
20 earlier that you heard about the proposed transaction
21 in May, 2014, I believe from Ms. Mikkelsen, and I am
22 wondering when you heard that news -- when you heard
23 that information from Ms. Mikkelsen, had you already
24 heard of the proposed transaction?

1 MR. KUTIK: I think you might have
2 misspoke, or I may have misheard you.

3 MR. SOULES: I think you meant EDU team.

4 MR. KUTIK: You said that he heard about
5 the proposed transaction from Ms. Mikkelsen.

6 Q. I apologize. Let me start over. So I
7 believe you said earlier that you heard about the EDU
8 team in May, 2014. And I am wondering if at that
9 time had you already heard of the existence of the
10 proposed transaction?

11 MR. KUTIK: Well, I'll object again. It
12 assume there was a proposed transaction.

13 A. I was not aware that there was a proposed
14 transaction at the time I heard about the formation
15 of the EDU team.

16 Q. Okay. And so when you spoke to
17 Ms. Mikkelsen in May, 2014, what did she tell you?

18 A. That Ms. Savage had been selected to
19 participate on a team on behalf of the EDUs.

20 Q. And did she tell you anything else?

21 A. Yes.

22 Q. And what else did she tell you?

23 A. She asked me to inform Ms. Savage that
24 she had been selected and that more information would

1 be forthcoming.

2 MR. MENDOZA: Okay. Thank you,
3 Mr. Fanelli. I have no further questions.

4 MR. KUTIK: All right. Let's go off the
5 record for a moment.

6 THE WITNESS: Thank you.

7 (Off the record.)

8 MR. KUTIK: Let's go on the record for a
9 moment. I assume that you have no questions on a
10 confidential basis?

11 MR. MENDOZA: I do not.

12 MR. KUTIK: Okay. Let's go off the
13 record.

14 (Discussion off the record.)

15 (Thereupon, a lunch recess was taken at
16 11:57 a.m.)

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Wednesday Afternoon Session

January 28, 2015.

- - -

MR. KUTIK: Back on the record.

Ms. Grady.

MS. GRADY: Thank you.

- - -

SANTINO L. FANELLI

being by me previously duly sworn, as hereinafter
certified, deposes and says further as follows:

CROSS-EXAMINATION

By Ms. Grady:

Q. Good afternoon, Mr. Fanelli.

A. Good afternoon.

Q. I am going to go through a little bit of
your background and some of the information you
provide in the background section of your testimony.
I want to direct your attention specifically to the
page 1, line 23, and carrying over to page 2, line 1.
You indicate you have experience in a number of
matters before the Commission. Do you see that?

A. Yes.

Q. Can you tell me what matters you are
referring to there? Could you describe those

1 matters?

2 A. I'm referring to regulatory filings and
3 proceedings.

4 Q. And do the regulatory filings and
5 proceedings have case numbers associated with them?

6 A. Yes.

7 Q. Can you identify -- can you identify the
8 regulatory filings and the case numbers associated
9 with those for me, please?

10 A. Case No. 12-1230.

11 Q. Okay. Is there any other case number
12 that you are referring to there that you have
13 provided or had experience in that has come before
14 this Commission?

15 A. Yes.

16 Q. Can you please list those for me.

17 A. Case No. 09-906.

18 Q. Thank you.

19 A. Case No. 10-388, Case No. 08-935. Those
20 are the only specific case numbers that I recall at
21 this time.

22 Q. Thank you. Now, with respect to the case
23 numbers that you've identified, did you provide
24 prefiled written testimony in any of those cases?

1 A. Yes.

2 Q. And were you deposed for purposes of any
3 one of those four cases that you identified?

4 A. Yes.

5 Q. Which one of the cases were you deposed
6 in? Of the four you identified can you tell me which
7 ones you were deposed in?

8 A. Yes. 09-906.

9 Q. And in that case were you testifying on
10 behalf of FirstEnergy electric distribution
11 utilities?

12 A. The FirstEnergy Ohio electric
13 distribution utilities.

14 Q. Now, when you refer on page 1, lines 13
15 through 14, to the fact that you have taken on roles
16 to support the FirstEnergy Corporation operating
17 companies in Ohio, are you referring to Ohio Edison,
18 Toledo Edison, and CEI there?

19 MR. KUTIK: Well, you misread it
20 slightly, but he can answer the question.

21 A. The FirstEnergy Corp. operating companies
22 in Ohio that I am referring to there are Ohio Edison,
23 Cleveland Electric Illuminating Company, and the
24 Toledo Edison Company.

1 Q. Thank you. And is that what you've
2 referred to as the FirstEnergy Ohio EDUs?

3 A. In my prior response, yes.

4 Q. Now, Mr. Fanelli, in your position -- in
5 any of your positions that you have maintained in
6 FirstEnergy Service Company, have you done work for
7 FirstEnergy Solutions?

8 A. Could you please rephrase the question?

9 Q. You indicate, Mr. Fanelli, that you are
10 employed by FirstEnergy Service Company. Do you see
11 that reference?

12 A. Yes.

13 Q. In your employment by FirstEnergy Service
14 Company, have you done work or have you conducted any
15 work for FirstEnergy Solutions?

16 A. Yes.

17 Q. And can you tell me what type of work you
18 may have done for FirstEnergy Solutions in your
19 employment by the FirstEnergy Service Company?

20 MR. KUTIK: Well, at this time I will
21 just instruct the witness to the extent that I want
22 you to refrain from divulging any tasks -- specific
23 tasks that you may have done at the request of
24 counsel, if you could generally describe your work,

1 you can go ahead and answer that question.

2 MS. GRADY: Thank you for that, Dave.

3 A. At the request of counsel in anticipation
4 of litigation, I have provided analytical support for
5 FES.

6 Q. Is that for purposes of this case are you
7 speaking of?

8 A. No.

9 Q. Are you talking about the past cases?
10 One of the four cases that you identified earlier in
11 my questioning?

12 A. No.

13 Q. Do you understand the term shared
14 services employee?

15 A. Yes, generally.

16 Q. And what's your understanding of a shared
17 service employee?

18 MR. KUTIK: I'll object.

19 A. Could you restate the question, please?

20 Q. Well, what I am trying to get to,
21 Mr. Fanelli, do you consider yourself to be a shared
22 service employee?

23 A. Yes. I'm employed by FirstEnergy Service
24 Company.

1 Q. Thank you. Now, you testify, do you not,
2 on the rider DCR, the delivery capital recovery
3 rider, and I am referring to your testimony on page 3
4 carrying over to page 4.

5 A. Yes.

6 Q. Can you tell me what the purpose of rider
7 DCR is?

8 A. Yes.

9 Q. Can you explain the purpose of the DCR
10 for me, please.

11 A. Rider DCR allows the companies to earn a
12 return of and on incremental plant in service since
13 the companies' last rate case subject to review by
14 the Commission.

15 Q. Can you tell me -- and I am referring
16 to -- let me strike that.

17 How does rider DCR allow the companies to
18 invest in infrastructure and provide safe and
19 reliable service more efficiently? And I am
20 referring to your testimony at page 9, line 11.

21 A. I see the reference. Could you please
22 restate the question? I'm sorry. I was flipping to
23 the page.

24 Q. I'm sorry. How -- Mr. Fanelli, how would

1 rider DCR allow the companies to invest in their
2 infrastructure and provide safe and reliable service
3 more efficiently?

4 A. Rider DCR more closely aligns the
5 companies' spending with recovery from customers and
6 Commission review than otherwise would occur.

7 Q. And when you say than would otherwise
8 occur, are you talking about in the context of a
9 distribution rate case?

10 A. In this reference, yes.

11 Q. Are you familiar with the reliability of
12 the FirstEnergy EDUs?

13 MR. KUTIK: You mean the FirstEnergy Ohio
14 EDUs.

15 Q. I'm sorry, yes, the FirstEnergy Ohio
16 EDUs.

17 MS. GRADY: Thank you.

18 A. I'm sorry. Could you please rephrase the
19 question?

20 Q. Are you aware of how reliable the
21 distribution service is for purposes of -- the
22 distribution service of FirstEnergy Ohio EDUs is --
23 are?

24 A. I am generally familiar though that

1 information is addressed in other witness testimony.

2 Q. Are you aware of the measures that are
3 looked at -- or are you aware of the measures in Ohio
4 to determine the reliability of an EDU distribution
5 system?

6 THE WITNESS: Could I please have the
7 question reread?

8 (Record read.)

9 A. I'm aware that there are measures or
10 metrics, although I am not familiar with the
11 specifics.

12 Q. So would it be safe to say, Mr. Fanelli,
13 that you would not know whether or not the company is
14 meeting those particular standards in terms -- in
15 terms of reliability? When I say the company, I am
16 talking about the FirstEnergy EDU -- Ohio EDUs.

17 A. No.

18 Q. Now, you refer to on page 9 of your
19 testimony lines 10 through 11 that through rider DCR
20 the companies will be able to invest in their
21 infrastructure and provide safe and reliable service
22 more efficiently than would be achieved through a
23 base rate case -- base distribution rate case under
24 an MRO. Do you see that reference?

1 A. Yes.

2 Q. Can you tell me what type of
3 infrastructure improvements to the distribution
4 system are necessary to provide safe and reliable
5 service?

6 MR. KUTIK: Objection, mischaracterizes
7 his testimony.

8 A. Could you please rephrase the question?

9 Q. Let me try. Let's go instead to page 4
10 of your testimony. And at page 4 of your testimony,
11 lines 6 through 9, you are speaking of the proposed
12 rider DCR revenue cap. And you indicate on line 7
13 that they will allow the companies to continue to
14 make necessary infrastructure investments in their
15 distribution system subject to Commission review. Do
16 you see that?

17 A. Yes.

18 Q. Can you tell me what type of necessary
19 infrastructure investments you are referring to
20 there?

21 A. Yes.

22 Q. Please identify what types of
23 infrastructure improvements you are referring to.

24 A. Investments that helped maintain the

1 safety and reliability of the companies' provision of
2 distribution service.

3 Q. And can you identify specifically what
4 those investments are and how to maintain the
5 reliability of the distribution system.

6 A. The companies make numerous types of
7 investments in their distribution system. Sitting
8 here today I am not able to specify all of them.

9 Q. Can you specify any investment that you
10 are referring to on page 4, lines 7 through 9, that
11 are necessary infrastructure investments that need to
12 be made to promote the safe and reliable provision of
13 electric service during ESP IV?

14 A. Yes.

15 Q. Please identify those necessary
16 infrastructure investments for me.

17 A. Examples could include replacing a pole
18 or replacing other infrastructure that has failed.

19 Q. Do you know, as we sit here today,
20 Mr. Fanelli, that it is necessary to replace poles,
21 for instance, in order to continue to -- in order to
22 promote safe and reliable provision of electric
23 service during the ESP IV?

24 THE WITNESS: Could I have the question

1 reread, please?

2 Q. Let me -- let me try to rephrase that.
3 Mr. Fanelli, do you know if there is a plan that the
4 FirstEnergy Ohio EDUs have for the infrastructure
5 investments to be made in the distribution system
6 during the ESP IV?

7 A. Could you please clarify what you mean by
8 "plan"?

9 Q. Do you know any of the specifics of -- or
10 details with regard to specific investments to be
11 made to the distribution system to promote the safe
12 and reliable provision of electric service during ESP
13 IV for the Ohio -- FirstEnergy Ohio EDUs?

14 A. I am aware that the companies routinely
15 prepare investment forecasts or budgets. However, I
16 do not know sitting here today the specifics of those
17 as they may pertain to the ESP IV period.

18 Q. Have you reviewed the budgets for the ESP
19 IV period with respect to the distribution
20 investments spending for the FirstEnergy Ohio EDUs?

21 MR. KUTIK: May I have the question read,
22 please.

23 (Record read.)

24 MR. KUTIK: Objection.

1 A. I don't remember.

2 Q. Let's move along to the customer impact
3 section of your testimony. There you have -- you
4 show estimated impacts -- there you estimate that the
5 rate impacts on customers of the proposed ESP IV,
6 correct?

7 MR. KUTIK: Objection.

8 A. No.

9 Q. Can you tell me why that's not correct?

10 A. The estimates that I calculated are
11 provided in Attachment 7 filed with the application.

12 Q. Yes. But those -- the estimates would be
13 of the rate impacts on customers of the proposed ESP
14 IV, correct?

15 A. Yes, on nonshopping customers.

16 Q. Now, on page 4 you also testify as to the
17 primary assumptions that were used to develop the
18 bill impacts. Do you see where you testify to that?

19 A. Yes.

20 Q. Can you tell me if these -- the
21 assumptions that you have set forth on page --
22 starting on line 19, page 4, and running through page
23 5, line 14, whether they are still valid in light of
24 the stipulation that was filed in this case?

1 A. Yes.

2 Q. And are they still valid?

3 A. Some of these assumptions are impacted by
4 the stipulation.

5 Q. And if you could, Mr. Fanelli, could you
6 go through each one of the assumptions and tell me
7 whether -- or, Mr. Fanelli, which of the assumptions
8 listed on page 4 carrying over to page 5 are impacted
9 by the stipulation?

10 A. The assumption listed on lines 1 through
11 3 on page 5 is impacted by the stipulation. The
12 assumption on lines 4 through 6 on page 5 is impacted
13 by the stipulation. The assumption on lines 10
14 through 12 on page 5 is impacted by the stipulation.
15 And the other assumptions are got impacted by the
16 stipulation.

17 Q. Thank you. Now, Mr. Fanelli, I want --
18 what I would like you to do is let's start with the
19 assumption on page -- at the top of page 5, lines 1
20 through 3. You indicated that is impacted by the
21 stipulation. Please explain to me how it is impacted
22 by the stipulation.

23 A. Some of the provisions of rider EDR that
24 otherwise would have expired are reinstated as part

1 of the stipulation.

2 Q. And on a -- let me strike that.

3 Will -- will the reinstatement -- or does
4 the reinstatement of portions of the EDR have then --
5 have -- or let me strike that.

6 Explain to me the effect of reinstating
7 the tariff rate on customer bills, what the ultimate
8 impact would be. Would it raise -- would it show
9 increases in customer bills, or would it decrease the
10 customer bills?

11 MR. KUTIK: Objection.

12 A. Could you please rephrase the question?

13 Q. Let me try. You indicated that -- that
14 the assumptions that was used to develop this -- the
15 bill analysis would be impacted by the stipulation,
16 the assumption we are talking about is on page 5, the
17 first three lines, the economic development rider
18 tariff rate assumption. You also indicated that the
19 economic development rider tariff rates were -- will
20 be reinstated under the stipulation. What is the
21 impact on the bill analysis taking that assumption
22 and carrying it through for purposes of determining
23 the rate impact on customers of the proposed ESP IV
24 under the stipulation?

1 MR. KUTIK: Objection.

2 A. I'm sorry. I don't understand the
3 question.

4 Q. Mr. Fanelli, have the companies conducted
5 or run a bill impact analysis associated with the
6 stipulation?

7 A. Yes.

8 Q. And is that estimated customer impact
9 presented in -- in filed testimony in this
10 proceeding, if you know?

11 A. No, it is not.

12 Q. So if one were to want to determine the
13 rate impacts on customers of the -- under the
14 proposed stipulation, what would one do?

15 MR. KUTIK: Objection.

16 Q. Let me withdraw that question. Has the
17 company estimated the rate impacts of customers under
18 the stipulation?

19 A. Yes.

20 Q. And did it -- and who would have -- who
21 would have been in charge of running that analysis,
22 if you know?

23 A. That was prepared under my direction.

24 Q. And have you, Mr. Fanelli, compared the

1 estimated rate impacts on customers of the filed ESP
2 versus the stipulated agreement filed in the ESP?

3 THE WITNESS: Could I please have the
4 question reread?

5 Q. Let me rephrase it for you. Have you
6 compared -- the rate impact analysis for customers
7 under the proposed ESP IV that you present as part of
8 your testimony or as part of Attachment 7, have you
9 compared that with the bill impact analysis that you
10 were in charge of running under the stipulation that
11 was filed in the proceeding?

12 A. Yes.

13 Q. And can you tell me how the two
14 analyses -- what -- let me strike that.

15 What were the differences in the end
16 result of the bill analysis under both -- both of
17 those scenarios?

18 MR. KUTIK: Objection.

19 A. The typical bill impact analyses are very
20 detailed. I'm not able to comfortably address your
21 question as I sit here today.

22 Q. Now, thank you, I appreciate that. The
23 bill analysis that you were in charge of for purposes
24 of the stipulation, can you tell me why -- can you

1 tell me if that bill analysis was shared with any
2 parties in this proceeding?

3 MR. KUTIK: Let me caution you. I don't
4 want you to reveal anything that would reveal a
5 conversation that you had with counsel. If you can
6 answer that question excluding conversations you've
7 had with counsel, go ahead and answer that question.

8 THE WITNESS: Could I please have the
9 question reread?

10 (Record read.)

11 A. I don't know.

12 Q. Do you know if any parties in the
13 proceeding -- let me strike that.

14 Do you know if any -- any parties that
15 signed the stipulation in this proceeding asked for a
16 bill impact analysis?

17 MR. KUTIK: Same instruction.

18 A. I don't know.

19 Q. And, Mr. Fanelli, why did you run a bill
20 impact analysis for purposes of the stipulation that
21 was filed in this proceeding?

22 A. To see the estimated impacts on
23 customers.

24 Q. Why is it important to see the estimated

1 impacts of the stipulation on customers?

2 A. To see how customers' bills are estimated
3 to be affected by the terms of the proposal.

4 Q. And why is it important to know whether
5 customer bills are affected by the proposal?

6 A. Because the companies are responsible for
7 understanding how the rates impact their customers.

8 Q. Do you think it's important to customers
9 to know how their bills are affected by a proposal
10 that's before the PUCO?

11 MR. KUTIK: Objection, calls for
12 speculation. I don't know what customers would or
13 would not be interested in seeing.

14 Q. Are you a customer of FirstEnergy Ohio
15 EDUs?

16 MR. KUTIK: Well, I guess whether he is
17 or he isn't is irrelevant, Maureen. So what's your
18 next question?

19 MS. GRADY: That's my question.

20 MR. KUTIK: Well, he is not going to
21 answer that. His personal circumstances are not
22 going to be a subject of your examination so I will
23 instruct him not to answer those questions.

24 Q. Now, with respect to the -- the -- let's

1 go back to the assumptions, the specific assumptions,
2 and let's try to figure out how the stipulation
3 effects that assumption, how the stipulation -- how
4 the assumptions are impacted by the stipulation.
5 Will the reinstatement of the economic development
6 rider tariff rate, will that as a general principle,
7 will that tend to increase customer bills as opposed
8 to the -- the ESP that was filed for purposes of this
9 proceeding?

10 A. The impact of the stipulation on these
11 rider EDR assumptions could result in increases or
12 decreases depending on the specific customer as
13 compared to Attachment 7 filed with the application.

14 Q. Okay. With respect to residential
15 customers, can you tell me whether the impact on
16 rider EDR would result in increases as compared to
17 the filed ESP plan?

18 MR. KUTIK: Objection.

19 THE WITNESS: Could I have the question
20 reread, please?

21 (Record read.)

22 A. Yes.

23 Q. And would it result -- let me ask it this
24 way, will there -- will there be increased -- will

1 there be increases in residential customer rates
2 under this assumption, under the economic development
3 rider assumption, under the ESP as compared to the
4 filed -- under the stipulation as compared to the
5 filed ESP?

6 MR. KUTIK: Well, I object. You are
7 talking about an EDR assumption. I assume you are
8 referring to page 5.

9 MS. GRADY: Yes. He --

10 MR. KUTIK: Let me finish. He testified
11 how that changed. You are asking him about EDR
12 assumptions and the question is unclear and I think
13 it mischaracterizes his testimony.

14 MS. GRADY: Okay. Let me try to rephrase
15 it, Dave.

16 Q. You indicate, Mr. Fanelli, that these --
17 these assumptions -- and the assumptions we are
18 talking about, we're talking right now about the EDR
19 assumptions on page 5, lines 1 through 3, you
20 testified, did you not, that this assumption is
21 impacted by the stipulation, correct?

22 A. Yes.

23 Q. And you also testified that the impact on
24 rider EDR could result in increases or decreases as

1 compared to the filed ESP plan depending on the type
2 of customer, correct?

3 A. Yes.

4 Q. So my question is with respect
5 specifically to the residential customers, is the
6 impact on the rider EDR, will it result in increases
7 for residential customers as compared to the filed
8 ESP plan?

9 A. Yes.

10 Q. Now, let's move along to the second
11 assumption you made that you indicated would be
12 impacted by the stipulation and I am specifically
13 referring to the demand-side management assumption
14 listed on lines 4 through 6. Do you see where I am
15 referring to?

16 A. Yes, I do.

17 Q. And you testified, Mr. Fanelli, that --
18 let me strike that.

19 It's true that by your testimony this
20 assumption would be impacted by the stipulation,
21 correct?

22 A. Yes.

23 Q. The impact on rider DSC -- would you
24 agree with me, Mr. Fanelli, that the impact on rider

1 DSC could result in increases to residential
2 customers as compared to the filed ESP plan?

3 A. The estimated pricing under rider DSC
4 resulting from the stipulation would be higher than
5 what was assumed in the companies' application
6 Attachment 7.

7 Q. And when you say the pricing would be
8 higher, would that -- would that translate into
9 increases to residential customers as compared to the
10 filed ESP plan?

11 A. Yes.

12 Q. Do you know how much higher the rates
13 would be to residential customers from the impact of
14 this rider DSC?

15 A. Could you please clarify what you mean by
16 "how much higher"?

17 Q. Let -- let's just drop that. Let's move
18 along. On the -- the third assumption that you
19 identified that would be impacted by the stipulation
20 is contained on page 5, lines 10 through 12; is that
21 correct?

22 A. Ye.

23 Q. And can you tell me the -- whether or not
24 that assumption that's changed by the stipulation

1 could result in increases to residential customers as
2 compared to the filed ESP plan?

3 A. There is no impact to residential
4 customers associated with the change to this
5 assumption resulting from the stipulation.

6 Q. Is there -- is there an impact to other
7 nonresidential customers?

8 A. Yes.

9 Q. And can you just -- will you describe
10 that impact, please.

11 A. The impact is to the rate design of rider
12 RRS.

13 Q. Can you explain that -- would you explain
14 that further, please? What is -- what is the change
15 to the rate design that would impact the customer
16 bill impacts to nonresidential customers?

17 MR. KUTIK: Objection.

18 THE WITNESS: Could you please reread the
19 question.

20 (Record read.)

21 A. Under the stipulation rider RRS for
22 nonresidential customers is billed based on demand
23 compared to the companies' application where rider
24 RRS for nonresidential customers was billed based on

1 energy.

2 Q. Thank you, Mr. Fanelli. Now, on page 7,
3 if you could turn to page 7 of your testimony, lines
4 13 and 14, I would like to focus on. And there you
5 state that distribution-related capital costs would
6 be recoverable under an MRO through a base
7 distribution rate case. Do you see that?

8 A. Yes.

9 Q. And you indicate there that -- let me
10 strike that.

11 Is it your understanding -- let me strike
12 that again.

13 Is your understanding that
14 distribution-related capital costs will be
15 recoverable under an MRO specifically related to the
16 Commission's decisions in the companies' most recent
17 ESP III case and other companies' cases?

18 MR. KUTIK: Objection.

19 THE WITNESS: Could I please have the
20 question reread?

21 Q. Let me try to rephrase it for you.

22 A. Thank you.

23 Q. What is the basis of your conclusion that
24 distribution-related capital costs would be

1 recoverable under an MRO through a base distribution
2 rate case?

3 A. Commission precedent.

4 Q. And by Commission precedent, are you
5 limiting it to the cases that are listed in Footnote
6 3?

7 A. Yes.

8 Q. So you have no independent opinions as to
9 whether or not distribution-related capital costs
10 will be recoverable under the MRO.

11 MR. KUTIK: Objection, mischaracterizes
12 his testimony.

13 A. No, I don't agree with that.

14 Q. Have you done an analysis on your own
15 that would indicate, a statutory analysis on your
16 own, that would indicate that you -- you come to the
17 same conclusion as the Commission?

18 MR. KUTIK: Objection, to the extent it
19 calls for a legal conclusion. Also object it
20 mischaracterizes his testimony. Also object on the
21 basis that it assumes that the statute alone is a
22 determiner of what's in and what's out pursuant to
23 the witness's prior testimony.

24 A. Could you please rephrase the question?

1 Q. No, I don't think I can. But let's move
2 on.

3 MR. KUTIK: Let's go off the record for a
4 minute.

5 (Discussion off the record.)

6 (Recess taken.)

7 MR. KUTIK: Okay. Go ahead.

8 Q. Mr. Fanelli, before the break we were
9 discussing base distribution rate cases, and I want
10 to understand whether -- I would like to know whether
11 you are familiar with base distribution rate cases in
12 Ohio that an electric EDU would file.

13 A. Could you please rephrase the question?

14 Q. Do you have -- do you know -- do you know
15 the -- what's involved in a base rate distribution
16 filing that would be made by an Ohio EDU?

17 A. I don't know what an EDU would or would
18 not include in their base case.

19 Q. Do you know if -- in a base distribution
20 rate case whether an EDU would include expenses as
21 well as revenues associated with a definite period of
22 time?

23 A. Could you please clarify what you mean by
24 "definite period of time"?

1 Q. Test period, do you know anything about
2 the test period in Ohio?

3 A. I'm aware there is a test year.

4 Q. And are you familiar with the application
5 process and what expenses and revenues are included
6 during the -- with an application?

7 A. Which application are you referring to?

8 Q. A base distribution rate case made by an
9 Ohio EDU.

10 A. I'm generally aware of the standard
11 filing requirements, but I don't know what a utility
12 would or would not include in their application.

13 Q. Do you have an understanding of the
14 standards that the PUCO applies to determine whether
15 or not expenses and the revenues sought are
16 appropriate to be included in customers' rates?

17 MR. KUTIK: Objection.

18 THE WITNESS: Could I please have the
19 question reread?

20 (Record read.)

21 A. I don't know what the Commission would or
22 would not consider.

23 Q. Do you know the standard that the
24 Commission uses?

1 MR. KUTIK: Objection.

2 Q. Let me rephrase it. Do you know what
3 tests the Commission utilizes to determine whether or
4 not expenses are appropriate for inclusion in a
5 distribution rate case for an electric distribution
6 utility in Ohio?

7 A. I'm sorry. I don't understand what you
8 mean by "standards."

9 Q. How does the Commission determine whether
10 or not expenses that are sought in an electric
11 distribution rate case are appropriate to include in
12 customers' rates?

13 MR. KUTIK: Objection.

14 Q. And I am talking about the Ohio
15 Commission and for an Ohio EDU.

16 A. I don't know what the Commission would or
17 would not consider.

18 Q. So you don't know the standards the
19 Commission applies to determine whether rates --
20 whether expenses are appropriate for purposes of
21 setting rates; is that correct?

22 MR. KUTIK: Objection, mischaracterizes
23 his testimony among other bases.

24 A. Still having trouble understanding the

1 use of the term standards.

2 Q. How does -- let me try to phrase it this
3 way, Mr. Fanelli, let's talk about a distribution
4 rate case and let's talk about distribution
5 investments. How does -- what -- how does the
6 Commission determine whether or not the distribution
7 investment that the company is requesting for
8 purposes of a rate case are appropriate to include in
9 customers' rates?

10 MR. KUTIK: Objection.

11 A. I don't know what the Commission would
12 consider in this determination.

13 Q. Do you know -- do you understand the
14 concept of base rate for purposes of base
15 distribution rate and ratemaking for electric
16 distribution utilities in Ohio?

17 A. Yes.

18 Q. Do you understand the concept of date
19 certain for purposes of ratemaking for Ohio electric
20 distribution utilities?

21 A. Yes.

22 Q. Can you tell me the difference between a
23 rider case and a base distribution rate case?

24 MR. KUTIK: Objection.

1 A. Could you please rephrase the question?

2 Q. Let me try. You have proposed -- or part
3 of the ESP application includes rider DCR, correct?

4 A. Yes.

5 Q. And are you familiar with how rider DCR
6 would be reviewed by the Commission?

7 A. I'm familiar with the rider DCR audit
8 process.

9 Q. Yes. And do you know how the DCR audit
10 process differs from a base distribution rate case
11 process where distribution investment would be
12 reviewed?

13 THE WITNESS: Could I please have the
14 question reread?

15 (Record read.)

16 A. I don't know how the Commission would
17 review distribution investment in a rate case.

18 Q. Do you know, Mr. Fanelli -- you had
19 mentioned that you were familiar with the standard
20 filing requirements for a distribution rate case. Do
21 you know how the filing requirements compare between
22 a distribution rate case and, for instance, the DCR
23 rider audit process?

24 A. I'm sorry. I don't understand the

1 question.

2 Q. You indicated that you were familiar with
3 distribution case standard filing requirements,
4 correct?

5 A. Yes.

6 Q. And am I correct in assuming there are
7 filing requirements associated with the DCR with the
8 audit review process?

9 MR. KUTIK: Objection.

10 A. I'm not aware of filing requirements
11 associated with the rider DCR audit process.

12 Q. Does the DCR audit process require the
13 company to file information with the staff -- or
14 provide information to the staff?

15 A. Could you --

16 MR. KUTIK: Let's go off the record for a
17 minute.

18 (Discussion off the record.)

19 MR. KUTIK: Let's go back on the record.
20 I think -- I'm sorry. I think there was a question
21 pending that had to deal with an issue.

22 MS. GRADY: Perhaps the question could be
23 reread.

24 MR. KUTIK: I would like to make it clear

1 on the record the reason we went off the record was
2 because there was some noise on the phone.

3 (Record read.)

4 A. The rider DCR audit process covers the
5 companies' rider DCR filings which are filed with the
6 Commission on a quarterly basis.

7 Q. But as far as you understand, there is no
8 filing requirement associated with those quarterly
9 filings; is that right?

10 MR. KUTIK: Objection.

11 Q. Similar to -- when I say filing
12 requirement, similar to the standard filing
13 requirement that you referred to with distribution
14 rate cases.

15 MR. KUTIK: Objection.

16 A. I'm not aware of specific filing
17 requirements related to our rider DCR filing.

18 Q. Mr. Fanelli, let's change gears for a
19 moment and talk about the RTEP costs. Is your
20 testimony that the RTEP costs are a quantitative
21 benefit in this case?

22 MR. KUTIK: You want to refer him to a
23 point in his testimony?

24 Q. Sure. That would be page 8, lines 3

1 through 6.

2 MR. KUTIK: I'm sorry, Karen. Could you
3 read the question, please.

4 (Record read.)

5 Q. And I understand that your testimony
6 there refers to the ESP II case, but my question was
7 with respect to this case, do you consider the RTEP
8 costs a quantitative benefit?

9 MR. KUTIK: I'll object.

10 A. Could you please clarify which RTEP costs
11 you're referring to?

12 Q. Well, let's talk for a moment about the
13 RTEP costs that you have listed on page 4, lines --
14 I'm sorry, page 8, line 4.

15 MR. KUTIK: I guess I'll object. I don't
16 know if there is any RTEP costs listed. The term
17 RTEP costs appear. Is that what you are talking
18 about? You're talking about the reference to RTEP
19 costs on the -- on that line, line 4?

20 MS. GRADY: That is correct.

21 MR. KUTIK: Okay.

22 Q. I guess the question is, again -- well,
23 let me try to start over, okay? You refer on page 8,
24 line 4, to RTEP costs, do you see that?

1 A. Yes.

2 Q. Can you tell me how -- please define RTEP
3 costs as you have used them in your testimony there.

4 A. I'm referring here to the costs that the
5 companies agreed to forego as part of their ESP II
6 case.

7 Q. Understanding that that is how you define
8 RTEP costs in the current proceeding, are you -- is
9 it your testimony that the RTEP costs are
10 quantitative benefit for this case?

11 A. No.

12 Q. So the RTEP costs are not included in
13 your more favorable in the aggregate analysis that
14 you present for purposes of ESP IV, correct?

15 A. Correct.

16 Q. Now, with regard to rider RRS and the
17 calculations and your ESP versus MRO test, is it fair
18 to say that if rider RRS does not achieve the
19 projected benefits that are testified to by Mr. Rose,
20 then the quantifiable benefit that you calculate will
21 decrease accordingly?

22 MR. KUTIK: Objection. That
23 mischaracterizes Mr. Rose's testimony.

24 A. Could you please rephrase the question?

1 Q. Let me try. You indicate, Mr. Fanelli,
2 on page 8 of your testimony that in the box -- in the
3 middle of the page you indicate that a quantitative
4 benefit of the ESP IV is the retail rate stability
5 rider. And you show there a net present value of
6 \$805 million. Do you see that?

7 MR. KUTIK: Well, I'll object on the
8 basis that that part of Mr. Fanelli's filed testimony
9 has been amended in the most recent filings that show
10 the amendments to the testimony of various witnesses
11 based upon the stipulation.

12 MS. GRADY: I stand corrected. Let's try
13 to keep the record clean. Thank you, Mr. Kutik.

14 MR. KUTIK: Always glad to be a help.

15 Q. You testify "the quantitative benefit "--
16 and I am looking at your errata sheet, "The
17 quantitative benefit of the retail rate stability
18 rider would be \$770 million in net present value."
19 Do you see that?

20 MR. KUTIK: Just to be clear I don't want
21 to take advantage of the fact that you are not in the
22 room, Ms. Grady. I have shown the witness the errata
23 sheet because he did not have it in front of him.

24 MS. GRADY: Thank you.

1 A. Thanks.

2 THE WITNESS: And I apologize. Because
3 of that I missed the question. Could I please have
4 it reread.

5 Q. I'm sorry. Let me try it again. In your
6 MRO versus ESP test, you assign a quantitative
7 benefit to the retail rate stability rider, correct?

8 A. Yes.

9 Q. And that net present value of the
10 quantitative benefit of the retail rate stability
11 rider is 770 million, correct?

12 A. Yes.

13 Q. And I believe you testified earlier that
14 that 770 net present value figure comes from another
15 witness, correct?

16 A. Yes.

17 Q. And that -- and can you identify which
18 witness that would be from?

19 MR. KUTIK: Objection. Asked and
20 answered. Go ahead and tell her again.

21 A. Witness Ruberto.

22 Q. Thank you. I apologize. It's been a
23 long day. Now, if that net present value -- let me
24 strike that.

1 If rider RRS does not achieve the
2 projected benefit of \$770 million of net present
3 value, then the quantifiable benefit will decrease
4 accordingly, correct?

5 THE WITNESS: Could I please have the
6 question reread?

7 (Record read.)

8 A. I have not conducted that analysis.

9 Q. Mathematically speaking isn't that a
10 correct -- isn't that a correct assumption from a
11 mathematical perspective only, that if you decrease
12 the net present value for the retail rate stability
13 rider, that the total quantitative benefit will also
14 decrease?

15 A. I do not agree with the premise that the
16 benefit would be less than as stated in my testimony.
17 Mathematically if the number was different, then the
18 different number would be reflected in the test.

19 Q. Thank you. Now, earlier today you
20 discussed a little bit about the -- you were asked --
21 let me strike that.

22 Earlier today you were asked some
23 questions about the stipulation. Do you recall those
24 questions?

1 A. I do not specifically, I'm sorry.

2 Q. Okay. Mr. Fanelli, did you have any --
3 did you take any part in negotiating the stipulation?

4 A. No.

5 Q. And are you aware of if there are any
6 agreements with parties that are not set forth in the
7 stipulation?

8 MR. KUTIK: Let me instruct you at this
9 point not to reveal any information that you may have
10 received as a result of conversations with counsel
11 for the purpose of giving or receiving legal advice.
12 If you can answer that question without revealing
13 that information, you can go ahead and answer the
14 question. Do you need the question?

15 THE WITNESS: I do. Could I please have
16 the question again reread, please?

17 (Record read.)

18 A. I don't know.

19 Q. Now, let's move on to your testimony on
20 SEET and that begins on page 10 carrying over to page
21 11. Can you tell me what type of adjustments are
22 made to net income purposes of SEET?

23 A. Is there a specific reference? I'm at
24 page 10 but I didn't hear a line reference.

1 Q. Yes. That would be line 15. You say
2 that the company -- each companies' return on equity
3 is calculated by dividing adjusted net income by a
4 13-month average of adjusted common equity. So
5 referring to the adjusted net income that you used
6 there, can you tell me what type of adjustments are
7 made to net income for purposes of SEET?

8 A. Yes.

9 Q. Can you describe -- please describe those
10 for me.

11 A. Adjustments permitted by the statute,
12 adjustments permitted by the Commission's order in
13 the generic SEET case, and adjustments approved by
14 the Commission as part of the companies' ESP filings.

15 Q. And when you use the term on line 15
16 carrying over to 16 on page 10 the term of "adjusted
17 common equity," can you tell me what type of
18 adjust -- what type of adjustments are made to common
19 equity for purposes of SEET?

20 A. The adjustments to common equity align
21 with the adjustments to net income.

22 Q. Now, you also refer to differences in --
23 appropriate adjustments for differences in capital
24 structure, and I am referring to line 18 on page 10.

1 What type of adjustments are made for differences in
2 capital structure?

3 A. Adjustments to allow for a better
4 comparison between the companies' returns and those
5 returns of the group of companies to which the
6 utilities are measured.

7 Q. And when you refer on line 22 on page 10
8 to the write-off of goodwill, can you tell -- what
9 type of expenses are currently written off as
10 goodwill?

11 A. The companies have not had any writeoffs
12 of goodwill during the term of their ESP.

13 Q. Now, on page 11, lines 11 through 12, you
14 state that the companies are proposing to broaden the
15 adjustment by language that follows. Do you see
16 that?

17 A. Yes.

18 Q. Why is the company seeking to broaden the
19 adjustment of equity?

20 MR. KUTIK: Objection.

21 A. Could you please rephrase?

22 Q. Let me try. You indicate that the
23 company is proposing to broaden the adjustment
24 testified above to include the impacts from

1 Commission orders that result in a reduction in
2 equity. Do you see that?

3 A. Yes.

4 Q. Can you explain -- what is the rationale
5 for the proposal to broaden that adjustment?

6 A. To better balance the interests of the
7 companies and the customers.

8 Q. Is the proposal to broaden the adjustment
9 something that has been addressed by the PUCO before
10 in an order or in -- let's limit it to the -- to the
11 two of the three instances you mentioned before, PUCO
12 order or in the generic SEET proceeding.

13 A. Could you please restate or reread the
14 question.

15 Q. Let me try to restate it. You have a
16 proposal to broaden the first adjustment, so it could
17 include impacts from Commission orders that result in
18 reductions in equity. Are you aware of whether the
19 PUCO has addressed this issue before either in an
20 order, in an ESP proceeding, or an order -- or its
21 order in its generic SEET proceeding?

22 A. I don't know.

23 Q. Can you tell me what types of
24 Commission's orders would result in a reduction in

1 equity?

2 A. Yes.

3 Q. Well, what type of Commission's orders
4 would result in a reduction in equity?

5 A. An example would be an order that
6 disallows recovery of costs.

7 Q. Can you think of any other examples? Or
8 let me -- let me rephrase that.

9 What are other examples of Commission's
10 orders that would result in a reduction in equity?

11 A. There may be others. That is the only
12 one that comes to mind at the moment.

13 Q. Are there any other pending matters,
14 Mr. Fanelli, that you are aware of for the
15 FirstEnergy Ohio EDUs that could result in a
16 reduction in equity?

17 THE WITNESS: Could I please have the
18 question reread?

19 (Record read.)

20 MR. KUTIK: Maureen, let me just make
21 sure I understand the question.

22 MS. GRADY: Sure.

23 MR. KUTIK: You are asking about any
24 matters the result of which might have had that

1 reduction in equity as opposed to any Commission
2 proceeding or matter where the Commission would order
3 a reduction in equity or is it both?

4 MS. GRADY: I think it's both.

5 Q. And my question goes to if there is any
6 pending matters currently before the Commission that
7 could result in a reduction in equity.

8 A. I don't have the list of all pending
9 matters in front of me, so I'm not able to answer
10 that.

11 Q. Do you know if there are any issues in
12 the present proceeding, the ESP IV proceeding, that
13 could result in a reduction in equity for the -- for
14 the FirstEnergy Ohio EDUs?

15 THE WITNESS: Could I please have the
16 question reread?

17 (Record read.)

18 A. I don't understand the question. I'm
19 sorry.

20 Q. Is it your expectation -- let me strike
21 that.

22 Let's talk about -- and this is the last
23 area of inquiry. Let's talk about this DCR revenue
24 cap that you testified to. I am going to direct you

1 to page 3 and 4 of your testimony. You describe on
2 page 3 of your testimony, lines 20 through 23, the
3 basis for the proposed rider DCR cap. Do you see
4 that?

5 A. Yes.

6 Q. You say there they are based on the
7 existing revenue caps under ESP III with annual
8 increases, right?

9 A. Yes.

10 Q. And the ESP revenue caps were set under a
11 stipulation adopted by the PUCO; is that correct?

12 A. The current rider DCR caps were approved
13 as part of the companies' ESP III.

14 Q. And the revenue cap there is \$187 million
15 for June 1, 2014, through 5-31-15; is that right?

16 A. Yes.

17 Q. And 210 million for the period June 1,
18 2015, through May 31, 2016?

19 A. Yes.

20 Q. And do you know how those caps were
21 developed?

22 A. Yes.

23 Q. How were they developed?

24 A. The ESP III caps were developed as a

1 continuation of the ESP II caps.

2 Q. The ESP II caps there was -- the -- can
3 you tell me what the caps were that were in place for
4 the ESP II?

5 MR. KUTIK: I'm sorry. What was your
6 question?

7 Q. What were the caps that were in place for
8 ESP II?

9 A. For the year 2012, the aggregate cap was
10 150 million. For the year 2013, the aggregate DCR
11 revenue cap was 165 million. And for the period
12 January 1, 2014, through May 31, 2014, the aggregate
13 rider DCR revenue cap was 75 million.

14 Q. And can you tell me -- let me strike
15 that.

16 And how were those caps developed? What
17 are the bases for those caps?

18 MR. KUTIK: Objection.

19 A. I don't remember.

20 Q. Would you agree that they are related to
21 the distribution rate case, the 07-551 rate case?

22 MR. KUTIK: Objection.

23 A. Could I have the question reread, please?

24 (Record read.)

1 A. Could you please rephrase? I don't know
2 what you mean by "related to."

3 Q. Sure, sure. At some point in this
4 examination you referred to the investment in
5 distribution as incremental. Do you recall that?

6 A. In the context of rider DCR, yes.

7 Q. And you refer on page -- on page 3, line
8 23, to the fact that the revenue cap increases is
9 based on the actual average annual rider DCR revenue
10 requirement increase since the company's last base
11 rate case. Do you see that?

12 A. Yes.

13 Q. Is the company's last base rate case the
14 Case No., if you know, 07-551?

15 A. Yes.

16 Q. And do you know what the test year would
17 have been for that rate case?

18 A. Yes.

19 Q. What was the test year for that rate
20 case?

21 A. March of 2007 through February of 2008.

22 Q. Do you know, Mr. Fanelli, whether the cap
23 increases that we have -- let's start -- let's take
24 this bit by bit. You identified cap increases as --

1 as a part of the ESP II process, correct?

2 MR. KUTIK: Objection.

3 A. I'm sorry. Could you please rephrase?

4 Q. Sure. We discussed that as part of the
5 ESP II, there were rate caps agreed to for the DCR.
6 Do you recall that?

7 A. There were revenue caps for rider DCR
8 under ESP II.

9 Q. I'm sorry, revenue caps. Okay. And then
10 you also testified that there were -- were revenue
11 caps developed under ESP III, correct?

12 A. There were revenue caps for rider DCR
13 under ESP III.

14 Q. And those revenue caps were increased
15 caps compared to the ESP II revenue caps, correct?

16 MR. KUTIK: Objection. The aggregate
17 rider DCR revenue caps were, as we previously stated
18 in this line of questioning, for ESP II and ESP III.

19 Q. And the aggregate revenue caps have
20 increased, have they not, from ESP II to ESP III to
21 ESP IV, correct?

22 MR. KUTIK: Objection.

23 THE WITNESS: Could I please have the
24 question reread?

1 (Record read.)

2 A. The companies don't have approved revenue
3 caps for rider DCR under ESP IV.

4 Q. But the company has proposed revenue
5 capped increases, correct, for ESP IV?

6 A. Yes.

7 Q. And they proposed revenue increase --
8 revenue capped increases in ESP III, correct?

9 A. The revenue caps under ESP III are higher
10 than under ESP II.

11 Q. And the revenue increased caps proposed
12 in ESP IV are higher than those under ESP III,
13 correct?

14 A. I'm sorry. Could you please rephrase? I
15 thought I heard the term "revenue increased cap."

16 Q. I'm sorry. You have proposed -- you do
17 testify on page 3 of your testimony that there is a
18 \$30 million annual aggregate revenue cap increase.
19 Do you see that reference?

20 A. Which page?

21 Q. Page 3, line 22.

22 A. Yes, I see that reference.

23 Q. And that \$30 million annual aggregate
24 revenue cap increase refers to the increase between

1 ESP III and what you have proposed for ESP IV; is
2 that correct?

3 A. Yes.

4 Q. Is it your opinion, Mr. Fanelli, that the
5 cap increases specified in ESP III resulted in
6 inadequate distribution revenues for the Ohio
7 FirstEnergy EDUs?

8 MR. KUTIK: Objection.

9 A. The ESP III period just started on June 1
10 of 2014. So I don't have information to be able to
11 respond to your question.

12 Q. So you have not made a determination that
13 the -- the cap increases specified in ESP III
14 resulted in inadequate revenues for the FirstEnergy
15 Ohio EDUs, correct?

16 MR. KUTIK: Objection.

17 THE WITNESS: Could I please have the
18 question reread?

19 (Record read.)

20 A. Could you please rephrase? I don't know
21 what you mean by "inadequate."

22 Q. Well, you determined, have you not, to --
23 to apply for an increase in the cap, a \$30 million
24 increase in the aggregate revenue cap, correct?

1 A. Under ESP IV as compared to ESP III, yes.

2 Q. And what is the basis of your choosing
3 the \$30 million annual aggregate revenue cap
4 increase?

5 A. Actual data.

6 Q. And by actual data are you referring to
7 the actual average annual rider DCR revenue
8 requirement?

9 A. Since the companies' last base rate case,
10 yes.

11 Q. And you are projecting, are you not, a
12 revenue -- at least a rider DCR revenue requirement
13 for the ESP IV?

14 A. No.

15 Q. You are basing the \$30 million annual
16 aggregate revenue cap increase on the historical DCR
17 revenue requirements; is that correct?

18 MR. KUTIK: Objection. Could you please
19 rephrase?

20 Q. You chose \$30 million to increase the
21 annual aggregate revenue cap, correct, for 2000 --
22 for the ESP IV, correct?

23 A. Yes.

24 Q. And the question is what did you base

1 that on?

2 MR. KUTIK: Objection, asked and
3 answered. Tell her again.

4 A. The \$30 million annual aggregate revenue
5 cap increase is based on the actual average annual
6 rider DCR revenue requirement increase since the
7 companies' last base rate case.

8 Q. But you have not determined the actual
9 annual revenue requirement for the ESP period for ESP
10 IV, correct?

11 THE WITNESS: Could I please have the
12 question reread?

13 (Record read.)

14 A. I have not determined the actual revenue
15 requirement for DCR for the ESP IV period.

16 MS. GRADY: Thank you, Mr. Fanelli.
17 That's all the questions I have.

18 MR. KUTIK: All right. Before we
19 continue let's take a break before we take the next
20 question -- line of questions.

21 (Recess taken.)

22 MR. KUTIK: Let's go back on the record.

23 Ms. Hussey, I understand you're next.

24 MS. HUSSEY: I am, thank you very much.

CROSS-EXAMINATION

By Ms. Hussey:

Q. Mr. Fanelli, you address the proposed annual aggregate revenue caps for rider DCR in your testimony, correct?

A. Yes.

Q. Okay. Can I direct your attention to page 3, lines 11 through 16. And there you testify as to generally what happens if the companies' spending produces revenue over or under the caps in any year; is that correct?

A. Yes.

Q. Can we agree to call the provision that you discuss there the rollover provision?

A. For this purpose I'm fine with that.

Q. Okay. Thank you. And is the rollover provision currently in effect?

A. Yes.

Q. Okay. You testified that the proposed annual aggregate rider DCR caps are based on the existing revenue caps with annual increases of \$30 million; correct?

MR. KUTIK: Objection, asked and answered. Go ahead and tell her again.

1 MS. HUSSEY: I'm sorry. I am just trying
2 to lay a foundation.

3 MR. KUTIK: It's been laid. Go ahead.

4 MS. HUSSEY: Okay.

5 A. Yes, that's correct.

6 Q. All right. Thank you. And the
7 \$30 million annual cap increase is based on the
8 average annual revenue requirement increase for rider
9 DCR since the companies' last distribution rate case,
10 correct?

11 A. Yes.

12 Q. Okay. And you testify that it has been
13 seven years since the companies' last distribution
14 rate case; is that accurate?

15 A. Do you have a specific reference?

16 Q. Sure. On page 4, line 1, you make
17 reference to the date certain in the companies' last
18 base distribution rate case.

19 A. Yes, I see the reference.

20 Q. Okay. You testify on page 4 beginning at
21 line 5 that in combination with all
22 distribution-related provisions of the proposed ESP
23 that the proposed rider DCR revenue caps are
24 reasonable; is that accurate?

1 A. Yes.

2 Q. Okay. When you formed your opinion that
3 the caps are reasonable, did you assess whether it
4 was reasonable if the companies have not filed a base
5 distribution rate case in seven years?

6 A. Could you please rephrase the question?

7 Q. Sure. Did you -- when you were forming
8 your opinion that the caps proposed are reasonable,
9 did you take into account whether or not it was
10 reasonable that the companies have not filed a base
11 distribution rate case in the past seven years?

12 A. I'm sorry. I don't understand the
13 question.

14 Q. Okay. My understanding is that you
15 formed an opinion and you've testified that the
16 proposed caps are reasonable; is that correct?

17 A. Yes.

18 Q. Okay. And when you formed that opinion
19 and made that determination, was one of the factors
20 that you took into account whether it was reasonable
21 that the companies haven't filed a base distribution
22 rate case in the last seven years?

23 MR. KUTIK: I'll object at this point.

24 That's the third time you have asked the same

1 question, and the witness has told you at least two
2 times prior to this he doesn't understand your
3 question.

4 MS. HUSSEY: I think he understands the
5 question.

6 MR. KUTIK: Well, perhaps magically he's
7 come to that view. He can answer if he understands
8 it.

9 Q. Okay. Let's go on. Do you think it's
10 reasonable that the companies have not filed a base
11 distribution rate case in the past seven years?

12 A. Yes.

13 Q. Okay. And what's your reasoning for
14 that?

15 A. It's provided rate stability.

16 Q. Do you think the fact that seven years
17 has passed since the companies last filed a rate
18 distribution -- or base distribution rate case has
19 any bearing on whether the proposed caps for rider
20 DCR are reasonable?

21 THE WITNESS: Could I please have the
22 question reread?

23 (Record read.)

24 A. Yes.

1 Q. Okay. And what's the rationale behind
2 that answer?

3 A. As noted in my testimony, the base
4 distribution rate freeze is one of the
5 distribution-related provisions of the proposed ESP
6 IV which when taken as a package support my
7 conclusion that the rider DCR revenue caps are
8 reasonable.

9 Q. Okay. Thank you. Can we talk about the
10 ESP versus MRO test? It is my understanding there
11 was an errata filed on November 11, 2014, that
12 affected your testimony; is that your understanding?

13 A. I'm sorry. I don't recall the specific
14 date but there was an errata filed.

15 Q. Okay. And then also for my understanding
16 there was an amendment to your testimony filed on
17 January 21, 2015, to reflect the stipulation; is that
18 correct?

19 A. Again, I don't recall the specific date
20 but, yes, there was an amendment filed to my
21 testimony related to the stipulation.

22 Q. Okay. Thank you. And as a result of the
23 amendment, the information appearing on page 8 of
24 your testimony, lines 9 through 11 including the

1 table should be deleted; is that correct?

2 A. Correct.

3 Q. Okay. And it's my understanding that the
4 table provided the quantitative benefit of the
5 proposed ESP; is that accurate?

6 THE WITNESS: Could I please have the
7 question reread?

8 (Record read.)

9 A. The table that was removed from my
10 testimony as a result of the amendment reflected the
11 quantitative benefit of the ESP IV as filed in the
12 companies' application.

13 Q. Okay. And do you know why the table was
14 deleted?

15 A. Yes.

16 Q. Okay. And could you tell me why?

17 A. The stipulation impacted the quantitative
18 benefit of the ESP IV and so that table was moved
19 into the companies' supplemental testimony.

20 Q. In spite of the table and lines 9 through
21 11 on page 8 of your testimony having been amended or
22 deleted, are you still offering testimony on the
23 total quantitative benefits of the ESP IV?

24 A. The numerical changes as a result of the

1 first errata sheet, yes.

2 Q. Okay. Thank you. Let me refer you to
3 page 8, lines 3 through 6. You refer to RTEP costs
4 there. Do you see that?

5 A. Yes.

6 Q. Okay. You testified that in the ESP II
7 case the Commission considered the entire amount of
8 the RTEP costs that the companies agreed to forego as
9 a quantitative benefit of that ESP; is that accurate?

10 MR. KUTIK: I'm sorry. May I have the
11 question read, please.

12 (Record read.)

13 A. The entirety of the benefit of that
14 commitment was recognized in the companies' ESP II
15 case.

16 Q. Okay. Thank you. And you further
17 testify that the Commission considers the entire
18 amount foregone by the companies is a quantitative
19 benefit of the ESP notwithstanding the fact that the
20 RTEP costs could be incurred -- would be incurred by
21 the companies beyond the term of that ESP; is that
22 correct?

23 THE WITNESS: Could I please have the
24 question reread?

1 (Record read.)

2 A. Yes.

3 Q. Okay. Would you agree that the entire
4 amount of the RTEP costs to be foregone by the
5 companies was determined prior to the Commission
6 decision to treat the amount as a quantitative
7 benefit of the proposed ESP?

8 THE WITNESS: Could I please have the
9 question reread?

10 (Record read.)

11 A. The commitment was recognized in the
12 companies' stipulation which preceded the ultimate
13 Commission order.

14 Q. Okay. And was the entire amount that
15 would be foregone identified in the stipulation?

16 MR. KUTIK: Objection.

17 A. I don't have the stipulation in front of
18 me.

19 Q. Okay. Is it your understanding that the
20 amount of costs to be foregone by the companies was a
21 concrete figure or predetermined?

22 MR. KUTIK: Objection.

23 A. No.

24 Q. So the parties did not agree on a certain

1 amount of costs to be foregone by the company?

2 MR. KUTIK: Objection.

3 A. Without having the stipulation in front
4 of me and reading the entirety of the provision, I'm
5 not in a position to answer that.

6 Q. Okay. Would you agree that the benefits
7 of rider RRS forecasted by the companies are not
8 guaranteed?

9 MR. KUTIK: Objection.

10 THE WITNESS: Could I have the question
11 reread, please?

12 (Record read.)

13 Q. Would you agree that the benefits of
14 rider RRS forecasted by the companies are not
15 guaranteed?

16 MR. KUTIK: Objection.

17 A. Which benefits are you referring to?

18 Q. The quantitative benefits.

19 A. The quantitative benefit of rider RRS is
20 based on estimates.

21 Q. Okay. And because it's based on
22 estimates it's not guaranteed; is that correct?

23 MR. KUTIK: Objection.

24 A. Could you please rephrase the question?

1 Q. Sure. You indicated that the
2 quantitative benefits of the rider retail rate
3 stability are based on estimates; is that correct?

4 A. Yes.

5 Q. Are those estimates guaranteed to result
6 in quantitative benefits?

7 MR. KUTIK: Objection.

8 A. The estimates are estimates.

9 Q. Correct. And so I'm asking are they
10 guaranteed?

11 MR. KUTIK: Objection.

12 A. If you're asking if the numeric value of
13 the quantitative benefit is going to be exactly what
14 is stated in my testimony, I don't know.

15 Q. Okay. Thank you. I am going to ask you
16 to make an assumption. Would you please assume that
17 the Commission does not approve rider RRS. Under
18 that assumption without rider RRS, is it your opinion
19 that the ESP would still be quantitatively
20 beneficial?

21 MR. KUTIK: Well, I'll object to the
22 extent that the full quantitative benefits are
23 discussed further in Mr. -- in Ms. Mikkelsen's
24 testimony, and for the reason I objected to

1 Mr. Mendoza's question I will object to that
2 question.

3 A. There are --

4 Q. I'm sorry. I am just asking about your
5 opinion.

6 MR. KUTIK: It's the same objection. You
7 know that there is another witness who's testified
8 about it, and I would suggest -- let me finish. I
9 suggest to you you ask her those questions. It's
10 unfair to ask this witness questions about another
11 witness's testimony and you know that.

12 THE WITNESS: Could you please read the
13 question?

14 (Record read.)

15 A. Yes.

16 Q. Okay. Have you performed any analysis to
17 determine what the quantitative benefit would be
18 without rider RRS?

19 MR. KUTIK: Same objection.

20 A. I address an additional quantifiable
21 benefit in my testimony. For the full quantitative
22 benefits reflecting the impact of the stipulation I
23 would defer to Ms. Mikkelsen's supplemental
24 testimony.

1 Q. Okay. Thank you. One last topic, would
2 you please turn to page 11, line 11 of your
3 testimony. My understanding you are proposing to add
4 language to the category of adjustments to the SEET
5 calculation; is that correct?

6 A. I'm sorry. I was flipping the pages. .

7 THE WITNESS: Could I please have the
8 question reread?

9 Q. I can just ask you again, I'm sorry.
10 You're proposing to add language to the category of
11 adjustments to the SEET calculation; is that
12 accurate?

13 A. Yes.

14 Q. Okay. And specifically the companies are
15 seeking to exclude from the calculation of the SEET,
16 the impact of a reduction in equity arising from a
17 Commission order; is that correct?

18 THE WITNESS: Could I please have the
19 question reread?

20 (Record read.)

21 A. Yes.

22 Q. Okay. What's the impetus behind this
23 proposed change?

24 A. Could you please rephrase the question?

1 Q. Sure. What is your understanding of why
2 the companies are seeking this change?

3 MR. KUTIK: Objection, asked and
4 answered. Tell her again.

5 A. To better balance the interests of the
6 companies and its customers.

7 Q. Okay. And is it your position that the
8 interests of the companies and their customers are
9 not balanced currently?

10 MR. KUTIK: Objection, also
11 mischaracterizes his testimony.

12 A. Could you please --

13 MS. HUSSEY: I'm sorry. I didn't hear
14 that.

15 MR. KUTIK: I said it mischaracterizes
16 his testimony.

17 MS. HUSSEY: I was just asking a
18 question.

19 MR. KUTIK: I said so which implies that
20 that's what he testified about. Go ahead.

21 A. Could you please rephrase the question?

22 Q. Sure. I believe you stated that one of
23 the reasons behind the change or the reason behind
24 the change is to balance the interests of the

1 companies versus their customers; is that correct?

2 A. Yes.

3 Q. Okay. And all I asked was do you
4 currently believe that the interests are out of
5 balance?

6 MR. KUTIK: Objection.

7 A. In this context, this circumstance would
8 arise, yes.

9 MS. HUSSEY: Okay. Thank you for your
10 time this afternoon. I appreciate it. Those are my
11 questions.

12 MR. KUTIK: Okay. Ms. Fleisher?

13 MS. FLEISHER: Yes. I am happy to say I
14 don't feel like I need to ask any more questions so.

15 MR. STINSON: Dave, this is Dane Stinson.
16 I have just a few clarifying questions.

17 MR. KUTIK: Okay. Please go ahead.

18 - - -

19

20

21 CROSS-EXAMINATION

22 By Mr. Stinson:

23 Q. Mr. Fanelli, my name is Dane Stinson. I
24 represent the Northeast Ohio Public Energy Council.

1 Just a few clarifying questions on what we have been
2 through today already primarily concerning your
3 analysis of the ESP versus MRO test. Now,
4 specifically what materials did you review when
5 conducting your analysis? I understand that you
6 considered the Commission orders at paragraph 3 on
7 page 7; is that correct? It was Footnote 3, page 7
8 of your testimony.

9 A. I considered those orders, yes.

10 Q. Did you also consider any statutes?
11 Specifically did you consider Section 4928.142?

12 A. Yes.

13 Q. And are you -- do you understand that
14 that would be the statute used for determining the
15 MRO?

16 A. My understanding is that 4928.142
17 addresses market rate offers.

18 Q. Thank you. And did you also consider
19 4928.143?

20 A. Yes.

21 Q. And do you agree that statute considers
22 the establishment of the ESP?

23 A. My understanding is that 4928.143
24 addresses electric security plans.

1 Q. And going back to 4928.142, the MRO
2 statute, would you agree with me that at a high
3 level, the statute provides for developing a standard
4 service offer generation supply through a competitive
5 bid process?

6 MR. KUTIK: May I have the question read,
7 please.

8 (Record read.)

9 A. I don't have a copy of that statute in
10 front of me.

11 MR. STINSON: Is one available to him,
12 Mr. Kutik?

13 MR. KUTIK: I don't have it.

14 MR. STINSON: So your response is -- does
15 anyone else in the room have a copy for Mr. --

16 MR. KUTIK: Ask your next question.

17 MR. STINSON: Well, reread the question.

18 (Record read.)

19 A. I'm not comfortable answering that
20 without having the statute in front of me to refer
21 to.

22 Q. So you don't know?

23 MR. KUTIK: Objection, asked and
24 answered.

1 MR. STINSON: I am asking him does he
2 know.

3 MR. KUTIK: He has given his answer.
4 What's your next question?

5 Q. Are you not going to answer that
6 question, Mr. Fanelli?

7 MR. KUTIK: I will instruct him not to
8 answer because, now, you are badgering the witness,
9 and we will stipulate that the witness will follow my
10 instructions.

11 Q. Let's go to Section 4928.143,
12 Mr. Fanelli. Are you aware that Section
13 4928.143(B)(2)(1) also provides for a generation
14 supply through -- for pricing of generation supply?

15 MR. KUTIK: Objection. Yeah, I mean, the
16 section you've cited does not exist, so I will make
17 that objection.

18 Q. 4928.143(B)(1)?

19 THE WITNESS: Could I please have the
20 question reread.

21 Q. I'll just restate it for you,
22 Mr. Fanelli.

23 A. Thank you.

24 Q. Are you aware Section 4928.143(B)(1)

1 provides for the determination of the pricing of
2 electric generation service?

3 MR. KUTIK: May I ask whoever is on the
4 phone, not Mr. Stinson, to put their phone on mute.

5 A. I do not have a copy of 4928.143 in front
6 of me, so I am not able to review that reference.

7 Q. And you don't recall what those
8 provisions provided?

9 A. My answer is the same.

10 Q. But in developing your testimony, you did
11 consider Sections 149 -- sorry. Did you consider
12 Sections 4928.142 and 4928.143, correct?

13 MR. KUTIK: Objection, asked and
14 answered. Tell him again.

15 A. Yes.

16 MR. STINSON: No other questions.

17 MR. KUTIK: Okay. At this point it
18 appears the deposition has been concluded. So I will
19 indicate that Mr. Fanelli will exercise his right to
20 read the transcript.

21 Thank you, Karen, as always and we are
22 off the record.

23 (Thereupon, the deposition was concluded
24 at 4:01 p.m.)

1 State of Ohio :
2 County of Summit : SS:

3 I, Santino L. Fanelli, do hereby certify that
4 I have read the foregoing transcript of my deposition
5 given on Wednesday, January 28, 2015; that together
6 with the correction page attached hereto noting
7 changes in form or substance, if any, it is true and
8 correct.

9 Santino L. Fanelli
10 Santino L. Fanelli

11 I do hereby certify that the foregoing
12 transcript of the deposition of Santino L. Fanelli
13 was submitted to the witness for reading and signing;
14 that after he had stated to the undersigned Notary
15 Public that he had read and examined his deposition,
16 he signed the same in my presence on the 10th day
17 of February, 2015.

18 Nancy Davis
19 Notary Public

20 My commission expires 2-8, 2016.

21 - - -

ERRATA SHEET

Please do not write on the transcript. Any changes in form or substance you desire to make should be entered upon this sheet.

TO THE REPORTER:

I have read the entire transcript of my deposition taken on the 28th day of January, 2015, or the same has been read to me. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the signature page and authorize you to attach the same to the original transcript.

Page	Line	Change	Reason
19	15	"well" should be "with"	transcription error
39	9	insert "an" between "is" and "in"	transcription error
45	12	"precedents" should be "precedent"	transcription error
96	24	"helped" should be "help"	transcription error
100	15	"got" should be "not"	transcription error
105	12-13	The sentence "I don't know what customers would or would not be interested in seeing" should be an Answer, not part of the objection.	transcription error
108	23	"DSC" should be "DSE"	transcription error
109	1, 3	"DSC" should be "DSE"	transcription error
109	22	"Ye" should be "Yes"	transcription error
115	24	insert "I'm" before "Still"	transcription error
116	12	"this" should be "its"	transcription error
116	14	"base rate" should be "rate base"	transcription error
126	2	"companies'" should be "Company's"	transcription error
127	12	"ESP" should be "ESPs"	transcription error
131	14	"187" should be "195"	transcription error
135	5	"capped" should be "cap"	transcription error
135	8	"capped" should be "cap"	transcription error
144	24	insert "Including" before "The"	transcription error
145	18	"is" should be "as"	transcription error
151	6	"its" should be "their"	transcription error
152	7	insert "if" before "this circumstance"	transcription error

Date: 2-10-15 Signature: _____

Santino L. Fanelli
Santino L. Fanelli

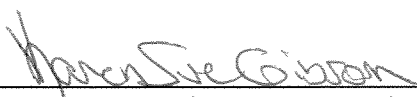
1 CERTIFICATE

2 State of Ohio :
3 County of Franklin : SS:

4 I, Karen Sue Gibson, Notary Public in and for
5 the State of Ohio, duly commissioned and qualified,
6 certify that the within named Santino L. Fanelli was
7 by me duly sworn to testify to the whole truth in the
8 cause aforesaid; that the testimony was taken down by
9 me in stenotypy in the presence of said witness,
afterwards transcribed upon a computer; that the
foregoing is a true and correct transcript of the
testimony given by said witness taken at the time and
place in the foregoing caption specified and
completed without adjournment.

10 I certify that I am not a relative, employee,
11 or attorney of any of the parties hereto, or of any
12 attorney or counsel employed by the parties, or
financially interested in the action.

13 IN WITNESS WHEREOF, I have hereunto set my
14 hand and affixed my seal of office at Columbus, Ohio,
on this 2nd day of February, 2015.

15 
16 Karen Sue Gibson, Registered
17 Merit Reporter and Notary Public
in and for the State of Ohio.

18 My commission expires August 14, 2015.

19 (KSG-5995)

20 - - -
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22
23
24

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Case No(s). 14-1297-EL-SSO

Summary: Deposition (Public) of Santino L. Fanelli electronically filed by Mr. Tony G. Mendoza
on behalf of Sierra Club