BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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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 Wednesday, September 2, 2015.

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VOLUME III

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

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APPEARANCES:

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

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

Jones Day
By Mr. David A. Kutik
901 Lakeside Avenue
Cleveland, Ohio 44114

On behalf of the Applicants.

Bruce E. Weston, Ohio Consumers' Counsel
By Mr. Larry Sauer
Ms. Maureen R. Grady
Mr. William J. Michael
Mr. Kevin F. Moore
Ms. Ajay K. Kumar
Assistant Consumers' Counsel
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.

APPEARANCES: (Continued)

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

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

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

Earthjustice
By Mr. Shannon Fisk
Northeast Office
1617 John F. Kennedy Boulevard, Suite 1675
Philadelphia, Pennsylvania 19103

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

Sierra Club Environmental Law Program
Mr. Tony Mendoza
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.

APPEARANCES: (Continued)

IGS Energy
By Mr. Joseph Oliker
6100 Emerald Parkway
Dublin, Ohio 43016

On behalf of IGS Energy.

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

On behalf of The Kroger Company.

Vorys, Sater, Seymour & Pease, LLP
By Mr. M. Howard Petricoff
Ms. Gretchen Petrucci
Mr. Stephen M. Howard
and Mr. Michael J. Settineri
52 East Gay Street
Columbus, Ohio 43215

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

Mike DeWine, Ohio Attorney General
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.

APPEARANCES: (Continued)

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

On behalf of Dynegy, Inc.

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

On behalf of the Ohio Manufacturers' Association Energy Group.

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

On behalf of EnerNOC, Inc.

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

On behalf of the Ohio Energy Group.

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

On behalf of the Environmental Law & Policy Center.

APPEARANCES: (Continued)

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.

Barth E. Royer, LLC
By Mr. Barth E. Royer
2740 East Main Street
Bexley, Ohio 43209

and

Taft, Stettinius & Hollister LLP
By Mr. Adrian D. Thompson
200 Public Square, Suite 3500
Cleveland, Ohio 44114-2300

On behalf of the Cleveland Municipal School District.

Spilman, Thomas & Battle, PLLC
By Mr. Derrick Price Williamson
Ms. Carrie Harris
Ms. Lisa Hawrot
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, Pennsylvania 17050

On behalf of Wal-Mart Stores East, LP, and Sam's East, Inc.

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

Bricker & Eckler, LLP
By Mr. Thomas J. O'Brien
100 South Third Street
Columbus, Ohio 43215-4291

On behalf of the Ohio Hospital Association.

APPEARANCES: (Continued)

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.

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

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

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

On behalf of the Association of Independent Colleges and Universities of Ohio.

American Electric Power
By Mr. Steven T. Nourse
Mr. Matthew J. Satterwhite
One Riverside Plaza
Columbus, Ohio 43215

On behalf of the Ohio Power Company.

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

On behalf of Material Sciences Corporation.

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

APPEARANCES: (Continued)

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, Incorporated.

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Wednesday Morning Session,
September 2, 2015.

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EXAMINER PRICE: Let's go on the record. Good morning. The Public Utilities Commission has set for hearing at this time and place in the matter of the application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for authority to provide for a standard service offer pursuant to Revised Code 4928.143 in the form of an Electric Security Plan, being Case No. 14-1297-EL-SSO.

My name is Gregory Price. With me are Mandy Chiles and Megan Addison. We are the attorney examiners assigned to preside over today's hearing. Let's begin again today with abbreviated appearances from the parties starting with the company.

MR. BURK: On behalf of the companies James W. Burk, Carrie M. Dunn; also from the Calfee law firm, James Lang, Trevor Alexander; and from the Jones Day law firm, David Kutik.

MR. SAUER: Good morning, your Honors. On behalf of the residential customers of FirstEnergy companies, the Office of Ohio Consumers' Counsel, Larry Sauer, Maureen Grady, Kevin Moore, Ajay Kumar, and William Michael.

MR. KURTZ: Good morning. For OEG Mike Kurtz.

MR. LAVANGA: Good morning, your Honors. For Nucor Steel Marion, Mike Lavanga, Garrett Stone and Owen Kopon.

MR. McNAMEE: On behalf of the staff of the Public Utilities Commission of Ohio, Thomas Lindgren, Steven Beeler, and I am Thomas McNamee.

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

MR. OLIKER: Good morning, your Honors. On behalf of IGS Energy, Joe Oliker.

MR. HOWARD: Good morning, your Honors. On behalf of Retail Energy Supply Association, Electric Power Supply Association, PJM Power Producers Group, Exelon Generation, LLC, and Constellation NewEnergy, Inc., the law firm of Vorys, Sater, Seymour & Pease, 52 East Gay Street, Columbus, Ohio, by M. Howard Petricoff, Michael J. Settineri Gretchen L. Petrucci, and Stephen M. Howard. Thank you.

MS. FLEISHER: Good morning, your Honors, Madeline Fleisher, on behalf of the Environmental Law and Policy Center.

MR. DOUGHERTY: Good morning. On behalf of the Ohio Environmental Council and Environmental Defense Fund, Trent Dougherty and John Finnigan.

MR. SECHLER: Good morning, your Honors. On behalf of EnerNOC, Inc., Joel E. Sechler, Carpenter, Lipps & Leland, LLP.

MS. BOJKO: Thank you. On behalf of Ohio Manufacturers' Association Energy Group, Kimberly W. Bojko and Rebecca L. Hussey with Carpenter, Lipps & Leland.

MR. FISK: Good morning, your Honor. On behalf of Sierra Club, Shannon Fisk and Richard Sahli, Michael Soules, and Tony Mendoza.

MR. DARR: On behalf of the Industrial Energy Users of Ohio, Sam Randazzo, Frank Darr.

MR. SITES: On behalf of the Ohio Hospital Association, Richard L. Sites and Tom O'Brien with the law firm of Bricker & Eckler. Thank you.

MR. HAYS: Good morning, your Honor. Tom Hays on behalf of NOAC and the individual communities.

EXAMINER PRICE: Okay. Before we take

our first witness, I would just like to notify the parties we have -- the Bench has been in contact with Duke Energy Ohio regarding the Rose testimony from Duke's previous ESP that's been the subject of some litigation in this proceeding.

Today Duke is going to file a motion for protective order to preserve their rights on appeal of issues that were raised in their current ESP. However, they will include a copy of a confidentiality agreement as part of the motion for protective order.

Parties that wish to have access to these documents can execute and return to Duke with a copy to FirstEnergy and the Bench the confidentiality agreement. Once you have signed the confidentiality agreement, FirstEnergy will make available to you the testimony and workpapers.

The one thing I would like to clarify is the confidentiality agreement will provide and will be part of the protective order, that you may not use this testimony or workpapers in a future case, and you must destroy or return to Duke the testimony, workpapers at the end of this proceeding.

And let me clarify the end of this proceeding will be after a final nonappealable order has been issued in this case.

FirstEnergy will provide the copies of these workpapers to the parties when they provide them a copy of the executed confidentiality agreement.

Any questions?

MR. KUTIK: Your Honor, just to be clear, we will provide what we receive from Duke.

EXAMINER PRICE: That's fair.

MR. KUTIK: And personally I haven't seen exactly all the documents. I know we have the testimony. I don't know what workpapers there might have been, but we'll represent that whatever we receive from Duke we will provide to the parties.

EXAMINER PRICE: And you receive whatever Mr. Oliker received, which was testimony and workpapers, so presumably any workpapers if they exist you have in your possession.

MR. KUTIK: Yes.

MR. OLIKER: Your Honor, just to clarify, when you said nonappealable order, that would be after any appeals to the Ohio Supreme Court would be resolved?

EXAMINER PRICE: That's correct.

MR. OLIKER: Thank you.

EXAMINER PRICE: With that, let's go ahead and resume the cross-examination of Ms. Mikkelsen. Ms. Mikkelsen, you are, of course, still under oath.

THE WITNESS: Yes.

EXAMINER PRICE: Mr. Sechler.

MR. SECHLER: Thank you, your Honor.

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EILEEN M. MIKKELSEN

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

CROSS-EXAMINATION

By Mr. Sechler:

Q. Good morning, Ms. Mikkelsen.

A. Good morning.

Q. Joel Sechler, on behalf of EnerNOC, Inc. If I could ask you to turn to I believe it's marked Companies' Exhibit 8. It's your supplemental testimony. In particular, page 11, lines 10 to 12, and let me know when you are there.

A. I'm there.

Q. Okay. And page 11, lines 10 to 12 of your supplemental testimony states, "Rider ELR provides economic development and job retention benefits to participating companies and also provides benefits to all customers from a system reliability perspective." Did I read that correctly?

A. Yes.

Q. And those economic development benefits that rider ELR provides accrue only to those customers that participate under the ELR rider; is that correct?

A. Customers who participate in the ELR rider are also eligible for economic development rider credits, yes.

Q. And, similarly, those job retention benefits that rider ELR provides accrue only to those customers that participate under the ELR rider; is that correct?

A. Yes.

Q. And my understanding, correct me if I am wrong, is that if there is a customer of the companies with available curtailable load, that that customer is not currently taking service under the ESP III rider ELR or has not been historically eligible for rider ELR, that customer cannot participate in rider ELR that's being proposed in this proceeding; is that correct?

A. The companies' signatory parties' proposal in this proceeding limits the number of customers that can -- pardon me. The curtailable load associated with the customers that have historically been eligible for rider ELR, but are not currently taking service under rider ELR.

Q. Okay. And that's in addition to exclusively customers that are participating under ELR now under ESP III; is that correct?

A. As proposed, any customer who is currently under ESP III taking service under rider ELR is eligible to take service under rider ELR during ESP IV. In addition, there was a limitation to an additional 136,250 kW of curtailable load that customers who were historically eligible to participate could provide notice of their intent to participate in ELR4.

Q. And were the companies approached by a customer who is not currently taking service under ELR under ESP III and also not historically eligible for the ELR rider asking if they could participate in the ELR rider being proposed in this proceeding?

A. Yes.

Q. Okay. And the companies told that customer it could not participate in the ELR rider proposed in this proceeding because it failed to meet the eligibility requirements; is that correct?

A. Yes.

Q. Turning back to Companies' Exhibit 8, your testimony on page 11, lines -- I believe it will be 10 to 12. In your supplemental testimony, you also represent, also testified to "benefits to all customers from a system reliability perspective." Do you see where that is in lines 11 and 12?

A. Yes.

Q. And that reference to "benefits to all customers from a system reliability perspective," those benefits stem from curtailable load being made available through the ELR rider; is that correct?

A. Yes. The benefits that accrue to all customers is that firm service customers recognize -- or will -- said a little differently, there will be interruptible load available to the company to call in the case of an emergency or for ATSI, the transmission operator, call in a case of a system emergency or for PJM to call in a system emergency, and that load is available to curtail in front of the firm's service customers.

So not only does the ability to curtail the load provide a system reliability benefit, but it also provides a benefit to firm service load in that they recognize that there is interruptible load that will be called upon in a case of a system emergency in advance of firm service load.

Q. Okay. And the -- based on your testimony, I understand that your position is making -- in your supplemental testimony at least, the 75,000 kW of curtailable load available to participate enhances those benefits from a reliability perspective to all customers; is that correct?

A. Yes.

Q. And, indeed, I think the companies are now proposing to make 136,250 kW of curtailable load available under the ELR rider; is that correct?

A. Not entirely. As we discussed earlier, the curtailable load that's eligible to participate in rider ELR during ESP IV would include the opportunity for every customer who is currently taking service under rider ELR to choose to continue to take service under rider ELR. And then in addition, there would be a limitation on those customers who have historically been eligible, and that limitation is 136,250 kW.

Q. Okay. And that's an increase from the original 75,000 kW in your supplemental testimony and in the supplemental stipulation; is that correct?

MR. KUTIK: We'll stipulate to that, your Honor.

EXAMINER PRICE: Thank you.

Q. Under the proposed rider ELR, Ms. Mikkelsen, is there any provision for aggregators to participate with the companies that are eligible?

A. No.

MR. SECHLER: I believe that's all the questions I have, Ms. Mikkelsen. Thank you.

THE WITNESS: Thank you.

EXAMINER PRICE: Before we go on to our next topic, I have a few questions about this area, so this seems like a convenient time.

Correct me if I'm wrong, pretty good chance I am, a company that participates under rider ELR receives two credits; is that correct? They receive a credit under the economic development rider and they receive a credit under the demand -- the rider DSE; is that correct?

THE WITNESS: Yes. But I would just clarify the credit actually accrues to the customer under rider ELR. The recovery of that credit is in rider DSE, and then there is a separate credit in rider EDR.

EXAMINER PRICE: Perfect. I knew I would

get that partially wrong.

Is it your belief that that's a rough approximation of the economic development value in the peak demand production value?

THE WITNESS: If you take the $5 ELR credit and you convert it to price per megawatt-day, it's just short of $165. It's $164.28 per megawatt-day. I think when I look at the average price of the capacity auctions and what they cleared at from the '14-'15 year through the '17-'18 year, that's in the neighborhood of $159, very representative.

And then when I look at the capacity clearing price in the '18-19 auction that just occurred, base capacity cleared at $150, 149.98 or something, and the capacity performance product cleared at just short of $165. So, yes, I believe that $5 credit is very representative of the kind of capacity prices in the market.

And then with respect to the $5 credit from an economic development perspective, that is the credit that we have paid to the customers through ESP II and ESP III. And we recommend continuation of that credit.

EXAMINER PRICE: Do you believe -- okay.

Let me rephrase. Strike that.

Is the rider ELR program a part of your amended portfolio plan that's been approved by the Commission?

THE WITNESS: No. I believe rider ELR has always been approved as part of our ESPs, but the tariff language in the rider has been very clear that we can count the peak demand reduction for purposes of meeting our statutory peak demand reduction requirements.

And then I would add further that in subsequent Commission actions in our energy efficiency proceedings, they currently allow the companies to score for statutory compliance purposes all demand response resources and energy efficiency resources that participate in the PJM markets for capacity behind our service territory. So we would be able to count it independent of the ELR.

EXAMINER PRICE: Okay. So would you characterize rider ELR as a peak demand reduction program?

THE WITNESS: I would.

EXAMINER PRICE: Okay. If you could turn to the December 22 stipulation, page 8.

THE WITNESS: I'm there.

EXAMINER PRICE: At the bottom, that final sentence states "For purposes of clarification, ELR customers may opt out of the opportunity and ability to obtain direct benefits from the companies' EE/PDR portfolio plans as provided in Senate Bill 310." If the Commission were to determine that rider ELR is, in fact, a peak demand reduction program and that customers taking service under the peak demand reduction program should not be permitted to opt out of the opportunity to obtain direct benefits under the EE/PDR portfolio plan, wouldn't this stipulation violate Ohio law? And I understand you are not an attorney, but you have spoken to the three-prong test; and as a violation of Ohio law, wouldn't that violate the third prong regarding no violation of important regulatory principles or practices?

THE WITNESS: And, as I said earlier, I think the companies, as they have done in the past ESPs, are seeking approval of rider ELR under the ESP plan. So I think which is exactly why this says for clarification, because it's not part -- we are not requesting approval of it as part of the companies' amended plan.

And, again, I am not a lawyer, but my understanding of the statutory language in SB 310 was a customer who opted out of the energy efficiency riders and recovery riders would not be able to participate in or enjoy a benefit of those programs in the amended plan.

But, again, from my perspective, rider ELR is approved outside of the amended plan as part of the economic stability -- pardon me, you know, the electric security plans.

EXAMINER PRICE: But you agree it's a peak demand reduction program?

THE WITNESS: I do.

EXAMINER PRICE: And you agree that part of the cost of the peak demand reduction program is recovery through your rider DSE which is where the other energy efficiency and peak demand reduction programs are collected from?

THE WITNESS: Yes.

EXAMINER PRICE: And you would agree that you count this -- or you count these energy savings for compliance with your statutory mandate?

THE WITNESS: Yes. But as I said earlier, under current Commission rules, if these resources participated through a CSP, we would count those as well, and it wouldn't be part of our programs.

EXAMINER PRICE: I understand. We are all living in the new language under 310.

THE WITNESS: Fair enough.

EXAMINER PRICE: Thank you.

THE WITNESS: Thank you, sir.

EXAMINER PRICE: Ms. Fleisher, you are next.

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CROSS-EXAMINATION

By Ms. Fleisher:

Q. Good morning, Ms. Mikkelsen, Madeline Fleisher representing the Environmental Law and Policy Center.

I want to just quickly go back to a couple of things you testified about earlier and try my best not to be duplicative. You had discussed with Mr. Oliker and Mr. Petricoff a potential scenario where under this rider RRS review process the Commission would disallow $200 million in costs, I think is the arbitrary number that was settled on, as unreasonable and the companies would be unable to recover those costs, at least in any other PUCO proceeding. Do you recall that conversation?

A. I recall a conversation that included hypotheticals. Whether I agree with everything you've said is a different matter, but right.

Q. Okay. So I'm getting it right as you recollect it in all material respects?

A. No. What I am saying is I recall a discussion about hypothetical disallowances.

Q. Okay. And I just was wondering one thing, which is under the hypotheticals as I have described it, could that $200 million loss, let's call it, to the companies impact the terms on which they are able to obtain credit?

A. If you are going to include other hypothetical conditions, I would appreciate it if you would include them in the question so we're clear on what the intent of your question is.

Q. Sure. I guess I would say all else being equal -- pardon. The microphone is cutting out a little. All else -- I will just --

EXAMINER PRICE: Let's go off the record a moment.

(Discussion off the record.)

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

Q. (By Ms. Fleisher) Under this hypothetical, I would assume all other relevant conditions unchanged would, would the fact of a $200 million cost on the books of the companies affect the terms on which they could obtain credit?

A. That would depend on the facts and circumstances at the time. I don't know.

Q. Is it possible?

A. Again, it would depend on the facts and circumstances at the time, but I suppose anything is possible under a range of assumptions.

Q. Okay. And going back to another conversation you had, I believe you -- I guess just ask you to correct me if I'm misrepresenting your prior testimony, but I believe you testified that the reason that the companies decided not to conduct competitive procurement process instead of coming to the proposed transaction was that the Davis-Besse and Sammis plants and OVEC entitlement had "Unique attributes that could not be found elsewhere"; is that correct?

A. Yes. Certainly more so with respect to Davis-Besse and Sammis, but yes.

Q. Okay. And just to clarify that, I guess, does OVEC have those unique attributes as well?

A. Many of the unique attributes, in so much as they are baseload generating units with on-site fuel storage capabilities that have historically served the customers of the companies.

Q. Okay. And in the hypothetical where just one of these quote-unquote attributes was at issue, and the example I am going to use is the ability to operate as a financial hedge. If the companies were only looking for assets to serve as a financial hedge, would you have conducted an RFP or a request for proposal or other competitive procurement process?

A. I can't answer that question because that's not what the companies were looking for. The companies were looking for a program that provided a number of benefits to the companies' customers.

Q. Is there a reason you can't answer besides that it's hypothetical?

A. Just I haven't given it any thought. That never entered into the companies' mind, so I don't have an opinion on it because I have never considered it because it wasn't part of the thought process that the companies were engaged in.

Q. Okay. All right. Talk a moment about corporate separation. Are you familiar with Ohio Revised Code 4928.17 which deals with corporate separation?

A. I am aware that there are corporate

separation requirements. If you want to ask me specific questions about that, that would be helpful for you to provide me a copy.

Q. Sure. Why don't we go ahead and do that.

MR. DOUGHERTY: I don't mind passing out, but that does not count on my time for cross.

MR. KUTIK: Well, since no one is really on the clock, it doesn't matter.

MS. FLEISHER: I am not intending to mark this as an exhibit.

EXAMINER PRICE: That's fine.

MS. FLEISHER: JUST use it for reference.

MR. DOUGHERTY: May I approach?

EXAMINER PRICE: You may.

MS. FLEISHER: Sorry. May he approach?

EXAMINER PRICE: It won't count against the amount of limited times you may approach either.

Q. (By Ms. Fleisher) And please take a little time to look over it but, just so you know, I am not going to ask you any questions about the specific language. I just want you to have it for reference.

MS. FLEISHER: Your Honors, while Ms. Mikkelsen is reviewing, I have a follow-up if Mr. Dougherty may approach and get that handed out as well.

EXAMINER PRICE: He may.

Q. (By Ms. Fleisher) Okay. Ms. Mikkelsen, have you had sufficient time to look these over?

A. I would say I have had sufficient time to skim these documents.

Q. Sure. And if at any point I am asking you questions and you don't feel prepared to answer, just let me know.

With respect to Ohio Revised Code 4928.17, in the process of negotiating the proposed transaction and proposing rider RRS to the Commission, did the companies at any point evaluate whether the proposed transaction would be consistent with this statutory provision?

A. I was not involved directly in the negotiations of the transaction, so that question would probably be better addressed to the folks that were negotiating that transaction.

Q. And that would be Mr. Ruberto probably?

A. Yes.

Q. All right. And moving on to the second document you have, which is Ohio Administrative Code 4901.1-37-04. And I would like to, just to make this easier, mark this for identification as ELPC Exhibit

1.

EXAMINER PRICE: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Ms. Mikkelsen, are you generally familiar with this provision?

A. Yes.

Q. And, again, during the process of arriving at the proposed transaction and the application to the Commission, did the companies at any point evaluate whether the proposed transaction would be consistent with the Ohio Administrative Code 4901:1-37-04?

A. The companies discharge their day-to-day responsibilities in all matters consistent with the provisions of 4901:1-37-04. We have training relative to these types of provisions, and we are all very, very mindful of these provisions. You know, looking through these, you know, we have -- we are located physically in separate offices, for example. We have separate accounting.

There certainly was no suggestion in the term sheet of indebtedness that would have, for example, been incurred by an affiliate being assumed by the companies. So I guess my answer to that is the companies and the companies' employees conduct themselves daily in a manner that's consistent with the code of conduct in Ohio.

Q. Okay. I guess I'm asking a different question than that, which is did the companies, aside from their general conduct, actually analyze whether the proposed transaction would be consistent with this provision?

A. In that respect, again, I would suggest that that question is better addressed to the folks that were negotiating the transaction and agreeing to the transaction, ma'am.

MS. FLEISHER: Okay. May Mr. Dougherty approach once more?

EXAMINER PRICE: He may.

MS. FLEISHER: And I would like to have this marked for identification as ELPC Exhibit 2.

EXAMINER PRICE: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. (By Ms. Fleisher) Ms. Mikkelsen, does this document represent ELPC interrogatory 6, set 2?

A. Yes.

Q. Okay. And one housekeeping matter, I must confess there's a typo in this, which the companies and I resolved elsewhere, but for purposes of keeping the record clear, at the end of that

interrogatory, it's meant to be 04(C)(2).
Ms. Mikkelsen, are you listed as the responding witness on this discovery response?

A. Yes.

Q. Okay. And can I ask why you are listed as the responding witness if Mr. Ruberto would be the one to ask about this issue?

MR. KUTIK: Objection.

EXAMINER PRICE: Grounds?

MR. KUTIK: Misstates her testimony, number 1.

EXAMINER PRICE: Sustained.

Q. (By Ms. Fleisher) Then can I just ask why are you listed as the responding witness on this?

MR. KUTIK: Your Honor, I'll object to the extent it calls for privileged communication with counsel.

EXAMINER PRICE: Sustained. Why don't you ask her if she is the responding witness and questions about this.

MS. FLEISHER: Okay.

Q. (By Ms. Fleisher) Ms. Mikkelsen, do you have knowledge about the companies' consideration of Ohio Administrative Code 4901:1-37-04 with respect to the proposed transaction?

A. May I have that question reread, please.

EXAMINER PRICE: Please.

(Record read.)

A. As we discussed earlier, it is my testimony that companies conduct themselves with 4901-1-37-04 in the day-to-day conduct of the responsibilities. I think what I also said if your questions are specific to an analysis of the transaction relative to that as part of the negotiations, those questions would be better addressed to Mr. Ruberto.

Q. Okay. I guess one last question, which is after the companies made their application to the Commission, were you involved in any analysis of whether the proposed transaction is consistent with OAC 4901:1-37-04?

A. The companies' application at pages 19 and 20 address the companies' corporate separation plan. And beyond that representation in the application, after filing the application, I did not participate in any analysis.

Q. Okay. And going back again to one item you discussed yesterday, I believe Mr. Petricoff asked you about the OVEC plants and the potential process for retiring Kyger Creek and Clifty Creek.

Do you recall that discussion?
A. I recall discussing OVEC with Mr. --
Q. And I believe at that time, you did testify that the future of Kyger Creek and Clifty Creek would be uncertain without rider RRS; is that correct?
A. I think what I testified yesterday is that, you know, certainly with respect to Davis-Besse and Sammis, the approval of rider RRS takes an uncertain situation and makes it more certain or very certain that those plants will continue to operate.
With respect to the OVEC entitlement, 116 megawatts of those OVEC facilities, while approval of rider RRS will certainly contribute to certainty, it will not create the same degree of certainty as it would with respect to Davis-Besse and Sammis.
Q. And what's the basis for your testimony that there is uncertainty as to whether Kyger Creek and Clifty Creek will remain open?
A. My review of the testimony filed in this case with respect to financial need and Mr. Moul's testimony.
Q. Okay. Now, turning to FirstEnergy Exhibit 1, the application, at 9, and right down at this bottom of the page, it says that one of the

benefits of the economic stability program is supporting regional fuel and asset diversity, correct?

A. Yes.

Q. And one of the reasons regional fuel and asset diversity is important is to hedge against the risks of any particular type of generation resource; is that correct?

A. Well, I think Mr. Moul discusses at great length in his testimony the benefits of resource diversity as well as fuel source diversity in terms -- in fact, so does Dr. Makovich with respect to his arguments are all your eggs in one basket. But in terms of providing more assured, stable and less volatile pricing and generation source as a result of having resource and fuel diversity.

Q. And FirstEnergy has asserted that the markets alone are failing to appropriately compensate for that diversity and the benefits of that diversity; is that correct?

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

(Record read.)

A. Dr. Makovich talks in his testimony about what is the missing money problem, so probably he would be a good witness to address those questions to, as well as Mr. Moul.

Q. And that's one of the justifications for the rider RRS, correct?

A. No, no. Rider RRS is being proposed by the companies in order to provide retail rate stability for the companies' customers, as well as to provide greater assurance about reliability of their electric service, economic development benefits that accrue from the transaction, as well as the avoidance of significant potential transmission investments. Those are the underlying reasons the company is seeking approval of the economic stability program as part of this ESP.

Q. So rider RRS is not intended to help encourage resource diversity in Ohio?

A. I think rider RRS, if approved as we've discussed, would create certainty with respect to the continued operation of Sammis and Davis-Besse, both of which are asset diverse, one is nuclear, one is coal, with on-site fuel storage capabilities that were built and designed to serve the companies' load. From the companies' perspective, that provides a very valuable resource for the companies' customers.

Q. Okay. I guess I'm not sure that you

answered the question.

MR. KUTIK: Objection, your Honor. She answered the question.

EXAMINER PRICE: Why don't you go ahead and object -- move to strike her motion because it's not responsive and go ahead and ask your next question.

MS. FLEISHER: Okay. I will go ahead and move to strike as nonresponsive.

Q. (By Ms. Fleisher) And can I ask that you just answer whether encouraging resource diversity is one of the justifications for rider RRS?

EXAMINER PRICE: Do you want an answer on your motion to strike, or do you want an answer to your question?

MS. FLEISHER: Answer on the motion would be great, your Honor.

EXAMINER PRICE: Can we have the previous question and answer back, please.

(Record read.)

EXAMINER PRICE: Motion to strike will be granted. Please answer the question pending directly. If your counsel has -- if you have additional information you would like to put in the record, I am sure your counsel would be happy to ask about it on redirect.

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

(Record read.)

A. Riders RRS, if approved, will maintain resource diversity and fuel diversity as it relates to the plants included in the program.

Q. And is that one of the companies' purposes in proposing rider RRS?

A. Yes.

Q. Can you tell me what percentage of coal generation in Ohio is necessary to attain those resource diversity benefits?

A. I don't believe -- or I'm not aware of a specific percentage, but I am aware that a number of coal plants have closed in the State of Ohio. And so when I think about resource diversity and the value of resource diversity, again, it's important to at least try to maintain a diverse resource base.

Q. All right. Can you tell me what percentage of Ohio's electricity will come from coal assuming all announced coal retirements in Ohio take place? To put a year on it, let's say as of 2018.

A. No.

Q. Can you tell me the percentage as of any

other year in the next five years?
A. No.
Q. And I believe you said resource diversity can help hedge against risks like price volatility; is that correct?
A. Yes.
Q. For example, if costs for fuels like natural gas rise, then zero fuel cost resources like wind or solar or energy efficiency can reduce customer's exposure to those higher-priced resources, correct?
A. I'm sorry, ma'am. Your microphone cut out.
EXAMINER PRICE: You have to turn it back on.
MS. FLEISHER: I was trying to ignore it.
EXAMINER PRICE: Why don't we go ahead and have the reporter reread the question.
(Record read.)
A. Yes.
Q. Are you aware representatives of FirstEnergy Corp. testified against Ohio's energy efficiency and peak demand reduction standards before the Ohio legislature in 2013 in connection with Senate Bill 58?

MR. KUTIK: Objection.

EXAMINER PRICE: Grounds?

MR. KUTIK: Relevance.

EXAMINER PRICE: Sustained.

Q. (By Ms. Fleisher) Can I -- I will move on. Are you familiar with PJM's recently approved tariff provisions regarding capacity performance products?

A. While I am aware that there have been a change, I have not reviewed the specifics of the tariff provisions.

Q. Okay. Are you aware that if a resource such as wind, solar, energy efficiency or demand response is bid into the PJM capacity auction as a capacity performance product and clears, that there would be significant penalties for failure to perform during emergency hours?

A. I am aware that the capacity performance products are all subject to penalties.

Q. Do you know how much those penalties are?

A. I do not.

Q. Can we turn to FirstEnergy Exhibit 9, your second supplemental testimony. Looking at page 10, lines 19 to 22. And here you say that "If the plants close, I would expect the demand for energy and capacity in our service territories would be reduced."

Was this expected decrease in demand accounted for in the PJM projections used by Mr. Cunningham and Mr. Phillips to predict which transmission upgrades would be needed if the plants closed?

A. I don't know.

Q. Do you know if demand were lower than projected by PJM in the companies' service territory, would that affect the need for transmission upgrades in the event of plant retirements?

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

EXAMINER PRICE: You may.

(Record read.)

A. It may or may not. I think that would depend on the transmission reliability studies that were conducted at that time.

Q. And you've testified that approval of rider RRS in this proceeding will constitute approval of legacy costs for Davis-Besse, Sammis, and the OVEC plants, correct?

THE WITNESS: May I have the question reread, please.

(Record read.)

A. The companies' proposal in this proceeding is that this is the proceeding to review legacy costs. Beyond this proceeding, legacy costs would not be subject to a reasonableness review as part of the second review process that the companies propose. As we discussed earlier, certainly those costs would be available for an accounting mathematical review but not for a reasonableness review beyond this proceeding.

Q. And turning to your direct testimony, Exhibit 7 at page 14, lines 13 to 15.

MR. KUTIK: Could you give those page references again?

MS. FLEISHER: Sure. Page 14 at lines 13 to 15.

Q. (By Ms. Fleisher) And there you testify that the Commission should presume all of the legacy costs are prudent or reasonable because they were assumed by a competitive company that prudently and conservatively incurred costs to effectively participate in the competitive market and deliver shareholder value; is that correct?

A. I don't think that I state here the Commission should presume. I mean, as I've said, we have said, this is the proceeding to review those legacy costs. I think what I am offering here in my testimony is my view that a competitive company that is trying to participate in markets would make reasonable business decisions with respect to their assets.

Q. And do you think that assumption is justified for a company that is considering retiring the assets?

A. I'm not sure I understand the question, ma'am. May I ask you to restate it, please?

Q. Sure. Happy to. Do you think that at the point after FES began considering retirement of Davis-Besse, Sammis, Kyger and Clifty Creek, that they should be assumed to be acting as a competitive company that is incurring costs to effectively participate in the competitive market and deliver shareholder value?

A. I haven't given any thought to how FES might make a retirement decision. Probably those questions are better addressed to the FES folks, Mr. Moul.

Q. Okay. So you can't speak to the question of whether FES would be acting prudently and conservatively with respect to plants that it's considering retiring?

A. I'm not sure there was any -- I am not aware that FES is even considering retiring. What I am aware of is testimony that their future of the plants is uncertain.

Q. And how is that different from considering retirement of the plants?

A. What I think of retirement, again, these are questions -- what I think about retirement may be entirely different than what FES thinks about retirement. But I think probably with that said, those questions are better addressed to FES.

Q. And just a couple of questions about the rider review process. Looking at Section 12 of the term sheet, which is Sierra Club Exhibit 1, and particularly on page 4 of the document.

A. I'm there.

Q. And is it correct that this full paragraph on page 4 describes certain communications that would occur between the companies and FES as part of a capital expenditure review process?

A. Yes.

Q. And for purposes of what I guess we are calling the second rider review process, would the companies disclose all of those communications to staff in full?

A. If staff asks for the communication, I believe the companies would produce those communications to the staff.

Q. Okay. And would the companies, likewise, produce them to intervenors in a Commission proceeding for the rider review process?

A. That, I think, would need to be determined as part of those proceedings.

Q. And turning back to section 11 of the term sheet, would the companies provide to staff in full all communications with FES about the application of the good utility practice obligation under this provision?

THE WITNESS: May I ask to have that question reread, please.

(Record read.)

A. May I ask you to clarify what you mean with respect to the application of the --

Q. Certainly. I am intending to refer to any communications that the companies might have with FirstEnergy Solutions as to whether FES is providing operating work in accordance with good utility practice.

A. I would expect if the staff asked for that information, the companies would provide that.

Q. And would the companies provide that information in full to any intervening parties in the rider review process?

A. I don't know.

Q. There's no provision in the term sheet providing a formal process for review and approval of expenditures other than capital expenditures, correct?

A. Well, the condition that we have been talking about with respect to good utility practice is as we discussed yesterday, Mr. Ruberto further describes in his testimony, and in that description in his testimony, he makes reference to the reasonableness of costs incurred in order to conduct the work in a fashion that's similar to good utility practice. So that would be one instance. If you would just give me a moment, please.

Q. Of course.

A. So we've talked about the capital expenditure process and then the good utility practice process, and then the other term I was thinking about was under -- on page 6 of 15, paragraph 14, where the seller will review with the buyers the annual scheduled outage program for the facility. I think there is an opportunity there for the buyers to participate in outage scheduling.

Q. During the rider review process, would the companies provide Commission staff with an itemized list of noncapital expenditures?

A. During the second review process, the companies will provide the staff the information they request as part of that review process to the extent that the information exists.

Q. And would the companies provide -- take a step back.

If intervenors in such a proceeding requested a list of noncapital expenditures, would the companies provide that to the intervenors?

A. I don't know.

Q. And I believe you have described the second rider review process as constituting reasonableness review; is that correct?

A. The second review process, as we've proposed it, is to allow the staff to review and make a determination that the costs and revenues included in rider RRS are not unreasonable.

Q. Would investments in Davis-Besse, Sammis, or Kyger Creek or Clifty Creek be considered reasonable if they were designed to improve their performance or useful life beyond the term of the proposed transaction?

A. They very well may be. It would depend on a number of other bits of information in order to make the final determination, but as long as -- I mean, that would -- that's it.

Q. Okay. Just to get a little more in the weeds, I think you were talking yesterday with Mr. Petricoff about the potential for conversion to natural gas of units at Sammis. Do you recall that?

A. Mr. Petricoff was talking about the conversion of the units to natural gas. I was not.

Q. Okay. I stand corrected. Let's say that the final version of the PPA and Commission allowed the conversion of -- strike that.

Let's say that the final version of the proposed transaction allowed FES to convert a unit at Sammis to natural gas. Would that constitute a reasonable expenditure that could be recovered through rider RRS?

MR. KUTIK: Objection.

EXAMINER PRICE: Grounds?

MR. KUTIK: The question assumes facts, your Honor. As we indicated yesterday, there is no testimony or indication in this record that there's any plans or contemplation that any plants will be converted. In fact, it's just the opposite, that one of the issues we discussed just this morning is the asset diversity of these particular units.

MS. FLEISHER: May I respond?

EXAMINER PRICE: You may.

MS. FLEISHER: I am not in any way intending to imply that natural gas conversion will happen. I'm just using it as one example of an investment that would extend -- would bear fruit beyond the term of the PPA.

MR. KUTIK: Your Honor, the question itself assumed that the final transaction would "allow" conversion. There is no facts with respect to that. In fact, the evidence is contrary.

EXAMINER PRICE: Why don't we sustain the objection. Just pick a different example that extends the life of the -- make something up. Coal fusion.

MS. FLEISHER: Sure. Okay. Give me one second to try to come up with one that won't get me in the weeds again.

EXAMINER PRICE: Let me try.

MS. FLEISHER: Sure.

EXAMINER PRICE: Take a shot at it.

MS. FLEISHER: Happy to, your Honor.

EXAMINER PRICE: Why don't you try your hypothetical based on carbon sequestration. I am not sure I can articulate it as well.

MS. FLEISHER: Sure.

Q. (By Ms. Fleisher) Let's say that under the final version of the proposed transaction, FES undertook installation of a pipeline for purposes of channeling carbon dioxide for carbon sequestration in order to allow to be -- as part of the compliance with EPA's clean power plant. Would that expenditure to cover the cost of that pipeline be considered reasonable?

A. I think that is the very purpose of the second review process, to review expenditures that were made subsequent -- you know, during the term of the agreement to make sure and allow the Commission to assure itself that those expenditures were made in a reasonable fashion under the facts and circumstances that were known at that time.

In addition, the term sheet does include a provision such that if the companies -- pardon me. If the operators of the plant are obligated to make a capital expenditure for environmental reasons or any other reasons and that expenditure renders the plant uneconomic going forward, then there are remedies included in the term sheet relative to that that protect the companies.

Q. Okay. And to be clear, that -- that provision would apply only if the investment would render the entire plant uneconomic; is that correct?

A. Correct, the second provision. But the first provision in terms of the -- the Commission's review and then setting that aside, there is the additional provision, which we've discussed, where all of the capital expenditure plans are submitted in advance of approval by the seller to the buyer for the buyer to review and comment on those capital expenditure plans with, you know, the details of the back and forth working to resolve any concerns about the capital expenditures so there's -- the companies built controls into this term sheet that will help them participate in those capital expenditure decision-making processes. To the extent that there is a determination they are unreasonable or would render the plant uneconomic, there's terms that protect against that.

And then stepping outside of that process, between the buyer and the seller, the companies have proposed that the Commission and its staff have an independent opportunity to review those decisions for reasonableness in light of the facts and circumstances known at that time.

Q. And if there were an expenditure that the companies contested under the final version of the proposed transaction as not consistent with good utility practice but that FES then expended the money anyway, would the companies seek to recover that expenditure through rider RRS?

A. I believe the companies will review the expenditures to assure themselves that they are being incurred in accordance with good utility practice. I expect that the expenditures will be, but in the event they won't, I think the companies would then withhold payment of those dollars. And as a result, they would not be included in rider RRS.

Q. And that withholding of payment would be resolved presumably through some contract action?

A. Correct.

Q. Okay. And if the companies lost that contract dispute and were required to make the payment to FES, would that determination then be binding on the Commission?

A. No.

MR. KUTIK: Objection. Objection.

EXAMINER PRICE: Grounds?

MR. KUTIK: Calls for a legal conclusion, your Honor.

EXAMINER PRICE: She can answer if she knows.

A. While I am not a legal -- pardon me. While I am not an attorney, the review process we called out does not except out that provision. The Commission has and its staff has the ability to review all revenues associated with the transaction and all nonlegacy costs.

Q. Okay. And I guess to try to walk you back from having to reach any legal conclusion, if the companies lost a contract dispute regarding the definition of good utility practice and were forced to make a payment in connection with that, would the companies seek to recover that payment through rider RRS?

A. The only way the companies would make that payment is if there's ultimate disposition that the costs were incurred in a fashion that was consistent with good utility practice. In which case, yes, the companies would seek to include those costs in the netting process that culminates in the charge or credit for rider RRS.

Q. And could we turn to your direct testimony, FirstEnergy Exhibit 7 at page 8, line 7 to 11.

EXAMINER PRICE: Before we leave this area, if I can interrupt you.

MS. FLEISHER: Sure, of course.

EXAMINER PRICE: While we are talking about expenditures, let's talk about fuel for a moment. Do you believe that the proposed transaction intends that Sammis would use the least cost fuel available in its generation of electricity?

THE WITNESS: I think the transaction contemplates that the operators of the plants will operate those plants in accordance with good utility practice.

EXAMINER PRICE: So then we get to ultimately there's going to be a staff audit of the fuel. And FirstEnergy Solutions, of course, has got some massive coal portfolio. They don't go out and buy every kind of coal at the same price.

Would FirstEnergy Solutions or the companies -- or FirstEnergy Solutions through the companies provide the staff the entire FES portfolio so the staff can be assured that they are using competitively priced coal and that FES is not simply using its worst coal contracts for Sammis and saving its best ones for power they are selling in the market?

THE WITNESS: I think the companies would and have committed to full information sharing with respect to the operation of the plants that are included in the proposed transaction.

EXAMINER PRICE: I understand that. I guess that's my point is, their full -- you could decide that all the information necessary for the operation does not include the full coal portfolio, so that the staff can look at all of FES's fuel contracts, or you can decide the other way. I mean, it's kind of an ambiguity in what we are talking about.

So my question is, do the parties intend that staff would have available to them the ability to review the entire FES coal portfolio or only the coal contracts that FES uses to serve Sammis?

THE WITNESS: I think the companies have committed to full information sharing relative to the plants included in the transaction.

EXAMINER PRICE: I'm not sure that answers my question, so I am going to ask -- let me rephrase my question.

Do the companies commit to make available to the staff FirstEnergy Solutions full coal portfolio for the staff to review in examining fuel costs? Yes or no.

THE WITNESS: No.

EXAMINER PRICE: Thank you. Thank you. I'm done.

Q. (By Ms. Fleisher) Okay. Now, I have one more question, of course, which is under the term sheet, do the companies have any ability to contest an expenditure that would be consistent with good utility practice but would not be the cheapest option?

A. Okay. As we've discussed, the term sheet lays out a very specific process for the companies to participate in the capital expenditure process. So to the extent that the companies had any concerns through that process, there's no limitations on their ability to raise those concerns. Beyond that, the standard that's been agreed to in the term sheet is that the operating work will be performed in accordance with good utility practice.

Q. And if there were an expenditure that the companies viewed as consistent with the good utility practice obligation but that was not the cheapest option for customers, would the companies seek to recover that expenditure through rider RRS?

A. As proposed, the rider RRS will include the net of the costs that the companies pay for the output from the plants versus the revenues that the companies receive from selling that output into the market. That is the calculation for rider RRS.

MS. FLEISHER: Move to strike as nonresponsive.

EXAMINER PRICE: The motion to strike will be granted -- actually, Mr. Kutik, I am going to let you respond before I respond to her motion.

MR. KUTIK: May I have the question and answer reread, your Honor?

EXAMINER PRICE: You may.

(Record read.)

MR. KUTIK: Your Honor, to me, the question is confusing. And because it's unclear to me first when you are talking about seeking recovery of costs, it assumes that this is a cost recovery mechanism, which this witness has said countless times in the last couple of days that it's not.

I think what the witness was trying to explain is it's not a typical cost recovery mechanism, but it is a netting mechanism, and that's the first error in the question.

The other error in the question, your Honor, I could mention, but I don't want to be accused of coaching the witness.

MS. FLEISHER: I am happy to clarify the question to the extent it gets us through faster.

EXAMINER PRICE: That would be great.

MS. FLEISHER: Okay. Let me take myself back to what the question was.

Q. (By Ms. Fleisher) To the extent an expenditure by FES is consistent with good utility practices but is not the cheapest option available, would the companies include that expenditure in the costs flowing through rider RRS?

MR. KUTIK: Your Honor, I will object at this time because I believe it's an incomplete hypothetical. And I could go further if you would like.

EXAMINER PRICE: No, no. I am going to sustain the objection, but then I am going to ask a question.

The companies will seek recovery of costs that the companies determine is consistent with good utility practice, period; is that correct? If the cost is consistent with good utility practice, the companies will seek recovery of that cost?

THE WITNESS: If the cost is consistent with good utility practice, it will be netted against the revenues from the output, and the net difference between those two will either be recovery or return as a credit to customers.

EXAMINER PRICE: Okay. Thank you.

Q. (By Ms. Fleisher) Okay. I think I can have just one more question on this. So let's say FES is going to replace the lights at Sammis, the lights in the Sammis cafeteria. And I don't know if there is a cafeteria, but let's say there is. And is choosing between CFL bulbs and LED bulbs, and for purposes of this hypothetical, I will ask you to accept that CFL bulbs have a, you know, five- or six-year payback period, and LEDs have a longer payback period, let's say ten years, would -- sorry. This is a complicated hypothetical and, no doubt, it will draw an objection.

MR. KUTIK: It will.

Q. Okay. I will strike, and let's just start with what I want you to answer, which is, let's presume that CFLs are a better investment, have a better payback over the term of the proposed transaction but LED bulbs offer payback that extends beyond the term of the proposed transaction. If FES were to choose to install LEDs because of the benefits offered beyond the term of the proposed transaction, would the companies consider that to be a reasonable cost?

MR. KUTIK: Your Honor, I'll object. This witness is not being tendered, although I think she is doing a good job at it, of being an expert on what constitutes good utility practice. There are other people here, who will be here, who certainly have operated plants and can answer that question. I am not sure it's productive use of our time for this witness to muse as to what light bulb is consistent with good utility practice and how that cost might be netted against revenues in the rider RRS.

MS. FLEISHER: May I respond?

EXAMINER PRICE: I was going to make her answer the question. Why don't you answer this question, and then we will move on from this area.

MS. FLEISHER: Certainly.

A. I think that determination has to be made at the time based on the facts and circumstances at the time and what the standard is at that time of good utility practice.

Q. Just to be totally clear, but the

companies would let the Commission make that determination, and the companies would not object to that expenditure?

MR. KUTIK: Objection.

A. I didn't say that.

MR. KUTIK: You answered.

Q. So the companies would object?

MR. KUTIK: Now, I'll object.

EXAMINER PRICE: Grounds?

MR. KUTIK: I'm not sure what it means to let the Commission make that determination.

EXAMINER PRICE: I agree. I think you need to rephrase your question in terms of would the companies accept -- or not maybe accept. Would this be part of the second stage of the two-stage review.

MS. FLEISHER: Certainly. I guess --

MR. KUTIK: I guess what is the what, your Honor?

EXAMINER PRICE: Pardon me?

MR. KUTIK: What is the what?

EXAMINER PRICE: Any expenditure.

Please proceed.

MS. FLEISHER: I guess do you want me --

EXAMINER PRICE: I am trying to help you out.

MS. FLEISHER: I appreciate it. Thank you.

Q. (By Ms. Fleisher) Would the companies present an expenditure, as we have been discussing, as part of the costs flowing through rider RRS?

A. Well, I think, as we've discussed, the companies are going to make a determination at the time the expenditures are presented to them whether that expenditure was made in accordance with good utility practice, which would be based on whatever the standard is for good utility practice at that time in the future.

If the determination by the company was that that cost was incurred in accordance with good utility practice, then payment would be made to the seller. The cost, among other costs, would be netted against the market revenues, and that net difference would be included in rider RRS.

Subsequent to that, as we've proposed, the Commission and its staff will have the opportunity to review all the revenue-related decisions for reasonableness, as well as nonlegacy, as well as costs arriving from nonlegacy decisions to make a separate and independent determination as to whether those costs were reasonable under the facts and circumstances at the time the decision was made.

Q. Now, we'll move on to FirstEnergy Exhibit 7, your direct testimony at page 8, lines 7 to 11.

A. I'm there.

Q. How will the companies calculate the amount of lost distribution revenue to be recovered?

A. The companies will, consistent with reporting to the Commission under the portfolio plans, identify kilowatt-hours savings that arose as a result of implementation of the energy efficiency programs approved by the Commission, take those kilowatt hours and multiply those in the case of residential customers by the base distribution rate, and that value would represent the lost distribution revenue.

Q. Are you familiar with a program that's part of the companies' portfolio plan called the customer action program?

A. Yes.

Q. And will kilowatt hours saved attributable to that program be included in the lost distribution revenue calculation?

A. Yes.

Q. And can you explain what the justification for that is?

A. The customer action plan is an approved Commission plan that will identify kilowatt hours that are saved as a result of energy efficiency, and, as a result, give rise to lost distribution revenue.

Q. And the energy efficiency measures that are within the customer action program are customer actions; is that correct?

A. Yes.

Q. Okay. Can we go to your first supplemental testimony, Exhibit 8, at page 4, lines 13 to 16.

MR. KUTIK: I'm sorry. What were the lines again?

MS. FLEISHER: I'm sorry. Page 4, lines 13 to 16.

Q. (By Ms. Fleisher) And is it correct there are currently only two customers of the companies participating under the generation service rider time-of-day option?

A. Yes.

Q. And to be clear, I am going to refer to this as rider GEN option; is that -- will that be clear?

A. No. I don't think so, only because rider GEN is also the rider where we provide our standard service offer generation rates that aren't time differentiated. So I think you should probably refer to it as rider GEN time-of-day option.

Q. Sure. Happy to do that. Thank you. And did the companies undertake any efforts under its current ESP to educate customers about this rate option?

A. The tariff is available publicly in our book of tariffs. Certainly to the extent -- I guess and I would add further in the number of presentations that I know I've made and my staff have made both to our customer service reps throughout the regions, as well as externally to customer facing groups, we always -- when we talk about the rider and generation options, we would mention the time-of-day rate as part of those discussions, so yes.

Q. Is there any information available on the companies' website about the rider GEN time-of-day rate option?

A. Yes. In fact, the tariff for all three companies is located on the companies' website.

Q. Anything aside from the tariff?

A. No.

Q. And if this particular aspect of the stipulation is approved, do the companies plan to conduct any particular activities to educate customers about this rate option or to encourage participation?

A. The companies would conduct the same outreach that they conduct after the approval of every Electric Security Plan, which, as I've described before, includes meeting with our customer service representatives so that when they are out in the field talking to customers, they have a full understanding, as well as including discussion of approved tariff and tariff opportunities in public meetings in which we participate in order to explain the terms and conditions of the electric security program.

Q. So am I correct in summarizing that as a continuation of your efforts to date?

A. Yes.

Q. And I believe you've testified that with respect to the energy efficiency programs contemplated in the stipulation, that the companies intend this ESP application as an application for approval of those programs at full stock?

MR. KUTIK: Could you have the question read, please?

MS. FLEISHER: Let's withdraw that

question, and I will say it again in a more comprehensible manner.

Q. (By Ms. Fleisher) Does the ESP application constitute the companies' application for approval of the energy efficiency programs described in the stipulation?

A. Yes. But as we discussed earlier in the week, to the extent that the Commission would decide that it needs to -- in order to administer the amended portfolio plan, that it needs to incorporate these programs into the portfolio plan, the companies would not oppose that.

Q. And if the Commission were to decide to incorporate the stipulation programs, would that be an amendment of the currently-approved plan?

A. I am not an attorney. I think that's really calling for a legal conclusion.

Q. Do the companies intend to include the stipulation energy efficiency programs in their proposed portfolio plans for 2017 and thereafter?

A. I don't know.

Q. If the company does not include the stipulation programs in its portfolio plan for 2017 through 2019, would the companies still recover the costs of those programs through rider DSE2?

A. Yes.

Q. And if the companies did propose to include the programs in the portfolio plan but the Commission decided that they would not be part of the portfolio plans for the companies, again, would the companies still recover the costs of those programs through rider DSE2?

A. Yes.

Q. Do you know how much the companies spend annually on the energy efficiency programs in, let's say, the 2013 or 2014 portfolio plan?

A. I don't remember.

MS. FLEISHER: May Mr. Dougherty approach?

EXAMINER PRICE: He may.

MS. FLEISHER: This is from a filing with the Commission, which I am happy to have marked as an exhibit if you would prefer.

EXAMINER PRICE: Let's mark it as an exhibit just for discussion purposes.

MS. FLEISHER: Sure.

EXAMINER PRICE: It will be marked as ELPC Exhibit 3.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. KUTIK: This is ELPC 4, your Honor?

MS. FLEISHER: No. 3.

Just so the record is clear, this is not a complete copy of the document which is available on the Commission's docket, but in order to save trees, I just printed the cover page.

MS. BOJKO: Ms. Mikkelsen, could you identify the document for us on the record?

MS. FLEISHER: That's what I was about to do.

MS. BOJKO: Okay.

Q. (By Ms. Fleisher) Ms. Mikkelsen, this document says it's energy efficiency and peak demand reduction program portfolio status report to the Public Utilities Commission of Ohio for the period January 1, 2014, to December 31, 2014, Docket Nos. 15-900-EL-EEC and others; is that correct?

A. Yes.

Q. And the second page you have is page 7 the document, and do you see the table on that page which has for each of the individual FirstEnergy EDUs the column labeled total 2013-2014 programs spend, including common costs?

MR. KUTIK: Objection.

EXAMINER PRICE: Grounds?

MR. KUTIK: Relevance.

EXAMINER PRICE: She'll get to that in a minute. Overruled.

MS. FLEISHER: I promise I will, your Honor.

Q. (By Ms. Fleisher) And subject to check, I promise I sat there with a calculator, would you agree that the total of these expenditures adds up to about $95 million over two years?

A. I'll accept that, subject to check.

Q. Certainly. And, you know, if I'm wrong, we'll correct the record. And would you agree that on average that's about $47.5 million per year?

A. I would agree that 5 divided by 2 is 47.5.

Q. Great. I am glad we can agree on that.

And do you know how much the energy efficiency programs described in the stipulation would cost annually?

A. Not precisely. I think that there are some annual numbers which we could calculate, and then there are some numbers included in this stipulation that are dependent upon participants bringing energy efficiency programs to the companies for inclusion in the portfolio, satisfaction of their portfolio obligations.

Q. And is it correct that the companies did not include the costs of the part 5B energy efficiency programs from the stipulation in its calculation of the -- or rather in its analysis of whether the ESP is in the aggregate better than an MRO?

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

EXAMINER PRICE: Please.

(Record read.)

A. I apologize. What section of the stipulation were you referring to, ma'am?

Q. To section 5B which would be -- sorry, different binder. I guess while I am finding the page numbers, that would include the city of Akron, COSE, and AICUO program. The companies did not include those in the quantitative analysis of the MRO versus the ESP because the companies have statutory mandates that they need to achieve relative to energy efficiency independent of the ESP case. And these programs are designed to provide energy efficiency savings to the companies in order to help them achieve those mandates. So it's not a cost of the ESP because the companies would need to incur costs in order to achieve those mandates independent of the

ESP.

EXAMINER PRICE: But in the absence of the ESP, isn't it true you can't amend your portfolio through 2016? So the 2016 costs -- isn't it true that in the absence of the ESP, you cannot amend your portfolio for 2016?

THE WITNESS: That is my understanding.

EXAMINER PRICE: So in the absence of the ESP, if we were comparing ESP to an MRO, the 2016 costs at a minimum would be over and above what would otherwise be provided if the company had an MRO?

THE WITNESS: I guess I don't see it that way if those programs give rise to energy efficiency savings which can be counted towards the companies' achievements of the mandates.

EXAMINER PRICE: But you can only get the authorization for the -- even assuming arguendo that you can get the 2016 costs included, you could only get the 2016 costs authorized if you are doing it as part of an ESP. You would have no other vehicle in the absence of the ESP for these energy efficiency programs; isn't that true?

THE WITNESS: To the extent they are included in the amended portfolio plan, yes.

EXAMINER PRICE: Right. And we cannot

change the amended portfolio plan until 2017?

THE WITNESS: Correct. But the amended portfolio plan does include a mercantile program which allows administrators during the period of 2016 to bring projects to the company for inclusion and that is part of what is contemplated in here certainly as it relates to the COSE program, as well as the Independent Colleges and Universities.

EXAMINER PRICE: Okay. Fair enough. Thank you.

Q. (By Ms. Fleisher) That actually raises a question for me. Are you asserting that the energy efficiency programs are -- provide a benefit because they help the companies meet their statutory energy efficiency requirements or because of external benefits to customers?

MR. KUTIK: Objection, your Honor. It assumes it's one or the other and not both.

MS. FLEISHER: If it's both, she can certainly say that.

MR. KUTIK: That wasn't her question.

EXAMINER PRICE: If it's both, you can certainly say that.

A. I think it is both.

Q. Okay. And to the extent those two do not exactly overlap, is it possible there are costs for these energy efficiency programs that would be above and beyond the costs required for the companies to achieve compliance with Ohio's statutory energy efficiency standard?

A. I'm not sure I can accept the hypothetical, the reason being that when we educate our customers about the benefits of energy efficiency, the result of that education in your hypothetical example may not manifest itself in this same area that the education occurred. But I think the customers are benefited, and that may manifest itself in actions in different periods.

Q. Do you agree that energy efficiency programs benefit customers by providing cost effective energy savings?

A. I think each customer makes the determination about how they're benefited by energy efficiency programs.

Q. That's one of the ways in which energy efficiency programs benefit customers?

A. I'm sorry. Is what? I didn't understand the question.

Q. Is delivery of cost effective energy savings one of the benefits to customers from energy efficiency programs?

A. Again, I think customers can address what they consider to be a benefit of energy efficiency programs rather than me opining as to what a customer may decide.

Q. Okay.

EXAMINER PRICE: Now, I am not going to allow that. You have been opining for two days now what you think benefits customers. You surely have an opinion on whether you think this benefits customers.

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

(Record read.)

A. May I ask you to clarify for me what you mean by cost effective energy savings?

Q. Sure. Let's say cost effective under the total resource cost test.

A. That's why I am having difficulty with the question, because in my mind, the total resource cost test takes a very long view with respect to the benefits arriving from an energy efficiency program. And it's difficult for me to assign that same view to an individual customer who may be challenged to make investments in the near term and look for a much shorter payback period, and that's why I am having difficulty providing a very general answer to what I think is very customer-specific determinations.

Q. Okay. That's fine. So you would agree that it's not necessarily automatic that any particular energy efficiency program would deliver cost effective energy savings to customers?

A. I think what I've said is that that determination should be made by the customers.

Q. Do you have any view as to what would constitute cost effective energy savings?

A. Again, I apologize if I am repeating myself, but I certainly think different customers have different views, and I have had conversations with different customers that have different views with respect to what is cost effective energy efficiency.

And I can think specifically of conversations that I have had with customers that are struggling economically and are asking me why they're being asked to pay for energy efficiency programs on their bills that they are not able to participate in because they don't have the capital funds. I think they may make a very, very different determination relative to your question than another customer who may make a very different determination, and so that's why I'm very much struggling because of my personal experience and discussions with customers providing a general answer to the question.

Q. I guess I'm not necessarily asking you to take a particular position. I'm just trying to find some common terminology we can use to talk about cost effective energy savings. So if you can give me a placeholder that I promise not to hold against you but just so -- how would you refer to cost effective energy savings?

A. I haven't thought about this in the context that I think you are asking. I don't have an opinion of how I would refer to that in terms of the entire customer population.

Q. Okay. Let's see if we can just get around this. Let's say I'm talking about cost effectiveness under the TRC test. Do you agree that some programs will be more cost effective under the total resource cost test than other programs?

A. Yes.

Q. Okay. And does the stipulation in parts -- take a step back. So I am going to refer to parts 5B and C of this stipulation at this point and incorporating part C only to the extent it involves potential funding for energy efficiency. Do these parts of this stipulation outline any specific measures or programs to be undertaken with the funds committed in the stipulation?

A. Yes. I think the stipulation lays out for each of these programs what the intent and purpose of the programs are. And then, more specifically, I think when we look at the, for example, COSE restricted payment or the restricted payment identified under paragraph 5 of VD, which is the AICUO restricted payment, those payments are going to be administered consistent with, as it says in the stipulation, the Commission's approved process in Case No. 09-553. So I think that there are specific programs or measures upon which these programs will operate.

Q. Okay. And neither your supplemental testimony nor the stipulation offers any estimates of specific energy savings from these programs, correct?

A. Correct.

Q. Are you aware that in reviewing a utility's proposed energy efficiency portfolio plan, the Commission requires the utility to show that a plan is cost effective on a portfolio basis?

A. Yes.

Q. Okay. And nowhere in the stipulation or your supplemental testimony is there any description of a process for evaluation, monitoring and verification of savings from these programs; is that correct?

A. No. I think, as we've discussed, the restricted payments for COSE, as well as AICUO, would be administered in accordance with 09-553-EL-EEC.

Q. Other than those two examples is there any description of evaluation, monitoring, and verification processes for these programs in the stipulation or your supplemental testimony?

THE WITNESS: May I have the question reread, please.

(Record read.)

A. In terms of evaluation and monitoring, I think the stipulation does address those issues when it talks about, for example, the companies will partner with COSE. They will, as part of that partnership, I'm sure, evaluate and monitor what COSE's proposals are or the companies' commitment to partner with the AICUO. I think as part of that partnership, we would monitor and evaluate those programs and the implementation.

Q. And are you aware that in reviewing the utility's portfolio plan, the Commission requires the utility to provide a description of a process for evaluation, monitoring, and verification of energy savings or peak demand reduction from the programs?

MR. KUTIK: May I have the question reread, please.

EXAMINER PRICE: You may.

(Record read.)

MR. KUTIK: Objection.

EXAMINER PRICE: Grounds?

MR. KUTIK: The requirements under portfolio plan are what they are. They can be briefed. They can be discussed. This witness being able to confirm or deny that is irrelevant, and those issues or those means of verification are irrelevant to the Commission's determinations in this case.

MS. FLEISHER: I am happy to respond, your Honor.

EXAMINER PRICE: Please.

MS. FLEISHER: I think Ms. Mikkelsen has clearly testified that the companies intend that these programs will in part help them comply with the statutory efficiency requirements, and the Commission has regulations regarding the programs to meet those requirements -- the portfolio plans to meet those requirements, and so I'm just trying to determine if the company intends to apply those regulations in some manner to these programs or not.

MR. KUTIK: Your Honor, this issue isn't a mystery to the Commission. This is how these programs have been dealt with under ESPs and they have been applied to the statute and reviewed. This isn't really a matter of serious debate.

MS. FLEISHER: That doesn't mean it's not relevant, your Honor.

MR. KUTIK: It's certainly not relevant.

EXAMINER PRICE: I think everyone's definition of serious debate varies, and I do think it is relevant. I will say this. Ms. Mikkelsen is supporting the energy efficiency provisions in the stipulation, but if there is somebody, other witness, of greater expertise to whom these questions are better directed, we can direct these questions to that witness and move on to a different topic. Otherwise, she needs to answer as best she can.

MR. KUTIK: I'll let Ms. Mikkelsen make that determination as to whether she is the best witness.

EXAMINER PRICE: Thank you.

THE WITNESS: May I have the question

reread, please.
EXAMINER PRICE: Yes.
(Record read.)
A. Yes. And savings arising from any of these programs in this stipulation that would be counted towards the companies' statutory mandates would be subject to the measurement and verification protocols that all other programs are subject to.
Q. And would the companies conduct that measurement and verification?
A. The measurement and verification would be conducted as part of the measurement and verification process being conducted for all energy savings or peak demand reductions being counted for reaching the companies' statutory obligations. So to the extent that that's done by an external evaluator, these would be counted by an external evaluator. To the extent that they are subject to review by the statewide evaluator, these would be reviewed by the statewide evaluator. It would become part and parcel of that same process.
EXAMINER PRICE: So just to be clear, it is the case that you have an independent EM&V coordinator to evaluate it; is that correct?
THE WITNESS: Yes, currently.

EXAMINER PRICE: Currently. And so all of these programs, including the city of Akron, all of the payments to AICUO and all the payments to COSE will be submitted to the EM&V coordinator for whatever EM&V actually means, evaluation, measurement and verification; is that correct?

THE WITNESS: What I said was to the extent that there are savings, energy efficiency or peak demand reduction savings, that arise from these programs, those would be submitted to the -- move through the measurement and evaluation process like all other savings.

EXAMINER PRICE: And so which of these programs do not result in savings towards the companies' annual benchmarks?

THE WITNESS: I don't think we would know that today, if any.

EXAMINER PRICE: Okay. So let me -- let me take a step back. The payments to the city of Akron you will present to the EM&V coordinator if it results in savings or evaluation, measurement and verification; but if it does not result in savings, you will not submit it to the EM&V coordinator?

THE WITNESS: I guess I don't know.

EXAMINER PRICE: Okay. And that would be

true of the other two programs if I were to repeat the question?

THE WITNESS: Yes.

EXAMINER PRICE: Thank you. Thank you for your indulgence.

MS. FLEISHER: Happy to, your Honor.

Q. (By Ms. Fleisher) And to the extent the companies do count savings from these programs towards their statutory benchmarks, would the companies seek shared savings for these energy savings?

A. The companies do not have a shared savings -- an approved shared savings mechanism as part of their amended plan for programs implemented during the amended plan period, and the companies don't have an approved portfolio plan for the balance. So we don't have a shared savings plan at this time.

Q. In submitting a new portfolio plan for approval to commence in 2017, would the companies seek a shared savings mechanism that would include savings from these programs?

A. I don't know what will be included in the companies' portfolio plan proposal for January '17 going forward.

EXAMINER PRICE: But in all fairness, the companies have never sought shared savings from mercantile customers for the mercantile program, have they?

THE WITNESS: No.

Q. (By Ms. Fleisher) I guess give me one second here just to be clear.

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

EXAMINER PRICE: You may.

(Discussion off the record.)

(Recess taken.)

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

Ms. Fleisher, you may proceed.

MS. FLEISHER: Thank you.

Q. (By Ms. Fleisher) And just to quickly finish up where we left off, Ms. Mikkelsen, is it correct that the city of Akron efficiency programs and the Citizens Coalition Customer Advisory Agency may provide energy efficiency programs to nonmercantile customers?

A. Yes. To the extent that the Citizens Coalition dollars aren't deployed for energy efficiency purposes I think is -- the first anticipation is they will be used for the Customer Advisory Agency.

Q. Fair enough. Now, does the stipulation provide for any cost effectiveness evaluation for the efficiency programs described?

THE WITNESS: May I have the question reread, please.

(Record read.)

A. The stipulation does not include any terms relative to cost effectiveness.

Q. And if savings from the programs are counted towards the companies' statutory efficiency benchmarks, would the companies conduct such a cost effectiveness evaluation?

A. Those programs would be subject to the same measurement verification and evaluation protocols that we discussed earlier.

Q. I guess is it your understanding that a form of cost effectiveness evaluation may involve steps beyond EM&V?

A. If the question is will the company perform a TRC test -- is that the question?

Q. Sure. That would be one example of the sort of formal cost effectiveness evaluation I am thinking about.

A. The stipulation does not contemplate the companies performing the TRC test; although, given the magnitude of the dollars in the stipulation, I don't think they would impact the overall cost effectiveness of the portfolio. Said a little differently, I think the portfolio would still be cost effective if you were to include the dollars.

Q. And I guess, just to be clear, putting aside what's in the stipulation, if the companies were to count the savings toward the statutory efficiency benchmarks, would the companies include these programs in a cost effectiveness evaluation such as the TRC test?

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

EXAMINER PRICE: You may.

(Record read.)

A. When I think of the dollars included in this program, to the extent, again, I am going to focus on the restricted payments to COSE, right, to the extent that COSE brings savings to the company through one of the companies' approved portfolio programs or through the mercantile program, those savings would be -- I mean those programs have already all been through the TRC test. The savings would be scored through those programs. So in that respect, I think the answer is yes.

Q. Okay. And would the companies include all of the programs described in the stipulation or just the programs for which they choose to count savings towards the statutory benchmark? And I'm -- let me strike that and make sure I'm clear.

In conducting any cost effectiveness evaluation such as the TRC test, would the companies include every efficiency program described in the stipulation or just the efficiency programs from which the companies are counting savings towards the statutory benchmark?

A. I think that will be determined when the company files its portfolio plan for 2017 forward.

Q. Okay. And if these programs are not included in either the current portfolio plan -- actually, let's take this one piece at a time.

To the extent these programs are occurring in 2016 and they are not included in the companies' portfolio plan, will the companies still recover the costs of those programs through rider DSE2?

MR. KUTIK: May I have the question read?

EXAMINER PRICE: You may.

(Record read.)

MR. KUTIK: Assumption that the ESP as amended by the stipulations are approved?

MS. FLEISHER: Sure, yes.

EXAMINER PRICE: Subject to that qualification.

A. Yes.

Q. Okay. And if these programs -- if savings from these programs are not counted towards the companies' statutory efficiency benchmarks, will the companies still recover the costs of these programs through rider DSE2?

A. Yes.

Q. And do the companies intend to bid energy savings from these programs into the PJM capacity auctions going forward?

A. To the extent that the PJM capacity markets allow for inclusion of the coincident demand reductions that arise from energy efficiency programs, then the companies would participate with those resources in the PJM capacity auctions.

Q. And are you aware that PJM has certain requirements with respect to EM&V for energy efficiency resources in order to qualify to be bid into the PJM capacity auctions?

A. Yes.

Q. And did the company -- strike that.

Will the companies receive any portion of the revenues resulting from bidding energy efficiency resources from these programs into the PJM capacity auctions?

A. To the extent that the companies are able to offer coincident demand reductions arising from these energy efficiency programs into the capacity markets, pursuant to Commission order, the companies would return 80 percent of those revenues to the customers and retain 20 percent of those revenues.

Q. And can we look at part 5B2 of the stipulation which is COSE Ohio efficiency resource program on page 10.

A. Yes.

Q. Is there anything in the stipulation restricting COSE from spending these funds outside the companies' service territory?

A. No, but it is my understanding that COSE's area of focus, of where their membership is, is within the companies' service territories.

Q. And the COSE unrestricted payments will go to COSE regardless of whether COSE then makes any loans to its members to invest in energy efficiency;

is that correct?

A. Correct. The unrestricted payment to COSE is to encourage the advancement of energy efficiency for the members of COSE.

Q. And in part VB5 of the stipulation, page 12, there is nothing in the stipulation restricting the AICUO from spending these funds outside of the companies' service territory, correct?

A. I guess I would make a caveat and then probably go back to my last answer. I thought in both instances for COSE and for AICUO, correct, there are two separate sets of funds. In the first question, you asked me about COSE regarding the unrestricted payments only, correct?

Q. Uh-huh.

A. So is your question with respect to AICUO also limited to the unrestricted payments?

Q. If you could answer as to both unrestricted and restricted, that would be great.

A. There is nothing in the document related to the unrestricted payment that it be used to encourage the advancement in education of energy efficiency for members of AICUO within the companies' service territories.

But with respect to the restricted

payments, those payments would only be made for projects that occurred in the companies' service territories, and the same would be true for the restricted payments for COSE.

Q. Okay. And is it correct that the AICUO unrestricted payments are not contingent on achieving any particular level of energy savings?

A. That's right. They are to encourage the advancement in education of energy efficiencies for the members of the AICUO.

Q. Okay. And to the extent the company counts energy savings or peak demand reduction savings from these programs towards the statutory benchmarks, is it correct that that would reduce the amount of savings that the companies must obtain through other programs?

THE WITNESS: May I ask to have the question reread, please?

MS. FLEISHER: I can reask it if it that would be helpful.

MR. KUTIK: May we go off the record?

EXAMINER PRICE: We may.

(Discussion off the record.)

Q. (By Ms. Fleisher) To the extent that companies count energy savings or peak demand reduction savings from these programs toward the statutory benchmarks, that would reduce the amount of savings that the companies must obtain through other programs, correct?

A. It is correct that it would reduce the amount of savings the companies have to achieve in order to meet their statutory mandates.

Q. All right. If we can go to Exhibit 2A, the errata to the stipulation.

So just to be clear about the effect of this provision, assuming that the Commission does approve these programs either as part of the companies' current portfolio plan or -- I'm sorry. Assuming that the Commission does not -- let me make sure I am asking it the right way.

Okay. I have got it. If the Commission does approve these programs as part of the companies' current portfolio plan or its next portfolio plan, will customers that opt out of the portfolio plan also be opting out of the costs of these programs?

THE WITNESS: May I have the question reread, please.

(Record read.)

A. May I ask what opt out you are referring to, ma'am?

Q. Well, as I think we both know, there are different kinds of opt outs. So let's start with a customer using the self-direct option in opting out of the rider, the efficiency rider. Would that customer then bear the cost of these programs?

A. Customers who opt out pursuant to the mercantile program would avoid paying rider DSE2.

Q. And to be clear, rider DSE2 would include the costs of these programs, correct?

A. Correct.

Q. And what about -- again, there are different versions, but an opt out under -- as authorized under Senate Bill 310. And if there is any difference among those various options, please tell me. But if a customer is opting out pursuant to Senate Bill 310, will that customer bear the cost of the stipulation efficiency programs?

A. Perhaps you can help me. I am unclear what you mean with respect to various options in that question, ma'am.

Q. Okay. I guess I was referring mainly to -- I guess I don't -- I don't think we need to distinguish at all, unless you think we do. If a customer is opting out pursuant to Senate Bill 310, will they bear the cost of these stipulation programs?

A. No.

Q. And does the stipulation contain any safeguards to ensure that customers that opt out don't participate in these programs?

A. The stipulation doesn't include any safeguards. I would expect safeguards associated with customers' participation in programs after they've opted out to be managed through the opt-out process in the management of the opt-out process.

Q. So the companies would ensure that no such participation took place by some means?

A. Yes.

Q. Okay. But those means are not -- you haven't decided what those would be yet; is that correct?

A. No. I don't know that I said that. What I said was that management of the customers who opt out and the assurance that once they opt out, they don't participate in the programs would be managed through the implementation and management of the opt-out process independent of the stipulation.

Q. Okay. And what safeguards does that process include?

A. I know that the energy efficiency folks work very closely with the staff of the Public Utilities Commission in order to keep a list of customers that have opted out. And to the extent that any of those customers that have opted out relative to SB 310 were to try to participate thereafter in a program offered by the companies, under the portfolio plan, I think there's checks at that point to say they are no longer eligible to participate.

Q. And to the extent these programs described in the stipulation will take the form of education through, I don't know, materials distributed to members, let's say, would there be any safeguard in place to ensure that those materials don't go to opt-out customers?

A. I think as a practical matter, that would be very difficult.

Q. Can we turn to your supplemental testimony, Exhibit 7 at page 3, lines 1 and 2. And here it describes certain economic development, job retention, system reliability and stability and certainty regarding retail electric service purposes that you ascribe to rider ELR; is that correct?

A. I am not sure of the use of the word "purposes" there, but I think the document says what it says, that rider ELR promotes economic development and job retention, system reliability and stability and certainty regarding retail electric service.

Q. And is there any way to quantify these benefits?

A. We have not included a quantification of these benefits in the MRO versus ESP test. We have captured the qualitative benefits of these programs.

Q. And is the curtailable load amount provided for in the supplemental stipulation designed to maximize these benefits?

A. Again, it's difficult for me to address the number included in the supplemental stipulation because it's been revised, so do you --

Q. I apologize. I think I am referring to the wrong one. I am talking about the final number which is in the second -- I am losing track. But the total amount of curtailable load as allowed under the stipulation as it exists today.

A. With that as a backdrop, may I have the question reread, please.

EXAMINER PRICE: Please.

(Record read.)

A. I think the curtailable load included in this stipulation was designed to reach a balance.

Q. A balance between what and what?

A. Benefits that arise from rider ELR participation with the costs to customers responsible for paying for the participation.

Q. So would it be your opinion that adding more curtailable load would not strike the right balance?

A. It is my opinion that the signatory parties agreed that this amount of curtailable load strikes the right balance for the ESP IV period.

Q. And I guess to dig in a little bit, in balancing those two factors, obviously there are costs on one side. What did you consider in determining that the balance was right based on the benefits from the other side?

MR. KUTIK: Your Honor, I'll object only to the extent that it may call for disclosure of issues and discussions that occurred during the settlement process.

MS. FLEISHER: Do you need me to respond?

EXAMINER PRICE: Sure.

MS. FLEISHER: I am asking only for her opinion, not any settlement communications, but she's asserted that this -- standing on its own, this number represents a balance, and I am curious about the basis for that opinion.

MR. KUTIK: Your Honor, she talked about stipulating parties agreed that this was the balance.

EXAMINER PRICE: I think I am going to sustain the objection.

MS. FLEISHER: Okay.

Q. (By Ms. Fleisher) Would you say that if there were a gigawatt of curtailable load permitted under rider ELR, that would not strike the right balance?

A. I don't know. I haven't thought about that in the context of the stipulation.

Q. What would you consider in making that determination?

A. The balance between the economic development and job retention benefits that arise from ELR, the system reliability and stability benefits that arise from rider ELR participation, the importance for certainty and predictability for customers relative to their price of their retail electric service, how that balances out against the costs of implementing those programs based on conditions and circumstances that exist at the time of making the evaluation.

Q. And is there any specific condition or circumstance that would inform you as to the magnitude of those benefits? Let's say reliability. How would you determine how much of a reliability benefit you were getting from a particular amount of curtailable load?

A. An example that comes to mind is currently FERC and PJM -- I guess the courts actually are looking at whether or not demand response has a role at all as a supply side resource in the PJM capacity markets, because as it stands today there is a great deal of doubt whether that will be the case going forward.

If, in fact, we find that that is not allowed, demand response is not allowed, to participate in the PJM market, then I think that's a fact and circumstance that would very heavily weigh in my thinking about what the right amount of retail interruptible load is in order to assure the stability and certainty of providing service to the companies' customers.

Q. Okay. And let's say that demand response continues to participate as a resource in PJM, so, in other words, putting aside that particular issue, are there any other conditions or circumstances that would form your analysis of what the magnitude of a reliability benefit would be?

A. Yes. I think my determination about the benefits arising from rider ELR would be influenced by the amount or number of instances where PJM finds itself in a condition of system emergency would influence my decision about the need and benefits of having retail interruptible load in order to protect the firm service of the companies' customers.

Q. So that would be based on the frequency of events or the amount of load called upon to be curtailed, things like that?

A. Yes.

Q. Okay. And in terms of the increase in the curtailable load available under rider ELR between the December 22, 2014 stipulation and the supplemental stipulation, did that increase lead to an increase in the magnitude of benefit that will result from rider ELR?

A. Yes.

Q. And will the demand resources created under rider ELR be eligible to participate as capacity performance resources in the PJM capacity markets?

A. The ESP period for ESP IV is the delivery years '16-'17, '17-'18, and '18-19. The transition auctions for capacity performance products in '16-'17, and '17-'18 will already be complete prior to the company having approval of this ESP and having ELR resources under contract.

For the delivery year '18-'19, the rules associated with participation in the PJM markets either as a base -- I guess it goes strictly to capacity performance in '18-'19. And as drafted today, the tariff provisions of rider ELR would not support participation or offering those resources into the capacity market for '18-'19.

While that is true, we have found ourselves in that circumstance in the past, and the companies have worked with the PUCO staff to reach an agreement that we would reach out to our participating ELR customers. We would modify the tariff. The customers would have the opportunity to elect to continue to participate under those modified terms. I would expect that's the process we would go through for the '18-'19 delivery year.

Q. And do you know what modifications would be necessary to the tariff?

A. I think there's a number of modifications that would be necessary to the tariff in terms of period of time in which the resources can be expected to be called, duration of the time in which the resources could be expected to call. A number of provisions would have to change. I don't have a comprehensive list in front of me, but it would be several changes to the tariff.

Q. And do you think that those changes to the tariff would affect the level of participation of curtailable load in rider ELR?

A. Again, the changes we are talking about would be for the '18-'19 delivery year only, and I don't know the answer.

EXAMINER PRICE: Is it possible for the '17-'18 delivery year to amend the tariffs and bid it in in an incremental auction, or will there not be enough time to get it done before the next incremental auction? Have they done away with incremental auctions?

THE WITNESS: My understanding is there wouldn't be an opportunity to or the resources as capacity resources products, but for '16-'17 and '17-'18 incremental auctions, we could offer those in as base capacity resources. It's only in '18-'19 that you no longer have the opportunity to offer the resources as a base.

EXAMINER PRICE: So will you offer them

into the '17-'18 and '16-'17 incremental auctions?

THE WITNESS: To the extent that we have a Commission-approved program and resources under contract coincident with PJM's rules, yes.

EXAMINER PRICE: Okay.

Q. (By Ms. Fleisher) And one question related to ELR customers opting out of the companies' energy efficiency and peak demand reduction portfolio plan. Where those companies opt out, will the rider ELR costs attributable to those customers still be included in the on-bill disclosure of the costs of the companies' compliance with the state PDR standard in connection with Case No. 14-1411?

THE WITNESS: May I ask that that question be reread, please.

(Record read.)

A. I believe so, yes.

Q. All right. And just one last question. I promise only one. Referring back to our discussion of good utility practice, is it your position that good utility practice is not the same as least cost planning?

A. May I ask you to describe to me what you mean by least cost planning? I have a different context than it sounds like what you are using in my mind when I think of least cost planning.

Q. I guess in terms of the operation of power plants, I'm struggling to describe it any better. But I guess by least cost planning, I mean making operational decisions so as to lead to the least cost over the long term.

MR. KUTIK: I'll object, your Honor.

EXAMINER PRICE: Grounds?

MR. KUTIK: As I indicated earlier, your Honor, I don't believe this witness is being offered as an expert on good utility practice with respect to utility plant operations, particularly generation plant operations. There are many witnesses that will be presented that will be experts with respect to plant operations.

EXAMINER PRICE: Ms. Mikkelsen, who would be the appropriate witness to ask this question?

THE WITNESS: From the companies' perspective, Mr. Ruberto. From the plant's perspective, Mr. Harden.

EXAMINER PRICE: Okay. We will defer until those witnesses have a chance -- or come up on the stand.

MS. FLEISHER: Okay. That's all I have. Thank you.

THE WITNESS: Thank you.

EXAMINER PRICE: Mr. Dougherty.

MR. DOUGHERTY: Yes. Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Dougherty:

Q. My name is Trent Dougherty.

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

EXAMINER PRICE: Yes.

(Discussion off the record.)

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

Q. Thanks. And, Ms. Mikkelsen, as I said, my name is Trent Dougherty, and I will be asking questions on behalf of the Ohio Environment Council and the Environmental Defense Fund. And thankfully some of my colleagues have asked a lot of my questions, so I am just going to try to bounce around on a couple of issues you've already been asked and try to get some clarification on a few details mainly about the proposed PPA agreement post-transaction.

I guess, first of all, you had mentioned Monday and I think yesterday and probably today that there has not been a contract signed for the proposed transaction; is that correct?

A. Yes.

Q. And you also confirmed that the term sheet previously marked as Sierra Club Exhibit 1 is a draft, correct?

A. I think I agreed that the Sierra Club Exhibit 1 certainly has a watermark that says draft but that it represented an agreement in principle between the buyers and the sellers and really contained the final representation of the terms and conditions between the two parties.

Q. Is an agreement in principle exactly the same as an agreement in detail, if I could say a final agreement?

MR. KUTIK: Well, at this point, your Honor, I think we are arguing with the witness. She has testified it is not a final. She testified what she believes the term sheet is.

EXAMINER PRICE: Well, he asked two questions so why don't you break up your two questions.

MR. DOUGHERTY: I will break up my two. Thank you.

Q. Is an agreement in principle the same as an agreement in detail?

A. Is the term an agreement in detail a term of art? I'm not familiar with it, so I am reluctant to answer if it's a specific term. Not being an attorney I am reluctant to answer for fear I am responding to a term of art inartfully.

Q. I will get to the point. Are negotiations continuing on this agreement?

A. No.

Q. So why is there not an agreement signed?

A. Again, I did not participate in the negotiation or the development of the term sheet ,so questions as to why the contract hasn't been signed would be better directed from the companies' perspective to Mr. Ruberto who did lead the EDU team.

Q. And -- okay. Very well. Going on to page 13 of your supplemental testimony, I believe that is Exhibit 8, line 13, you urge the Commission -- are you there?

A. Yes, sir.

Q. You urge the Commission at that time to approve the stipulation by April 8, 2015, in time for what was then the May BRA auction; is that right?

A. I am not sure about the word urge, but it does state approval of the stipulation by April 8 would be necessary for the companies to have adequate time to participate --

Q. Fine.

A. -- in the base residual auction.

Q. Fine. The urge was mine, I believe. And so there was no -- obviously no final agreement by then, by the April 8, no final agreement on the PPA.

MR. KUTIK: Objection. I don't think this part of his -- her testimony is talking about a final agreement on the PPA. It's talking about approval by the Commission.

EXAMINER PRICE: That's correct. And we will take administrative notice of the Commission did not approve of the ESP by April 8, 2015.

MR. DOUGHERTY: Thank you.

Q. And, however, the -- the RRS rider which is part of the ESP and the stipulation deals in large part, if not exclusively, with the proposed power purchase agreement, correct?

A. The companies are not seeking Commission approval of the purchase power agreement in this proceeding. The economic stability program contemplates a purchase power agreement between the companies and the plant operators.

Q. Would it be fair to say that there's not a guarantee that the power purchase agreement will be agreed to by the time this proceeding is over?

A. I don't know.

Q. And you wouldn't know whether -- strike that.

And the same could be said that you can't guarantee there will be a final signed power purchase agreement by June 1, 2016, correct?

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

EXAMINER PRICE: You may.

(Record read.)

A. That's correct.

Q. Thank you. Did the companies hire an independent financial adviser to review the aspects of this proposed transaction to determine whether it was in the best interest of the companies?

A. Not that I'm aware of but, again, that question would probably be best directed to Mr. Ruberto who led the EDU team.

Q. Okay. In other large deals that you would be a part of for -- for FirstEnergy for the companies, have the companies hired an independent financial adviser to review aspects of the deal?

MR. KUTIK: Objection.

EXAMINER PRICE: Grounds?

MR. KUTIK: Foundation.

EXAMINER PRICE: Sustained.

Q. All right. I will -- you had mentioned that the issues and questions dealing with the negotiations are best for Mr. Ruberto. Would he be the decision maker for the approval of the power purchase agreement?

A. I would expect Mr. Ruberto would have reviewed prior to agreeing to the terms and conditions in the term sheet in the agreement of principle, I would expect he would have reviewed those terms and conditions with his management. But, again, better questions directed to Mr. Ruberto.

Q. And would his management, Mr. Ruberto's management, be the decision maker?

A. I would ask that you direct that question to Mr. Ruberto.

Q. Fair enough. You were asked, I believe, by Mr. Petricoff yesterday about the makeup of the FirstEnergy Corp. family, that's my term, but I believe he suggested he tried to ask a line of questioning to get a sense of a chart of how the company's made up -- FirstEnergy Corp. is made up. Do you recall that?

A. Yes.

Q. And so I just want to ask a couple of clarifying questions there. In that chart are officers of FirstEnergy companies employees of FirstEnergy Corp.?

MR. KUTIK: May I ask a clarification as I'm --

EXAMINER PRICE: You may.

MR. KUTIK: I am not remembering our glossary. FirstEnergy companies, are those the operating companies, Ohio Edison, Toledo Edison, CEI?

MR. DOUGHERTY: I think as long as I say companies, that's what it means.

MR. KUTIK: As long as you are making that representation, that's fine with me. Thank you, your Honor.

A. I don't think FirstEnergy Corp. has any employees.

Q. Okay. And the companies are investor-owned utilities, correct?

MR. KUTIK: We'll stipulate to that, your Honor.

Q. Thank you. And that they have -- and as Mr. Petricoff explored yesterday, am I correct that FirstEnergy Corp. is the sole shareholder of that investor -- those investor-owned utilities?

A. I don't know. I think so but I don't know.

Q. Check with the record of what the answer of that question was earlier. But as investor-owned utilities with shareholders, the companies have a fiduciary duty to those shareholders, correct?

MR. KUTIK: To the extent it calls for a legal conclusion, I will object.

MR. DOUGHERTY: Understanding she is not an attorney.

EXAMINER PRICE: Understanding you are not an attorney, you can answer if you know.

A. Yes.

Q. Thank you. Going to the -- going to the analysis of this power purchase agreement, I believe you were asked earlier by Ms. Fleisher about the possibility of a competitive bidding process being considered by the company. Do you remember that?

A. I'm troubled by the underlying assumption in the question about the analysis of the purchase power agreement. Again, the purchase power agreement is not before the Commission for approval in this proceeding.

Q. And by analysis I think I am referring --

I know I am referring to the companies' analysis of the -- of the proposal presented by FES. So I'll ask it again maybe with that to clarify. I'll just ask it. In considering the power purchase agreement that was presented by FirstEnergy Solutions, FES, to the companies, is it true that you did not consider a competitive bid process for those resources or similar resources to consider whether it's the best deal for the companies?

MR. KUTIK: Objection.

EXAMINER PRICE: Grounds?

MR. KUTIK: Your Honor, I believe this area has been covered. Ms. Mikkelsen has testified that she was not involved in the negotiations, and in response to Ms. Fleisher's questions along this line, she suggested that questions be put to Mr. Ruberto who led the team on behalf of the companies with respect to the proposed transaction.

EXAMINER PRICE: That's odd. I thought you were going to say it was asked and answered.

MR. KUTIK: That's what I mean.

EXAMINER PRICE: I had a different answer in mind. Was this just a foundation question and you have a follow-up or?

MR. DOUGHERTY: It was a foundation, but

as long as we can -- we can stipulate that any questions about the details of negotiations about alternatives, about evaluations of other resources that could be used to reach the goals of the power purchase agreement are best for Mr. Ruberto and that Mr. Ruberto doesn't say I should have asked Ms. Mikkelsen about that, I'm fine with that.

EXAMINER PRICE: I'll assure you if Mr. Ruberto says you should ask Ms. Mikkelsen, we will bring her back.

MR. KUTIK: Well, with respect to an area relating to the negotiations.

EXAMINER PRICE: With respect to the negotiation of the proposed transaction, consideration of alternatives. What was your other area?

MR. DOUGHERTY: Let me see. Alternatives, evaluation of other resources, I am considering that alternatives as well, that could meet the goals of the power purchase agreement as it's been represented to the parties and the Commission here.

EXAMINER PRICE: Ms. Mikkelsen, are all those questions best directed to Mr. Ruberto?

THE WITNESS: I think I've answered a

number of those questions already. Any additional questions, I guess, could be directed to Mr. Ruberto.

Q. Excellent. That's speeding things up considerably. Thank you.

EXAMINER PRICE: Well, for Ms. Mikkelsen, not Mr. Ruberto.

Q. This may be a similar area but I will go down it just in case. Have the companies done any benchmarking in your career when it comes to comparing the companies' business practices with the business practices of other utilities to make sure that the companies are following best business practices?

MR. KUTIK: Your Honor, I would just ask that this be a general answer so that nothing with respect to the companies' proprietary business strategies be revealed. Certainly a "Yes," "No," or something very close to that certainly would be okay. Certainly we are concerned about proprietary information.

EXAMINER PRICE: "Yes", "No," or "I don't know."

A. Yes.

Q. Again, this may be a question for you, it may be a question for Mr. Ruberto, but with that in mind, was benchmarking done to analyze the proposed transaction in this case?

A. Yes. And the details of that analysis would be better addressed to Mr. Ruberto. That analysis was done under his direction.

MR. DOUGHERTY: Thank you. I have no further questions for you. Thank you.

EXAMINER PRICE: Thank you. Why don't we go ahead and take our lunch break now. We will return immediately after the Commission meeting. We are off the record.

(Thereupon, at 12:37 p.m., a lunch recess was taken.)

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Wednesday Afternoon Session,
September 2, 2015

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EXAMINER PRICE: Let's go on the record. Who was the next volunteer?

MR. STINSON: I'll go.

EXAMINER PRICE: Mr. Stinson.

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EILEEN M. MIKKELSEN

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

CROSS-EXAMINATION

By Mr. Stinson:

Q. Good afternoon, Ms. Mikkelsen.

A. Good afternoon.

Q. I just have a few questions of you. First of all, I would like to draw your attention to Company Exhibit 8, which would be your supplemental testimony. And on page 11 at the top of the page in the box, you have listed there "Economic Development Funding" and "Low Income & Customer Advisory Agency Funding." I just wanted to ask if those were both shareholder funded.

A. Yes, sir.

Q. Thank you. Are you familiar with base distribution rate cases filed before the Commission generally?

A. Yes.

Q. You participated in those in the past?

A. Yes.

Q. Are you aware that those cases can be stipulated as well?

A. Yes.

Q. And are you aware if any of those base distribution rate cases contain stipulation provisions that provided shareholder funds to low income customers or groups?

A. I can't remember any provision as I sit here today, any such provision.

Q. Could that be a provision of a base distribution rate case stipulation, though, providing low income funds to -- providing funds to low income customers or groups?

A. Yes.

MR. STINSON: If I could approach, your Honor.

EXAMINER PRICE: You may. You are not marking this as an exhibit? It is just for reference?

MR. STINSON: Yeah, I think it is

reference. I don't know if she is going to really need it, your Honor.

EXAMINER PRICE: Okay.

Q. (By Mr. Stinson) Now, Ms. Mikkelsen, you are testifying today as to the -- in the aggregate test, correct?

A. I am -- Mr. Fanelli is the primary witness with respect to the MRO versus ESP test. I am testifying as to the modification to the MRO versus the ESP test that arises as a result of the stipulations.

Q. Okay. Thank you. Are you familiar with what I just handed you, which is Section 4928.143 of the Revised Code?

A. Yes.

Q. And that is the statute, particularly Division C, that contains the ESP versus MRO test, correct?

A. Yes.

Q. And Division B contains those items that can be included in an ESP application; is that also correct?

A. Yes.

Q. I would like to draw your attention now to Company Exhibit 8, which is your supplemental testimony, page 8, lines -- beginning at line 5 where you state, "In particular, the Economic Stability Program as implemented through rider RRS is a term, condition or charge that relates to bypassability and default service as it has the effect of stabilizing or providing certainty regarding retail electric service." And I just wanted to ask you if what you are doing there is essentially paraphrasing the statute that is 4928.143(B)(2)(D)?

A. Yes.

Q. Now, how -- I'm sorry.

A. Pardon me. Yes, as it relates to the terms of the economic stability program.

Q. Thank you. How does the RRS relate to bypassability?

A. Rider RRS relates to bypassability in so much as it applies and provides benefits to both shopping customers as well as nonshopping customers.

Q. Does that mean it's nonbypassable?

A. Rider RRS is nonbypassable.

Q. And also with respect to default service, how does the RRS relate to default service?

A. Rider RRS relates to default service insomuch as it is a retail rate stability mechanism for our standard service offer customers which provides a rate stabilization mechanism for their SSO generation supply.

Q. Are you equating default service then to the SSO?

A. Yes.

Q. I would like to talk just a little bit -- first we will go to rider DCR. And I don't believe you quantified that for purposes of the ESP versus MRO test; is that correct?

A. It is not included in the quantification of the MRO versus ESP test, that is correct; although, questions related to the MRO versus ESP test arising from the original application are sponsored -- should be directed to Mr. Fanelli.

Q. I am just going to ask why it was not quantified.

A. And, again, Mr. Fanelli can certainly describe this in greater detail, but I think it is the view that in the absence of an ESP, the companies could file for a base rate case to collect the dollars associated with DCR, so it would be indifferent -- it would be indifferent in the MRO versus the ESP. And that determination is consistent with past Commission practices in our ESP, sir.

Q. So you are saying if the company were to file an MRO, it could also file a base rate case and collect the DCR revenues?

A. Yes.

Q. Also rider GDR is not quantified. Can you explain the reason for that?

A. Rider GCR was proposed in the companies' --

MR. KUTIK: Did you say GCR?

THE WITNESS: GDR.

MR. KUTIK: Thank you.

MR. DOUGHERTY: GDR.

A. Rider GDR as proposed in the companies' application is really the companies' seeking establishment of a rider which will be populated potentially but not with certainty over the ESP period with costs that arise from governmental directives during the term of the ESP.

In order to include costs for recovery in that rider GDR, the companies would first have to come before the Commission and seek authority and approval to include those costs. So at this time, the companies have not incurred any costs. It could be included in the rider, which is why it's not reflected at a value, sir.

Q. What's commonly called a placeholder

rider at this point?

A. You could refer to it as a placeholder rider, yes.

Q. Now, you say that the company will come back to the Commission when the rider is to be populated. At that point, is the company also going to submit another analysis of the ESP versus MRO test?

A. First, I would say the company may, not that it will, come forward with an additional application. I don't know with certainty that the company will come forward with an additional application relative to the government directives rider.

And with respect to the second part of the question, no, I would not expect the companies at that time to come forward with a revised MRO versus ESP test, because I believe in the absence of an ESP, the companies under an MRO would similarly seek recovery of these costs. So the MRO versus ESP test would be indifferent.

Q. I would like to go back to the statute, and particularly 4928.143(B)(2). And in focusing on rider GDR, if you could tell me under what provision rider GDR would fall under subdivision B?

THE WITNESS: May I have the question reread. I didn't catch the last part of the question. I apologize.

(Record read.)

A. H, because it is a provision regarding the utility's distribution service. And, also, because if one of these issues arise, it would be a provision regarding single-issue ratemaking.

Q. Would all items recovered then under rider GDR be related to distribution?

A. All items collected or proposed for recovery under rider GDR would be the responsibility of the companies' distribution utilities, yes.

Q. Also on Exhibit 7, your direct testimony, page 26, you testify as to net metering. And I don't believe that that's quantified for purposes of the ESP versus MRO test either. Can you explain why?

A. Currently, the companies are making payments to net metering customers for generation that they produce in excess of their needs. The companies are making those payments to the net metering customers and not being reimbursed for those payments. So the proposal here is that the companies should be able to recover those payments.

The companies would seek recovery of

those payments whether we were taking generation -- or procuring generation service for our standard service offer customers under an MRO or an ESP. So the MRO versus ESP is indifferent to this request.

Q. Now, going back to Exhibit 8 at page 4, I believe, and take these together, the last two bullets there. My question is the same with respect to both of those. And under which provision in .143(B)(2) would those items fall?

MR. KUTIK: Not being too picky, but just to be clear, at least on my page, there are white bullets and black bullets. Are we talking about two black bullets?

MR. STINSON: The two black bullets. The white ones are circles.

MR. KUTIK: Thank you for that.

A. Provision I, sir, which specifically allows for provisions associated with energy efficiency programs. I'm sorry. That was bullet 1, the second dark bullet.

Q. It was a two-parter.

A. I think it is also provision I, sir, in so much as the fuel funding is an economic development program for the residential customers.

Q. How is that an economic development

program for the fuel fund customers?

A. I think that the fuel fund is directed towards low income customers in the companies' service territory, and to the extent that these customers receive fuel funding under the ESP, I believe that promotes the residential customers' economic well-being or economic development.

Q. Exhibit 9 at pages 13 and 14 discuss severability provisions. It's my understanding if a court were to reject the RRS in whole or in part, the company would attempt to modify the RRS; is that correct?

A. I think what this provision says is that if the companies and the parties find themselves in a circumstance where a court modifies -- or rejects or modify the rider RRS, then the provisions of the ESP would continue forward while the companies and the parties work together in good faith and great haste in order to remedy the deficiency identified by the court so that it could repropose alternate or revised solution to the Commission for its review and approval.

Q. And at page 13, lines 15 and 16, you indicated, "The Companies would then file (or jointly file with the Signatory Parties)." By that, do you mean that the company could file solely?

A. I wouldn't anticipate that to be the outcome. But to the extent that none of the signatory parties were supportive of the solution proposed by the companies, then, yes, the companies could. But, again, it's hard for me to picture that scenario because the signatory parties already agreed to rider RRS. Under this scenario, the Commission has already approved rider RRS, and now what the parties are trying to do is work in good faith to remedy whatever the concerns might be from the courts.

Q. But if the parties couldn't reach an agreement upon a modification, the company could file on its own, correct?

A. Yes.

MR. KUTIK: Objection.

EXAMINER PRICE: Grounds?

MR. KUTIK: She answered.

EXAMINER PRICE: It's moot. Let's move on.

Q. (By Mr. Stinson) If the company did file on its own, the signatories would lose the benefits of the current stipulation; is that correct?

EXAMINER PRICE: Can I have that question back again.

(Record read.)

A. No.

Q. Why not?

A. The companies' proposal is that the signatory parties would have an opportunity to express concerns, if any, with the modified rider RRS or its successor provision and raise those concerns to the Commission.

What the proposal is, is if those concerns are not accepted by the Commission, then the signatory party that opposed the modified RRS or its successor provision would forfeit its stipulation provision.

Q. Does that mean then if the court -- if the current signatories propose the modification and the Commission did not accept their proposals, that's when they would lose their benefits?

THE WITNESS: May I ask that that question be reread.

Q. Maybe I can rephrase it for you.

A. Thank you, sir.

Q. Make it a little bit clearer. I am trying to get out when the signatories will lose their benefits under the stipulation. I am trying to understand is it your testimony then that if a modified stipulation or modified RRS is agreed to by some of the parties or even the company, if any of the current signatories propose it before the Commission and lose, they will lose their benefits?

MR. KUTIK: Objection.

EXAMINER PRICE: Grounds?

MR. KUTIK: Perhaps I am just seeking a clarification. Are we talking about the hypothetical where the RRS has been approved by the Commission and the ESP has been approved by the Commission and the court has rejected rider RRS?

EXAMINER PRICE: Yes.

MR. STINSON: Correct.

MR. KUTIK: That wasn't the question.

A. Yes.

MR. STINSON: Thank you. Nothing further.

EXAMINER PRICE: Thank you.

THE WITNESS: Thank you.

EXAMINER PRICE: Mr. O'Brien.

MR. O'BRIEN: I have no questions, your Honor, at this point.

EXAMINER PRICE: Mr. Mendoza.

MR. MENDOZA: I am Mr. Mendoza.

EXAMINER PRICE: You are Mr. Dougherty.

MR. MENDOZA: I am with Mr. Fisk.

EXAMINER PRICE: I knew you were with one. Any intervenor attorneys care to cross?

MR. SAUER: I still have some questions, your Honor.

EXAMINER PRICE: Mr. Sauer.

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CROSS-EXAMINATION

By Mr. Sauer:

Q. Good afternoon, Ms. Mikkelsen.

A. Good afternoon.

Q. I have a few questions for you. My name is Larry Sauer. I am with the office of Ohio Consumers' Counsel.

EXAMINER PRICE: Your microphone, Mr. Sauer.

MR. SAUER: I thought it was on. Is that better?

EXAMINER PRICE: No.

Q. (By Mr. Sauer) Ms. Mikkelsen, could you turn to your direct testimony, page 6 and 7. And there you are talking about the incremental tax provision beginning on about line 15 of page 6.

A. I'm there.

Q. And you describe the incremental tax provision, and you say it allows the company to file a separate application to commence recovery of any new or incremental taxes paid or collected by the companies and not recovered elsewhere, correct?

A. Yes.

Q. Is that provision intended to address situations where the companies are facing tax increases only?

A. Yes.

Q. So if during the term of the ESP, there should be a tax decrease or reduction in the companies' taxes that are embedded in base rates, would the company not seek to credit customers for that tax reduction?

A. The companies would not seek to credit customers under that circumstance.

Q. And is there a materiality limit that the companies are thinking in terms of if there was a tax increase they would actually seek recovery for?

A. The companies do not have a materiality threshold established with respect to the incremental tax provision. I think that determination of whether the impact of the incremental tax would be made if and when the circumstance presented itself, sir.

Q. And on pages 24 to 26 of your direct testimony, you discuss the rider GDR; is that correct?

A. Yes.

Q. And in the event that there would be a governmental directive during the ESP term that had the effect of eliminating or reducing costs that are in base rates, would the company propose a credit for customers to be run through rider GDR?

A. No.

Q. With the tax provision and the GDR provision, why would the company not propose any credits for customers in the event there are costs that were embedded in base rates would go down?

A. It was not part of the companies' proposal.

Q. And with rider GDR, is there a mandatory threshold or materiality threshold that will dictate when the company comes in for recovery under rider GDR?

A. No, sir. But rider GDR, like the incremental tax provision, require the companies to make a filing before the Commission. So if the Commission were to determine that the dollars sought for recovery weren't material, they would have the opportunity to make that ruling.

Q. And on pages 11 to 13, you are discussing rider DCR in your direct testimony?

A. Yes.

Q. And was rider DCR originally established as part of the companies' ESP II?

A. Yes.

Q. And at that time, were the utilities authorized to implement riders to recover up to $150 million for revenue requirements associated with plant additions since the last distribution rate case, which I believe was 07-5517-EL-AIR?

EXAMINER PRICE: May I have that reread?

(Record read.)

A. The companies were authorized to collect incremental revenue requirements arising from investments made since the companies' last rate case starting in ESP II. That provision which allows the companies to recover incremental revenue requirements has a cap; and since the inception of the program, that revenue cap increases $15 million per year through ESP II and ESP III.

So while it may have started at 150 -- and, frankly, as I sit here today, I don't remember whether it did or didn't. It would not have been 150 throughout the entire term of ESP II.

Q. And, to your knowledge, was there any requirement at the time that the rider DCR was established for the companies, that it was established that planned additions since the prior rate case actually caused them to experience revenue deficiencies?

A. The revenue requirement calculation that the company includes with the DCR filing demonstrates quarterly what the incremental revenue requirements are associated -- or pardon me, what the total revenue requirements are since the companies' last rate case and then determines which of those are incremental to the recovery that's included in base rates.

Q. But there is no requirement that you have to demonstrate that you were operating below your authorized rate of return in order to get the recovery?

A. I think that the quarterly filing does demonstrate that the companies have a revenue deficiency relative to those incremental capital investments.

Q. If you turn to page 10, line 17 to 21 in your direct testimony. You are talking about CAIDI

performance metrics. Do you see that?
A. Yes.
Q. And would you attribute the improved CAIDI performance metrics to the dollars the companies spend through the DCR program?
A. Investments made and recovered under rider DCR do promote the enhanced reliability of the companies' distribution system.
Q. And on page 10 you are also talking about customer surveys that were conducted in 2008 to 2013. Do you see that, page 10, line 6 through 13?
A. Yes.
Q. Did you ascertain from the survey or the questions you asked the customers in the surveys that they were aligned with the companies charging customers additional dollars for improved reliability?
A. No. The surveys are designed to elicit from the customers their perception with respect to reliability of the companies' distribution system.
Q. And there are no questions in the survey regarding the cost of service or the charges that the companies are rendering in the bills?
A. The standard customer perception survey that we assure that we receive 2,400 customer

responses on does not.

Q. Moving to your supplemental testimony filed December 22 marked as Company Exhibit 8, looking at page 2, lines 9 to 17.

A. May I have the reference again, sir?

Q. Yes. Page 2, lines 9 to 17.

A. I'm there.

Q. You discuss the Stipulation is a comprehensive plan designed to do a variety of things. You say it provides more stable and predictable electric prices that would otherwise have been put in place during the ESP IV and beyond. Do you see that?

A. I do.

Q. And do you mean stable and predictable electric prices for the companies' customers?

A. Yes.

Q. And, in your opinion, does stable and predictable equate to lower electric prices?

A. No.

Q. And if you can turn to the stipulation that was filed December 22, looking at page 7.

A. I'm there, sir.

Q. Okay. Beginning on page 7, there is a Section A rate design that goes from 7 through page

10, about halfway down page 10.

A. Yes. But I would add that many of those provisions were modified and, in fact, deleted and replaced by provisions that were included in the supplemental stipulation and recommendation.

Q. Okay. Thank you.

A. You're welcome.

Q. And would you agree the stipulation states that those provisions were intended to promote economic development and provide stability and certainty regarding retail electric service?

MR. KUTIK: Are you quoting from where?

MR. SAUER: Yeah. It probably starts on page 6 and goes over to page 7.

A. Yes.

Q. I'm sorry. It's in A1 on page 7. Do you see that?

A. Again, I would remind you that A1 has been deleted in the original stipulation on page 7, and it's been replaced by the language in the supplemental stipulation and recommendation. With that said, the same language appears in the replacement language.

Q. Okay. Thank you for that clarification.

A. You're welcome.

Q. To your knowledge, do any of the rate design provisions of the stipulation modify any provisions of the PPA term sheet between the companies and FES?

A. They do not.

Q. Do any of the rate design provisions in the stipulation that you were just looking at, do any of those provisions modify the economic stability program in any way as part of FirstEnergy's ESP IV plan?

A. Yes.

Q. And can you explain how the rate provisions modify the economic stability program?

A. In the companies' stipulation and recommendation filed in December 22, 2014, under section V.A.i -- pardon me, little 4.i.V. I'm on page 10.

Q. Okay. That helps.

A. Thank you. That provision modifies the rider RRS rate design for GS, GP, GSU, and GT customers such that the rate design will be based on billing demand versus energy charge or kWh charge which was as proposed. I would add that the rider RRS rate design for residential and lighting schedules did not change.

Q. And is that rate design change you were just discussing on page 10 under i.V., was that a revenue neutral change from the companies' point of view?

A. Revenue neutral to the companies and revenue neutral to the rate classes.

Q. Okay. Are there any other ways that the rate design provisions of the stipulation modify rider RRS?

A. No.

Q. Are there any rate design provisions of the stipulation that would extend beyond the three-year term of the ESP IV?

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

EXAMINER PRICE: Please.

(Record read.)

A. The rate design change we just discussed relative to rider RRS would extend throughout the term of the economic stability program.

Q. Do any other rate design provisions of the stipulation extend beyond May 31, 2017 or beyond the ESP IV?

MR. KUTIK: I'm sorry. The question was any other?

MR. SAUER: Any other rate design provisions in the stipulation.

MR. KUTIK: Again, I'm sorry, Larry. Any other? Is that what you said?

MR. SAUER: Yes, yes.

MR. KUTIK: I'm sorry.

A. I believe absent a change, the rate design change associated with rider GCR and rider DRR would continue beyond the term of ESP IV.

Q. And how long beyond the ESP term would those riders continue, if you know.

A. Until such time as a modification to those riders was approved by the Commission.

Q. There were some questions, I think, yesterday regarding the curtailment load of the ELR customers. And there was some discussion around the 136,250 that is included in the supplemental stipulation now. And I believe your testimony yesterday was that the curtailable load cap in ESP II and ESP III were higher than the current curtailable cap in the supplemental stip; is that correct?

A. Yes. I think what I testified to earlier was that in the ESP II and ESP III, there was more load, curtailable load, eligible to participate in rider ELR than there is in the ESP IV.

Q. And do you recall in ESP II what that curtailable cap would have been?

MR. KUTIK: Your Honor, may I have the prior question and answer read, please?

EXAMINER PRICE: The prior answer and question, sure.

(Record read.)

MR. KUTIK: I object, your Honor. I don't think there was curtailable cap testimony in ESP II and III.

EXAMINER PRICE: Sustained.

Q. (By Mr. Sauer) Was there a curtailable cap for the ELR load in ESP II?

A. Not in the context of the cap that we are talking about in the ESP IV. However, there were a finite set of customers who were eligible to participate in ELR in ESP II and ESP III, and each of those customers had a maximum curtailable load amount assigned to them.

Q. Historically what was the number of customers that were eligible for ELR shared services during the ESP II period?

A. 63.

Q. And what was the historical level of customers eligible for ELR during ESP III?

A. 63.

Q. Is it your opinion that rider ELR promotes economic development?

A. Rider ELR compensates participating customers for their agreement to take nonfirm service from the company. Those same customers receive an economic development related credit under rider EDR.

Q. In order to qualify for rider ELR, must customers commit to a certain level of job creation?

THE WITNESS: May I ask that that question be reread, please.

EXAMINER PRICE: Please.

(Record read.)

A. Customers that are eligible for rider ELR had to be taking service in 2008 either under one of the companies' interruptible tariffs or under an interruptible contract. Both the tariffs and the contracts had as an element underlying those a need for a demonstration of the economic development arising from participating in that tariff.

So that showing was made when those customers originally took service, whether it be under the tariff or under the contract, and those are the only customers then that are eligible or have been historically eligible to participate in rider

ELR.

MR. SAUER: Could I have that answer read back.

EXAMINER PRICE: Sure. Could we have the answer back again.

(Record read.)

Q. (By Mr. Sauer) So was the demonstration that you are talking about under the tariff or the contract a need to show that there would be a commitment to a certain level of job creation or job retention? Is that part of it?

A. I think those would have varied by contract or by tariff, but there would have needed to be a showing at that time that the customer needed economic development support either to retain their business, grow their business, site their business in the service territory.

Q. And once they demonstrated that for the tariff or the contract, was there any follow-up from the companies to assure that those economic development reasons for becoming eligible for the tariff were maintained or achieved?

A. I don't know what the requirements may have been at the time that those customers were participating under those tariffs, if there were ongoing obligations. But what I do know is that the customers taking service under ELR are still here and producing in the State of Ohio today.

Q. Well, some of the customers are still here. I mean maybe they are all here, but only some of them are still on the ELR tariff, correct?

A. That's right, only some of them are on the ELR tariff.

Q. Would it be your testimony that the automaker credit is intended to promote economic development to customers who are eligible for this credit?

A. Yes.

Q. And is there a similar showing or demonstration that customers must achieve to qualify for the tariff similar to the ELR with regards to job retention or job creation?

A. That tariff or provision is a little bit different in that respect. There are, again, a finite set of customers who are eligible to participate in the automaker credit. It is the domestic automakers located in the companies' service territory, and the way that automaker credit provision works is it establishes a baseline of consumption for each of those customers based on the

12 months ending sometime in 2009. And the notion is that for every kilowatt-hour they use in excess of that baseline, they will receive going forward a 1 cent per kilowatt-hour credit.

And what the mechanism is designed to do is to recognize that in 2008 and in the pre-recession days, the domestic automakers in the State of Ohio had significantly higher level of energy consumption than they had at the time the provision was created and unfortunately than they have today. But the provision was put in place to help stimulate decisions by the automakers so that if they were deciding would I put production in Ohio or someplace else, this credit would drive the decision to make that production occur in the State of Ohio.

And when I look across the nine customers that are participating under the automaker credit today, there are a couple that have actually exceeded the pre-recession level of productions. The balance are slowly working their way towards that. So I feel this is a very effective mechanism from an economic development perspective.

Q. Similarly, the transmission rate GT, do you consider that to be an economic development tariff?

A. Sir, you are talking about rider EDR(d)?

Q. Yes.

A. I think rider EDR(d) was designed to transition our transmission service level customers more gradually to market-based rates, and it is a self-contained tariff provision in so much as it's revenue neutral to the company and to other customers. It only impacts customers served at the transmission level. And that provision was designed to incent our largest customers to improve their load factor which would assist them as they transitioned to full market-based rates.

Q. Under the rate design provision of the stipulation that appears in the stipulation filed on December 22 or as modified in subsequent stipulations, are there any costs or revenue deficiencies in that rate design that would not be recovered by customers?

A. May I ask you to restate the question, please, sir?

Q. To the extent that any rate design provisions in the stipulation or as provisions are modified in subsequent stipulations, is there any revenue deficiencies or costs the company incurs that your shareholders would be responsible for paying?

A. These rate design provisions are revenue neutral to the company.

Q. If you look at the stipulation beginning on page 10, there's a letter B with energy efficiency demand response. Do you see that?

A. Yes.

Q. And that section runs through page 13 until you get to letter C, about halfway down, that says "other issues."

A. Yes.

Q. Do any of those provisions under letter B, the energy efficiency or demand response provisions, do any of those provisions of the stipulation modify any provision of the PPA term sheet between the companies and FES?

A. No, sir.

Q. Would any of those provisions under the energy efficiency and demand response provisions of the stipulation modify the economic stability program in any way?

A. No.

Q. And if they don't modify the economic stability program in any way, do they modify rider RRS in any way?

A. No.

Q. And do any of the energy efficiency and demand response provisions of the stipulation continue beyond the proposed three-year term of the ESP IV?

A. No.

Q. Under the energy efficiency and demand response provisions of the stipulation, are any of the benefits that are identified in those various provisions costs that would be covered by the companies' shareholders?

A. Not under provision B. But to the extent that funding identified in provision C2 is used for energy efficiency, that would be borne by the companies' shareholders. And also to the extent that the companies' commitment to spend up to $1 million a year in economic development, job retention, or energy efficiency, to the extent that those dollars were used for energy efficiency, they would be borne by the shareholders.

Q. I was focused on section B, and I heard part of the answer. You got into section C, which we'll get to in a second. But as far as section B, you were talking about some up to a million dollar expenditures. Are those included in section B?

A. No, sir.

Q. Okay. So as far as section B goes, the dollars that are identified in each of the various provisions that are provided to either the city of Akron or COSE or the Association of Independent Colleges and Universities of Ohio, those dollars, are those all dollars that would be paid for by customers?

A. Those dollars would be recovered through rider DSE2.

Q. And DSE is charged -- DSE2 is charged to your customers?

A. Yes.

Q. As far as the provisions that are included in section B, energy efficiency and demand response, would the company be looking for collection of lost distribution revenues associated with any of these programs?

A. To the extent that these programs give rise to energy efficiency savings that can be counted or arise from programs that are in the companies' approved EE, current plan or future plan, then yes.

Q. And with respect to these programs, to the extent there are energy efficiency savings associated with any of these programs, would the company be looking for shared savings recovery as well?

MR. KUTIK: Objection.

EXAMINER PRICE: Grounds?

MR. KUTIK: Asked and answered.

EXAMINER PRICE: Sustained.

Q. (By Mr. Sauer) If you turn to the stipulation, page 13, section C, I think I was just asking you -- or you were answering a question that I had asked regarding B. But I will ask it here now. With these provisions that are included in section C, are there any shareholder dollars that would be responsible for paying the benefits that are identified?

A. All of -- I'm sorry.

EXAMINER PRICE: You're fine.

A. All of the dollars identified in C1 and C2 in the original stipulation and recommendation as noted on page 13 and 14 would be funded by shareholder dollars.

Q. Okay. And if you look at Company Exhibit 8, your supplemental testimony, page 11, Mr. Stinson was just asking you a question about that box at the top of the page. Are you there?

A. I am, sir.

Q. Is the $7.2 million that is identified as low income customer advisory funding, is that what you were referring to in C1 -- or C2? I'm sorry. C2 or C1 plus C2.

A. Those dollars are the dollars referred to in C1 and C2.

Q. Okay. So those are the only shareholder dollars that are identified within the stipulation?

A. Correct.

Q. Okay. There were some questions regarding the polar vortex maybe Monday, yesterday. During the polar vortex, would it be your opinion that the companies, CEI, Toledo Edison, and Ohio Edison, provided safe service to their customers?

A. Yes.

Q. Would it be your opinion during the polar vortex that CEI, Toledo Edison and Ohio Edison provided reliable service?

A. Yes. The companies did provide reliable service to their customers during the polar vortex. And that was the result of a number of activities initiated by the companies. During that timeframe, the companies were calling for -- introduced a specific effort, if you will, to reach out to its firm service customers and asked those customers to voluntarily curtail load to avoid having rolling blackouts across the system.

In addition to that, we were reaching out to our interruptible customers and asking them to interrupt service. There were a number of activities going on throughout the companies, as well as through the transmission operator, ATSI, to ensure that during that period of extreme system emergency, we were able to maintain reliable service for our customers.

I can tell you as someone who participated in a number of meetings over that timeframe, there was very, very grave concern from the folks responsible for the operation of not only our distribution system but the operation of the ATSI transmission system about whether or not we would be able to maintain reliability during that timeframe.

Q. So your answer is yes?

A. Yes.

Q. And during the polar vortex, did CEI, Toledo Edison and Ohio Edison provide adequate service during the polar vortex?

A. I don't think I can agree that we provided adequate service in so much as if I have a customer of the company who is paying me for firm service and I have to contact that customer and ask them -- when I say "I," I am using the term loosely to be sure. But if the companies have to contact those customers and say even though you are a firm service customer, please curtail your load in order to assure the overall reliability of the system, I don't think we've met our obligation in terms of providing adequate service.

Q. With regard to the supplemental stipulation, in your opinion, do any of the supplemental provisions of the supplemental stipulation modify the provisions of the term agreed upon by FES and the companies in what was marked as Sierra Club Exhibit 1?

A. No, they do not, nor would they.

Q. Do any of those provisions modify the economic stability program of the companies under their ESP IV?

A. No.

Q. Do any of those provisions of the stipulation modify rider RRS?

A. No.

Q. Do any of those provisions extend beyond the term of the ESP IV the companies have proposed?

A. Regarding the NMB pilot, pilot participants should remain eligible for participation as long as they continuously remain a pilot participant, so that could extend beyond the term.

Q. Is there an expiration date for the pilot?

A. No.

Q. Are the costs associated with the benefits of the provisions under the supplemental stipulation, are those costs all recovered from the companies' customers?

A. Regarding the supplemental stipulation, the costs arising from expanding the participation in rider ELR eligibility from that which was included in the original stipulation would be recovered from the companies' customers. There would be no incremental costs arising from the NMB pilot.

Q. But to be clear, there are no shareholder dollars that would be looked upon for recovery of any of those costs?

A. Correct.

Q. If we turn to the second supplemental stipulation.

EXAMINER PRICE: Mr. Sauer, I have a question to follow-up on your previous one.

MR. SAUER: Okay.

EXAMINER PRICE: The rider NMB pilot, if

customers enroll in the pilot, will the remaining customers' share of the costs go up? Even if the costs remain constant, will the customers who remain in the regular rider NMB, will their share of the costs go up as customers go into the pilot program, or will this result in some sort of overall savings on costs?

THE WITNESS: The NMB revenue requirement remains indifferent as a result of the pilot. So pilot participants and NMB revenue requirement is assigned 99-plus percent to the companies on the basis of the companies' NSPL, that work service peak load.

To the extent that a customer participates in the pilot, they leave the companies' NMB service, and they are going to -- their service provider, CRES provider, will be assigned those costs on the basis of their NSPL, and the costs assigned to the company will go down accordingly.

EXAMINER PRICE: Okay. Thank you.

THE WITNESS: You're welcome, sir.

Q. (By Mr. Sauer) I had asked you to turn your attention to the second supplemental stipulation. Are you there?

A. I am, sir.

Q. Thank you. Do any of the provisions of the second supplemental stipulation modify any provision of the terms of the purchase power agreement between the companies and FES?

A. No.

Q. Do the provisions of the second supplemental stipulation modify the economic stability program of the companies' ESP IV proposal?

A. No.

Q. Do any of the provisions of the second supplemental stipulation modify rider RRS?

A. No.

Q. Do any of the provisions of the second supplemental stipulation extend beyond the term of the ESP IV?

A. No.

Q. Are the costs associated with the provisions of the second supplemental stipulation recovered from the companies' customers?

A. To the extent that participation in the commercial high-load factor time-of-use program creates costs to serve the participants from a generation perspective greater than what those customers pay for that service, that charge would be recovered through rider GCR.

Conversely, to the extent that what those customers pay for generation service is greater than the costs to serve, that credit would flow through rider GCR. Until we know who the participants are and what their load characteristics are, it is difficult to say with certainty whether it would be a charge or a credit.

Q. But to be clear, shareholders would not be responsible for the costs or wouldn't get the benefit if there was a credit with no shareholder participation?

A. Correct.

Q. Okay. I'm sorry if I don't have the full context of this. I think you were asked a question today regarding the benefits of rider RRS, and I think you said something it was -- there was greater reliability provided for the delivery system. Does that sound plausible to you?

MR. KUTIK: Well, your Honor, might we just ask for a question?

MR. SAUER: I can do that.

EXAMINER PRICE: Please.

Q. (By Mr. Sauer) In your opinion, does rider RRS provide the companies greater reliability of their delivery system?

A. Yes. The continued operation of baseload fuel diverse generating plants with on-site fuel storage capabilities that were built and designed to serve the load of the companies would provide increased assurance for the reliability of the customers on the companies' delivery system.

Q. So based on your answers, is the delivery system as you view it more than the distribution system?

MR. KUTIK: I'm sorry, your Honor. May I have the question read back, please?

EXAMINER PRICE: Let's have the question back, please.

(Record read.)

A. No. I used the term "delivery system" in the context of the companies' distribution system.

Q. Okay. Assuming that the purchase power agreement is approved and the companies sell the capacity into the wholesale market, won't that energy be delivered to the 13-state PJM region?

A. May I ask you to restate your question, sir? Because the companies are not seeking approval of the PPA in this proceeding.

Q. Okay. Assuming rider RRS is approved and the companies acquire the energy, capacity, ancillary services and environmental attributes from Sammis and Davis-Besse and then sell those services into the wholesale market, won't the energy from that transaction be delivered to the 13-state PJM region?

A. Sir, is your question with respect to contract path or physical path?

Q. Let's start with physical path.

A. These are probably at this point questions far better addressed to Mr. Phillips, our transmission expert. But I would not expect the generation from the plants in Ohio to end up across the 13-state region physically.

Q. But there's no guarantee that that's where the energy from those transactions would end up in the companies' service territory, though, would it?

A. Again, the plants were built to serve the load of the company and are electrically connected to the companies' load centers. So I think the generation would end up physically in the companies' service territory, but I would suggest you ask that question of Mr. Phillips.

Q. Okay. You earlier had testified today that -- it was in the context of questions from Ms. Fleisher, that you had had conversations with customers regarding complaints about rates; is that true?

A. I'm not sure I would characterize it exactly in that fashion. I think the conversation I recall she was asking me about -- frankly, I am not sure I recall it right now, but customer -- do all customers benefit from energy efficiency, and I was recounting a conversation among several conversations that I have had with customers about the impact of the energy efficiency charges on their operations.

Q. And they were complaining about rates going up or rates -- was it a rate increase they were complaining about or a rate decrease?

A. The particular conversation that I was referring to this morning was a customer -- I don't want to go too far for fear I'll disclose customer-specific information. So I'll just say --

Q. Don't do that.

A. -- a customer that was trying to start up an operation that was very economically challenged and was concerned about the level of energy efficiency charges on their bill given that -- given their economic situation, they were not in a position to invest in energy efficiency measures for their operations, but they were paying for those for other folks.

Q. And what you are saying they were paying was a -- they were discussing a rider having to do with energy efficiency that was increasing?

A. I am not sure it was in the context of increasing. It was just there was a rider that they were paying and continuing to pay, yes.

Q. There's been some discussions the last few days about the audit process. And, in fact, there was a question from the Bench regarding coal contracts and being able to see all of the portfolio of coal contracts. And along that line, I have got a question that has to do with today are the plants, as well as other generating units that are owned by FES, are they charged overheads from the service company?

A. I think questions about what charges FirstEnergy Solution receives would be better addressed to Mr. Lisowski.

Q. Okay.

MR. SAUER: May I have a moment, your Honor?

EXAMINER PRICE: You may. Let's go off.

(Recess taken.)

EXAMINER PRICE: Let's go back on the record. Mr. Sauer.

MR. SAUER: Thank you, your Honor.

Q. (By Mr. Sauer) Ms. Mikkelsen, would you know what the generation resource mix is for the companies for 2014 or 2015?

MR. KUTIK: Objection.

EXAMINER PRICE: I would like some clarification. Do you mean the generation resource mix for the SSO load, or do you mean FirstEnergy Solutions' generation resource mix or something else?

MR. KUTIK: That was the point of my objection, your Honor.

MR. SAUER: Just generally the FirstEnergy Solutions' generation mix.

A. I think that -- I don't know. That question should be addressed to Mr. Moul.

Q. Mr. Moul? Okay.

Yesterday I think there were some discussions with Mr. Petricoff about a customer who had discussions with you. I believe the customer was complaining about a rate decrease. Without divulging any confident customer information, do you know what rate decrease that customer was discussing?

A. The conversation I had with Mr. Petricoff yesterday was intended to illustrate conversations I have had not just with one but a number of customers who see a rate behave in a manner that they didn't expect that rate to behave, and the instant example I was thinking of was a change relative to rider GCR.

Q. And in that instance, rider GCR had actually gone down? It was a decrease in that rate?

A. Yes.

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

EXAMINER PRICE: Thank you. Okay. Now, any intervenor witness -- any intervenor counsel who would like to cross-examine that we have missed so far?

No. Mr. McNamee, you are last.

MR. McNAMEE: Why thank you.

- - -

CROSS-EXAMINATION

By Mr. McNamee:

Q. Good afternoon.

A. Good afternoon, sir.

Q. I would like to put a finer point on a question that Examiner Price asked you a few minutes ago.

MR. KUTIK: Could you use your microphone?

MR. McNAMEE: Oh, sorry. Is that better?

MR. KUTIK: Thank you.

MR. McNAMEE: All right. There we go.

Q. (By Mr. McNamee) It's true, isn't it, that those customers of the companies who are not qualified to participate in the NMB pilot would pay the same amount for NMB charges regardless of whether the NMB pilot was approved or not?

A. That is not true.

Q. That is not true. Okay. Glad I asked.

Pardon me.

A. Maybe just to clarify the not true, to the extent that customers that have -- currently all customers take NMB service from the company. To the extent that customers elect to participate in the NMB pilot, they will take with them the costs that they cause relative to NMB service.

To the extent that they were subsidizing other customers through taking service through rider NMB and that rate design, their moving out of the program may change the amount that the other customers pay, but it would work to reduce the subsidy and bring greater alignment between the costs and the cost causers for the customers taking the NMB service from the company.

Q. And that's purely an intraclass subsidy that you are talking about or -- not class even. It's within -- what is it? Is it an intraclass subsidy?

A. I think that there -- there could be an interclass subsidy and there could be an intraclass subsidy.

Q. Okay. Oh, I will jump around a lot because it's kind of hit or miss what's left for me to ask.

It's true, is it not, that the two OVEC units were constructed to supply OVEC's single client at the time it was created, the Atomic Energy Commission; is that right?

A. That's my understanding, yes.

Q. Okay. And so those two plants were not built to supply the companies' retail regulated load, were they?

A. No.

Q. Okay. Oh, and, by the way, neither of those plants were ever in the rate base of Ohio Edison, Cleveland Electric Illuminating, or Toledo Edison, right? They were not rate based?

A. I don't know.

Q. Fair enough.

A. I would say I don't think there was ever a Cleveland Electric Illuminating entitlement, so it wouldn't have been in the rate base of Cleveland Electric Illuminating.

Q. That's true.

Now, you've indicated that Davis-Besse, OVEC -- the companies' interest in OVEC and Sammis are at risk and that that at risk condition would be ameliorated if the RRS was approved. Isn't that a fair characterization?

A. I think what I've testified to is that the future of the plants is uncertain. Certainly with respect to Sammis and Davis-Besse, approval of rider RRS will eliminate that certainty. And with respect to the FES entitlement at OVEC, it will not eliminate the uncertainty, but it would certainly somewhat vindicate that uncertainty.

Q. Okay.

MR. KUTIK: Could I have the question read. I think the witness misspoke.

EXAMINER PRICE: I am sure she misspoke. Let's have the question and answer, please.

(Record read.)

A. With respect to Davis-Besse and Sammis, if I used the word "certainty," I meant the word -- eliminate the uncertainty with respect to those plants. Thank you.

Q. Now, the basic reason that these units that we are talking about are at risk is that they are relatively expensive plants to use to produce electricity; isn't that right?

A. I think that question would be better addressed to Mr. Moul or Mr. Ruberto.

Q. Okay. Fair enough. I'll do that.

But here's the basic concern that I have, I guess. If this program is approved and the situation is improved for these plants, won't we simply be shifting this same problem to different plants somewhere else in PJM?

THE WITNESS: May I ask that question be reread.

EXAMINER PRICE: Yes. Please reread the question.

(Record read.)

A. It is my understanding that these plants are operating and being dispatched in the economic dispatch order currently that would continue I would expect as the company offers that energy into the markets. So I don't see a change in the resources that are able to participate in the wholesale markets as a result of the transaction.

Q. Isn't the real problem here that there is more supply of generation than there is demand for it leading to low market prices?

A. I think Dr. -- pardon me. I think Mr. Rose talks about a number of factors, one of which relates to the recession but many other factors that are impacting the current near term prices for energy and capacity, as well as Dr. Makovich. So probably those questions are better addressed to those witnesses, sir.

Q. Fair enough. I will.

Let's talk about hedges. If an electricity consumer was concerned about the potential of increasing electricity prices in the future, that consumer could presumably, among other things, go out and buy energy futures in the market. Such things are available, correct?

A. I don't think that -- well, that opportunity may be available for some customers. It is certainly not available for all customers.

Q. Okay. But purchasing such futures would be a free market option that would be available to at least some to deal with the concern about the potential of increasing electricity prices in the future, correct?

A. That would not address the range of concerns that the companies have with respect to the provision of service for their customers.

EXAMINER PRICE: Can I ask a question, a follow-up to Mr. McNamee's questions about hedges. Isn't the long term, three-, four-, five-year contract a form of a hedge against rising energy prices? And aren't those available to customers in our retail choice market?

THE WITNESS: I am aware of one-, two- and three-year contracts being offered. I am not aware of contracts with terms extending beyond that.

EXAMINER PRICE: Fair enough. If it was the case that there are no four- or five-year contracts, would that be because customers aren't interested in hedging that far into the future? If there was an interest in hedging that far into the future, the retail suppliers would meet that interest.

MR. KUTIK: Objection, your Honor.

EXAMINER PRICE: Grounds?

MR. KUTIK: Foundation. I don't know if this witness is qualified to testify about the financial market and the availability of hedges and whether there are hedges that are available or not available and why they are not available.

EXAMINER PRICE: Hedges are way above what I am talking about, Mr. Kutik. I am just talking about being able to get contracts on the competitive retail electric service market, and this witness has an admirable resume, including time at FirstEnergy Solutions. I think she is certainly capable of answering my limited knowledge questions.

THE WITNESS: May I ask to have the question repeated, please?

EXAMINER PRICE: Sure.

(Record read.)

A. I don't know, sir, whether they would or wouldn't given the transparency in the forward markets over the long term or lack thereof.

EXAMINER PRICE: Fair enough. Thank you.

Thank you, Mr. McNamee.

MR. McNAMEE: Certainly.

Q. (By Mr. McNamee) That brings up an interesting question. I believe despite being on the stand for three days, no one has asked you this,

Now, the companies' position is that the approval of this program is very beneficial to customers, correct?

A. Yes.

Q. Okay. To the tune of -- I can't recall the companies' estimated benefit for ratepayers, can you?

A. 2 billion.

Q. 2 billion. Good enough.

A. Over $2 billion.

Q. Okay. So it's very beneficial in the companies' view for customers. I can understand that it is very beneficial for FirstEnergy Solutions, okay? You know, they have a market now for their power, and it's locked in and such. But what's the benefit for the operating companies? What do they get out of this arrangement?

A. A retail rate stability mechanism for our customers, the ability to avoid rate increases for our customers associated with transmission investment that might be necessitated should the plants close, as well as the continued benefit of resource and fuel diversity associated with the baseload units that are fuel diverse with on-site fuel storage.

Q. Okay. So there's no financial benefit to the companies?

A. No, no financial benefit.

Q. Okay.

A. If anything, the audit process introduces a financial risk to the companies.

Q. Okay. You are, of course, familiar with the ESP process that we are involved with now and familiar with the statutes, I'm sure. In the event that the Commission modifies and approves the companies' application here, the companies would have the ability to -- I don't know how to characterize it -- withdraw their application; is that right?

A. It is my understanding if the Commission modifies -- the application is modified by the stipulation, the company has the opportunity to, I guess using your words, withdraw.

Q. I couldn't think of a better way to phrase it.

Okay. And it's not the companies' intention, I'm sure, to waive that ability in this application at all, that you are going to retain that?

A. Correct.

Q. Okay. Getting to the end.

Let's go back and talk about hedges for a little bit more. One of the benefits of the companies' proposal here is that it offers customers at large a hedge against volatility in electricity prices, correct, in the companies' view?

A. It provides a rate stabilization mechanism against volatility and increasing prices in the future, yes.

Q. Okay. So as it's proposed now, we get a -- customers get a certain quantum of relief from volatility by virtue of this plan. Now, wouldn't we get more relief from volatility if, say, another plant were added into the mix?

A. May I ask you to explain what you mean by "the mix," sir?

Q. Oh, certainly. If we added another plant to Davis-Besse, Sammis and the companies' share of the OVEC units, if we put in some other plant that FirstEnergy Solutions owned, wouldn't that increase the total amount of the hedge, if you will?

A. If your question to me is if the PPA included --

Q. Yes.

A. -- additional resources and those resources, the costs associated with procuring that power net of the revenues from selling it, were included in our RRS, yes, that would be a larger hedge.

Q. Okay. And, conversely, the hedge could be smaller if we deleted one or more of the units, took Sammis out, for example, or took OVEC out, that would reduce the amount of a hedge that was made available by virtue of the approval of this plan to customers at large; isn't that right?

MR. KUTIK: I'll object, your Honor, to the extent that the question assumes we are talking about approval of a plan, approval of what is in and out of the PPA, which this witness has said on countless times is not what's being sought.

EXAMINER PRICE: I'm sorry. You just trailed off, Mr. Kutik.

MR. KUTIK: The question appears to assume, your Honor, that approval of the companies' plan would include some type of approval of what plants were included within the PPA, which this witness has said on countless occasions is not what the companies are seeking here because the companies are not seeking approval of the PPA.

EXAMINER PRICE: Mr. McNamee, can you clarify that you are only referring to what plants were authorized for recovery under the rider RRS rather than PPA?

MR. McNAMEE: Indeed, indeed, I am.

EXAMINER PRICE: With that clarification --

MR. KUTIK: Yes. Thank you.

Q. (By Mr. McNamee) Sorry for the inexact --

A. May I ask you to restate the question in that context, please?

Q. Okay. It's sort of the converse of what I asked before.

In the event that the companies' proposed RRS in this case would consist of a smaller number of plants than it does currently, that is, it didn't have Sammis in it, for example, okay, or OVEC or whatever, that would reduce the total amount of the hedge that would be provided to the companies' customers by virtue of the approval of the RRS; isn't that right?

A. Yes.

Q. And that was a long way around the barn to the ultimate question, and the ultimate question is how do we know that the companies' current plan that's, you know, being presented to the Commission now, how do we know that that is the correct amount of hedge to offer?

A. I think, as we've discussed earlier, the companies were originally approached with a much broader offer and felt that that was too much, and this is where the companies ended up comfortable that this was the right size hedge given our total load obligations for purposes of this proposal.

Q. Do you have -- it just sort of mystifies me. Do you have a feel for what metrics the company would use to assess the right quantity of hedge for a customer to be offered here? Apparently that decision was made.

MR. KUTIK: Objection.

EXAMINER PRICE: Grounds?

MR. KUTIK: Your Honor, as this witness has testified previously, questions with respect to the evaluation of the proposals are made by others, including the individuals on the team that was evaluating the proposals on behalf of the companies. Ms. Mikkelsen was not on that team.

EXAMINER PRICE: Well, she can answer whether she is aware of any metrics that they used. She may not be aware. He may have to simply direct his question to a different witness.

MR. McNAMEE: That's certainly fair.

A. I would suggest you ask Mr. Ruberto.

Q. Ruberto? Okay.

EXAMINER PRICE: Could I ask a follow-up, though? I had a different question on your long way around the barn.

You stated earlier in response to Mr. McNamee that companies are economically indifferent to the rider, the rider RRS. The companies neither gain nor lose money based on rider RRS, except for being exposed to a disallowance risk; is that correct?

THE WITNESS: Yes.

EXAMINER PRICE: If the Commission were to modify the ESP and reduce the amount of the hedge as suggested as possible by Mr. McNamee, the company would have no -- should be indifferent to that decision and would have no reason to exercise its right to withdraw; isn't that true?

THE WITNESS: I think that would require a legal conclusion. Because, again, we are not seeking Commission approval of the PPA.

EXAMINER PRICE: No. I tried to be real clear. If the Commission modified rider RRS to eliminate or reduce one or two of the plants, that would have no -- my point simply is that would have no economic impact upon the companies, right?

THE WITNESS: At that point, I don't think there would be an economic stability program anymore because that's not the proposed PPA.

EXAMINER PRICE: I understand. That's

not my question. My question is that would have no economic impact upon FirstEnergy, which we've defined as Cleveland Electric Illuminating, Toledo Edison, Ohio Edison; is that right?

THE WITNESS: I guess I'm not understanding your question.

EXAMINER PRICE: If the companies are economically indifferent to this transaction because of the RRS, if the Commission were to reduce the size of the RRS, the companies would neither lose nor gain money by that reduction in size; isn't that true?

THE WITNESS: I think if the Commission were to reduce, to use your words, the number of plants allowed in the RRS, there would be no RRS because that's not the -- the companies can't execute the proposed PPA, purchase the output from the plants. The notion is, as constructed then, those are the plants that would run through the PPA.

EXAMINER PRICE: As you pointed out --

THE WITNESS: Pardon me. The rider RRS.

EXAMINER PRICE: Are you done with your answer?

THE WITNESS: Pardon me?

EXAMINER PRICE: Are you done with your answer?

THE WITNESS: Yes.
EXAMINER PRICE: As you are pointing out, you are not presenting the proposed transaction to the Commission for review. You are solely asking the Commission to approval the rider RRS. So we have no -- the Commission has no bearing on whether or not the proposed transaction goes through. We are not approving it; isn't that right?
THE WITNESS: That's correct.
EXAMINER PRICE: Thank you.
Q. (By Mr. McNamee) Let's talk about something else. Let's talk about OVEC again for just a moment. One of the advantages of the companies' proposal here is preserving jobs at the generating plants, including OVEC, the OVEC plants; isn't that right?
A. I think the OVEC preservation of jobs is secondary to the preservation of the jobs at Davis-Besse and Sammis.
Q. Well, it's a smaller number of people, right?
A. Well, and it's a smaller entitlement share that FES has that would be included in the transaction.
Q. Sure. Whatever the number of employees

is, half of them are in Indiana, aren't they, more or less?

A. I would agree that some of the OVEC employees are in Indiana. I don't have the exact number vis-a-vis Ohio.

Q. All right. Has anyone at any of the FirstEnergy Corp. subsidiaries that you are aware of approached anyone in Indiana, Indiana regulatory commission, utilities in Indiana, I don't know, anybody, about trying to support at least the Indiana portion of the OVEC units?

A. The companies' proposal is about a retail rate stability mechanism for our customers, the company's customers here in Ohio. So I don't know why the companies would have reached out to anyone outside of the state in an effort to provide retail rate stability to our customers here in Ohio.

Q. But part of the purported benefits of doing this program at all is maintaining these facilities and the employment associated with these facilities, and at least in terms of OVEC, half perhaps of that occurs in Indiana and doesn't benefit Ohio as far as I can tell at all.

MR. KUTIK: Objection.

Q. Isn't that a reason to look for some sort of support from the state of Indiana?

EXAMINER PRICE: Don't answer that. Grounds?

MR. KUTIK: Argumentative. Relevance, witness has already testified about why it wouldn't make sense to approach Indiana being Ohio companies.

EXAMINER PRICE: Let's try to rephrase it in a less argumentive manner, Mr. McNamee.

MR. McNAMEE: You are right, it was argumentative. It was unintentional. I did not mean that.

Q. (By Mr. McNamee) Wouldn't it be reasonable for people in Indiana to pay for the benefits associated with keeping a plant operating in Indiana? Yes. That's the question.

THE WITNESS: May I ask that the question be reread?

EXAMINER PRICE: You may.

(Record read.)

A. While it may or may not be reasonable for the people in Indiana to pay to keep Indiana plants running, that's not part of the company's proposal here.

Q. Okay. And so there have been no efforts to approach anyone in Indiana about doing anything to support that aspect of the OVEC operation?

MR. KUTIK: Objection. Asked and answered.

EXAMINER PRICE: Sustained.

Q. Okay. It's the companies' position that the approval of this program will, as we discussed earlier, result in $2 billion worth of benefit, gain, if you will, for the customers of the company; is that right?

A. The companies forecast that the customers will receive a net credit of $2.018 billion over the term of the economic stability program.

Q. Okay. If the program was not approved but all of the companies' projections turned out to be correct, then wouldn't that 2 billion-plus end up to the benefit of FirstEnergy Solutions?

A. Not if the plants close, sir.

Q. If it was worth $2 billion to keep them open, wouldn't they keep them open?

A. Mr. Moul has filed extensive testimony on that very topic, sir. Perhaps you should address those questions to him.

Q. Okay. Now, the companies do not intend to go to FERC to seek FERC's approval for the PPA; isn't that correct? Did you say that two days ago?

A. I don't know that I said it two days ago, but I don't believe the companies plan to go to FERC.

Q. Okay. But you would agree with me that under the terms of the PPA, the companies will buy electricity and then resell it; isn't that right?

A. Under the terms of the PPA, the companies will buy the capacity energy, ancillary services and environmental attributes associated with the plants. That is what's under the terms of the PPA.

MR. OLIKER: If her answer is done, could I have her answer from two answers ago read, please?

EXAMINER PRICE: You may.

(Record read.)

MR. McNAMEE: I think that's -- one second. That may be it.

Nothing further. Thank you.

THE WITNESS: Thank you.

EXAMINER PRICE: Okay. At this time, we are going to -- let's go off the record.

(Discussion off the record.)

(CONFIDENTIAL PORTION EXCERPTED.)

(OPEN RECORD.)

EXAMINER PRICE: Okay. I believe at this time, we will go on the public record again. Redirect?

MR. KUTIK: Can we go off the record?

EXAMINER PRICE: Yes.

(Discussion off the record.)

EXAMINER PRICE: Let go back on the record. Mr. Kutik.

MR. KUTIK: Your Honor, I have no redirect, and I now -- well, depending on whether you have any questions, I am prepared to move some exhibits into evidence.

EXAMINER PRICE: I have no remaining questions for this witness.

Ms. Mikkelsen, you are excused.

THE WITNESS: Thank you.

EXAMINER PRICE: Thank you.

MR. KUTIK: Your Honor, at this time, we would move for the admission of Companies' Exhibit 1, 2, 2A and 3 through 11.

EXAMINER PRICE: Any objection?

MR. PETRICOFF: Could we have those numbers again?

MR. KUTIK: Sure. The only exhibits we've offered are 1, 2, 2A, 3 through 11.

EXAMINER PRICE: Any objections to the admission of 1, 2, 2A, and 3 through 11?

MR. PETRICOFF: Could we have a moment? I just want to look at the list.

EXAMINER PRICE: Yes.

MR. PETRICOFF: I have no objections, your Honor.

EXAMINER PRICE: Any other parties have objections to the admission of those exhibits? Hearing none, they will be admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: Mr. Fisk.

MR. FISK: Your Honor, we would like to more for the admission of Exhibit Sierra Club 1.

EXAMINER PRICE: Any objection to the admission of Sierra Club 1?

MR. KUTIK: No objection.

EXAMINER PRICE: Being no objection, it will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: Ms. Bojko.

MS. BOJKO: Yes. Thank you, your Honor.

MS. FLEISHER: Sorry to interrupt. Can we go off the record?

EXAMINER PRICE: Let's go off the record.

(Discussion off the record.)

EXAMINER PRICE: Let's go back on the record. Ms. Fleisher.

MS. FLEISHER: Your Honor, ELPC moves the admission of Exhibit 1 through 4.

EXAMINER PRICE: I believe 1 was simply the administrative code and we just marked it for discussion.

MS. FLEISHER: Yes, yes. So if we want to take that out and renumber the remaining ones.

EXAMINER PRICE: No, we won't take it out. We will admit 2, 3 and 4.

MS. FLEISHER: Okay. Sure.

EXAMINER PRICE: Any objection to ELPC 2 through 4?

MR. WILLIAMS: And 4.

MR. KUTIK: I have no objection to the others, your Honor.

EXAMINER PRICE: Thank you. Those

exhibits will be admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: Mr. Sauer, we have already stipulated the admission of OCC Exhibit 1.

MR. SAUER: Thank you, your Honor.

EXAMINER PRICE: Ms. Bojko.

MS. BOJKO: Thank you, your Honor. I would like to move for the OMAEG 3, 5, 6, 7, and 8, and I would like to withhold moving admission of Exhibit 4 until a later time.

EXAMINER PRICE: Okay. We will defer Exhibit 4 to a later time. Let's take these one at a time. Any objection to admission of OMAEG 3?

MR. KUTIK: Yes, your Honor.

EXAMINER PRICE: Let me step back. Are the grounds for your objection to OMA Exhibit 3 similar to the one that it may be for 5, 6, 7, 8?

MR. KUTIK: Yes, your Honor.

EXAMINER PRICE: Okay. Do you have an objection to the admission of OMAEG Exhibit 5?

MR. KUTIK: Yes, your Honor.

EXAMINER PRICE: The committee calendar?

MR. KUTIK: Your Honor, if you --

EXAMINER PRICE: Okay. Fair enough.

MR. KUTIK: If that doesn't turn your

head, I guess it doesn't.

EXAMINER PRICE: Any objection to OMA Exhibit 6?

MR. KUTIK: Yes, your Honor.

EXAMINER PRICE: And OMA Exhibit 7?

MR. KUTIK: Yes, your Honor, we object.

EXAMINER PRICE: OMAEG Exhibit 8?

MR. KUTIK: Yes.

EXAMINER PRICE: Grounds, please?

MR. KUTIK: Your Honor, these exhibits are all hearsay. They are -- I'll start with the first one, Exhibit 3. It is a newspaper article. It reports the events that occurred at a particular meeting and purports to make statements as to what certain individuals, including individuals that have titles relating to FirstEnergy, FirstEnergy family of companies.

The Commission has a long line of authority for excluding newspaper articles on the grounds of hearsay. Specifically, your Honor, In the Matter of the Complaint of the City of Reynoldsburg, Ohio Case No. 08-846-EL-CSS, the Commission entry on -- or the entry on April 5, 2001. And in the Matter of the Application of Duke Energy Retail Sales, LLC, for Certification as a Competitive Retail

Electric Service Supplier in Ohio Case No. 04-1323-EL-CRS, entry of December 23, 2008. The Commission follows a long line of authority in courts, including the Ohio Supreme Court, State versus Lundgren 73 Ohio St. 3d 474 1995.

There are a string of appellate cases that I won't cite at this point because I think it's an obvious proposition that is hearsay.

We also object to this, your Honor, on the grounds of relevance. Statements made or allegedly made by what we will just say officers of a corporation within the FirstEnergy family of companies with respect to what happened in 2007 with respect to a bill that never made the light of day in terms of being enacted are another time and another issue and are deserving of no weight and aren't really relevant to the Commission's consideration of the ESP versus MRO test.

The applicability of the proposals in this case to Section 4928.143, the policies behind 4928.08 -- excuse me, 08, and with respect to the AEP factors.

EXAMINER PRICE: Ms. Bojko, care to respond?

MR. RANDAZZO: Your Honor, if I may, I

would join the objection in relevancy as indicated previously. Without duplicating Mr. Kutik's remarks, it's public record, very clearly shows that the articles are focused on the as introduced version of Senate Bill 221 which was followed by amended Senate Bill 221, which was followed by substitute Senate Bill 221. And the notion that somehow the comments that are focused on the initial bill are relevant to this proceeding lacks any foundation in this record. So I would object for that reason.

EXAMINER PRICE: Let me toss you a softball, Mr. Randazzo.

MR. RANDAZZO: Yes, sir.

EXAMINER PRICE: Let's say hypothetically that Mr. Alexander or some other person at FirstEnergy had said under no circumstances should an act -- should the legislature enact the provisions related to an ESP, would that preclude the company if it was enacted from applying for an ESP?

MR. RANDAZZO: Your Honor, it would not, and, in fact, we are all bound by the law as it is enacted regardless of what our positions may be regarding the wisdom of certain policies or acts that ultimately are included in the law.

But my point is that advocacy related to a particular piece of legislation that -- and in Mr. Kutik's words never saw the light of day and has nothing to do with the issues that are framed in this proceeding is not relevant to the resolution or advances the Commission's ability to resolve issues to any extent in this proceeding and is a profound waste of time, and we will see more of it unless it's nipped in the bud.

EXAMINER PRICE: Ms. Bojko. Response, please. Let's do hearsay first and then on to relevance.

MS. BOJKO: Okay. As to hearsay, the newspaper article itself is not hearsay. It is an exception to hearsay as the reporter summary falls under Rule 8031 which is a present sense impression, and that is available. Even if the declarant is available, the availability is immaterial.

Present sense impression is a statement describing or explaining an event or condition made while the declarant was perceiving the events or condition or immediately thereafter unless circumstances indicate lack of trustworthiness.

This is a newspaper service that regularly publishes newspaper articles concerning the hearings that occur in the Ohio General Assembly. It also is reporting the situation that it has -- that the reporter had seen and witnessed.

Additionally to that, the quotes contained within the article that are made by FirstEnergy representatives are actually not hearsay because they are admission by party opponent, and that applies to FirstEnergy representatives even in addition to the witnesses that might be present.

So any quotes that were made are actually an admission of party opponent.

As far as relevancy goes, this is very relevant to the case today. The purpose is not talking about the bill. My questioning was not about the particular bill that was introduced. It is about the policy and whether the discussion around reregulation, which is exactly what happened in 2007, and it was considered and it's exactly what's being considered here today, whether the Commission should consider another change in policy to guarantee costs for the continued operation of unregulated generation plants after those plants have received transition costs.

This directly goes to 4928.02. It directly goes to the code of conduct as well as corporate separation issues that are found in both

Ohio law as well as the Commission's rules.

It is directly relevant to whether these plants should be reregulated or at least should receive costs associated from ratepayers, receive costs from ratepayers associated with the unregulated generating plants. So this --

EXAMINER PRICE: How is something -- pardon my interruption. How is something that happened in 2007 when economic conditions were totally different, before the great recession, before the enactment of substitute Senate Bill 221, which certainly was not a strict market based measure by any stretch of the imagination, before FirstEnergy was even in PJM, how are they relevant to the Commission's consideration now in 2015 post-great recession, now in PJM, now with the capacity market, and frankly now with a different management from the company?

MS. BOJKO: Absolutely, your Honor. Thank you for that question. They are very relevant to the necessity of the plants, which is the AEP factors are economic development interests requested in the AEP factor, that the Attorney Examiner actually asked the parties to address in testimony here. It is relevant to the factors of the stipulation criteria.

EXAMINER PRICE: You need to explain. You keep saying it's relevant, but you are not explaining why. I am not following you. Why is it relevant? Why is Mr. Alexander's statements in 2007 relevant to the necessity of the plants?

MS. BOJKO: It's relevant to the necessity of the plants, your Honor, because the whole discussion is whether competition is working and whether we should proceed to a fully competitive market. And when you subsidize the generating plant, that is a backward movement in the fully competitive market.

So when Tony Alexander addresses competitive markets and whether they're working back in 2007 and whether he believes there should be any generation subsidies of any type, it is very relevant to now when the company is requesting the same thing that it opposed previously.

EXAMINER PRICE: Okay.

MS. BOJKO: It's very relevant.

EXAMINER PRICE: Back to my softball to Mr. Randazzo. So I will ask you the question. If you testified before congress that you don't believe under any circumstances that income taxes should be cut by 10 percent and congress goes ahead and cuts the tax, do you have to refund that money? I mean he may have chosen -- he may have had in his head at the time, a picture for Ohio, but the legislature didn't go down that path.

The legislature enacted a hybrid bill and part, whatever you want to call the electric security plan, but whatever you want to call it, it certainly is not a strict competition measure; isn't that right?

MS. BOJKO: Well, no. I mean, I disagree with your characterization. I think that the pending question here is whether generating plants that receive transition revenues under the law, whatever it may have been at the time, whether they received those transition revenues is very important, and whether an owner of generating plants believe that they should get subsidies for those transition -- or subsidies for operating those transition plants.

So I mean I think it is very relevant. I think it's the exact question you are asking, is we look at what they were advocating before and whether that came to fruition or not. We are talking right now about another policy change very comparable to the policy change that was discussed previously.

So the importance of whether the Commission moved forward with a fully competitive market or go back to reregulation in some form is the exact issue before this Commission. You're right, we have the debate and we have the law. Unfortunately, this doesn't fall within the law. It doesn't meet the law and yet we're considering it.

EXAMINER PRICE: I understand your -- I understand your position, but you are not tying into the testimony and the relevance to your position.

MS. BOJKO: The testimony is very relevant, but unfortunately I was not given the opportunity to raise the issues of the testimony and to bring that in front of the witness and ask the witness about it. I mean I can talk about the testimony if you would like. But I mean I think it's very relevant.

He states that competitive markets are working. He states that -- and so does Ms. Vespoli, by the way, who is still at the company, states that competitive markets are working, states that there should be no subsidies to generators, states that we should move forward to a fully competitive market.

Now they're suggesting a flip-flop in position that we should move backwards and we should reregulate some form of reregulation to those generating plants, and that is very relevant to see whether the competitive market is working or not working.

EXAMINER PRICE: So what if it is a flip-flop? If it's the best public policy, if it's embarrassing to them a little bit, so be it. If it's best public policy, it's the best public policy, isn't it? I understand you think it isn't, but the flip-flopping has nothing to do with whether or not it's the best public policy.

MS. BOJKO: It absolutely has everything to do with the credibility of the witnesses that are before the Court saying the opposite of what they said five years ago. It absolutely has everything to do with this case.

EXAMINER PRICE: Eight years ago, okay. I appreciate your arguments. I am going to dissent forcefully from your claim of lack of the opportunity, but anybody care to rise in defense of Ms. Bojko?

MR. OLIKER: Your Honor, I would only preserve the right to address this issue with Mr. White's testimony because I do believe it goes to the credibility of some of the claims of FirstEnergy

Solutions regarding competitive markets and what they may have said in the past.

EXAMINER PRICE: Mr. Kutik, final world.

MR. KUTIK: Your Honor, I think you can assess the strength of arguments by how much support they have and how "creative" they are. The issue with respect, for example, to present sense impression, if that was the correct reading of the hearsay rules, all the authorities I've cited to you and many more would obviously have been cited wrong, which isn't the case.

And I think that colors, I think, the rest of the arguments here. There are many claims, which, of course, we disagree with, about receiving transition revenues and how that's relevant and subsidies and where it doesn't follow the law. None of that is in any of these statements or is relevant to any of these statements. They don't relate to any of these statements. Ms. Bojko never even tried to relate them despite your urging.

This is a dangerous precedent to set. There are certainly many parties, including, not surprisingly, OMA, that took positions before the legislature which surprisingly -- that's being sarcastic. Not surprisingly are different than the positions they take here. We shouldn't be using statements that relate to a different market in a different time under a different regulatory regime as somehow relevant here, and no relevancy has been proven.

EXAMINER PRICE: Thank you. We will leave you all on pins and needles, and we will caucus this afternoon and maybe tomorrow morning, and we will give our answer on the admission of these documents tomorrow morning.

We will convene at 9:30 to give the examiners some time to discuss this. And with that, we are off the record.

(Discussion off the record.)

EXAMINER PRICE: Let's go on the record. Before we adjourn, Mr. Kutik has reminded me of one piece of business, and that relates to the testimony of Bradley Miller. Mr. Kutik.

MR. KUTIK: Your Honor, we had previously marked and provided to the court reporter and ask for the Bench to recognize that we have marked as Exhibit 12, Companies' Exhibit 12, the direct testimony of Bradley Miller.

EXAMINER PRICE: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. KUTIK: As we previously indicated, your Honor, we have surveyed the parties, and none of the parties have indicated they have cross-examination for them, and the parties at this point are ready to allow us to move into evidence the testimony of Mr. Miller, Exhibit 12.

EXAMINER PRICE: Any objections to the submission of Mr. Miller's testimony, Company Exhibit 12?

MR. OLIKER: Your Honor, subject to taking administrative notice of Mr. Miller's testimony in case 08-0935-EL-SSO filed on February 20, 2009, IGS will waive cross.

EXAMINER PRICE: Any other objections?

MS. BOJKO: Are you marking that as an exhibit?

MR. OLIKER: Taking administrative notice.

EXAMINER PRICE: We will admit Company Exhibit 12, and we will take administrative notice of Mr. Miller's testimony in 08-935-EL-SSO.

MR. OLIKER: Thank you, your Honor.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: Any other issues? Okay. Now, we are adjourned. We will convene at -- well, let's make it 9:15 tomorrow. Give the examiners some time to caucus and discuss our pending ruling.

(Thereupon, at 5:18 p.m., the hearing was adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, September 2, 2015, and carefully compared with my original stenographic notes.

Karen Sue Gibson, Registered Merit Reporter.

(KSG-6087)

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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 09/02/15 - Volume III electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.