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 Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan.	:	Case No. 14-1297-EL-SSO

- - -

PROCEEDINGS

before Mr. Gregory Price, Ms. Mandy Chiles, and Ms. Megan Addison, Attorney Examiners, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-A, Columbus, Ohio, called at 10:00 a.m. on Monday, August 31, 2015.

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VOLUME I

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1 APPEARANCES:

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3 and Ms. Carrie M. Dunn
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By Mr. James Lang
6 and Mr. N. Trevor Alexander
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Jones Day
9 By Mr. David A. Kutik
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11 On behalf of the Applicants.

12 Bruce E. Weston, Ohio Consumers' Counsel
By Mr. Larry Sauer
13 Ms. Maureen R. Grady
Mr. William J. Michael
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17 On behalf of the Residential Consumers of
Ohio Edison Company, The Cleveland
18 Electric Illuminating Company, and The
Toledo Edison Company.
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20 By Ms. Colleen L. Mooney
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21 Findlay, Ohio 45840

22 On behalf of the Ohio Partners for
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8 On behalf of the Northeast Ohio Public
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9 Power for the Schools.
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On behalf of the Industrial Energy Users
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14 Electric Power Supply Association,
Constellation NewEnergy, and Exelon
15 Generation, LLC.
16 Mike DeWine, Ohio Attorney General
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On behalf of the Staff of the PUCO.
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5 On behalf of the Ohio Manufacturers'
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15 By Ms. Madeline Fleisher
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17 On behalf of the Environmental Law &
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8 On behalf of the Cleveland Municipal
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13 On behalf of Wal-Mart Stores East, LP,
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17 By Mr. Thomas J. O'Brien
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19 On behalf of the Ohio Hospital
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On behalf of the Ohio Environmental
24 Council and the Environmental Defense
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1 APPEARANCES: (Continued)

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3 Maineville, Ohio 45039

4 On behalf of the Northwest Ohio
Aggregation Coalition and the Individual
5 Communities.

6 Ice Miller, LLP
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On behalf of the Association of
9 Independent Colleges and Universities of
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11 By Mr. Steven T. Nourse
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On behalf of Material Sciences
17 Corporation.

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On behalf of the Citizens Coalition.
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24 Columbus, Ohio 43215-4294

25 On behalf of the EverPower Wind Holdings,

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1 Monday Morning Session,
2 August 31, 2015.
3 - - -
4 EXAMINER CHILES: The Public Utilities
5 Commission of Ohio has called for hearing at this
6 time and place Case No. 14-1297-EL-SSO, being In The
7 Matter of the Application of Ohio Edison Company, The
8 Cleveland Electric Illuminating Company, and the
9 Toledo Edison Company for Authority to Provide for a
10 standard service offer Pursuant to R.C. Code 4928.143
11 in the Form of an Electric Security Plan.
12 My name is Mandy Chiles, and with me are
13 Gregory Price and Megan Addison, and we are the
14 Attorney Examiners assigned by the Commission to hear
15 this case.
16 I would like to begin by taking
17 appearances of the parties present today. We will
18 begin with the companies and proceed around the
19 table.
20 MR. BURK: Thank you, your Honor. On
21 behalf of Ohio Edison Company, the Cleveland Electric
22 Illuminating Company, and the Toledo Edison Company,
23 James W. Burk and Carrie M. Dunn. Also on behalf of
24 the companies, David A. Kutik of the Jones Day law
25 firm, 901 Lakeside Avenue, Cleveland, Ohio, and also

on behalf of the companies, James F. Lang and N. Trevor Alexander of Calfee, Halter & Griswold, the Calfee Building, 1405 East Sixth Street, Cleveland, Ohio, and the companies' corporate address is 76 South Main Street, Akron, Ohio 44308.

EXAMINER CHILES: Thank you.

MR. SAUER: Thank you, your Honor. On behalf of the residential consumers of the FirstEnergy companies, the Office of the Ohio Consumers' Counsel, Bruce J. Weston, Consumers' Counsel, Larry Sauer, Maureen Grady, Kevin Moore, William Michael, and Ajay Kumar, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215.

EXAMINER CHILES: Thank you.

MR. KURTZ: Good morning, your Honor. For the Ohio Energy Group, Mike Kurtz, Kurt Bohem, and Jody Kyler Cohn, 1510 URS Center, Cincinnati, Ohio.

EXAMINER CHILES: Thank you.

MR. LAVANGA: Good morning, your Honor. On behalf of Nucor Steel Marion, Michael Lavanga, Garret Stone, and Owen Kopon of the law firm of Stone, Mattheis, Xenopoulos & Brew, 1025 Thomas Jefferson Street, N. W., Washington, D.C.

EXAMINER CHILES: Thank you.

1 MR. McNAMEE: On behalf of the staff of
2 the Public Utilities Commission of Ohio, Thomas
3 Lindgren, L-I-N-G-D-R-E-N, and Steven Beeler,
4 B-E-E-L-E-R, and I am Thomas McNamee, M-C-N-A-M-E-E.
5 The address is 180 East Broad Street, Columbus, Ohio.
6 MR. OLIKER: Good morning, your Honors.
7 On behalf of the IGS Energy, Joseph E. Oliker, 6100
8 Emerald Parkway, Dublin, Ohio 43016. Thank you.
9 EXAMINER CHILES: Thank you.
10 MS. FLEISHER: Good morning, your Honors.
11 On behalf of the Environmental Law & Policy Center,
12 Madeline Fleisher at 21 West Broad Street, Suite 500,
13 Columbus, Ohio 43215.
14 MR. SMITH: Your Honors, on behalf of
15 Material Sciences Corporation, Craig I. Smith,
16 Attorney at Law, 15700 Van Aken Boulevard, Suite 26,
17 Shaker Heights, Ohio 44120.
18 EXAMINER CHILES: Thank you.
19 MR. MEISSNER: Good morning, your Honor.
20 My name is Joseph Meissner. I am an attorney. 5400
21 Detroit Avenue, Cleveland, Ohio 44102 is our address.
22 I am here representing the Citizens Coalition, and,
23 your Honor, this is my 40th year in these hearing
24 rooms celebrating representing low-income families,
25 senior citizens, and other vulnerable customers.

1 Thank you very much.
2 EXAMINER PRICE: Congratulations.
3 MR. SECHLER: Good morning, your Honors.
4 On behalf of EnerNOC, Inc., Joel Sechler from the law
5 firm of Carpenter, Lipps & Leland, LLP, 280 North
6 High Street, Suite 1300, Columbus, Ohio 43215. Thank
7 you.
8 EXAMINER CHILES: Thank you.
9 MS. BOJKO: Thank you, your Honors. On
10 behalf of the Ohio Manufacturers' Association Energy
11 Group, Kimberly W. Bojko, Rebecca L. Hussey, with the
12 law firm of Carpenter, Lipps & Leland, LLP, 280 North
13 High Street, Suite 1300, Columbus, Ohio 43215.
14 EXAMINER CHILES: Thank you.
15 MR. FISK: Good morning, your Honor. On
16 behalf of Sierra Club, Shannon Fisk, Earthjustice,
17 1617 John F. Kennedy Boulevard, Suite 1675,
18 Philadelphia, Pennsylvania 19103. And I have with me
19 Richard Sahli, 981 Pinewood Lane, Columbus, Ohio,
20 Michael Soules, also with Earthjustice, and Tony
21 Mendoza with Sierra Club, 85 Second Street, San
22 Francisco, California 94105.
23 EXAMINER CHILES: Thank you.
24 MR. DOUGHERTY: Good morning, your Honor.
25 On behalf of the Ohio Environmental Council and the

1 Environmental Defense Fund, Trent Dougherty and John
2 Finnigan, 115 Chesapeake Avenue, Suite I, Columbus,
3 Ohio 43212.
4 EXAMINER CHILES: Thank you.
5 MR. O'BRIEN: Good morning, your Honor.
6 On behalf of the Ohio Hospital Association, Richard
7 L. Sites, 155 East Broad Street, Columbus, Ohio
8 43215, and Bricker & Eckler, LLP, by Thomas J.
9 O'Brien, 100 South Third Street, Columbus, Ohio
10 43215. Thank you.
11 EXAMINER CHILES: Thank you.
12 MR. PETRICOFF: Good morning, your Honor.
13 On behalf of the Retail Energy Supply Association,
14 the Electric Power Supply Association, PJM Power
15 Providers Group, Exelon Generation, LLC, and
16 Constellation NewEnergy, Howard Petricoff, Gretchen
17 Petrucci, Michael Settineri from the law firm of
18 Vorys, Sater, Seymour & Pease, 52 East Gay Street,
19 Columbus, Ohio.
20 EXAMINER CHILES: Thank you.
21 MR. STINSON: Good morning. On behalf of
22 Northeast Ohio Public Energy Council, Ohio Schools
23 Council and Power for the Schools, the law firm of
24 Bricker & Eckler, LLP, by Glenn S. Krassen, 1001
25 Lakeside Avenue East, Suite 1350, Cleveland, Ohio

1 44114, and Dane Stinson and Dylan Borchers, 100 South
2 Third Street, Columbus, Ohio 43215.
3 MR. MILLER: Good morning, your Honor.
4 On behalf of the Association of Independent Colleges
5 and Universities of Ohio, Christopher L. Miller, the
6 law firm of Ice Miller, 250 West Street, Columbus,
7 Ohio 43215.
8 MR. DARR: On behalf of the Industrial
9 Energy Users - Ohio, McNees, Wallace & Nurick, 21
10 East State Street, Columbus, Ohio 43215. Appearing
11 on behalf of the client are Frank Darr and Sam
12 Randazzo.
13 MR. DORTCH: On behalf of Dynegy, Inc.,
14 Michael D. Dortch, and Richard R. Parsons from the
15 law firm of Kravitz, Brown & and Dortch, 65 East
16 State Street, Suite 200, Columbus, Ohio.
17 MS. MOONEY: On behalf of the Ohio
18 Partners for Affordable Energy, Colleen Mooney, 231
19 West Lima Street, Findlay, Ohio 45840.
20 MR. WILLIAMSON: Good morning, your
21 Honor. On behalf of Wal-Mart Stores East and Sam's
22 East, my name is Derrick Williamson. I am with the
23 law firm of Spilman, Thomas & Battle. Co-counsel are
24 Carrie Harris and Lisa Hawrot. Our address is 1100
25 Bent Creek Boulevard, Mechanicsburg, Pennsylvania

1 17050. Thank you.
2 MR. ROYER: Thank you, your Honors.
3 Barth E. Royer of Barth E. Royer, LLC, 2740 East Main
4 Street, Bexley, Ohio 43209, on behalf of the
5 Cleveland Municipal School District. Representing
6 the school district is Adrian Thompson of the Taft
7 Law Firm, Cleveland, Ohio.
8 MR. NOURSE: Thank you, your Honor. On
9 behalf of the Ohio Power Company, Steven T. Nourse,
10 Matthew J. Satterwhite, 1 Riverside Plaza, Columbus,
11 Ohio 43215.
12 MR. HAYS: Your Honor, Thomas R. Hays,
13 8355 Island Lane, Maineville, Ohio 45039, on behalf
14 of the Northwest Ohio Aggregation Coalition and the
15 Individual Communities, 11 individual communities in
16 Toledo and Lucas County, et cetera. Thank you, your
17 Honor.
18 EXAMINER CHILES: Okay.
19 MR. ALLWEIN: Good morning, your Honors,
20 Christopher J. Allwein of the law firm of Kegler,
21 Brown, Hill & Ritter, Capitol Square, Suite 1800, 65
22 East State Street, 43215, Columbus, Ohio. I am
23 making an appearance on behalf of Buckeye Wind, LLC;
24 Champaign Wind, LLC; and Hardin Wind, LLC;
25 collectively EverPower Wind Holdings, Incorporated.

1 I would like to be designated counsel of record in
2 this case, and my co-counsel, Margeaux Kimbrough,
3 will remain as co-counsel in the case.
4 MR. PARRAM: Good morning, your Honors,
5 on behalf of the Kroger Company, Taft, Stettinius &
6 Hollister, 65 East State Street, Suite 1000, by
7 counsel Mark Yurick and Devin Parram.
8 EXAMINER CHILES: Is that everyone from
9 this section?
10 Okay.
11 EXAMINER PRICE: Let's go off the record.
12 (Discussion off the record.)
13 EXAMINER PRICE: Let's go back on the
14 record. We have a number of housekeeping issues and
15 pending motions to discuss. As we indicated off the
16 record, there are a very large number of pending
17 motions for protective order. We are going to defer
18 ruling on those until a later point in the hearing
19 or, perhaps, by separate entry depending on how
20 logistically it would be easier to do.
21 As I also discussed off the record, for
22 purposes of this hearing, Ohio Edison, Cleveland
23 Electric Illuminating Company, and the Toledo Edison
24 will be collectively referred to as "the companies,
25 the operating companies," or FirstEnergy.

1 FirstEnergy Solutions will be referred to as
2 FirstEnergy Solutions or FES. FirstEnergy Corp., the
3 holding company, will be referred to as FirstEnergy
4 Corp. or "the holding company."
5 Counsel, please direct your witnesses to
6 these conventions so we can have a clean record and
7 move quickly through our cross-examination.
8 Do we have any motions?
9 MR. KUTIK: Well, your Honor, there are
10 two things I would like to put on the record pursuant
11 to our conversation off the record. The first
12 relates to the testimony of company witness, Bradley
13 Miller. We understand from a survey of the parties
14 that there are no parties that have cross-examination
15 for Witness Miller, so we do not intend to bring him
16 to Columbus. We intend to offer his testimony
17 without cross-examination. That appears to be
18 acceptable to all the parties.
19 IGS has asked in exchange for its
20 agreement that the Bench take administrative notice
21 of Mr. Miller's testimony in Case No. 08-935-EL-SSO,
22 and we are not asking you to rule on that at this
23 time so that the parties may have an opportunity
24 to review Mr. Miller's testimony from that 08-935
25 case.

1 EXAMINER PRICE: Thank you.
2 MR. KUTIK: Secondly, your Honor, I would
3 like to address the issue of our guests in the room
4 today, our special guests in the room today; that is,
5 the camera operators, and we object to that.
6 The companies certainly welcome the
7 public's participation in these proceedings, and we
8 applaud the various methods that the Commission has
9 employed to have the public aware of this matter as
10 well as to participate in this matter for public
11 comments or participation in public hearings.
12 And although the Commission does have
13 pursuant to its rules the discretion to have cameras
14 in the hearing rooms, the cameras at this point in
15 time, your Honor, are inappropriate from both a
16 procedural and legal standpoint.
17 The Commission frequently refers to court
18 rules, although they are not specific rules of the
19 Commission, and we would urge the Bench to review and
20 to implement Rule 12 of the Rules of Superintendence
21 Reports in Ohio which deal with, among other things,
22 cameras in court proceedings. And in those
23 proceedings cameras are to remain stationary and
24 witnesses have the opportunity to object to the
25 recording of the testimony, and if they object, their

1 testimony cannot be recorded.
2 We think that's appropriate from a
3 procedural standpoint in that the individuals that we
4 understand who are here today to record the
5 proceedings are from a documentary film company that
6 has as its advisors Sierra Club and potential other
7 parties to this case. It is, as I noted on the
8 record, no coincidence that one of the cameras is
9 directed to Sierra Club's counsel. This isn't the
10 Sierra Club's show.
11 In any event, your Honor, we think that
12 it is important for the proprietary of the
13 proceedings and presentation, all parties, witnesses
14 in this case, that cameras not be used. And for the
15 record, the companies object to the cameras in the
16 courtroom. Each and every one of the companies'
17 witnesses object to being recorded, and each and
18 every one of the individuals in this room that are
19 working on or on behalf of the companies or
20 FirstEnergy Service Company object to being recorded
21 as well.
22 EXAMINER PRICE: Thank you. Any
23 responses? Mr. Fisk, care to respond?
24 MR. FISK: My only response is that we
25 believe that it is appropriate to allow cameras in

1 the room during the public sessions, and we urge the
2 Attorney Examiners to recognize the public interest
3 in this proceeding and allow the cameras.
4 EXAMINER PRICE: Thank you.
5 MR. KUTIK: The only interest, your
6 Honor, is the commercial interest of the
7 documentaries and the particular partisan interest of
8 Sierra Club.
9 EXAMINER PRICE: Noted. At this time we
10 will go off the record. The examiners are going to
11 take five minutes to caucus and discuss FirstEnergy's
12 motion, and we will be back at 10:40.
13 Thank you. We are off the record.
14 (Recess taken.)
15 EXAMINER PRICE: Let's go back on the
16 record. Ohio Administrative Code Rule 4901-3-02
17 allows that video recording of Commission public
18 hearings subject to certain conditions. These rules
19 also empower the examiners to address any issues
20 which may arise due to the filming.
21 The examiners find these conditions as
22 well as the discussions held with the filmmakers will
23 ensure that the hearing will not be unduly
24 interrupted by the filming. FirstEnergy's motion
25 will be denied.

1 Anything else? Yes, sir.
2 MR. MEISSNER: Yes, your Honor, Attorney
3 Meissner. As a firm supporter of the Sierra Club and
4 its polices, I still would like to request counsel
5 for the Sierra Club if they would make available
6 whatever is being taped before its made public, maybe
7 give us like a week to review it.
8 Thank you, your Honor.
9 EXAMINER PRICE: Mr. Fisk.
10 MR. FISK: To my knowledge, we will not
11 have that video. This is an independent film crew.
12 It's not a Sierra Club film crew, so to my knowledge
13 we won't have that video to produce to anybody.
14 EXAMINER PRICE: Thank you.
15 MR. KUTIK: Most certainly, your Honor,
16 you could ask as a condition of the filming that that
17 be done if that was your proclivity.
18 EXAMINER PRICE: I could, but it is not
19 my proclivity.
20 MR. KUTIK: Fair enough, your Honor.
21 EXAMINER PRICE: Okay. At this time call
22 your first witness.
23 MR. KUTIK: Your Honors, the companies
24 call as their first witness Eileen M. Mikkelsen.
25 EXAMINER PRICE: Please be seated and

1 state your name and address. I have to swear you in.
2 (Witness sworn.)
3 EXAMINER PRICE: Now you may be seated.
4 Please state your name and business address for the
5 record.
6 THE WITNESS: My name is Eileen M.
7 Mikkelsen. My business address is 76 South Main
8 Street, Akron, Ohio 44308.
9 EXAMINER PRICE: Please proceed,
10 Mr. Kutik.
11 MR. KUTIK: Your Honor, we have provided
12 to the court reporter and we have provided copies to
13 the Bench to your right what we ask that be marked as
14 Companies Exhibits 1, 2, 2A, and 3 through 11.
15 Let me briefly describe them now, your
16 Honor. Exhibit 1 is the company's application and
17 attachments.
18 Exhibit 2 is the Stipulation and
19 Recommendation filed on December 2, 2014.
20 Exhibit 2A is the errata for Stipulation
21 and Recommendation filed on January 21, 2015.
22 Exhibit 3 is a Supplemental Stipulation
23 filed on May 28, 2015.
24 Exhibit 4 is the Second Supplemental
25 Stipulation filed on June 4, 2015.

1 Exhibit 5 is the amendments to testimony
2 filed on January 21, 2015.
3 Exhibit 6 are the proofs of publication
4 for the public hearing notices that we will make
5 available to the parties for their inspection and
6 move at a later time.
7 Exhibit 7 is the Direct Testimony of
8 Eileen M. Mikkelsen. Exhibit 8 is the Supplemental
9 Testimony of Eileen Mikkelsen. Exhibit 9 is the
10 second supplemental testimony of Eileen Mikkelsen.
11 Exhibit 10 is the Third Supplemental Testimony of
12 Eileen Mikkelsen, and Exhibit 11 is the Fourth
13 Supplemental Testimony of Eileen Mikkelsen.
14 We ask that the documents be considered
15 marked for identification at this time.
16 EXAMINER PRICE: They will be so marked.
17 (EXHIBITS MARKED FOR IDENTIFICATION.)
18 - - -
19 EILEEN M. MIKKELSEN
20 being first duly sworn, as prescribed by law, was
21 examined and testified as follows:
22 DIRECT EXAMINATION
23 By Mr. Kutik:
24 Q. Good morning, Ms. Mikkelsen. Could you
25 introduce yourself.

1 A. Good morning. My name is Eileen M.
2 Mikkelsen.
3 Q. And you have in front of you the
4 documents that have been marked for identification as
5 Exhibits 1, 2, 2A and 3 through 11 for the company?
6 A. I do.
7 Q. Could you describe Exhibit 1, please.
8 A. Yes. Exhibit 1 is a company of the --
9 pardon me -- a copy of the companies' application and
10 the attachments to the application in this
11 proceeding.
12 Q. Could you describe Exhibits 2 and 2A,
13 please.
14 A. Exhibit 2 is a copy of the companies'
15 Stipulation and Recommendation filed in December of
16 2014 in this proceeding. 2A is a copy of the errata
17 for the Stipulation and Recommendation that was filed
18 on December 22nd of 2014.
19 Q. Can you identify Exhibits 3 and 4,
20 please.
21 A. Exhibit 3 is a company -- is a copy of
22 the Supplemental Stipulation and Recommendation that
23 was filed on the 28th of May, 2015. Exhibit 4 is the
24 Second Supplemental Stipulation and Recommendation
25 filed in this proceeding on June 4 of 2015.

1 Q. Could you identify Exhibit 5, please.
2 A. Exhibit 5 is a copy of the amendments to
3 the testimony to reflect the Stipulation and
4 Recommendation that was filed by the companies on
5 December 22, 2014.
6 Q. Is your testimony one of the testimonies
7 that's amended?
8 A. Yes.
9 Q. What is Exhibit 6?
10 A. Exhibit 6 is the proof of the notice of
11 publication for our public hearings.
12 Q. What is Exhibit -- what are Exhibits 7
13 through 11?
14 A. Exhibit 7 is my direct testimony in this
15 proceeding. Exhibit 8 is my supplemental testimony
16 filed in this proceeding. Exhibit 9 is my second
17 supplemental testimony filed in this proceeding.
18 Exhibit 10 is my third supplemental testimony filed
19 in this proceeding, and Exhibit 11 is my fourth
20 supplemental testimony filed in this proceeding.
21 Q. And let me direct your attention to
22 Exhibit 5, which is the amendments to testimony and
23 particularly the part of that Exhibit 5 that relates
24 to your testimony. Do you have that before you?
25 A. I do.

1 Q. Do you have any corrections to make to
2 those amendments?
3 A. I do.
4 Q. What are they?
5 A. On page 2 under the area headed "Direct
6 Testimony of Eileen M. Mikkelsen" specifically the
7 reference to page 22, line 12, it currently reads
8 "Replace 4 with 2." It should read "Replace 2 with
9 4."
10 MR. KUTIK: Your Honor, would you like
11 Ms. Mikkelsen to repeat that?
12 EXAMINER PRICE: No. I have it. Thank
13 you.
14 Q. Other than the amendments in Exhibit 5
15 and the one that you just mentioned, do you have any
16 other additions or corrections to make to any of the
17 testimony that's been marked as Exhibits 7 through
18 11?
19 A. I do.
20 Q. What are those?
21 A. In my direct testimony on page 18 at line
22 10, I would like to change the "40" to "35."
23 Q. Do you have any other corrections or
24 additions?
25 A. No.

1 Q. If I asked you the questions that appear
2 in Exhibits 7 through 11 today, would your answers be
3 the same as appear in Exhibits 7 through 11 as
4 amended by Exhibit 5 and the comments that you have
5 made today?
6 A. Yes.
7 MR. KUTIK: Thank you, your Honor.
8 EXAMINER PRICE: Would any intervenor
9 care to volunteer to be the first to cross-examine?
10 Mr. Fisk.
11 MR. FISK: Yes, your Honor.
12 EXAMINER PRICE: Please proceed.
13 - - -
14 CROSS-EXAMINATION
15 By Mr. Fisk:
16 Q. Good morning, Ms. Mikkelsen.
17 A. Good morning.
18 Q. How are you today?
19 A. Fine, thank you.
20 Q. Great. So just -- just to -- a little
21 bit of background to make sure we are on the same
22 page. From the late 1990s to June, 2010, you worked
23 for FirstEnergy Solutions; is that correct?
24 A. Yes.
25 Q. Okay. And since June, 2010, you have

1 been employed by FirstEnergy Service Corporation; is
2 that right?
3 A. Yes.
4 Q. Okay. And your testimony today is on
5 behalf of the companies?
6 A. Yes.
7 Q. Okay. And in your current position, you
8 regularly provide services to the companies; is that
9 right?
10 A. Yes.
11 Q. Okay. And in your current position you
12 have also from time to time -- from time to time
13 provided services to FES; is that right?
14 A. I have from time to time provided
15 services to FES at the direction of counsel on
16 matters not related to the companies.
17 Q. Okay. Thank you. And are you aware of
18 the W.H. Sammis Power Plant?
19 A. Yes.
20 Q. Okay. And that is a coal-fired power
21 plant; is that right?
22 A. Yes.
23 Q. And do you know who owns the Sammis
24 plant?
25 A. Yes.

1 Q. And who does?
2 A. FirstEnergy Generation.
3 Q. Okay. And the Sammis plant went into
4 service between 1959 and 1971; is that right?
5 A. Yes.
6 Q. Okay. So depending on the unit, those
7 Sammis units are between 44 and 56 years old?
8 A. Yes.
9 Q. Okay. And are you aware of the
10 Davis-Besse Nuclear Power Plant?
11 A. Yes.
12 Q. Okay. And who owns Davis-Besse?
13 A. FirstEnergy Nuclear Generation.
14 Q. Okay, okay. And that plant began
15 operating in 1978; is that right?
16 A. No.
17 Q. When did that plant begin operating?
18 A. 1977.
19 Q. Okay. And to your knowledge does FES own
20 a 4.85 percent interest in two Ohio Valley Electric
21 Cooperative plants?
22 A. FES has a contractual arrangement. I am
23 not exactly sure of the specific ownership associated
24 with the OVEC, but I know FES has the entitlement for
25 the output at the levels that you mentioned, sir.

1 Q. Okay. And I apologize, I believe I said
2 Ohio Valley Electric Cooperative, and I meant
3 Corporation. Are you aware of what Ohio Valley
4 Electric Corporation is?
5 A. Yes.
6 Q. Okay. And can we agree to refer to Ohio
7 Valley Electric Corporation as OVEC?
8 A. Yes.
9 Q. Okay. And the two OVEC plants that FES
10 has a 4.85 percent interest in, are those the Clifty
11 Creek and Kyger Creek plants?
12 A. Yes.
13 Q. Okay. And the Clifty Creek plant, that's
14 located in Indiana, correct?
15 A. Yes.
16 Q. Okay. And that plant went into service
17 in 1955 or '56; is that right?
18 A. I don't remember.
19 Q. Okay. Do you know approximately when
20 that went into service?
21 A. I don't remember.
22 Q. Okay. And how about the Kyger Creek
23 plant, do you know when that went into service?
24 A. I don't remember.
25 Q. Okay. And are you aware of the proposed

1 transaction under which FES would sell the energy,
2 capacity, and ancillary services from the Sammis and
3 Davis-Besse plants and from the OVEC entitlement to
4 the companies?
5 A. I am aware of the proposed transaction
6 where the energy, capacity, ancillary services, and
7 environmental attributes would be sold to the
8 companies.
9 Q. Okay. And those would be sold by FES?
10 A. Yes.
11 Q. Okay, okay. And can we agree to refer to
12 that as the proposed transaction?
13 A. Yes.
14 Q. Okay. And under the proposed transaction
15 the companies would pay FES's costs related to
16 Sammis, Davis-Bessie, and the OVEC entitlement; is
17 that right?
18 A. The companies would pay FES the
19 negotiated price for the energy, capacity, ancillary
20 services, and environmental attributes.
21 Q. And what is the negotiated price?
22 A. The terms of the negotiated price are
23 spelled out in the term sheet --
24 Q. Okay.
25 A. -- between the two parties.

1 Q. Okay. And do you know what costs are
2 included that the companies would be paying under
3 that term sheet?
4 A. I am aware of the cost elements that are
5 included in the negotiated price for that
6 transaction, yes.
7 Q. Okay. And what are those elements?
8 A. It would be helpful to have -- do you
9 have a copy of the term sheet, sir?
10 Q. Sure.
11 MR. FISK: May we approach?
12 EXAMINER PRICE: You may.
13 MR. FISK: Okay. I would like to mark as
14 an Exhibit Sierra Club 1 the term sheet, which is --
15 was provided as Attachment 1 to the IEU discovery
16 requests at 1, Interrogatory 25.
17 EXAMINER PRICE: So marked.
18 (EXHIBIT MARKED FOR IDENTIFICATION.)
19 MR. FISK: Thank you.
20 Q. (By Mr. Fisk) Okay. Ms. Mikkelsen, do
21 you have the term sheet in front of you?
22 A. I do.
23 Q. Okay. And you've seen this document
24 before?
25 A. Yes.

1 Q. Okay. And if you turn to page -- well,
2 starting at the bottom of page 4 of the document; is
3 that -- there is a header that says "Contract Price."
4 Do you see that?
5 A. I'm sorry, sir. Your microphone cut out.
6 I couldn't hear you.
7 Q. Is it working now?
8 A. Yes, sir.
9 Q. Okay. On the bottom of page 4, there is
10 a header "13." It says "Contract Price." Do you see
11 that?
12 A. Yes.
13 Q. And over on page 5 there is a listing of
14 the various elements of the contract price for the
15 Sammis and Davis-Besse plants; is that right?
16 A. Yes.
17 Q. Okay. And so under the proposed
18 transaction the companies would be paying FES for the
19 five different categories of costs that are
20 identified on pages 5 and 6 of the term sheet; is
21 that right?
22 A. Yes.
23 Q. Okay. And those costs include the fuel
24 payments, the O&M payments, depreciation payments,
25 capacity payments, and tax reimbursement payments; is

1 that right?
2 A. Yes.
3 Q. Okay. And am I correct that under the
4 proposed transaction the companies would also be
5 paying FES an 11.15 percent return on equity?
6 A. Yes.
7 Q. Okay. And so -- and that means that any
8 equity that FES puts into the Davis-Besse and Sammis
9 plants during the proposed transaction would
10 receive -- they would receive basically 11.15 percent
11 rate of return on that equity; is that right?
12 A. No.
13 Q. What does that mean?
14 A. May I ask you to be more clear with your
15 question, sir?
16 Q. What does the -- what does the provision
17 in the term sheet that has the companies paying FES
18 an 11.15 percent return on equity, what does that
19 require?
20 A. The transaction contemplates a fixed
21 capital structure of 50 percent equity and 50 percent
22 debt so the return on equity that you referenced of
23 11.15 percent would be applied to the assumed
24 50 percent equity capital structure, which may be
25 different than the actual amount of equity put into

1 the transaction by FirstEnergy Solutions.
2 Q. Okay. So under the proposed transaction
3 the assumption is that capital investments into
4 Davis-Besse and Sammis are 50 percent equity and
5 50 percent debt; is that right?
6 A. That is the assumption for purposes of
7 the trans -- proposed transaction, yes.
8 Q. Okay. And so that -- so FES would
9 receive an 11.15 percent return on an assumed
10 50 percent equity investment regardless of how --
11 what the actual breakdown of debt versus equity is?
12 A. Yes.
13 Q. Okay, okay. And under the proposed
14 transaction, the companies would then receive all of
15 the energy, capacity, ancillary services, and
16 environmental -- I lost the word -- environmental
17 attributes from the Sammis and Davis-Besse plants; is
18 that right?
19 A. Under the proposed transaction, the
20 companies would receive all of the energy, capacity,
21 ancillary services, and environmental attributes from
22 Davis-Besse, Sammis, and the FES OVEC entitlement.
23 Q. Okay. Great. And then separate from the
24 proposed transaction the companies are proposing that
25 they would then sell all of the energy, capacity, and

1 ancillary services from Sammis, Davis-Bessie, and the
2 OVEC entitlement into the PJM market; is that right?
3 A. Yes, along with any environmental
4 attributes.
5 Q. Okay. Great. So the companies would not
6 use any of the energy, capacity, and ancillary
7 services that it obtained under the proposed
8 transaction to provide services to their own
9 customers; is that right?
10 THE WITNESS: May I ask you to reread the
11 question, please, ma'am.
12 (Record read.)
13 A. No. I think that the companies will sell
14 those energy, capacity, ancillary, and environmental
15 attributes into the wholesale markets and the results
16 of that market sale, coupled with the cost that they
17 pay for those attributes, will provide a rate
18 stabilization service to the companies' customers.
19 Q. Okay. And I'm sure we will get into the
20 rate stabilization claims later, but the energy that
21 the companies obtain through the proposed
22 transaction, that energy would not be supplied to the
23 companies' customers, correct?
24 A. The companies would not use the energy
25 purchased as part of the proposed transaction to

1 serve SSO customers.
2 Q. Okay. Great. Instead the companies'
3 nonshopping customers would continue to receive their
4 energy through a Standard Service Offer even if this
5 proposed transaction were finalized; is that right?
6 A. The companies nonshopping customers would
7 continue to receive market-based generation that the
8 company procures on their behalf through a
9 competitive bid process.
10 Q. Okay. And that would not change one way
11 or the other if the proposed transaction were
12 finalized; is that right?
13 A. Yes.
14 Q. Okay. And the -- and if the proposed
15 transaction were finalized, that would not impact the
16 price of the energy received by nonshopping customers
17 under the standard service offer; is that right?
18 A. The price that the SSO customers pay for
19 the physical energy would not change; however, there
20 would be a generation-related nonbypassable component
21 that would impact the overall price that the
22 customers pay for their generation.
23 Q. Okay. But that's a component that is
24 separate from the price they are paying for the
25 actual energy they are receiving through the SSO,

1 correct?
2 A. Yes.
3 Q. Okay. And the companies' customers are
4 currently free to shop for their own energy service;
5 is that right?
6 A. All of the companies' customers are able
7 to shop from a competitive supplier for their
8 generation service or take competitively sourced
9 generation through the companies' SSO product
10 offering.
11 Q. Okay. And the companies' customers'
12 ability to shop for their own energy service would
13 remain unchanged whether or not the proposed
14 transaction were finalized, correct?
15 A. That's right. 100 percent of the
16 generation, the physical generation, for the
17 customers of the company would continue to be
18 procured in a competitive fashion.
19 Q. Okay. Thank you. And are the companies
20 in this proceeding seeking a Commission decision
21 regarding whether it is reasonable or prudent for the
22 companies to enter into the proposed transaction?
23 A. The companies are seeking approval in
24 this proceeding of the retail rate stability rider.
25 Q. Okay. Yes. And we'll get to that rider

1 in a minute. I'm curious, are the companies seeking
2 any sort of Commission approval regarding the
3 proposed transaction itself?
4 A. The companies are not seeking approval of
5 the proposed transaction in this proceeding.
6 Q. Okay. And are the companies planning to
7 seek any sort of Commission approval in the future
8 before entering into the proposed transaction with
9 FES?
10 A. No.
11 Q. Okay. So it's the companies' position,
12 am I correct, they can enter into a contract to pay
13 the costs of Sammis, Davis-Besse, and the OVEC
14 entitlement for 15 years without Commission approval?
15 A. Yes.
16 Q. Okay.
17 MR. FISK: Your Honor, I would like to
18 move for admission of Exhibit Sierra Club 1.
19 EXAMINER PRICE: Let's go off the record
20 one moment.
21 (Discussion off the record.)
22 EXAMINER PRICE: Back on the record. We
23 will defer ruling on the motion for admission for
24 Sierra Club 1 until later. Thank you.
25 MR. FISK: Okay. Thank you, your Honor.

1 EXAMINER PRICE: Mr. Meissner.
2 MR. MEISSNER: Are we going to get copies
3 of these exhibits?
4 EXAMINER PRICE: I'm sorry. I did not
5 realize Sierra Club did not provide you copies of the
6 exhibits.
7 MR. FISK: We had not printed a copy of
8 exhibits that other parties have already received
9 except for the Attorney Examiners, the witness. We
10 can go back and print 30 copies, but these are
11 documents that everybody has received in discovery
12 and have at their disposal.
13 MR. MEISSNER: As long as we received
14 them all and they clearly state in the record what
15 they are, then there is no need for copies here. If
16 there is anything outside of that, we would want
17 copies. Thank you, your Honor.
18 EXAMINER PRICE: Okay. Well, that issue
19 has been resolved. Thank you.
20 MR. FISK: Thank you, your Honor.
21 Q. (By Mr. Fisk) Okay. So I believe,
22 Ms. Mikkelsen, you referred earlier to the retail
23 rate stabilization rider; is that correct?
24 A. It is the retail rate stability rider.
25 Q. Okay. Stability, okay. And can we agree

1 to refer to that as rider RRS?
2 A. Yes.
3 Q. Okay. And am I correct under rider RRS
4 the companies would pass through to their customers
5 the net of the costs incurred under the proposed
6 transaction and the market revenues from selling into
7 PJM the energy, capacity, ancillary services, and
8 environmental attributes from Sammis, Davis-Besse,
9 and the OVEC entitlement?
10 A. Yes.
11 Q. Okay. And in your second supplemental
12 testimony, page 9, line 4, you refer there to "retail
13 rate stabilization credits"; is that correct?
14 A. Yes.
15 Q. Okay. And those credits represent the
16 net revenues that would be passed on to customers
17 through rider RRS if market revenues from Sammis,
18 Davis-Besse, and the OVEC entitlement are higher than
19 the costs paid under the proposed transaction; is
20 that right?
21 A. The companies forecast that their
22 customers will receive over $2 billion in retail rate
23 stability credits under rider RRS over the term of
24 the economic stability program.
25 Q. Okay. And that is because the companies

1 are forecasting that the market revenues generated
2 from the sale of the energy, capacity, ancillary
3 services, and environmental attributes into PJM will
4 exceed the costs incurred under the proposed
5 transaction; is that right?
6 A. Over the 15-year term, yes.
7 Q. Okay, okay. And that figure that you
8 referred to over the 15-year term, that is not a
9 guaranteed figure, correct?
10 A. Correct.
11 Q. Okay. And if you go to page 3 of your
12 second supplemental testimony, lines 15 through 19,
13 you state that in the near-term the cost of Sammis,
14 Davis-Besse, and the OVEC entitlement are projected
15 to be higher than the market revenues from those
16 plants; is that right?
17 A. Yes.
18 Q. Okay. So in the near term the companies
19 are projecting that they will incur a net cost under
20 their proposed transaction; is that right?
21 A. In the near term the companies are
22 projecting that rider RRS will be a charge.
23 Q. Okay. And that's a charge to customers,
24 correct?
25 A. Yes.

1 Q. Okay. And ride RRS is what would enable
2 the companies to pass along that charge to its
3 customers; is that right?
4 A. Rider RRS is, as proposed, a rate
5 stabilization mechanism for our customers such that
6 in circumstances where market prices are low, there
7 would be a charge for the customers, and then over
8 the longer term as market prices rise, the customers
9 would receive a credit thereby stabilizing their
10 rates over the term of the economic stability
11 program.
12 Q. Okay. And you refer in your second
13 supplemental testimony on page 3, lines 15 through 19
14 that we were discussing, Mr. Ruberto's Attachment
15 JAR-1 (Revised); is that correct?
16 A. Yes.
17 Q. Okay. And do you have a copy of that?
18 A. No.
19 Q. No? Okay.
20 MR. FISK: May we approach, your Honor?
21 EXAMINER PRICE: You may.
22 MR. FISK: Again, in the interest --
23 MR. KUTIK: May I have a copy?
24 EXAMINER PRICE: Give him mine. The
25 Bench will share.

1 MR. FISK: Again, in the interest of
2 saving paper, we did not make copies for documents
3 that the other parties had already received, but we
4 are happy to do so in the future if needed.
5 Q. (By Mr. Fisk) Ms. Mikkelsen, do you now
6 have in front of you Attachment JAR-1 (Revised)?
7 A. Yes.
8 Q. Okay. And have you seen this document
9 before?
10 A. Yes.
11 Q. And this is -- is this document what you
12 were referring to on lines 15 through 19 on page 3 of
13 your second supplemental testimony?
14 A. Yes.
15 Q. Okay. And am I correct this document was
16 created by Mr. Ruberto?
17 MR. KUTIK: Your Honor, at this point I
18 object. I am not sure of the relevance of asking
19 this witness that question. Mr. Ruberto is going to
20 be here to testify. He can ask Mr. Ruberto all the
21 questions he wants about this document. But what she
22 knows about its creation is irrelevant.
23 MR. FISK: I was just trying to clarify
24 he created it, not Miss Mikkelsen. I can ask her if
25 she created it.

1 EXAMINER PRICE: Ms. Mikkelsen, did you
2 create this document?
3 THE WITNESS: No, sir.
4 EXAMINER PRICE: There you go.
5 MR. FISK: Thank you.
6 Q. (By Mr. Fisk) Okay. And this -- this
7 document identifies, am I correct, projected market
8 revenues and projected costs that are estimated to be
9 included in the retail rate stability rider?
10 A. The retail rate stability rider will
11 include the net difference between the costs and the
12 revenues.
13 Q. Okay. And that difference is the --
14 reflected in the line that says "under or
15 overrecovery"; is that right?
16 A. Yes.
17 Q. Okay. And the proposed retail rate
18 stability rider would start on June 1, 2016; is that
19 right?
20 A. Yes.
21 Q. Okay. And so for June 1 through
22 December 31, 2016, the projection is that there would
23 be a net charge to customers under the retail rate
24 stability rider of $167 million; is that right?
25 MR. KUTIK: Your Honor, I object. The

1 document speaks for itself. Mr. Ruberto will be
2 available to cross-examine about this document. She
3 said she didn't create it. I object. The questions
4 are irrelevant.
5 MR. FISK: Well, Ms. Mikkelsen has
6 clearly relied on this document in her testimony
7 where she offers testimony about what costs may or
8 may not be passed through the retail rate stability
9 rider and whether those costs will fall on customers
10 versus the company, and I am simply asking her about
11 a document she relied on.
12 MR. KUTIK: But it says what it says.
13 EXAMINER PRICE: She can answer the
14 question if she knows. Overruled.
15 THE WITNESS: May I have the question
16 reread, please.
17 Q. Sure.
18 (Record read.)
19 A. Yes.
20 Q. Okay. And Attachment JAR-1 (Revised)
21 also identifies net charges to customers under rider
22 RRS for 2017 and 2018; is that right?
23 A. Yes.
24 Q. And subject to check, would you agree
25 that the net charge to customers reflected in

1 Attachment JAR-1 (Revised) in 2016, 2017, and 2018
2 totals $464 million.
3 A. Yes.
4 Q. Okay. And so that's an average charge to
5 customers of nearly $15 million per month for the
6 first 31 months of the proposed rider RRS; is that
7 right?
8 THE WITNESS: May I have that question
9 reread, please, ma'am.
10 (Record read.)
11 A. 464 divided by 31, it's just short of 15,
12 yes.
13 Q. Okay. Thank you. Okay. The actual
14 amount of credits or charges that would pass -- be
15 passed on to customers under rider RRS could be
16 different than the amounts projected in Attachment
17 JAR-1 (Revised); is that correct?
18 A. Yes.
19 Q. Okay. So the total costs to customers
20 under the first 31 months of rider RRS could be
21 higher than $464 million; is that right?
22 A. The charges or credits to the customers
23 could be different than the 464 million.
24 Q. Okay. And they could be higher or lower?
25 A. Correct.

1 Q. Okay. And that's -- is that also true
2 for the full 15-year period that the total charges or
3 credits could be higher or lower than what is
4 projected in Attachment JAR-1 Revised?
5 A. Yes.
6 Q. Okay. And am I correct that the amount
7 of credits or charges that would be passed on to
8 customers under rider RRS do not impact in any way
9 the amounts that the companies would pay to FES under
10 the proposed transaction?
11 A. Yes.
12 Q. Okay. So no matter how large the charges
13 or credits to customers under rider RRS end up being,
14 FES would be guaranteed to receive under the proposed
15 transaction all of the costs for operating Sammis and
16 Davis-Besse, including the 11.15 percent return on a
17 50 percent equity assumption?
18 MR. KUTIK: Objection.
19 EXAMINER PRICE: Grounds?
20 MR. KUTIK: Misstates her testimony.
21 EXAMINER PRICE: I will give him a little
22 bit of leeway.
23 A. I would say I think -- perhaps you are
24 referring to the rider differently than I would. I
25 think we agreed to call it rider RRS. I may have

1 misheard you, but you may have referred to it
2 differently so just to clarify with respect to rider
3 RRS.
4 Q. Yes.
5 A. Then I don't agree that there are
6 payments that are guaranteed to FirstEnergy Solutions
7 under the proposed transaction.
8 Q. And why not?
9 A. Because I think there are terms that are
10 contained in the term sheet relative to the
11 negotiated price that the companies would pay for the
12 energy, capacity, ancillary, and environmental
13 attributes under the proposed transaction that
14 suggests that the payments are not guaranteed.
15 For example, I'm now looking at Sierra
16 Club Exhibit 1 on page 3, Item 11, where it states
17 that during the delivery period the "Seller has an
18 obligation to perform the Operating Work in
19 accordance with Good Utility Practice."
20 I'm also aware that in Mr. Ruberto's
21 testimony he describes more fully, I believe in a
22 footnote, what good utility practice is, and that
23 definition talks about reasonable costs in order to
24 accomplish the work that's being performed. So to
25 the extent that FES were to pass along costs that

1 were in excess of those that would be expected by
2 good utility practice, there would be no guarantee
3 and, in fact, quite the opposite. The term sheet
4 would suggest that the companies would not pay for
5 those costs.
6 Also the term sheet has a provision where
7 the companies have an active role in the review and
8 finalization of the capital expenditures, plans
9 annually for these plants and a provision further
10 that states to the extent that a capital expenditure
11 would render the plant uneconomic, there would be a
12 separate set of circumstances in terms of whether or
13 not that would continue to operate as part of the
14 proposed transaction. So I think those things to me
15 suggest there is anything but a guarantee, sir.
16 Q. Okay. But the amount of payments FES
17 would receive under the proposed transaction would
18 not vary due to how large the charge or credits to
19 customers under rider RRS would be; is that correct?
20 A. Yes.
21 Q. Okay. And referring to your -- you
22 referred to, I believe, page 3 of the term sheet,
23 paragraph 11; is that right?
24 A. Yes.
25 Q. Okay. There is a reference there to the

1 seller needing to perform the operating work in
2 accordance with good utility practice; is that right?
3 A. Yes.
4 Q. Okay. And who decides whether work has
5 been performed in accordance with good utility
6 practice under the proposed transaction?
7 A. I think the companies would have a very
8 primary role in determining before they make payment
9 that the work was performed in accordance with good
10 utility practice.
11 Q. And is that reflected somewhere in the
12 term sheet?
13 A. I think it's reflected here where it says
14 the "Seller has an obligation to perform the
15 Operating Work in accordance with Good Utility
16 Practice."
17 Q. Can you identify anywhere in the term
18 sheet where it says that the companies can decline to
19 pay costs on the grounds that good utility practice
20 has not been followed by the seller?
21 A. Yes.
22 Q. And where?
23 A. If you look further up in the page, and
24 this is in a different provision, provision No. 8,
25 but in provision No. 8 it calls out that -- and this

1 section is talking about the seller's failure to
2 deliver capacity, energy, and ancillary services
3 would not be excused if the seller could have avoided
4 such failure by exercise of good utility practice.
5 Q. Can you point to me anywhere in the term
6 sheet where the companies get to decide whether good
7 utility practices have been followed?
8 A. The term sheet represents an agreement in
9 principle between the companies and FirstEnergy
10 Solutions, and so the expression that they mutually
11 agreed to that the seller has an obligation to
12 perform in accordance with good utility practices
13 suggests a mutual agreement, and I believe to the
14 extent that the companies have concerns with respect
15 to whether or not costs were incurred or actions were
16 taken consistent with good utility practice, they
17 could raise those issues with the seller and reach a
18 remedy.
19 Q. Okay. But so going back to my question,
20 you -- you cannot identify any place in the term
21 sheet that states that the companies get to decide
22 whether good utility practices were followed; is that
23 correct?
24 MR. KUTIK: Objection. Asked and
25 answered.

1 EXAMINER PRICE: Overruled.
2 A. I've pointed you to the portions of the
3 term sheet that I am aware of that address the good
4 utility practice.
5 Q. Okay. And do any of those portions state
6 specifically that the companies get to decide whether
7 good utility practices were followed?
8 A. I think these provisions certainly
9 suggest that the companies can and will, in fact,
10 raise concerns with the seller to the extent that
11 they believe there are costs that are being incurred
12 that are not consistent with good utility practice.
13 Subsequent to that there may be
14 discussions between the sellers and the buyers, but
15 it would be incumbent upon the buyers to be very
16 diligent in the I guess -- very diligent in
17 maintaining or upholding these terms because as part
18 of our initial proposal, the buyers or the companies
19 have agreed that all the costs associated with the
20 transaction -- all nonlegacy costs are available for
21 a review by the Commission staff in order to assure
22 that those costs are not unreasonable.
23 And to the extent that the companies
24 don't enforce this provision, they create a risk for
25 themselves in the fact that the Commission and its

1 staff will review this and may -- may make a
2 different determination which wouldn't allow the
3 companies to recover those costs. So in order to
4 isolate themselves from that risk, I believe the
5 companies would be very diligent with respect to
6 enforcing this provision.
7 Q. Do you know if FES believes the companies
8 will have final say as to whether FES has followed
9 good utility practices under the proposed
10 transaction?
11 MR. KUTIK: Objection. Calls for
12 speculation.
13 EXAMINER PRICE: Sustained.
14 Q. Were you involved in the negotiation of
15 the term sheet?
16 A. No.
17 Q. Okay. And do you have any personal
18 knowledge about how FES may or may not interpret the
19 term sheet?
20 A. No.
21 Q. Okay. And this term sheet, it is -- has
22 a watermark that says "Draft"; is that correct?
23 A. Yes.
24 Q. Okay. And to your knowledge is this
25 document still a draft?

1 A. This document represents an agreement in
2 principle between the two parties of all of the terms
3 and conditions associated with the proposed
4 transaction.
5 Q. Okay. And why -- why is it labeled
6 "Draft" then? Is it a draft or is it final?
7 MR. KUTIK: Objection.
8 EXAMINER PRICE: Grounds?
9 MR. KUTIK: Compound.
10 EXAMINER PRICE: Sustained.
11 Q. Okay. Is this document draft or final?
12 A. I think the document speaks for itself.
13 It is labeled draft. But as I said, I believe it
14 represents an agreement in principle between the
15 buyer and seller and contains all the terms and
16 conditions relative to the proposed transaction.
17 EXAMINER PRICE: Excuse me. Can you tell
18 me have the companies and FES executed a final
19 version of this document?
20 THE WITNESS: No, sir.
21 EXAMINER PRICE: Okay. Thank you.
22 Q. And have the companies and FES developed
23 any sort of contract based on this term sheet?
24 A. Not that I'm aware of.
25 Q. So there is no contract for any of the

1 parties or the Commission to review that would
2 memorialize what -- what would be in the proposed
3 transaction; is that right?
4 A. While there is no contract drafted at
5 this time, the term sheet, again, represents an
6 agreement in principle between the buy -- agreement
7 in principle between the buyer and the seller
8 relative to all the terms and conditions associated
9 with the proposed transaction such that the
10 Commission has before it all of the information
11 necessary relative to the terms and conditions of the
12 agreement.
13 Q. Do you think it is prudent to sign -- to
14 proceed on a 15-year deal based on a draft term sheet
15 rather than seeing an actual contract?
16 A. The companies are not seeking approval of
17 the Purchase Power Agreement from the Commission. So
18 I think the term sheet provides sufficient
19 information.
20 Q. Would the companies proceed on this deal
21 for 15 years based solely on this draft term sheet?
22 A. I'm not sure I understand the question,
23 sir.
24 Q. Before entering into the proposed
25 transaction would the companies want to actually

1 draft a contract as opposed to simply relying on this
2 draft term sheet?
3 A. Yes. I would expect there would be a
4 contract.
5 Q. Okay. And neither the Commission nor the
6 parties will be presented with that contract before
7 the proposed transaction is finalized; is that right?
8 A. The contract would reflect the terms and
9 conditions contained in the term sheet so I'm not
10 sure it would be necessary to see the contract when
11 all of the information is contained in the term
12 sheet.
13 Q. Okay. So the answer to my question is,
14 yes, the Commission and the parties will not see the
15 contract before it is finalized; is that right?
16 A. I don't know the answer to that question,
17 sir.
18 Q. And the companies are seeking approval of
19 rider RRS from June 1, 2016, through May 31, 2031; is
20 that correct?
21 A. Yes.
22 Q. Okay. So if the Commission approves
23 rider RRS as part of the companies' Electric Security
24 Plan proposed in this proceeding, is it the
25 companies' position they would not need to seek

1 approval of rider RRS again in future Electric
2 Security Plan proceedings?
3 A. The companies, as proposed, would make an
4 annual filing for rider RRS, which would be available
5 for the Commission review and approval. Once the
6 rider RRS is approved, the companies would not in
7 future ESPs seek continued approval of the rider RRS
8 through May 31, of 2031.
9 Q. Okay. Thank you.
10 MR. FISK: May we go off the record?
11 EXAMINER PRICE: You may.
12 (Discussion off the record.)
13 EXAMINER PRICE: Back on the record.
14 Q. (By Mr. Fisk) Okay. Turning to your
15 second supplemental testimony, page 12, line 2, you
16 reference an alternative plan to allocate the rider's
17 financial risk between both the company and its
18 ratepayers; is that correct?
19 A. This reference addresses what AEP Ohio
20 was directed to include in its PPA rider proposal.
21 Q. Okay. I guess I was just asking did I
22 read that correctly, that you are referencing an
23 alternative plan to allocate the rider's financial
24 risk between both the company and its ratepayers?
25 A. You read that correctly, sir.

1 Q. Okay. Thank you. And is it your
2 testimony that the companies' proposal in this
3 proceeding includes an alternative plan to allocate
4 rider RRS's financial risk between the company and
5 its ratepayers?
6 A. Yes.
7 Q. Okay. So you would agree there is
8 financial risk for ratepayers under rider RRS; is
9 that right?
10 A. Financial risk being the cost or charges
11 included in rider RRS, this discusses the allocation
12 potentially of those costs between the companies and
13 its customers.
14 Q. Okay. And is the financial risk the fact
15 that the credits or charges under rider RRS could be
16 higher or lower than what is projected in the
17 companies' application?
18 A. The financial risk reference here really
19 addresses the risk that there would be -- that the
20 net of the revenues received from the sale to the
21 market or the costs associated with the proposed
22 transaction may be unreasonable, and so the financial
23 risk allocation is such that to the extent under the
24 companies' proposal there is a determination that
25 either the underlying costs or the underlying

1 revenues are unreasonable, then the risk was, the
2 financial risk of those unreasonable determinations
3 would be transferred from the companies' customers to
4 the company.
5 Q. Okay. And am I correct there is no
6 provision in the companies' proposal that would
7 allocate that financial risk to FES rather than to
8 the companies?
9 THE WITNESS: May I have that question
10 read, please, ma'am.
11 (Record read.)
12 A. I think allocation of the risk between
13 the companies -- the buyer and the seller would be
14 dictated by the terms of the Purchase Power
15 Agreement, which is not before the Commission for
16 approval.
17 Q. Okay.
18 A. However, the term sheet, as we have
19 already discussed, does have certain company/customer
20 protections built into it.
21 Q. One second. Do you believe there are any
22 provisions in the companies' proposal that would
23 allocate financial risk to FES rather than to the
24 companies' customers?
25 MR. KUTIK: May I have the question read,

1 please.
2 EXAMINER PRICE: Please.
3 (Record read.)
4 A. As I said, sir, the allocation of risk
5 between the company and FES is dictated by the term
6 sheet and then the allocation of risk between the
7 companies and its customers is laid out in our
8 proposal for the two-tier review process.
9 Q. Okay. Do you recall being deposed a few
10 weeks ago in this proceeding?
11 A. Yes.
12 Q. Okay. And do you recall --
13 MR. KUTIK: Your Honor, if he is going to
14 use her deposition, may she have a copy of the
15 deposition?
16 EXAMINER PRICE: Are you going to use her
17 deposition?
18 MR. FISK: I was going to read to her and
19 see if she still agrees with the statement, and I
20 think I can put it in front of her if she likes.
21 MR. KUTIK: I think it's only fair, your
22 Honor.
23 EXAMINER PRICE: Go ahead and put it in
24 front of her, not that we doubt your reading skills.
25 MR. FISK: May we approach?

1 EXAMINER PRICE: Please. ROSE
2 MR. KUTIK: And which deposition are you
3 going to?
4 MR. FISK: This is the August 19
5 deposition.
6 MR. KUTIK: What page?
7 MR. FISK: We are on page 25, lines 19 to
8 21.
9 MR. KUTIK: Your Honor.
10 MR. FISK: And we will go ahead and have
11 this marked as Exhibit --
12 MR. KUTIK: I object to the use of that
13 page and those lines. It's improper impeachment. It
14 is not inconsistent with anything she said.
15 EXAMINER PRICE: Well, he hasn't asked
16 her about anything. If and when he improperly asks
17 them, then you can object.
18 MR. KUTIK: He has pointed it out. There
19 is no need to burden the record with something that
20 may be stricken.
21 MR. FISK: I am going to ask her if she
22 has changed her -- if her testimony today she thinks
23 is consistent with what she said here.
24 MR. KUTIK: That's not impeachment
25 either, your Honor.

1 EXAMINER PRICE: Why don't we go ahead
2 and let him ask.
3 Q. (By Mr. Fisk) Ms. Mikkelsen, do you have
4 the deposition transcript in front of you?
5 A. I do.
6 Q. Okay. And if you turn to page 25, lines
7 1 through 21, do you see that?
8 A. Yes.
9 Q. And you state there, "There is no
10 provision in the plan that allocates the rider RRS
11 financial risk between the company and FES." Do you
12 see that?
13 A. Yes.
14 Q. Okay. And are -- do you still believe
15 that statement is true?
16 MR. KUTIK: Objection.
17 EXAMINER PRICE: Grounds?
18 MR. KUTIK: Well, first, it's improper
19 impeachment because he only -- he only had her read
20 the answer. He didn't read the question. That's No.
21 1. No. 2, again, it is not inconsistent with
22 anything she said this morning.
23 MR. FISK: I'm simply asking if she still
24 maintains her position on that.
25 MR. KUTIK: Asking that question is not

1 an impeachment question.
2 EXAMINER PRICE: One at a time. Why
3 don't we go ahead and ask the question and answer so
4 the witness has the -- the record is clear and then
5 we will get to Mr. Kutik's other point.
6 MR. FISK: Okay.
7 Q. (By Mr. Fisk) So if we go up to line 14
8 on page 25 the question says, "Okay. And my question
9 is simply is there any provision in the companies'
10 application that would allocate any portion of that
11 financial risk to FES rather than to the customers?"
12 Mr. Kutik then had an objection. And then the
13 answer, "There is no provision in the plan that
14 allocates the rider RRS financial risk between the
15 company and FES." Did I read that correctly?
16 A. Yes, you read that correctly.
17 Q. And is that answer still your testimony
18 today?
19 A. Yes.
20 MR. KUTIK: Your Honor, I move to strike.
21 EXAMINER PRICE: Motion to strike will be
22 denied. Mr. Fisk's point will either be proven up
23 when we review the transcript and compare with what
24 was asked in the deposition to what was asked her or
25 it won't.

1 MR. FISK: Thank you, your Honor.
2 EXAMINER PRICE: Thank you.
3 Q. (By Mr. Fisk) And turn to your direct
4 testimony, page 14, line 21. You have a discussion
5 there about "rider RRS will be subject to two
6 separate reviews." Do you see that?
7 EXAMINER PRICE: Let's pause here. She's
8 got four different sets of direct. You're on Company
9 7, right?
10 MR. FISK: Yes, Company 7, yes.
11 EXAMINER PRICE: Thank you.
12 Q. On page 14, starting at line 21. Are you
13 there?
14 A. Yes.
15 Q. Okay. And you have a discussion starting
16 there about "rider RRS will be subject to two
17 separate reviews"; is that right?
18 A. Yes.
19 Q. Okay. And the first review is that the
20 staff would have from April 31 to May -- April 1 to
21 May 31 to review an annual rider RRS filing for
22 mathematical errors consistent with
23 Commission-approved rate design and incorporation of
24 prior audit rider finding applicable; is that right?
25 A. Yes.

1 Q. Okay. And the companies are proposing
2 this first review would occur annually; is that
3 right?
4 A. Yes.
5 Q. Okay. And am I correct that the
6 companies are proposing that this first review would
7 be carried out by staff?
8 A. Yes.
9 Q. Okay. And the companies are proposing
10 that customers of the companies would not be able to
11 participate in this first review process; is that
12 correct?
13 A. Yes.
14 Q. Okay. And the first review process does
15 not involve any assessment of the reasonableness or
16 prudence of any costs incurred by the companies under
17 the proposed transaction; is that correct?
18 A. Yes.
19 Q. Okay. And the first review process also
20 does not involve any assessment of the reasonableness
21 or prudence of any charges or credits that would be
22 passed on to customers through rider RRS; is that
23 correct?
24 A. Yes.
25 Q. Okay. Then on page 15 of your direct

1 testimony, lines 3 to 22, you discuss the companies'
2 proposed second review; is that correct?
3 A. Yes.
4 Q. Okay. And the second review would
5 include an audit of the reasonableness of the actual
6 costs around actual market revenues included in rider
7 RRS; is that correct?
8 A. The second review would include the
9 opportunity to audit the reasonableness of the actual
10 costs excluding legacy cost components as well as the
11 actual market revenues, sir.
12 Q. Okay, okay. And is it the companies'
13 proposal that this second review process could
14 potentially lead to a disallowance of some costs that
15 were passed through rider RRS?
16 A. Yes.
17 Q. Okay. Am I correct that if there is a
18 disallowance of costs that were passed through rider
19 RRS, such disallowance would have no impact on the
20 amount of money the companies pay FES under the
21 proposed transaction?
22 A. That's correct.
23 Q. Okay. So under the proposed transaction,
24 FES would receive all of the costs agreed to under
25 the -- in the proposed transaction regardless of

1 whether the Commission ended up finding certain costs
2 to be unreasonable; is that right?
3 THE WITNESS: May I have that question
4 reread, please, ma'am.
5 (Record read.)
6 A. FES will be paid subject to the terms and
7 conditions laid out relative to the negotiated price
8 of the contract. That payment is independent of any
9 determination made by the Commission with respect to
10 unreasonable costs.
11 Q. Okay. And the companies are not
12 proposing any specified frequency at which the audits
13 proposed in the second review process would occur; is
14 that correct?
15 A. That's right. I think the companies
16 believe the Commission can determine what the
17 appropriate level of frequency is for the second
18 review process.
19 Q. Okay. And the companies are proposing
20 that customers will pay for the companies' cost of
21 any audit even if the Commission finds the audit
22 costs to be unreasonable; is that correct?
23 A. It's the companies' proposal that any
24 costs incurred associated with the audit process
25 would be recovered in rider RRS.

1 Q. Okay. Regardless of the ultimate result
2 of that audit, correct?
3 A. Yes.
4 Q. And in your direct testimony, page 15,
5 lines 20 to 21, you state that "Resolution of any
6 audit findings will be included in the next Rider RRS
7 filing after the final nonappealable Order in that
8 proceeding." Is that right?
9 A. You read that correctly, sir.
10 Q. Okay. So if the Commission were to
11 disallow as unreasonable any costs that have been
12 included in rider RRS, those costs would then be
13 deducted from the costs included in the next rider
14 RRS; is that correct?
15 A. After the final nonappealable order in
16 the proceeding.
17 Q. Okay.
18 A. Yes.
19 Q. And when you state "final nonappealable
20 Order," if the companies were to appeal a Commission
21 audit order to the Ohio Supreme Court, any -- any
22 disallowance would not -- would not be incorporated
23 into the next rider RRS until after the Ohio Supreme
24 Court had ruled; is that right?
25 A. Yes.

1 Q. Okay. And during that entire audit
2 period, including any potential appeal to the Ohio
3 Supreme Court, the companies would continue to
4 collect any disputed costs; is that right?
5 A. Disputed costs would continue to be
6 recovered in rider RRS throughout the dispute period.
7 Q. Okay. And if the Commission were to
8 disallow as unreasonable any costs included in rider
9 RRS and then the Ohio Supreme Court were to uphold
10 any such disallowance, would customers receive any
11 interest on the disallowed costs when they were
12 factored into the next rider RRS?
13 A. Yes.
14 Q. Okay. And if rider RRS ends before there
15 is a non -- final nonappealable order resolving the
16 audit findings, how would any disallowance be passed
17 through to customers?
18 A. It is a common practice that to the
19 extent a rider's term ends, it remains open for
20 reconciliation purposes beyond the end of the term of
21 the rider. So if the companies were to find
22 themselves in the circumstance you described, I would
23 expect that the rider would remain open for
24 reconciliation purposes so that in the event there
25 was an ultimate determination that a refund was

1 necessary, it would be returned to the customers at
2 that time.
3 Q. Okay. The market revenues included in
4 rider RRS are the amounts of revenue generated by the
5 sale of energy, capacity, ancillary services, into
6 the PJM markets, correct?
7 A. It is the revenue generated from the sale
8 of the energy, capacity, ancillary services, and
9 environmental attributes associated with -- arising
10 from the plants included in the proposed transaction.
11 Q. Okay. And under the companies' audit
12 proposal, is it your position that the market
13 revenues could be reviewed for reasonableness?
14 A. Yes.
15 Q. Okay. And if the companies reasonably
16 bid the energy, capacity, ancillary service, and
17 environmental attributes into the PJM markets and
18 include all the revenues generated in rider RRS, is
19 there any way in which the Commission could find the
20 market revenues included in rider RRS unreasonable?
21 A. Sir, is your question to me if the
22 revenues included in the rider are reasonable, could
23 the Commission find them to be unreasonable? The
24 answer to that question would be no.
25 Q. Well, my question is a little different.

1 If -- I guess -- if you go to Attachment JAR-1
2 (Revised) that we discussed earlier, and let's say,
3 for example, 2019 you have a projected market revenue
4 of $1.507 billion; is that correct?
5 A. May I ask you to repeat that question,
6 sir?
7 Q. On attachment JAR-1 (Revised), in 2019 it
8 says projected market revenue is $1.507 billion; is
9 that right?
10 A. Yes.
11 Q. If in 2019 the companies reasonably bid
12 the energy, capacity, ancillary services
13 environmental attributes into the PJM markets and
14 include in rider RRS all of the resulting revenues
15 but those revenues are significantly lower than
16 $1.507 billion, is there any way in which the
17 company -- the Commission could determine that is
18 unreasonable?
19 A. No, as long as the determination is that
20 the actions taken to produce the market revenues were
21 reasonable.
22 Q. Okay.
23 A. The investigation ends there.
24 Q. So if -- would you agree with me the
25 projected market revenues included in Attachment

1 JAR-1 (Revised) are based, in part, on projections of
2 what the PJM market energy prices and capacity prices
3 may be in 2019?
4 A. The projected market revenue values
5 included in JAR-1 (Revised) reflect the forecast by
6 Mr. Rose of energy and capacity prices in the forward
7 periods.
8 Q. Okay. So if the actual PJM energy and
9 capacity prices are significantly lower than what
10 Mr. Rose projected, all else being equal, they
11 project market revenues -- the actual market revenues
12 in 2019 would be lower than the projected ones,
13 correct?
14 A. Yes.
15 Q. Okay. And there -- under the companies'
16 proposal there is no way, am I correct, that the fact
17 that those revenues are lower than what were
18 projected would lead to an unreasonableness finding;
19 is that right?
20 A. The circumstance you are describing
21 really is the -- sort of the underlying notion of the
22 retail rate stability rider such that when market
23 prices are low, the customers may see a charge or be
24 neutral and only to the extent market prices increase
25 would there be a credit for those customers that

1 would work to stabilize customers' rates and offset
2 the impact of rising market prices and volatility on
3 the customers.
4 Q. Okay. But looking solely at rider RRS,
5 customers are bearing all of the risk that the
6 projected market -- that the actual market revenues
7 will be lower and the projected market revenues due
8 to, for example, lower PJM energy and capacity
9 prices; is that right?
10 A. When I think of the retail rate
11 stabilization mechanism, I think of it as sort of a
12 financial insurance against increasing and volatile
13 market prices in the future. So to the extent those
14 market prices don't increase or are not as volatile
15 as expected today, the mechanism provides the
16 assurance to the customers that they would have
17 protection in the event that that did occur.
18 Q. Well, they would not have protection
19 under rider RRS, correct? They would end up with
20 lower market revenues than what was projected, right?
21 A. I am not sure I understand the question,
22 sir.
23 Q. If market -- PJM market energy and
24 capacity prices are lower than what Mr. Rose
25 projected in 2019, the market revenue included in

1 rider RRS will be lower than what the companies are
2 projecting, all else being equal, correct?
3 A. Yes.
4 Q. Okay. And the risk that such actual
5 market revenues will be lower -- could be lower than
6 what the companies are projecting due to lower PJM
7 energy or capacity prices falls entirely on the
8 customers under rider RRS, correct?
9 A. The risk of lower market prices as well
10 as the opportunity for higher market prices flow to
11 the customers, assuming participation in the market
12 is done on a reasonable basis.
13 Q. Okay.
14 EXAMINER PRICE: Could I ask you a
15 question?
16 THE WITNESS: You may.
17 EXAMINER PRICE: It's your intent that
18 rider RRS be fully reconcilable; is that right? If
19 there is a disallowance, and it goes to the Supreme
20 Court and you -- the companies appeal and the
21 Commission prevails on that appeal, it's your
22 position that that money then will be flowed back to
23 the customers; is that correct?
24 THE WITNESS: Yes, sir, with interest.
25 EXAMINER PRICE: Okay. I know you are

1 not an attorney but you are -- are you familiar with
2 the case that we call Keco?
3 THE WITNESS: No, sir.
4 EXAMINER PRICE: No? Rate doctrine?
5 THE WITNESS: No, sir.
6 EXAMINER PRICE: No? But it is the
7 companies' intent that any cost that is consequently
8 found to be unreasonable would be flowed back to the
9 customers after the appeal.
10 THE WITNESS: After the final
11 nonappealable order, the dollars would be flowed back
12 to the customers.
13 EXAMINER PRICE: In creating this rider?
14 THE WITNESS: Correct.
15 EXAMINER PRICE: And one more question
16 before we part this page. On page 9 -- line 9, you
17 give a description of the test, and you say in that
18 regard --
19 MR. KUTIK: I'm sorry, your Honor.
20 EXAMINER PRICE: I'm sorry, page 15.
21 MR. KUTIK: Of which document?
22 EXAMINER PRICE: Good call. Exhibit 7.
23 MR. KUTIK: Thank you.
24 EXAMINER PRICE: Page 15, Exhibit 7,
25 lines 9 through 11, you describe the test, how the

1 Commission will review cost and revenues, and then
2 you say the test is very similar to the historic test
3 that the Commission has employed; is that correct?
4 THE WITNESS: Yes.
5 EXAMINER PRICE: How is it different?
6 THE WITNESS: I don't expect it to be
7 different, sir.
8 EXAMINER PRICE: Okay. So there is no
9 planned differences in the way we would normally do a
10 prudency review?
11 THE WITNESS: No, sir.
12 EXAMINER PRICE: Thank you. Thank you.
13 MR. FISK: Thank you, your Honor.
14 Q. (By Mr. Fisk) Okay. Sticking with the
15 audit, under the second review process that the
16 companies are proposing, the audit could also look at
17 the reasonableness of the costs that are included in
18 rider RRS; is that correct?
19 A. Yes.
20 Q. Okay. And the costs that are included in
21 rider RRS are the costs that the companies incur
22 under the proposed transaction; is that right?
23 A. Yes.
24 Q. Okay. Plus legacy costs that are not
25 part of the audit; is that right?

1 A. I'm not sure I followed that question,
2 sir. May I ask you to reask it, please?
3 Q. Sure. The companies are also proposing
4 that there's a legacy cost component to rider RRS; is
5 that right?
6 A. I think the companies' proposal
7 recognizes that there are legacy cost components that
8 will be part of the costs paid under the proposed
9 transaction and included for netting purposes against
10 market revenues for rider RRS purposes.
11 Q. Okay, okay. And we'll discuss those
12 later, but just for purposes here, the legacy cost
13 components, am I correct if they are approved in this
14 proceeding, it is the company's position that they
15 would not be subject to future audit?
16 A. It is the companies' position that they
17 would not be subject to future reasonableness or
18 prudence reviews, the legacy cost components included
19 in future filings would be eligible for the first
20 review process that we talked about, as well as in
21 the second review what I would characterize as an
22 accounting review to be sure that the costs that are
23 charged do tie out to the seller's books and records,
24 things of that nature, and they would not be eligible
25 for a prudence or reasonableness review.

1 Q. Okay, okay. And with regards to the
2 costs included in rider RRS, under the proposed
3 transaction, FES makes the ultimate determination of
4 what capital investments are made to the Sammis and
5 Davis-Besse plants; is that correct?
6 A. The term sheet lays out a fairly specific
7 process for participation by the companies in the
8 capital expenditure planning process. Ultimately if
9 a decision is made that a capital expenditure would
10 render the plant uneconomic on a going-forward basis,
11 then the parties could decide to remove that plant
12 from the PPA.
13 Q. Okay. But outside of that, that specific
14 example, in general, capital investments under the
15 proposed transaction, am I correct, are governed
16 under paragraph 12 of the term sheet?
17 A. Yes.
18 Q. Okay. And under paragraph 12 while the
19 companies have various options to comment on capital
20 expenditure plans, in the end it is the seller that
21 makes the decision whether to make the capital
22 investment; is that right?
23 A. Yes, although the seller is obligated to
24 provide an explanation for any nonexception --
25 nonacceptance or nonadoption of any of the companies'

1 customers, and I do continue to believe that they are
2 held to the good utility practice that we discussed
3 earlier.
4 Q. And so then those capital investments,
5 the costing of those would be passed on to customers
6 in rider RRS, correct?
7 A. Subject to the review process that we
8 just discussed for determination that the costs
9 incurred were not unreasonable.
10 Q. Okay. And am I correct that the -- under
11 the companies' proposal, the staff would have the
12 ability to submit data requests to the companies as
13 part of the audit of such capital costs?
14 A. Yes.
15 Q. Okay. Would -- under the companies'
16 proposal would the staff have the authority to submit
17 data requests to FES as part of the audit?
18 MR. KUTIK: Objection, your Honor, to the
19 extent it calls for a legal conclusion.
20 EXAMINER PRICE: Sustained.
21 You can answer if you know.
22 A. I don't know.
23 Q. Okay. Do you know under this audit --
24 EXAMINER PRICE: One second, Mr. Fisk.
25 So you are making no representation that

1 the staff will be able to issue data requests to FES?
2 THE WITNESS: Right. I believe the staff
3 will be able to issue data requests to the companies.
4 EXAMINER PRICE: Okay. Thank you.
5 MR. FISK: Okay. Thank you. Thank you.
6 Q. (By Mr. Fisk) And is it your -- is it the
7 companies' proposal that intervenors in -- in this --
8 in any audit proceeding would have the ability to
9 submit data requests to the companies as part of the
10 audit?
11 A. I believe after the staff issues its
12 staff report. Then other parties would have the
13 opportunity, subject to Commission approval, to
14 participate in that proceeding.
15 Q. Okay. And that participation would
16 include the ability to submit data requests to the
17 companies?
18 A. Subject to the Commission approval, sure.
19 Q. Okay. And is it the companies' position
20 that such intervenors would have the right to submit
21 data requests to FES as part of an audit proceeding?
22 A. I believe the intervenors would be able
23 to issue data requests to the companies.
24 Q. Okay. If the staff and the intervenors
25 are not able to issue data requests to FES and FES is

1 the entity that makes the -- ultimately makes the
2 capital decision, how would there be a review of the
3 prudence of FES's capital decisions?
4 A. The term sheet on page 9 of 15 under
5 condition 18 specifies that the "Seller shall
6 reasonably and timely provide all data and
7 information requested by Buyers: (i)to respond to a
8 Governmental Authority request for information; (ii)
9 to prepare for and make other regulatory filings;
10 and, (iii) as required by law with respect to the
11 Buyers."
12 Q. Okay. So it would be up to -- the staff
13 and the intervenors would have to rely on the
14 companies to request the information from FES; is
15 that correct?
16 A. Yes.
17 Q. Okay.
18 EXAMINER PRICE: Let us talk about this
19 for a second, this provision. What you are saying is
20 if the -- if there was a piece of information or data
21 necessary for the staff's review, the staff would
22 issue the data requests to the company, and then the
23 company would, in turn, pass along that request to
24 FirstEnergy Solutions; is that right?
25 THE WITNESS: Yes.

1 EXAMINER PRICE: And if there is a
2 dispute regarding producing that information, how
3 does that get resolved? FES then says to the
4 company, no, we disagree, this is not something that
5 should be turned over.
6 THE WITNESS: I would think at that
7 point -- again, I am not an attorney, but I would
8 think at that point the companies would bear the risk
9 associated with the failure to produce the
10 information.
11 EXAMINER PRICE: Okay. Thank you.
12 Thank you, Mr. Fisk.
13 Q. (By Mr. Fisk) So following up on that, if
14 FES refused to produce the information, is it the
15 companies' proposal there would be any way to compel
16 FES to produce?
17 MR. KUTIK: Well, I will object to the
18 extent it calls for a legal conclusion.
19 EXAMINER PRICE: Sustained.
20 You can answer what you know.
21 A. I don't have anything to add beyond what
22 I already said, which is the term sheet dictates that
23 the seller shall reasonably and timely provide data
24 to the buyers to respond to a governmental authority
25 request for information.

1 Q. Okay. And intervenors in an audit
2 proceeding would not be considered a governmental
3 authority; is that correct?
4 A. That may depend on the intervenor, sir.
5 Q. Okay. Well, a nongovernmental intervenor
6 in an audit proceeding would not have the -- would
7 not have any ability to request that the buyers seek
8 information from FES in an audit proceeding, correct?
9 MR. KUTIK: Objection, mischaracterizes
10 her testimony.
11 EXAMINER PRICE: Sustained. Please
12 restate your question.
13 Q. You are referring to page 9 in the term
14 sheet, correct, with regards to governmental
15 authorities?
16 A. Yes.
17 Q. Okay. And it's your testimony, am I
18 correct, that the sellers under the term sheet would
19 need to reasonably and timely provide data and
20 information requested by buyers to respond to a
21 governmental authority request for information; is
22 that correct?
23 A. Among other conditions, yes.
24 Q. Okay. And is it the companies' position
25 that a nongovernmental intervenor in an audit

1 proceeding would fit within this requirement that the
2 seller reasonably and timely provide all data and
3 information requested by buyers to respond to a
4 governmental authority request?
5 A. No.
6 MR. FISK: Okay. May we go off?
7 EXAMINER PRICE: Let's go off the record.
8 (Recess taken.)
9 (Thereupon, at 12:25 p.m., a lunch recess
10 was taken until 1:30 p.m.)
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1 Monday Afternoon Session,
2 August 31, 2015.
3 - - -
4 EXAMINER PRICE: Let's go back on the
5 record. Mr. Fisk, please continue.
6 MR. FISK: Thank you, your Honor.
7 - - -
8 EILEEN M. MIKKELSEN
9 being previously sworn, as prescribed by law, was
10 examined and testified as follows:
11 CROSS-EXAMINATION (Continued)
12 By Mr. Fisk:
13 Q. Ms. Mikkelsen, I believe before the lunch
14 break we discussed briefly legacy cost components; is
15 that correct?
16 A. Yes.
17 Q. Okay. And am I correct the legacy cost
18 components are costs that arise from decisions or
19 commitments made or contracts entered into prior to
20 December 31, 2014; is that right?
21 A. Yes.
22 Q. And they are the future costs from those
23 commitments and decisions that would arise during the
24 term of rider RRS; is that right?
25 A. They are costs that would arise in the

1 future from decisions made prior to December 31st of
2 2014.
3 Q. Okay, great. And am I correct there is
4 no limit on how far back the contracts that could
5 lead to legacy cost components go?
6 A. I'm not aware -- there is no timeframe
7 associated with contracts from which legacy cost
8 components could arise.
9 Q. Okay. And there is no limit, am I
10 correct, on the amount of legacy costs that may be
11 included in rider RRS, assuming they arise from
12 decisions, commitments, or contracts entered into
13 prior to December 31, 2014?
14 A. Correct.
15 Q. Okay. And the legacy cost components are
16 not listed in the companies' application; is that
17 right?
18 A. Mr. Lisowski's, which was filed in
19 support of the application, had various costs
20 categories and legacy cost components which would
21 have been included within those categories.
22 Q. Okay. But there's no listing in the
23 application or the supporting testimony of what
24 specific commitments, decisions, and contracts from
25 before December 31, 2014, are included in the legacy

1 cost components; is that right?
2 A. I think it would be difficult to know at
3 the time we filed the application what costs would
4 arise from legacy commitments or contracts entered
5 into prior to December 31 of 2014.
6 Q. And would that still be difficult to know
7 today?
8 A. I guess when I say "difficult," maybe I
9 misunderstood your question, to know with precision
10 what dollar amounts in the future would arise from
11 contracts that were entered into prior to December 31
12 of 2014, but the parties did have the opportunity in
13 this proceeding to review any of those contracts from
14 which legacy cost components would arise in the
15 future.
16 Q. Okay. Because those contracts were
17 identified in a discovery response; is that right?
18 A. Yes.
19 Q. Okay. And leaving aside the supplemental
20 discovery that was allowed by the Attorney Examiners
21 on factors identified in the AEP ESP proceeding, do
22 you know when the discovery cutoff on the companies'
23 application was?
24 MR. KUTIK: Objection.
25 EXAMINER PRICE: Grounds?

1 MR. KUTIK: Relevance. Discovery cutoff
2 is what it is. Her knowledge of it is irrelevant.
3 EXAMINER PRICE: I will allow it.
4 You can answer if you know.
5 A. I think what's probably clearer to me is
6 when the final date of discovery was due, which was
7 in late December of 2014, from the first round of
8 discovery allowed in this proceeding.
9 Q. Okay. And that was before December 31,
10 2014, correct?
11 A. Yes.
12 Q. Okay. So those discovery responses would
13 not have identified any contracts, decisions or
14 commitments entered into between the close of
15 discovery on December 31, 2014; is that right?
16 A. My recollection is that the discovery
17 cutoff was December 29th of 2014 in terms of the
18 final responses being provided.
19 Q. Okay.
20 A. So. I guess to the extent there were
21 contracts entered into on the 30th or the 31, those
22 would not have been reflected in the December 29th --
23 or before discovery responses, but the discovery was
24 reopened several times, and to the extent contracts
25 would have been entered into subsequent to

1 December 29, that information would have been
2 provided in supplemental discovery responses.
3 Q. Okay. And I believe you've said that the
4 definition of the legacy cost components includes in
5 addition to contracts entered into prior to
6 December 31, 2014, decisions or commitments that were
7 made before that date; is that correct?
8 A. Legacy cost components are all costs that
9 arise from decisions or commitments made or contracts
10 entered into prior to December 31 of 2014.
11 Q. Okay. And so decisions or commitments
12 made is a different category than the actual -- than
13 the contracts; is that right?
14 A. Yes.
15 Q. Okay. And is there any listing in the
16 application or any supporting testimony of what the
17 specific decisions or commitments that would be
18 included in the legacy cost components?
19 A. I think information regarding the legacy
20 cost components would have been provided in response
21 to discovery.
22 Q. Okay, okay. And I believe those
23 responses were identified as confidential so we will
24 discuss those in a later session.
25 And the companies are proposing, am I

1 correct, that if the Commission approves their
2 application in this proceeding, then the recovery of
3 all legacy cost components through rider RRS will be
4 deemed reasonable; is that correct?
5 A. Yes.
6 Q. Okay. But you cannot, sitting here
7 today, identify what those costs will be with
8 specificity; is that correct?
9 A. Those costs would need to be traced back
10 to decisions made or contracts entered into or
11 commitments made prior to December 31st of 2014, so
12 absent a showing of that connection, they would not
13 be considered legacy cost components.
14 Q. Okay. And so the specific amounts that
15 the companies are asking the Commission to deem
16 reasonable are not in the record, is that correct, in
17 this proceeding?
18 A. Yes.
19 Q. Okay. And am I correct that the
20 companies contend that the legacy cost components
21 should be presumed to be prudently incurred?
22 A. I think the parties had the opportunity
23 to explore the reasonableness of the legacy cost
24 components in this proceeding.
25 Q. Okay.

1 EXAMINER PRICE: Were you done with your
2 answer?
3 THE WITNESS: No.
4 MR. FISK: I'm sorry.
5 A. So absent a determination that legacy
6 cost components were not reasonable or prudent, then
7 exiting this proceeding the assumption is going
8 forward all legacy cost components would be
9 reasonable.
10 Q. Okay. I guess I am talking about in
11 terms of the evaluation of these legacy costs in this
12 proceeding is it the companies' position that those
13 costs should be presumed to be prudently incurred?
14 A. I think there is a presumption that all
15 costs incurred are prudent.
16 Q. Okay. And if you turn to your testimony,
17 direct testimony, on page 14, this is Companies'
18 Exhibit 7, lines 12 through 15, you state, "These
19 Legacy Cost Components were assumed by a competitive
20 company that prudently and conservatively incurred
21 costs to effectively participate in the competitive
22 market and deliver shareholder value"; is that
23 correct?
24 A. Yes.
25 Q. Okay. And is -- is your contention that

1 these costs were incurred by a competitive company
2 operating in the market? Is that why you believe
3 there should be a presumption that the costs were
4 prudently incurred?
5 THE WITNESS: May I ask you to reread the
6 question, please, ma'am.
7 (Record read.)
8 A. I think that is one reason, but I also
9 think there should be a presumption that the costs
10 incurred were prudent regardless.
11 Q. Okay. And when you say in your
12 testimony, your direct testimony, in the line we just
13 read, that the costs "were assumed by a competitive
14 company that prudently and conservatively incurred
15 costs to effectively participate in the competitive
16 market," do you believe that FES has been effectively
17 participating in the competitive market?
18 A. That was not the point of this statement.
19 I don't have an opinion on that. What this statement
20 is saying is that my assumption is that these costs
21 were incurred by a competitive company in a prudent
22 and conservative fashion to allow them to effectively
23 participate in competitive markets and deliver
24 shareholder value.
25 Q. Okay. And if you turn to your second

1 supplemental testimony, page 3, lines 13 to 14, you
2 state -- referring to Mr. Moul's testimony, you state
3 that the "markets have not and are not providing
4 sufficient revenue to ensure the continued operation"
5 of the Sammis and Davis-Besse plants; is that
6 correct?
7 A. Yes.
8 Q. Okay. Doesn't the fact that the markets
9 have not and are not providing sufficient revenues
10 suggest that FES has not been effectively
11 participating in the competitive market?
12 A. No.
13 Q. And why not?
14 A. I think a market participant can
15 participate very effectively in the market and for
16 any number of reasons find themselves in a situation
17 where the markets have not and are not providing
18 sufficient revenue to ensure the continued operation
19 of the plants.
20 Q. Okay. And does the fact that markets
21 have not and are not providing sufficient revenue to
22 ensure the continued operation of the plants suggest
23 FES has not been delivering shareholder value through
24 its participation in the market?
25 A. I think the demonstration of the

1 financial need of these plants suggests that they are
2 not returning shareholder value at the levels one
3 might expect that shareholders would expect.
4 Q. And isn't that ultimately why we are here
5 today and there is a proposed transaction, to ensure
6 that the shareholders receives a return on equity?
7 A. No. The companies' proposal is, again,
8 for Commission approval of a retail rate
9 stabilization mechanism that will help insulate the
10 companies' customers from volatile and increasing
11 market prices, and, in addition, the companies'
12 proposal contemplates the continued operation of the
13 plants, and by virtue of the continued operation of
14 the plants, the avoidance of significant transmission
15 investment, the continued operation of baseload
16 generating units that are fuel diverse with on-site
17 fuel storage capabilities, as well as deliver
18 significant economic development benefits to these
19 companies' service territory as well as the state of
20 Ohio.
21 Q. The proposed transaction also provides
22 shareholders a fixed rate of return of 11.15 percent,
23 does it not?
24 A. The proposed transaction is not before
25 the Commission for approval.

1 Q. And you just referenced, I believe,
2 various transmission-related costs that could occur
3 if Sammis and Davis-Besse plants were to close; is
4 that correct?
5 A. Yes.
6 Q. Okay. You cannot say today that the
7 Sammis plant would close if rider RRS is not
8 approved, correct?
9 A. The future of the plant is uncertain.
10 Q. Okay. So am I correct you cannot say
11 that at this time, sitting here today, the Sammis
12 plant will close if rider RRS is not approved?
13 MR. KUTIK: Objection. Asked and
14 answered.
15 MR. FISK: She didn't actually answer the
16 question.
17 MR. KUTIK: Yes, she did.
18 EXAMINER PRICE: Number one, all the
19 comments will be directed to the Bench.
20 MR. FISK: Sorry.
21 EXAMINER PRICE: Number two, we will give
22 a little bit of leeway.
23 Go ahead and answer the question.
24 A. I can't say with certainty the Sammis
25 plant will continue to operate any more than I can

1 say with certainty that it won't.
2 Q. Okay. And am I correct no one has told
3 you that the Sammis plant would close if the proposed
4 transaction were not executed; is that right?
5 A. Yes.
6 Q. Okay. And am I correct you do not know
7 who specifically would be responsible for deciding
8 whether to close the Sammis plant?
9 A. I ask you to be more specific with your
10 question. Are you asking me for names or -- I
11 apologize.
12 Q. Name or position of the person who would
13 decide whether to close the Sammis plant.
14 A. I don't know.
15 Q. And am I correct you cannot say today
16 that the Davis-Besse plant would close if rider RRS
17 is not approved?
18 A. I can't say whether the Davis-Besse plant
19 would continue to operate or would not continue to
20 operate if rider RRS is not approved.
21 Q. Okay. And is that -- and is it the same,
22 you cannot say today that the Davis-Besse plant would
23 close if the proposed transaction were not executed?
24 A. Yes.
25 Q. Okay. And no one has told you that the

1 Davis-Besse plant would close if the proposed
2 transaction were not executed; is that correct?
3 A. Yes.
4 Q. Okay. And no one has told you that the
5 Davis-Besse plant would close if the rider RRS were
6 not approved; is that correct?
7 A. Yes.
8 Q. So the transmission related electric
9 price increases discussed in your second supplemental
10 testimony, there's -- would not necessarily occur
11 even if rider RRS were denied, correct?
12 EXAMINER PRICE: Can I have that question
13 reread, please.
14 MR. FISK: Sure.
15 (Record read.)
16 A. This is the estimate of the rate-related
17 impacts of transmission investment if the plants do
18 close.
19 Q. Okay.
20 A. Not if the plants don't close.
21 Q. Okay. And so denial of rider RRS would
22 not necessarily lead to the transmission-related
23 electric price increases you identify in your second
24 supplemental testimony, correct?
25 A. It is uncertain to the extent that the

1 plants do close, then these costs would be incurred.
2 Q. And referring to your second supplemental
3 testimony, page 7, line 6, and then running through
4 page 8, you identify in there an estimate of
5 transmission-related costs that might occur in the
6 future; is that right?
7 A. What I show on page 7 continuing to page
8 8 in my testimony is if Sammis and Davis-Besse were
9 to close, what the rate impact would be of the
10 transmission investments that are described in
11 Mr. Phillips' testimony.
12 Q. Okay. And am I correct you had no
13 involvement in identifying the transmission
14 investments that might be needed if Sammis and
15 Davis-Besse were closed?
16 A. Correct.
17 Q. Okay. And you have not done any
18 independent evaluation outside of reviewing
19 Mr. Phillips' testimony of what additional
20 transmission investment might be needed; is that
21 correct?
22 A. I have compared the numbers provided to
23 me by Mr. Phillips to dollar amounts that were
24 incurred for transmission investments that were
25 necessitated by the closure of other plants on our

1 system.
2 Q. Okay. But in terms of the actual
3 transmission investments -- the specific transmission
4 investments that Mr. Phillips has identified as
5 potentially being needed, did you do anything to
6 independently evaluate the investments that
7 Mr. Phillips has identified?
8 A. Short of preparing -- you know, comparing
9 them to dollars that were incurred as a result of
10 other transmission investments necessitated by
11 closure of other plants, no.
12 Q. Okay. And on page 7, lines 16 to 18, you
13 mention "the difficulty in estimating today precisely
14 how the dollars spent to maintain reliability would
15 be allocated to various Companies since the final
16 allocation is very dependent upon the solution
17 chosen." Do you see that?
18 A. I do.
19 Q. Okay. And in identifying the estimated
20 transmission-related costs to the companies'
21 customers, you and Mr. Phillips both assumed that
22 82 percent of the costs would be allocated to the
23 companies' customers; is that right?
24 A. Yes.
25 Q. Okay. And it was Mr. Phillips who

1 decided to assume an 82 percent cost allocation to
2 the companies' customers; is that right?
3 A. Yes.
4 Q. Okay. Now, did you have any involvement
5 in deciding whether to assume an 82 percent cost
6 allocation to the companies' customers?
7 A. I may have participated in discussions,
8 but Mr. Phillips made the decision.
9 Q. Okay, okay. And would you agree that the
10 actual cost allocation for any transmission
11 investments that might be needed could be different
12 than the 82 percent that you and Mr. Phillips
13 assumed?
14 A. Yes.
15 Q. Okay. And if that 82 percent cost
16 allocation were different than the specific prices
17 identified on page 8 of your Second Supplemental
18 Testimony, the transmission investments could also be
19 different?
20 A. Yes. But as we point out, absent
21 knowledge -- we went to the most recent history and
22 that's what Mr. Phillips relied upon, was very recent
23 history in terms of transmission investments
24 associated with plant closures and how many of those
25 dollars would have been allocated to the companies.

1 Q. And there is a reference on page 8 in
2 your Second Supplemental Testimony, lines 6 through
3 9, about how Mr. Phillips had originally assumed that
4 transmission lines would simply need to be
5 reconductored, but then in his supplemental testimony
6 assumed that they would need to be rebuilt or perhaps
7 even be replaced; is that right?
8 THE WITNESS: May I have the question
9 reread, please, ma'am.
10 (Record read.)
11 EXAMINER PRICE: Why don't you rephrase
12 your question, Mr. Fisk.
13 MR. FISK: What?
14 EXAMINER PRICE: Why don't you rephrase
15 your question.
16 Q. (By Mr. Fisk) Ms. Mikkelsen, if you could
17 refer to page 8, line 6, of your Second Supplemental
18 Testimony, and let me know when you are there.
19 A. I'm there.
20 Q. Okay. Great. You stated there that
21 "Mr. Phillips further testified that the initial
22 conservative estimate for transmission investments...
23 assumed all of the overloaded facilities were
24 remedied by reconductoring"; is that right?
25 A. Yes.

1 Q. Okay. And then you state, "It was very
2 likely that lines would need to be rebuilt or perhaps
3 even be replaced with more expensive new facilities";
4 is that right?
5 A. The reference is related to Mr. Phillips'
6 testimony.
7 Q. Okay. Okay.
8 A. Yes.
9 Q. Okay. And did you have any personal
10 involvement in whether -- in deciding whether various
11 overloaded facilities would need to be reconductored
12 versus being rebuilt or replaced?
13 A. No, sir, and I don't think that final
14 determination would be made until such time as the
15 plants close and the, you know, reliability models
16 are run at that time and a determination is made as
17 to what the proper solution is for remedy --
18 remedying the violations --
19 Q. Okay.
20 A. -- arising from the plant closures.
21 Q. Okay. And so until that happens, there
22 would be no way to know the costs of what
23 transmission investments might be needed; is that
24 correct?
25 A. No. I think what Mr. Phillips did was

1 provide a range of outcomes, a very conservative
2 estimate based on the assumption that the reliability
3 could be restored by reconductoring, and then on the
4 opposite end of this spectrum, an analysis which
5 calculated what the costs would be if all of the
6 reliability violations were remedied, either through
7 rebuilding or replacing the lines, so I think what
8 Mr. Phillips did was to provide estimates.
9 Q. Okay. And would it be fair to call those
10 kind of a high and a low estimate?
11 A. Or as Mr. Phillips refers to it, a
12 conservative estimate and then a subsequent estimate,
13 yes.
14 Q. Okay, okay. And you have no experience
15 with the modeling of transmission grid reliability;
16 is that correct?
17 A. That is correct.
18 Q. Okay. And do you know whether PJM is
19 responsible for transmission and generation
20 reliability?
21 A. May I ask you to restate the question
22 because it's a compound question?
23 Q. Okay. Do you know whether PJM is
24 responsible for ensuring transmission reliability?
25 A. I think PJM, along with others, have a

1 role for ensuring transmission reliability, but I
2 believe the transmission operators as well as NERC,
3 CK Reliability First, all play a role in the
4 reliability of the bulk transmission system.
5 Q. Am I correct you do not have any
6 responsibility for environmental compliance with
7 regards to the Sammis plant?
8 A. That is correct.
9 Q. Okay. And besides reviewing the
10 testimony of Witnesses Harden and Evans, you have not
11 done any analysis of the environmental compliance of
12 Sammis; is that right?
13 A. That is correct.
14 Q. Okay. And am I correct you do not have
15 any experience -- experience forecasting long-term
16 market energy prices?
17 A. That is correct.
18 Q. Okay. And am I also correct you do not
19 have any experience in forecasting long-term capacity
20 prices?
21 A. That is correct.
22 Q. Okay. And are you aware that the
23 business development department of the FirstEnergy
24 Service Company performs dispatch modeling?
25 A. Yes.

1 Q. Okay. And you have never run that
2 dispatch model, correct?
3 A. Well, I have run dispatch models in the
4 past. I have not run that dispatch model.
5 Q. Okay, okay. And prior to the present
6 proceeding, you never reviewed modeling outputs
7 produced by the business development department; is
8 that right?
9 A. That is correct.
10 Q. Okay. I believe I am down to just a few
11 cleanups. Earlier I believe I had asked you whether
12 the companies' nonshopping customers would continue
13 to receive their energy through a standard service
14 offer even if the proposed transaction were executed.
15 Do you recall that question?
16 A. I recall a discussion of that nature.
17 Q. Okay.
18 A. I am not sure if I recall that specific
19 question.
20 Q. Okay. Fair enough. Would the companies
21 nonshopping customers continue to receive their
22 energy through a standard service offer even if rider
23 RRS were approved?
24 THE WITNESS: May I ask you to reread the
25 question, please, ma'am.

1 (Record read.)
2 A. Yes, absent any change in the
3 Commission-approved structure for providing service
4 to customers who choose not to shop.
5 Q. Okay. But under the current proposal --
6 application from the companies, there would be
7 nonshopping customers who would continue to receive
8 their energy through an SSO even if rider RRS were
9 approved, correct?
10 A. The physical provision of energy and
11 capacity to the nonshopping customers would occur
12 through the competitive bid process and delivered to
13 the SSO customers.
14 Q. Okay. And the companies' customers'
15 ability to shop for their own energy service would
16 remain unchanged, whether or not rider RRS were
17 approved, correct?
18 A. Correct.
19 Q. Okay.
20 MR. FISK: Can I take one minute to make
21 sure I hit everything?
22 EXAMINER PRICE: Yes. Let's go off the
23 record.
24 (Discussion off the record.)
25 EXAMINER PRICE: Let's go back on the

1 record.
2 MR. FISK: Thank you, your Honor. We
3 have no more questions in the public session. We may
4 have some in the confidential session.
5 And point of clarification, do you want
6 me to move my exhibits now, or are we waiting to the
7 end of this -- everybody with this witness?
8 EXAMINER PRICE: Everybody with this
9 witness. Thank you.
10 Mr. Oliker.
11 MR. OLIKER: Thank you, your Honor.
12 - - -
13 CROSS-EXAMINATION
14 By Mr. Oliker:
15 Q. Good afternoon, Ms. Mikkelsen. My name
16 is Joseph Oliker, and I represent IGS Energy. Just a
17 few questions for you today. I will try not to jump
18 around, but Mr. Fisk has covered some of my material
19 so it's inevitable.
20 Starting with the process of the
21 negotiations with FirstEnergy Solutions, are you
22 familiar with the way rider RRS originated in the
23 negotiation process?
24 MR. KUTIK: Objection.
25 EXAMINER PRICE: Grounds?

1 MR. KUTIK: Assumes there was any
2 negotiations about rider RRS.
3 EXAMINER PRICE: Okay. Well, go ahead
4 and ask the foundation question, Mr. Oliker.
5 MR. OLIKER: That's fine. Thank you,
6 your Honor.
7 Q. Ms. (By Mr. Oliker) Ms. Mikkelsen, you
8 are familiar with what we have been calling the
9 proposed transaction, correct?
10 A. Yes.
11 Q. And are you familiar with the way the
12 proposed transaction originated?
13 A. As a result of negotiations between FES
14 and the EDU team.
15 Q. Are you aware whether FirstEnergy
16 Solutions approached FirstEnergy or whether
17 FirstEnergy approached FirstEnergy Solutions?
18 A. FirstEnergy Solutions approached the
19 companies.
20 Q. Would you agree that FirstEnergy
21 Solutions is not the only generation owner within the
22 transmission footprint known as ATSI?
23 A. Yes.
24 Q. And for purposes of clarifying the
25 record, could you define what ATSI stands for?

1 A. American Transmission System -- I am
2 going to need a little help with it.
3 Q. That's why I asked you for it.
4 MR. KUTIK: We'll stipulate it's "Inc."
5 Q. Would you agree that FirstEnergy did not
6 hold a request for proposals to determine whether any
7 other generation owner would like to enter into a
8 cost-based purchase power agreement similar to the
9 one contained in the proposed transaction?
10 MR. KUTIK: Objection.
11 EXAMINER PRICE: Grounds?
12 MR. KUTIK: It assumes that the contract
13 for the proposed transaction is "cost based," which
14 is contrary to the witness's testimony.
15 EXAMINER PRICE: Please go ahead and
16 rephrase your question.
17 MS. BOJKO: Could Mr. Kutik speak up or
18 use the mic?
19 MR. KUTIK: I will do so in the future.
20 MS. BOJKO: Thanks.
21 MR. OLIKER: Also I would ask if there
22 are objections regarding the content of the
23 questions, that the witness be able to correct it or
24 identify that instead of Mr. Kutik.
25 EXAMINER PRICE: I am not going to grant

1 that request just yet, but if you have an objection
2 to him testifying, you can make it at the time.
3 MR. OLIKER: Thank you, your Honor.
4 Q. (By Mr. Oliker) Ms. Mikkelsen, would you
5 agree that FirstEnergy did not hold a request for
6 proposal to determine whether another generation
7 owner would be interested in entering a purchase
8 power agreement with FirstEnergy similar to the one
9 contained in the proposed transaction?
10 A. The plants that are included in the
11 proposed transaction have very unique attributes that
12 I'm not aware of any other generation owner in the
13 ATSI zone that has generation with those same unique
14 attributes. The companies viewed those unique
15 attributes as very important to the company and their
16 customers for a number of reasons including
17 reliability, economic development, assured continued
18 operation of baseload generating units with on-site
19 fuel storage capabilities, so for the range of very
20 unique value attributes, the companies did not
21 conduct an RFP.
22 Q. Did the companies evaluate the impact on
23 reliability of the closure of all other generation
24 units within the ATSI footprint within Ohio, if you
25 know.

1 A. I'm not sure I understand the question,
2 sir.
3 Q. What about my question don't you
4 understand, Ms. Mikkelsen?
5 A. There were a number of plants that closed
6 in the ATSI zone that the companies would be very,
7 very familiar with the reliability implications, such
8 as over a billion dollars in transmission investment
9 that was necessitated by the closure of those plants,
10 which, as we've discussed, 82 percent of those costs
11 will be paid for by the companies' customers.
12 Q. Ms. Mikkelsen, would you agree that we
13 discussed earlier that there are other generating
14 assets in ATSI, correct, besides FirstEnergy
15 Solutions?
16 A. Yes.
17 Q. And my question is did FirstEnergy
18 evaluate the closure of all of those generating
19 assets and the impact it may have?
20 A. That was my point of lack of clarity on
21 the first question. Now I understand you mean the
22 plants that are continuing to operate?
23 Q. That's correct.
24 A. I am not aware of that study. But I'm
25 also not aware of any of those plants having the same

1 unique attributes that the companies found valuable
2 in the plants that were included in the proposed
3 transaction.
4 EXAMINER PRICE: I am going to strike
5 everything after "but" in that answer as
6 nonresponsive.
7 MR. OLIKER: Thank you, your Honor.
8 Q. Ms. Mikkelsen, would you agree that one
9 of the purposes of corporate separation requirements
10 is to prevent an unregulated entity from obtaining a
11 benefit through its affiliation with the regulated
12 entity?
13 A. Only insomuch as that benefit wasn't
14 available to other similarly situated parties.
15 Q. Ms. Mikkelsen, if I understand all of the
16 exhibits that have been marked, you're supporting the
17 application but also the various stipulations that
18 have been filed, correct?
19 A. Yes.
20 Q. Would you agree that no competitive
21 retail electric service provider signed any of the
22 stipulations in this case?
23 A. I believe one party who agreed not to
24 oppose may be a competitive retail electric service
25 provider.

1 Q. Is that party IEU-Ohio?
2 A. That's the party I'm thinking of.
3 Q. Thank you for that clarification. Would
4 you agree that FirstEnergy did not send a draft of
5 the first stipulation to all of the parties in this
6 case before it filed it?
7 A. The companies circulated the draft
8 stipulation to the parties that were actively engaged
9 at that time in discussions. Certainly subsequent to
10 filing that stipulation the company would have been
11 and was, in fact, open to discussing that stipulation
12 as well as other terms with other parties as would
13 have been demonstrated by the filing of the
14 Supplemental Stipulation and the Second Supplemental
15 Stipulation.
16 Q. Let's take it one at a time. Would you
17 agree that FirstEnergy did not send a draft of the
18 stipulation that was filed in December to IGS Energy
19 in the two months before the stipulation was filed,
20 if you know?
21 A. I don't believe IGS received a draft of
22 the stipulation prior to December.
23 Q. And would you agree that FirstEnergy did
24 not reach out to IGS subsequently to filing the first
25 stipulation for purposes of negotiation?

A. I am not -- I do not believe the companies' reached out to IGS, nor do I believe IGS reached out to the companies subsequent to the filing of the first stipulation.

Q. And subsequent to the filing of the second stipulation, would you agree that FirstEnergy did not reach out to IGS prior to the filing of the next stipulation?

A. I would agree that the companies did not reach out to IGS after the filing of the second stipulation, nor did IGS reach out to the companies. The companies, I believe, have made clear from the start their interest in working with interested parties to reach a settlement in this proceeding.

Q. And did IGS ever tell FirstEnergy that it had no interest in negotiating?

A. Not that I recall.

Q. And I believe there was also another stipulation, but I may have lost track in my counter. Would you agree FirstEnergy did not reach out to IGS prior to filing that stipulation?

MR. KUTIK: Well, your Honor, I believe that we've covered all the stipulations. Is there some other stipulation?

MR. OLIKER: Is there three?

1 EXAMINER PRICE: I thought there were
2 three.
3 MR. KUTIK: I thought he talked about a
4 second supplemental stipulation in a prior question.
5 EXAMINER PRICE: I think we have all lost
6 track. I think you made your point. You can move
7 on.
8 MR. OLIKER: Thank you, your Honor.
9 Q. (By Mr. Oliker) Turning to page 8, line 8
10 of what is your supplemental testimony --
11 EXAMINER PRICE: Which exhibit is that,
12 Joe?
13 MR. OLIKER: I believe that is Exhibit
14 No. 8, your Honor.
15 EXAMINER PRICE: Thank you.
16 Q. And I'll wait until you get there.
17 A. Page 8, line 8 of Exhibit 8?
18 Q. Yes.
19 A. I'm there.
20 Q. And when you say that the economic
21 stability program is a job retention and economic
22 development program, you were relying on the
23 testimony of other witnesses, correct?
24 A. I am relying on the testimony of other
25 witnesses, coupled with my knowledge about the

1 employment levels at those plants.
2 Q. Ms. Mikkelsen, do you have a copy of your
3 deposition in front of you?
4 A. Which one?
5 Q. I believe it is Volume 2. You may not
6 have that one.
7 MR. KUTIK: It might be helpful to
8 identify the date.
9 MR. OLIKER: And the date is March 11,
10 2015.
11 A. No, sir.
12 MR. OLIKER: May I approach, your Honor?
13 EXAMINER PRICE: You may. Do you have a
14 copy for the Bench?
15 MR. FISK: Joe.
16 Q. Now, Ms. Mikkelsen, if you could please
17 turn to page 382.
18 A. I'm there.
19 Q. Now, would you agree that there was a
20 question on page -- line 8 to line 17 of your
21 deposition where you were asked, "And when you say
22 the economic stability program is a job retention
23 program, in that statement you are also relying on
24 the testimony of other witnesses, correct?" And then
25 there is an objection from Mr. Kutik. And then the

1 witness, "I would be relying upon the testimony of
2 Witness Murley and Witness Strah"; is that correct?
3 A. And it continued along to say, "as well
4 as Witness Moul."
5 Q. Okay. Thank you. And you would also
6 agree that you were not offering any of your own
7 conclusions as to how the economic stability program
8 is an economic development program?
9 A. Are you referencing this deposition here?
10 Because the question you are referencing was talking
11 about job retention programs, and you are asking me
12 about economic development, and your original
13 question had both, so I'm losing my --
14 Q. Let's go back to your regular testimony
15 and I'll ask you the question again. And this is
16 still on page 8, and I believe it's on page 8, line
17 8. Now, when you are talking about an economic
18 development program, you are not offering any of your
19 own conclusions, correct? You are relying on other
20 witnesses?
21 A. I am relying on the testimony of
22 Mr. Strah, Ms. Murley, and Mr. Moul.
23 Q. Okay. Thank you. Switching gears a
24 little bit to the impact of rider RRS, you would
25 agree, as you sit here today, you cannot identify in

1 any specific year whether it will be a charge or
2 credit?
3 A. I think the companies, based on the
4 forecasts that have been included in the application,
5 have made an estimate of when that rider RRS will be
6 a credit and when it will be a charge for our
7 customers.
8 Q. But just to be clear, you are not
9 guaranteeing that those forecasts will be true,
10 correct?
11 A. No, sir.
12 Q. And the companies are not guaranteeing
13 the level of any credit with a level of any charge
14 that customers could pay?
15 A. Correct.
16 Q. On page 8 of your supplemental testimony,
17 you indicate, "Customers will benefit from the
18 Stipulation because it is designed to ensure the
19 provision of adequate, safe, reliable and predictably
20 priced electric service." You would agree your
21 definition of predictable is if you have some sense
22 of a future outcome?
23 A. Yes.
24 Q. Earlier you had a discussion with
25 Mr. Fisk about the audit process of rider RRS. Do

1 you remember that discussion?
2 A. I do.
3 Q. And you also talk about that at page 14
4 of your direct testimony, correct?
5 A. Page 14 and 15 of my direct testimony.
6 Q. Okay.
7 A. Company Exhibit 7.
8 Q. Now, to the extent that the Ohio
9 Commission were to disallow costs that FirstEnergy
10 Solutions charges to FirstEnergy, I think we are in
11 agreement that that will not change the amount that
12 FirstEnergy pays to FirstEnergy Solutions.
13 A. Correct.
14 Q. Would you agree that the impact of that
15 disallowance would be to lower the return on equity
16 of FirstEnergy?
17 A. Consistent with the direction earlier,
18 FirstEnergy is referring to the companies, the
19 utility companies in this question?
20 Q. Yes.
21 THE WITNESS: May I have the question
22 reread, please, ma'am.
23 (Record read.)
24 A. In what period, sir?
25 Q. Let me just ask a general hypothetical

1 maybe to help understand the way this would work.
2 Assume that the Ohio Commission disallows $200
3 million in charges that FirstEnergy Solutions
4 assigned to FirstEnergy through the proposed
5 transaction, and say that happens in 2017. Would you
6 agree that if FirstEnergy did not appeal that
7 decision to the Ohio Supreme Court, the impact would
8 be to decrease the net income of FirstEnergy by
9 approximately $200 million subject to income tax
10 issues?
11 A. Yes.
12 Q. Would you agree that a disallowance could
13 potentially threaten the ability of FirstEnergy to
14 provide stable delivery service to the extent the ROE
15 lowers to a dangerous level?
16 MR. KUTIK: Objection.
17 EXAMINER PRICE: Grounds?
18 MR. KUTIK: Assumes facts.
19 EXAMINER PRICE: It's a hypothetical.
20 She can answer.
21 A. I would not expect a one-year impact on
22 the companies' ROE to have an effect on the provision
23 of distribution service to the companies' customers.
24 Q. If there was a $200 million disallowance,
25 is it your testimony that FirstEnergy could still

1 maintain a stable return on equity?
2 A. I'm not sure, sir, what you mean by
3 stable return on equity.
4 Q. If the Ohio Commission disallowed $200
5 million, would it potentially jeopardize
6 FirstEnergy's ability to provide stable energy
7 delivery of service?
8 THE WITNESS: May I have the question
9 reread, please, ma'am.
10 (Record read.)
11 A. I don't know based on the information
12 provided in the question.
13 Q. In the event that FirstEnergy believed
14 that it was having a cash flow crisis, would you
15 agree that it could potentially file an emergency
16 rate case under 4909.16?
17 A. While I am not sure what you mean by cash
18 flow crisis, I think certainly the statute provides
19 the manner in which a company can make an emergency
20 filing before the Commission.
21 Q. And if the company were to make an
22 emergency filing, then would you agree that
23 distribution customers' rates could increase to the
24 extent that it is approved?
25 A. All else equal, yes.

1 Q. FirstEnergy did that in 1988, correct?
2 A. I don't think FirstEnergy existed in
3 1988, sir.
4 Q. Thank you for that clarification. You
5 would agree that predecessor companies of FirstEnergy
6 made such a filing in 1988?
7 A. I don't recall.
8 Q. Earlier -- we have just been talking
9 about the costs being audited that would be charged
10 to FirstEnergy. Now, earlier you talked about the
11 revenues that FirstEnergy is going to earn with the
12 power plants, correct? Do you remember that
13 discussion, in the audit of reasonableness of those
14 revenues?
15 A. Yeah. I don't recall a discussion about
16 the companies' earning revenue.
17 Q. Okay. Do you remember discussing the
18 ability of the Commission to audit the reasonableness
19 of the revenues that are earned by FirstEnergy
20 Solutions generation?
21 A. The companies under the proposed
22 transaction would purchase the energy, capacity,
23 ancillary services, and the environmental attributes.
24 Then the companies would have ownership of those, and
25 the companies would sell those into the wholesale

1 market and take the revenues collected as a result of
2 that sale, net that against the costs of purchasing
3 those attributes, and the difference is what would be
4 included in rider RRS.
5 Q. Assuming -- let's take it with a
6 hypothetical. Assume that FirstEnergy is bidding
7 Davis-Besse and Sammis into the base residual
8 auction. They bid those plants in at $250 a
9 megawatt-day, and it turns out that the auction
10 clears at 180, so those plants don't clear. Would
11 customers then still continue to pay a full
12 cost-based rate, or would there be a determination
13 those plants should have cleared and received revenue
14 of $180 a megawatt-day?
15 MR. KUTIK: Objection.
16 EXAMINER PRICE: Grounds?
17 MR. KUTIK: There is no testimony it's
18 cost based, that customers would pay a, quote, "full
19 cost-based rate."
20 MR. OLIKER: I would be happy to rephrase
21 that question, your Honor.
22 EXAMINER PRICE: Thank you.
23 Q. (By Mr. Oliker) Let's take it one step at
24 a time. Ms. Mikkelsen, you agree that under the
25 proposed transaction, FirstEnergy is going to bid

1 into base residual auctions the generation plants
2 that are owned by FirstEnergy Solutions, that being,
3 Davis-Besse, the OVEC plants and Sammis?
4 A. Capacity values associated with those
5 plants, yes.
6 Q. And you agree they would then have to
7 pick a price to bid those plants in, correct?
8 A. If by picking a price you would include
9 zero on up from picking a price, then, yes.
10 Q. So just for a minute, let's assume that
11 FirstEnergy picks a price that's too high and the
12 plants aren't selected to provide capacity. Now, in
13 this hypothetical would the Commission have the
14 ability to say you should bid in zero and disallow
15 cost recovery for the difference between zero and the
16 capacity clearing price?
17 A. As we've said, the Commission would have
18 the ability in the review process to make a
19 determination about whether the companies' actions
20 with respect to offering these units into the
21 wholesale market was reasonable. To the extent that
22 the Commission made a determination that those
23 actions were unreasonable, then they could take
24 whatever action they deem appropriate.
25 Q. Switching to a different subject, you

1 talk in your testimony about the government
2 directives rider.
3 EXAMINER PRICE: Can we have a reference,
4 please?
5 MR. OLIKER: I believe it is in her
6 direct testimony, Exhibit 7, and I believe it is on
7 page 23.
8 Q. Are you with me, Ms. Mikkelsen?
9 A. Yes.
10 Q. Regarding this, would you be comfortable
11 with me calling the government directives rider the
12 GDR rider?
13 A. Yes.
14 Q. With respect to the GDR, FirstEnergy has
15 identified manufactured gas plant cleanup costs as
16 one potential item to be cleared, correct?
17 A. We point to that as an example of a type
18 of cost that may be included in the rider in the
19 future, yes.
20 Q. And has FirstEnergy quantified the cost
21 of such a cleanup?
22 A. No. I don't think the companies have
23 even identified responsibility for such cleanup at
24 this time.
25 Q. And what you provide in your testimony,

1 though, is a nonexhaustive list, correct?
2 A. A nonexhaustive list of government
3 directives that we may seek for inclusion in the
4 government directives rider, yes.
5 Q. Has FirstEnergy identified any additional
6 items besides manufactured gas plant cleanup costs?
7 A. As included in my testimony, sir, we talk
8 about the potential for infrastructure protection
9 both physical and cybersecurity related. We talk
10 about investments that may be necessitated coming out
11 of the Commission's retail market investigation.
12 Q. And is there anything else that's not
13 identified in your testimony that you can think of?
14 A. No.
15 Q. Okay. And you also talk about net
16 metering in your testimony, correct?
17 A. Yes.
18 Q. And the purpose of this part of your
19 testimony is to have FirstEnergy receive compensation
20 for net metered compensation provided to its
21 customers, correct?
22 A. The companies are seeking to be made
23 whole for the payments they make to net metering
24 generators pursuant to the net metering tariff,
25 correct.

1 Q. Does FirstEnergy provide net metering
2 compensation to default service customers and
3 customers that take their service from a CRES
4 provider?
5 A. Yes, sir.
6 Q. Okay. And with respect to -- one second.
7 MR. OLIKER: Your Honor, if I could have
8 just a moment?
9 EXAMINER PRICE: You may.
10 Q. Just one or two more questions,
11 Ms. Mikkelsen. I believe you mentioned earlier to
12 Mr. Fisk that the proposed transaction is still only
13 in the draft state, correct?
14 MR. KUTIK: Objection.
15 EXAMINER PRICE: Grounds?
16 MR. KUTIK: Mischaracterizes her
17 testimony.
18 EXAMINER PRICE: Try again, Mr. Oliker.
19 Q. Ms. Mikkelsen, FirstEnergy has not
20 entered into a definitive purchase power agreement
21 with FirstEnergy Solution, correct?
22 A. The companies have not executed a
23 contract with FirstEnergy Solutions, but the terms
24 and conditions that are documented in the term sheet
25 we discussed earlier represent an agreement in

1 principle of the terms and conditions that would be
2 included in the contract, and so while the term sheet
3 may be labeled a draft, I believe it represents the
4 final results of the negotiations between the
5 companies and FirstEnergy Solutions relative to the
6 terms of that proposed transaction.
7 Q. And you would agree that when the
8 purchase power agreement is final, it will have to be
9 filed at the Federal Energy Regulatory Commission,
10 correct?
11 A. I don't know.
12 Q. If you know, if there is a dispute
13 between FirstEnergy and FirstEnergy Solutions, will
14 that dispute play out with the Federal Energy
15 Regulatory Commission?
16 A. I don't know.
17 Q. And, likewise, if the Public Utilities
18 Commission of Ohio or an intervenor in this room has
19 a concern about that purchase power agreement, will
20 that take place at the Federal Energy Regulatory
21 Commission?
22 MR. KUTIK: May I have the question read,
23 please.
24 EXAMINER PRICE: You may.
25 (Record read.)

A. I don't know where those hypothetical disputes would be resolved.

MR. OLIKER: Okay. That's all the questions I have, your Honor.

Thank you, Ms. Mikkelsen.

THE WITNESS: Thank you, sir.

EXAMINER PRICE: Thank you.

Do we have a volunteer to go next?

MS. BOJKO: Your Honor, may we go off the record?

EXAMINER PRICE: We may.

(Discussion off the record.)

(Recess taken.)

EXAMINER PRICE: Let's go back on the record. Ms. Bojko, you may proceed.

MS. BOJKO: Thank you, your Honor.

- - -

CROSS-EXAMINATION

By Ms. Bojko:

Q. Good afternoon, Ms. Mikkelsen.

A. Good afternoon.

Q. Currently you are the director of rates and regulatory affairs for the FirstEnergy Ohio utilities; is that correct?

A. Yes.

1 Q. And in your current capacity, do you
2 provide services to any other FirstEnergy-affiliated
3 companies or subsidiaries?
4 A. From time to time at the direction of
5 counsel I would provide services to other areas of
6 the FirstEnergy Corporation on matters that do not
7 relate to the companies.
8 Q. So is it fair to say that the majority of
9 your work is providing services to the Ohio companies
10 unless or until you are asked by counsel to provide a
11 service to FirstEnergy Solutions or another
12 affiliate?
13 A. Yes.
14 Q. And you are considered a shared service
15 employee, correct?
16 A. Yes.
17 Q. And you report to Mr. Ridmann?
18 A. Yes.
19 Q. And Mr. Ridmann reports to Ms. Vespoli;
20 is that correct?
21 A. Yes.
22 Q. And the companies are seeking approval of
23 their retail rate stability rider as part of their
24 economic stability program; is that accurate?
25 A. Yes.

1 Q. And as proposed, rider RRS, the retail
2 reliability -- the retail stability rider, will be
3 adjusted annually with the applicable charge or
4 credit in effect from June 1 through May 31 of each
5 year; is that correct?
6 A. The retail rate stability rider will be
7 adjusted annually.
8 Q. Thank you. And so if the market is
9 volatile for a short duration, say, in July of 2016,
10 under the companies' proposal rider RRS will not
11 respond immediately because the new rate would not be
12 effective until June of the following year; is that
13 correct?
14 A. That is correct, although I would not
15 expect short-term volatility to materially impact the
16 forecasted rate over the annual period.
17 Q. Well, one of the stated rationales for
18 this provision was the polar vortex that occurred in
19 January of 2014; is that correct?
20 A. I think the testimony regarding the polar
21 vortex addressed concerns or pointed out concerns
22 that the company had with respect to reliability of
23 service to its -- to the companies' customers.
24 Q. During the polar vortex event.
25 A. During the polar vortex event, right, in

1 addition to the indication of volatile and increasing
2 prices over the forward period.
3 Q. And how long did that event last in
4 January of 2014?
5 A. The polar vortex specifically was a
6 couple of days, I think, I think the 6th and 7th of
7 January, although there was a subsequent very cold
8 period again later in that same January.
9 Q. And are you sponsoring the companies'
10 application in this case?
11 A. Yes.
12 Q. If we could turn to page 9 of the
13 companies' application -- I lost my mic. Can you
14 hear me? Are you there?
15 A. Yes.
16 Q. There are no line numbers so I apologize.
17 On page 9 of the application, one of the stated
18 rationales listed in the numbered paragraphs towards
19 the bottom, do you see, "The Economic Stability
20 Program will also provide numerous other benefits for
21 customers and the State of Ohio." Do you see that
22 sentence?
23 A. I do.
24 Q. Okay. No. 1 listed in -- as one of the
25 stated rationales is retaining jobs at the generating

1 plants; is that correct?
2 A. Yes.
3 Q. And this is assuming that the plants do
4 not retire or close; is that correct?
5 A. To the extent that the Commission
6 approves the retail rate stability rider, at that
7 point there would be certainty with respect to the
8 continued operation of the plants included in the
9 proposed transaction and no risk for them to be
10 retiring.
11 Q. And thus the retention of the jobs is
12 associated with the plants remaining open; is that
13 correct?
14 A. Yes.
15 Q. And the second rationale stated there is
16 "assuring continuation of property taxes associated
17 with the plants"; is that correct?
18 A. Yes.
19 Q. Again, the underlying assumption is that
20 the plants do not retire or close; is that correct?
21 A. Right. And this sentence is talking
22 about the benefits that will be provided as a result
23 of the economic stability program being approved,
24 correct.
25 Q. And are you familiar with the provision

1 proposed in the state of Ohio budget bill HB64 that
2 would eliminate tangible personal property taxes
3 associated with generating plants and facilities?
4 MR. KUTIK: I'll object. There is no
5 foundation there is such a provision.
6 EXAMINER PRICE: Ms. Bojko.
7 MS. BOJKO: I asked if she was familiar
8 with the budget bill that was discussed that would --
9 I'll rephrase, your Honor.
10 Q. (By Ms. Bojko) Are you familiar with a
11 proposal in HB64, which was the budget bill that was
12 discussed in June, 2015, that proposed to eliminate
13 tangible personal property taxes associated with
14 generating facilities?
15 A. My understanding is the Governor vetoed
16 that provision.
17 Q. That's right. You are familiar with that
18 provision for tangible personal property taxes?
19 A. Somewhat familiar, yes.
20 Q. And similarly for Items 3, 4, 5, and 6
21 listed in this series of rationales, all of these are
22 also based on the assumption that the plants will not
23 retire or close under the economic stability plan; is
24 that correct?
25 A. If the economic stability plan is

1 approved, the plants will continue to operate and
2 these are the benefits that flow from the continued
3 operation arising from the approval of the economic
4 stability program.
5 Q. I think our mics are going off.
6 In referring to the seventh factor on
7 page 9 of the application, isn't it true there --
8 that new generating plants are currently under
9 various stages of development in Ohio?
10 A. While it may be true that there are
11 plants that are under development or considered for
12 development in the state of Ohio, I am not sure that
13 those plants have the same electrical interconnection
14 as the existing plants or any of the other unique
15 attributes that we attribute to the plants included
16 in the proposed transaction.
17 Q. And with regard to those new generating
18 plants under various stages of development in Ohio,
19 you are familiar with the Carrollton plant?
20 A. I have heard of the Carrollton plant.
21 I'm not sure what you mean by familiar. I don't have
22 a great level of depth regarding that plant.
23 Q. Sorry. Is it also your understanding
24 there is a plant being proposed in Oregon?
25 MR. KUTIK: Ohio.

1 Q. Ohio.
2 A. Yes.
3 Q. And one in Middletown, Ohio?
4 A. Yes.
5 Q. And one in Rolling Hills. It's called
6 Rolling Hills in a county in Ohio.
7 A. I'm not sure.
8 Q. How about the Lordstown generating plant
9 under construction?
10 A. Yes.
11 Q. And there's also an Avon Lake conversion
12 presently under construction?
13 A. I am not aware that the Avon Lake
14 conversion is under construction at this time. I
15 know there has been talk about converting that plant,
16 but I'm not certain that that conversion has started.
17 And, again, as I mentioned earlier, when we talk
18 about generation located in the state of Ohio, from
19 our perspective and my perspective, it's important to
20 be mindful of how that generation is electrically
21 tied to the load in Ohio and particularly the load of
22 the companies.
23 Q. And you stated earlier this morning that
24 PJM is one of the entities that is responsible for
25 reliability of the electric grid in the region that

1 includes Ohio?
2 A. I think what I said this morning was that
3 PJM has responsibility along with others for the bulk
4 transmission system.
5 Q. And do you know who Andrew Ott is?
6 A. Yes.
7 Q. Does he work for PJM?
8 A. Yes.
9 Q. Are you familiar with the Ohio Energy
10 Mandates Study Committee?
11 A. I am aware that Senate Bill 310 created
12 an Ohio Energy Mandates Study Committee.
13 Q. And isn't it true over the past five
14 auctions, PJM auctions, that 2,922 megawatts new
15 generation and generation upgrade were offered into
16 the PJM auctions and 2,012 megawatts were actually
17 committed?
18 A. I don't know.
19 MS. BOJKO: Your Honor, at this time I
20 would like to have marked -- I would like to have
21 marked as OMAEG Exhibit 1 a document -- oh, may we
22 approach?
23 EXAMINER PRICE: You may.
24 MS. BOJKO: My apologies, your Honors. I
25 would like to have marked as OMAEG Exhibit 1 the

1 Testimony of Andrew Ott on Behalf of the PJM
2 Interconnection before the Ohio Energy Mandates Study
3 Committee dated March 18, 2015.
4 EXAMINER PRICE: So marked.
5 (EXHIBIT MARKED FOR IDENTIFICATION.)
6 Q. (By Ms. Bojko) Ms. Mikkelsen, do you have
7 before you what has previously been marked as OMAEG
8 Exhibit 1?
9 A. Yes.
10 Q. Does this appear to be the testimony of
11 Andrew Ott on Behalf of PJM Interconnection in front
12 of a legislative Ohio energy study committee?
13 A. I have not seen this document before, but
14 it is certainly labeled "Testimony of Andrew Ott on
15 Behalf of the PJM Interconnection."
16 Q. And does the document explain what the
17 role of PJM is in -- and how the regional
18 transmission organization operates in Ohio?
19 MR. KUTIK: Objection.
20 EXAMINER PRICE: Grounds?
21 MR. KUTIK: Two, your Honor. Lack of
22 foundation and hearsay.
23 EXAMINER PRICE: Why don't we take the
24 first one first. Ms. Bojko.
25 MS. BOJKO: I didn't hear the second one.

1 EXAMINER PRICE: Hearsay. We will get a
2 response to the lack of foundation. Do you care to
3 lay a better foundation?
4 MS. BOJKO: I will, your Honor, if you so
5 desire.
6 Q. (By Ms. Bojko) Ms. Mikkelsen, you stated
7 you're aware that Senate Bill 310 created the Ohio
8 Energy Mandates Study Committee; is that correct?
9 A. Yes.
10 Q. And you are aware that there has been
11 various public hearings before the Ohio Energy
12 Mandates Study Committee since the creation of the
13 study committee; is that correct?
14 A. Yes.
15 Q. And are you also aware that various
16 interested parties have testified before the energy
17 study committee about various issues concerning
18 reliability and the role of PJM in Ohio?
19 A. I am aware that there has been testimony.
20 I have never participated in or attended any of the
21 testimony that you are referring to.
22 EXAMINER PRICE: Did you attend the
23 hearing on March 18, 2015?
24 THE WITNESS: No, sir.
25 EXAMINER PRICE: Have you ever seen this

1 document before in your life?
2 THE WITNESS: No, sir.
3 MS. BOJKO: Would you like me now to
4 respond to the objection, your Honor?
5 EXAMINER PRICE: I don't see a
6 foundation. She's never seen this before. We don't
7 even get to the hearsay, which he is going to prevail
8 on anyway.
9 MS. BOJKO: Well, your Honor, the company
10 is alleging in its application that reliability is a
11 big part of the application and the need for the
12 reliability -- the rider RRS. There's also a
13 directive from the Bench to discuss the AEP Ohio
14 factor set forth in the PUCO order discussing the AEP
15 standard service offer and PPA, and Ms. Mikkelsen
16 talks in her supplemental testimony about those AEP
17 Ohio factors.
18 Ms. Mikkelsen -- Ms. Mikkelsen makes many
19 claims throughout her many testimonies about the need
20 for the plants and the reliability concerns,
21 including that referenced in the application on page
22 9 and 10. So she has made assertions. She's adopted
23 the FirstEnergy application, and the parties have a
24 right to test her knowledge in the area that she is
25 stating she is an expert in and has an opinion on.

1 EXAMINER PRICE: And you have
2 demonstrated she did not attend the hearing and that
3 she's never seen this before.
4 MS. BOJKO: She's stated that she is
5 familiar with Andrew Ott and she is familiar with
6 PJM. She is familiar with what PJM does. This is a
7 public record of a public agency. It's also a
8 business record. It is data compilation, and it is a
9 market report, all of which are exceptions to the
10 hearsay rule. She's stated many different witnesses
11 as her basis for her testimony stating that
12 reliability is uncertain in Ohio --
13 EXAMINER PRICE: All of those witnesses
14 are going to be brought in here. Are you going to
15 provide Andy Ott? All the witnesses she references
16 in her testimony are testimony that's been filed -- I
17 don't know why I am making these arguments. I know
18 Mr. Kutik is capable of making them.
19 MR. KUTIK: You are doing a fine job,
20 your Honor.
21 EXAMINER PRICE: All the people she is
22 referencing are people who have filed testimony and
23 are going to be in here subject to cross-examination.
24 Are you going to bring Andy Ott in?
25 MS. BOJKO: She herself needs to be

1 subject to cross-examination, and that is testing her
2 expertise and her claims regarding reliability of the
3 transmission system --
4 EXAMINER PRICE: You can't do that with
5 -- you can't do that with hearsay. You are offering
6 this testimony as an out-of-court statement by a
7 declarant written for the truth of the matter
8 asserted. You can't do that.
9 MS. BOJKO: It is an exception to
10 hearsay, your Honor. It is not hearsay.
11 EXAMINER PRICE: Which exception are you
12 going to rely on?
13 MS. BOJKO: Well, it falls under several
14 categories.
15 EXAMINER PRICE: Fire away.
16 MS. BOJKO: It is a public record. It is
17 a business record of PJM. It is a market report, and
18 it is data compilation, all of which are exceptions
19 to the hearsay rule.
20 EXAMINER PRICE: Mr. Kutik, do you wish
21 to respond to each of those four?
22 MR. KUTIK: Your Honor, all we've heard
23 are allegations these are those things. There isn't
24 any testimony from the witness that's the case, and I
25 am not sure how there could be witness testimony from

1 the witness that that's the case because she has
2 never seen this before so there is still no
3 foundation.
4 EXAMINER PRICE: The problem is it's not
5 a self-authenticating document. You are not bringing
6 in something that's been certified as a public
7 record. I am not sold about PJM being a public
8 agency if that's the allegation you are trying to
9 make. You don't have anything here saying you got
10 this from the Senate clerk. It's not a market report
11 that's been published in the newspaper. I don't
12 doubt that the document is what you say it is, but
13 you haven't proven it.
14 MS. BOJKO: I think people disagree that
15 PJM is not a public agency with respect to the types
16 of agencies that governs public records of an agency.
17 It is an agency. It's found -- it has
18 responsibility --
19 EXAMINER PRICE: It's a nonprofit
20 corporation owned by the generation and transmission
21 owners. People can disagree, but I think at the end
22 of the day, I get the final word on that.
23 MS. BOJKO: Well, it is deemed to be a
24 regulatory agency in change-of-law provisions in many
25 supplier contracts, so it's deemed to be a public

1 agency when it's at the interest of the utility
2 companies and the CRES providers.
3 EXAMINER PRICE: Mr. Kutik.
4 MR. KUTIK: Well, your Honor, as you
5 pointed out, that's -- you have accurately indicated
6 what PJM is and what it isn't. Even if you could
7 stretch the rules to say that PJM is a public agency,
8 which I don't believe you can, the other part of the
9 public record rule is that the public agency had a
10 duty to report particular facts or a duty to report
11 the report itself, and certainly there has been no
12 indication, certainly from this witness on this
13 record that -- that PJM qualifies in that way or that
14 this document qualifies for the rest of what a public
15 record would be.
16 MS. BOJKO: Well, I think the Senate
17 committee would disagree --
18 MR. KUTIK: The Senate committee is not
19 here, your Honor.
20 EXAMINER PRICE: Did you obtain this from
21 the Senate committee?
22 MS. BOJKO: Off the website, sir.
23 EXAMINER PRICE: I'm sorry, it's not self
24 authenticating. It's hearsay. You can't use it.
25 Q. (By Ms. Bojko) Okay. Let's see if the

1 witness knows the answer to the question without the
2 use of the document. Do you know whether over the
3 past five PJM capacity auctions, 2,012 megawatts of
4 new generation and generation upgrades were committed
5 to the PJM system?
6 MR. KUTIK: Objection, asked and
7 answered. She said she didn't know.
8 EXAMINER PRICE: Let's go ahead and let
9 her ask because that was a while ago.
10 Answer the question without the document,
11 again.
12 A. I don't know.
13 Q. And do you know the amount of new
14 generation additions in the PJM region from 2007 to
15 2017?
16 A. No.
17 Q. Do you believe that there have been
18 generation additions in PJM from 2007 to 2017?
19 MR. KUTIK: Could I have the question
20 read? And what was the time period, I'm sorry?
21 MS. BOJKO: 2007 to 2015. Sorry. Thank
22 you.
23 MR. KUTIK: Thank you.
24 A. I would expect there to have been, but I
25 don't know.

1 Q. Do you know if Ohio is currently a net
2 importer of electricity?
3 A. I believe Ohio is currently a net
4 importer of electricity.
5 Q. And do you know how much electricity is
6 imported into the state of Ohio currently?
7 A. I don't have the nominal value of the
8 imports into the state of Ohio.
9 Q. Do you know how long Ohio has been a net
10 importer of electricity?
11 A. I think Ohio -- I know Ohio has been an
12 importer -- a net importer for some time, but the
13 reliance on imports is continuing to grow year over
14 year.
15 Q. And with your knowledge would you say
16 that it's been decades that Ohio has been a net
17 importer of electricity?
18 A. Yeah. I don't know about decades.
19 Q. So the term of the ESP, as I understand
20 it, is June 1, 2016, through May 31, 2019; is that
21 correct?
22 THE WITNESS: May I have that reread,
23 please.
24 (Record read.)
25 Q. I'm sorry, the proposed ESP, ESP IV; is

1 that correct?
2 A. Correct.
3 Q. Thank you. And the term of the economic
4 stability program, as I understand it, is June 1,
5 2016, to May 31, 2031; is that right?
6 A. Yes.
7 Q. And rider RRS conforms to the term of the
8 economic stability program, meaning that it is to
9 last from June 1, 2016, through May 31, 2031; is that
10 right?
11 A. Yes.
12 Q. Will rider RRS -- will RRS exist in the
13 absence of the proposed transaction?
14 A. The companies are seeking approval in
15 this proceeding of rider RRS. If the Commission
16 approves rider RRS, the proposed transaction will go
17 forward.
18 Q. And if there was no proposed transaction,
19 you would not be proposing rider RRS; is that
20 correct?
21 A. I don't know.
22 Q. And it's your understanding that if ESP
23 IV terminates by its own terms, rider RRS will still
24 continue; is that correct?
25 A. May I ask you to clarify what you mean

1 with respect to "terminate under its own terms"?
2 Q. Sure. If ESP IV terminates by -- by the
3 sunset date of May 31, 2031, RRS will still continue;
4 is that right?
5 A. Yes.
6 Q. If ESP IV terminates because of a
7 withdrawal of a party and a change in the
8 stipulation, rider RRS will still continue; is that
9 correct?
10 MR. KUTIK: May I have the question read,
11 please?
12 EXAMINER PRICE: Actually, let's pause on
13 this question and let's go back two questions, if the
14 court reporter could read the question and the
15 answer.
16 (Record read.)
17 MS. BOJKO: My apologizes. I withdraw
18 that question.
19 THE WITNESS: I withdraw the answer.
20 MR. KUTIK: The question and answer is
21 stricken?
22 EXAMINER PRICE: Both the question and
23 the answer will be stricken.
24 Q. (By Ms. Bojko) If the ESP IV terminates
25 by the sunset date of May 31, 2019, would rider RRS

still continue?

A. Yes.

Q. And if ESP IV terminates because of an act of a stipulating party due to a modification of the stipulation by the Commission, rider RRS would still continue?

THE WITNESS: Could I have that question reread, please.

MS. BOJKO: I'll strike that question.

EXAMINER PRICE: No, I want to hear the answer. You can't take it back.

Read the question again.

MS. BOJKO: I would like to rephrase it.

(Record read.)

A. If the question is asking in the event that the Commission modifies the companies' application as amended by the stipulations and the companies don't accept the modification, under that circumstance rider RRS would not continue.

EXAMINER PRICE: What if one of the stipulating parties, not the company, objected to the modification?

THE WITNESS: I think that would require a legal opinion, but in my judgment, if one of the stipulating parties opposes the modification and the

1 companies accepted the modification, the ESP and
2 rider RRS would continue.
3 EXAMINER PRICE: Thank you.
4 Q. (By Ms. Bojko) If ESP IV terminates for
5 some other reason, say, the Supreme Court overrules
6 provisions of the ESP, would rider RRS still
7 continue?
8 THE WITNESS: May I ask you to reread the
9 question, please, ma'am.
10 (Record read.)
11 MR. KUTIK: Objection on two bases, your
12 Honor. One, it calls for a legal conclusion; and,
13 two, it's an incomplete hypothetical.
14 EXAMINER PRICE: I'll sustain your
15 objection on one, and two is moot.
16 Q. Have you had discussions with members of
17 the EDU team regarding the proposed transaction?
18 A. Yes.
19 Q. And as director of rates and regulatory
20 affairs, you have responsibility over the rates and
21 regulatory affairs group; is that correct?
22 A. Yes, for the state of Ohio.
23 Q. And are there employees in the rates and
24 regulatory affairs group who were members or are
25 members of the EDU team regarding the proposed

1 transaction?
2 A. There was a member of my staff who was a
3 participant on the EDU team.
4 Q. And have you had discussions with the
5 shared services employee who was acting on behalf of
6 FirstEnergy Solutions regarding the proposed
7 transaction?
8 MR. KUTIK: Objection.
9 EXAMINER PRICE: Grounds?
10 MR. KUTIK: I'm not sure -- I could be
11 wrong on this. I am not sure this witness has
12 testified that the person who was a member of the EDU
13 term was a shared service employee. I might have
14 missed that question.
15 EXAMINER PRICE: Is the member of the EDU
16 team in the rates and regulatory affairs system a
17 shared service employee?
18 THE WITNESS: Yes.
19 EXAMINER PRICE: Okay. Let's go back and
20 ask your question again, Ms. Bojko.
21 Q. (By Ms. Bojko) Well, have you had
22 discussions with an employee who was acting on behalf
23 of FirstEnergy Solutions regarding the proposed
24 transaction?
25 A. Yes.

1 Q. And through the application the companies
2 are not proposing to add a new or different fuel mix
3 to Ohio or the region, are they?
4 A. No. The company's application is
5 intended to preserve baseload generation in Ohio with
6 diverse fuel services and on-site fuel capabilities.
7 Q. With existing resources; is that correct?
8 A. Yes.
9 Q. Let's turn to page 5 of your direct
10 testimony, which I believe is Exhibit 7. Are you at
11 page 5 of your testimony?
12 A. Yes.
13 Q. Starting on line 12 you discuss the
14 companies' proposal to commit to a base distribution
15 rate freeze in the ESP IV if the ESP IV is approved
16 without modification; is that correct?
17 A. Yes.
18 Q. And there are exceptions to the rate
19 freeze; is that correct?
20 A. May I ask you to be more specific with
21 respect to your question? Are you referring to page
22 6 of my testimony, the question at line 4?
23 Q. Indeed.
24 A. Yes.
25 Q. And those exceptions include an emergency

1 filing; is that accurate, on line 11?
2 A. One of the exceptions is the companies
3 would be permitted to seek a base distribution rate
4 change due to an emergency pursuant to Ohio Revised
5 Code Section 4909.16.
6 Q. Sorry. And the base distribution rate
7 freeze commitment would not preclude the companies
8 from implementing a revenue neutral rate design; is
9 that correct?
10 A. Yes.
11 Q. Or from eliminating subsidies; is that
12 correct?
13 A. That's correct.
14 Q. Or offering a new service; is that
15 correct?
16 A. Yes.
17 Q. And it's my understanding that the
18 companies could file for a distribution rate increase
19 prior to the expiration of ESP IV as long as the
20 rates do not go into effect until after the effective
21 date of ESP V; is that correct?
22 A. Yes.
23 Q. Let's turn to page 11 of your direct
24 testimony, Exhibit 7.
25 A. I'm there.

1 Q. On page 11 of your testimony you address
2 the proposed annual aggregate revenue caps for rider
3 DCR in your testimony; is that right?
4 THE WITNESS: May I have that question
5 reread, please.
6 (Record read.)
7 A. Could you point me more directly on page
8 11? I don't see the reference you are referring to.
9 Q. Well, I'm -- let's take a step back.
10 Rider DCR is a distribution rider intended to recover
11 costs associated with distribution, transmission,
12 general and tangible plant; is that correct?
13 A. Rider DCR allows the company to recover
14 the incremental revenue requirements associated with
15 investment in our distribution, transmission, and
16 general and tangible plants since the date certain in
17 our last rate case.
18 Q. Okay. And incremental meaning it would
19 only include costs that are not or have not been
20 included in the last distribution rate case; is that
21 correct?
22 A. Not entirely. When I use the word
23 "incremental," I am recognizing that assets that were
24 included in rate base at the time the rates were set
25 last depreciate over the period, and so when I refer

1 to incremental, I am talking about the incremental
2 effect of the additions as offset by any
3 depreciation, retirements, or what have you, that
4 would have been existing in rate base at the time the
5 rates were set.
6 Q. Thank you. And that last distribution
7 rate case was in 2007 with the test year of March,
8 2007, through March, 2008; is that correct?
9 A. Yes, but for DCR purposes it's not a
10 test-year issue. It's a date-certain issue.
11 EXAMINER PRICE: What was the date
12 certain?
13 Q. And the date certain --
14 A. I know I set myself up for that one. I
15 don't recall.
16 Q. It would have been in 2007; is that
17 right?
18 A. I don't recall. But Mr. Fanelli could
19 answer that question for you.
20 Q. In this case, in the ESP IV application,
21 the companies are proposing to continue rider DCR; is
22 that correct?
23 A. Yes.
24 Q. And the companies are also proposing to
25 increase the rider DCR rate caps; is that correct?

1 A. Could you be more clear with what you
2 mean with respect to rate caps, ma'am?
3 Q. Sure. The companies are proposing that
4 the DCR or rate revenue requirements increase by
5 $30 million per year; is that correct?
6 A. No.
7 Q. Why is that not correct?
8 A. What the companies are proposing in this
9 case is that the revenue that they collect under
10 rider DCR will increase each year the cap that they
11 are allowed to collect, no more than will increase
12 each year by $30 million. But that does not dictate
13 that the companies will collect $30 million more each
14 year or that the companies will have revenue
15 requirements of 30 million more each year. It's
16 simply the cap on the revenue that the companies are
17 allow to collect.
18 Q. And if a cap is not fully used in one
19 year, the difference of the unused portion may roll
20 over to a subsequent year to increase the cap allowed
21 in the subsequent year; is that correct?
22 A. Yes.
23 Q. I have a couple of additional questions
24 on the legacy costs. On page 14 of your testimony --
25 EXAMINER PRICE: Before we leave the DCR,

1 have you ever not hit your caps in a given year?
2 THE WITNESS: Yes.
3 EXAMINER PRICE: Okay. Which years, off
4 the top of your head?
5 THE WITNESS: '12, 2012.
6 EXAMINER PRICE: Okay. Thank you.
7 MS. BOJKO: I'm sorry. I didn't hear
8 your first question there.
9 EXAMINER PRICE: Have they ever not hit
10 their revenue caps in a particular year.
11 THE WITNESS: And subject to check, I
12 would also say 2013.
13 EXAMINER PRICE: Okay. Thank you.
14 MS. BOJKO: '13?
15 EXAMINER PRICE: Uh-huh. She said '12
16 and, subject to check, '13.
17 MS. BOJKO: Thank you.
18 EXAMINER PRICE: Now, you can go on to
19 your legacy costs.
20 Q. (By Ms. Bojko) The legacy cost components
21 that you've discussed today, they may include capital
22 investment, but that's only one type of cost that may
23 be included in the legacy cost components; is that
24 correct?
25 A. Legacy cost components may include

1 revenue requirements arising from capital investments
2 made prior to December 31st of 2014. Legacy cost
3 components can also include costs not related to
4 capital expenditures arising from decisions,
5 commitments made, or contracts entered into prior to
6 December 31st of 2014.
7 Q. And the decisions or commitments that
8 were contracts that you referenced, those would be
9 decisions or commitments of the plant owners or
10 operators; is that correct?
11 A. Yes.
12 Q. And the legacy cost components are
13 separate and distinct from the RTEP and MTEP costs
14 you discuss later in your testimony; is that right?
15 A. Yes.
16 Q. Who decides -- let's back up. The term
17 "legacy cost components" was created solely for this
18 case; is that correct?
19 A. The term "legacy cost components" was
20 created for this case, yes.
21 Q. And who will decide what is a legacy
22 cost?
23 A. Again, the definition of a legacy cost
24 component is any cost that arises from a decision or
25 commitment or a contract entered into prior to

1 December 31st of 2014. If the question is if there
2 is a dispute over whether a cost is a legacy cost or
3 not, I would expect the Commission would have the
4 ultimate authority to make that determination.
5 Q. And on lines 12 to 15 you state that
6 "These Legacy Cost Components were assumed by a
7 competitive company," and that competitive company
8 that you are referencing in that sentence is
9 FirstEnergy Solutions; is that right?
10 A. Yes.
11 Q. And could costs -- could the costs
12 include costs associated with decisions made prior to
13 FirstEnergy Solutions' ownership of Davis-Besse and
14 Sammis?
15 THE WITNESS: May I have that question
16 read, please, ma'am.
17 (Record read.)
18 Q. Can the legacy costs include costs
19 associated with decisions made prior to FirstEnergy
20 Solutions' ownership of David-Besse and Sammis?
21 MR. KUTIK: You mean Davis-Besse?
22 MS. BOJKO: Davis-Besse, isn't that what
23 I said?
24 A. Yes, but those decisions would have been
25 made by the companies and would have been subject at

1 that time to the jurisdiction of the Public Utilities
2 Commission of Ohio.
3 Q. And as I understood your testimony
4 previously today, the legacy cost components can
5 never be challenged in any future cases; is that
6 correct?
7 A. The legacy cost components would be
8 subject to an accounting review, if you will, in the
9 annual audits on a going-forward basis to assure the
10 staff that the costs being charged are, in fact --
11 you know, tie out to the books and records of the
12 company and arise from contracts that -- or decisions
13 or commitments that were made prior to December 31st
14 of 2012. What would not be subjected to the
15 subsequent review is a subsequent determination about
16 whether the costs were reasonable or unreasonable.
17 Q. And you believe the opportunity to
18 challenge those legacy costs would be through this
19 proceeding; is that correct?
20 A. The company has stated from the onset
21 that the opportunity to review the legacy costs is in
22 this proceeding.
23 Q. Let's turn to page 16 of your direct
24 testimony. On lines 4 and 5 you discuss continuing
25 the Community Connections program; is that correct?

1 A. Yes.
2 Q. And the December 22 stipulation states
3 that the companies will select who administers that
4 fund; is that correct?
5 MR. KUTIK: Do you want to point her
6 somewhere in the stipulation?
7 MS. BOJKO: Sure. Page 15.
8 MR. KUTIK: Of the stipulation?
9 MS. BOJKO: Yes. I think so.
10 A. The Stipulation and Recommendation filed
11 December 22nd of 2014 on page 15, Item 4, says the
12 administrator for the Community Connections program
13 will be -- which will be continued under ESP IV will
14 be selected by the companies.
15 Q. Okay. So those are the same programs; is
16 that correct?
17 A. Yes.
18 Q. Okay. And has the administrator been
19 selected?
20 A. No.
21 Q. Can you turn to --
22 A. I guess I would add it would be premature
23 to select an administrator prior to the companies'
24 being sure the Community Connections program is
25 approved for continuation.

1 Q. Could you turn to your supplemental
2 stipulation, which is Exhibit 8, Company Exhibit 8.
3 MR. KUTIK: Her supplemental testimony.
4 MS. BOJKO: Yes.
5 MR. KUTIK: You said "supplemental
6 stipulation."
7 MS. BOJKO: Sorry, I apologize.
8 Supplemental testimony, Exhibit 8.
9 Q. Do you see the bullet point --
10 A. I'm not there yet, ma'am.
11 Q. Oh, sorry.
12 MR. KUTIK: Do you have a page reference?
13 MS. BOJKO: Page 5, line 13 through 16.
14 Are you having trouble hearing me,
15 Mr. Kutik? Sorry.
16 A. I'm in my supplemental stipulation, line
17 13 to 16.
18 MR. KUTIK: Now you are doing it.
19 Supplemental testimony.
20 THE WITNESS: Oh, what did I say?
21 Correct, I am in my supplemental testimony. Thank
22 you.
23 Q. Does this provision talk about the
24 selection of the administrator of the Community
25 Connections program?

1 A. Yes.
2 Q. And there is a reference to CHN being
3 allocated funds for the annual Community Connections
4 program. Do you see that?
5 A. I do.
6 Q. So is CHN not the administrator for the
7 Community Connections program?
8 A. Again, the companies have not selected
9 the administrator for the Community Connections
10 program. What this provision says is regardless, the
11 Cleveland Housing Network will be allocated
12 1.7 million of the annual Community Connections
13 program funding for each year in the ESP IV.
14 Q. Thank you. So as I understand it, $5.1
15 million for the duration of the ESP term will be
16 allocated to CHN, but then additional funds will be
17 allocated to the administrator; is that correct?
18 A. No. I think the way the Community
19 Connections program works is there's an administrator
20 who works with a number of different agencies, like
21 the Cleveland Housing Network, so the administrator
22 would allocate the $5 million among a number of
23 agencies, recognizing that Cleveland Housing Network
24 will continue to be allocated $1.7 million a year
25 just as they are under ESP III.

1 Q. Okay. And the $5.1 million that you just
2 referenced that's going to be allocated to CHN, the
3 companies have not committed to not collect that
4 money from customers; is that correct?
5 A. The companies' proposal is those dollars
6 would be recovered through rider DSC.
7 Q. And also on page 16 of your direct
8 testimony, Exhibit 7, you discuss funding support for
9 economic development and job retention for energy
10 efficiency activities; is that correct?
11 A. Yes.
12 Q. And the companies have agreed to
13 contribute up to $1 million annually; is that
14 correct?
15 A. Yes.
16 Q. And the companies' economic development
17 organization will decide how much will actually be
18 contributed by the companies up to that $1 million
19 level; is that correct?
20 A. The companies economic development
21 department would be responsible for administering the
22 funds that are committed to here.
23 Q. And that economic development department
24 would also decide whether the funds will be allocated
25 to economic development activities or energy

1 efficiency activities; is that right?
2 A. The economic development department would
3 determine whether those funds are allocated to
4 economic development, job retention, or energy
5 efficiency within our service territories.
6 Q. Would you turn to page 17 of your
7 testimony, direct. RTEP costs are PJM's regional
8 transmission expansion costs, correct?
9 EXAMINER PRICE: Would you turn your
10 microphone back on.
11 A. Yes.
12 Q. And MTEP costs are MISO transmission
13 expansion costs that you describe on page 18, line
14 17; is that correct?
15 A. Yes.
16 Q. And through your testimony you've stated
17 it's your understanding that the companies have
18 agreed to absorb up to $360 million for the RTEP
19 costs; is that correct?
20 A. No.
21 Q. I'm sorry?
22 A. No.
23 Q. The companies have agreed to absorb up to
24 $360 million for transmission expansion charges?
25 A. The companies' commitment in ESP II was

1 to -- related to legacy RTEP costs as separate and
2 distinct from just RTEP costs, and the companies'
3 commitment was, as we say here, that the customers --
4 I mean that the companies would absorb $360 million
5 of PJM legacy RTEP costs or absorb all legacy RTEP
6 costs through May 31st of 2016, whichever was longer,
7 and then there were other provisions associated with
8 that commitment as well.
9 Q. And customers currently do not pay for
10 the MISO expansion costs if it's not included in the
11 ATSI formulas; is that right?
12 A. That's right. To the extent that costs
13 aren't included in the ATSI formula rate, the
14 companies are not assessed those charges, and, in
15 turn, they don't seek recovery of those costs from
16 their customers.
17 Q. So currently the companies would absorb
18 up to $360 million of legacy RTEP costs plus
19 customers wouldn't have to pay for the MTEP costs
20 that were included in the ATSI formula; is that
21 correct?
22 A. Do you have specific -- I mean, I guess
23 I'm not entirely following the question. May I ask
24 you to restate the question, please?
25 Q. As things currently stand, the companies

1 would absorb 360 million of the legacy RTEP costs; is
2 that right?
3 A. Subject to the other conditions or
4 provisions I mentioned earlier, yes.
5 Q. And also as things currently stand,
6 customers do not have to pay for the MTEP costs that
7 aren't included in the ATSI formula; is that correct?
8 A. Yes.
9 Q. Okay. In the companies' application in
10 this case you are seeking to count the MTEP costs
11 toward the up to $360 million number; is that
12 correct?
13 A. What the company is seeking in this case
14 is permission in the event that ATSI is ultimately
15 not allowed to include those MTEP costs in the ATSI
16 formula rate, which is assessed to the companies, and
17 I think the belief is ATSI will be able to include
18 those costs. But to the extent that those costs are
19 not able to be included in the formula rate, what I
20 think is in order to restore the balance of the
21 original agreement, which really was that the
22 customers would absorb the MISO-related transmission
23 expansion costs and the companies would absorb
24 360 million subject to the provisions we talked
25 about.

1 What happened subsequent to this
2 agreement was FERC approved a tariff change where
3 prior to that tariff change, those MTEP costs were
4 being charged directly to the companies. The tariff
5 change modified that such that those MTEP costs are
6 now being assigned to the exiting transmission owner
7 so it created a circumstance where costs that would
8 have -- that expected to be charged to the companies
9 and recovered from the customers are now being
10 charged to the transmission owner.
11 And what the companies are seeking here
12 is just recognition of that change in the tariff
13 structure and really seeking authority to restore
14 that original balance to say that ultimately if those
15 costs aren't ability to be allowed in that rate from
16 ATSI to the companies, that the companies be able to
17 count that towards the $360 million commitment. And
18 MTEP costs are not currently allowed to be recovered
19 through the NITS rate; is that right?
20 MR. KUTIK: Objection, asked and
21 answered.
22 EXAMINER PRICE: Sustained.
23 Q. Okay. The original agreement you just
24 referenced was from the ESP II proceeding; is that
25 correct?

1 A. Yes.
2 Q. Okay. And at the time of the
3 application, the companies have stated that they paid
4 $80 million for PJM legacy costs; is that correct?
5 A. At the time of the application for ESP
6 IV, the companies had absorbed $80 million for PJM
7 legacy transmission expenses. Since that time that
8 number has grown to 124 million.
9 EXAMINER PRICE: Let's not leave this
10 topic just yet. Didn't the parties each take a risk
11 in that the stipulating parties in ESP II each took a
12 risk? The company took the risk that for some reason
13 they may pay more or the customers may not pay as
14 much in the legacy MTEP costs as the parties foresaw.
15 And the residential customers and everybody else took
16 the risk that the companies may not have to pay any
17 of the $360 million RTEP costs; isn't that right?
18 THE WITNESS: When I think about the
19 original bargain, I think the companies committed to
20 absorb the $360 million or worked to put the
21 customers in a better situation than $360 million.
22 And, in turn, the customers would be responsible for
23 MTEP costs that they would have been responsible for
24 if the companies had never left MISO.
25 EXAMINER PRICE: But the companies filed

1 an action at FERC saying they shouldn't have to pay
2 and customers shouldn't have to ultimately pay both
3 the RTEP and MTEP, right?
4 THE WITNESS: May I ask you to repeat
5 that, sir?
6 EXAMINER PRICE: The companies filed an
7 action at FERC challenging being assessed RTEP costs
8 as a result of joining PJM, isn't that right?
9 THE WITNESS: Are you talking about the
10 494 remand?
11 EXAMINER PRICE: Probably. Doing this
12 off the top of my head.
13 THE WITNESS: Fair enough. I think the
14 original agreement, the original ESP stipulation, the
15 ESP II stipulation, contemplated that the companies
16 would actively pursue getting relief for being
17 charged certain RTEP charges from PJM and further
18 that agreement contemplated to the extent that the
19 companies were successful at avoiding greater than
20 $360 million as a result of that process, then the
21 companies' commitment relative to the $360 million
22 would be satisfied.
23 EXAMINER PRICE: No. I think we are not
24 communicating properly. The companies brought an
25 action at FERC saying they should be relieved

1 entirely of the obligation to pay legacy RTEP costs.
2 The company lost that action. The company took that
3 to the Court of Appeals and lost that there.
4 If the company had won and had been
5 relieved from all of the legacy RTEP costs, would the
6 company now be saying, well, we should balance back
7 the equation since we won on our risk and make the
8 customers hold to the $360 million?
9 THE WITNESS: I apologize if I am not
10 understanding the question, but my understanding was
11 that was the balance of the bargain, that if the
12 companies were able to avoid through actions --
13 EXAMINER PRICE: Then the companies would
14 come in.
15 MR. KUTIK: Could she finish?
16 EXAMINER PRICE: I'm sorry, you're right.
17 My mistake. Please finish.
18 THE WITNESS: I guess what I was going to
19 say is the -- exactly what I said before, is that the
20 ESP II -- I'm not certain all of those -- perhaps
21 where I am differing in my understanding with you is
22 I am not sure all of those actions have reached their
23 conclusion relative to redistributing obligations
24 associated with RTEP.
25 EXAMINER PRICE: Isn't it true that

1 Mr. Ridmann's testimony in the ESP MRO test case, or
2 test in 10-388, indicated on the customer benefit
3 side the benefit of the ESP approximately
4 $300 million in foregone RTEP costs?
5 THE WITNESS: I think he would have used
6 the $360 million number, yes.
7 EXAMINER PRICE: Okay. And so if we now
8 allocate some portion of MTEP to offset that, isn't
9 that throwing off the ESP MRO test the Commission did
10 in 10-388?
11 THE WITNESS: I don't see it that way.
12 The way I see it is the companies, not the customers,
13 still are not paying $360 million worth of
14 transmission expansion costs consistent with their
15 commitment in the original agreement.
16 EXAMINER PRICE: When you say "original
17 agreement," just to be clear, you are talking about
18 the stipulation which was ultimately approved by the
19 Commission?
20 THE WITNESS: Right.
21 EXAMINER PRICE: Okay. I think we have
22 gone as far as we can go at this point. On my own
23 motion we are going to take administrative notice of
24 the combined stipulations in 10-388-EL-SSO,
25 Mr. Ridmann's testimony in 10-388-EL-SSO, and to the

1 extent the companies were to protect their interest
2 and need to take administrative notice of any other
3 documents, you can let me know later.
4 MR. KUTIK: Thank you.
5 EXAMINER PRICE: Thank you.
6 Q. (By Ms. Bojko) In the original
7 stipulation you were referencing, that was 2010; is
8 that accurate?
9 A. It was the stipulation in the
10 10-388-EL-SSO case, if that is the question.
11 Q. Okay. Now, let's turn to page 20 of your
12 testimony, please, direct testimony still. Starting
13 on line 17 you discuss the interruptible credit
14 provision and automaker provision. Do you see that?
15 A. Among other provisions, yes.
16 Q. The application had originally proposed
17 to eliminate those two provisions; is that accurate?
18 MR. KUTIK: I'm sorry. May I have the --
19 not this question but the prior question read.
20 EXAMINER PRICE: Yes. Let's have the
21 last two questions and answers back, please, or first
22 answer.
23 (Record read.)
24 A. Those provisions expire under their own
25 terms as of May 31st of 2016.

1 Q. And the application did not propose to
2 continue those two riders' provisions; is that
3 correct?
4 A. Yes.
5 Q. And the stipulation filed on December 22
6 does propose to modify the companies' application
7 with regard to the elimination or not continuing
8 those two provisions; is that correct?
9 THE WITNESS: Could I have that question
10 reread, please.
11 (Record read.)
12 A. The Stipulation and Recommendation filed
13 in December of 2014 proposes the continuation of the
14 interruptible credit provision rider, EDR(b), as well
15 as continuation with modification of the automaker
16 credit provision, rider EDR(h).
17 Q. And the stipulation filed in December
18 also proposes to modify the companies' application
19 with regard to the general service transmission rate,
20 rate GT; is that correct?
21 A. No. The stipulation does not address the
22 trans -- the base general service-transmission rate.
23 It does propose a modification to rider EDR(d), which
24 has a provision that relates to general
25 service-transmission customers.

1 Q. Thank you for that clarification. And
2 the stipulation modifies the level of the charges; is
3 that correct, associated with rider EDR(e)?
4 A. Are we still talking about the general
5 service-transmission rate provision?
6 Q. Yes.
7 A. Okay. That, for purposes of discussion,
8 is EDR(d).
9 Q. My apologies.
10 A. And the stipulation does propose to more
11 gradually phase down the charge provisions included
12 in rider EDR(d) than was proposed in the application.
13 Q. And the gradual phase-down that you just
14 discussed has a charge effective June 1, 2016, in the
15 amount of an $8 charge per kVA of billing demand; is
16 that correct?
17 A. Yes.
18 Q. And then effective June 1, 2017, there
19 will be a $6 charge per kVA of billing demand; is
20 that right?
21 A. Yes.
22 Q. And I think as you corrected this
23 morning, effective June 1, 2018, there will be a $4
24 charge per kVA of billing demand; is that correct?
25 A. Although that's correctly stated in the

1 stipulation as filed.
2 Q. Yes. Now, let's go to page 24 of your
3 direct testimony. You talked a little bit earlier
4 today about --
5 EXAMINER PRICE: Ms. Bojko, before we
6 leave page 20, I have a question.
7 MS. BOJKO: Okay.
8 EXAMINER PRICE: Can you explain the
9 school credit provision, rider EDR(f)?
10 THE WITNESS: Yes. The existing ESP has
11 a provision for certain schools who elect not to shop
12 from a competitive supplier that they receive a
13 discount on the generation portion of their bill.
14 EXAMINER PRICE: And is the company --
15 does the company recover the cost of that discount?
16 THE WITNESS: Yes.
17 EXAMINER PRICE: Who do they recover it
18 from, just all ratepayers?
19 THE WITNESS: I don't think it's all
20 ratepayers. I think it's RS, residential general
21 service, primary and some transmission.
22 EXAMINER PRICE: Okay. What's the total
23 discount annually given to the schools under rider
24 EDR(f)?
25 THE WITNESS: There are -- the last time

1 I checked, there were 41 schools participating
2 receiving that credit, and I think that credit is
3 approximately $200,000 a year.
4 EXAMINER PRICE: Per school?
5 THE WITNESS: Total.
6 EXAMINER PRICE: 41 school districts?
7 THE WITNESS: That's correct.
8 EXAMINER PRICE: Okay. Perfect. Thank
9 you.
10 Q. (By Ms. Bojko) And just so the record is
11 clear, that school rider credit expires by its own
12 terms May 1, 2016; is that correct?
13 A. Yes.
14 Q. And the companies are not proposing to
15 continue that school credit.
16 A. Correct.
17 Q. Turning to page 24, you discussed earlier
18 with Mr. Oliker the rider GDR, which is the
19 government directives recovery rider; do you recall
20 that?
21 A. We are now on page 24 of --
22 Q. Direct still, yes.
23 A. I'm on page 24.
24 Q. Rider GDR, the government directives
25 recovery rider, that's a new rider; is that correct?

1 A. That is a proposed new rider, correct.
2 Q. And the companies are requesting the
3 creation of rider GDR as the cost recovery mechanism
4 to recover all costs incurred associated with future
5 costs arising from or related to legislative or
6 governmental actions or directives; is that correct?
7 A. I think, as I say here in my testimony,
8 the proposed rider is designed to permit timely
9 recovery of future costs arising from implementation
10 of programs required by legislative or governmental
11 directives. I think it's important to note that part
12 of the company's proposal is that prior to recovering
13 any of these costs, the companies would make a filing
14 with the Commission seeking approval to recover any
15 costs in this rider, so I'm triggering off the "all"
16 in your earlier question.
17 Q. Well, if you look at line 9, it says,
18 "The proposed rider would allow all types of
19 legislative or government-directed costs," so all
20 types; is that correct?
21 A. Yes. The testimony says, right, the
22 proposed rider would allow the companies the
23 opportunity to seek recovery of all -- of costs
24 arising from all types of legislative or governmental
25 directives.

1 Q. And it's my understanding the companies
2 have not yet incurred any costs related to rider GDR;
3 is that correct?
4 A. Yes.
5 Q. Are the companies proposing any caps or
6 limit to the level of costs associated with the
7 legislative or governmental directives that may be
8 recovered under rider GDR?
9 A. Yes, insomuch as the companies' proposal
10 would require the company to make a filing with the
11 Commission seeking approval of recovery of any costs
12 in this rider, so I think by virtue of that process,
13 there's checks and balances on the costs that would
14 be recovered in this rider.
15 Q. Right. But the company isn't requesting
16 at this time that there be a cap or ceiling set to
17 level the cost that it may request, is it?
18 A. No.
19 EXAMINER PRICE: Let's still go back a
20 couple of questions. There are no RMI-related costs
21 that the companies have already incurred which you
22 might seek recovery of under GDR, like bill
23 formatting, perhaps?
24 THE WITNESS: That's why I was thinking
25 through, and those questions are best addressed to

1 company Witness Smialek.
2 EXAMINER PRICE: We will talk to him
3 later. Thank you.
4 THE WITNESS: Okay.
5 MR. KUTIK: Had you finished your answer,
6 Ms. Mikkelsen?
7 THE WITNESS: No. It is my understanding
8 that those costs will be incurred subject to approval
9 of the proposals included in this ESP application.
10 EXAMINER PRICE: Thank you.
11 Q. (By Ms. Bojko) Turning to page 26 of your
12 direct testimony, you discussed earlier today with
13 Mr. Oliker again, you discussed that the companies
14 are proposing that payments for excess generation
15 made to net metering customers be recovered in -- in
16 rider DUN; is that correct?
17 A. Yes.
18 Q. And the companies are currently not
19 recovering such costs through rider DUN; is that
20 correct?
21 A. Yes.
22 Q. And the companies are proposing that
23 costs associated with generation payments made to net
24 metering companies from back in the summer of 2013 be
25 recovered starting with the effective date of ESP IV,

1 which is June 1, 2016; is that correct?
2 A. Yes.
3 EXAMINER PRICE: Do you know the costs,
4 the total costs, you could recover from 2013 forward?
5 THE WITNESS: From July, 2013, forward
6 the costs incurred by the companies to date is
7 $161,000 associated with 683 net metering customers.
8 EXAMINER PRICE: Thank you.
9 Q. (By Ms. Bojko) Move to your supplemental
10 testimony, page -- yes, it is supplemental testimony
11 page 2, line 4. Are you there?
12 A. Yes.
13 Q. You state on line 4 that "The
14 stipulation, as a package... extends the terms and
15 conditions of the Companies' current and prior
16 Electric Security Plan Stipulations approved in Cases
17 Nos. 12-1230-EL-SSO and 10-388-EL-SSO and adds an
18 Economic Stability Program to address retail price
19 volatility..." Do you see that?
20 A. No. I think what's written here is "The
21 Stipulation, as a package, in large part extends the
22 terms and conditions of the Companies' current and
23 prior Electric Security Plan Stipulations approved in
24 Cases No. 12-1230-EL-SSO and 10-388-EL-SSO and adds
25 an Economic Stability Program to address retail price

1 volatility, expected increases in prices and
2 reliability challenges."
3 Q. I'm sorry. I was attempting to
4 paraphrase in parts, but thank you for that
5 clarification. But you state that the stipulation
6 extends the terms and conditions and adds an economic
7 stability program, and I just want to make sure I
8 understand this correctly. The economic stability
9 program was actually proposed as part of the
10 application, not as part of the stipulation; is that
11 right?
12 A. Again, I want to clarify that what we say
13 here extends -- the stipulation, as a package, with
14 the application, in large part, extends the terms and
15 conditions, so the stipulation also incorporates and
16 supports the application, which includes the economic
17 stability program.
18 Q. Okay. It doesn't add an additional
19 economic stability program other than that outlined
20 in the application, does it?
21 A. No.
22 Q. Okay. And does -- strike that.
23 The energy efficiency dollars included in
24 the stipulation will be recovered through rider DSE;
25 is that correct?

1 A. Yes.
2 Q. And on page 4, line 17, of your
3 supplemental testimony, you state that "In order to
4 promote energy efficiency, the Companies will provide
5 additional energy efficiency and peak demand
6 reduction programs that will be in addition to the
7 programs approved by the Commission in Case No.
8 12-2190-EL-POR, et al." Is that correct?
9 A. Yes, that's what it says.
10 Q. And then under that you list energy
11 efficiency in PDR programs that the companies are
12 providing.
13 A. Yes. In a general sense it outlines the
14 energy-efficiency-related provisions and peak-demand
15 reduction provisions of the stipulation. They are
16 described in more detail in the stipulation.
17 Q. And, in general, those include funding
18 for the City of Akron, funding to energy efficiency
19 administrators for submitting projects, and/or for
20 use as seed money for loans, and 330 energy
21 efficiency audits; is that correct?
22 A. Yes.
23 Q. Let's turn to page 10 of the stip and
24 talk about those provisions more specifically.
25 EXAMINER PRICE: The December 22, 2014,

1 stip?
2 MS. BOJKO: Oh, yes, your Honor.
3 Q. Are you there?
4 A. Yes, ma'am.
5 Q. On page 10, provision B-1 provides that
6 the Akron energy efficiency program will be provided
7 $300,000 during the ESP IV term; is that correct?
8 A. The City of Akron will be provided
9 $100,000 per year during each year of the ESP to
10 enable it to achieve its energy goals.
11 Q. For a total of 300,000 for the duration
12 of the ESP IV; is that correct?
13 A. Yes.
14 Q. Okay. And that $300,000 will be
15 collected from customers through rider DSE; is that
16 correct?
17 A. Yes.
18 Q. And other than being available to Akron
19 residents in Ohio Edison's service territory, are
20 there any other parameters around which programs the
21 City of Akron may offer?
22 A. The dollars should be used to help the
23 City of Akron achieve its energy efficiency and
24 sustainability goals.
25 Q. Are the Akron programs Ohio Edison's

1 sponsored programs?
2 A. I'm not sure I understand the question,
3 ma'am.
4 Q. Will the -- will Ohio Edison administer
5 the Akron energy efficiency program?
6 A. No. But nothing in the stipulation would
7 prevent the City of Akron or any of the residents of
8 the city of Akron from participating in any
9 Commission-approved energy efficiency program that
10 the company might be offering during the term of the
11 ESP.
12 Q. And the City of Akron energy efficiency
13 program as defined on page 10 of the stipulation
14 filed in December, Section B-1, that is not offered
15 as part of one of the portfolio programs of the
16 operating companies, is it?
17 A. You have to recognize the term of the ESP
18 is from June 1st of 2016 through May 31st of 2019.
19 The companies currently have approved a portfolio
20 plan through December 31st of 2016 so the companies
21 don't have an approved portfolio plan for the
22 majority of the period of the ESP.
23 So in that context what the company is
24 proposing here is that the Commission approve these
25 energy efficiency programs as part of this ESP. If

1 the Commission finds it necessary in order to
2 administer the portfolio plan, the companies would
3 not object to the Commission including these as
4 amendments to that plan.
5 Q. In the Akron -- the City of Akron energy
6 efficiency program is not currently included in the
7 portfolio as you just described it here?
8 A. There's no such approval -- oh, at this
9 time. We are seeking approval of the program at this
10 time.
11 Q. And the stipulation filed in December
12 also provide for $240,000 to Council of Small
13 Enterprises, COSE, for its Ohio efficiency resource
14 program; is that correct?
15 A. Yes.
16 Q. And this -- this funding will serve as
17 seed money to provide -- upfront loans to members of
18 COSE; is that right?
19 A. Yes.
20 Q. And $240,000 will be recovered from
21 customers through rider DSE; is that correct?
22 A. Yes.
23 Q. And Ohio Edison will not administer the
24 COSE Ohio energy efficiency resource program, will
25 they?

1 A. No.
2 Q. And this COSE Ohio efficiency resource
3 program does not exist today; is that correct?
4 A. Yes.
5 Q. The stipulation, if you turn to page 11,
6 also provides up to $1 million in administrator
7 compensation during the ESP IV term; is that correct?
8 A. Yes.
9 Q. And isn't it true this administrator
10 compensation up to $1 million will be recovered from
11 customers through rider DSE?
12 A. Yes.
13 Q. Is the administrator compensation for
14 implementation of programs that are already included
15 in the companies' amended portfolio plan in case
16 12-2190?
17 THE WITNESS: May I have that question
18 reread, please.
19 (Record read.)
20 A. May I ask you to restate the question,
21 please.
22 Q. Sure. Is the administrator compensation
23 for the implementation of energy efficiency programs
24 already included in the companies' amended portfolio
25 plan in Case 12-2190?

1 A. The compensation for the administrators
2 we are referring to here was really authorized by the
3 Commission in case, as it says here, 09-553-EL-EEC.
4 EXAMINER PRICE: Are those administrative
5 payments still part of your amended portfolio plan?
6 THE WITNESS: I am not sure I entirely
7 understand the question.
8 EXAMINER PRICE: You said they were
9 approved in 09-553-EL-EEC. Are they still part of
10 your amended portfolio plan that was approved by the
11 Commission in 12-2190?
12 Let me take a step back. You had a
13 broader program in 12-2190.
14 THE WITNESS: Correct.
15 EXAMINER PRICE: Last year you filed an
16 amended portfolio plan which reduced the number of
17 programs. Are the AI -- AICUO and COSE payments
18 still a part of the amended portfolio plan as
19 approved by the Commission in 12-2190?
20 THE WITNESS: Is the question are these
21 proposed payments here part of the amended portfolio
22 plan?
23 EXAMINER PRICE: I think more the
24 authorization of the payment incentive than the
25 amount.

1 THE WITNESS: The company is seeking in
2 this ESP proceeding --
3 EXAMINER PRICE: Okay.
4 THE WITNESS: -- approval of these
5 programs.
6 EXAMINER PRICE: So they are not
7 currently in the amended portfolio plan?
8 THE WITNESS: Correct.
9 MS. BOJKO: Well --
10 MR. KUTIK: I object. It assumes that
11 the amended portfolio plan goes throughout the
12 entirety of the ESP IV period, which is not the case.
13 EXAMINER PRICE: Well, I understand that.
14 I understand the amended portfolio plan ends in 2016.
15 Q. (By Mr. Bojko) Ms. Mikkelsen, isn't it
16 true that there is administrator compensation for
17 implementing energy efficiency plans provided for in
18 the current energy efficiency portfolio of the
19 companies?
20 A. Yes. But those would be different than
21 the proposals that are contained in this document
22 that we are seeking approval of in this ESP IV
23 proceeding.
24 Q. Right. But the concept of administrator
25 compensation is provided for in the current

1 portfolio; is that right?
2 A. The administrator payments are included
3 in the budget for the current portfolio program and
4 recovered through rider DSC.
5 Q. Right. And COSE is a listed
6 administrator for those energy efficiency programs
7 under the current portfolio plan; is that correct?
8 A. Yes.
9 Q. And on page 11 of the stipulation the
10 stip provides for the completion of 300 energy
11 audits; is that correct?
12 A. The stipulation calls for the company to
13 perform 300 ASHRAE Level II energy efficiency audits
14 for C&I COSE members located in the companies'
15 service territory.
16 Q. And all costs to complete those audits
17 will be recovered from customers through rider DSE;
18 is that correct?
19 A. Yes.
20 Q. And do you know the cost of those 300
21 audits?
22 A. No.
23 Q. On page 12 of the stipulation, the
24 stipulation provides for $200,000 in payments to the
25 Association of Independent Colleges and Universities

of Ohio, AICUO; is that correct?

A. The stipulation says that the companies will contribute $200,000 in $50,000 increments "to encourage the advancement and education of energy efficiency for members of AICUO.

Q. And $200,000 was the total of the 50,000 over a four-year period; is that correct?

A. Yes.

Q. And that $200,000 in payments to AICUO for its Ohio energy resource program will be recovered from customers through rider DSE; is that correct?

A. Yes.

Q. And isn't it true that the AICUO Ohio energy -- excuse me -- the AICUO Ohio efficiency resource program does not exist today?

A. The companies are seeking approval of this program in this ESP IV proceeding.

Q. And will Ohio Edison administer the AICUO Ohio efficiency resource program?

A. The companies will not administer the program, but the companies have agreed to partner with AICUO to bring greater awareness of the AICUO Ohio energy efficiency resource program to its members.

1 Q. And the stipulation also provides for up
2 to $1 million in administrator compensation during
3 the ESP term to AICUO; is that correct?
4 A. The stipulation allows for
5 administration -- pardon me -- administrator
6 compensation approved by the Commission, again, in
7 this reference case, 09-553-EL-EEC.
8 Q. And those administrator compensation
9 payments up to $1 million will also be recovered from
10 customers through rider DSE; is that correct?
11 A. Yes. Any of the programs -- pardon me.
12 The payments that are made to the administrators
13 under these restricted payments that we have been
14 discussing would only be paid to the extent that the
15 organization brought a program with savings to the
16 companies so that the companies could count those
17 energy efficiency savings towards the mandates that
18 the companies are subject to relative to energy
19 efficiency.
20 MS. BOJKO: Well, your Honor, there
21 wasn't a question pending. We were fixing the mic,
22 and the witness just started talking so I move to
23 strike her answer.
24 EXAMINER PRICE: I think she was just
25 completing her answer. She had taken a long pause,

1 Bill Ridmann style, in her answer, so strike denied.
2 Q. Are -- rider DSC rate design is by
3 individual company and then by rate schedule; is that
4 correct?
5 A. Yes.
6 Q. And the energy efficiency programs are
7 commercial programs and are not recovered from
8 residential customers; is that correct?
9 A. Which energy efficiency programs are you
10 referring to, ma'am?
11 Q. I'm sorry, the Ohio administrator
12 compensation programs, those programs are considered
13 commercial programs and, therefore, that amount will
14 not be recovered from residential customers; is that
15 correct?
16 A. The cost of the administrator payments
17 for the COSE Ohio energy efficiency resource program
18 as well as the cost of the administrator payments for
19 the AICUO Ohio efficiency resource program would not
20 be recovered from residential customers.
21 Q. Because I believe it's recovered through
22 DSE 2; is that correct?
23 A. It will be recovered through rider DSE 2.
24 Q. The stipulation also provides that the
25 Cleveland Housing Network, the Council for Economic

1 Opportunities in Greater Cleveland, and the Consumer
2 Protection Association will receive $1.39 million
3 annually in the aggregate for continuation of the
4 appeal fund for all three years of the ESP IV; is
5 that correct?
6 A. Yes.
7 EXAMINER PRICE: Ms. Bojko, you sped
8 ahead and changed topics before I was done.
9 Let's turn to page 13 of the stipulation,
10 section 7. It's titled "EE/PDR Plan." Your
11 currently approved amended plan, is there something
12 deficient about that plan?
13 THE WITNESS: Just to be clear, there --
14 we did submit errata related to page 13, the EE-PDR
15 amended plan, and that errata --
16 MR. KUTIK: Exhibit 2A.
17 THE WITNESS: -- was filed January 21st
18 of 2015, and it replaced the language that you see on
19 page 13.
20 EXAMINER PRICE: Yeah.
21 THE WITNESS: I'm sorry. With that
22 background may I ask you?
23 EXAMINER PRICE: Sure. It doesn't change
24 my --
25 THE WITNESS: I didn't think it would,

1 but I wanted to be sure.
2 EXAMINER PRICE: Is there something
3 deficient about your amended portfolio plan?
4 THE WITNESS: No.
5 EXAMINER PRICE: Absent the Commission
6 approving these changes, will the companies' reach
7 their statutory mandates under their management
8 portfolio plan for 2016?
9 THE WITNESS: Yes.
10 EXAMINER PRICE: Absent these changes,
11 will the companies reach their statutory mandates in
12 a cost-effective manner for 2016?
13 THE WITNESS: Yes.
14 EXAMINER PRICE: Can you explain to the
15 Bench why these changes would be necessary for the
16 administration of the program?
17 THE WITNESS: Again, as we've discussed,
18 the term of the ESP is much longer than the seven
19 months of 16. It would be overlapping between the
20 ESP and the EE-approved portfolio plan, so to the
21 extent that there are customer interests in offering
22 the programs over that longer term, the companies
23 recognize they will have mandates over the longer
24 term, that was really the underlying rationale for
25 including these programs.

1 EXAMINER PRICE: I understand. But for
2 purposes of 2016, can you explain to the Bench why
3 these provisions relate to 2016 and 2016 only would
4 be necessary for the administration of the portfolio,
5 the amended portfolio plan?
6 MR. KUTIK: Objection, your Honor. I
7 think the question assumes that it's the companies'
8 position that these changes are necessary to
9 administer the plan.
10 EXAMINER PRICE: I understand the
11 companies' position today is it's not. But the
12 Commissioners may desire to have a record that
13 demonstrates -- they may not agree with the company
14 and may feel constrained by the statute that says we
15 can only make changes that are necessary for the
16 administration --
17 MR. KUTIK: Sure. I wanted to make sure
18 because your question seemed to assume that was the
19 companies' position.
20 EXAMINER PRICE: I'm sorry.
21 MR. KUTIK: Thank you.
22 EXAMINER PRICE: So subject to the
23 understanding that the companies do not necessarily
24 believe these need to be changed as part of the plan,
25 can you explain to the Bench why the 2016 provisions

1 in the stipulation would be necessary for the
2 administration of the amended portfolio plan?
3 THE WITNESS: May I have the question
4 reread, please?
5 EXAMINER PRICE: Please.
6 (Record read.)
7 THE WITNESS: I think the companies, as
8 we said, don't believe it's necessary to administer
9 the plan, but if the Commission determines that the
10 only manner in which they can approve or offer energy
11 efficiency programs is to include them as an element
12 of the amended plan, then the companies in order to
13 administer those programs and need to be included as
14 part of the amended plan, then the companies would
15 not oppose that.
16 EXAMINER PRICE: Okay. Thank you.
17 Q. (By Ms. Bojko) Ms. Mikkelsen, you are not
18 suggesting that the company --
19 MR. KUTIK: Could you turn your
20 microphone on.
21 Q. You are not suggesting that the companies
22 would not propose a portfolio plan at the expiration
23 of the current portfolio plan in 2016, are you?
24 A. To the extent that energy efficiency
25 mandates exist subsequent to 2016, the companies

1 would file a portfolio plan to be effective
2 January 1st of 2017.
3 Q. And that's the current state, that the
4 energy efficiency mandates would be unfrozen in 2017;
5 is that correct?
6 A. SB310 says that the energy efficiency
7 mandates would begin to increase annually effective
8 January 1st of 2017 from the 2016 levels.
9 Q. And currently there are mandates in
10 place; is that correct?
11 A. Yes.
12 EXAMINER PRICE: Let's go off the record.
13 (Discussion off the record.)
14 EXAMINER PRICE: Let's go back on the
15 record. Please proceed, Ms. Bojko.
16 MS. BOJKO: I'm sorry, if counsel and the
17 Bench will bear with me, I will backtrack a little
18 bit to start over with regard to the provision of the
19 stipulation that focused on "C. Other Issues" on page
20 13.
21 Q. (By Ms. Bojko) Are you there,
22 Ms. Mikkelsen?
23 A. Yes.
24 Q. I had asked you, and just for foundation
25 purposes, that the stipulation provides that the

1 Cleveland Housing Network, Council for Economic
2 Opportunities, and Greater Cleveland, and the
3 Consumer Protection Association will receive $1.39
4 million annually in the aggregate for continuation of
5 the fuel fund for all three years of the ESP; is that
6 correct?
7 A. Yes.
8 Q. Okay. That's $463,333 per year, per
9 agency for a total of 4.17 million over the term of
10 the ESP IV; is that correct?
11 A. Yes.
12 Q. And isn't it true that 10 percent of the
13 moneys will be used to administer the fuel fund?
14 A. Yes.
15 MS. BOJKO: Your Honor, at this time I
16 would like to mark for identification purposes OMAEG
17 Exhibit 2, which is discovery responses from the
18 Consumer Protection Association.
19 EXAMINER PRICE: It will be so marked.
20 (EXHIBIT MARKED FOR IDENTIFICATION.)
21 Q. Ms. Mikkelsen, do you have what's been
22 previously marked as OMAEG Exhibit 2?
23 A. I do.
24 Q. And is this the discovery responses of
25 the Consumer Protection Association to the Ohio

1 Manufacturers' Association Energy Group's First Set
2 of Interrogatories?
3 MR. KUTIK: Objection.
4 EXAMINER PRICE: Grounds?
5 MR. KUTIK: Your Honor, these are
6 responses of another party not to the company.
7 EXAMINER PRICE: I understand that, but
8 she can ask this one question, and then we will get
9 to your objection.
10 MR. KUTIK: Thank you.
11 EXAMINER PRICE: Go ahead and answer this
12 question.
13 THE WITNESS: May I have the question
14 reread, please.
15 A. While it appears to be, I don't know that
16 I've seen or reviewed these responses prior to this
17 time.
18 Q. Ms. Mikkelsen, are you the witness
19 sponsoring the stipulations submitted in this case?
20 A. Yes.
21 Q. Are you the witness that discusses the
22 criteria established by the Commission for approving
23 stipulations?
24 A. Yes.
25 Q. Have you asserted in this case that the

1 stipulations filed meet the criteria of the
2 Commission and all of the Commission's factors
3 considered?
4 A. Yes.
5 Q. Is the Ohio Consumer -- I'm sorry. Is
6 the Consumer Protection Association a party to this
7 proceeding?
8 A. Yes.
9 Q. Is the Consumer Protection Association a
10 direct beneficiary of the stipulation provision that
11 we just discussed in Section C of the December
12 stipulation?
13 MR. MEISSNER: Your Honor, being counsel
14 representing this particular group, I would like to
15 at least know what she means by "beneficiary."
16 EXAMINER PRICE: Would you care to
17 describe what you mean by beneficiary?
18 MS. BOJKO: My question was posed to the
19 witness, not opposing counsel.
20 EXAMINER PRICE: He is seeking
21 clarification.
22 MS. BOJKO: Well, we just listed benefits
23 that the CPA receives from the stipulation, including
24 $463,333 per year for three years of the ESP IV.
25 That's one example.

1 MR. MEISSNER: That money goes primarily
2 to the poor.
3 EXAMINER PRICE: Again, Mr. Meissner, you
4 can't testify.
5 MR. MEISSNER: I'm sorry, your Honor.
6 EXAMINER PRICE: Unless you want --
7 unless you want to authenticate this document, you
8 cannot testify. But I am sure she would love it if
9 you would authenticate this document.
10 MR. MEISSNER: Yes, your Honor.
11 EXAMINER PRICE: Ms. Bojko, please
12 proceed.
13 MR. MEISSNER: Your Honor, we still
14 haven't had a definition of what she means by
15 beneficiary.
16 EXAMINER PRICE: Well, she gave her
17 definition and you testified.
18 MR. MEISSNER: She gave an example of
19 what she believes is a beneficiary.
20 EXAMINER PRICE: That's her
21 understanding.
22 MR. MEISSNER: All right, your Honor.
23 Thank you.
24 THE WITNESS: I think there's a question
25 pending.

1 EXAMINER PRICE: I think so.
2 THE WITNESS: May I ask that it be
3 reread, please.
4 EXAMINER PRICE: Please.
5 (Record read.)
6 A. While I'm not sure what you mean by
7 beneficiary, I believe the beneficiaries of this
8 provision are the low-income customers who receive
9 fuel funding assistance in order to assist them to
10 pay their electric bill. And the administration of
11 that fuel fund is conducted by the Consumer
12 Protection Association as well as the Cleveland
13 Housing Network and the Council for Economic
14 Opportunities in Greater Cleveland.
15 Q. Right. And the Consumer Protection
16 Agency will receive fuel fund moneys in the amount of
17 $463,333 per year for the program; is that correct?
18 MR. KUTIK: Objection. Asked and
19 answered.
20 EXAMINER PRICE: Sustained.
21 Q. Okay. The Consumer Protection
22 Association will receive $46,300 annually to
23 administer the fuel fund; is that correct?
24 MR. KUTIK: Objection.
25 EXAMINER PRICE: Grounds?

1 MR. KUTIK: Same objection, your Honor.
2 We have been through this.
3 EXAMINER PRICE: She can answer this one
4 if she knows.
5 A. The Consumer Protection Association will
6 receive $46,300 annually to be used to administer the
7 fuel fund. It is my understanding from conversations
8 with representatives of the Consumer Protection
9 Association that the cost associated with
10 administering the fuel funds is in excess of that
11 amount.
12 MS. BOJKO: May I continue, your Honor?
13 EXAMINER PRICE: Sure.
14 Q. If we look at what's been marked as OMAEG
15 Exhibit 2, could you turn to the second page of that
16 document.
17 A. I would note that this document starts
18 with page 1 and then it has an unnumbered page 2 that
19 refers to an Interrogatory No. 52, which isn't
20 included, and concludes with what looks like a page
21 20, so I don't know that I have a complete document,
22 ma'am.
23 MS. BOJKO: Your Honor, may I explain?
24 EXAMINER PRICE: You may.
25 MS. BOJKO: Your Honor, it is -- it is

1 typical in the PUCO proceedings for parties to use
2 discovery responses, and when the parties provide
3 discovery responses on single pages, then that is all
4 that's necessary in order to produce as evidence for
5 the hearing.
6 In the case of a party that does not
7 separate their discovery responses, we are left with
8 either manipulating the document in order to provide
9 only one discovery response that we intend to use at
10 the hearing or we provide partial documents. If the
11 Bench would like a full presentation of all the
12 discovery responses, I will be happy to do that, but
13 I thought that would raise more concerns than
14 providing the responses that we intend to use.
15 EXAMINER PRICE: No, this is fine. This
16 is fine. Just refer her to which interrogatory and
17 response that you want to ask a question and go ahead
18 and pose your question.
19 MS. BOJKO: Sure.
20 Q. (By Mr. Bojko) Interrogatory No. 60
21 states, "Please describe how the $46,300 referenced
22 in paragraph -- "$46,300 referenced in paragraph VC
23 of the Stipulation will be used to administer the
24 fuel fund." Do you see that?
25 A. I see the interrogatory that you are

1 pointing to, yes.
2 Q. And is it your understanding that that
3 money will be used by CPA for staff salaries?
4 MR. KUTIK: Objection.
5 EXAMINER PRICE: Grounds?
6 MR. KUTIK: No foundation, your Honor.
7 EXAMINER PRICE: Response?
8 MS. BOJKO: Your Honor, I've laid plenty
9 of foundation, and we can lay a lot more, but the
10 point is that the companies have set forth a witness,
11 only one witness, that is to testify to the
12 stipulations and the three-prong test. The witness
13 claims that stipulating parties do certain things in
14 order to meet the prong test. In order for us to
15 challenge her understanding of the party's intent and
16 her discussions and statements regarding the
17 criteria, we have to be able to use the party's own
18 statements in order to dispel the notions or
19 challenge the notions.
20 EXAMINER PRICE: Then you should have
21 subpoenaed somebody from Mr. Meissner's organization
22 who sponsored this -- who sponsored this discovery
23 request. She has no personal knowledge of the answer
24 to this interrogatory. You can ask a million
25 different ways. You can explain all the stuff that's

1 in her testimony. It doesn't get you a foundation
2 for this interrogatory response. She has no personal
3 knowledge, I assume.
4 MR. KUTIK: She said as much. She has
5 never seen it before.
6 EXAMINER PRICE: She said she has never
7 seen it before so if you have -- if you have a doubt
8 as to the validity of the response to No. 60, you
9 should subpoena Mr. Meissner's witness.
10 MS. BOJKO: Your Honor, I don't have the
11 doubt of the validity. I will be happy to stipulate
12 to the admission of -- Ohio Rule of Evidence 801(2)
13 allows the party-opponent's statement to be an
14 exception to hearsay. This is the party's own
15 statement. It's a party-opponent, and it is allowed
16 to be admitted into evidence as an admission of a
17 party-opponent's statement.
18 MR. KUTIK: Slight detail, your Honor.
19 It is not an admission of the companies. This is a
20 witness here on behalf of the companies. If she
21 wants to use it against the individuals or the
22 organization that responded, she is more than able to
23 do that, but not with this witness.
24 MS. BOJKO: Your Honor, this is case
25 law --

1 EXAMINER PRICE: We are not talking about
2 hearsay. We are talking about foundation. You have
3 not laid a foundation she has ever seen this
4 statement before.
5 MS. BOJKO: Your Honor, she's testified
6 that the parties are knowledgeable parties. If we
7 have documentation to show that that might not be
8 truth then we will move to strike all of her
9 testimony regarding the knowledge and capabilities
10 and the information of every party that we might want
11 to challenge for the three-prong test.
12 EXAMINER PRICE: Are you going to do that
13 in the next 15 minutes?
14 MS. BOJKO: No.
15 EXAMINER PRICE: Okay. Again, you are
16 seeking to admit this interrogatory response, and she
17 doesn't have a foundation -- she -- you have not laid
18 a foundation that she's seen it or that she can
19 authenticate the interrogatory response. So it's not
20 a hearsay question. It's getting the document in.
21 Now, if you can get -- if you can get the parties to
22 stipulate to the admission of interrogatory No. 60,
23 then it can come in.
24 MS. BOJKO: Your Honor, she's testified
25 that she is the one that did the three-prong test

1 that talks about all signatory parties. This is in
2 direct response to a signatory party. She has made
3 those statements. She has made that testimony.
4 EXAMINER PRICE: Well, I understand that
5 but I don't understand the relevance to laying the
6 foundation of this -- of this answer, let alone what
7 difference it makes for the three-prong test that
8 they use.
9 MR. KUTIK: So, your Honor, my objection
10 is sustained.
11 EXAMINER PRICE: Your objection is
12 sustained. A long way of saying sustained.
13 Q. (By Ms. Bojko) Ms. Mikkelsen, do you
14 speak to the stipulating parties and the criteria of
15 the Commission in determining whether stipulations
16 should be approved or not approved?
17 MR. KUTIK: Your Honor, may I have the
18 question read, please?
19 A. May I ask you to restate the question? I
20 am not sure I understand the question.
21 Q. Our supplemental stipulation, if we could
22 turn to that.
23 A. I'm there.
24 Q. On page 6 of your testimony --
25 A. I'm sorry. Are we in the testimony or

1 the supplemental stipulation?
2 Q. I said -- I thought I said supplemental
3 testimony.
4 MR. KUTIK: You said stipulation.
5 Q. I apologize.
6 A. I'm sorry. May I ask you to repeat the
7 question, please?
8 Q. On page 6 of your supplemental testimony,
9 do you identify the parties that have signed the
10 stipulation in the proceeding?
11 A. This is a list of the parties that signed
12 the stipulation and recommendation. The stipulation
13 and recommendation has been supplemented to include
14 an additional party and a nonopposing party that are
15 not listed here.
16 Q. But there is a list of signatory parties
17 as with regard to the first stipulation which is what
18 you filed supplemental testimony; is that correct?
19 MR. KUTIK: Your Honor, I object. I am
20 not sure what the relevance of this line is. I mean,
21 the signatory parties are the signatory parties. The
22 stipulation indicates what signatory -- who the
23 signatory parties are. What's the relevance of
24 battling and arguing with this witness at this late
25 hour with respect to who is a signatory party and

1 not. There is no question who are the signatory
2 parties.
3 EXAMINER PRICE: We will give Ms. Bojko a
4 little bit of leeway. I am sure she will tie it up
5 nicely for us in a second.
6 Answer the question, please.
7 THE WITNESS: May I have the question
8 read, please.
9 (Record read.)
10 A. Yes.
11 Q. And listed in that party is the Consumer
12 Protection Association that we just discussed; is
13 that correct?
14 A. The Consumer Protection Association is a
15 signatory party, yes.
16 Q. Okay. And then on line 13 you talk about
17 the criteria that the Commission has used in
18 considering approval of a stipulation; is that
19 correct?
20 A. I would say I talk about the criteria
21 specifically in lines 16 through 19 on page 6.
22 Q. And you make -- you draw the conclusion
23 that the stipulation satisfies the criteria listed
24 above; is that correct?
25 A. Yes.

1 Q. And then you go on to explain of how you
2 believe the signatory parties to the stipulation meet
3 the first criteria on page 7; is that correct?
4 A. On page 7, I discuss why the stipulation
5 is a product of serious bargaining among capable,
6 knowledgeable parties.
7 Q. And on line 10 --
8 MR. MEISSNER: Has she finished her
9 answer, your Honor?
10 THE WITNESS: Yes, sir.
11 MR. MEISSNER: Thank you, your Honor.
12 Q. On line 10, you discuss that the
13 signatory parties had the opportunity to participate
14 in extensive discovery served on the companies, over
15 2,250 questions including subparts were asked; is
16 that correct?
17 A. Yes. The discovery count was as at the
18 time of the stipulation, significantly higher now
19 but, yes.
20 Q. And do you know whether signatory parties
21 to the stipulation participated in discovery?
22 A. They did.
23 Q. And do you make the assertion that the
24 signatory parties are very familiar with both the
25 application and the stipulation?

1 A. Yes. I say on line 17 carrying over to
2 18 "For these reasons the signatory parties are very
3 familiar with and knowledgeable about most of the
4 provisions of the stipulation." This coupled with
5 recent negotiations particularly regarding the
6 economic stability program enabled the signatory
7 parties to gain familiarity with and knowledge of the
8 various components of the stipulation.
9 Q. And have you met with every single
10 signatory party and asked what they do or do not know
11 about the application?
12 A. The companies have had numerous meetings
13 with the signatory parties both to explain the
14 original application as well as to negotiate the
15 terms of the stipulation, and it is throughout that
16 process that I become aware of how familiar the
17 signatory parties are not only with the application
18 but with the terms and conditions of the stipulation.
19 Q. My question is have you had a discussion
20 with each signatory party to inquire as to what they
21 know or do not know about the application?
22 MR. KUTIK: Objection, asked and
23 answered.
24 EXAMINER PRICE: Overruled. Go ahead and
25 answer.

1 A. Again, we met with all of the signatory
2 parties and had numerous discussions which included
3 explaining the original application, responding to
4 the questions about elements of the original
5 application, followed by negotiations with respect to
6 terms and conditions that were included ultimately in
7 the stipulations agreed to by the signatory parties.
8 Q. So your answer would be the same, that
9 you have met with individual signatory parties and
10 discussed the terms of the stipulation?
11 A. No, ma'am, that wasn't my testimony.
12 Q. Have you met with individual signatory
13 parties and discussed each and every term of the
14 stipulation?
15 A. We have met -- again, if included with
16 the definition of stipulation is the application, we
17 did meet with the parties and describe all the
18 elements of the original application. We negotiated
19 with the parties for modifications to the
20 application, and then all signatory parties were made
21 aware of what those modifications were, and when
22 there was an agreement to the set of modifications,
23 we executed the stipulation.
24 Q. So you know whether each party understood
25 the application and/or the stipulations that were

filed.

MR. KUTIK: Objection.

MR. MEISSNER: Objection.

EXAMINER PRICE: Grounds? Mr. Kutik first.

MR. KUTIK: Well, first, it's been asked and answered. Second, it potentially calls for speculation. And, third, it's argumentative.

EXAMINER PRICE: Irrespective of the first and third, you are asking her if she knows their state of knowledge which she cannot know. She can only tell you what she said or what she saw. She is not a mind reader. She cannot testify whether she did or did not -- whether a party did or did not understand every provision of the stipulation.

MS. BOJKO: Your Honor, that's -- that's the whole point is that that's exactly what she's testifying to. She sounded pretty knowledgeable when she talked about all the discovery and the stipulations so that is why --

EXAMINER PRICE: You are taking a general statement and trying to narrow it down to say did somebody make a mistake and sign something. I don't agree that's what the test says so move on to your next question.

Again, if you have got testimony from the other parties saying I didn't understand what I was saying, that's something different. She cannot testify to what a party understood. She can testify that she thought they were capable, knowledgeable parties which is exactly what she has been testifying.

MS. BOJKO: And explore what the basis of that knowledge is.

EXAMINER PRICE: And she told us she met with them or the company met with them all.

MS. BOJKO: Okay. On page 13 of the stipulation --

MR. KUTIK: Your Honor, may we go off the record?

EXAMINER PRICE: We may.

(Discussion off the record.)

EXAMINER PRICE: At this time we will adjourn until 9 o'clock tomorrow morning.

Thank you all.

(Thereupon, the hearing was adjourned at 5:24 p.m.)

- - -

1 CERTIFICATE

2 I do hereby certify that the foregoing is
3 a true and correct transcript of the proceedings
4 taken by me in this matter on Monday, August 31,
5 2015, and carefully compared with my original
6 stenographic notes.
7
8
9
10 _____
Karen Sue Gibson, Registered
11 Merit Reporter.
12 (KSG-6085)
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in

Case No(s). 14-1297-EL-SSO

Summary: Transcript In the Matter of the application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company hearing held on 08/31/15 - Volume I electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.