

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

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 9 a.m. on  
Tuesday, September 1, 2015.

- - -

VOLUME II

- - -

ARMSTRONG & OKEY, INC.  
222 East Town Street, Second Floor  
Columbus, Ohio 43215-5201  
(614) 224-9481 - (800) 223-9481  
Fax - (614) 224-5724

- - -

## 1 APPEARANCES:

2 FirstEnergy Corp.  
3 By Mr. James W. Burk  
4 and Ms. Carrie M. Dunn  
5 76 South Main Street  
6 Akron, Ohio 44308

7 Calfee, Halter & Griswold LLP  
8 By Mr. James Lang  
9 and Mr. N. Trevor Alexander  
10 The Calfee Building  
11 1405 East Sixth Street  
12 Cleveland, Ohio 44114

13 Jones Day  
14 By Mr. David A. Kutik  
15 901 Lakeside Avenue  
16 Cleveland, Ohio 44114

17 On behalf of the Applicants.

18 Bruce E. Weston, Ohio Consumers' Counsel  
19 By Mr. Larry Sauer  
20 Ms. Maureen R. Grady  
21 Mr. William J. Michael  
22 Mr. Kevin F. Moore  
23 Ms. Ajay K. Kumar  
24 Assistant Consumers' Counsel  
25 10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485

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

Ohio Partners for Affordable Energy  
By Ms. Colleen L. Mooney  
231 West Lima Street  
Findlay, Ohio 45840

On behalf of the Ohio Partners for  
Affordable Energy.

## 1 APPEARANCES: (Continued)

2 Bricker & Eckler, LLP  
3 By Mr. Dane Stinson  
4 and Mr. Dylan Borchers  
5 100 South Third Street  
6 Columbus, Ohio 43215-4291

7 Bricker & Eckler, LLP  
8 By Mr. Glenn S. Krassen  
9 1001 Lakeside Avenue East, Suite 1350  
10 Cleveland, Ohio 44114

11 On behalf of the Northeast Ohio Public  
12 Energy Council, Ohio Schools Council, and  
13 Power for the Schools.

14 Earthjustice  
15 By Mr. Shannon Fisk  
16 Northeast Office  
17 1617 John F. Kennedy Boulevard, Suite 1675  
18 Philadelphia, Pennsylvania 19103

19 Earthjustice  
20 By Mr. Michael Soules  
21 1625 Massachusetts Avenue NW, Suite 702  
22 Washington, D.C. 20036

23 Sierra Club Environmental Law Program  
24 Mr. Tony Mendoza  
25 85 Second Street, 2nd Floor  
San Francisco, California 94105

Richard Sahli Law Office, LLC  
By Mr. Richard C. Sahli  
981 Pinewood Lane  
Columbus, Ohio 43230-3662

On behalf of the Sierra Club.

McNees, Wallace & Nurick LLC  
By Mr. Frank P. Darr  
and Mr. Samuel C. Randazzo  
21 East State Street, 17th Floor  
Columbus, Ohio 43215

On behalf of the Industrial Energy Users  
of Ohio.

## 1 APPEARANCES: (Continued)

2 IGS Energy  
3 By Mr. Joseph Olikier  
4 6100 Emerald Parkway  
5 Dublin, Ohio 43016

6 On behalf of IGS Energy.

7 Taft, Stettinius & Hollister LLP  
8 By Mr. Mark S. Yurick  
9 and Mr. Devin D. Parram  
10 65 East State Street, Suite 1000  
11 Columbus, Ohio 43215

12 On behalf of The Kroger Company.

13 Vorys, Sater, Seymour & Pease, LLP  
14 By Mr. M. Howard Petricoff  
15 Ms. Gretchen Petrucci  
16 and Mr. Michael J. Settineri  
17 52 East Gay Street  
18 Columbus, Ohio 43215

19 On behalf of Retail Energy Supply  
20 Association, PJM Power Providers Group,  
21 Electric Power Supply Association,  
22 Constellation NewEnergy, and Exelon  
23 Generation, LLC.

24 Mike DeWine, Ohio Attorney General  
25 By Mr. William L. Wright,  
Section Chief  
Mr. Thomas G. Lindgren  
Mr. Thomas W. McNamee  
Mr. Steven L. Beeler  
Assistant Attorneys General  
Public Utilities Section  
180 East Broad Street, 6th Floor  
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

Kravitz, Brown & Dortch, LLC  
By Mr. Michael D. Dortch  
and Mr. Richard R. Parsons  
65 East State Street, Suite 200  
Columbus, Ohio 43215

## 1 APPEARANCES: (Continued)

2 Carpenter Lipps & Leland LLP  
3 By Ms. Kimberly W. Bojko  
4 Ms. Rebecca L. Hussey  
5 280 North High Street, Suite 1300  
6 Columbus, Ohio 43215

7 On behalf of the Ohio Manufacturers'  
8 Association Energy Group.

9 Carpenter Lipps & Leland LLP  
10 By Mr. Joel E. Sechler  
11 280 North High Street, Suite 1300  
12 Columbus, Ohio 43215

13 On behalf of EnerNOC, Inc.

14 Boehm, Kurtz & Lowry  
15 By Mr. Michael L. Kurtz  
16 Mr. Kurt J. Boehm  
17 Ms. Jody Kyler Cohn  
18 36 East Seventh Street, Suite 1510  
19 Cincinnati, Ohio 45202

20 On behalf of the Ohio Energy Group.

21 Environmental Law & Policy Center  
22 By Ms. Madeline Fleisher  
23 21 West Broad Street, Suite 500  
24 Columbus, Ohio 43215

25 On behalf of the Environmental Law &  
Policy Center.

Stone Mattheis Xenopoulos & Brew, PC  
By Mr. Michael Lavanga  
Mr. Garrett A. Stone  
Mr. Owen J. Kopon  
1025 Thomas Jefferson Street, N.W.  
Eighth Floor West Tower  
Washington, D.C. 20007-5201

On behalf of the Nucor Steel Marion, Inc.

## 1 APPEARANCES: (Continued)

2 Barth E. Royer, LLC  
3 By Mr. Barth E. Royer  
4 2740 East Main Street  
5 Bexley, Ohio 43209

6 and

7 Taft, Stettinius & Hollister LLP  
8 By Mr. Adrian D. Thompson  
9 200 Public Square, Suite 3500  
10 Cleveland, Ohio 44114-2300  
11 On behalf of the Cleveland Municipal  
12 School District.

13 Spilman, Thomas & Battle, PLLC  
14 By Mr. Derrick Price Williamson  
15 Ms. Carrie Harris  
16 Ms. Lisa Hawrot  
17 1100 Bent Creek Boulevard, Suite 101  
18 Mechanicsburg, Pennsylvania 17050  
19 On behalf of Wal-Mart Stores East, LP,  
20 and Sam's East, Inc.

21 Mr. Richard L. Sites  
22 155 East Broad Street  
23 Columbus, Ohio 43215

24 Bricker & Eckler, LLP  
25 By Mr. Thomas J. O'Brien  
100 South Third Street  
Columbus, Ohio 43215-4291  
On behalf of the Ohio Hospital  
Association.

Ohio Environmental Council  
By Mr. Trent A. Dougherty  
and Mr. John Finnigan  
1145 Chesapeake Avenue, Suite I  
Columbus, Ohio 43212

On behalf of the Ohio Environmental  
Council and the Environmental Defense  
Fund.

## 1 APPEARANCES: (Continued)

2 Mr. Thomas R. Hays  
3 8355 Island Lane  
4 Maineville, Ohio 45039

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

8 Ice Miller, LLP  
9 By Mr. Christopher Miller,  
10 250 West Street, Suite 700  
11 Columbus, Ohio 43215-7509

12 On behalf of the Association of  
13 Independent Colleges and Universities of  
14 Ohio.

15 American Electric Power  
16 By Mr. Steven T. Nourse  
17 Mr. Matthew J. Satterwhite  
18 One Riverside Plaza  
19 Columbus, Ohio 43215

20 On behalf of the Ohio Power Company.

21 Mr. Craig I. Smith  
22 15700 Van Aken Boulevard #26  
23 Shaker Heights, Ohio 44120

24 On behalf of Material Sciences  
25 Corporation.

Meissner and Associates Law Firm  
By Mr. Joseph Patrick Meissner  
5400 Detroit Avenue  
Cleveland, Ohio 44102

On behalf of the Citizens Coalition.

Kegler, Brown, Hill & Ritter  
By Mr. Christopher J. Allwein  
and Ms. Margeaux Kimbrough  
Capitol Square, Suite 1800  
65 East State Street  
Columbus, Ohio 43215-4294

On behalf of the EverPower Wind Holdings,

1	INDEX		
2	- - -		
3	WITNESSES		PAGE
4	Eileen M. Mikkelsen		
5	Cross-Examination (Continued) by Ms. Bojko		231
6	Cross-Examination by Mr. Petricoff		
7	- - -		
8	OMAEG EXHIBITS	IDENTIFIED	ADMITTED
9	3 Gongwer Volume #76,		
10	Report #197, Article #1,		
11	Thursday, October 4, 2007	351	--
12	4 Gongwer Testimony for		
13	Anthony J. Alexander Senate		
14	Bill 221, Thursday,		
15	October 4, 2007	357	--
16	5 Gongwer Legislative Committee		
17	Schedule, Wednesday,		
18	November 14, 2007	366	--
19	6 Gongwer Volume #76,		
20	Report #224, Article #3,		
21	Wednesday, November 14, 2007	366	--
22	7 Gongwer Legislative Committee		
23	Schedule Wednesday,		
24	November 28, 2007	375	--
25	8 Gongwer Volume #76,		
	Report #233, Article #2,		
	Wednesday, November 28, 2007	376	--
	9 Gongwer Volume #76,		
	Report #238, Article #1,		
	Wednesday, December 5, 2007	381	--
	10 Compete July 13, 2015, Press		
	Release and Evolution of the		
	Revolution: The Sustained		
	Success of Retail Electricity		
	Competition	384	--
	- - -		



1 Tuesday Morning Session,  
2 September 1, 2015.

3 - - -

4 EXAMINER PRICE: Okay. Let's go back on  
5 the record.

6 Good morning. The Public Utilities  
7 Commission has set for hearing at this time and place  
8 in the matter of the application of Ohio Edison  
9 Company, The Cleveland Electric Illuminating Company,  
10 and The Toledo Edison Company for authority to  
11 enter -- provide for a standard service offer  
12 pursuant to Revised Code Section 4928.143 in the form  
13 of an Electric Security Plan being Case No.  
14 14-1297-EL-SSO.

15 My name is Gregory Price. With me is  
16 Mandy Chiles and Megan Addison. We are the Attorney  
17 Examiners assigned to preside over today's hearing.  
18 We would like to begin by just taking abbreviated  
19 appearances from the parties. Starting with the  
20 company.

21 MR. BURK: On behalf of the companies,  
22 your Honor, James W. Burk, Carrie M. Dunn. Also on  
23 behalf of the companies James Lang, Trevor Alexander  
24 from the Calfee law firm, and David Kutik from the  
25 Jones Day law firm.

1 MR. SAUER: Thank you, your Honor. On  
2 behalf of the Residential Consumers, the Office of  
3 the Ohio Consumers' Counsel, Larry Sauer, Maureen  
4 Grady, William Michael, Ajay Kumar, and Kevin Moore.  
5 Thank you.

6 MR. KURTZ: For the Ohio Energy Group,  
7 Mike Kurtz.

8 MR. LAVANGA: Good morning, your Honor.  
9 On behalf of the Nucor Steel Marion, Mike Lavanga,  
10 Garret A. Stone, and Owen Kopon.

11 MR. McNAMEE: Excuse me. On behalf of  
12 the staff of the Public Utilities Commission of Ohio,  
13 Thomas McNamee.

14 MR. STINSON: On behalf of the Northeast  
15 Ohio Public Energy Council, the Ohio Schools Council  
16 and Power for Schools, Bricker & Eckler, Glenn  
17 Krassen, Dane Stinson, and Dylan Borchers.

18 MR. OLIKER: Good morning, your Honor.  
19 On behalf of IGS Energy, Joe Olikier.

20 MS. FLEISHER: Good morning. On behalf  
21 the Environment Law and Policy Center, Madeline  
22 Fleisher.

23 MR. PETRICOFF: Good morning. On behalf  
24 of the Retail Energy Supply Association, the Electric  
25 Power Supply Association, Exelon Generation, and

1 Constellation NewEnergy, Howard Petricoff, Gretchen  
2 Petrucci, Steve Howard, and Matt Settineri.

3 MR. SECHLER: Good morning, your Honors.  
4 On behalf of the EnerNOC, Inc., Joel Sechler,  
5 Carpenter Lipps & Leland.

6 MS. BOJKO: Thank you, your Honors. On  
7 behalf of the Ohio Manufacturers' Association Energy  
8 Group, Kimberly W. Bojko, Rebecca L. Hussey with the  
9 law firm of Carpenter Lipps & Leland.

10 MR. FISK: Good morning, your Honors.  
11 Shannon Fisk on behalf of the Sierra Club, and I have  
12 with me, Michael Soules and Rick Sahli.

13 MR. DOUGHERTY: Good morning, your  
14 Honors. On behalf of Ohio Environmental Council and  
15 Environmental Defense Fund, Trent Dougherty and John  
16 Finnigan.

17 MR. O'BRIEN: On behalf of the Ohio  
18 Hospital Association, Richard L. Sites, and Bricker &  
19 Eckler LLP by Thomas J. O'Brien. Thank you.

20 MR. DARR: On behalf of IEU-Ohio, Frank  
21 Darr.

22 MR. ROYER: On behalf of Cleveland  
23 Municipal School District, Barth E. Royer and Adrian  
24 Thompson.

25 MR. NOURSE: On behalf Ohio Power, Steven

1 T. Nourse and Matthew J. Satterwhite.

2 EXAMINER PRICE: Anybody else? Thank  
3 you.

4 MR. HAYS: I'm sorry, your Honor. Tom  
5 Hays on behalf of the NOAC.

6 EXAMINER PRICE: Thank you. Anybody  
7 else? Thank you.

8 Let's go off the record at this point.

9 (Discussion off the record.)

10 EXAMINER PRICE: Go back on the record.

11 Ms. Bojko, you may proceed.

12 MS. BOJKO: Thank you, your Honor.

13 - - -

14 EILEEN M. MIKKELSEN

15 being previously duly sworn, as prescribed by law,  
16 was examined and testified further as follows:

17 CROSS-EXAMINATION (Continued)

18 By Ms. Bojko:

19 Q. Good morning, Miss Mikkelsen.

20 A. Good morning. I think I am out of  
21 batteries.

22 Q. If we could turn to page 13 of the  
23 stipulation is, I believe, where we left off  
24 yesterday of the December 2 stipulation -- can you  
25 hear me over there?

1           A.    Yes.

2           Q.    Are you there, Ms. Mikkelsen?

3           A.    Yes.

4           Q.    On page 13 of the stipulation, and we  
5           were in Section C when we left off yesterday, it  
6           states that the fuel fund moneys, so the  
7           \$4.17 million, are only available to the distribution  
8           customers in the distribution service territory of  
9           Cleveland Electric Illuminating Company; is that  
10          correct?

11          A.    Yes.

12          Q.    And if we turn the page to page 14 of the  
13          stipulation, and it's paragraph 2, the stipulation  
14          also provides for \$3 million to the Citizens  
15          Coalition to be allocated to CHN, which is the  
16          Cleveland Housing Network; CPA, which is the Consumer  
17          Protection Association; and the CEOGC, which is the  
18          Greater Cleveland Consumer Protection Association; is  
19          that correct?

20          A.    It is the Council for Economic  
21          Opportunities in Greater Cleveland.

22          Q.    Thank you.  So those -- the \$3 million  
23          that is provided to the Citizens Coalition will then  
24          be allocated among those three agencies; is that  
25          correct?

1           A.    Yes.

2           Q.    And the purpose of that money is to  
3   establish a Customer Advisory Agency; is that  
4   correct?

5           A.    Yes.

6           Q.    Is this a new agency created in the  
7   stipulation or by the stipulation?

8           A.    Yes.

9           Q.    And isn't it true that this Customer  
10   Advisory Agency has been recommended to be created  
11   previously by the citizens coalition in prior  
12   Commission proceedings?

13          A.    I don't recall.

14          Q.    Ms. Mikkelsen, do you know how the funds  
15   will be allocated to each organization?

16          A.    No.

17          Q.    And does the stipulation provide for any  
18   details regarding the Customer Advisory Agency?

19          A.    Yes. The stipulation notes that the  
20   Customer Advisory Agency will be designed to ensure  
21   the preservation and growth of the competitive market  
22   in Ohio and will be available to help all residential  
23   customers in the three service territories of the  
24   companies.

25          Q.    Beyond that, are there any additional

1 details of how the Customer Advisory Agency will be  
2 established?

3 A. The additional detail regarding that is  
4 that the companies as well as CHN, CPA, and CEOGC  
5 will work together to determine the details for the  
6 Customer Advisory Agency before the effective date of  
7 ESP IV.

8 Q. So the details will be created later.  
9 They are not contained within the stipulation; is  
10 that correct?

11 A. No. As I mentioned, the detail as to  
12 what the intent of the Customer Advisory Agency is is  
13 included in the detail -- in the stipulation. The  
14 implementation details will be worked out.

15 Q. Okay. And the sentence we are  
16 referencing says, "The Companies, CHN, CPA and CEOGC  
17 will determine the details for this Customer Advisory  
18 Agency in discussions conducted between the date the  
19 Stipulation in this proceeding is approved and the  
20 date when the ESP IV takes effect." Is that correct?

21 A. Yes. The details that statement is  
22 referencing is the details of how to design the  
23 Customer Advisory Agency to ensure the preservation  
24 and growth of the competitive markets in Ohio and to  
25 be available to help all the residential customers in

1 the three service territories.

2 Q. Okay. And then paragraph 3 on page 14 is  
3 stating that Material Sciences Corporation agrees  
4 with one of the operating companies that Toledo  
5 Edison will bill to and collect from Material  
6 Sciences Corporation and charge a \$4 per kVA of  
7 billing demand under Rider EDR (d), general  
8 service-transmission rate provision for service  
9 during the ESP IV; is that correct?

10 A. Yes. The document speaks for itself,  
11 yes.

12 Q. Okay. And that charge is different than  
13 the phase-out provision that we discussed yesterday  
14 in the stipulation, which appears to be located in  
15 5(A) (1) (a) (9); is that correct?

16 A. Not entirely. It is the same for one  
17 year as the stipulation in different -- in the first  
18 two years.

19 Q. Okay. And the difference in --  
20 recognizing, just for clarification purposes, that  
21 this portion of the initial stipulation did get  
22 modified and we discussed those modifications  
23 yesterday; is that correct? Oh, no. Strike that.

24 Your original testimony was modified, but  
25 the provisions of the stipulation are as set forth in



1 page 9 of the stipulation; is that correct?

2 A. Yes.

3 Q. And Material Sciences, via provision 3 on  
4 page 14 over to 15, will be charged the \$4 for  
5 June -- will be charged as the same provision in the  
6 stipulation which is 5(A)(1)(i)(9)(c), which is the  
7 charge listed in the stipulation for June 1, 2008 to  
8 through May 31, 2009, which is the \$4 per kVA of  
9 billing, correct?

10 A. I think you may have misspoke. You said  
11 2008 through 2009 is what I heard, and it's June 1 of  
12 2018 through May 31st of 2019.

13 Q. Thank you. With that clarification; is  
14 that correct?

15 A. Yes.

16 Q. And referencing the rider ELR that is  
17 also provided for in the stipulation starting on  
18 page 7, the rider ELR customers may shop for their  
19 generation service; is that correct?

20 A. May I ask you to restate the question,  
21 please, ma'am?

22 Q. Sure. May rider ELR customers shop for  
23 their generation service during the term of ESP IV  
24 under the stipulation provisions filed in December?

25 A. The paragraph that you are referencing or

1 the paragraphs that you are referencing in the  
2 stipulation on page 7 were deleted and replaced in  
3 the supplemental Stipulation and Recommendation filed  
4 by the companies in May of 2015. So I want to be  
5 sure we're --

6 Q. I am just talking about the ELR program  
7 in general.

8 A. I said that the provision that --

9 MR. KUTIK: Your Honor, may she finish  
10 her answer?

11 EXAMINER PRICE: Were you done with your  
12 answer?

13 THE WITNESS: I just wanted to be clear  
14 that the paragraph we are pointing to on page 7 no  
15 longer exists. It has been replaced by the paragraph  
16 that begins on page 1 continuing through page --  
17 upper portion of page 3 in the supplemental  
18 Stipulation and Recommendation.

19 Q. I understand. I was giving you context  
20 of the ELR program that's been established by the  
21 multiple stipulations in this case.

22 And under those multiple stipulations  
23 provisions regarding the ELR program, ELR customers  
24 may shop for their generation service during the term  
25 of the ESP IV; is that correct?

1           A.    Yes.

2           Q.    And this is a change from how the current  
3 rider ELR program works wherein the tariff currently  
4 established prohibits ELR customers from shopping for  
5 generation service; is that correct?

6           A.    Customers who currently participate in  
7 rider ELR are not able to shop with a competitive  
8 supplier for their generation supply. But  
9 participation in rider ELR is voluntary, so if the  
10 customer would be interested in shopping, they could  
11 not -- not volunteer to participate in that rider and  
12 shop. But once they make the election to participate  
13 in the rider currently, they are not able to shop.

14          Q.    Of course. I was trying to just  
15 establish that this stipulation changes the current  
16 ELR program as it currently exists; is that correct?

17          A.    That is one of the changes, yes.

18          Q.    And under the stipulations, plural, will  
19 the companies bid the demand response resources into  
20 PJM market?

21          A.    To the extent that the companies are able  
22 to bid the resources into the PJM market, they will  
23 do so.

24          Q.    And that provision is not currently  
25 provided for in the stipulations themselves; is that

1 correct?

2 A. That is not a provision of the  
3 stipulation, but it has been the companies' practice  
4 since the inception of rider ELR to participate in  
5 the PJM markets to the extent they are able to do so.

6 Q. And it was actually ordered by the  
7 Commission; is that correct?

8 A. I don't recall.

9 Q. And will the company bid it in at  
10 100 percent?

11 A. May I ask you what you mean by  
12 100 percent?

13 Q. Will the company bid 100 percent of the  
14 demand versus -- excuse me -- demand response  
15 resources into the PJM market?

16 A. Again, the companies will bid the demand  
17 resources that they are able to bid into the PJM  
18 market pursuant to the rules of the PJM market for  
19 market participation.

20 Q. Well, currently, doesn't the company only  
21 bid in 80 percent of the demand response resources  
22 from the ELR program into the PJM market?

23 A. No.

24 Q. Do you recall whether discovery responses  
25 that were provided by the companies based estimations

1 of revenues received from PJM on the company only  
2 bidding in 80 percent of the PJM resources into the  
3 PJM market?

4 A. I think the confusion with the 80 percent  
5 may stem from a Commission order which directs the  
6 companies to return 80 percent of the revenues to the  
7 customers from participation in the PJM markets  
8 through rider DSE is not a limitation or direction  
9 with respect to the amount to be bid in.

10 Q. Thank you for that clarification.

11 MR. KUTIK: Excuse me, your Honor. Just  
12 to be clear, there was an error in the record  
13 yesterday. We are talking about D-S-E, as in Edward;  
14 is that correct?

15 THE WITNESS: D-S-E, as in Edward, is the  
16 name of the rider.

17 MR. KUTIK: Sometimes in the record it  
18 was DSE, as in charges.

19 EXAMINER PRICE: We will make those  
20 corrections. I'm sorry, Ms. Bojko. Please proceed.

21 Q. (By Ms. Bojko) So if the companies bid  
22 the demand response resources into the PJM market,  
23 they refund 80 percent of the revenues from the PJM  
24 market to the customers and they retain 20 percent;  
25 is that correct?

1           A.    Yes, pursuant to Commission order.

2           Q.    Currently, are qualified customers able  
3 to participate in demand response resource programs  
4 through curtailment service providers in the PJM  
5 market?

6           A.    May I ask you to clarify for me what you  
7 mean by qualified customers, ma'am?

8           Q.    Well, as you know, the PJM, as you, I  
9 think, alluded to a minute ago that there are certain  
10 restrictions -- can you not hear me?

11                   There are current restrictions regarding  
12 participation and eligibility requirements of  
13 participation in the PJM market both from a demand  
14 response resource perspective as well as a customer  
15 perspective.

16                   So with that understanding, do current --  
17 do current eligible customers participate in demand  
18 response -- response resource programs at PJM through  
19 curtailment service providers?

20           A.    If your question to me is can customers  
21 in the companies' service territory participate in  
22 the PJM capacity markets through curtailment service  
23 providers, assuming they meet the qualifications of  
24 the program, then the answer to that question is yes.

25           Q.    And those curtailment service providers

1 would then also offer the demand response resources  
2 that they receive into the PJM market; is that  
3 accurate?

4 A. I don't know what the offer strategy  
5 would be for curtailment service providers beyond the  
6 company.

7 Q. Well, in order for them to -- the  
8 customers to participate, they either have to  
9 participate through a curtailment service provider or  
10 directly be eligible to participate in the PJM  
11 markets with regard to demand response programs; is  
12 that correct?

13 A. Customers are not able to directly  
14 participate in the PJM demand response programs.  
15 Their participation needs to be through a curtailment  
16 service provider.

17 Q. Okay. And so with that, the curtailment  
18 service provider then offers the customers demand  
19 response resources into the PJM market in order for  
20 the customers to participate in the PJM demand  
21 response market; is that correct?

22 A. I'm not able to say. And I guess to be  
23 more clear with respect to my answer, an offer  
24 strategy of a curtailment service provider, as part  
25 of their business model, they may accumulate a number

1 of demand response resources. Which of those  
2 resources they end up offering into the market and  
3 not offering into the market, I think, is probably  
4 more a function of their business model and risk  
5 appetite.

6 Q. Okay. But the customers are considered  
7 to be participating in the PJM demand response  
8 program; is that correct?

9 A. I'm not entirely sure what you mean by  
10 the customers are considered to be participating in  
11 the PJM demand response market. But to the extent a  
12 curtailment service provider offers customers  
13 resources into that market, then, in effect, the  
14 customer is participating in the market.

15 Q. And the impact of offering those demand  
16 response resources into the PJM market would be the  
17 same regardless of whether the EDU is offering the  
18 demand response resources into the market or whether  
19 the curtailment service provider is offering the  
20 demand response resources into the market; is that  
21 correct?

22 A. If the question is if the companies offer  
23 100 demand response resources in the PJM versus a  
24 curtailment service provider offering the same  
25 100 resources in the PJM, the impact on the PJM



1 demand response market would be the same, but the  
2 impact on the overall reliability of the companies'  
3 system would differ in so much as customers who  
4 participate in the companies' ELR program are also  
5 subject to interruptions called by the transmission  
6 operator ATSI as well as each of the individual  
7 customers -- pardon me -- each of the individual  
8 companies should either -- or any of those entities  
9 find themselves in a situation of a system emergency.

10 Q. And under your proposal in the ELR  
11 program, customers also may be called to interrupt  
12 under emergency situations; is that correct?

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

15 EXAMINER PRICE: Please.

16 (Record read.)

17 A. Under the companies' ELR rider,  
18 participating customers can be curtailed if PJM calls  
19 an emergency event or if ATSI calls an emergency  
20 event or if the operating companies call an emergency  
21 event.

22 Q. Okay. Let's turn to your second  
23 supplemental testimony at page 4, which has been  
24 identified and marked as Company Exhibit 4.

25 MR. KUTIK: Your Honor.

1                   THE WITNESS: I'm sorry. Could I have  
2                   that repeated.

3                   Q. I'm sorry. It has been marked as Company  
4                   Exhibit 9.

5                   A. I'm sorry, what page, please?

6                   Q. Four.

7                   A. Thank you. I am in my second  
8                   supplemental testimony at page 4.

9                   Q. Okay. On this page you were discussing  
10                  AEP Ohio factors; is that correct?

11                  A. Very, very generally, yes.

12                  Q. Okay. And on the question starting on  
13                  line 9 in the answer, you are talking about the  
14                  second factor, which is in regard to reliability,  
15                  future reliability concerns; is that correct?

16                  A. The question starting at line 9 addresses  
17                  the second AEP Ohio order factor regarding the  
18                  necessity of the generating facility in light of  
19                  future reliability concerns including supply  
20                  diversity.

21                  Q. And I believe you mentioned this  
22                  yesterday, but who directs that a generating unit  
23                  will be dispatched into the -- into the market?

24                  A. PJM.

25                  Q. And, again, for some foundation, for some

1 background, PJM is responsible for the reliability of  
2 the transmission system for the region that includes  
3 Ohio; is that correct?

4 A. PJM, along with others, is responsible  
5 for the reliability of the bulk transmission system.

6 Q. And isn't it true that PJM schedules  
7 resources sufficient to meet the forecasted demand  
8 and then adds a 15 percent reserve margin?

9 A. I believe PJM schedules resources. I  
10 can't, as I sit here, testify to the 15 percent.

11 Q. You don't know that there is a 15 percent  
12 reserve margin requirement of PJM?

13 A. I don't know what the reserve -- I know  
14 there is a reserve margin requirement. I can't  
15 attest to the 15 percent.

16 Q. Okay. And you don't know what the  
17 current reserve margin is today, which is 20 percent  
18 then?

19 MR. KUTIK: Objection.

20 EXAMINER PRICE: Grounds?

21 MR. KUTIK: Assumes facts. Assumes that  
22 the reserve margin is 20 percent.

23 MS. BOJKO: I asked to her knowledge.  
24 She's testifying to reliability. I asked her if she  
25 knew what the current reserve margin --

1 EXAMINER PRICE: And she said she didn't.  
2 So where did the 20 percent come from?

3 MS. BOJKO: I said do you know that the  
4 current reserve margin is 20 percent today?

5 EXAMINER PRICE: Do you know whether the  
6 reserve margin is 20 percent today?

7 THE WITNESS: No, sir.

8 EXAMINER PRICE: Move on.

9 MS. BOJKO: That was my question. Thank  
10 you.

11 Q. (By Ms. Bojko) Are you familiar with  
12 PJM's RMR, or reliability must-run mechanism?

13 A. I have some familiarity with PJM's  
14 reliability must-run requirements. I believe  
15 Mr. Moul provides testimony specifically on that  
16 topic.

17 Q. Well, you also are aware that PJM's RMR  
18 contract allows for PJM to enter into an agreement  
19 with any units determined necessary to maintain  
20 reliability; is that right?

21 A. PJM -- entering into an RMR agreement is  
22 a voluntary transaction between the generator and  
23 PJM, so PJM is not in a position to direct a unit to  
24 operate. The generator has to agree to operate.

25 Q. But if PJM deems it's necessary, it will

1 offer to provide that generating unit with the cost  
2 of service arrangement that provides cost recovery  
3 for the units that are necessary for reliability; is  
4 that correct?

5 A. I believe that's correct but, again, I  
6 would suggest these questions are probably best  
7 addressed to Mr. Moul, who raise -- who discusses RMR  
8 specifically in his testimony.

9 Q. And are you aware that FirstEnergy  
10 Solutions is currently receiving revenue from RMR  
11 agreements for certain generating units?

12 A. I don't believe that's the case. But,  
13 again, those questions are better directed to  
14 Mr. Moul.

15 Q. And are you aware that the RMR agreement  
16 concept comes up after a generating unit has notified  
17 PJM of their intent or pending retirement?

18 A. Yes.

19 Q. Are you familiar with PJM's newly-enacted  
20 capacity performance product created to enhance  
21 reliability and ensure the delivery of power  
22 supplies?

23 A. I am aware of the capacity performance  
24 product but believe those questions, again, are  
25 better addressed to a representative from FES. Or

1 perhaps Mr. Ruberto.

2 Q. So sitting here today, you are telling me  
3 you don't know that the PJM capacity performance  
4 product was created in order to enhance the  
5 reliability of power supplies to the region?

6 MR. KUTIK: Objection.

7 EXAMINER PRICE: Grounds?

8 MR. KUTIK: Asked and answered. She said  
9 she was aware.

10 MS. BOJKO: If she could confirm that,  
11 that would be great.

12 EXAMINER PRICE: We will allow it. Go  
13 ahead.

14 THE WITNESS: May I ask you to reread the  
15 question, please, ma'am.

16 (Record read.)

17 A. I don't think that's what I testified. I  
18 think I said I was aware of the capacity performance  
19 product but that those questions on the details  
20 related to that would be better addressed to Mr. Moul  
21 or Mr. Ruberto.

22 Q. Right. But I am asking you if you knew  
23 that the purpose of initiating the capacity  
24 performance product was intended to ensure the  
25 reliability or enhance the reliability of the PJM

1 system.

2 A. I would agree it was intended to enhance  
3 the reliability.

4 Q. And it's your understanding that that  
5 capacity performance product has been approved by  
6 FERC and actually implemented in the last capacity  
7 auction -- last two auctions, that have been held  
8 recently; is that correct?

9 A. May I ask you to be more specific with  
10 respect to the last two auctions?

11 Q. Sure. There was a base residual auction  
12 held two weeks ago, or last Friday, and then one held  
13 yesterday; is that correct -- an incremental auction  
14 held on Monday?

15 A. My understanding is the capacity  
16 performance product was included in the base residual  
17 auction for the delivery year of '18-'19 and that PJM  
18 implemented transition auctions to incorporate the  
19 capacity product for delivery years in which the base  
20 residual auction had already occurred.

21 Q. Right. And the one that occurred  
22 yesterday was for the delivery year of 2016-'17; is  
23 that correct?

24 A. Yes.

25 Q. And there is another one going to be held

1 for the delivery year '17-'18?

2 A. Yes.

3 Q. On page -- going back to your testimony  
4 on page 4, line 16, you mention delivery system.

5 In that context, you are referencing the  
6 companies' distribution system; is that correct?

7 A. Yes.

8 Q. And do you believe that the companies'  
9 delivery system or distribution system is currently  
10 reliable?

11 A. Yes. But I would add that the fact that  
12 the companies' current distribution system is  
13 reliable does not alleviate concerns that the company  
14 has with respect to the ongoing stability and  
15 certainty of the operation of the companies' delivery  
16 system, particularly as it relates to the  
17 availability of generation resources to serve our  
18 customer's load.

19 Q. And currently, the Commission does have  
20 system requirements, rules, in place with regard to  
21 the delivery system and what is required of the  
22 companies; is that correct?

23 A. May I ask you to be more specific with  
24 that question, please, ma'am?

25 Q. Sure. There are standards in place that



1 the companies have to follow with regard to SAIFI and  
2 CAIDI different reliability indexes; is that correct?

3 A. The companies have Commission-approved  
4 reliability standards for SAIFI and -- CAIDI and  
5 SAIFI.

6 Q. And the company has met those standards  
7 in the last few years; is that correct? Or targets?  
8 Some people like to call them targets.

9 A. They are standards, not targets, but the  
10 companies have performed better than their standards.

11 Q. And the company intends to either meet or  
12 exceed those standards going forward?

13 A. Yes.

14 Q. And could we turn to -- still on page 14,  
15 but look at line 15. You discuss that continued  
16 operations of the plants provides stability and  
17 certainty.

18 Do you see that?

19 A. I may have lost my bearing in what  
20 document you are in, ma'am.

21 Q. I'm sorry. Line 16. We are still on the  
22 same page, same document.

23 A. Okay. Then help me out.

24 MR. KUTIK: You gave two different lines  
25 so --

1           A.    I am not sure which document we are in,  
2    please.

3           Q.    It's the supplemental testimony.

4           A.    Page, please?

5           Q.    I am giving her the whole sentence, but I  
6    am talking about stability and certainty on line 16.  
7    Starts with "is needed to promote stability and  
8    certainty."

9           A.    May I ask what page, please?

10          Q.    Page 4, still at the supplemental  
11    testimony.

12          A.    I apologize.

13               MR. KUTIK:  It's the second supplemental  
14    testimony.

15               THE WITNESS:  That's, perhaps, the source  
16    of my confusion.  Thank you.  I'm sorry.

17          Q.    We are still on the same paragraph we  
18    have been discussing.  It's -- line 16 is the word  
19    "stability and certainty."  I had used the quote "is  
20    needed to promote stability and certainty."

21          A.    I'm sorry.  Is there a question pending?

22          Q.    I asked if you saw that, if you saw the  
23    statement on that page.

24               EXAMINER PRICE:  I think the short answer  
25    is, no, she has not.  But now she is there, so let's

1 have a question.

2 Q. Well, to put it all in context, I did  
3 ask. You discuss that continued operation of the  
4 plants provides stability and certainty; is that  
5 correct?

6 A. Yes.

7 Q. And do you believe that promotion of  
8 stability and certainty with regard to continued  
9 operation of the plants exists regardless of who owns  
10 the generating plants?

11 A. Not necessarily.

12 Q. So if FirstEnergy sells the plants to  
13 some other entity, do you believe that continued  
14 operation of the plants will -- will not promote  
15 stability and certainty for the companies' system?

16 A. I don't think I can answer that question  
17 without knowing who the operator of the plant would  
18 be, what their business model would be relative to  
19 the operation of the plant, and I guess their overall  
20 intention with respect to operation of the plant or  
21 plants.

22 Q. Now, okay. Let's turn to page 12 of that  
23 same supplemental -- second supplemental testimony.

24 A. I'm there.

25 Q. And beginning on line 6, you discuss a

1 review process for rider RRS; is that correct?

2 A. I reference the detailed explanation of  
3 the review process that's in my direct testimony on  
4 page 12 of my second supplemental testimony.

5 Q. Okay. Are there other existing riders  
6 that the companies currently implement that are  
7 reconciled on a period basis?

8 A. Yes.

9 Q. And do the companies have riders in  
10 existence today that have an annual audit and  
11 prudence review?

12 A. All of the companies' riders are subject  
13 to audit annually by the Commission's staff.

14 Q. And are some of the riders subject to  
15 prudence review?

16 A. Specifically, rider DCR calls out that  
17 the Commission can review the expenditures for which  
18 we -- you seek recovery for the reasonableness, so  
19 when I use the word reasonable, unreasonable -- when  
20 I think of unreasonable, I think of that as  
21 synonymous with prudence, but I am not sure how you  
22 are using the term prudence so --

23 Q. I'm sorry. At the end of that, you said  
24 it is -- prudence and reasonable are synonymous?

25 A. I think of them as synonymous for

1 purposes of this case or for purposes of the DCR  
2 review.

3 Q. And there are others. You just mentioned  
4 one example. There are other riders that are also  
5 reviewed for reasonableness; is that correct?

6 A. Just as I stated, all of our riders are  
7 subject to annual review by the Commission staff.

8 Q. But not all of the riders are subject to  
9 an audit review that disallows costs for being  
10 imprudent; are they?

11 A. I believe -- and these questions are  
12 probably better directed to the staff, but I believe  
13 to the extent staff reviews costs for which we are  
14 seeking recovery as part of their annual review and  
15 they determine that those costs were either imprudent  
16 or unreasonable, it would be my expectation that the  
17 staff would recommend that we not be allowed to  
18 recover those costs.

19 Q. Okay. And those types of reviews would  
20 be different from what you would consider a  
21 reconciliation, which is more of an update of either  
22 the reconciliation of the costs or of mathematical  
23 errors similar to what you discussed yesterday; is  
24 that correct?

25 A. Maybe it would help the discussion to

1 understand that our reconcilable riders are filed  
2 either quarterly, semi-annually, or annually. And  
3 every time we make one of those filings, it contains  
4 a reconciliation element in order to align actual  
5 costs incurred with revenues collected. That process  
6 goes on, and the staff is certainly able to review  
7 those filings when they are made.

8 Separate and distinct from that process  
9 is an annual audit review process where we make an  
10 application with the riders that were filed in the  
11 prior year and then the staff looks at those -- that  
12 application and the underlying costs and recovery  
13 mechanism in greater detail to issue a staff report  
14 on those riders, so similar to what we are talking  
15 about here in so much as it is a two-step process.

16 Q. Thank you. Let's move on to discuss the  
17 ELR program. And this was discussed a little bit  
18 today but, again, to lay some foundation, the  
19 companies' proposed to eliminate rider ELR in the  
20 companies' application; is that correct?

21 A. No. The companies -- the rider ELR  
22 expired under its own terms May 31st of 2016.

23 Q. And the company did not request to  
24 continue or renew that rider; is that correct?

25 A. That is correct.

1           Q.    And then the December stipulation that  
2           was filed provided that the ELR would continue for  
3           existing customers meeting the certain eligibility  
4           requirements that had been previously established in  
5           other ESP cases and that that ELR would be expanded  
6           to include up to 75,000 kW of additional curtailable  
7           load; is that correct?

8           A.    No.  I think the original December  
9           stipulation created a new limitation on participation  
10          in rider ELR in so much as it was very -- much more  
11          finite than the prior eligibility requirements and in  
12          order -- pursuant to the December stipulation, which  
13          we have already discussed has been superseded by a  
14          supplemental stipulation, but in order to  
15          participate, the customer needed to be currently  
16          taking service under rider ELR or have been  
17          historically eligible to take service under ELR and  
18          provide notification by a certain date, and that  
19          second group of customers, that participation was  
20          limited to 75,000 kW.

21                So coming out of that stipulation, what  
22                you had was a contraction or a limitation on the  
23                number of customers that could participate in the ELR  
24                vis-a-vis the number of customers that were eligible  
25                to participate in ELR during ESP II or ESP III.

1           Q.     Because it was a grandfather -- the  
2     reason why you are saying that is because, in the  
3     prior ESP, there was a grandfathering of the ELR so  
4     no new customers could sign up to take service  
5     pursuant to the ELR tariff; is that correct?

6           A.     I think what I am saying that -- more  
7     clearly is because, in the ESP II and ESP III, a  
8     total number of customers were able to participate  
9     due to the eligibility participation criteria.

10           Starting with the December stipulation  
11     and during ESP IV, a smaller number of customers will  
12     be eligible to participate in the ELR.

13           Q.     Okay. And the certain eligibility  
14     requirements that you just referenced in the existing  
15     ELR that had to do with ESP II and III limited the  
16     customers that could take service pursuant to that  
17     program to those that had already taken service  
18     previously or that had notified the companies a while  
19     back in the ESP II or III cases; is that correct?

20           THE WITNESS: May I ask to have the  
21     question reread, please.

22           (Record read.)

23           A.     Participation in rider ELR during the  
24     ESP II and ESP III was limited to a finite set of  
25     customers who had taken service either under and --



1     pardon me -- an interruptible contract or an  
2     interruptible tariff prior to the start of ESP II.

3             Q.     Thank you.  And then the supplemental  
4     stipulation that was filed modified the amount of  
5     additional curtailable load that would be able to  
6     participate in the new ELR program to up to  
7     136,250 kW; is that correct?

8             A.     The supplemental stipulation increased  
9     the amount of ELR curtailable load that would be  
10    eligible to participate during ESP IV from the  
11    75,000 kW that was included in the original  
12    stipulation to 136,250 kW.

13            However, that 136,250 kW is still less  
14    than the amount of eligible ELR load that would have  
15    been available to participate under ESP II or  
16    ESP III.

17            Q.     Well, not ESP III because, as I recall,  
18    ESP III was limited to customers that had already  
19    been taking service pursuant to the ELR under ESP II;  
20    is that not correct?

21            A.     That is not correct.

22            Q.     Okay.  Referring 136,250 kW of  
23    additional -- up to that number of additional  
24    curtailable load that was increased, to use your  
25    word, in the supplemental stipulation, that was a

1 negotiated number; is that correct?

2 A. The 136,250 kW of curtailable load was a  
3 negotiated number.

4 Q. And that additional curtailable load will  
5 only be available to customers who have historically  
6 been eligible for rider ELR but were not taking rider  
7 ELR service during the ESP III period; is that  
8 correct?

9 A. Yes.

10 Q. And my understanding is new customers  
11 that enter the service territory, either new  
12 customers or new buildings, new accounts of existing  
13 customers, those would not be eligible to take  
14 service under the ELR program; is that correct?

15 A. Yes.

16 Q. And as you previously mentioned in  
17 response to a different question, the supplemental  
18 stip also modified the notice provision from the new  
19 participants executing an addendum by May 1, 2015, to  
20 a written notification requirement of those  
21 participants' intent to participate in the ELR  
22 program by May 31, 2015; is that correct?

23 THE WITNESS: May I have that question  
24 reread, please.

25 (Record read.)

1           A.    Attachment EMM-13 to my third  
2   supplemental testimony provides a red-lined analysis  
3   of the changes in the ELR provision from the December  
4   stipulation to the supplemental stipulation. And in  
5   that redline, you can see where there was a change  
6   from customer's notification requirement requiring  
7   notification prior to May 1 to on or before May 31.

8           Q.    And just so the record is clear, I have  
9   that as attachment EMM-3? Is that not correct? I  
10  thought you said 1-3?

11          A.    I apologize if I did. It's No. 3.

12          Q.    And also in that redline the notification  
13   type also changed from requiring that customers  
14   execute the addendum prior to May 1 to act -- to only  
15   providing notice of an intent to participate by the  
16   May 31 date; is that correct?

17          A.    Yes. And the reason for that was, in the  
18   December stipulation, the company and the parties  
19   anticipated that the matter would be ruled upon by  
20   the Commission prior to this time and the customers  
21   would be in a position to execute a contract  
22   addendum.

23                When we reached the point where it was  
24   less clear to us that the customers -- you know, that  
25   we would have approval to move forward with the

1 program, it did not make sense to us to execute  
2 contract addendums when we weren't even sure we would  
3 have the authority to enter into the contracts.

4 So we modified this language to recognize  
5 the point we were in the case and just request  
6 written notice with the expectation that we would  
7 execute contract addendums after Commission approval.

8 Q. Okay. So participants intending -- new  
9 participants intending to participate in the program  
10 had to know -- written notification provided to it by  
11 May 31, 2015; is that correct?

12 A. Yes.

13 Q. And the supplemental stipulation that we  
14 are referencing that made this change was filed on  
15 May 28, 2015; is that correct?

16 A. Yes.

17 Q. Did existing ELR customers also have to  
18 notify the companies of their intent to continue to  
19 participate in the ELR program by May 31, 2015?

20 A. No.

21 Q. How many customers currently take service  
22 pursuant to the interruptible program?

23 A. If, by the interruptible program, you are  
24 referring to rider ELR, we have 27 customers  
25 currently taking service under rider ELR.

1           Q.    And how many of those existing 27  
2 customers have expressed an intent to continue to  
3 participate in the ELR program?

4           A.    We have not sought an expression of  
5 intent to continue to participate. Our plan would  
6 be, once rider ELR is approved for continuation, we  
7 would reach out to the existing ELR customers to see  
8 if they wanted to enter into a contract addendum  
9 extending their ELR service through May 31st of 2019.

10          Q.    So are you telling me that none of the  
11 customer -- existing ELR customers have expressed an  
12 intent to continue in the ELR program to the  
13 companies?

14          A.    I think, in the course of negotiations,  
15 it was made clear to the companies that a number of  
16 the customers currently taking service under rider  
17 ELR would -- I would expect them to continue to take  
18 service under rider ELR.

19          Q.    Mine went off again. How many new  
20 customers that are not currently taking service under  
21 rider ELR -- or, excuse me, have not currently taken  
22 service under rider ELR have notified the company of  
23 their intent to participate?

24          A.    There are five customers that have been  
25 historically eligible to participate in rider ELR

1       that are not currently taking rider ELR service that  
2       have notified the companies they would like to  
3       participate in rider ELR for the ESP IV period.

4             Q.     And with the addition of those five new  
5       customers, the 136,250 kW has been fully subscribed;  
6       is that correct?

7             A.     Yes.

8             Q.     And is it -- and it's my understanding  
9       that three of those five new customers informed you  
10      of their intent to participate before May 1; is that  
11      correct?

12            A.     Yes.

13            Q.     And is it fair to say that those three  
14      customers notified you on or before May 1 that they  
15      wanted to participate at their historical curtailable  
16      load caps?

17            A.     Yes.

18            Q.     And those three customers were approved  
19      to participate at their historical curtailable load  
20      caps which totaled 70,532 kW?

21            A.     Yes.

22            Q.     And the remaining two customers notified  
23      you after May 1 but before May 31st of their intent  
24      to participate in the program?

25            A.     Yes.

1           Q.    And they were able to do this because of  
2           the extension of the deadline and because of the  
3           total curtailable load cap that had been revised; is  
4           that correct?

5           A.    Yes.

6           Q.    And those two customers' curtailable  
7           loads were prorated so that the aggregate total  
8           curtailable load of all of the new ELR customers did  
9           not exceed the cap contained in the supplemental  
10          stipulation; is that correct?

11          A.    Yes.

12          Q.    And at this time, you don't know the  
13          total curtailable load that will actually participate  
14          in the ELR program taking consideration of the  
15          existing customers with the new customers; is that  
16          correct?

17          A.    As I sit here today, I don't know with  
18          certainty what the curtailable load will be during  
19          ESP IV for a couple of reasons. One, I have not  
20          sought execution of contract addendums for the 27  
21          customers that currently exist.

22                And then, two, with respect to all  
23          customers participating, the numbers we are talking  
24          about are caps. The actual curtailable load will be  
25          a function of their usage characteristics throughout

1 the period, so these are -- should be considered not  
2 to exceed or caps rather than a guarantee.

3 Q. In the contract addendum that you keep  
4 discussing, is this actually a contract or is it --  
5 what, exactly, is it? Because it is a tariff  
6 provision; is that correct?

7 A. I'm not sure I understand your question  
8 with respect to tariff provision, ma'am.

9 Q. I'm sorry. Let me step back.

10 The ELR program is a tariff provision  
11 that will be filed with the Commission; is that  
12 correct?

13 A. Rider ELR is a tariff that's filed with  
14 the Public Utilities Commission of Ohio.

15 Q. Okay. And that -- you don't have a  
16 current redline of -- you don't have a proposed rider  
17 ELR tariff at this time; is that correct?

18 A. The companies would make a compliance  
19 filing with a tariff for Commission review and  
20 approval consequent to approval of this ESP.

21 Q. Okay. And you have not currently  
22 redlined the existing ELR rider tariff in order to  
23 reflect the changes or agreement in the stipulations;  
24 is that correct?

25 A. No. The companies would make a



1 compliance filing after the order in this case.

2 Q. Okay. So do the ELR customers have to  
3 file -- excuse me -- have to execute a contract with  
4 the companies with regard to taking service pursuant  
5 to the ELR program?

6 A. Customers who participate on rider ELR  
7 execute a contract addendum to their contract for  
8 electric service.

9 Q. Okay. And is the addendum a form  
10 addendum, or is this something that will need to be  
11 negotiated between each customer?

12 A. It is a form addendum with  
13 customer-specific information included in the form  
14 addendum.

15 Q. Okay. Similar to the contract for  
16 electric service is a form contract with  
17 customer-specific information contained therein; is  
18 that correct?

19 A. I don't know. I haven't looked at all  
20 the contracts for electric service. They may have  
21 changed over the years so --

22 MS. BOJKO: Your Honor, may I have just  
23 two minutes?

24 EXAMINER PRICE: You may.

25 (Discussion off the record.)

1           Q.    I am going to go to the existing ELR  
2           program. We were discussing eligibility  
3           requirements. Do you recall that?

4           A.    I do recall that discussion, but it would  
5           be -- I don't have a copy of the tariff in front of  
6           me, so to the extent you would like to discuss the  
7           tariff, it would be helpful to me to have a copy of  
8           the tariff.

9           Q.    Well, I have -- I have the tariff  
10          electronically.

11          MS. BOJKO: May I provide the witness  
12          with a computer?

13          EXAMINER PRICE: Mr. Kutik, would you  
14          like to stand over her shoulder and see what's being  
15          provided to your client?

16          MR. KUTIK: You read my mind, your Honor.  
17          Yes.

18          MS. BOJKO: May I approach, your Honor?

19          EXAMINER PRICE: You may approach as well  
20          as Mr. Kutik.

21          Q.    (By Ms. Bojko) Do you have what's in  
22          front of you what appears to be the rider ELR tariff  
23          currently in effect at the Commission?

24          A.    For Ohio Edison Company, yes.

25          Q.    Okay. And it's labeled -- just for

1 record purposes, it's labeled Sheet 101 Third Revised  
2 page 1 of 6 and it's the PUCO No. 11 tariff; is that  
3 correct?

4 A. Yes. It does continue, obviously, to  
5 2 of 6, 3 of 6, 4 of 6, but the first page in the  
6 document is labeled 1 of 6.

7 Q. Okay. And this, if you look at the  
8 bottom of the page of the tariff, it says that it  
9 is -- it was filed pursuant to the last ESP  
10 proceeding, which was 10-388-EL-SSO; is that correct?

11 MR. KUTIK: Objection.

12 Q. Oh, wait. I'm sorry. It says it's filed  
13 pursuant to several orders listed, and one of those  
14 being the last ESP case --

15 MR. KUTIK: Your Honor, I'm going to --

16 Q. Two ESP cases.

17 MR. KUTIK: Your Honor, I am going to  
18 object. The tariff says what it says. It is  
19 effective when it is effective and it was ordered  
20 when it was ordered.

21 EXAMINER PRICE: What we are going to do  
22 to simplify this, you can continue to refer to this  
23 for your convenience, but we will go ahead and take  
24 administrative notice of that particular tariff.

25 What's the tariff number, Ms. Bojko?

1 MS. BOJKO: It's PUCO No. 11 sheet 101.

2 EXAMINER PRICE: Okay. We are going to  
3 go ahead and take administrative notice of that  
4 tariff and then everybody can refer to it in their  
5 briefs. Go ahead.

6 MS. BOJKO: Thank you, your Honor.

7 Q. (By Ms. Bojko) It is -- I understand  
8 taking administrative notice, but it is your  
9 understanding that the -- this is the last tariff  
10 provision that was adopted in the last ESP case; is  
11 that correct?

12 A. Rider ELR was not modified -- pardon me.  
13 Rider ELR was approved in the last ESP case that is  
14 the reference case -- let me get my bearings here.

15 EXAMINER PRICE: The current ESP was  
16 approved by the Commission in 12-30-EL-SSO.

17 A. Rider ELR was approved in that  
18 proceeding. It was subsequently modified pursuant to  
19 Commission order such that the tariff that I'm  
20 looking at here is different in some measure than the  
21 tariff that was approved in the 12 -- 12-30-EL-SSO  
22 case. And that would be the reference  
23 14-2037-EL-ATA.

24 Q. Okay. Thank you for that explanation.  
25 And the eligibility requirements listed on page 1 of

1 sheet 101, it's called under the section  
2 applicability, those provisions or those eligibility  
3 criteria would not have changed by the 14 --  
4 14-2037-EL-ATA case you just mentioned; is that  
5 correct?

6 A. Yes.

7 Q. So those eligibility requirements would  
8 have been approved by the ESP case, the last ESP  
9 case; is that correct?

10 A. Yes.

11 Q. Okay. And so the first eligibility  
12 requirement states that the customer took service  
13 under the companies' interruptible tariff set forth  
14 below as of February 1, 2008; is that correct?

15 A. You read that correctly.

16 Q. Okay. So one of the requirements was  
17 that a customer had to have previously taken service  
18 as of February 1, 2008.

19 A. One of the requirements for the Ohio  
20 Edison rider ELR is that the customer had to take  
21 service under one of the companies' interruptible  
22 tariffs that are set forth below in the rider.

23 Q. Okay. Thank you. That's all the  
24 questions I have about that tariff.

25 MS. BOJKO: May I retrieve?

1 EXAMINER PRICE: Yes.

2 MS. BOJKO: Thank you.

3 Q. And --

4 A. I guess, just to be clear, since we  
5 looked only at the Ohio Edison tariff, the Cleveland  
6 Electric Illuminating tariff and the Toledo Edison  
7 tariff would have references to contracts in addition  
8 to the language that was in the Ohio Edison tariff  
9 that focused strictly on tariffs, just to be clear.

10 Q. Okay. And those --

11 MS. BOJKO: Well, your Honor, maybe it  
12 would be just easier to take administrative notice of  
13 the ELR tariff in the CEI as well as the Toledo  
14 Edison companies.

15 EXAMINER PRICE: We will go ahead and  
16 take administrative notice of all three tariffs for  
17 all three operating companies.

18 MS. BOJKO: Thank you.

19 Q. (By Ms. Bojko) The credits and the  
20 charges regarding the ELR program did not change from  
21 the first stipulation filed in December to the  
22 supplemental stipulation filed on May 28, 2015; is  
23 that correct?

24 A. Yes.

25 Q. And rider EDR(b) is the credit provision

1 of \$5 per kW per month per unit of curtailable load;  
2 is that correct?

3 THE WITNESS: May I have that question  
4 reread, please, ma'am?

5 (Record read.)

6 A. Yes.

7 Q. Okay. And then -- EDR(b) -- the EDR(b)  
8 credit is collected in rider EDR(e); is that correct?

9 A. Yes. And the rider EDR(b) credit is  
10 associated with economic development, which is why it  
11 is included in the economic development rider and  
12 recovered through the economic development rider.

13 Q. Okay. And the economic development rider  
14 B is collected from GS and GP customers only; is that  
15 correct?

16 A. Yes.

17 Q. We're flashing. I don't know what that  
18 means.

19 And the EDR(b) will be allocated to those  
20 GS and GP customers as reflected in the current ELR  
21 tariff; is that correct?

22 A. No.

23 Q. Oh, I'm sorry. As reflected in the  
24 current EDR tariff; is that correct?

25 A. Yes.

1           Q.    And then the second piece of the ELR  
2   program is the rider ELR credit; is that correct?

3           MR. KUTIK:   May I have the question read,  
4   please.

5           (Record read.)

6           A.    May I ask you to restate the question,  
7   please, ma'am.

8           Q.    Sure.   The interruptible credit  
9   provisions that are there are two credit provisions  
10   that make up the ELR credit provision; is that  
11   correct?

12           There is ELR(d), (b), and then there's  
13   rider ELR.   There are two separate riders.   One is  
14   rider ELR and one is rider EDR(b).

15           Q.    Okay.   And we talked about EDR(b)  
16   equaling \$5 per kW per month per unit of curtailable  
17   load.

18           Is it true that rider ELR is a credit  
19   that also equals \$5 per kW per month by unit of  
20   curtailable load?

21           A.    Yes.

22           Q.    So the total credit provided to ELR  
23   customers is \$10 per kW per month by unit of  
24   curtailable load; is that correct?

25           A.    Yes.   And that \$10 per kW of curtailable



1 load represents credits associated with provision of  
2 interruption or curtail -- the customer's agreement  
3 to take curtailable service as well as economic  
4 development.

5 Q. Okay. And the ELR credit, the \$5 per kW  
6 per month by unit curtailable load, is collected in  
7 DSE1 net any of the PJM revenues that we talked about  
8 earlier; is that correct?

9 A. Yes.

10 Q. And that actually be net of 80 percent of  
11 the PJM revenues; is that correct?

12 A. Currently, that is correct.

13 Q. Okay. And isn't it true that DSE1 is  
14 being collected from all customers except for the ELR  
15 customers?

16 A. Yes.

17 Q. Let's turn to the automaker credit, which  
18 would be reflected in the first stipulation in  
19 December; is that correct?

20 A. On page 9 of the Stipulation and  
21 Recommendation filed in December of 2014, items --  
22 item 7 addresses the automaker credit provision.

23 Q. Okay. And that item 7 did not change in  
24 the supplemental stipulation; is that correct or in  
25 the second supplemental stipulation.

1           A.     That is correct.

2           Q.     Okay. And the automaker credit is a  
3 credit to EDR(h); is that correct?

4           A.     May I ask you to restate the question,  
5 please.

6           Q.     Yeah. The automaker credit is reflected  
7 as an -- as a credit -- as an EDR(h) credit; is that  
8 correct?

9           A.     Rider EDR(h) is the rider provision for  
10 the automaker credit.

11          Q.     Okay. And that automaker credit EDR(h)  
12 is collected through rider EDR(i); is that correct?

13          A.     Yes.

14          Q.     And the automaker credit will be  
15 collected from all customers excluding GT customers  
16 and lighting customers; is that correct?

17          A.     Yes, as it is today.

18          Q.     And the credit, as proposed by the  
19 stipulation, will be modified to a flat credit of  
20 1 cents per kW for kWh exceeding the baseline usage;  
21 is that correct?

22          A.     The automaker credit for the ESP IV  
23 period will be lower than the existing automaker  
24 credit due to the elimination of the tail block that  
25 exists in the current rate structure where customers

1 are compensated at 1.2 cents per kilowatt-hour for  
2 usage over a certain level.

3 So the proposal in this stipulation is  
4 any usage that the domestic automakers have that is  
5 over their 2009 baseline level will be compensated at  
6 a flat 1 cent per kilowatt-hour credit as opposed to  
7 the 1 cent growing to 1.2 cents.

8 Q. Right. But the 1 cent is the same as the  
9 first block rate as it currently exists today; is  
10 that correct?

11 A. The first block is 1 cent. It's  
12 difficult for me to say it's the same because the  
13 1 cent will be applicable to all usage over the  
14 baseline where currently it is not.

15 Q. Okay. But for the first 20 percent over  
16 the baseline, that credit will not change from the  
17 existing credit today?

18 A. Correct.

19 Q. Okay. Now, let's turn to -- I am going  
20 to turn to the NMB pilot program, which was  
21 established by the supplemental Stipulation and  
22 Recommendation filed on May 28; is that correct?

23 A. Yes.

24 Q. And that's on page 3 of the supplemental  
25 stipulation?

1           A.    Yes.

2           Q.    Under the NMB pilot program -- may I call  
3   it the NMB pilot program?

4           A.    You may.

5           Q.    And that stands for the nonmarket-based  
6   services rider or nonmarket-based services; is that  
7   correct?

8           A.    NMB stands for nonmarket-based services.

9           Q.    And under the pilot program, the  
10   companies would no longer be assessed from PJM any  
11   nonmarket-based charges associated with the pilot  
12   program members because those costs would be charged  
13   directly to their suppliers; is that correct?

14          A.    The companies would not be assessed  
15   nonmarket-based services charges from PJM for pilot  
16   participants.

17          Q.    And those costs instead would be assessed  
18   to the pilot participants by their suppliers; is that  
19   correct?

20          A.    Those costs would be assessed to the  
21   pilot participant's suppliers. When the contractual  
22   arrangement is between the pilot participant's  
23   supplier and the pilot participant, I would have no  
24   knowledge of that.

25          Q.    Okay. Theoretically, the PJM charges

1       assessed to the companies should decrease by the  
2       exact amount that now PJM will charge the suppliers;  
3       is that correct? Let me rephrase.

4               Theoretically, the PJM charges assessed  
5       to the companies should decrease by the exact amount  
6       that PJM will now charge or assess the suppliers for  
7       those pilot program participants; is that correct?

8               A.     Yes.

9               Q.     And the NMB charges assessed to the  
10       companies from PJM are allocated to the companies'  
11       customers by rate class based on the average of the  
12       four coincident peaks from June through September; is  
13       that correct?

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

16               EXAMINER PRICE: Please.

17               (Record read.)

18               MR. KUTIK: And the allocation is the  
19       allocations by the companies?

20               MS. BOJKO: Yes. Thank you.

21               A.     I heard in that question what sounded  
22       like two allocations to me, so I will say that the  
23       companies allocate the nonmarket-based services  
24       charges among the rate schedules of that company  
25       based on their contribution to the 4CP.

1           Q.    From June through September; is that  
2           correct? The 4CP from June through September?

3           A.    June through September coincident peaks  
4           are used to come up with the average 4CP, yes.

5           Q.    And after that allocation is performed  
6           that you just discussed, it is then collected from  
7           customers either on an energy or a demand basis  
8           depending on the particular rate schedule?

9           A.    Yes.

10          Q.    And isn't it true that that 4CP average  
11          may change if customers in the pilot program opt out  
12          of rider NMB per the established pilot program?

13          A.    Yes.

14          Q.    And historically, the companies have  
15          filed their annual NMB filing in May of each year; is  
16          that correct?

17          A.    Yes.

18          Q.    And when do the companies plan to file  
19          their next rider NMB filing?

20          A.    January of 2016.

21          Q.    And the companies are proposing that the  
22          new MMB rider will take effect no later than 75 days  
23          after the filing of the NMB application; is that  
24          correct?

25          A.    Yes.

1           Q.    And the pilot participants of the NMB  
2   program are limited to those customers or current  
3   members of associations listed on page 3 of the  
4   supplemental stipulation; is that correct?

5           THE WITNESS:   May I ask you to reread  
6   that question, please, ma'am?

7                   (Record read.)

8           A.    Pilot participants are limited to members  
9   of the organizations listed or the other customers  
10   listed on this list, but page 4 recognizes that new  
11   and expanded accounts of a pilot participant shall  
12   also be included.

13          Q.    New and expanded accounts of the pilot  
14   participants listed on page 3?

15          A.    Yes.

16          Q.    But no other customers of the FirstEnergy  
17   companies will be able to participate in the NMB  
18   pilot program; is that true?

19          A.    Other than those that qualify pursuant to  
20   the stipulation, no.

21          Q.    And pilot participants have to notify the  
22   companies of their intent to participate within  
23   30 days of either approval of the ESP IV or by  
24   December 31, 2015, whichever is later; is that  
25   correct?

1           A.    Yes.

2           Q.    And after that notification period has  
3           elapsed, no additional customers, even those that are  
4           members or that are customers listed on page 3, will  
5           be able to participate?

6           A.    No, that's not correct.  Again, as it  
7           describes, if you continue on to page 4, opening of a  
8           replacement account or an account transfer would be  
9           eligible as would new and expanding accounts of  
10          existing pilot participants, regardless of whether  
11          the accounts are known or in existence by the  
12          election deadline.

13          Q.    I'm sorry.  I said no additional  
14          customers, not accounts.

15                Will any additional customers be able to  
16          join the pilot program after the notification period  
17          has lapsed?

18          A.    If there are new customers who are pilot  
19          participants, as defined in the stipulation, they  
20          would be able to participate in the pilot.

21          Q.    They don't become pilot participants  
22          unless they notify you within 30 days of the approval  
23          of the ESP IV or by December 31, 2015, whichever is  
24          later; is that correct?

25          A.    Again, if you look at page 3 of the



1 stipulation, it defines -- pilot participant is a  
2 defined term in the stipulation. And that is the  
3 universe of participants who are eligible to  
4 participate in a pilot.

5 From that universe of customers that are  
6 eligible to participate in the pilot, the customer  
7 has to make the election and notify the company of  
8 its intent to participate in the pilot.

9 Q. Okay. And if they don't do that in a  
10 timely fashion, can they later join the pilot  
11 program?

12 A. May I ask you to clarify your question,  
13 please, ma'am, with respect to "they"?

14 Q. Let's just take an example. Material  
15 Sciences Corp. is one of the customers that is  
16 eligible to participate in the pilot program; that  
17 true?

18 A. Yes.

19 Q. If Material Sciences Corp. does not  
20 notify you by the later of 30 days after the ESP IV  
21 approval or December 31, 2015, will they be able to  
22 still participate in the pilot program?

23 A. No.

24 Q. Using that same example, if Material  
25 Sciences Corp. does notify you within 30 days of

1 approval of the ESP IV or by December 31, 2015,  
2 whichever is later, and decides to add new or  
3 expanded accounts at a later date, that is  
4 permissible by the stipulation; is that correct?

5 A. Yes.

6 Q. Okay. Now, let's change to the second  
7 supplemental stipulation. And this supplemental  
8 stipulation has been marked as Company Exhibit 4 and  
9 was filed on June 4, 2015; is that correct?

10 A. Yes.

11 Q. And this stipulation adds one new  
12 provision to the two prior stipulations; is that  
13 correct?

14 A. Yes.

15 Q. Around that new provision is a commercial  
16 high load factor experimental time-of-use rate; is  
17 that correct?

18 A. Yes.

19 Q. If I refer to that as HLFTOU, are you  
20 comfortable with that?

21 A. Yes.

22 Q. Only nonshopping customers may take  
23 service pursuant to the HLFTOU; is that correct?

24 A. Customers who elect to participate in the  
25 HLFTOU would elect to take generation service from

1 the company.

2 Q. And, therefore, cannot shop; is that  
3 correct?

4 A. The customers have the opportunity to  
5 shop. If they make the election to participate on  
6 this tariff, they're making the election to take  
7 generation service from the company, which I might  
8 add, that generation service is also sourced  
9 100 percent at market.

10 Q. But this is distinguished from the ELR  
11 program or customers that take service pursuant to  
12 the ELR program are allowed to shop for the  
13 generation service; is that correct?

14 A. Yes, and for good reason, because this is  
15 testing or running a pilot program to test customers'  
16 willingness to modify their peak load shape as it  
17 relates to their generation service. So in order to  
18 test that pilot, they need to take generation service  
19 from the company.

20 Q. And the pilot program that you are  
21 referencing, the HLFTOU, has many applicability  
22 provisions; is that correct?

23 A. The HLFTOU does, like all our other  
24 riders, have applicability provisions, yes.

25 Q. Okay. And those provisions, it's only

1       offered to commercial customers; is that correct?

2           A.     It is offered to commercial customers  
3       taking service under the companies' GS or GP rate  
4       schedules.

5           Q.     Okay. The commercial customer has to  
6       have headquarters located in Ohio; is that correct?

7           A.     Yes.

8           Q.     Commercial customer has to have at least  
9       30 facilities in the companies' combined service  
10      territories; is that correct?

11          A.     Yes.

12          Q.     And each of those facilities have to  
13      consume at least 1.5 gigawatt hours annually; is that  
14      correct?

15          A.     Yes.

16          Q.     And the refrigeration -- excuse me -- and  
17      refrigeration has to be a major portion of that  
18      customer's load; is that correct?

19          A.     Yes.

20          Q.     Additionally, each individual facility of  
21      that customer must have interval metering; is that  
22      correct?

23          A.     Yes.

24          Q.     And they must have -- each individual  
25      facility must have an average monthly load factor

1 during the preceding 12 months of 70 percent or  
2 higher; is that correct?

3 A. Yes.

4 Q. Have any existing customers of the three  
5 operating companies expressed interest in taking  
6 service pursuant to the HLFTOU?

7 A. The companies have not received  
8 notification from any customer that they would like  
9 to take service under this rider at this time. Of  
10 course, I am not sure I would have expected to  
11 receive that notice since it is not an approved rider  
12 at this time.

13 Q. Well, there is no notification  
14 requirement in the rider; is there?

15 A. Well, in order to take generation service  
16 from the company, they would have to notify the  
17 company that they want to take generation service  
18 from the company pursuant to this program.

19 Q. Okay. Have any current customers of the  
20 three operating companies expressed interest in  
21 taking service pursuant to the HLFTOU?

22 A. Again, I have had no customer notify me  
23 they want to take service under this rider.

24 Q. Okay. I am not asking for a  
25 notification. I am asking if any customer has

1       expressed interest in the program.

2               A.     Perhaps it would be helpful to me then if  
3       you better define what you mean by interest. To me,  
4       interest is notification that they intend to  
5       participate.

6               Q.     Expressed interest, to me, means they  
7       would consider the program and consider taking  
8       service under it, not that they have notified you of  
9       their intent to actually take service. That's my  
10      distinction.

11              MR. KUTIK: So can we have the question  
12      put to the witness now, please, your Honor?

13              MS. BOJKO: She asked me for my  
14      definition, your Honor.

15              Q.     (By Ms. Bojko) So with that definition,  
16      has any customer expressed interest in taking service  
17      pursuant to the HLFTOU?

18              THE WITNESS: May I ask you to reread the  
19      definition of interest that Ms. Bojko is using?

20              (Record read.)

21              A.     Yes.

22              Q.     And how many customers have expressed  
23      interest to you?

24              A.     One, to date.

25              Q.     Do any customers meet the applicability

1 requirements of the HLFTOU, as you sit here today?

2 A. No.

3 Q. Does that customer that expressed  
4 interest to you currently meet the applicability  
5 requirements of the HLFTOU?

6 A. No.

7 Q. And are you stating no because you do not  
8 know if those customers will be able to maintain the  
9 the applicability requirements as they go forward in  
10 the future?

11 A. That would be one reason.

12 Q. Under this provision, do they have to  
13 maintain their headquarters in the State of Ohio to  
14 be continuing to be eligible for the HLFTOU?

15 A. Yes.

16 Q. And would they also have to maintain all  
17 of the other requirements set forth on the first and  
18 second page of the supplemental stipulation  
19 throughout the duration of their participation in the  
20 HLFTOU?

21 A. No. Once a facility qualifies for the  
22 HLFTOU and is, in fact, enrolled in the HLFTOU, that  
23 facility may remain on the rate notwithstanding any  
24 subsequent changes in the load characterization of  
25 the facility or reduction in the energy consumption

1 of the facility.

2 And that makes good sense because that's  
3 exactly what we are trying to test in this pilot:  
4 Are these customers, these high load factor  
5 customers, are they further able to improve their  
6 consumption profile by managing their on-peak load?

7 So you wouldn't want to reward them for  
8 that by disqualifying them for that rate.

9 Q. You mentioned a couple of requirements  
10 that would have to be continued through the  
11 participation of the HLFTOU.

12 Would a customer taking service between  
13 the -- taking service from HLFTOU, would they have to  
14 maintain their company headquarters in the State of  
15 Ohio after they had already qualified and been  
16 participating in the program?

17 MR. KUTIK: Objection. Asked and  
18 answered.

19 EXAMINER PRICE: Sustained.

20 MS. BOJKO: Your Honor, I didn't ask  
21 about the headquarters.

22 MR. KUTIK: Yes, you did.

23 EXAMINER PRICE: Yeah, you did. Four  
24 questions ago. Three or four.

25 Q. (By Ms. Bojko) So am I to assume that, in



1 your answer, when you only were responsive to two of  
2 the requirements, you believe that all of the  
3 requirements have to be maintained for continued  
4 participation in the HLFTOU?

5 MR. KUTIK: We'll object again, your  
6 Honor. I am not -- she talked, in her answer, about  
7 two requirements, and I am not sure on the record  
8 what two requirements we are talking about.

9 EXAMINER PRICE: Please, rephrase the  
10 question.

11 MS. BOJKO: She qualified her answer to  
12 my question, so I was following up as to the other  
13 items she qualified.

14 EXAMINER PRICE: I understand. Just  
15 rephrase your question. I didn't follow your  
16 question either.

17 Q. (By Ms. Bojko) After a customer begins  
18 participating in the HLFTOU requirement -- or  
19 sorry -- after begins participating in the HLFTOU  
20 program, would the customer have to continue to  
21 maintain all of the eight criteria mentioned on  
22 pages 1 and 2 of the second supplemental stipulation?

23 THE WITNESS: May I have the question  
24 reread, please?

25 EXAMINER PRICE: Please.

1 (Record read.)

2 A. No, ma'am. As I testified earlier, once  
3 a facility qualifies for the HLFTOU and is, in fact,  
4 enrolled in the HLFTOU, that facility may remain on  
5 that rate notwithstanding any changes to its load  
6 characteristics or reduction in its energy  
7 consumption, which may differ from the load and --  
8 load factor and consumption requirements that are  
9 spelled out in the applicability section.

10 Q. Okay. And also notwithstanding whether  
11 the customer retains its headquarters in the State of  
12 Ohio and whether it retains 30 facilities in the  
13 companies' three service territories, correct?

14 MR. KUTIK: I'll object. I not sure --  
15 notwithstanding what?

16 EXAMINER PRICE: Yes. Rephrase that  
17 question. Let's try to cut through this.

18 Of the eight criteria, the ones that the  
19 companies do not -- that the customer does not have  
20 to maintain relate to load characteristics and usage.  
21 The other eight criteria, they must maintain; is that  
22 correct?

23 THE WITNESS: With the qualification "the  
24 remaining of the eight," because those are included  
25 in the eight.

1 EXAMINER PRICE: Yes. So the six that  
2 don't relate to load characteristics and -- and  
3 usage, they must maintain the two that relate to  
4 load -- the load usage and load factor they can  
5 deviate from?

6 THE WITNESS: That is correct, sir.

7 EXAMINER PRICE: Thank you.

8 MS. BOJKO: Thank you.

9 Q. (By Ms. Bojko) How were the  
10 applicability, the eight that we have been  
11 discussing, how were those determined?

12 A. Through negotiation.

13 Q. Negotiation with the one customer that  
14 expressed interest?

15 MR. KUTIK: Objection.

16 EXAMINER PRICE: Grounds?

17 MR. KUTIK: Settlement.

18 EXAMINER PRICE: Sustained.

19 Q. There are no time restraints or  
20 notification deadlines regarding when a company could  
21 choose to take service pursuant to HLFTOU; is that  
22 correct?

23 A. There would be a practical constraint  
24 insomuch as any participant would have to notify the  
25 company in order to take generation service from the

1 company under this pilot, but there is no specific  
2 notification provisions that are detailed in this  
3 application.

4 Further, to the extent a customer elects  
5 to participate and is eligible to participate in the  
6 HLFTOU, they can elect at any time to remove  
7 themselves from that pilot and take standard SSO  
8 service from the company or elect to shop from a CRES  
9 provider.

10 Q. And the HLFTOU will be a tariff -- tariff  
11 provision with set rates; is that correct?

12 A. Yes. The HLFTOU rates will be set  
13 annually coincident with the establishment of the  
14 companies' SSO generation rates.

15 Q. Okay. And the tariff provision will be  
16 available whether or not a customer elects to take  
17 participation of the tariff; is that correct?

18 A. The tariff will -- the tariff will be  
19 available for people to elect to participate under it  
20 or not.

21 Q. We talked about notification. I was  
22 trying to see if there is a timeframe established of  
23 when a customer had to elect to actually participate  
24 in HLFTOU.

25 A. No. As contemplated, customers can elect

1 to take service under this rider and exit this rider  
2 at their discretion.

3 Q. And there is no minimum stay requirements  
4 or participation duration requirements of the rider?  
5 They can come on and off as they please?

6 A. Yes, ma'am.

7 EXAMINER PRICE: This rider will remain  
8 in place in all three years of the ESP?

9 THE WITNESS: Yes, sir.

10 Q. Let's look at the example that you've  
11 attached as Attachment 1 to the second stip -- second  
12 supplemental stip.

13 A. I'm there.

14 Q. Line 3 is the capacity value that the  
15 company is proposing will be constant for the entire  
16 ESP IV term; is that correct?

17 A. Correct, with the caveat that is the  
18 companies' and the signatories parties'  
19 recommendation.

20 Q. Okay. And that constant capacity value  
21 is \$150 per megawatt-day; is that correct?

22 A. Yes.

23 Q. And that was the negotiated number; is  
24 that correct?

25 A. Yes.

1           Q.    Line 4, the load factor percentage listed  
2           in this example, is based on rider GEN calculation  
3           for the 2015-'16 delivery year; is that correct?

4           A.    Yes.

5           Q.    And that represents the load factor --  
6           the average load factor of a standard service load;  
7           is that correct?

8           A.    No.

9           Q.    That represents the actual load factor of  
10          the standard service load; is that correct?

11          A.    No.

12          Q.    What does the 52 percent represent?

13          A.    That is the load factor for -- that is  
14          used in our rider GEN calculation that really is  
15          representative of the load factor of all the load  
16          delivered in for the companies' customers standard  
17          service offer and other.

18          Q.    And that load factor percentage may  
19          change based upon the actual load factor for each  
20          delivery year in that rider GEN calculation; is that  
21          correct?

22          A.    Yes.

23          Q.    And the loss factors on lines 11 and 12  
24          will change if the loss factors are revised in the  
25          rider GEN filing; is that correct?

1           A.    Yes.

2           Q.    The energy charge calculation in the  
3           second box, that is, the auction price is the total  
4           SSO clearing price resulting from a number of the  
5           competitive bid auctions for a given delivery year;  
6           is that correct?

7           A.    Yes.

8           Q.    So the \$65.10 number on line 16 is the  
9           result of the multiple competitive bid auctions for  
10          the SSO load for the 2015-16 delivery year; is that  
11          correct?

12          A.    Yes.

13          Q.    Going to the third box, which is called  
14          total TOU charge, do you see that?

15          A.    I do.

16          Q.    Those dollars per kWh will be revised  
17          through the tariff on an annual basis concurrent with  
18          the rider GEN filing that you have just mentioned; is  
19          that right?

20          A.    Yes.

21          Q.    And there are two rates that will be  
22          offered through the HLFTOU tariff; is that correct?

23          A.    I'm not entirely sure what you mean by  
24          two rates, ma'am.

25          Q.    There's a summer midday rate that is

1 listed in the boxes on lines 26 to 29, and then  
2 there's all other hours rate; is that correct?

3 A. Yes, but those rates will exist for two  
4 different rate schedules, so they will also exist for  
5 GS and GP.

6 Q. Thank you. So in total, there will be  
7 four rates that are offered through this TL -- HLFTOU  
8 program; is that correct?

9 A. Per year, yes.

10 Q. Okay. And summer midday is defined as a  
11 weekday, nonholiday, hours from 12 to 6 p.m. during  
12 the months of June through August; is that correct?

13 A. Yes.

14 Q. And the all other hours is all hours  
15 other than the summer midday hours; is that correct?

16 A. Yes.

17 Q. Was the definition of summer midday hours  
18 negotiated?

19 A. No. That period is consistent with our  
20 existing summer midday period in our tariffs.

21 Q. So as I understand the companies'  
22 proposal, any differences between the revenues  
23 collected from a customer taking service pursuant to  
24 the HLFTOU and the costs per megawatt-hour paid to  
25 the suppliers who are supplying the SSO load during



1 that period is what the -- any differences equals; is  
2 that correct? Let me try that again.

3 You refer to any differences in your  
4 testimony that, if there are any differences, those  
5 differences will be collected from customers; is that  
6 correct?

7 A. Differences between the revenues  
8 collected for customers taking service under this  
9 rider and the cost to provide generation service to  
10 the customers taking service under this tariff.  
11 Whether that be a charge or a credit, those  
12 differences would be included in our rider GCR.

13 Q. Okay. And what you are discussing is the  
14 revenues collected under the rates provided on  
15 lines 28 and 29; is that one side of the equation?

16 A. Multiplied by the customer's billing  
17 determinants, yes.

18 Q. Okay. You will net out the costs paid to  
19 the suppliers who are supplying the SSO load during  
20 that period if the customers would be taking service  
21 off of the cuss -- the companies' GS and GP rate  
22 schedules; is that correct?

23 A. Looking at Attachment 1, the companies,  
24 under this illustration, will pay the wholesale  
25 suppliers of our SSO load \$65.10 per megawatt-hour.

1       So that will be the cost that the companies incur to  
2       provide generation service to customers participating  
3       on this tariff.

4             Q.     Okay.  And if we look at the customers  
5       taking service during non-summer midday hours under  
6       the HLFTOU, those customers would be paying  
7       5.68 cents per kWh; is that correct?

8             A.     Assuming those customers you are  
9       referring to are taking service under rate GS.

10            Q.     And for those GS customers, then you  
11       would take the difference of the 6.51 cents per kWh  
12       and the 5.68 cents per kWh to create the -- a  
13       difference; is that correct?

14            A.     That would be the difference that's  
15       calculated in all other hours than the summer midday  
16       hours.  In the summer midday hours, we would take the  
17       20.7015 cents and subtract from that the 6.510 cents,  
18       and that credit would be returned to the customers  
19       through rider GCR.

20            Q.     Okay.  So during the all other hours  
21       example, the charge that we discussed, the difference  
22       6.51 cents and the 5.68 cents, that charge is  
23       calculated and passed on to customers through rider  
24       GCR; is that correct?

25            A.     Yes.  As I've said, any differences

1 between the cost to provide generation service and  
2 the revenues received for the generation service,  
3 positive or negative, would be included in rider GCR.

4 Q. Okay. And have the companies calculated  
5 what the impact of the HLFTOU will have on customers?

6 A. It would be impossible for the companies  
7 to do so without knowing who the customer was and  
8 what their billing determinants would be during the  
9 term of the pilot program.

10 And further, I'm not sure historical  
11 billing determinants would be particularly relevant  
12 because the purpose of this pilot is, again, to test  
13 whether customers who are already high load factor  
14 customers are further able to refine their load  
15 profile by managing their on-peak load in order to  
16 minimize these on-peak charges.

17 Q. Okay. And as I understood your  
18 testimony, a customer could take -- could take  
19 service pursuant to the HLFTOU from September through  
20 May and receive the 5.68 cent per kWh charge  
21 reflected in your HLFTOU example; is that correct?

22 A. Yes.

23 Q. Okay. And then a customer could leave  
24 the program and take service from the companies  
25 pursuant to the GS or GP schedule for the period of

1 June to August or any time of the year; is that  
2 correct?

3 THE WITNESS: May I have the question  
4 reread, please, ma'am?

5 (Record read.)

6 A. The customers could leave this pilot  
7 program and take service from a CRES provider or take  
8 standard service offer generation service from the  
9 company at any time.

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

12 EXAMINER PRICE: We may.

13 (Discussion off the record.)

14 (Recess taken.)

15 EXAMINER PRICE: Let's go back on the  
16 record.

17 Ms. Bojko, please proceed.

18 MS. BOJKO: Thank you, your Honor.

19 Q. (By Ms. Bojko) Ms. Mikkelsen, was there  
20 ever a settlement meeting where all parties to the  
21 proceeding were invited to the same settlement  
22 meeting?

23 MR. KUTIK: Your Honor, could she turn on  
24 her microphone?

25 EXAMINER PRICE: Yes. Read that back,

1 please.

2 (Record read.)

3 A. While there was never a settlement  
4 meeting where all parties were invited to attend at  
5 one time, all parties to the proceeding were  
6 approached to participate in settlement discussions  
7 relative to this proceeding and the companies'  
8 application.

9 Q. Were there any nonparties to the  
10 proceeding that participated in the settlement  
11 process or the settlement discussions among and  
12 between the signatory parties?

13 MR. KUTIK: Objection.

14 EXAMINER PRICE: Grounds?

15 MR. KUTIK: Well, relevance. I can  
16 understand if there were nonsignatory parties,  
17 signatory parties, and talking about what those  
18 people did, but what's the relevance of nonparties  
19 participating?

20 EXAMINER PRICE: Ms. Bojko?

21 MS. BOJKO: Well, I think it's very  
22 relevant, your Honors.

23 EXAMINER PRICE: Well, explain why.

24 MS. BOJKO: The settlement criteria --  
25 it's relevant to the settlement criteria set forth.

1 It's relevant to the witness's prior statements.

2 It's also relevant to the Commission process.

3 There would be an argument that, if there  
4 were nonparties to the proceeding that participated  
5 in settlement discussions or the process, that there  
6 is no longer any confidentiality attached to those  
7 settlement proceedings and discussions.

8 It also is very important with regard to  
9 companies, affiliated companies, and how the proposed  
10 transaction works in this process and whether or not  
11 certain entities participated in the discussions.

12 The company has made claims that they are  
13 separate and distinct transactions between them and  
14 the proposed transaction in rider RRS and we can  
15 explore that and explore the rationale for the  
16 settlement negotiations price.

17 MR. KUTIK: May I respond, your Honor?

18 EXAMINER PRICE: You may.

19 MR. KUTIK: Her initial comments were all  
20 just allegations in terms of things being relevant or  
21 not relevant. With respect to whether the settlement  
22 privilege somehow doesn't apply if there is a  
23 nonparty participating, I know of no rule of that.

24 If there are settlement discussions to  
25 resolve the case, those are conversations that remain

1 out of evidence regardless of who participates as  
2 long as the parties, at least some of the parties,  
3 are participating in those -- in that process.

4 With respect to whether it's relevant to  
5 the transaction, she can ask Ms. Mikkelsen all she  
6 wants about whether FES is involved, I guess, even  
7 though that's not relevant, as opposed to,  
8 generically, nonparties.

9 But even if FES participated in the  
10 settlement discussions, that would not be relevant  
11 either.

12 EXAMINER PRICE: Okay. We are going to  
13 sustain the objection. You can go ahead and ask  
14 about FES.

15 Q. (By Ms. Bojko) Was an FES employee or a  
16 shared services employee representing FirstEnergy  
17 Solutions present for or participate in any  
18 settlement meetings or settlement negotiations that  
19 occurred through e-mail, correspondence, or actual  
20 physical meetings?

21 THE WITNESS: May I have the question  
22 reread, please?

23 (Record read.)

24 A. Not that I'm aware of, related to the  
25 stipulations in this proceeding.

1           Q.    Okay.  And it's your understanding that  
2 COSE is a signatory party to the stipulation; is that  
3 right?

4           A.    COSE is a signatory party to the  
5 stipulation.

6           Q.    And the same is true for AICUO; are they  
7 a party to the stipulation?

8           MR. KUTIK:  Your Honor?

9           EXAMINER PRICE:  Yes, sir.

10          MR. KUTIK:  Object as to relevance.  Who  
11 the signatory parties are and are not is certainly a  
12 matter of the record.  It's in the record.  I don't  
13 think it's a matter of debate.

14          MS. BOJKO:  Your Honor, I am merely  
15 trying to lay foundation before I get an objection.

16          MR. KUTIK:  She doesn't need a  
17 foundation.  There already is a foundation.

18          EXAMINER PRICE:  There is a stipulation  
19 with signatures.  Let's move on, Kim.

20          Q.    (By Ms. Bojko) Okay.  Who -- who is Mark  
21 Hayden?

22          A.    Mark Hayden is an attorney for --  
23 employed by the FirstEnergy Services Corporation.

24          Q.    Is he an employee that represents  
25 FirstEnergy Solutions?



1           A.    I think questions about Mr. Hayden's work  
2           would be better directed to -- I mean, I can't  
3           testify to what Mr. Hayden's work assignments are.

4           Q.    Well, has Mr. Hayden represented  
5           FirstEnergy Solutions before this Commission in this  
6           exact proceeding?

7           MR. KUTIK: Well, again, your Honor,  
8           that's a matter of record.

9           MS. BOJKO: Actually, it wasn't a matter  
10          of record.

11          MR. KUTIK: It is a matter of record.

12          EXAMINER PRICE: Mr. Kutik will stipulate  
13          that Mark Hayden made an appearance on behalf of FES  
14          in the proceeding. Right?

15          MR. KUTIK: Yes, sir.

16          MS. BOJKO: Your Honor, it wasn't a  
17          matter of record. It wasn't transcribed, just so the  
18          record is clear.

19          MR. KUTIK: Well, I believe -- I  
20          believe --

21          EXAMINER PRICE: It doesn't matter. We  
22          already stipulated to the fact. Let's roll.

23          Q.    (By Ms. Bojko) Ms. Mikkelsen, to your  
24          knowledge, do you know whether any of the signatory  
25          parties believed or have stated that FirstEnergy

1 Solutions was present at negotiations and --  
2 settlement discussions and negotiations?

3 MR. KUTIK: Objection, your Honor, to the  
4 extent it calls for speculation. She asked about  
5 whether she believed.

6 EXAMINER PRICE: She can answer if she  
7 knows.

8 THE WITNESS: May I have the question  
9 reread, please, ma'am?

10 (Record read.)

11 A. I do not know.

12 Q. Ms. Mikkelsen, were you included on an  
13 e-mail correspondence regarding settlement of this  
14 proceeding with signatory parties such as AICUO on  
15 December 22, 2014?

16 A. I don't remember. If you have a  
17 document, I would be happy to look at it, but I don't  
18 remember.

19 Q. Would you be surprised to learn that you  
20 were in e-mail correspondence regarding this cause on  
21 December 22, 2014, the date the stipulation was  
22 signed?

23 MR. KUTIK: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. KUTIK: Well, I am not sure what the

1 relevance of being surprised is but, further, if she  
2 has a document, show her the document, your Honor.

3 I think that's the proper procedure at  
4 this point, given the witness has said she doesn't  
5 have a recollection of a document and would be glad  
6 to see it.

7 EXAMINER PRICE: Well, we will let  
8 Ms. Mikkelsen answer her question as to her surprise  
9 or lack thereof and then we will move on to the  
10 document. Please, answer the question.

11 A. I would not be surprised to find I would  
12 have been included in e-mail correspondence regarding  
13 the stipulation that was filed on December 22, in  
14 e-mails at or around December 22.

15 Q. And do you remember being deposed  
16 regarding this proceeding on January 29, 2015?

17 A. Yes.

18 Q. On that date, was the question posed  
19 to --

20 MR. KUTIK: Do you want to give us a page  
21 reference, please?

22 MS. BOJKO: I thought I had to ask the  
23 question first, but --

24 MR. KUTIK: You were saying on the  
25 deposition -- on the day of the deposition, you asked

1       this question.

2                       So if you want to refer to the  
3       deposition, your Honor, I assume that the proper  
4       procedure is to reference the page so we can all see  
5       what the question and answer was as well as the  
6       witness.

7                       MS. BOJKO: He objected to that exact  
8       thing that happened yesterday, your Honor. I am just  
9       trying to do it by the books.

10                      MR. KUTIK: Well, you haven't done it by  
11       the books.

12                      MS. BOJKO: Yes, I have.

13                      EXAMINER PRICE: Let's direct comments to  
14       the Bench, not to each other.

15                      Why don't you just rephrase the question  
16       with the date of the deposition and the question. We  
17       can move on. Come on.

18                      Q.     (By Ms. Bojko) Were FirstEnergy  
19       Solutions, either employees of FirstEnergy Solutions  
20       or shared services employees on behalf of FirstEnergy  
21       Solutions, were they present for any of the  
22       settlement discussions or did they participate in  
23       settlement discussions and negotiations among the  
24       signatory parties and the companies?

25                      MR. KUTIK: Objection. Asked and

1 answered.

2 EXAMINER PRICE: I've lost track. Okay.  
3 Are you asking -- are you reading to her the question  
4 that she was asked in the deposition, or are you  
5 starting over and asking her a question now?

6 MS. BOJKO: I am reading her a question  
7 that was asked in deposition. She has to answer it  
8 first, and then you impeach the witness.

9 MR. KUTIK: No, you don't.

10 EXAMINER PRICE: We don't need to have a  
11 discussion about what proper etiquette here is. I  
12 just wanted a clarification whether you are reading  
13 the question or not.

14 MS. BOJKO: Yes. It's on page 202 of the  
15 deposition.

16 EXAMINER PRICE: Which nobody has.

17 MS. BOJKO: Actually, they do all have it.

18 EXAMINER PRICE: Well, not the Bench.

19 A. I don't have a copy of it either. We  
20 have the two other depositions but not the January  
21 deposition. Or I have the two other. Okay. Which  
22 page are we on?

23 MS. BOJKO: 202.

24 EXAMINER PRICE: Now, pose your question,  
25 Ms. Bojko.

1           Q.     (Ms. Bojko) Do you recall being asked the  
2 question on page 202, beginning on line 16, in the  
3 deposition?

4           A.     I'm sorry. I was reading the document.  
5 May I have the question reread, please?

6           Q.     I just asked if you recall being asked  
7 that question during the deposition.

8           MR. KUTIK: Specifically, we are talking  
9 about the question that appears on page 202, line 16?

10          MS. BOJKO: That's exactly what I said in  
11 my question.

12          MR. KUTIK: I wanted to make sure I  
13 understood.

14          EXAMINER PRICE: Why don't we have the  
15 reporter read back the question and then we will all  
16 be on the same page, which is what Ms. Mikkelsen  
17 asked a couple of minutes ago.

18                 Read back the question, please.

19                 (Record read.)

20          A.     This document refreshes my recollection,  
21 yes.

22          Q.     And the question states "Sure. Were  
23 FirstEnergy Solutions, either employees of  
24 FirstEnergy Solutions or shared services employees on  
25 behalf of FirstEnergy Solutions, were they present

1 for any of the settlement discussions, or did they  
2 participate in any -- in settlement discussions and  
3 negotiations among the signatory parties and the  
4 companies?"

5 And your answer at the deposition was  
6 "No."

7 Did I read that correctly?

8 A. Yes.

9 Q. On December 22, 2004, do you recall an  
10 e-mail correspondence where Mark Hayden would have  
11 been listed as participating in that e-mail  
12 correspondence regarding the settlement negotiations  
13 and the terms of the stipulation?

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

16 EXAMINER PRICE: Sustained.

17 MS. BOJKO: I didn't ask if Mark  
18 Hayden -- I asked if she was present. I never asked  
19 if Mark Hayden was on the e-mail.

20 EXAMINER PRICE: With that qualification.

21 MR. KUTIK: She, specifically, did ask  
22 that question.

23 MS. BOJKO: No, I didn't.

24 EXAMINER PRICE: Okay. We are going to  
25 spend more time hunting back when she answered a

1 question than we are going to spend on this answer.

2 Please, answer the question.

3 A. I don't recall such an e-mail.

4 Q. And you don't recall whether Mark Hayden  
5 would have been included on the e-mail chain or  
6 correspondence?

7 EXAMINER PRICE: Now you are getting  
8 repetitive. If you have got the e-mail, I have given  
9 you three shots at asking the questions. She has  
10 answered, "I don't recall" each time. If you have  
11 got the e-mail, prove it up now. She doesn't recall.  
12 The record is clear on that.

13 MS. BOJKO: Okay. Your Honor, I am not  
14 going to mark this as an exhibit.

15 EXAMINER PRICE: Okay.

16 MS. BOJKO: I am going to use this purely  
17 pursuant to Rule 613, which is impeachment of a  
18 self-contradiction of fact, and it's B(1)(a). And if  
19 the statement is offered solely for the purpose of  
20 impeaching the witness, the witness is afforded a  
21 prior opportunity to explain or deny the statement  
22 and the opposite parties are afforded an opportunity  
23 to interrogate the witness on the statement.

24 EXAMINER PRICE: Okay.

25 MS. BOJKO: And it requires that it be a



1 fact that is of consequence to the determination of  
2 the action other than the credibility of the witness.

3 EXAMINER PRICE: Okay.

4 MS. BOJKO: May I approach?

5 EXAMINER PRICE: You may.

6 Q. (By Ms. Bojko) Ms. Mikkelsen, do you have  
7 in front of you what appears to be the Association of  
8 Independent Colleges and Universities' Supplemental  
9 Responses to the Ohio Manufacturers' Association  
10 Energy Group's interrogatories and requests for  
11 production of documents?

12 A. I do, although I have not seen this  
13 document before today.

14 Q. Would you have any reason to believe that  
15 a document produced by an entity in response to  
16 discovery would be inaccurate or in any way  
17 misrepresenting the statements of the parties?

18 MR. KUTIK: Objection.

19 EXAMINER PRICE: Grounds?

20 MR. KUTIK: We went over this yesterday,  
21 your Honor. This is a document that is not the  
22 companies' document. It's a document of another  
23 party. It's hearsay. It's also a document that  
24 she's not familiar with. So any further questions on  
25 this document are improper.

1 EXAMINER PRICE: Ms. Bojko, response?

2 MS. BOJKO: First of all, the Bench asked  
3 for the document. Secondly --

4 EXAMINER PRICE: Fair enough.

5 MR. KUTIK: Actually, he asked for the  
6 e-mail.

7 MS. BOJKO: Secondly, it is not hearsay,  
8 actually. It's an admission by a party opponent,  
9 which is nonhearsay. The document is also  
10 self-authenticating. And because it's  
11 self-authenticating, there is no need to lay a  
12 foundation of the document.

13 The document is self-authenticating  
14 because these discovery responses were signed by an  
15 officer of this court and that makes them fall under  
16 the self-authenticating exception of the Rule 902.

17 MR. KUTIK: May I respond, your Honor?

18 EXAMINER PRICE: You may.

19 MR. KUTIK: This doc -- this witness must  
20 have knowledge of the document for her to be asked  
21 about it, for it to be responding to her, to be a  
22 party admission against her, that would have to be a  
23 admission of the companies. Neither is the case  
24 here.

25 Therefore, it's improper to pursue any

1 further questions with respect to this document even,  
2 assuming the rest of Ms. Bojko's statements are  
3 correct, which is not the case.

4 MS. BOJKO: Could you, please, turn on  
5 your mic. I couldn't hear your response. But may I  
6 respond, your Honor?

7 MR. KUTIK: I thought you couldn't hear  
8 it.

9 MS. BOJKO: Well, I think I got the gist.

10 EXAMINER PRICE: No, that's not  
11 necessary.

12 MS. BOJKO: I have a Supreme Court case,  
13 your Honor.

14 EXAMINER PRICE: You are about to win.  
15 You should stop while you are ahead.

16 Go ahead and answer the question,  
17 Ms. Mikkelsen.

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

20 EXAMINER PRICE: Sure.

21 MR. KUTIK: Your Honor, I have another  
22 objection.

23 EXAMINER PRICE: Okay.

24 MR. KUTIK: Now that I have read the rule  
25 that Ms. Bojko has referred to and I have refreshed

1 my recollection with respect to the rule, with  
2 respect --

3 MS. BOJKO: I'm sorry. Can you turn your  
4 mic on?

5 MR. KUTIK: Sure, I will. Thank you for  
6 that. With respect to Rule 16 -- 613, first, it's  
7 examining the witness regarding a prior statement.  
8 It has to be a prior statement of the witness, which  
9 this is not.

10 Extrinsic evidence of prior inconsistent  
11 statement of the witness, there is no extrinsic  
12 statement of the witness here. This is a statement  
13 of a prior party.

14 Prior inconsistent conduct. Again, in  
15 this document, there is no evidence of any conduct.  
16 It's the statement of another party. Therefore,  
17 there is nothing under Rule 613 which would make this  
18 a permissible impeachment.

19 MS. BOJKO: Your Honor, I disagree. I  
20 asked the witness a question. She did make a prior  
21 statement that is now going to be proven  
22 inconsistent. And it doesn't fall under prior  
23 conduct; it falls under 613(B)(1)(a).

24 MR. KUTIK: Which has to be a statement  
25 of the witness, your Honor.

1 MS. BOJKO: She did make a statement.

2 MR. KUTIK: This witness' prior  
3 inconsistent statement. This witness.

4 EXAMINER PRICE: We will go ahead and  
5 allow the question. We will give her a little bit of  
6 leeway and allow the question and Ms. Mikkelsen will  
7 provide the answer.

8 THE WITNESS: May I have the question  
9 reread, please, ma'am?

10 (Record read.)

11 MR. KUTIK: Renew the objection, your  
12 Honor. It calls for speculation.

13 EXAMINER PRICE: She can answer if she  
14 knows.

15 A. I don't know.

16 Q. The document before you lists you as  
17 being on the e-mail correspondence on page 4, dated  
18 12-22-14, correct?

19 MR. KUTIK: Same objection, your Honor.

20 EXAMINER PRICE: Overruled.

21 A. Yes.

22 Q. It actually has you listed on several  
23 e-mail correspondences throughout the month of  
24 December, 2014; is that correct?

25 MR. KUTIK: Your Honor, this record says

1       what it says, so I object.

2               EXAMINER PRICE: Overruled.

3               A.    I am not sure what you mean specifically  
4       by several, but I am certainly listed a number of  
5       times throughout this document as being included on  
6       communications.

7               Q.    Okay. And could you turn to page 5,  
8       please. There's a list of -- an e-mail dated  
9       January 20, 2015, and you are listed as one of the  
10      recipients of the e-mail communication; is that  
11      correct?

12              MR. KUTIK: Objection.

13              EXAMINER PRICE: Grounds?

14              MR. KUTIK: Same grounds, your Honor.

15              EXAMINER PRICE: We are going to give her  
16      a little bit of leeway on this. The Commission will  
17      give this fact it's due weight when the time comes to  
18      consider it.

19              A.    I am listed as one of the parties  
20      involved in an e-mail communication on January 20,  
21      2015. I would note that January 20, 2015, is after  
22      the date that the stipulation was filed in this  
23      proceeding. That date was December 22, of 2014.

24              Q.    Okay. And it is prior to two other  
25      stipulations that were filed in this case on May 25,

1       2015, and January 20, 2015; is that correct?

2           A.     Yes.

3           Q.     And do you see on the January 20, 2015,  
4       date there is -- Mark Hayden is listed as one of the  
5       recipients of the e-mail communication?

6           A.     Mark Hayden is listed on this document,  
7       but there is no way of knowing, looking at this  
8       document, whether the correspondence dealt with  
9       settlement discussions or negotiations among the  
10      signatory parties.

11          Q.     Okay. Could you turn to page 2 of the  
12      document.

13               MR. KUTIK: Well, at this point, your  
14      Honor, I must object again for the additional  
15      grounds. Now she's asking for this witness to parse  
16      what this other party may have had in mind and how  
17      this other party may have interpreted this  
18      interrogatory in its response.

19               EXAMINER PRICE: Overruled.

20          Q.     The chart that we were just referring to  
21      is provided in response to interrogatory No. 9; is  
22      that correct?

23          A.     Again, that appears to be the case. I  
24      wasn't -- I didn't participate in the development of  
25      this response nor have I seen this before today.

1 EXAMINER PRICE: Why don't you read the  
2 interrogatory response to Ms. Mikkelsen into the  
3 record.

4 THE WITNESS: Interrogatory Request No.  
5 9, sir?

6 EXAMINER PRICE: Yes.

7 THE WITNESS: "Please identify how many  
8 times AICUO, or a representative on behalf of AICUO,  
9 had discussions, communications and/or meetings with  
10 FirstEnergy regarding terms of the Stipulation."

11 EXAMINER PRICE: And the stipulation was  
12 the December stipulation; is that correct?

13 THE WITNESS: That is my understanding of  
14 my reading of this document, sir.

15 EXAMINER PRICE: And so this is the  
16 response to communications that were made after the  
17 stipulation has already been filed; is that correct?

18 MR. KUTIK: Objection, your Honor. She's  
19 reading the document as you are reading the document.  
20 The document is what it is.

21 MS. BOJKO: I object, your Honor.

22 EXAMINER PRICE: Well, neither of you can  
23 object to my questions. I am just pointing out the  
24 fact that this January 20 conversation took place  
25 explicitly with respect to a stipulation that had



1 already been filed before this Commission.

2 MR. KUTIK: I'd only add "alleged," your  
3 Honor.

4 EXAMINER PRICE: Alleged.

5 MS. BOJKO: Your Honor, I don't believe  
6 that -- if you could give me one moment. I'm not  
7 sure that is completely accurate.

8 Your Honor, I am questioning how you are  
9 defining the term stipulation, and I don't believe  
10 that's how it was defined in the discovery request  
11 documents. So the record is clear, I don't believe  
12 that your statement or your question is accurate.

13 EXAMINER PRICE: My question -- my point  
14 is simply that's what the document says. Throughout  
15 this proceeding we have said stipulation,  
16 supplemental stipulation, second supplemental  
17 stipulation.

18 If you define it differently in discovery  
19 requests, that's fine. Make the record.

20 Q. (By Ms. Bojko) Could you turn to the  
21 stipulation that was provided in December, the first  
22 stipulation.

23 EXAMINER PRICE: Are we leaving this  
24 previous topic, or are you going to go to the  
25 discovery instructions later, or are we moving on?

1 MS. BOJKO: I am moving on from this  
2 particular document if that's your question.

3 EXAMINER PRICE: Okay.

4 Q. Well, Ms. Mikkelsen, isn't it true that,  
5 after the first stipulation was signed, that all  
6 parties that had signed the first stipulation also  
7 signed the supplemental stipulation and the second  
8 supplemental stipulation?

9 A. While it is true that all parties to the  
10 initial stipulation signed on to the supplemental  
11 stipulation and the second supplemental stipulation,  
12 we would not have been having any of those  
13 discussions with any of the signatory parties in  
14 January of 2015.

15 Q. So you're suggesting that the -- strike  
16 that.

17 On the stipulation that was filed on  
18 December 22, there was a cover letter filed with the  
19 stipulation; is that accurate?

20 A. Yes.

21 Q. And on that cover letter, the companies  
22 listed entities on the cover page that purported to  
23 support something; is that correct?

24 A. I think the document speaks for itself.

25 Q. Okay. Do you know, Ms. Mikkelsen, do --

1 the entities listed on page 2 of the cover letter, do  
2 you know whether they support all of the terms of the  
3 stipulation that was filed in this case?

4 A. I don't know whether they would support  
5 all the terms of the stipulations filed in this case.

6 Q. Do you know --

7 A. I know that they -- pardon me. I know  
8 that they would not have had the luxury of reviewing  
9 the terms of the stipulation prior to it being filed.

10 Q. And do you know whether all of the  
11 entities have reviewed the multiple stipulations  
12 filed in this case?

13 A. I don't know.

14 Q. Do you know whether the entities listed  
15 on this cover page support the companies'  
16 application?

17 A. I believe the entities listed here did  
18 file letters in support of the companies' initial  
19 application, yes.

20 Q. All of these entities, you believe, filed  
21 letters with the Commission separately than what they  
22 are listed here?

23 MR. KUTIK: Objection, asked and  
24 answered. She just said yes.

25 EXAMINER PRICE: Sustained.

1           Q.    Have you spoken to these entities  
2           regarding their explicit support of the application  
3           or stipulations?

4           A.    I have not.

5           Q.    Do you know whether the entities have  
6           reviewed all of the testimony filed in this case?

7           A.    I don't know.

8           Q.    And isn't it true that the stipulation  
9           that was filed in this case adopts the application in  
10          its entirety except as modified by the stipulation?

11          A.    Yes.

12          Q.    And that includes the establishment of  
13          rider RRS with the one modification listed on the  
14          stipulation; is that correct?

15          A.    Rider RRS was included in the companies'  
16          initial application, and the only modification to  
17          rider RRS that was included in the stipulation was a  
18          change in the manner in which customers taking  
19          service under rate schedules GS, GP, GSU, and GT  
20          would be billed for rider RRS. That change was a  
21          change from an energy billing determinant to a demand  
22          billing determinant.

23          Q.    You submitted EMM-1, which reflects the  
24          estimated demand-based rider RRS rates for certain  
25          classes of customers based on the modification

1 contained in the stip that you just described; is  
2 that correct?

3 A. Yes.

4 Q. And it's your understanding that the  
5 supplemental stipulation that was filed in May adopts  
6 the December stipulation in its entirety as modified  
7 by the supplemental stipulation; is that correct?

8 A. Yes.

9 Q. And isn't it true that the supplemental  
10 stipulation adopts the application in its entirety  
11 except as modified by the stipulation?

12 A. Except as modified by the original  
13 Stipulation and Recommendation in the supplemental  
14 Stipulation and Recommendation.

15 Q. And isn't it true that the second  
16 supplemental stipulation adopts the two prior  
17 stipulations in their entirety as modified by each  
18 stipulation?

19 A. Yes.

20 Q. And isn't it true that the  
21 supplemental -- the second supplemental stipulation  
22 adopts the application in its entirety except as  
23 modified by the multiple stipulations?

24 A. Yes.

25 Q. Do you know whether one of the signatory

1 parties AICUO stated that they are not taking a  
2 position on whether all portions of the application  
3 not addressed or modified by the stipulation should  
4 be approved by the Commission as filed?

5 THE WITNESS: May I have the question  
6 reread, please, ma'am?

7 (Record read.)

8 A. I don't know what one may believe or not  
9 believe, but it is very explicit in the stipulation  
10 that the AICUO signed that the signatory parties  
11 expressly agree and recommend that the Commission  
12 approve and adopt the ESP filing -- ESP IV filing in  
13 its entirety as filed by the companies with the  
14 Commission in this proceeding as modified by the  
15 stipulations. It's an express agreement to that.

16 Q. So you believe that an entity that would  
17 make that limitation or qualification on their  
18 support is violating the stipulations because of the  
19 provision that you just read?

20 MR. KUTIK: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. KUTIK: Calls for a legal conclusion.

23 EXAMINER PRICE: Sustained.

24 MS. BOJKO: Your Honor, she spoke to the  
25 legal conclusion that she believed that they -- by

1 the terms of the stipulation, that they --

2 EXAMINER PRICE: She spoke to what the  
3 stipulation said and the stipulation is signed by  
4 their counsel.

5 Q. Could you turn to the signatory page of  
6 the stipulation.

7 A. I'm there.

8 Q. Okay. If you look at the second  
9 signatory page, it's not page numbered, but it has  
10 one signature on it for the Ohio Power Company.

11 Do you see that?

12 A. I do.

13 Q. And is Ohio Power Company an operating  
14 company of AEP?

15 A. I'm not sure what you mean by an  
16 operating company, ma'am.

17 Q. Ohio Power is not an operating company of  
18 American Service Corporation -- American Service  
19 Power Corporation -- American Electric Power  
20 Corporation?

21 MR. KUTIK: Well, your Honor, I object.  
22 Again, what relevance? This Commission is well aware  
23 of Ohio Power's relationship with its various  
24 corporate --

25 EXAMINER PRICE: We can always ask

1 Mr. Nourse.

2 MR. KUTIK: -- family, and I am not --

3 EXAMINER PRICE: We will take  
4 administrative notice of the fact Ohio Power is a  
5 public utility regulated by this Commission under  
6 4905.2.

7 MS. BOJKO: Thank you for that. Will you  
8 also take administrative notice that Ohio Power is a  
9 subsidiary of American Electric Power Corporation?

10 EXAMINER PRICE: Sure. Why not?

11 Q. Okay. And Ohio Power often goes by the  
12 name AEP Ohio in proceedings before the Commission;  
13 is that correct?

14 A. I'm not aware of what name AEP or Ohio  
15 Power uses in their proceedings before the  
16 Commission. But I would agree with you that, on this  
17 signature page, after it says Ohio Power Company, it  
18 does say, parenthetically, AEP Ohio.

19 Q. Okay. And that was my next question.  
20 Let's look at footnote No. 4.

21 Does Ohio Power, in footnote No. 4 --  
22 which is footnoting its signature, is that correct,  
23 footnoting its signature to the stipulation?

24 A. Yes.

25 Q. Is -- does Ohio Power explain in its



1 footnote that its purpose of participating in the  
2 case and signing the stipulation is limited to the  
3 legal and policy basis supporting the RRS rider?

4 A. Yes.

5 Q. And does the footnote also state that AEP  
6 Ohio recommends adopting rider RRS?

7 A. It reads: "AEP Ohio recommends adoption  
8 of the RRS rider in this proceeding in recognition  
9 that the underlying legal and policy basis supporting  
10 the RRS rider in this proceeding are comparable to  
11 the AEP Ohio's Purchase Power Agreement rider  
12 currently pending in Cases No. 13-2385-EL-SSO,  
13 13-2386-EL-SSO, 14-1693-EL-RDR, and 14-1694-EL-AAM."

14 Q. And that is AEP Ohio's own request for a  
15 Purchase Power Agreement rider similar to rider RRS;  
16 is that correct?

17 A. I would assume so. I haven't committed  
18 the AEP docket numbers to memory.

19 Q. And does the footnote also state that AEP  
20 Ohio is not taking a position with regard to any  
21 other issue being settled or litigated in the  
22 proceeding?

23 MR. KUTIK: Your Honor, the document says  
24 what it says. I'm not sure what the point of the  
25 questions -- half the questions are for the last hour

1 and a half where we are just reading documents, so  
2 I'll object.

3 EXAMINER PRICE: We are going to overrule  
4 your objection, but we will ask Ms. Bojko to get to  
5 the point she wants to make here pretty quick.

6 A. Yes.

7 Q. Does the supplemental stipulation and the  
8 second supplemental stipulation signature block for  
9 Ohio Power contain the same footnote regarding its  
10 interest in limited support of the stipulations?

11 A. Yes.

12 Q. And your supplemental testimony was filed  
13 in support of the December stipulation; is that  
14 correct?

15 EXAMINER PRICE: Ms. Bojko, you need to  
16 move on and make a point real fast here.

17 A. Yes.

18 Q. Your third supplemental testimony was  
19 filed in support of the supplemental stipulation; is  
20 that correct?

21 A. My third supplemental testimony was filed  
22 to support the supplemental testimony filed on  
23 May 28, 2015.

24 Q. And your fourth supplemental testimony  
25 was filed in support of the second supplemental

1 stipulation; is that correct?

2 A. Yes.

3 Q. And on page 6 of your supplemental  
4 testimony, you list the Commission criteria for  
5 considering stipulations; is that correct?

6 A. Yes.

7 Q. And on page 7 of your supplemental  
8 testimony, you discuss the first prong of the test;  
9 is that correct?

10 A. Yes.

11 Q. Isn't it true that you do not list the  
12 criteria for considering stipulations in your third  
13 supplemental testimony and your fourth supplemental  
14 testimony?

15 EXAMINER PRICE: Don't answer that.  
16 That's not relevant. It's not relevant. Her  
17 testimony is cumulative. She already listed it once.  
18 She doesn't have to list it every time. It's not  
19 relevant. Let's go.

20 Q. Okay. Do you know whether the signatory  
21 party COSE conducted or directed anyone to conduct an  
22 analysis of the ESP application?

23 A. I don't remember.

24 Q. Do you know whether COSE conducted or  
25 directed anyone to conduct an analysis of the

1 stipulations?

2 A. I don't know who, on behalf of COSE,  
3 would have reviewed the applications or the  
4 stipulations or whether they directed an additional  
5 party to do so.

6 Q. And you also don't know whether they  
7 reviewed or did an analysis of that -- of the  
8 stipulation at all, do you?

9 A. I know we had very engaged conversations  
10 with the COSE representatives. I know that we spent  
11 significant time at the start of that process  
12 stepping through, in great detail, the details of the  
13 application, responding to inquiries that the COSE  
14 representatives had about the various provisions that  
15 were contained in the application.

16 And then we would have had subsequent  
17 discussions with COSE regarding the terms that  
18 ultimately culminated in the stipulations.

19 Q. So you would be surprised to learn that  
20 COSE does not believe or has stated that they did not  
21 conduct an analysis of the stipulation?

22 MR. KUTIK: Objection.

23 Q. Would you?

24 EXAMINER PRICE: She can answer if she  
25 knows.

1 MR. KUTIK: It also assumes a fact, your  
2 Honor.

3 EXAMINER PRICE: I assume that Ms. Bojko  
4 is going to prove this up in due course. She can  
5 answer if she knows.

6 A. I have no opinion.

7 Q. And isn't it true that you don't know  
8 whether COSE conducted a bill impact analysis  
9 regarding the application?

10 MR. KUTIK: Same objection, your Honor.

11 EXAMINER PRICE: Overruled.

12 A. I don't know what analysis COSE would  
13 have done. I only know about the conversation and  
14 the exchange of information in the conversations and  
15 negotiations that we had with COSE.

16 Q. And would your answers be similar with  
17 regard to the AICUO, that you do not know what  
18 analysis they may or may not have done with regard to  
19 the application or the stipulations?

20 A. No, I am not aware of what work they may  
21 have done.

22 Q. And isn't it true that the Citizens  
23 Coalition, the Cleveland Housing Network, and the  
24 Council for Economic Opportunities in Greater  
25 Cleveland, and the Consumer Protection Association

1 are all four signatory parties of the stipulation  
2 that are listed separately on the signature page of  
3 the stipulations?

4 A. Yes.

5 Q. And isn't it true that the Cleveland  
6 Housing Network, the Council for Economic  
7 Opportunities in Greater Cleveland, and the Consumer  
8 Protection Association are all members of the  
9 Citizens Coalition?

10 A. Yes, but there are other members of the  
11 Citizens Coalition beyond those three agencies.

12 Q. Isn't it true that all four parties are  
13 represented by the same attorney in the proceeding  
14 and he is the one that signed the stipulation on  
15 their behalf?

16 MR. KUTIK: We will stipulate to that,  
17 your Honor. What's the point?

18 EXAMINER PRICE: Next question,  
19 Ms. Bojko.

20 Q. On page -- the stipulation.

21 A. I'm sorry, ma'am. I couldn't hear you.

22 Q. I said if we could go to the stipulation  
23 on page 10.

24 EXAMINER PRICE: This is the December 2  
25 stipulation?

1 MS. BOJKO: Yes.

2 A. I'm there.

3 Q. The COSE provision that's listed as B-2,  
4 isn't it true that the details of the COSE's energy  
5 efficiency investment loan offerings have not been  
6 determined yet?

7 A. I don't know.

8 Q. And if you turn to the next page, on  
9 page 11, isn't it true that there is not yet a  
10 contract or process established regarding CEOGC's  
11 administration of the fuel funds money?

12 A. I'm not sure I am following your  
13 reference, ma'am. I thought we were on page 10 and  
14 you asked me to turn to page 11. But I'm not seeing,  
15 on 11, what you are referencing.

16 Q. Oh, I'm sorry. It's actually page 14.

17 A. Thank you. May I have your question,  
18 please?

19 Q. Sure. Isn't it true that there is not  
20 yet a contract or process established regarding  
21 CEOGC's administration of the fuel funds money?

22 A. There would not be a contract executed at  
23 this point because the stipulation hasn't been  
24 approved by the Commission. However, there are  
25 existing contracts that dictate the manner in which

1 the fuel funds are administered.

2 And I would expect that the contract  
3 that's ultimately executed for the ESP IV period  
4 would be similar, if not identical, except with  
5 respect to the terms, to the contract that's in place  
6 today.

7 Q. And isn't it true that the exact details  
8 of the Customer Advisory Agency are unknown and will  
9 be negotiated with the parties at a later time?

10 THE WITNESS: May I have the question  
11 reread, please, ma'am?

12 (Record read.)

13 MR. KUTIK: Objection, asked and answered  
14 about an hour ago.

15 EXAMINER PRICE: Sustained.

16 Q. If we turn to your supplemental testimony  
17 on page 8 --

18 A. I'm there.

19 Q. -- on line 11, this is the start of your  
20 testimony that describes the benefits of the  
21 stipulation to the interests of the public; is that  
22 true?

23 A. Yes.

24 Q. And following, in your supplemental  
25 testimony, is where you talk about the remaining



1 factors or criteria of the stipulation; is that  
2 correct?

3 A. I'm not sure I understand your question,  
4 ma'am.

5 Q. Your supplemental testimony is where you  
6 further talk about the three criteria of the -- that  
7 the Commission should consider when addressing or  
8 considering stipulations.

9 MR. KUTIK: Objection, asked and  
10 answered.

11 EXAMINER PRICE: I'll allow this one,  
12 just so we are all on the same page.

13 A. Yes.

14 Q. I'm sorry. You said "Yes"?

15 A. Yes.

16 Q. Is rider RRS a product that can be found  
17 in a competitive market?

18 A. As proposed, rider RRS, if approved,  
19 would be a retail ratability mechanism that functions  
20 along with the competitive generation market in the  
21 State of Ohio.

22 Q. But is rider RRS a product that a  
23 customer could go out and obtain through the  
24 competitive market?

25 A. If you are asking me if retail

1 competitive suppliers offer a rider RRS, my answer  
2 would be not that I'm aware of.

3 Q. And could suppliers come before the  
4 Commission and request to have established rider RRS  
5 that would collect costs from ratepayers?

6 MR. KUTIK: May I have the question read,  
7 your Honor?

8 EXAMINER PRICE: Can I have the question  
9 back, please.

10 (Record read.)

11 A. I can't agree with your characterization  
12 of rider RRS as proposed by the companies.

13 Q. Would rider RRS be allowed to be --  
14 strike that.

15 Could the supplier come in and request  
16 rider RRS to collect either charges or pass along  
17 credits to ratepayers similar to what FirstEnergy is  
18 proposing in this case?

19 A. I suppose a supplier could ask for  
20 anything, but I'm not aware of the Commission having  
21 the authority to approve that request made on behalf  
22 of a supplier.

23 Q. And the rider RRS, if approved, if it  
24 does, in fact, result in a charge to customers, that  
25 charge will be added to the rate supplied by the SSO

1 competitive bid offer or a customer's supplier; is  
2 that correct?

3 A. May I have that question reread, please.

4 (Record read.)

5 A. I think rider RRS, whether it is a charge  
6 or a credit, acts as a financial limitation on the  
7 consequence of a customer shopping for generation  
8 supply from a CRES provider or from electing to take  
9 competitively-sourced generation from the companies  
10 as an SSO customer.

11 Q. Okay. But practically speaking, a  
12 customer goes out and procures energy from a supplier  
13 at X price and rider RRS is a charge, it will be  
14 added on top of the supplier's X charge; is that  
15 correct?

16 A. I don't think it will be added to the  
17 supplier's charge. It is a separate retail rate  
18 stabilization mechanism, which the charge or credit  
19 will be reflected on the customer's bill without  
20 regard to whether they are taking service from a  
21 competitive supplier or source service.

22 Q. Fair enough. It will be assessed to the  
23 customer above whatever they are paying for  
24 generation; is that correct?

25 A. I'm not sure what you mean by above,

1 ma'am.

2 Q. If it's a credit -- I'm sorry.

3 If it's a charge, it will be assessed to  
4 the customer and will increase that customer's costs  
5 for generation; is that correct?

6 A. Rider RRS, as proposed, is a  
7 generation -- a nonbypassable generation-related  
8 rider. The charge or credits that are assessed  
9 through that would be part of the customer's  
10 generation charges.

11 Q. Okay. So it would be possible that  
12 customers could be paying above-market rates for  
13 their electric generation service; is that true?

14 A. No.

15 Q. So customers are not paying above-market  
16 rates for their electric generation service if a  
17 generation charge is added to whatever charge they  
18 receive from energy?

19 MR. KUTIK: Objection, asked and  
20 answered.

21 EXAMINER PRICE: I will allow it.

22 A. All customers of the companies would be  
23 paying market-based generation charges either through  
24 a competitively-sourced SSO generation service or  
25 from a CRES provider. As I said earlier, the rider

1 RRS is a Retail Rate Stability mechanism that is a  
2 generation-related charge that is nonbypassable.

3 Q. Okay. Are you familiar with Senate Bill  
4 221?

5 A. I am aware of Senate Bill 221.

6 Q. Was this a legislative proceeding that  
7 discussed a hybrid approach of regulation and  
8 deregulation?

9 A. I think Senate Bill 221 speaks for  
10 itself.

11 Q. Was Senate Bill 221 adopted after Senate  
12 Bill 3, that restructured the industry?

13 MR. KUTIK: We'll stipulate to that, your  
14 Honor.

15 EXAMINER PRICE: Thank you.

16 Q. Did FirstEnergy participate in the Senate  
17 Bill 221 discussions in front of the legislature?

18 MR. KUTIK: Objection.

19 EXAMINER PRICE: Grounds?

20 MR. KUTIK: Relevance.

21 EXAMINER PRICE: Ms. Bojko, relevance?

22 MS. BOJKO: I think it's very relevant,  
23 your Honor. We're talking about reverting from a  
24 deregulated environment in order to subsidize two  
25 generating plants and make them regulated when they

1 have been an unregulated -- when FirstEnergy  
2 Solutions has been an unregulated entity for quite  
3 some time now.

4 EXAMINER PRICE: We will give you a  
5 little bit of leeway. Go ahead and answer the  
6 question.

7 THE WITNESS: May I have the question  
8 reread, please, ma'am.

9 (Record read.)

10 A. I would expect that they did, but I did  
11 not participate in that and have no firsthand  
12 knowledge of that participation.

13 Q. Do you know whether FirstEnergy actually  
14 testified at hearings before the legislature  
15 regarding Senate Bill 221?

16 MR. KUTIK: Same objection, your Honor.

17 EXAMINER PRICE: She can answer if she  
18 knows.

19 A. I feel as though there may have been an  
20 exhibit to someone's testimony in this case that  
21 suggested that, but my recollection is incomplete.

22 Q. Okay. But you were an employee -- you  
23 were a service -- you were an employee at FirstEnergy  
24 Corp. during the time of Senate Bill 221 -- I'm  
25 sorry.

1           You were a shared services employee  
2       during the time of Senate Bill 221; is that correct?

3           MR. KUTIK:  Objection.

4           EXAMINER PRICE:  Grounds?

5           MR. KUTIK:  I withdraw my objection.

6           EXAMINER PRICE:  Thank you.

7           A.    It would be helpful to me, ma'am, if you  
8       could refresh my recollection as to what timeframe  
9       you are referring to relevant to SB 221.

10          Q.    Sure.  2007, 2008 timeframe.

11          A.    I was not an employee of FirstEnergy  
12       Services Company in 2007 and 2008.

13          Q.    But you were a direct employ of  
14       FirstEnergy Solutions?

15          A.    I was an employee of FirstEnergy  
16       Solutions.

17          Q.    During that timeframe?

18          A.    Yes.

19          Q.    Okay.  And are you familiar with GONGWER  
20       News Services?

21          A.    Yes.

22          Q.    And would you characterize GONGWER as the  
23       repository for information concerning the daily  
24       activities of the Ohio General Assembly?

25          MR. KUTIK:  Objection.

1 EXAMINER PRICE: She can answer if she  
2 knows.

3 A. I'm not sure I would characterize it  
4 that -- I wouldn't characterize it at all.

5 Q. Is it true that GONGWER is called The  
6 Record of Capital Square?

7 MR. KUTIK: Objection. By whom? That  
8 would be hearsay.

9 MS. BOJKO: If she knows.

10 EXAMINER PRICE: Sustained.

11 Q. Do you -- is it your understanding that  
12 Gongwer publishes hearing schedules and tracks bills  
13 of the Ohio legislature?

14 A. I don't have that specific understanding.

15 Q. Do you receive the daily Gongwer  
16 report --

17 A. I do not.

18 Q. -- Ms. Mikkelsen?

19 A. Pardon me. I do not.

20 Q. Do you know Mr. Alexander, Mr. Tony  
21 Alexander?

22 A. If, by Mr. Tony Alexander, you mean the  
23 former CEO of FirstEnergy, yes.

24 Q. And would he have been the CEO of  
25 FirstEnergy in the October, November, 2007,



1       timeframe?

2             A.    I believe so.

3             Q.    And do you know who Leila Vespoli is?

4             A.    Yes.

5             Q.    Would she have been the senior vice  
6       president and general counsel of FirstEnergy during  
7       the October-November, 2007, timeframe?

8             A.    I'm not aware of Ms. Vespoli's job title  
9       during that timeframe.

10            Q.    Ms. Vespoli is currently employed by the  
11       company?

12                   MR. KUTIK:  Well, objection, your Honor.

13                   EXAMINER PRICE:  Grounds?

14                   MR. KUTIK:  "By the company" is none of  
15       our accepted definitions.

16                   EXAMINER PRICE:  That is quite correct.  
17       Sustained.

18            Q.    Is she employed -- I think she is a  
19       shared services employee.  Does she work for one of  
20       the FirstEnergy companies?  Oh, that's not a good  
21       term either.

22                   Does she work for -- is she a shared  
23       services employee of FirstEnergy?

24            A.    I believe so, yes.

25            Q.    And she was during the 2007 timeframe; is

1       that correct? You just weren't sure of her title.

2               A. I'm not sure of her title or what her  
3       organizational reporting entity would have been.

4               Q. But she was with FirstEnergy in some  
5       capacity.

6               A. Again, we've defined FirstEnergy, for  
7       purposes of this case, to mean the Ohio Edison  
8       Company, The Cleveland Electric Illuminating Company  
9       and The Toledo Edison Company. I do not believe she  
10      was working for one of those companies in that  
11      timeframe.

12              Q. Good point. Thank you. I was speaking  
13      of the more broader holding company.

14                      Was she an employee of the holding  
15      company or a subsidiary at the time in 2007?

16              A. Yes.

17              Q. And were Mr. Alexander and Ms. Vespoli  
18      authorized by FirstEnergy to make statements  
19      regarding Senate Bill 221 on -- on FirstEnergy's  
20      behalf?

21              A. I would have no knowledge about that,  
22      what authorization they had to take actions.

23              Q. You would expect the CEO of FirstEnergy  
24      would have had some authorization to speak on behalf  
25      of the company; would you not?

1           A.    I think I already answered the question,  
2   ma'am.

3           Q.    Okay.

4           EXAMINER PRICE:  No, no.  He needs to  
5   make the objections, not you.  If he doesn't say  
6   asked and answered, you have to answer it.

7           MR. KUTIK:  Well, I object, your Honor.  
8   Asked and answered.

9           EXAMINER PRICE:  Sustained.

10          Q.    I think you mentioned you do recall or  
11   have read a document to know that FirstEnergy did, in  
12   fact, testify at the Senate Bill 221 hearings; is  
13   that correct?

14          A.    I think what I testified to is that I  
15   have a recollection that a document like that may  
16   have been attached to a piece of testimony in this  
17   proceeding.

18          MS. BOJKO:  Your Honor, may we approach?

19          EXAMINER PRICE:  You may.

20          MS. BOJKO:  For identification purposes,  
21   may I have marked as OMAEG -- I think I am at 3 --

22          EXAMINER PRICE:  You are.

23          MS. BOJKO:  -- a Gongwer news article  
24   with the description of Volume No. 76, Report  
25   No. 197, Article No. 1, dated Thursday, October 4,

1 2007.

2 EXAMINER PRICE: It is so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Do you have the Gongwer report dated  
5 October 4, 2007?

6 A. I do. I don't recall seeing this  
7 document before.

8 Q. And the title of the document is Electric  
9 Rates Would Rise Under Regulation, FirstEnergy Chief  
10 Says; is that correct?

11 MR. KUTIK: Objection.

12 EXAMINER PRICE: Grounds?

13 MR. KUTIK: Hearsay, authentication, no  
14 foundation.

15 EXAMINER PRICE: Ms. Bojko, care to  
16 respond to those objections?

17 MS. BOJKO: Absolutely. First of all,  
18 authentication and foundation are not two separate  
19 things under the Supreme Court ruling of State versus  
20 Jackson.

21 And this is a self-authenticating  
22 document. It is a news report. It's public document  
23 that was produced. Gongwer is, typically, a reporter  
24 and record of Capitol Square. They have bill  
25 tracking that is used to publicize both hearing

1 schedules as well as testimony and the reports of  
2 such through its services.

3 It is an exception to the hear -- I think  
4 I heard like three objections. It's an exception  
5 to -- it's self-authenticating under Rule 902(6).  
6 And it's an exception to the hearsay rule as it is an  
7 admission of party opponent statement.

8 MR. KUTIK: May I respond, your Honor?

9 EXAMINER PRICE: You may.

10 MR. KUTIK: This is a newspaper article.  
11 It doesn't matter if Gongwer's or New York Times or  
12 Marion Gazette; it's a newspaper article. This  
13 Commission has held, on numerous occasions, that  
14 newspaper articles are hearsay because they are.

15 And even if they contain an alleged  
16 statement of a party, it is still hearsay, because it  
17 is a -- it is a report of that alleged statement, and  
18 that's what makes it hearsay.

19 There still has been no foundation  
20 because this witness has said that she has never seen  
21 this document before, never seen the report before.  
22 So there is no foundation. There is no such thing as  
23 a self-authenticating newspaper article.

24 EXAMINER PRICE: Ms. Bojko?

25 MS. BOJKO: Sorry, but the Ohio Rules of

1 Evidence disagree with you. There is such a thing as  
2 self-authentication in the rules, and this does fall  
3 under that exact provision in the rules.

4 Additionally, the Commission -- there's,  
5 actually, a lot of precedent on the other side. The  
6 Commission has many proceedings where it has let  
7 newspaper articles into the record, and I believe the  
8 Bench suggested such yesterday.

9 We are providing this not for the truth  
10 of the matter asserted herein. We are providing this  
11 to demonstrate that the testimony did, in fact, occur  
12 on the date that it is stated that it did occur. And  
13 it is more for that reason that we were offering it  
14 here today before you.

15 MR. KUTIK: Well, let me give you the two  
16 citations, your Honor, first. In Case No.  
17 08-846-EL-CSS, the opinion and order on April 5,  
18 2011, Case No. 04-1323-EL-CRS, December 3, 2008,  
19 entry, that's our precedent.

20 With respect to this argument that it's  
21 not offered for the truth, it certainly is offered  
22 for the truth. It is offered for the truth of the  
23 statement that there was alleged testimony at that  
24 alleged time.

25 EXAMINER PRICE: Okay. We will allow --

1 I will exercise my discretion and we will allow the  
2 document and the Commission will give it the weight  
3 that it deserves.

4 MS. BOJKO: Thank you, your Honor. I  
5 think there was a question pending.

6 EXAMINER PRICE: Sure.

7 Q. And I would just reask that question of:  
8 Does the title state that "Electric Rates Would Rise  
9 Under Regulation, FirstEnergy Chief Says"?

10 A. That's what the document says.

11 Q. And it says, "Ohioans should expect their  
12 electric rates to rise even if the state returns to  
13 some form of regulation on the industry,  
14 FirstEnergy's top executive told a legislative panel  
15 on Thursday."

16 MR. KUTIK: Objection.

17 EXAMINER PRICE: Grounds?

18 MR. KUTIK: Hearsay.

19 EXAMINER PRICE: Overruled.

20 A. That's what the document says.

21 Q. Okay. And the FirstEnergy chief that the  
22 document is referencing that testified before a  
23 legislative panel on Thursday is Anthony Alexander,  
24 the company's president and CEO; is that correct?

25 MR. KUTIK: Objection. Objection. This

1 witness has never seen this document before. The  
2 document says what it says. She has no independent  
3 recollection of this happening. All she is doing is  
4 reading the document.

5 EXAMINER PRICE: Sustained.

6 MS. BOJKO: Your Honor, I am just trying  
7 to set foundation that Tony Alexander is actually the  
8 entity that testified -- the person that testified on  
9 Thursday, October 4, 2007.

10 I wasn't reading from the document. I  
11 asked if the document was referring to testimony  
12 issued by Anthony Alexander.

13 EXAMINER PRICE: The document indicates  
14 the testimony was issued by -- was presented by  
15 Anthony Alexander, president and CEO.

16 MS. BOJKO: Thank you. I want to be  
17 respectful. You said you had a hard stop.

18 EXAMINER PRICE: No. This is too  
19 exciting. Let's proceed until we get done with your  
20 questioning.

21 MS. BOJKO: Okay. Your Honor, may we  
22 approach?

23 EXAMINER PRICE: You may.

24 MS. BOJKO: Now, your Honor, this has  
25 previously been put into the record as an attachment



1 to the witness's testimony. I am not sure what your  
2 pleasure is, if you would like to mark it as an OMAEG  
3 exhibit or just retain the marking of the witness  
4 that testified or attached it to his testimony.

5 MR. KUTIK: Well, your Honor, that's not  
6 true, because there isn't any testimony in the record  
7 other than Ms. Mikkelsen's testimony.

8 MS. BOJKO: Okay. That's fine. I am  
9 just trying to make it easier.

10 MR. KUTIK: If you are going to say it,  
11 say it right, I think, your Honor.

12 EXAMINER PRICE: Okay. We will allow --  
13 we will allow Ms. Mikkelsen to be questioned about  
14 this pending and we will revisit this in the event  
15 that Mr. Kutik successfully strikes this testimony  
16 when the witness actually presents it. So which?

17 MS. BOJKO: Oh, well, let's mark it as  
18 OMAEG 2 because that is independent of any motions to  
19 strike regarding an IGS witness that may or may not  
20 have it attached, because this testimony has nothing  
21 to do with that testimony.

22 EXAMINER PRICE: Then why did you refer  
23 to it?

24 MS. BOJKO: Some attorney examiners like  
25 to keep the record clean and like to talk about

1 attachments to testimony as they have been previously  
2 marked. I am fine marking it. That's why I asked  
3 for your preference.

4 EXAMINER PRICE: Okay. We will mark it  
5 OMAEG 4.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MS. BOJKO: Thank you, your Honor.

8 Q. Do you have the document in front of you  
9 which has been marked as OMAEG 4?

10 A. I do.

11 Q. Does this appear to be the testimony for  
12 Anthony Alexander regarding Senate Bill 221 that was  
13 issued on Thursday, October 4, 2007?

14 MR. KUTIK: Objection.

15 EXAMINER PRICE: Grounds?

16 MR. KUTIK: This witness has previously  
17 stated she was not aware that Mr. Alexander ever  
18 testified in front of the legislature with respect to  
19 Senate Bill 221. Her only knowledge is based upon  
20 what she was provided in the newspaper article and  
21 she had no knowledge of it prior to seeing the  
22 document.

23 So there is -- no proper foundation has  
24 been laid for her to discuss this document or  
25 identify it whatsoever.

1 EXAMINER PRICE: Have you ever seen this  
2 document before in your life?

3 THE WITNESS: Not that I remember, no.

4 EXAMINER PRICE: Is it a  
5 self-authenticating newspaper article? No, it's not.

6 THE WITNESS: No.

7 MS. BOJKO: It, actually, has the Gongwer  
8 News Service's stamp on it.

9 EXAMINER PRICE: I don't think the  
10 Gongwer News Service is the official repository of  
11 the State of Ohio and it will take some convincing to  
12 convince me of that fact, whatever Gongwer may  
13 represent to the world.

14 MS. BOJKO: I am sorry?

15 EXAMINER PRICE: Whatever Gongwer may  
16 represent to the world, they are not the official  
17 repository of the state of Ohio.

18 Q. It's a report of testimony that actually  
19 happened on October 4, 2007; is that correct?

20 EXAMINER PRICE: Don't answer that. She  
21 can't authenticate the document and you can't ask her  
22 questions about a document that she has not seen.

23 I have given you the reporter's  
24 recollection of what Mr. Alexander said, and you are  
25 entitled to use OMAEG 3 however you see fit, but

1 OMAEG 3 is not going to get OMAEG 4 into the record  
2 for you.

3 MS. BOJKO: No, your Honor. I think  
4 OMAEG 3 was describing that the testimony actually  
5 occurred and was documenting that the testimony  
6 happened.

7 I think that OMAEG 4 falls under a party  
8 opponent statement and it is not hearsay and it is  
9 the statement offered against a party and it's the  
10 party's own statement --

11 EXAMINER PRICE: As you pointed out --

12 MS. BOJKO: -- either individual or a  
13 representative capacity is the rule.

14 EXAMINER PRICE: Thirty seconds ago, you  
15 pointed out that this was provided by Gongwer, not by  
16 the company. This is Gongwer's copy of what the  
17 company may or may not have said.

18 MS. BOJKO: It's the testimony that  
19 FirstEnergy filed, your Honor.

20 EXAMINER PRICE: Hum?

21 MS. BOJKO: It is the testimony  
22 FirstEnergy gave and represented.

23 EXAMINER PRICE: You are almost certainly  
24 right, but according to the Rules of Evidence, you  
25 can't get it in that way.

1 MS. BOJKO: It is the party's own  
2 statement, your Honor, and it can be in a  
3 representative capacity.

4 EXAMINER PRICE: Are you willing to  
5 stipulate that this is the party's own statement?

6 MR. KUTIK: We are not.

7 EXAMINER PRICE: Are you willing to  
8 stipulate Gongwer is the official repository of  
9 records of the State of Ohio?

10 MR. KUTIK: No.

11 EXAMINER PRICE: Are you willing to  
12 stipulate that this came from the Ohio Senate?

13 MR. KUTIK: No.

14 EXAMINER PRICE: Are you willing to  
15 stipulate this came from the Ohio House of  
16 Representatives?

17 MR. KUTIK: No.

18 EXAMINER PRICE: Ms. Bojko, do you have a  
19 witness who can testify to the authenticity of this  
20 document?

21 MS. BOJKO: Sure. Am I allowed to call a  
22 new witness, your Honor?

23 MR. KUTIK: Let's finish with this one,  
24 your Honor.

25 EXAMINER PRICE: Is it in your prefiled

1 testimony?

2 MS. BOJKO: It is not in mine,  
3 personally, no. It doesn't have to be.

4 EXAMINER PRICE: Well, then how are you  
5 going to get it in?

6 MS. BOJKO: May I ask the witness  
7 questions to lay some foundation in her companies' --  
8 in her representative capacity of the company?

9 EXAMINER PRICE: You can try.

10 Q. (By Ms. Bojko) Ms. Mikkelsen, you've  
11 already stated to me that you believe FirstEnergy  
12 did, in fact, testify on Senate Bill 221 issues; is  
13 that correct?

14 MR. KUTIK: Objection, mischaracterizes  
15 her testimony. She said she expected that they did,  
16 but she had no knowledge.

17 EXAMINER PRICE: Sustained.

18 Q. Well, didn't you say you have seen  
19 testimony that FirstEnergy issued on Senate Bill 221?

20 A. What I said was I recall there may have  
21 been an attachment to an intervenor's testimony in  
22 this proceeding that suggested such.

23 Q. Okay. And you stated that Tony Alexander  
24 was president and CEO of the company of FirstEnergy  
25 Corp. during the time of 2007; is that correct?

1           A.     Yes.

2           Q.     And you don't have any reason to believe  
3           that Mr. Alexander would not have been reporting or  
4           had the authority to report what the companies'  
5           position was during Senate Bill 221 discussions in  
6           October, 2007, do you?

7           MR. KUTIK: That's been asked and  
8           answered, too, your Honor. I object.

9           MS. BOJKO: I thought I was voir diring  
10          of sorts, your Honor.

11          MR. KUTIK: That question has already  
12          been answered, whether you've asked it now or  
13          later -- or previously.

14          EXAMINER PRICE: Sustained.

15          Q.     And FirstEnergy's operating companies  
16          were actually operating in Ohio during October of  
17          2007; is that true?

18          MR. KUTIK: We will stipulate to that,  
19          your Honor.

20          EXAMINER PRICE: The company was in  
21          operation in 2006 and '7.

22          Q.     Is it your understanding that the  
23          companies took a position on Senate Bill 221 in  
24          October of 2007?

25          A.     I have no firsthand knowledge of

1 positions that the companies may have taken relative  
2 to Senate Bill 221. I was not involved in that  
3 activity.

4 Q. And you were not made aware of it through  
5 public filings by FirstEnergy or newspaper articles  
6 during the time that it was occurring?

7 A. I may have read articles during that  
8 timeframe relative to Senate Bill 221 but, again, at  
9 that time, I was directing an energy consulting  
10 business with a national client base, so my focus at  
11 that time would have been on my consulting clients.

12 Q. Okay. Thank you, with regard to that  
13 document.

14 A. You're welcome.

15 MS. BOJKO: Unless your Honor thinks I  
16 have now established a foundation to discuss the  
17 document itself?

18 EXAMINER PRICE: I do not.

19 MR. KUTIK: Your honor, may we go off the  
20 record?

21 EXAMINER PRICE: We may.

22 (Discussion off the record.)

23 EXAMINER PRICE: Back on the record.

24 MR. KUTIK: Your Honor?

25 EXAMINER PRICE: Yes.



1 MR. KUTIK: Your Honor, may I ask the  
2 witness if she would need a personal health break?  
3 Are you okay?

4 EXAMINER PRICE: Do you need a 5-minute  
5 break?

6 THE WITNESS: I would appreciate it.

7 EXAMINER PRICE: Let's take 5 minutes.

8 (Recess taken.)

9 EXAMINER PRICE: Let's go back on the  
10 record. Ms. Bojko?

11 MS. BOJKO: Sure.

12 Q. (By Ms. Bojko) Ms. Mikkelsen, we are  
13 talking about e-mail correspondence that was dated  
14 January 20, 2015.

15 Do you recall that?

16 A. I recall the discussion.

17 Q. Okay. And the discussion was e-mail  
18 correspondence regarding the stipulation in this  
19 case. And I think you made the comment that you  
20 wouldn't have been discussing the stipulation on  
21 January 20; is that true?

22 MR. KUTIK: Could you turn your  
23 microphone on, please?

24 MS. BOJKO: Oh, I'm sorry.

25 A. No. I believe my testimony was that we

1 would not have been discussing the supplemental  
2 stipulation or the second supplemental stipulation  
3 with the parties on January 20.

4 Q. I'm sorry. I thought you included the  
5 stipulation.

6 So you think it was possible, on January  
7 20, to be talking about issues around the stipulation  
8 that was filed on December 22?

9 A. I wouldn't expect we would have been  
10 talking about issues because I am not aware of any  
11 issues around that stipulation.

12 The parties agreed to the stipulation,  
13 signed the stipulation, the stipulation was filed on  
14 December 22nd of 2014. I am not aware of any  
15 subsequent issue related discussions regarding that  
16 stipulation.

17 Q. Okay. Are you -- are you aware that the  
18 errata concerning the stipulation was filed with the  
19 Commission on January 21, 2015?

20 A. Yes.

21 MS. BOJKO: May we approach, your Honor?

22 EXAMINER PRICE: You may.

23 MS. BOJKO: To speed this up, your Honor,  
24 I intend to hand out two documents simultaneously.

25 EXAMINER PRICE: Are you intending to

1 mark OMAEG 5?

2 MS. BOJKO: OMAEG 5 would be a  
3 Legislative Committee Schedule reported via Gongwer,  
4 The Record of Capital Square Since 1906, newspaper  
5 service.

6 EXAMINER PRICE: Thank you. So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MS. BOJKO: And then OMAEG 7 -- 6 would  
9 be the Gongwer newspaper article titled Volume  
10 No. 76, Report No. 224, Article No. 3, Wednesday,  
11 November 14, 2007.

12 EXAMINER PRICE: Okay. Please, proceed.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MR. McNAMEE: Excuse me, your Honor,  
15 before we proceed. So far I am confused as to which  
16 is which.

17 EXAMINER PRICE: The committee schedule  
18 is marked as 5 and the article is marked as OMAEG 6;  
19 is that right? OMAEG; is that right?

20 MS. BOJKO: Yes.

21 EXAMINER PRICE: Yes?

22 MS. BOJKO: Yes.

23 Q. Ms. Mikkelsen, do you have in front of  
24 you what has been marked as OMAEG 5, which is the  
25 Legislative Committee Schedule reported by Gongwer?

1           A.    I do, although I have never seen this  
2 document before.

3           Q.    And does the -- the Legislative Committee  
4 Schedule of Gongwer state that there is a House  
5 Public Utilities Committee meeting scheduled for  
6 November 14, 2007, in room 313 at 10 a.m.?

7           MR. KUTIK:  Objection.

8           EXAMINER PRICE:  Grounds?

9           MR. KUTIK:  Hearsay.

10          EXAMINER PRICE:  Overruled.

11          A.    That appears to be what the document  
12 says.

13          Q.    And does it list the panelists who are  
14 expected to appear at the -- and testify at the  
15 Legislative Committee Schedule, and does the first  
16 one state Tony Alexander with FirstEnergy?

17          A.    That's what the document says.

18          Q.    And does the document state that the  
19 panel discussion will be about Senate Bill 221?

20          MR. KUTIK:  Your Honor, I object.  This  
21 witness has never seen this document before.  There's  
22 no indication she has any familiarity -- familiarity  
23 with it otherwise.  All she is doing is reading it.  
24 The document is what it is.

25          EXAMINER PRICE:  I understand, but I am

1 going to overrule your objection. The Commission  
2 will give it due weight in consideration of the  
3 record.

4 A. I see SB 221 in the margin of this  
5 document, but beyond that, I don't see anything that  
6 specifically says or doesn't say it will be  
7 discussing SB 221. It does mention energy policy.

8 Q. And it does mention revising state energy  
9 policy to address electric service price regulation,  
10 establish alternative energy benchmarks for  
11 regulation distribution utilities and electric  
12 services companies, and provide for the use of  
13 renewable energy credits, among other things?

14 MR. KUTIK: Same objection, your Honor.

15 EXAMINER PRICE: I am going to overrule  
16 you again. I am not sure you read that correctly.  
17 What I read is somewhat different than what I heard  
18 you read, but the document says what it says.

19 Q. Okay. And the last line says that this  
20 is -- the second hearing in this matter, and it also  
21 provides the history of deregulation and State Senate  
22 Bill 3 and the status of current situation; is that  
23 correct?

24 A. What I read here is: Dash dash second  
25 hearing dash history of deregulation comma SB3 and

1 status of current situation dash panelists by  
2 invitation.

3 Q. Okay. Thank you. And do you have, in  
4 front of you, what's been marked as OMAEG 6?

5 A. Yes.

6 Q. And is this a Gongwer news report titled,  
7 Witnesses Diverge On Aspects Of Electric Bill As  
8 House Hearings Continue?

9 MR. KUTIK: Objection.

10 EXAMINER PRICE: Grounds?

11 MR. KUTIK: Foundation. Also hearsay.

12 EXAMINER PRICE: Overruled. Well, let  
13 me -- overruled.

14 A. I have not seen this document before.  
15 But the document does read, in part, "Witnesses  
16 Diverge On Aspects Of Electric Bill As House Hearings  
17 Continue."

18 Q. Okay. And this appears to be a newspaper  
19 article issued by Gongwer?

20 A. I don't know what it appears to be. It  
21 is a document that says Gongwer on it.

22 Q. And does the third paragraph down state  
23 that CEO Anthony Alexander did testify at the panel?

24 MR. KUTIK: Objection.

25 EXAMINER PRICE: Grounds?

1 MR. KUTIK: It's hearsay, your Honor.

2 EXAMINER PRICE: It's a newspaper  
3 article. We will give it its due weight.

4 A. The third paragraph down reads,  
5 "Testifying as a panel were FirstEnergy President and  
6 CEO Anthony Alexander, Consumers' Counsel Janine  
7 Migden-Ostrander; Timken state government affairs  
8 manager Peggy Claytor, Industrial Energy Users-Ohio  
9 counsel Sam Randazzo and Public Utilities Commission  
10 Chairman Alan Schriber."

11 Q. Okay. And then does the fifth and sixth  
12 paragraphs explain what Mr. Alexander, the CEO and  
13 President of FirstEnergy --

14 EXAMINER PRICE: Ms. Bojko, are you going  
15 to move the admission of this document?

16 MS. BOJKO: Yes.

17 EXAMINER PRICE: Okay. Then we don't  
18 need to test her reading skills. If you want to ask  
19 her a question about the document that doesn't  
20 involve summarizing it or reading from the document,  
21 that would be great.

22 It's either going to come in or it's not,  
23 but her reading into the record isn't going to  
24 advance our goal here in this hearing one wit if he  
25 successfully moves to strike it from admission or

1 strike her testimony. If he doesn't, it will be in  
2 the thing.

3 So if you want to ask her a question  
4 other than reading or summarizing, that would be  
5 great.

6 MS. BOJKO: Okay. I didn't intend to ask  
7 her a question to read it. I asked her if the fifth  
8 and sixth paragraphs explained or summarized what  
9 Mr. Alexander's testimony before the committee on  
10 Senate Bill 221 was.

11 EXAMINER PRICE: If you had listened  
12 carefully, you would have said "I'd asked you not to  
13 have her read it or summarize it or explain it."

14 If you have a question on the merits of  
15 the arguments, make them. I am sure she can  
16 summarize what the third paragraph says.

17 MS. BOJKO: Okay.

18 Q. (By Ms. Bojko) Isn't it true that it was  
19 FirstEnergy's opinion that higher costs will incur if  
20 the industry is restructured?

21 MR. KUTIK: Objection.

22 Q. Or returned to reregulation?

23 EXAMINER PRICE: Overruled.

24 MR. KUTIK: I have another objection,  
25 your Honor.



1 EXAMINER PRICE: Okay.

2 MR. KUTIK: Relevance.

3 EXAMINER PRICE: Please, make your  
4 relevance objection, Mr. Kutik.

5 MR. KUTIK: What the companies'  
6 position -- well, I should say what FirstEnergy  
7 Corp.'s position might have been in 2007 is totally  
8 irrelevant to anything the company might do or  
9 suggest today about the marketplace because markets  
10 change and regulatory environments change. So what?

11 EXAMINER PRICE: CEOs change.

12 MR. KUTIK: CEOs change. I won't comment  
13 any further.

14 EXAMINER PRICE: We'll allow a brief line  
15 of questioning along these lines. Please, proceed if  
16 you can answer the question.

17 THE WITNESS: May I have the question  
18 reread, please.

19 (Record read.)

20 A. In what timeframe, ma'am?

21 Q. In 2007, when the position was stated.

22 MR. KUTIK: Objection.

23 EXAMINER PRICE: Grounds?

24 MR. KUTIK: The only evidence, your  
25 Honor, that a "position was stated" is hearsay and

1 this witness certainly hasn't agreed that she even  
2 knew what the companies' positions were or that the  
3 company was taking any positions at all on Senate  
4 Bill 221 before the legislature.

5 EXAMINER PRICE: We will allow a little  
6 bit of leeway on this one. You can answer the  
7 question if you know.

8 A. I don't know. As I said before, I was  
9 not working on matters related to Senate Bill 221  
10 during that timeframe.

11 Q. During 2007, wasn't it FirstEnergy's  
12 position that a viable competitive market exists for  
13 electricity?

14 MR. RANDAZZO: Your Honor, I object.

15 EXAMINER PRICE: Mr. Randazzo. He has  
16 not had a turn the last two days. We will hear your  
17 objection.

18 MR. RANDAZZO: I will object on lack of  
19 foundation and relevance. As these documents  
20 indicate, I have some awareness of this event and  
21 this piece of legislation which was never adopted by  
22 the General Assembly.

23 Ms. Bojko's focused on a senate bill, but  
24 the testimony that she is trying to extract useful  
25 information from -- from is focused on the senate

1 bill. There is no indication that the particular  
2 type of result that was advocated in the senate bill  
3 has anything to do with the issues that are present  
4 in this proceeding. I object.

5 EXAMINER PRICE: Mr. Kutik?

6 MR. KUTIK: Well, I would support  
7 Mr. Randazzo's position, but my objection also was  
8 there's no foundation that this witness is aware of  
9 what FirstEnergy Corp. or any of its affiliate's  
10 position was with respect to 221 or its predecessors.

11 EXAMINER PRICE: Ms. Mikkelsen, were you  
12 aware or are you aware what the companies' position  
13 was on Senate Bill 221 in 2007?

14 THE WITNESS: No, sir. I may have read  
15 articles but I was, again, not involved in SB 221  
16 matters. At that time, I was directing our  
17 unregulated energy consulting business.

18 EXAMINER PRICE: Thank you. Go on to  
19 your next question, please.

20 Q. (By Ms. Bojko) And is it safe to say that  
21 you are not familiar with the actual testimony that  
22 Mr. Alexander provided to Senate Public Utilities  
23 Committee, to Chairman Schuler and the senators?

24 MR. KUTIK: Objection.

25 EXAMINER PRICE: Grounds?

1 MR. KUTIK: Asked and answered. She said  
2 she wasn't aware that Mr. Alexander testified on any  
3 subject with respect to Senate Bill 221 or that he  
4 was even authorized to do so.

5 EXAMINER PRICE: She can answer if she  
6 knows.

7 A. I am not aware if Mr. Alexander offered  
8 testimony relative to Senate Bill 221.

9 Q. Thank you.

10 MS. BOJKO: May we approach, your Honor?

11 EXAMINER PRICE: You may.

12 MS. BOJKO: Your Honor, for  
13 identification purposes, I would like to have marked  
14 as OMAEG 7 a Gongwer Legislative Committee Schedule  
15 for Wednesday, November 28, 2007, in front of the  
16 Ohio House Public Utilities Committee.

17 EXAMINER PRICE: So marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. KUTIK: I'm sorry, your Honor. May  
20 we be off the record for a second?

21 EXAMINER PRICE: Yes.

22 (Discussion off the record.)

23 EXAMINER PRICE: Go back on the record.  
24 To clarify the record, the committee schedule will be  
25 marked as OMAEG Exhibit 7. And Report No. 223,

1 Article 2 will be marked as OMAEG Exhibit 8.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. Ms. Mikkelsen, do you have in front of  
4 you what has been marked as OMAEG Exhibit 7?

5 A. I do, although I haven't seen this  
6 document before.

7 Q. And it is a report from Gongwer News  
8 Service?

9 A. It is a document labeled with Gongwer. I  
10 am not sure what you mean by report.

11 Q. And it states that there -- it's dated  
12 Wednesday, November 28, 2007; is that correct?

13 A. No. I believe it's dated November 20,  
14 2007.

15 Q. Oh, I'm sorry. It is.

16 It's stating that there is a meeting  
17 scheduled before the House Public Utilities Committee  
18 on Wednesday, November 28, 2007, at 10 a.m., in  
19 room 313; is that correct?

20 MR. KUTIK: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. KUTIK: No foundation has been laid  
23 that this witness has any understanding what this  
24 document is, and all we are doing is reading the  
25 document.

1 MS. BOJKO: Your Honor, it's a  
2 self-authenticating newspaper report. I don't have  
3 to establish a foundation in a --

4 MR. KUTIK: And you don't have to read it  
5 to the witness either. You never asked her if you  
6 read it.

7 EXAMINER PRICE: We will overrule the  
8 objection. We will allow it. We are approaching,  
9 however, needlessly cumulative, so keep that in mind.

10 Q. Ms. Mikkelsen, does it report that the  
11 panelists for this meeting include Leila Vespoli of  
12 FirstEnergy?

13 A. The document reads that the panelists  
14 include David Boehm, Ohio Coalition for Affordable  
15 Power; Richard Dwayne, Midwest ISO; Janine  
16 Migden-Ostrander, Ohio Consumers' Counsel; Alan  
17 Schreiber, PUCO Chairman; and Leila Vespoli,  
18 FirstEnergy.

19 Q. Thank you. And does it also indicate  
20 that the panel is going to be concerning Senate  
21 Bill 221?

22 MR. KUTIK: Objection, your Honor.

23 EXAMINER PRICE: Grounds?

24 MR. KUTIK: Well, among the other grounds  
25 I have stated, your Honor, relevance.

1 EXAMINER PRICE: Overruled.

2 A. As much like the other document, I agree  
3 to the margin. There is a notation SB 221, but it is  
4 not clear to me, in reading the document, that the  
5 panel will be discussing Senate Bill 221.

6 Q. And do you have in front of you what's  
7 been marked as OMAEG 8?

8 A. I do. And I have not seen this document  
9 before.

10 Q. Is this a newspaper article titled  
11 "Lawmakers Show Interest in Adding Market Conditions  
12 to Electric Bill"?

13 MR. KUTIK: Your Honor, I object again on  
14 the grounds of hearsay and relevance.

15 EXAMINER PRICE: I'll overrule your  
16 continuing objection.

17 A. I'm not sure if it's a newspaper article  
18 or not. It seems to be marked on the face of the  
19 document as a Senate Activity Report/House Activity  
20 Report. But the document does say "Lawmakers Show  
21 Interest In Adding Market Conditions To Electric  
22 Bill."

23 Q. Okay. And if you look at the third  
24 paragraph from the bottom, does it state that Leila  
25 Vespoli, senior vice president and general counsel

1 for FirstEnergy, was at the hearing and presented  
2 testimony?

3 MR. KUTIK: Objection.

4 EXAMINER PRICE: Grounds?

5 MR. KUTIK: Hearsay, foundation. All  
6 this witness is doing is being asked to read what the  
7 document says and interpret the document. She has no  
8 independent knowledge of this document.

9 Nothing has been established that she has  
10 any background or information about the underlying  
11 facts which this document alleges to report.

12 EXAMINER PRICE: Overruled. We are going  
13 to give Ms. Bojko a little bit more leeway, but time  
14 is running out.

15 A. The document reads "Earlier in the  
16 hearing, Leila Vespoli, senior vice president and  
17 general counsel for FirstEnergy, urged the  
18 legislature to take this step in defining what  
19 constitutes competition. She told the committee that  
20 competition could be reflected in having an abundant  
21 supply of energy, low barriers to entry, and a  
22 notable number of suppliers."

23 Q. And is it fair to assume you are not  
24 familiar with the actual testimony that was given and  
25 submitted to the committee meeting on November 28,



1 2007, by Leila Vespoli, the senior vice president and  
2 general counsel for FirstEnergy?

3 MR. KUTIK: Same objections.

4 EXAMINER PRICE: Overruled.

5 A. I am not even aware there was testimony  
6 presented by Leila Vespoli on that date, let alone  
7 what the nature of testimony, if any, would have  
8 been.

9 Q. You have no reason to doubt that the  
10 Gongwer Report reported inaccurately that Ms. Vespoli  
11 did, in fact, testify on that day in that hearing; is  
12 that correct?

13 MR. KUTIK: Objection.

14 EXAMINER PRICE: Overruled.

15 A. I have no way -- pardon me. I have no  
16 opinion one way or another.

17 Q. Thank you.

18 MS. BOJKO: Bear with me. Last one with  
19 regard to this issue. I would like to mark two  
20 documents.

21 MR. KUTIK: May we go off the record?

22 EXAMINER PRICE: Let's go off the record.

23 (Discussion off the record.)

24 EXAMINER PRICE: Let's go on the record.

25 You may approach.

1 MS. BOJKO: Have this marked for  
2 identification purposes as OMAEG 9, which is a  
3 Gongwer article titled "Witnesses Battle Over State  
4 Of Electric Market; Request for PUCO Rules Draws  
5 Dissent" dated Wednesday, December 5, 2007.

6 EXAMINER PRICE: It will be so marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Ms. Mikkelsen, do you have what's marked  
9 OMAEG 9? And that is a newspaper article from  
10 Gongwer dated Wednesday, December 5, 2007.

11 A. I have before me what's been marked as  
12 OMAEG Exhibit 9. I have not seen this document  
13 before, and based on my look at this document, it's  
14 labeled a "Senate Activity Report/House Activity  
15 Report."

16 Q. Okay. And does the document describe a  
17 hearing that was held where parties testified in  
18 front of the House -- the House committee, House  
19 Public Utilities Committee regarding Senate Bill 221?

20 MR. KUTIK: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. KUTIK: Foundation. This witness  
23 isn't familiar with this document. Hearsay,  
24 relevance. This purports to be discussions before a  
25 Senate committee -- or House committee, excuse me,

1 and unless I missed it because I just scanned the  
2 document there is not even any reference to anyone  
3 from any FirstEnergy Corp. affiliate.

4 EXAMINER PRICE: I believe she is  
5 referring to Mr. Boehm here in due course.

6 MR. KUTIK: Well, again, your Honor,  
7 that's not an admission with respect to this witness.  
8 If she wants to use that for Mr. -- Dr. Baron, go  
9 right ahead, even though that would be objectionable.

10 MS. BOJKO: I was going to say --

11 MR. KUTIK: But at least with respect to  
12 the particular hearsay and confrontation issue, your  
13 Honor, it's inappropriate for this witness.

14 EXAMINER PRICE: I am going to sustain  
15 the objection. If you wish to use this document  
16 vis-a-vis Mr. Baron, you are fully entitled to.

17 MS. BOJKO: Your Honor, I think the Bench  
18 misrepresented the use of this document so that is  
19 not what I intended to do and that is something that  
20 I can't do because that wasn't my purpose.

21 MR. KUTIK: Well, again, your Honor,  
22 since it doesn't refer to any FirstEnergy affiliate  
23 or an individual working on their behalf, I would  
24 object.

25 EXAMINER PRICE: Response, Ms. Bojko?

1 MS. BOJKO: I guess I would like the  
2 opportunity to ask my question that everybody is  
3 objecting to the use or how I am using it before  
4 assumptions are made.

5 EXAMINER PRICE: Okay. Ask your  
6 question.

7 Q. Isn't it true that Craig Baker of  
8 American Electric Power, which is a signatory party  
9 in this case, filed and testified before the House  
10 Public Utility Committee on Wednesday, December 5,  
11 2007?

12 MR. KUTIK: Objection.

13 EXAMINER PRICE: Grounds?

14 MR. KUTIK: Same one as I just mentioned.

15 EXAMINER PRICE: Strikingly I am going to  
16 sustain it. American Electric Power is not a party  
17 to this proceeding. Ohio Power is. They are two  
18 separate entities.

19 MS. BOJKO: It was a subsidiary and that  
20 was why I laid the foundation for those questions  
21 that were objected to previously, your Honor, that  
22 Ohio Power is a subsidiary of American Electric  
23 Power, and just as the CEO of FirstEnergy testifies  
24 on behalf of FirstEnergy and FirstEnergy's operating  
25 companies in front of all of these Ohio legislative

1 proceedings, so does American Electric Power testify  
2 on behalf of its operating companies, Ohio Power.

3 EXAMINER PRICE: Objection sustained.

4 Q. Ms. Mikkelsen, are you familiar with an  
5 organization called the Compete Coalition?

6 A. I have heard of the Compete Coalition.

7 Q. And does that organization support well  
8 structured, competitive electricity markets to your  
9 knowledge?

10 A. I don't know.

11 MS. BOJKO: Your Honor, may I approach  
12 with a document to be marked?

13 EXAMINER PRICE: You may.

14 MS. BOJKO: This would be OMAEG 10.

15 EXAMINER PRICE: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MS. BOJKO: Which is for identification  
18 purposes a Compete market data report and data  
19 compilation.

20 Q. Ms. Mikkelsen, do you have in front of  
21 you OMAEG Exhibit 10?

22 A. I do and I have not seen this document  
23 before.

24 Q. Okay. And does the first two pages  
25 purport to be a press release issued by Compete, the

1 organization that you said you were familiar with?

2 MR. KUTIK: Objection.

3 EXAMINER PRICE: Grounds?

4 MR. KUTIK: No foundation, your Honor.  
5 She said she isn't familiar with it. It's a press  
6 release, so it would be hearsay.

7 EXAMINER PRICE: Ms. Bojko, response?

8 MS. BOJKO: Your Honor, I was getting to  
9 my foundation questions. I was trying to show the  
10 witness a document to ask if she was familiar with it  
11 and to ask if it was a press release from an entity  
12 that she did tell me she knew about, and I don't  
13 believe it is hearsay. I believe that it is a market  
14 report and a data compilation which is an exception  
15 to hearsay; and, therefore, it would not be hearsay.

16 MR. KUTIK: Well, your Honor, you can  
17 allege those things, but you must prove those things.  
18 And she hasn't proven anything with this witness  
19 given the fact that this witness has already said  
20 that she is unfamiliar with the document.

21 EXAMINER PRICE: Ms. Bojko, what makes  
22 you think this is a market report?

23 MS. BOJKO: It is a commercial  
24 publication market report as well as data  
25 compilation, and it is such as the first two pages as

1 I was -- I actually had not asked the witness a  
2 question yet. I was trying get there, but the first  
3 two pages are a press release which is  
4 self-authenticating and is admissible. And then the  
5 second is a Compete report which is a data  
6 compilation and market report about the state of the  
7 market in the midwest region, and it describes in  
8 great detail the choice jurisdictions versus the  
9 nonchoice jurisdictions and how the competitive  
10 market has data compiled about different choice and  
11 competitive suppliers and information that makes it a  
12 commercial publication as well as a market data and a  
13 market report.

14 MR. KUTIK: Your Honor.

15 EXAMINER PRICE: Yes, sir.

16 MR. KUTIK: To quote the rule on market  
17 reports, "Market quotations, tabulations, lists,  
18 directories, or other published publications  
19 generally used and relied upon by the public or  
20 persons in a particular occupation." There's no  
21 evidence that that's the case. Certainly this  
22 witness hasn't testified to that. And certainly on  
23 its face this document doesn't appear to be that.

24 MR. HAYS: Your Honor, if I may make a  
25 comment. I just happened to notice if, and I am not

1 introducing this document, the Commission had a  
2 lengthy proceeding on trying to -- trying to make the  
3 energy market more competitive. And, you know, I  
4 don't attend a lot of these things, but I did all of  
5 that because NOAC thought it was important, and they  
6 had a panel of three witnesses. And I remember one  
7 was Philip R. O'Connor, and he testified in that  
8 proceeding about -- about -- he was one of three  
9 people that the Commission asked to come and testify  
10 about what could be done to make a more competitive  
11 market. And I think probably -- I know FirstEnergy,  
12 I know everybody here saw Mr. O'Connor speak so I  
13 just want to point that out because it seemed  
14 relevant to --

15 EXAMINER PRICE: How would Mr. Kutik  
16 cross-examine him today?

17 MR. HAYS: I think that my recollection  
18 of the Federal Rules of Evidence is that if there is  
19 a -- if there is an expert report by somebody in the  
20 field who is known -- known and has been recognized  
21 by the PUCO, it could be used to --

22 EXAMINER PRICE: Can you cite me -- she  
23 is not impeaching Ms. Mikkelsen. First of all, I am  
24 not agreeing this is a known -- first of all, I am  
25 really winching on the Federal Rule of Evidence you



1 are referring to. Second of all, she is not  
2 impeaching Ms. Mikkelsen with this. She's just  
3 showing it to her.

4 MR. HAYS: Well, I think that was her  
5 first step. I might be wrong.

6 MS. BOJKO: No. He is very right. First  
7 of all, none of us --

8 EXAMINER PRICE: You are not impeaching.  
9 You might be cross-examining her, but you are not  
10 impeaching any prior inconsistent statements she  
11 made.

12 MR. HAYS: The word impeachment is not --  
13 using expert opinion that has -- by somebody in the  
14 field, and in this case somebody recognized by the  
15 PUCO, can use that to challenge -- challenge somebody  
16 who is testifying that this is in everybody's best  
17 interest.

18 MS. BOJKO: And, your Honor, she has made  
19 prior inconsistent statements that -- in her written  
20 testimony that we are allowed to test to see if she  
21 is correct or not correct.

22 MR. KUTIK: Right now, your Honor, the  
23 purpose, whatever she is trying to do, is irrelevant  
24 to my objection which is that it's hearsay, and no  
25 foundation has been laid to what it is.

1 EXAMINER PRICE: Let's work our way  
2 through the hearsay examples Mr. Kutik has. It's not  
3 a market report. What else have you got? It's not a  
4 learned treatise.

5 MS. BOJKO: I'm sorry. What is the  
6 rationale it is not a market report?

7 EXAMINER PRICE: Mr. Kutik.

8 MS. BOJKO: Generally relied upon in the  
9 industry and has been by several parties to this  
10 case. Whether -- it may not be by Mr. Kutik but that  
11 doesn't set the standard.

12 EXAMINER PRICE: This is an advocacy  
13 piece. We don't allow advocacy pieces. We have  
14 never allowed advocacy pieces. You have sat here on  
15 the bench with me and have not allowed advocacy  
16 pieces. This is simply an advocacy piece by the  
17 Compete Coalition. It's not Platts. It's not the  
18 Wall Street Journal. It's not -- it's not a market  
19 report. I'm sorry. You have got to do better than  
20 that.

21 MS. BOJKO: Just for the record it is by  
22 two former chairpersons of the Commission. It's  
23 not -- just to make sure the record is clear. It's  
24 not -- I think that was just misstated in the record,  
25 so I want to make that clear.

1 MR. KUTIK: Again, there is no testimony  
2 about that fact. We have got allegations and  
3 assertions.

4 EXAMINER PRICE: I am sure that the  
5 authors of this piece are well esteemed members of  
6 the public utilities bar, but a learned treatise that  
7 does not make it.

8 MS. BOJKO: Did you -- your Honor, you  
9 trailed off at the end, but I would --

10 EXAMINER PRICE: I am saying --

11 MS. BOJKO: You asked me to go through,  
12 and I would say learned treatise is an expert  
13 bringing a form of an out-of-court statement of  
14 textbook authors, colleagues, and others that form  
15 the basis of an expert's training and education. I  
16 don't -- I didn't know why you said it was not, if  
17 that's what I heard.

18 EXAMINER PRICE: I am not persuaded it's  
19 a learned treatise.

20 MS. BOJKO: Okay. Well, your Honor, I  
21 have no further questions.

22 EXAMINER PRICE: Excellent. We may break  
23 for lunch. Go off the record.

24 (Thereupon, at 1:54 p.m., a lunch recess  
25 was taken until 3 p.m.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

- - -

1 Tuesday Afternoon Session,  
2 September 1, 2015.

3 - - -

4 EXAMINER PRICE: Let's go back on the  
5 record.

6 Mr. Petricoff?

7 MR. PETRICOFF: Yes, your Honor. I think  
8 I need a microphone though.

9 - - -

10 EILEEN M. MIKKELSEN

11 being previously duly sworn, as prescribed by law,  
12 was examined and testified further as follows:

13 CROSS-EXAMINATION

14 By Mr. Petricoff:

15 Q. Good afternoon, Ms. Mikkelsen. Can you  
16 hear me?

17 A. Yes. Good afternoon.

18 Q. I'm Howard Petricoff, although I know  
19 this is a formality because we've known each other  
20 for quite some time, but I'm here representing  
21 several groups of suppliers, both wholesale and  
22 retail.

23 If you don't understand any of my  
24 questions, by all means, ask me to explain and  
25 I'll -- I'll do my best. And if my voice starts to

1 fade, let me know and I'll get closer to the  
2 microphone.

3 Now, you are sponsoring the application  
4 in this case and you also do the introduction of the  
5 witnesses for the companies; is that correct?

6 A. Yes.

7 Q. And so is it fair to say you are the  
8 person I should address policy issues to concerning  
9 the positions that the company's taking on the  
10 application?

11 A. I think you can address policy questions  
12 to me, certainly. And then to the extent that there  
13 are policy-related questions that may address  
14 Mr. Strah's testimony, you can certainly address  
15 Mr. Strah relative to those.

16 Q. Okay. Thank you. Now, we, in the last  
17 day and a half, have mentioned a lot of FirstEnergy  
18 entities. What I would like to do now is sort of set  
19 up a chart as to what the entities are and what their  
20 relationships are.

21 The first is FirstEnergy Corp. That's a  
22 public utility holding company?

23 A. Yes.

24 Q. And they own all of the stock of Toledo  
25 Edison, Ohio Edison and Cleveland Electric

1 Illuminating?

2 A. Yes.

3 Q. And do they also own the stock of three  
4 utilities in Pennsylvania, electric distribution  
5 utilities?

6 A. I believe FirstEnergy has four  
7 distribution utilities in the State of Pennsylvania.

8 Q. Okay. And does FirstEnergy Corp. also  
9 own companies that are not public utilities?

10 A. Yes.

11 Q. Okay. And that includes FirstEnergy  
12 Solutions?

13 A. Yes.

14 Q. And do they own all the stock of  
15 FirstEnergy Solutions?

16 A. I believe so.

17 Q. And then yesterday we mentioned two  
18 companies, FirstEnergy Nuclear and FirstEnergy  
19 Generation.

20 First of all, is the correct name  
21 FirstEnergy Nuclear, or is there more to the name  
22 than that?

23 A. I believe, subject to check, the name is  
24 FirstEnergy Nuclear Generation.

25 Q. Okay. And does FirstEnergy Nuclear

1       Generation own the Davis-Besse plant?

2             A.     Yes.

3             Q.     And do they have an arrangement with  
4       FirstEnergy Solutions so that all of the output of  
5       the Davis-Besse plant goes to FirstEnergy Solutions?

6             MR. KUTIK: Your Honor, this was  
7       discussed earlier in Ms. Mikkelsen's testimony with  
8       Mr. Fisk, so I'll object as asked and answered.

9             EXAMINER PRICE: Overruled.

10            A.     Yes.

11            Q.     Does FirstEnergy Nuclear also own the  
12       Perry plant?

13            A.     Yes.

14            Q.     And the Perry plant is a nuclear plant in  
15       Ohio?

16            A.     Yes.

17            Q.     And does the Perry plant have the same --  
18       I think you refer to them as attributes -- as  
19       Davis-Besse in terms of having fuel on -- on-site and  
20       being essential for the operation of the distribution  
21       system?

22            A.     Perry Nuclear Power Plant has on-site  
23       fuel storage capabilities, and it was built  
24       originally to serve the load of the companies'  
25       customers.



1 EXAMINER PRICE: Let's go off the record.

2 (Discussion off the record.)

3 EXAMINER PRICE: Back on the record.

4 MR. PETRICOFF: I think we had a question  
5 outstanding. Could you read the question back?

6 (Record read.)

7 EXAMINER PRICE: Did you finish your  
8 answer?

9 THE WITNESS: I did. Thank you.

10 Q. Thank you. Now, does FirstEnergy,  
11 again -- I'm sorry.

12 And FirstEnergy Corp. owns all of the --  
13 strike that. I think I have asked that.

14 Does FirstEnergy Corp. own all of the  
15 stock of FirstEnergy Generation?

16 A. I believe FirstEnergy Generation is a  
17 subsidiary of FirstEnergy Solutions.

18 Q. Okay. And does FirstEnergy Generation  
19 own any other plants -- I'm sorry.

20 Do they own the Sammis plant? Let me  
21 start again.

22 Does FirstEnergy Generation own the  
23 Sammis power plant?

24 A. Yes.

25 Q. Okay. And do they own any other power

1 plants in Ohio?

2 A. I believe they own a number of other  
3 power plants in Ohio, although those power plants may  
4 not be operational.

5 Q. Besides the Sammis plant, do they own any  
6 generating plants that you would consider to have the  
7 same attributes as Sammis?

8 A. No.

9 Q. Okay. And just to make sure I have got  
10 my notes correct, does FirstEnergy Solutions own  
11 FirstEnergy Nuclear, or is FirstEnergy Nuclear  
12 unaffiliated with FirstEnergy Solutions?

13 A. FirstEnergy Solutions does not -- pardon  
14 me. Let me say it this way. FirstEnergy Nuclear  
15 Generation is not a subsidiary of FirstEnergy  
16 Solutions.

17 Q. Okay. Thank you. Okay.

18 EXAMINER PRICE: I just want to fix this  
19 in my own head. So FirstEnergy Generation is owned  
20 by FirstEnergy Solutions, but FirstEnergy Nuclear  
21 Generation is not owned by FirstEnergy Solutions; is  
22 that correct?

23 THE WITNESS: Yes.

24 EXAMINER PRICE: Thank you.

25 Q. Okay. In order to effectuate the 15-year

1 term on the proposed arrangement, would there have to  
2 be an agreement or an amendment to the existing  
3 agreements between FirstEnergy Solutions and its  
4 subsidiary FirstEnergy Generation or its affiliate  
5 FirstEnergy Nuclear in order to complete the  
6 arrangements?

7 A. I think that would be a question better  
8 addressed to Mr. Hardin, sir.

9 Q. Okay. So your answer is you don't know.

10 A. Correct.

11 Q. Okay. Would the Public Utilities  
12 Commission have authority over the arrangement  
13 between FirstEnergy Solutions and FirstEnergy  
14 Generation and FirstEnergy Nuclear in order to assure  
15 that the arrangement was carried out?

16 MR. KUTIK: Objection.

17 EXAMINER PRICE: Grounds?

18 MR. KUTIK: Legal conclusion.

19 Q. To the best of your knowledge as a  
20 regulatory expert.

21 EXAMINER PRICE: She can answer if she  
22 knows.

23 A. I'm not a lawyer, but I wouldn't expect  
24 the Commission to have jurisdiction over those  
25 arrangements.

1           Q.    Okay.  Now, from the perspective of a  
2   shareholder of FirstEnergy Corp., does it matter  
3   whether a dollar is earned in FirstEnergy Solutions  
4   as opposed to the companies in terms of paying  
5   dividends?

6           MR. KUTIK:  Objection.

7           EXAMINER PRICE:  Grounds?

8           MR. KUTIK:  Calls for speculation of what  
9   a shareholder might think.

10          MR. PETRICOFF:  I'll rephrase.

11          Q.    In terms of revenues available to pay  
12   shareholders, does it make a difference whether a  
13   dollar is earned by FirstEnergy Solutions or the  
14   companies?

15          A.    I think this would be a question better  
16   addressed to Mr. Strah.

17          Q.    Is it better addressed to him because he  
18   would have a better answer or because you don't know?

19          A.    Because he is the treasurer of the  
20   company, yes.

21          Q.    Do you know though?

22          A.    I don't have an opinion.

23          Q.    Is not having an opinion different than  
24   not knowing?

25          MR. KUTIK:  Objection, your Honor.

1 MR. PETRICOFF: It's a legitimate  
2 question.

3 MR. KUTIK: We are arguing now with the  
4 witness.

5 EXAMINER PRICE: Overruled.

6 A. I am not responsible for dividend  
7 decisions, so I don't know or have an opinion  
8 relative to that.

9 Q. Fair enough. I'll try to cut this short  
10 because there was quite a bit of testimony on this, I  
11 think, yesterday afternoon, but if there are holes in  
12 here, let me know and I will fill in with the  
13 questions.

14 If you recall, I think it was Mr. Olier  
15 asked you what would happen if the Commission  
16 disallowed an expense under the arrangement and the  
17 companies still had to pay under the Purchase Power  
18 Agreement for the -- for the expenses that were  
19 disallowed.

20 Do you recall that exchange?

21 A. Yes.

22 Q. Would it be the companies' position that  
23 if the Commission disallowed a -- an expense as part  
24 of the rider RRS process, that the companies would be  
25 barred from seeking compensation for the disallowance

1 in other forms from the Commission -- from the  
2 Commission or the ratepayers?

3 A. May I ask you to clarify, sir, what you  
4 mean with respect to other forms?

5 Q. Sure. If the disallowance of the -- of  
6 the expense -- if the Commission issued an order and  
7 disallowed an expense, would that, in your opinion,  
8 bar the company from seeking to recover that  
9 disallowed funds as part of a rider or a separate  
10 application to the Commission for reimbursement?

11 A. Costs and revenues that are netted for  
12 inclusion in rider RRS are not costs and revenues  
13 that would be included in a base rate case  
14 proceeding. And I don't envision a circumstance  
15 where, if the Commission disallows recovery of costs  
16 in a rider, we would seek to recover those costs in a  
17 separate rider.

18 Q. Okay. One more question in the area and  
19 then I'll go.

20 So it's your view as -- as a rate expert  
21 that, if the disallowance took place during a test  
22 year, those expenses that had been disallowed could  
23 not come into -- into the application for a base rate  
24 increase?

25 A. Yes. As I said, the revenues and costs

1       pursuant to the rider are not revenues and costs that  
2       would be included in a base rate case application.

3               Q.     Do the companies -- and again, I am  
4       referring to Ohio Edison, Toledo Edison, Cleveland  
5       Electric Illuminating -- own any baseline generation  
6       at this time?

7               A.     Sir, when you say baseline, do you mean  
8       baseload?

9               Q.     Baseload, yes.

10              A.     The Cleveland Electric Illuminating  
11       Company, The Ohio Edison, Toledo Edison do not own  
12       any generating plants.

13              Q.     And was that divestiture part of the  
14       application from the company in the 99-1212-EL-ETP  
15       case?

16              A.     I'll subject that to check. I don't have  
17       the docket off the top of my mind, sir.

18              Q.     Did the company receive transition monies  
19       when they divested their generation to nonregulated  
20       affiliates?

21              A.     No. At the time those plants were  
22       transitioned from the utilities to the unregulated  
23       affiliate, the companies did not receive any  
24       incremental revenue and, in fact, at that time, the  
25       companies' residential revenue was decreased by

1 5 percent.

2 Q. So it's a -- is it your testimony then  
3 that the -- that the companies never received  
4 transition monies because of deregulation?

5 A. It is my testimony that the companies did  
6 not see any increase in the revenues that they were  
7 collecting associated with transition revenues.

8 Q. To the best of your knowledge, did the  
9 Commission ever issue an order that resulted in what  
10 the Commission called transition payments to the  
11 company because of the divestiture due to  
12 deregulation?

13 A. Do you have a copy of the order you are  
14 referring to, sir?

15 Q. I'm referring to 99-1212-EL-ETP, but I do  
16 not have a copy.

17 A. I was not working in the regulatory area  
18 at that time, so I don't know that I have ever  
19 reviewed that order.

20 Q. Okay. Let me ask you this then. Is --  
21 this is a policy question I am directing to you as  
22 spokesman for the company.

23 Does the company have any claims that  
24 it's entitled to any monies at this time for the  
25 Sammis or the Davis-Besse plant because of



1 divestiture?

2 THE WITNESS: May I have the question  
3 reread, please, ma'am.

4 (Record read.)

5 A. I'm struggling a little bit, so perhaps  
6 you can help me with the policy question and then  
7 what seems like a very specific question. So perhaps  
8 I am going to ask you to restate your question, sir.

9 EXAMINER PRICE: Well, wait a second.  
10 Irrespective of whether you call it a policy question  
11 or anything else, does the company have any -- do the  
12 companies have any claims that they are entitled to  
13 any monies at this time for the Sammis plant or  
14 Davis-Besse because of the divestiture?

15 THE WITNESS: No, sir.

16 Q. Well, let's switch to another subject.

17 Earlier, you have been -- you were asked  
18 many times about the potential for either the Sammis  
19 or the Davis-Besse plant to close.

20 Do you have an opinion on whether the  
21 Kyger Creek or Clifty Creek plants would close if  
22 rider RRS is not approved?

23 A. I think the testimony in this case  
24 demonstrates the near-term financial challenges that  
25 those plants face as well as the Sammis and

1 Davis-Besse plant.

2 Q. So your testimony is that the plants  
3 would close if rider RRS is not approved?

4 A. No, sir. As I've testified before, I  
5 believe the future of those plants is uncertain in  
6 the absence of rider RRS and, with approval of rider  
7 RRS, there is certainty with respect to the continued  
8 operation of those plants.

9 Q. Well, let's explore that for a moment.  
10 Who owns the Clifty Creek and Kyger Creek plants?

11 A. It's a joint ownership arrangement.

12 Q. Well, let me try -- let me try it this  
13 way.

14 Isn't it true that Ohio Valley Electric  
15 Company owns the Kyger Creek and Clifty Creek power  
16 plants?

17 A. I'm not entirely clear on the ownership  
18 structure.

19 Q. Okay. To the best of your knowledge,  
20 isn't it true that FirstEnergy Solutions only owns  
21 the output rights of some 5 percent of those two  
22 plants?

23 A. As I said, sir, I am not entirely sure of  
24 the ownership structure associated with OVEC.

25 Q. Do you know the amount of output that the

1 FirstEnergy Solutions plants are entitled to from  
2 those two plants?

3 MR. KUTIK: You said -- your Honor, I  
4 think counsel misspoke. Could we have the question  
5 read, please.

6 (Record read.)

7 Q. Can you answer that question?

8 A. Sir, I think the question I heard read  
9 was the FirstEnergy Solution plants. By this did you  
10 mean FirstEnergy Solutions, sir?

11 Q. I'm sorry.

12 MR. PETRICOFF: Thank you, counsel.

13 Q. Let's go back. For the Kyger Creek and  
14 Clifty Creek plants, do you know the percentage of  
15 the output from those two plants which is owned and  
16 controlled by FirstEnergy Solutions?

17 A. Again, I've testified that I'm not  
18 entirely clear on the ownership structure, but I do  
19 know that FES is entitled to 4.85 percent of the  
20 output of those facilities.

21 Q. Okay. And if the rider RRS would be  
22 implemented, then it would just be FES that would be  
23 receiving the guarantees on costs and return and just  
24 for that 5 percent -- less than 5 percent of the  
25 output?

1 MR. KUTIK: Objection.

2 EXAMINER PRICE: Grounds?

3 MR. KUTIK: There's been no testimony  
4 that there is a "guarantee" in this case. In fact, I  
5 think the witness testified just the opposite.

6 Q. I'll rephrase the question.

7 Isn't it true that the arrangement would  
8 only cover the 5 percent of the output out of the  
9 Clifty Creek and Kyger Creek plants that are owned by  
10 FirstEnergy -- I'm sorry -- that are controlled by --  
11 the output is controlled by FirstEnergy Solutions?

12 A. The companies' proposal is 4.85 percent  
13 OVEC entitlement be included in the economic  
14 stability program.

15 Q. No. I am asking you whether the  
16 95 percent of the output from these plants that  
17 aren't covered by the arrangements are really going  
18 to be -- is really going to make a difference to  
19 their existence.

20 A. No. I think I would agree with you on my  
21 answer earlier that went more specifically to Sammis  
22 and to Davis-Besse. Certainly, there is greater  
23 certainty with respect to the continued operation,  
24 but it is not as certain as it is with respect to  
25 Davis-Besse and Sammis.

1           Q.    If you know, did either the Kyger Creek  
2           and Clifty Creek have an unplanned outage during the  
3           polar vortex in January and February of 2013?

4           A.    My recollection is one of those did, but  
5           I believe those questions are probably better  
6           addressed to Mr. Moul.

7           Q.    Okay. And to the best of your knowledge,  
8           were there other coal plants that had unplanned  
9           outages during the polar vortex of 2013? When I say  
10          other plants, other plants in PJM.

11          MR. KUTIK: May I have the question read,  
12          please.

13          (Record read.)

14          MR. KUTIK: Did counsel mean 2014?

15          Q.    With that amendment, can you answer the  
16          question?

17          A.    Just for the sake for clarity, I wasn't  
18          sure, with your modification, like if you were  
19          broadening from coal plants to all plants or --

20          Q.    Oh, let me start over again because we  
21          want this to be clear.

22                Do you know whether, in PJM, there were  
23          other coal plants that were -- that had unplanned  
24          outages during the polar vortex incident in 2014?

25          A.    My understanding is there were, but also

1 my understanding is that the Davis-Besse plant and  
2 the Sammis plant and one or the other of the OVEC  
3 plants were running through the period of the polar  
4 vortex.

5 Q. Okay. Which FirstEnergy entity would  
6 have the authority and the responsibility of shutting  
7 down the Davis-Besse plant if it was uneconomic?

8 MR. KUTIK: Objection, your Honor.

9 EXAMINER PRICE: Grounds?

10 MR. KUTIK: I guess the question is  
11 unclear. Are we talking about today? Are we talking  
12 about if a proposed transaction went through?

13 MR. PETRICOFF: Today. Current  
14 ownership.

15 EXAMINER PRICE: Today.

16 A. I think, ultimately, a decision of that  
17 nature would have to be approved by the Board of  
18 Directors of the corporation.

19 Q. And do you know whether, in order to shut  
20 down the Davis nuclear power plant, there would have  
21 to be notices to the -- to the Nuclear Regulatory  
22 Commission?

23 A. And your question is talking about the  
24 Davis-Besse nuclear power plant?

25 Q. Davis-Besse, right.

1           A.    I don't know with certainty.  I would  
2   expect there would be.

3           Q.    Okay.  Would there have to be a  
4   decommissioning plan filed and approved?

5           A.    I don't know.  I think that question is  
6   probably better addressed to Mr. Hardin.

7           Q.    Okay.  Would PJM have to be notified and,  
8   if so, when?

9           A.    That question should probably be  
10   addressed to Mr. Moul.

11          Q.    Could the plants be closed as long as  
12   there were obligations under the base residual  
13   auction to supply power from Davis-Besse?

14                THE WITNESS:  May I have the question  
15   reread, please, ma'am.

16                (Record read.)

17                MR. KUTIK:  I will object to the extent  
18   it calls for a legal conclusion.

19                EXAMINER PRICE:  She can answer if she  
20   knows.

21          A.    I'm troubled by the underlying assumption  
22   in the question that the base residual auction deals  
23   with the sale of power.  That's not my understanding,  
24   sir.

25          Q.    Okay.  And I'm trying to dance around the

1 public, the fact that we are in public session --  
2 public session now. Let me try it one other way and,  
3 if it doesn't work, we will just pick this up in the  
4 confidential section.

5 Assuming that there were contracts and  
6 acceptances to run during a base residual auction  
7 period through PJM, could the companies shut the  
8 plant down while they still had obligations to  
9 deliver?

10 MR. KUTIK: Well, in this context, I am  
11 sure not what the word "company" means, so I'll  
12 object.

13 MR. PETRICOFF: I'm sorry, Counsel.

14 MR. KUTIK: I am not sure when you say  
15 "the companies" what you are talking about.

16 MR. PETRICOFF: The companies.

17 MR. KUTIK: And you are talking about  
18 today?

19 MR. PETRICOFF: Today.

20 A. The companies would have no commitment in  
21 the PJM capacity markets today.

22 Q. Okay. How about FirstEnergy Solution,  
23 they had accepted a -- if they had accepted an  
24 obligation to provide power under the BRA for a set  
25 year, could they close the plant as long as that



1 obligation was in existence?

2 MR. KUTIK: Objection to the extent it  
3 calls for a legal conclusion.

4 Q. To the degree that you, as a regulatory  
5 expert, can answer.

6 EXAMINER PRICE: You can answer if you  
7 know.

8 A. Again, it is not my understanding that  
9 the base residual auctions or commitments made in the  
10 base residual auctions are for power.

11 Q. Okay.

12 A. Those are capacity auctions.

13 Q. Well, we'll -- I think we are getting  
14 uncomfortably close to the confidential section. We  
15 will push these questions off.

16 Is it possible, then, by the time that  
17 all of the necessary notices and approvals to close  
18 down the Davis-Besse plant could be obtained, we  
19 would be in the portion of Mr. Ruberto's projections  
20 where the companies -- where the plant was  
21 profitable?

22 THE WITNESS: May I have the question  
23 reread, please.

24 (Record read.)

25 A. May I ask you to restate the question,

1       sir? I don't understand the question.

2               Q.     Sure. Let's take it in pieces.

3                       You are familiar with Mr. Ruberto's chart  
4 of when the companies -- when the rider RRS will be  
5 negative and when it will be positive.

6               A.     If, by Mr. Ruberto's chart, you are  
7 referring to Attachment JAR-1 Revised to  
8 Mr. Ruberto's testimony, yes, I am familiar with it.

9               Q.     And you will agree with me that, in  
10 Exhibit JAR-1, that there's a -- there's a period of  
11 time in the first couple of years where the RRS is  
12 projected to be negative and then it becomes positive  
13 out for the rest of the 15-year period?

14              A.     Yes.

15              Q.     Is it possible that, by the time all of  
16 the notices and steps that would be taken in order to  
17 close the Davis-Besse plant could be completed, that  
18 we would be in the period of time that Mr. Ruberto  
19 projects the RRS would be profitable -- I'm sorry. I  
20 take that back.

21                      Would it be positive, that is that there  
22 would be monies flowing from the sale of power from  
23 the two plants?

24              A.     Sir, I am struggling with the question,  
25 because I am not aware of any announcement to close

1 Davis-Besse. So I guess if you are trying to create  
2 a hypothetical, I am not following the underlying  
3 assumptions in the question.

4 Q. Okay. Well, that's fine. Let me -- let  
5 me work my way back up here then.

6 So, first of all, it is your testimony  
7 there are no plans to close the Davis-Besse plant at  
8 this time?

9 A. What I have said is the future of the  
10 plant is uncertain.

11 Q. Okay. Now, let me look at that period of  
12 time when you say the future is uncertain. The  
13 future in the next three years, or the future beyond  
14 three years?

15 A. I think it is uncertain for a period of  
16 at least three years.

17 Q. Okay. And would you agree --

18 A. Today.

19 Q. From today, right.

20 And would you agree with me, then, if the  
21 fear is that the plant will close in the next three  
22 years, wouldn't it be important to know whether the  
23 shutdown process itself would take 36 months or more?

24 A. No, because if rider RRS is approved, as  
25 I said earlier, the future of that plant is certain.

1 And under that scenario, there would be no shutdown  
2 scenario, which is why I'm struggling with your  
3 asking me would it shut down in these periods of a  
4 credit, because if the credits would only be in place  
5 if rider RRS is approved and if rider RRS is  
6 approved, as I've said, then the future of  
7 Davis-Besse and Sammis and certainly the OVEC units,  
8 to a lesser extent, is more certain.

9 Q. Okay. Well, where I'm heading is that,  
10 in Mr. Ruberto's chart, it looks like the only  
11 financial risk, assuming the projections are -- are  
12 accurate, are in these first couple of years.

13 Is that a correct assessment?

14 A. I'm not sure, sir, what you mean by  
15 financial risk but, again, I think we need to step  
16 back and ask ourselves: What is the purpose of the  
17 retail rate stability rider?

18 And the purpose of the retail rate  
19 stability rider is to provide a rate stabilization  
20 mechanism to our customers to help mitigate the  
21 impact of volatile and increasing prices in the  
22 future.

23 Q. Okay. So the primary purpose of the rate  
24 stabilization rider and the arrangement, as we have  
25 labeled it in the first day and a half of hearing, is

1 not the rescue of the plants; it is to keep the rates  
2 that customers pay from fluctuating a great deal?

3 A. One of the purposes of the retail rate  
4 stability rider and the economic stability program is  
5 to provide retail rate stability to our customers.

6 Another benefit of the economic stability  
7 program is the enhanced reliability for the  
8 companies' customers that arise from the continued  
9 operation of baseload fuel-diverse generating units  
10 that have on-site fuel storage capabilities that were  
11 built to serve the companies' load.

12 An additional benefit of the economic  
13 stability program is the economic development  
14 benefits that accrue to the companies' service  
15 territories in the State of Ohio as a result of the  
16 assured continued operation of the plants.

17 And the final benefit -- well, perhaps  
18 not final, but another benefit that comes to mind is  
19 the avoidance of any transmission investment that  
20 would be necessitated for reliability purposes in the  
21 event that the plants were to close in the absence of  
22 approval of the economic stability program.

23 Q. But you would agree with me that, if the  
24 plants aren't going to close, then the Commission  
25 doesn't, one, have to worry about costs of redoing

1 the transmission, because if they don't close, there  
2 is no transmission to redo.

3 It doesn't have to worry about the  
4 economic impact of closing the plants on the  
5 community if the plants, in fact, don't close.

6 And, three, don't have to worry about any  
7 change in reliability because the sourcing of power  
8 would be changed unless the plants close; isn't that  
9 correct?

10 MR. KUTIK: Objection, your Honor.  
11 Compound.

12 EXAMINER PRICE: I think he was simply  
13 setting out the conditions, so overruled.

14 MR. KUTIK: And, your Honor, may I have  
15 the court reporter read the first part of his  
16 question.

17 EXAMINER PRICE: Go ahead and read the  
18 entire question.

19 (Record read.)

20 A. While it may be true that if the plants  
21 don't close, the Commission doesn't have to worry  
22 about those things but what is not certain is that  
23 the plants won't close.

24 Q. Is it your testimony that the plants will  
25 close unless the Commission grants the rider RRS with

1 the term sheet as presented in the arrangement in  
2 this case?

3 MR. KUTIK: Since his microphone went out  
4 I must ask to have the question to be reread, please.

5 EXAMINER PRICE: Let's reread the  
6 question.

7 MR. KUTIK: AI apologize.

8 (Record read.), I apologize may I ask you  
9 to read that again.

10 (Record read.)

11 MR. KUTIK: Your Honor, I'll object in  
12 that it assume the companies are seeking to have the  
13 Commission grant the term sheet which is specifically  
14 contrary to what this witness has said multiple  
15 occasions.

16 EXAMINER PRICE: Care to rephrase?

17 MR. PETRICOFF: Sure.

18 Q. If the Commission does not grant the  
19 rider RRS as cried in the application, is it your  
20 testimony that the plants will close? By the plants  
21 I mean Davis-Besse aren't Sammis plant. Or Sammis  
22 plant, I'm sorry.

23 A. No, sir. My testimony is that the future  
24 of the plants is uncertain if the Commission doesn't  
25 approve rider RRS.

1 EXAMINER PRICE: Could I ask you a  
2 question in.

3 THE WITNESS: You may.

4 EXAMINER PRICE: Do you believe -- is it  
5 your understanding that the most likely plants that  
6 FES owns to closes are Davis-Besse and Sammis if  
7 rider RRS is not approved?

8 THE WITNESS: I don't know.

9 EXAMINER PRICE: You don't know. Thank  
10 you. So let me can you a follow-up question then or  
11 two or three. Isn't it the case that if the  
12 Commission were to approve rider RRS and FES were to  
13 close a different plant such as Perry, the economic  
14 development concerns that you have raised respect to  
15 the possible closure of Davis-Besse would till take  
16 place.

17 A. That is true but Perry was not a plant  
18 that I had in mind when I said I don't know.

19 EXAMINER PRICE: Do you have any belief  
20 that Perry will not -- do you have any knowledge that  
21 Perry has no need for -- is in no danger of closure  
22 in.

23 THE WITNESS: I don't know.

24 EXAMINER PRICE: I don't know. I don't  
25 know whether pay pair may or may not close in the



1 absence of rider RRS.

2 THE WITNESS: I don't.

3 EXAMINER PRICE: Okay. The other benefit  
4 you pointed out are transmission -- the avoidance of  
5 higher transmission costs. Isn't it true that the  
6 Commission approved rider RRS and FES closed Perry,  
7 we may still have incremental transmission upgrade  
8 costs?

9 A. Yes and perhaps the questions with  
10 respect to the likelihood of Perry being subject to  
11 closure would be better addressed to Mr. Hardin --  
12 pardon May Mr. Moul.

13 EXAMINER PRICE: Okay. Thank you.

14 THE WITNESS: Uh-huh.

15 EXAMINER PRICE: And then finally the  
16 other area of avoided problems that you have  
17 supported rider RRS is reliability. Isn't it true  
18 that if Perry Nuclear Power Plant were to close, we  
19 would have similar reliability issues that would have  
20 occurred if Davis-Besse were to close?

21 THE WITNESS: I haven't seen a  
22 transmission study or heard of the results of a  
23 transmission study that would show what the  
24 reliability implications would be from closing Perry  
25 plant so I can't answer that question, sir.

1                   EXAMINER PRICE: Isn't it true that even  
2                   if FES were to close a plant outside of Ohio, like  
3                   Bruce Mansfield, in the event the Commission approved  
4                   rider RRS, that Ohio ratepayers could be looking at  
5                   increased transmission costs to upgrade the  
6                   transmission system due to the closure of Bruce  
7                   Mansfield or any other plant outside the border of  
8                   Ohio?

9                   THE WITNESS: Yes.

10                  EXAMINER PRICE: And isn't it true there  
11                  would still be reliability issues if Bruce Mansfield  
12                  or some other FES plant were to close, even if the  
13                  Commission approved rider RRS, because we are all one  
14                  interconnected RTO grid?

15                  THE WITNESS: I haven't seen the result  
16                  of a reliability study associated with the closure  
17                  of --

18                  EXAMINER PRICE: Let me make it more  
19                  simple, and probably oversimple, just displaying my  
20                  ignorance.

21                  If we proved -- if the Commission  
22                  approved rider RRS and Sammis and Davis-Besse were  
23                  not to close, in the event we would have another  
24                  polar vortex, PJM wouldn't dispatch Sammis and  
25                  Davis-Besse to Ohio in -- to the exclusion of the

1 other states.

2 PJM is just simply going to dispatch it  
3 where it will and we may still have reliability  
4 issues even if RRS were to be approved, in the event  
5 of another polar vortex?

6 THE WITNESS: I'm not sure, because when  
7 I am thinking about the polar vortex, there was a  
8 period of time, on January 7, when the synchronized  
9 reserves to the grid were at 500 megawatts, as I  
10 recall.

11 And so when I think about removing, I  
12 think, which was your question, Davis-Besse and  
13 Sammis, that's certainly in excess of that 500, and  
14 those units were running at that time. So --

15 EXAMINER PRICE: And I guess that's my  
16 point is, even if we did rider RRS and we had another  
17 polar vortex, only this time it was just a little bit  
18 worse, the rest of the forced outage rates throughout  
19 PJM were even worse, there is no guarantee that  
20 Ohioans wouldn't face outages.

21 PJM would dispatch the power wherever  
22 they were going to dispatch the power and Davis-Besse  
23 and Sammis, being under this PPA, would have no  
24 benefit to Ohio. They are not going to dispatch that  
25 power here. They are going to dispatch the power

1       wherever their tariff says it should go, right?

2               THE WITNESS: I guess what I'm trying to  
3       sort out in my mind is a couple of things. One,  
4       paper versus physical for the electricity. As we've  
5       said, the generation from Sammis and Davis-Besse was  
6       built to serve the load electrically in the  
7       companies' service territories, which it would be  
8       independent of any paper or tariff transaction. So  
9       it's difficult for me, from a reliability  
10      perspective, not to acknowledge that.

11              And further, the point I was trying to  
12      make earlier is, if you have a constrained generation  
13      resource, right, which was the situation during the  
14      polar vortex, we were very close to working through  
15      all of the synchronized reserves to the system, it is  
16      my belief that, having continued operation of  
17      baseload generating units with on-site fuel storage  
18      capabilities that are electrically designed to serve  
19      the companies' load, will increase the likelihood  
20      that the system will remain stable and reliable  
21      through that emergency period.

22              EXAMINER PRICE: Thank you. Fair enough.

23              Mr. Petricoff, thank you.

24      Q.     (By Mr. Petricoff) I want to follow up in a  
25      question or two in this area.

1                   When were the plants transferred from  
2                   the -- from the companies to the affiliated  
3                   generation companies? I don't mean an exact date. I  
4                   mean years. How many years ago?

5                   A. I don't remember.

6                   Q. Okay. But it's probably 5 to 10 years?

7                   A. Certainly five, but I don't remember  
8                   specifically beyond that.

9                   Q. Have there been any modifications to the  
10                  PJM grid in the intervening 5 to 10 years?

11                  A. If, by modifications to the PJM grid, you  
12                  mean transmission expansion projects, the answer is  
13                  yes.

14                  Q. Okay. And isn't the goal of PJM to make  
15                  the grid so that load can go from the lowest-cost  
16                  source to the -- to the sync that needs the power?

17                  THE WITNESS: May I have that question  
18                  reread, please, ma'am.

19                  EXAMINER PRICE: Please.

20                  (Record read.)

21                  A. I think, as I have said earlier, PJM has  
22                  a role and responsibility for the reliability of the  
23                  bulk transmission system as well as the operation of  
24                  the wholesale power markets.

25                  Q. So you still believe that the individual

1 utilities control how the grid operates?

2 MR. KUTIK: Objection.

3 EXAMINER PRICE: Grounds?

4 MR. KUTIK: Mischaracterizes her  
5 testimony.

6 EXAMINER PRICE: Please rephrase.

7 Q. Okay. Actually, let me ask a different  
8 question.

9 Is it part of PJM's mission to have an  
10 integrated regional transmission system?

11 A. I can't recall specifically what PJM --  
12 the words for PJM's mission, but that doesn't sound  
13 incorrect to me.

14 Q. Let's move on to another -- another  
15 subject.

16 I believe -- and you may not have the  
17 date here, so I will put the date in. I believe it  
18 was May of 2014 when FirstEnergy Solutions came to  
19 the companies and put the arrangement on the table  
20 for discussion?

21 A. If, by arrangement, you mean the proposed  
22 transaction as we defined it yesterday?

23 Q. Yes.

24 A. Then the answer is yes.

25 Q. Okay. And when FirstEnergy Solutions

1       came, what did they say the reason was for the -- for  
2       the arrangement? Was it to rescue the plants, or was  
3       it to assure rate stability for the retail customers?

4           A.    I don't know what FES said when it came  
5       to the companies, but I know what the companies  
6       concluded when they looked at the proposed  
7       transaction and analyzed it and concluded that it  
8       provided benefits to the companies' customers.

9           Q.    Take me through the process. Who came  
10      from FES to the companies that put the proposal on  
11      the table and what was the process the companies used  
12      to evaluate the proposal?

13          A.    I am not sure, as I sit here today, who,  
14      from FES, approached the companies, but certainly  
15      Mr. Moul could answer that question for you. And it  
16      may have been Mr. Moul.

17                And then with respect to the second part  
18      of your question which is how did the utilities  
19      analyze that proposal, Mr. Ruberto would be the  
20      gentleman to address those questions, too, as he was  
21      the lead on the EDU team.

22          Q.    Okay. Did the company look at  
23      alternatives to the rider RRS to achieve retail rate  
24      stability for its customers?

25                MR. KUTIK: And, again, your Honor, when

1 we're saying "company," are we talking about  
2 companies?

3 MR. PETRICOFF: The companies. Sorry.

4 MR. KUTIK: Should we have that as --  
5 adding that to our glossary.

6 EXAMINER PRICE: From this point out, the  
7 company will refer to the, collectively, Toledo  
8 Edison, Ohio Edison, and CEI.

9 THE WITNESS: May I have the question  
10 reread, please.

11 (Record read.)

12 A. The companies are always looking for  
13 opportunities to provide retail rate stability to its  
14 customers. Examples that come to mind is base  
15 distribution rate freezes that the companies have  
16 proposed and have been accepted in prior ESP cases,  
17 the levelization of our rider AER charges and  
18 probably, perhaps, the best example is the near-term  
19 stabilization benefit of the laddering of our CBP  
20 products for our competitive bid process.

21 Q. Okay. Did you ever consider going out  
22 and buying a financial hedge?

23 A. I did not, sir.

24 Q. Are you familiar with how a financial  
25 hedge works for power?



1           A.    Well, it would be helpful for me to -- I  
2   am not sure that I am, sir, in the context that you  
3   are using the term.

4           Q.    Let's do it this way. Under the rider  
5   RRS, the financial hedge aspect that is supplied is  
6   that, if the price of capacity goes up, then the  
7   plants -- the plants being Davis-Besse and Salmis --  
8   or Sammis -- will be more profitable and, therefore,  
9   when capacity prices go up through the rider RRS, we  
10  will have credits that will flow back; is that a fair  
11  summary of the -- of the way the -- that rider RRS  
12  provides a hedge?

13          A.    No, I don't think that's a fair summary  
14  because, in addition to the capacity revenue, the  
15  rider RRS also contemplates energy revenue, revenue  
16  from ancillary services, as well as revenues, if any,  
17  from environmental attributes associated with the  
18  plants.

19          Q.    Okay. Well, let me try again then.

20                So basically, if capacity, energy,  
21  ancillary services, and environmental attributes, if  
22  the market for those go up, the customers, where  
23  otherwise there would be an increase in price, would  
24  be offset by the additional profits that will flow  
25  through rider RRS; is that a fair summary?

1           A.    I would agree with the summary, except  
2           that I would use -- substitute the words "the  
3           credits" that are flowed through rider RRS.

4           Q.    Fair enough.   Fair enough.   So couldn't  
5           you -- if the idea then was to -- well, let me ask  
6           another foundation question first.

7                    You -- you have great experience in  
8           rates, especially as they apply to retail customers,  
9           correct?

10          A.    I have experience in ratemaking.

11          Q.    Fair to say that the call center at  
12          the -- at the companies will be busy if there was a  
13          dramatic hike in the price of electric service from  
14          the utilities?

15          A.    I don't know whether that would be the  
16          case or not, sir.

17          Q.    Okay.   Let me ask you this.

18                   Do people complain when the price of  
19          their electric service goes up?

20          A.    In my professional experience, customers  
21          want stable, predictable prices for their electric  
22          service.   And the conversations I have with customers  
23          tend to focus on when those rates operate outside the  
24          bounds of what the customers consider stable or  
25          predictable.   That is when I find myself engaged in

1       those conversations.

2               Q.     So it's your testimony, if the company  
3       had a dramatic decrease in price for their electric  
4       service, people would rather -- the retail customers  
5       would call up and complain about the decrease and  
6       want it raised?

7               A.     No, sir, that wasn't my testimony.  But  
8       what I would say to you is I have received, in the  
9       very recent past, history calls -- calls -- a number  
10      of calls from a number of our customers, large  
11      customers, when we had a rate reduce to a level that  
12      they didn't expect and it triggered, in their mind,  
13      this lack of certainty, predictability, stability  
14      relative to the rate.  And yes, I did field a number  
15      of questions from our industrial customers about that  
16      rate reduction, sir.

17              Q.     Okay.  But they weren't complaining about  
18      the lower rate.  They were complaining about  
19      uncertainty made of a higher rate that was coming  
20      because of it?

21                    THE WITNESS:  May I have the question  
22      reread, please.

23                    (Record read.)

24              A.     No, sir.  I don't think that's the case.  
25      The calls that I took were trying to raise questions

1 about the lack of stability, certainty, and  
2 predictability about the rate and impress upon me the  
3 importance of those attributes to the customers.

4 Q. And those were a few industrials.

5 What about the million and a half  
6 residential, small, commercial customers that you  
7 serve? Do any of them complain when the rates go  
8 down?

9 A. I don't know, sir.

10 Q. Okay. If the goal was to predict --  
11 well, let me ask this question.

12 If we were looking at rate stability,  
13 should we be focusing on how to prevent price spikes  
14 or just how to keep the prices within a range where  
15 it doesn't change by more than a few percent?

16 A. I think, if we are focusing on providing  
17 rate stability to our customers, we would certainly  
18 want to avoid price spikes for our customers and we  
19 would want to provide more stable, predictable prices  
20 for our customers.

21 And we believe that the retail rate  
22 stability rider, by virtue of the fact that it will  
23 move counter to the market, will contribute to that  
24 stability and certainty for our customers.

25 Q. I wasn't questioning about what the goal

1 was. I'm looking to see what the -- what the goal of  
2 the filing was. I am looking to see what the goal  
3 should be for rate stability.

4 Isn't it true, if you charged a dollar a  
5 kilowatt-hour, could you make a 100 percent assurance  
6 that, given the projections or prices, we would have  
7 no price increase; there would be zero change.

8 Would that be an acceptable plan?

9 THE WITNESS: May I have the question  
10 reread, please, ma'am.

11 (Record read.)

12 A. Sir, I can't see a circumstance where, if  
13 I changed may rates now to a dollar per  
14 kilowatt-hour, that anyone would consider that to be  
15 stable rates.

16 Q. But if you promise it wouldn't change for  
17 10 years, that would be a stable rate, correct?

18 A. No. There would be a dramatic step  
19 increase and then the rate would be held constant  
20 thereafter, but the rate would not be stable.

21 Q. I am going to go back. In rate  
22 stability, isn't it more important to prevent price  
23 spikes than to try to keep the rate from changing  
24 within a moderate zone? Isn't that the goal of rate  
25 stability, from a customer's perspective?

1           A.    I think, and I believe I said this  
2   before, rate stability should work to mitigate  
3   volatile prices as well as mitigate the impact of  
4   price increases other the period.

5           Q.    Well, couldn't the company achieve that  
6   if they simply went out in the market and brought a  
7   financial hedge and said if, in fact, the price of  
8   power on the PJM market goes above X, that would be  
9   the strike price; then, basically, they have the  
10   financial hedge that would pay us some back, too, so  
11   you could limit the rate?

12                    Wouldn't that be a better way to do it  
13   than -- than betting on the outcome of one particular  
14   or two particular power plants?

15           A.    No, sir, because the suggestion that you  
16   make would not bring with it the benefits that would  
17   accrue to the companies' customers as well as the  
18   State of Ohio in addition to Retail Rate Stability  
19   that would be provided under the economic stability  
20   program.

21           Q.    But didn't you just tell me earlier that,  
22   if the plants don't close, those -- those attributes  
23   don't come into play? We don't have to worry about  
24   redoing the transmission if you don't close the  
25   plant? You don't have to worry about people being

1       laid off if I don't close the plant. I am just  
2       looking at the retail stability point.

3               Wouldn't it be better to have a retail  
4       stability point that had a strike price certain as  
5       opposed to just what the future profitability of two  
6       plants are?

7               MR. KUTIK: Objection, your Honor. Asked  
8       and answered.

9               MR. PETRICOFF: Sorry. What was the  
10      objection?

11              MR. KUTIK: Asked and answered.

12              EXAMINER PRICE: Asked and answered.  
13      Overruled.

14              THE WITNESS: May I have the question  
15      read reread, please.

16              EXAMINER PRICE: Please.

17              (Record read.)

18              A. I believe what I testified to earlier is  
19      that the future of the plants is uncertain, so there  
20      is a concern that the plants will not continue to  
21      operate. And I don't believe it's appropriate to  
22      look at one narrow aspect of the company's proposal  
23      in isolation without considering the entirety of the  
24      company's proposal.

25              Q. But right now I want to look at just the

1 one aspect, rate stability. Wouldn't you agree with  
2 me that, if the price of energy, capacity, ancillary  
3 services, and power increase in the market, but the  
4 price to produce the power and capacity and ancillary  
5 services from the Davis-Besse and the Sammis plant  
6 are greater than the market, then, actually, the  
7 rider RRS would contribute to a price spike, not  
8 offset it?

9 A. Rider RRS is designed such that when  
10 market revenues are less than the costs of operating  
11 the plant, that is a charge to the customers in a  
12 period when market prices are lower and customers are  
13 paying lower prices for energy, capacity, and  
14 ancillary services.

15 To the extent as forecasted when those  
16 market prices increase, then market revenues would  
17 exceed the costs of operating the plant and that  
18 would serve as a credit through rider RRS to mitigate  
19 the impact of those increasing prices on the  
20 companies' customers.

21 Q. Well, that's right. Now I am asking you  
22 in the hypothetical in which prices go up but the  
23 prices for Davis-Besse and Sammis go up more so that  
24 they are not profitable, doesn't the rider RRS  
25 actually make the price stability worse by raising



1 the price?

2 MR. KUTIK: Objection, asked and  
3 answered.

4 MR. PETRICOFF: I don't think I have  
5 gotten an answer.

6 EXAMINER PRICE: I don't think she has  
7 answered yet. Please answer the question.

8 A. I am not sure, sir, and perhaps you could  
9 help me understand what you mean by profitability in  
10 the context of this discussion.

11 Q. Certainly. When we look at the operation  
12 of the rider RRS, we net out reasonable expenses  
13 against revenues, correct?

14 A. Correct.

15 Q. Okay. If, in fact, the price of power  
16 and capacity go up, but the price of power and  
17 capacity generated at these plants go up more, then  
18 it is possible that both will be an increase in the  
19 regular price that -- that customers have to pay for  
20 the power and, because there will be losses from  
21 these two plants that they will have to make up, the  
22 retail rate stability rider will actually make the  
23 price spike larger?

24 A. In the circumstance that you, I believe,  
25 are laying out where the costs of operating the plant

1 are reasonable but higher than the market prices,  
2 there would be a charge to the customers.

3 However, the customers would also benefit  
4 in all the other ways we've described from the  
5 continued operation of the plants in terms of the  
6 avoidance of the transmission investment, the  
7 additional reliability benefits, and the economic  
8 development benefits that we've discussed.

9 MR. PETRICOFF: I move to strike that  
10 last part of the answer where she went off to then  
11 nonrate stability aspects. That was not part of the  
12 question.

13 EXAMINER PRICE: We'll give the witness  
14 leeway on this particular answer, but we will ask you  
15 to try to answer the question and only the question  
16 on a going-forward basis.

17 Q. Let's focus in now on the -- on the  
18 operation of the proposed rider RRS. We've talked  
19 about the costs that would be -- that would be  
20 included.

21 As part of the costs, there would be an  
22 11.15 percent return on the equity investment that --  
23 I guess it's FES has in the plant?

24 A. No, sir. As we discussed yesterday, the  
25 term sheet indicates that there will be an agreed-to

1 capital structure for purposes of the transaction and  
2 50 percent equity and 50 percent debt, which would  
3 likely differ from the actual equity or capital  
4 structure associated with FirstEnergy Solutions.

5 Q. But basically, when we are -- well, let's  
6 go back.

7 Earlier, you indicated to me that the way  
8 the rider RRS works, we are going to net revenues and  
9 expenses. Now I am looking at the expenses.

10 First, one of the expenses would be the  
11 capital contributions for the plant. Is it correct  
12 that the capital contributions are going to be  
13 whatever the theoretically-constructed book value is  
14 of these plants times 11.15 percent?

15 A. No, sir.

16 Q. Okay. Explain to me then how the capital  
17 costs for the power plants Davis-Besse and Sammis are  
18 going to be calculated for purposes of rider RRS.

19 THE WITNESS: May I ask you to reread the  
20 question?

21 (Record read.)

22 A. The calculation of the capacity payments  
23 that would be included in the transaction -- proposed  
24 transaction, the specifics of that calculation are  
25 detailed in Sierra Club Exhibit 1 we discussed

1 yesterday.

2 Q. Okay. And can you summarize that  
3 quickly? How will the capacity payments be  
4 calculated?

5 A. The capacity payment is going to be equal  
6 to the sellers' invested capital times the weighted  
7 average cost of capital, which means the sum of the  
8 equity component and the debt component of the  
9 weighted average cost in capital, weighted average  
10 cost of capital using a 50 percent equity and  
11 50 percent debt capital structure.

12 The 50 percent equity would have a return  
13 on equity of 11.15 percent. And the 50 percent debt  
14 would have a cost equal to FirstEnergy Solutions  
15 long-term embedded cost of debt --

16 Q. I want to take that data --

17 A. -- divided by 12.

18 Q. Oh, I'm sorry.

19 And that gives a monthly rate then by  
20 dividing it by 12?

21 A. Right.

22 Q. Okay. Let's go back to that first part.  
23 If we are talking about the Davis-Besse plant or, for  
24 that matter, the Sammis plant, FirstEnergy Solutions  
25 doesn't own it; is that correct? I am trying to

1 figure out -- let me withdraw the question.

2 I am trying to figure out whose  
3 investment -- where do the investment dollars come  
4 from that we are going to apply the theoretical  
5 capital structure of 50 percent debt, 50 percent  
6 capital? Where is the basis of that -- of that  
7 investment? Where does that come from?

8 MR. KUTIK: Objection, your Honor. I  
9 think we have about three or four questions in that.

10 EXAMINER PRICE: I don't think we have  
11 actually gotten to this specific question, so we will  
12 go ahead and allow the question.

13 MR. KUTIK: All I am saying is this  
14 particular question has three or four questions in  
15 it.

16 EXAMINER PRICE: Oh, I'm sorry.

17 MR. PETRICOFF: He's complaining it's a  
18 compound question.

19 EXAMINER PRICE: I'm sorry. I  
20 misunderstood.

21 MR. PETRICOFF: I'll break it up. We  
22 will take it in pieces.

23 Q. You have just given me a formula. And  
24 the first variable in the formula is what the  
25 investment is, correct?

1           A.    Net of depreciation and accumulated  
2 deferred income taxes, correct.

3           Q.    I assume there is a book value somewhere  
4 that's going to be applied here. Whose book value?  
5 Where does that value come from?

6           A.    That book value would be provided to the  
7 companies in the monthly invoice from FirstEnergy  
8 Solutions.

9                     If your question is where does it come  
10 from to arrive in the calculation in the invoice to  
11 the companies, then I would suggest that question is  
12 better addressed to Mr. Lisowski from FirstEnergy  
13 Solutions.

14          Q.    Do you know the answer?

15          A.    I think the number would come from the  
16 books and records associated with the plant, but I  
17 think your specific question is: Are those books and  
18 records of FirstEnergy Solutions or FirstEnergy  
19 Nuclear Generation or FirstEnergy Generation? And if  
20 that is your question, no, I don't know that answer.

21          Q.    Well, actually, you answered both parts  
22 of the compound question. And that brings me up to  
23 the next part.

24                     How would the staff of the Commission  
25 audit this? Are they going to have access to these

1 books?

2 A. I believe the staff would ask the  
3 companies' data requests. And as we discussed  
4 yesterday, the term sheet has a specific provision  
5 which requires the seller to respond to inquiries  
6 from the companies -- to respond to governmental  
7 authorities' requests for information to prepare for  
8 and to make regulatory filings or as required by law  
9 with respect to the buyers.

10 Q. And the Commission is not going to --  
11 this is a draft that we are reading from, correct?  
12 It says "Draft" on it? It's a draft?

13 A. I think, as I testified yesterday, sir,  
14 this agreement -- this term sheet represents an  
15 agreement in principle between the buyer and the  
16 seller, and I believe it reflects all of the terms  
17 and conditions that will end up in the final  
18 contract.

19 Q. Okay. But we don't have a final contract  
20 now. We don't have a final Purchase Power Agreement.

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

23 EXAMINER PRICE: Sustained.

24 Q. And that -- that Purchase Power  
25 Agreement, when it comes, will not be reviewed or

1 approved by this Commission?

2 MR. KUTIK: Objection, asked and  
3 answered.

4 EXAMINER PRICE: Sustained.

5 Q. Does the Commission then have to assume  
6 that the return of 11.15 percent is inviolate and  
7 can't be changed?

8 A. Yes.

9 Q. So it's take it or leave it at  
10 11.15 percent rate of return?

11 A. As it relates to the proposed  
12 transaction.

13 Q. That's correct.

14 A. Yes.

15 EXAMINER PRICE: But the Commission  
16 could, in approving rider RRS, put a limit upon the  
17 amount of the return on equity that we will allow the  
18 companies to recover from the ratepayers; isn't that  
19 true?

20 THE WITNESS: That is not the company's  
21 proposal, sir.

22 EXAMINER PRICE: Oh, I understand. No  
23 surprise there. But it is true that, although the  
24 Commission does not review the proposed transaction,  
25 we have full review over rider RRS and the



1 Commissioners will scan or put any limits, if any,  
2 they view are supported by the record and justified  
3 by the law, correct?

4 A. Yes. And to the extent there are  
5 modifications to the proposal, then the company  
6 has --

7 EXAMINER PRICE: You get a vote, too.

8 THE WITNESS: Thank you.

9 MR. KUTIK: Well, Ms. Mikkelsen, had you  
10 finished your answer? The Attorney Examiner,  
11 helpfully, finished your answer for you, but I don't  
12 know if you had finished your answer.

13 THE WITNESS: I did.

14 Q (By Mr. Petricoff) If the Commission did,  
15 in fact, put in a provision that says, "We're going  
16 to limit the rate of return, but we will authorize  
17 for payment to 5 percent," would that change other  
18 provisions in the -- in the Purchase Power Agreement?

19 A. Sir, I think what we have said is the  
20 Commission cannot change any of the terms in the  
21 Purchase Power Agreement. We are not seeking  
22 Commission approval of the Purchase Power Agreement  
23 and, therefore, the Commission is not at liberty to  
24 change the terms of the Purchase Power Agreement.

25 Q. But FES and the companies then, at any

1 time, could just meet and append the PPA as they see  
2 fit, any time during the term?

3 A. No. I think the term sheet contains very  
4 specific and limited provisions that would allow for  
5 a change such as the condition of force majeure or  
6 when a capital expenditure would render further  
7 operation of the unit uneconomic, but in the main,  
8 the term sheet contemplates the operation -- or  
9 pardon me -- the continuation of the agreement over  
10 the 15-year term under the terms and conditions  
11 contained in the term sheet.

12 Q. Could the Sammis plant be converted to  
13 natural gas?

14 A. I don't know.

15 Q. Who -- under the term sheet, who would  
16 have to approve the capital -- let's see.

17 Who would have to approve converting  
18 Sammis to gas under the -- under the term sheet?

19 MR. KUTIK: Objection, your Honor.

20 EXAMINER PRICE: Grounds?

21 MR. KUTIK: There are no facts in this  
22 record, there is no suggestion in this record that  
23 there was any plans or contemplation or any notion of  
24 conversion. In fact, it was just the opposite.

25 MR. PETRICOFF: Your Honor, it's a

1 15-year agreement. And it is certainly foreseeable  
2 that conversion, especially if given the outcome of  
3 EPA Rule 111(d) may be very attractive. I'm asking  
4 what happens. If that occurs, how does -- how does  
5 the term sheet deal with it?

6 EXAMINER PRICE: We will allow  
7 Ms. Mikkelsen to answer the hypothetical.

8 A. The term sheet is very specific that the  
9 facilities included in the proposed transaction are,  
10 quote, W.H. Sammis plant a 2,220-megawatt coal-fired  
11 and 13-megawatt diesel-fired power plant, and this is  
12 a unit contingent arrangement.

13 So I don't believe the term sheet  
14 contemplates nor would it allow for a conversion.  
15 The term sheet is very specific with respect to what  
16 the facilities are and how those facilities are  
17 powered.

18 Q. So even if it was economically  
19 advantageous and beneficial in terms of the overall  
20 profitability of the plant which is now going to be  
21 shared with -- with the customers, couldn't be  
22 converted, any units.

23 MR. KUTIK: The same objection, your  
24 Honor.

25 MR. PETRICOFF: Well, your Honor, I think

1 it's important to know if we are digging ourselves  
2 into a hole here for the next 15 years.

3 EXAMINER PRICE: I would like to hear the  
4 answer to this. Overruled.

5 THE WITNESS: May I have the question  
6 reread, please, ma'am.

7 (Record read.)

8 A. May I ask you to restate it?

9 Q. Yeah. I think so.

10 Is it your testimony that, given the  
11 nature of the term sheet, for the next 15 years, the  
12 companies and FES would be precluded from converting  
13 any units of Sammis to natural gas?

14 A. Yes, that is my read of the document,  
15 although you could certainly address those concerns  
16 to Mr. Ruberto, who negotiated the document, but,  
17 again, if the underlying -- one of the underlying  
18 benefits of the economic stability program is  
19 fuel-diverse baseload-generating plants with on-site  
20 fuel storage capabilities, then I think it would be  
21 important to the companies that they remain  
22 fuel-diverse baseload-generating plants with on-site  
23 fuel capabilities.

24 Q. Okay. Let me move on to another topic.

25 EXAMINER PRICE: Before you move on --

1 MR. PETRICOFF: Oh, sure.

2 EXAMINER PRICE: -- I would like to go  
3 back. Rolling back just a minute or two on staff  
4 audits. We discussed the issue about that the  
5 proposed transaction, which isn't subject to  
6 Commission review, provides that FirstEnergy  
7 Solutions will provide any information that  
8 FirstEnergy needs in order to participate in the  
9 staff audit.

10 And you kind of mentioned this yesterday,  
11 but I just want to be clear on the record. You  
12 believe that the companies are bearing the risk so  
13 that FirstEnergy Solutions doesn't produce the  
14 day-to-day need to bear -- to meet their burden of  
15 proof in a prudence review, the companies bear that  
16 risk and will -- and will accept the results  
17 accordingly?

18 THE WITNESS: I think, under rider RRS,  
19 the companies have the burden of proof to demonstrate  
20 that the costs included in the rider and the revenues  
21 included in the rider are reasonable.

22 EXAMINER PRICE: And I understand you are  
23 not an attorney, and so if you cannot answer these  
24 questions, that's fine, but -- and under rider RRS,  
25 it contemplates that the companies were dissatisfied

1 with the Commission's decision in a prudence review,  
2 they could appeal to the Ohio Supreme Court; is that  
3 correct?

4 THE WITNESS: Yes.

5 EXAMINER PRICE: Are the companies  
6 committing that they would only pursue state remedies  
7 in this situation and would not pursue a federal  
8 remedy, either at FERC or Federal District Court,  
9 claiming perhaps that the Commission was trapping  
10 costs as a result of Commission prudence review?

11 MR. KUTIK: I'll object to the extent  
12 that it does call for a legal conclusion.

13 EXAMINER PRICE: It was worth a shot.  
14 Thank you.

15 Q. (Mr. Petricoff) Let's continue on in that  
16 vein. I'll skip ahead and take on those -- those  
17 questions now about the -- I think you referred to it  
18 as the -- we have the two-step process of review.

19 And the first step, you'll agree with me,  
20 that's a mathematical review, or I think, as you  
21 called it yesterday, an accounting review of the  
22 revenues and costs that would be turned in to the  
23 staff?

24 A. I think the first review is a  
25 mathematical review.

1           Q.    Okay.  First review is a mathematical  
2   review.

3           A.    As well as for consistency with  
4   Commission-approved rate design and incorporation of  
5   prior audit findings, if applicable.

6           Q.    And basically, the staff's got two months  
7   to get that done.  You'll file and, in two months,  
8   the period for -- for challenging that by the staff  
9   will be over?

10          A.    That's right.

11          Q.    Okay.  And then we come to -- we come to  
12   step two.  And that's where the staff can review both  
13   the revenues and the expenses.  Let's start with  
14   the -- with the revenues.

15                How will the staff know what power was  
16   dispatched by the companies when and at what prices?  
17   Will there be a standard filing where they are going  
18   to turn this information in?

19          A.    I expect the staff would ask the  
20   companies for the information that it feels necessary  
21   in order to conduct its review.

22          Q.    You will agree with me that, because it  
23   will be the customers who are paying any operational  
24   losses, it would be important not to dispatch power  
25   at a price that was greater than the -- I'm sorry --

1 a price that was lesser than the variability costs of  
2 generating that power, fair statement?

3 THE WITNESS: May I have that statement  
4 reread, please.

5 (Record read.)

6 A. I'm not sure I fully understand what you  
7 mean by operational losses.

8 Q. Okay. Let's -- let's -- that's a fair  
9 question. Let's break it up into -- into pieces.

10 You will agree with me that power is  
11 dispatched on a clock-hour basis? I'm sorry.

12 Power is sold on a clock-hour basis.

13 A. I believe that's correct.

14 Q. Okay. And so the companies are going  
15 to -- let me make sure we have got this.

16 And it will be the companies that are  
17 going to dispatch the power, not FirstEnergy  
18 Solutions and, when I say dispatch the power,  
19 dispatch the power from Davis-Besse and Sammis, if  
20 rider RRS is approved?

21 A. Correct.

22 Q. Okay. And wouldn't it be prudent that  
23 there be dispatching rules or protocols that would  
24 prohibit dispatching power if the revenues received  
25 would be less than the variability cost of making the



1 power -- of generating the power?

2 A. I think Mr. Ruberto is the gentleman to  
3 address specific questions about dispatch. However,  
4 I would say to you, as it relates to the review  
5 process, the company has proposed that the  
6 Commission, as part of the second review process, has  
7 had the opportunity to review the revenues included  
8 and netted against the cost to produce either the  
9 charge or credit for rider RRS to determine whether  
10 or not those revenues are reasonable.

11 Q. Okay. Well, let's say that the staff  
12 goes out and gets a consultant to help them with --  
13 with this -- with this task. And now the companies  
14 have to respond to the consultant's report and they  
15 get their own consultant.

16 Would the cost of the -- of the fees of  
17 the consultant and the efforts of the company to  
18 refute the claims of the staff be an expense that  
19 would go through rider RRS to the customers?

20 MR. KUTIK: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. KUTIK: Asked and answered.

23 MR. PETRICOFF: I don't think so.

24 EXAMINER PRICE: Can you appreciate --

25 MR. KUTIK: Ms. Bojko asked those

1 questions yesterday about the cost of the audit.

2 MR. PETRICOFF: In general, I am giving  
3 her a hypothetical here.

4 MR. KUTIK: Costs are costs.

5 EXAMINER PRICE: Yeah.

6 MR. PETRICOFF: Nuance is everything.

7 MS. BOJKO: Your Honor, I don't believe I  
8 asked those questions yesterday.

9 MR. KUTIK: Yes, you did.

10 EXAMINER PRICE: We will let her answer  
11 this one.

12 A. As proposed, any expenses incurred by the  
13 companies associated with the audit process would be  
14 recovered in rider RRS.

15 Q. And when the companies are dispatching  
16 the Sammis and Davis-Besse, aren't they going to be  
17 in direct competition with FES dispatching its units?

18 MR. KUTIK: Objection.

19 EXAMINER PRICE: Grounds?

20 MR. KUTIK: Relevance.

21 EXAMINER PRICE: Mr. Petricoff?

22 MR. PETRICOFF: Oh, you know, we have set  
23 up a system here. They are in competition. And if  
24 the FES, the profits don't have to be shared, and the  
25 Sammis and Davis-Besse plants, the profits do have to

1 be shared, that's an issue. That's got to be  
2 considered. Dual loyalties are always an issue.

3 MR. KUTIK: There's no evidence that  
4 there is any dual loyalty anywhere. There is no  
5 evidence as to who is going to be dispatching and has  
6 any loyalty other than to the companies.

7 EXAMINER PRICE: I am not even  
8 comfortable with the term dual loyalty.

9 MR. PETRICOFF: Your Honor, if I could,  
10 just to simplify it, if they are going to be in  
11 competition with each -- with each other -- with each  
12 other, and they are affiliated, that's an issue the  
13 Commission must consider.

14 EXAMINER PRICE: Okay. So let's go ahead  
15 and we will overrule the objection. The witness can  
16 answer the question.

17 THE WITNESS: May I have the question  
18 reread, please.

19 (Record read.)

20 A. I don't know. I think that question  
21 should be addressed to Mr. Ruberto.

22 Q. You don't know whether they will be in  
23 competition --

24 MR. KUTIK: Objection. Finish your  
25 question, sir. I'm sorry.

1 MR. PETRICOFF: She had answered that.  
2 If I remember -- if I heard correctly, she answered  
3 that that's better to ask someone else. And I am  
4 just asking her if she knows the answer.

5 Q. Do you know whether they will be in  
6 competition?

7 A. What I answered, sir, to the question  
8 before was I don't know. That question is better  
9 addressed to Mr. Ruberto.

10 Q. Okay. Fair enough. Let's talk about --  
11 let's talk about risk now and risk assignment.

12 Currently, if the cost of generation is  
13 greater than the revenues -- if the cost of  
14 generation, sale of ancillary services, environmental  
15 attributes, and power, and if I didn't say capacity,  
16 put capacity in there, too -- if, basically, the cost  
17 of generating the power and keeping the facility up  
18 is -- is less than the revenues that the company can  
19 get for the unit, who bears the risk today?

20 A. Again, the companies' proposal is for a  
21 retail rate stability mechanism. The design of the  
22 retail rate stability mechanism is to provide  
23 customers a charge in the period where market prices  
24 are low and, therefore, revenues are less than costs  
25 and a credit to the customers in those periods when

1 market prices are higher than the costs.

2 MR. PETRICOFF: Your Honor, I will move  
3 to strike that. I asked her the question of who  
4 bears the risk at the moment for unmarketable power,  
5 an unmarketable power plant.

6 MR. KUTIK: I am not sure she finished  
7 her answer.

8 MR. PETRICOFF: I'm sorry if you haven't.

9 EXAMINER PRICE: Go ahead and complete  
10 your answer.

11 THE WITNESS: My answer was complete.

12 MR. KUTIK: I apologize.

13 EXAMINER PRICE: Your answer will be  
14 stricken. He is asking not what the company has  
15 proposed, but I think he is asking as a foundational  
16 question what the situation is today.

17 THE WITNESS: I'm sorry. I don't  
18 understand the question, then, what the situation is  
19 today, what that means.

20 Q. That's fine. We'll just start over  
21 today.

22 Right now, what is the entity that has  
23 the risk if the sale of the power, the capacity, the  
24 ancillary services, and the environmental attributes  
25 from the Sammis and Davis-Besse plants do not equal

1 the revenues that can be -- can be obtained, who  
2 takes the loss at the moment?

3 MR. KUTIK: May I have the question read?  
4 I apologize.

5 EXAMINER PRICE: Don't apologize. Go  
6 ahead and reread the question, please.

7 (Record read.)

8 MR. KUTIK: Your Honor, I guess he is  
9 talking about the sale, comparing it to the revenue.

10 EXAMINER PRICE: I believe he is asking:  
11 If the costs exceed the revenues, who bears the risk  
12 of loss?

13 MR. PETRICOFF: I tell you what. If I  
14 could, I will withdraw the question and reask it.

15 EXAMINER PRICE: I liked the way I  
16 phrased it.

17 MR. PETRICOFF: Never mind.

18 EXAMINER PRICE: Never mind. Go ahead.  
19 Withdraw the question.

20 MR. PETRICOFF: Although -- off the  
21 record for a second.

22 (Discussion off the record.)

23 (Recess taken.)

24 EXAMINER PRICE: Let's go back on the  
25 record.

1 Mr. Petricoff.

2 MR. PETRICOFF: Yes. Thank you, your  
3 Honor.

4 Q. (By Mr. Petricoff) Ready?

5 A. Yes, sir.

6 Q. Okay. Thank you. Okay.

7 Currently, who has the risk of whether  
8 the Sammis and Davis-Besse plants are profitable?

9 A. FirstEnergy Solutions has that risk. And  
10 as I think about it more, I'm not entirely sure, in  
11 our earlier discussion, but I would say that, as I  
12 think about it more, FirstEnergy Nuclear Generation  
13 as well as FirstEnergy Generation are both  
14 subsidiaries of FirstEnergy Solutions.

15 Q. Okay. And if rider RRS, as -- as  
16 requested in the application, is approved, isn't it  
17 true then that, basically, the risk of the  
18 profitability outside of -- assuming only reasonable  
19 costs are -- are incurred, is now going to be shifted  
20 to the retail customers?

21 A. I believe, if rider RRS is approved, it  
22 will provide a rate stabilization mechanism and  
23 benefits to the customers as well as the other  
24 benefits associated with the economic development --  
25 pardon me -- the economic stability program.

1           Q.     Putting aside whether it's -- whether  
2     rider RRS is good or bad for the public, the question  
3     is: Just in terms of risk, who is now going to bear  
4     the risk for the profitability? Is it going to be --  
5     assuming reasonable costs, isn't it true that it's  
6     going to be the retail customers?

7           A.     Again, I am, a little bit, struggling  
8     with the term profitability of the plants, because  
9     the plants and FES will be paid pursuant to the term  
10    sheet as part of the proposed transaction.

11           Then from a company perspective, again,  
12    that output will be sold into the market, right, and  
13    we will net that market revenue with those costs.

14           Q.     But when we get done netting the costs,  
15    okay, if it's negative, who is going to pick up the  
16    bill? Isn't it going to be the retail customers?

17           A.     If, when we net market revenues with the  
18    costs of the transactions and the revenues are  
19    incurred in a reasonable manner and the costs  
20    incurred are also reasonable, then either the net  
21    charge or credit would flow through to the customers  
22    under rider RRS.

23           Q.     My question is just about profitability.  
24    So if there -- if there is no -- if there were no  
25    profits of those losses, those losses are the



1 responsibility of the retail customer financially?

2 A. Sir, if your use of profits relates to:  
3 If, when I net market revenues against costs, there  
4 is a rider RRS charge, if, to you, that equals lack  
5 of profitability -- is that what you are saying, sir?

6 Q. I am asking -- the question was about  
7 risk. If the company -- if the -- if the operation  
8 of the Sammis and Davis-Besse facilities are not  
9 profitable, including paying 11.15 percent return,  
10 then that loss is now going to be transferred from  
11 FES to the retail customers; isn't that correct?

12 MR. KUTIK: Objection, your Honor. The  
13 witness asked for clarification with respect to the  
14 term profitability. Counsel has not provided that  
15 clarification.

16 EXAMINER PRICE: Please, define what you  
17 mean by profitability.

18 Q. If, after paying all of the expenses,  
19 including the return on capital, there -- the  
20 revenues are not equal to those expenses, that is an  
21 absence of profitability?

22 EXAMINER PRICE: Can you answer the  
23 question now?

24 A. I apologize. I thought I did. If, under  
25 that definition, you're equating a lack of

1 profitability to a rider RRS charge, then the charge  
2 would go to the companies' customers.

3 Q. Okay. The companies' customers includes  
4 senior citizens, college students, and work-a-day  
5 people who are living from paycheck to paycheck?

6 A. The companies have over 2 million  
7 customers who will be benefited by the retail rate  
8 stability provision.

9 Q. I didn't ask that. I asked whether there  
10 were --

11 MR. KUTIK: Frankly, your Honor, at this  
12 point, it's argumentative.

13 EXAMINER PRICE: Sustained.

14 Q. Okay. Who knows more about the  
15 operations and potential profitability of the  
16 companies? The customers, the retail customers, or  
17 the employees and officers of FES?

18 A. I don't know what knowledge the officers  
19 of FES have about the profitability of the companies.

20 Q. But surely, you would agree with me that  
21 the -- that the decision makers in FES know more  
22 about the operation and relative risk of  
23 profitability on the plants than the 2 million  
24 customers that the company serves?

25 MR. KUTIK: Objection, asked and

1 answered. She said she doesn't know.

2 EXAMINER PRICE: With the clarification  
3 that Mr. Petricoff included in the last question, do  
4 you know?

5 THE WITNESS: If the question is: Does  
6 the management of FES know more about the operation  
7 of the plants than the companies' customers?

8 Q. Yes.

9 A. I believe that would be true.

10 Q. I just have a couple of cleanup items,  
11 then, on areas that have been -- that have been  
12 explored extensively earlier today and yesterday.

13 I want to talk to you about the high load  
14 factor time-of-use pilot that was proposed in this  
15 second amendment to the stipulation.

16 As I recall earlier today, you indicated  
17 that there were eight criteria that had to be made in  
18 order to qualify for the pilot, correct?

19 A. Yes.

20 Q. Okay. And one of them was that a  
21 significant portion of the load was refrigeration.

22 In terms of cost of serving the customer,  
23 does it make any difference to the company whether  
24 the -- the kW and kWh to serve the customer and goes  
25 to the customer's meter on the other end of the meter

1 end up in refrigeration as opposed to heating or  
2 running motors?

3 A. While it does not matter to the company  
4 in terms of its cost to serve the company, it is  
5 important or considered important to the company to  
6 have as homogenous a group of pilot participants as  
7 possible in this pilot so the companies are better  
8 able to compare and evaluate customers that  
9 participate. And so that serves to contribute to the  
10 overall homogenous nature of the pilot participants.

11 Q. Is the pilot testing the impact of  
12 refrigeration?

13 A. No. The pilot is testing the  
14 responsiveness or the willingness of high load factor  
15 commercial customers with a major portion of their  
16 load served with refrigeration to respond to capacity  
17 price signals on peak in order to measure whether or  
18 not they are able to further improve their load  
19 profile on peak as a result of these capacity price  
20 signals.

21 Q. How will the company know whether it's  
22 for refrigeration or not for refrigeration? The use  
23 of the power?

24 A. I'm not sure I understand the question,  
25 sir.

1           Q.    Let me ask you this question.  The  
2 stipulation talks about significant use.  Can you  
3 quantify what significant is?

4           A.    The stipulation actually reads having  
5 refrigeration is a major portion of load --

6           Q.    Can you quantify a major portion of the  
7 load?

8           A.    I wasn't quite done, sir.

9           Q.    Oh, sorry.

10          A.    In terms of saying a major portion of the  
11 load, the companies did not have a specific percent  
12 of load in mind but rather that criteria was included  
13 to eliminate facilities that may have refrigeration  
14 as an incidental portion of their load.

15                So, for example, if there is a commercial  
16 office facility that has a cooler or a couple of  
17 refrigerators in the break room, those would not be  
18 able to participate in the pilot because that would  
19 not contribute to the kind of comparability of the  
20 pilot participants that we were looking for in this  
21 pilot.

22          Q.    So the goal is, basically, then, to see  
23 whether customers who have refrigeration will respond  
24 to time-of-day pricing?

25          A.    Again, the pilot is designed to focus on

1 high load factor customers. So, typically, high load  
2 factor customer is just that; they already have a  
3 high load factor, right?

4 And now we are trying to identify if  
5 those customers who already have a load factor  
6 greater than 70 percent with a capacity price signal  
7 higher than our standard service offer rate in those  
8 mid-day summer hours would respond to that price  
9 signal.

10 And, in fact, that's part of the reason  
11 the companies agreed, in negotiations, to holding the  
12 150-dollar capacity price constant, because we felt,  
13 A, that was representative of the average price of  
14 the capacity auctions that had cleared in the four  
15 prior years prior to reaching the stipulation.

16 I might add that number was corroborated  
17 in the '18-19 base residual auction that cleared, but  
18 what we thought, given the historical volatility in  
19 that rate, if we allowed that to track on a volatile  
20 basis, customers might not be willing to make the  
21 technology investment that might be necessary in  
22 order to manage their on-peak load.

23 So we felt holding that number constant  
24 might -- over a three-year period, might send an  
25 appropriate price signal, while we are testing if

1     it's an appropriate price signal, to induce customers  
2     to take action to further refine their on-peak load  
3     profile.

4             Q.     So if the goal is to look to see whether  
5     this level of price incentive will get people to  
6     change, don't you need to have a statistically  
7     significant number of applicants?

8             A.     I think we were trying to address that  
9     concern when we said pilot participants need to have  
10    at least 30 facilities located in the companies'  
11    service territories such that, once they have those  
12    30 participants, they could elect to have some of  
13    those facilities participate in the pilot.

14            They could elect to -- any number of  
15    things: Test behavioral changes, test technology  
16    changes, they could have some of those facilities  
17    take SSO service, some could take shopping service.

18            But having that broad 30-facility --  
19    pardon me. That requirement for 30 facilities under  
20    common management with similar load attributes would  
21    allow to us make the very comparison that you are  
22    talking about, sir.

23            Q.     But the 30 facilities are only for one  
24    customer. I guess my point is: If you only have  
25    one -- one customer that shows up who can make all of

1     these criteria, one or two, do you really have the  
2     basis of a study, because you don't have a lot of  
3     participants, if the goal is to test when people move  
4     to -- to adjust their use with refrigeration?

5             A.     I think a participant with 30 facilities  
6     in this service territory provides a measure or view  
7     of what -- you know, of a comparison of what a  
8     customer might do. To the extent that there are two  
9     or more participants, that would only broaden the  
10    study group.

11            Q.     Just one last question on this area and  
12    that is: Isn't it true that the more specific the  
13    restrictions get into who can participate in the  
14    program, the less significant in terms of statistics  
15    the outcome is going to be because you're not going  
16    to have very many participants? It's a balancing  
17    act, isn't it?

18            A.     I am not sure I agree -- I mean, what I  
19    know that the companies have offered and continue  
20    today to offer is a time-of-use rate that holds  
21    capacity constant on a year -- annual basis and  
22    varies energy.

23                   And we have seen some, but limited,  
24    participation. So I think this was the -- viewed as  
25    the first step in testing what if we hold energy



1 constant and send the capacity price signal during  
2 the on-peak hours, so I think that's precisely why  
3 it's a pilot, in order to test that, sir.

4 Q. How many -- how many customers do you  
5 have now on your time-of-day programs, in the three  
6 companies?

7 A. We have two customers on our  
8 generation-related time-of-day rate.

9 Q. Okay. One last thing on this program.  
10 It's true that -- that the rates that -- that the  
11 power that's going to come for the high load factor  
12 time-of-use program, that power is going to come from  
13 the -- excuse me -- the standard service offer bid  
14 suppliers, correct?

15 A. Correct.

16 Q. All right. And the price that they  
17 charge for power is not differentiated by time of  
18 day, correct?

19 A. Correct, for any of the customers that  
20 take standard service offer.

21 Q. So to the degree that -- that this is  
22 successful and that these customers do -- do move off  
23 peak, it is -- it is likely, then, that there will be  
24 costs that flow through the rider to the other  
25 customers, because they are going to be paying less

1       than the all-in price of power that's bought from the  
2       suppliers?

3               A.     As we discussed this morning, to the  
4       extent that the costs to serve the customers is less  
5       than the revenue received, that revenue would flow  
6       through rider GCR. To the extent that the cost to  
7       serve these customers is greater than the revenue,  
8       then that cost would flow through rider GCR.

9               Q.     Okay. That's fine. Final item I want to  
10      explore with you in this session is the rider NMB.  
11      Okay.

12              You will agree with me NMB stands for  
13      nonmarket-based transmission costs?

14              A.     NMB stands for nonmarket-based.

15              Q.     Nonmarket-based, okay. Right now there  
16      are a number of nonmarket-based charges for  
17      transmission that are levied by PJM on load-serving  
18      entities. Fair statement? Or is that a correct  
19      statement?

20              A.     Market-based transmission and ancillary  
21      services in the companies' service territory are  
22      assessed to load-serving entities. Currently, all  
23      nonmarket-based services are assigned to the  
24      companies.

25              Q.     Right. And then the company directly

1 bills the customers, correct?

2 A. The company recovers the cost of those  
3 charges through its rider NMB.

4 Q. Okay. And rider NMB, basically, then,  
5 takes those charges and allocates them by service  
6 class based on the contribution to the 4PC.

7 A. I might say it a little differently than  
8 you did. I might say that the costs that are  
9 assigned or charged to the companies by PJM are then  
10 allocated to the companies' rate schedules on the  
11 basis of 4CPs.

12 Q. Right. And so if you are a -- if you are  
13 a customer and you know that your contribution to  
14 costs is less than average in your class, then it is  
15 possible that it would be advantageous to be able to  
16 make rider NMB bypassable and go arrange with your --  
17 with a load-serving entity to bill you the  
18 nonmarket-based transmission charges?

19 A. That is the stated purpose of the NMB  
20 pilot is exactly to explore whether certain customers  
21 could, in fact, benefit from opting out of the  
22 companies' rider NMB and obtaining --

23 Q. So you would agree with me.

24 MR. KUTIK: Excuse me.

25 Q. I'm sorry.

1 MR. KUTIK: Had you finished?

2 THE WITNESS: No, sir.

3 A. -- and obtaining nonmarket-based services  
4 from a CRES provider.

5 Q. Okay. Thank you. I'm sorry to interrupt  
6 you.

7 Okay. Would that be attractive to more  
8 than just the members of the IEU, the OEC, and the  
9 named participants in the stipulation?

10 MR. KUTIK: Objection to the extent it  
11 calls for speculation.

12 EXAMINER PRICE: Overruled.

13 A. May I ask you to restate the question,  
14 sir? The OEC is not --

15 EXAMINER PRICE: The Environmental  
16 Council doesn't care.

17 Q. I'm sorry.

18 MR. KUTIK: He sat up on that one.

19 Q. The Ohio Energy Group.

20 A. Can I -- could I ask you to restate the  
21 question, please?

22 Q. Knowing that anybody with below-average  
23 cost allocation factors for the rider NMB may benefit  
24 if they could have their nonmarket-based transmission  
25 billed separately, isn't it true that there are

1       probably customers out there who could benefit from  
2       being in the pilot who are not members of those  
3       permitted to participate in the pilot under the  
4       stipulation?

5               A.     I guess what the pilot is exploring is if  
6       customers could benefit from participation in this  
7       pilot.  As I sit here today, I'm not certain that  
8       that's the case.

9               I'm not certain that CRES suppliers would  
10      be willing to offer NMB services to customers.  I am  
11      not sure how they would price those services and  
12      that's part of what we are trying to explore here is  
13      if there is even a benefit.

14              Q.     But I'm focusing in on the fact that this  
15      potential benefit is excluded to just those named in  
16      the stipulation.  Why not make it available to  
17      everyone?

18              A.     Because, sir, it's a pilot, so we want to  
19      explore whether, again, there is benefits to the  
20      pilot participants and whether, from an  
21      administrative perspective, to the company, it's even  
22      manageable to offer this type of service.

23              Q.     Then why not make it available to the  
24      number of test participants that you can handle  
25      administratively but open it to everyone who asks for

1 it?

2 A. It wasn't what we agreed to in the  
3 stipulation, sir.

4 Q. Oh, just one last -- one last question  
5 for you.

6 What happens today if -- if Davis-Besse  
7 or Sammis has an unplanned outage? Where does the  
8 power come from?

9 A. What power, sir?

10 Q. Well, if the plants are down at  
11 Davis-Besse and Sammis and -- where does the  
12 generation come from that -- that goes to the  
13 FirstEnergy distribution system? Where does it come  
14 from?

15 A. May I ask you to explain what you mean by  
16 "goes to the FirstEnergy distribution system"?

17 Q. Let me make it simpler. Today, if  
18 Davis-Besse and Sammis went down, wouldn't PJM be  
19 responsible for -- for setting up the operations to  
20 get power to the FirstEnergy syncs?

21 A. As we've said, PJM, along with others,  
22 share the responsibility for the reliability of the  
23 bulk transmission system.

24 MR. PETRICOFF: Okay. I have no further  
25 questions. Thank you very much.

1 THE WITNESS: Thank you, sir.

2 EXAMINER PRICE: Before you leave, I have  
3 one last question. I will try to phrase it better  
4 than I did in a less objectionable manner.

5 Is there any provision in the application  
6 which addresses whether the companies have the right  
7 or have disclaimed the right to file an action at  
8 FERC or the federal -- in federal court regarding a  
9 dispute over an audit by the Commission staff and an  
10 order of the Commission?

11 THE WITNESS: I'm not a lawyer, sir.

12 EXAMINER PRICE: I am not asking you to  
13 interpret what that provision may or may not say. I  
14 am just asking is there a provision in the  
15 application you can direct my attention to which  
16 addresses that topic?

17 THE WITNESS: No.

18 EXAMINER PRICE: Thank you. Thank you.  
19 We are adjourned for this evening. We will see  
20 everybody at 9 o'clock tomorrow. We are off the  
21 record.

22 (Thereupon, the hearing was adjourned at  
23 5:27 p.m.)

24 - - -

25

## 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 Tuesday, September 1,  
5 2015, and carefully compared with my original  
6 stenographic notes.

7  
8  
9 Karen Sue Gibson, Registered  
10 Merit Reporter.

11 (KSG-6086)

12 - - -  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**9/16/2015 4:36:55 PM**

**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 09/01/15 - Volume II electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.