

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PROCEEDINGS

before Mr. Gregory Price, Ms. Mandy Chiles, and
Ms. Megan Addison, Attorney Examiners, at the Public
Utilities Commission of Ohio, 180 East Broad Street,
Room 11-A, Columbus, Ohio, called at 9:00 a.m. on
Thursday, October 1, 2015.

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VOLUME XXI

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On behalf of the City of Cleveland

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1 Thursday Morning Session,
2 October 1, 2015.

3 - - -

4 EXAMINER CHILES: Let's go ahead and go
5 on the record.

6 The Public Utilities Commission of Ohio
7 has called for hearing at this time and place Case
8 No. 14-1297-EL-SSO, being In the Matter of the
9 Application of Ohio Edison Company, the Cleveland
10 Electric Illuminating Company and The Toledo Edison
11 Company for Authority to Provide a Standard Service
12 Offer pursuant to RC 4928.143 in the Form of an
13 Electric Security Plan.

14 My name is Mandy Chiles, and with me is
15 Greg Price and Megan Addison, and we're the Attorney
16 Examiners assigned by the Commission to hear this
17 case.

18 Since we have some new people in the
19 room, let's go ahead and take appearances from the
20 attorneys present this.

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

1 firm.

2 MS. WILLIS: Thank you, your Honor. On
3 behalf of the residential customers of FirstEnergy,
4 the office of Consumers' Counsel, Maureen R. Willis
5 associate consumers' counsel.

6 MR. COHN: Good morning. On behalf of
7 the Ohio Energy Group, Michael Kurtz, Kurt Boehm, and
8 Jody Kyler Cohn.

9 MR. LAVANGA: Good morning, your Honors,
10 on behalf Nucor Steel Marion, Michael Lavanga,
11 Garrett Stone, and Owen Kopon from Xenopoulos & Brew.

12 MR. LINDGREN: On behalf of the
13 Commission staff, Ohio Attorney Mike DeWine, by
14 Thomas Lindgren, Thomas McNamee, and Steven Beeler,
15 assistant attorneys general.

16 MR. WILLIAMSON: Good morning, your
17 Honors, on behalf of Wal-Mart stores and Sam's East,
18 Derrick Williamson and Carrie Harris from Spilman,
19 Thomas & Battle.

20 MR. SOULES: Good morning, your Honors.
21 On behalf of the Sierra Club, Michael Soules and
22 Shannon Fisk with the law firm Earthjustice, as well
23 as Tony Mendoza of Sierra Club.

24 MS. BOJKO: Good morning, your Honors.
25 On behalf of the Ohio Manufacturers' Association

1 Energy Group, Kim Bojko, and Danielle Ghiloni will be
2 joining later.

3 MS. RYAN: Good morning, your Honors. On
4 behalf of the City of Cleveland, Kate Ryan with the
5 City of Cleveland's Law Department.

6 MR. DOUGHERTY: Good morning, your
7 Honors. On behalf of the Ohio Environmental Council
8 and Enviromental Defense Fund, Trent Dougherty and
9 John Finnigan.

10 MR. O'BRIEN: Good morning, your Honors.
11 On behalf of the Ohio Hospital Association, Rick
12 Sites and Tom O'Brien.

13 MR. HAYS: Good morning, your Honors.
14 Tom Hays on behalf of the NOAC and the individual
15 communities.

16 MR. ROYER: Good morning. On behalf of
17 the Cleveland School District, Barth Royer, Barth E.
18 Royer, LLC, and Adrian Thompson of the Taft law firm.

19 EXAMINER PRICE: Ms. Ryan, there's seats.
20 There's seats at the counsel table if you'd be more
21 comfortable.

22 EXAMINER CHILES: Mr. Lavanga, are you
23 ready to proceed?

24 MR. LAVANGA: Yes, your Honor. Nucor
25 Steel Marion calls Dr. Dennis Goins.

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DENNIS W. GOINS, PH.D.

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

DIRECT EXAMINATION

By Mr. Lavanga:

Q. Can you please state your name and business address for the record, please.

A. My name is Dennis Goins. My address is -- business address is a 5801 Westchester Street, Alexandria, Virginia.

MR. LAVANGA: Your Honor, I'd like to mark for Nucor Exhibit 1 the Direct Testimony of Dr. Dennis Goins.

EXAMINER CHILES: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Dr. Goins do you have before you what has been marked as Nucor Exhibit 1?

A. I do.

Q. Is this your prefiled direct testimony in this case?

A. It is.

Q. Do you have any corrections to make to your testimony?

A. I do not.

1 Q. If I were to ask you the same questions
2 as those contained in your testimony today, would
3 your answers be the same?

4 A. They would.

5 MR. LAVANGA: Your Honor, the witness is
6 available for cross-examination.

7 EXAMINER CHILES: Thank you. Go around
8 the table.

9 Ms. Willis.

10 MS. WILLIS: No questions, your Honor.

11 EXAMINER CHILES: Ms. Cohn.

12 MS. COHN: No questions, your Honor.

13 EXAMINER CHILES: Mr. Soules?

14 MR. SOULES: No questions, your Honor.

15 EXAMINER CHILES: Ms. Ryan.

16 MS. RYAN: No questions, your Honor.

17 EXAMINER CHILES: Ms. Bojko.

18 MS. BOJKO: Thank you, your Honor.

19 Sir, would you please turn on your
20 microphone.

21 - - -

22 CROSS-EXAMINATION

23 By Ms. Bojko:

24 Q. Good morning, Dr. Goins.

25 A. Good morning.

1 Q. On page 3 of your testimony, you explain
2 your testimony is in support of the provisions set
3 forth in the December 22, 2014 stipulation related to
4 rider ELR and the SSO time-of-day rates; is that
5 accurate?

6 A. Yes, it is.

7 Q. And is it your understanding, sir, that
8 Ohio is in a deregulated state?

9 A. It is.

10 Q. And the utilities are required in Ohio to
11 separate their distribution and their generation
12 functions and the distribution companies not allowed
13 to own generation; is that correct?

14 A. To my knowledge, yes.

15 Q. Sir, would you agree with me that rate
16 stability is important for all customers?

17 A. It is one element or one objective that
18 one has in designing rates, so to that extent, yes.

19 Q. And you believe that demand response is a
20 useful tool to displace higher-cost capacity
21 resources; is that correct?

22 A. I believe that demand response is an
23 effective product that's offered by a utility and
24 that the result of customers taking advantage of that
25 product is that there will be displacement of

1 high-cost generation during certain situations.

2 Q. And you believe that demand response
3 that's bid into the PJM capacity markets could
4 displace higher-cost capacity resources; is that
5 correct?

6 A. Yes.

7 Q. You believe that demand response outside
8 of a utility program is also a useful product or tool
9 to displace higher-cost capacity resources; is that
10 correct?

11 A. Demand response outside a utility
12 program?

13 Q. Of a distribution utility program?

14 A. I'm trying to understand your question.
15 Are you saying distribution-only companies'
16 interruptible program?

17 Q. You are aware that a customer can either
18 participate directly or indirectly in the PJM markets
19 with the demand response programs that PJM offers,
20 either directly or through a curtailment service
21 provider, are you not?

22 A. In a sense.

23 Q. And in those scenarios, they would be
24 useful tools for that customer, just as a utility
25 program would be, is that correct?

1 A. Yes.

2 Q. And you state on page 9 that demand
3 response can be used to avoid or defer the need for
4 new generation capacity; is that correct?

5 A. I do.

6 Q. And as you note in your testimony, demand
7 response was actually a useful tool during the polar
8 vortex; is that correct?

9 A. It was, yes.

10 Q. On page 6 of your testimony, lines 18 and
11 19, you explain that demand response can also be a
12 useful tool for economic development and job
13 retention; is that correct?

14 A. It can have that effect, yes.

15 Q. And you believe this to be a benefit for
16 the region where the economic development occurs; is
17 that correct?

18 A. I do.

19 Q. And you would agree with me that economic
20 development tools should be available to all
21 similarly-situated customers in order to be
22 competitively neutral; is that correct?

23 A. It depends on the situation and what the
24 policy objectives are of the entity that's offering
25 the economic development tool.

1 Q. So as an economic development tool, you
2 don't believe that competing customers should have
3 equal access to that economic development tool?

4 A. In my experience it has been that that
5 often is case-specific. The answer to your question
6 is in general, to the extent that efficient effective
7 pricing of utility products can promote economic
8 development, I think that's a good thing.

9 Q. And you think it should be competitively
10 neutral, meaning it's offered to all similarly
11 situated commercial customers?

12 A. Well, yeah. There are conditions under
13 which it can't be. So is it a universal application?
14 No, I don't believe that is, in fact, the case or
15 should be the case. I think there are situations in
16 which the policymaker has to be selective in how the
17 economic development tool is applied and to whom it's
18 applied.

19 Q. So in that case, the policy regulator
20 would have to decide which manufacturers, competing
21 manufacturers, which one gets a benefit and which one
22 does not; is that what you're saying?

23 A. Sometimes that may happen. It's no
24 different than having, for example, certain programs
25 that are used to offset cost for residential

1 customers, for example. Those offsets are not
2 available to nonresidential.

3 It's the same type of situation that you
4 might have with a specific targeted program which
5 provides incentives in some way for customers with
6 water heaters to act in a certain way. Customers
7 that don't have water heaters can't act that way,
8 because they don't have the water heater.

9 So when you say that programs have to be
10 totally universal, that's not true, in my opinion.
11 They don't have to be to be effective and to be in
12 the social interest.

13 Q. Well, you used the example of water
14 heaters, and my question to you was
15 similarly-situated customers. So in my scenario,
16 both of them do have water heaters so both of them in
17 your hypothetical should be able to have access to
18 the same economic development tools; isn't that
19 right?

20 A. In some cases, yes. In other cases, it
21 may be -- when you say "similarly situated," you'll
22 have to define what that means because if you're
23 talking about, for example, a broad class of
24 customers that may have, you know, hundreds or
25 thousands of customers, there's great diversity among

1 those in terms of the types of loads they have, how
2 they use their energy, whether they're manufacturing,
3 nonmanufacturing, and simply because they may be
4 in -- one might say all residential or all small
5 commercial or all large commercial or all
6 industrials. That's too broad a sweep, in general,
7 to accept the terms that you're putting on this.

8 Q. Well, similarly-situated customers to me
9 was much more specific. So let's be specific. Let's
10 take Nucor Steel and let's take another steel
11 company. If two steel companies are competing in the
12 same region, shouldn't both of those steel companies
13 have access to either the same tariff that's offered
14 by a utility company, the same time of use rate
15 offered by a utility company? Shouldn't both of
16 those steel companies that are very similarly
17 situated have similar loads? They have similar
18 manufacturing facilities. Shouldn't those two
19 entities be offered or have available to them the
20 same economic development tools?

21 A. Well, from a utopian point of view, one
22 might think that that's true, but we have numerous
23 situations in which policymakers decide that
24 grandfathering of certain provisions to customers who
25 were either in existence at a particular point in

1 time or who had certain other characteristics that
2 defined them differently than other customers are --
3 have these tools.

4 These economic development tools may be
5 available to them and others don't, and those
6 decisions that were made are based on whatever
7 objectives, goals that the policymaker had in making
8 those decisions. So one would have to go back and
9 reconstruct the history of all of that to determine
10 if there was a reasonable and valid basis for that
11 policy.

12 Q. And if that occurred, if Nucor was able
13 to get an economic development rate and the other
14 steel company in my hypothetical was not able to get
15 an economic development rate, Nucor Steel would have
16 a competitive advantage over the other steel company;
17 isn't that correct?

18 A. Not necessarily. You may have competing
19 steel company -- I've seen this happen over my
20 career -- in which a steel company may come in with
21 the state and negotiate a special -- or a locality
22 and negotiate a special arrangement that has nothing
23 to do with energy but has a lot to do with taxes and
24 other types of incentives, infrastructure
25 contributions. And those types of benefits may not

1 be available, for example, to Nucor, because Nucor is
2 established and is not an entering customer or coming
3 in.

4 So there are situations -- when you say
5 "similarly situated," that's not -- that doesn't mean
6 that simply because you have steel mill A and steel
7 mill B, that everything that's available is applied
8 to both of them in terms of policy tools, both rate
9 and nonrate.

10 Q. Absolutely. But in the situation that
11 you just mentioned, Nucor Steel, maybe they will not
12 be able to get incentives for locating in the state
13 of Ohio, but they could take access to reasonable
14 arrangement; isn't that correct?

15 MR. LAVANGA: Objection, assumes facts.

16 EXAMINER CHILES: Ms. Bojko?

17 Q. (By Ms. Bojko) You're familiar, sir,
18 with reasonable arrangement. I believe you mentioned
19 it in one of your prior comments without using the
20 word "reasonable arrangement." But you're familiar
21 with in the state of Ohio a company can apply for a
22 reasonable arrangement, which can be a variety of
23 incentives similar to what you've just mentioned for
24 the new company; isn't that correct?

25 A. I understand the general concept. I've

1 never been involved in one so I don't know all the
2 details.

3 Q. But you are aware that that is an
4 available economic development tool in the state of
5 Ohio, are you not?

6 A. To my knowledge, it is.

7 Q. So putting aside Jobs Ohio or reasonable
8 arrangements, if steel company A and steel company B
9 are competing in the same region, and one company
10 gets a discount on their electric price and the other
11 does not, the company A that gets a discount on
12 their electric price will have an advantage because
13 they'll have a lower operating cost added to make
14 their product so that company A will have an
15 advantage over company B; isn't that correct?

16 A. Only in terms of relative prices for
17 electricity.

18 Q. Thank you.

19 A. There may be other offsets that shift the
20 balance in favor of the customer that doesn't have
21 that benefit.

22 Q. And you understand that the December
23 stipulation provided for the continuation of the
24 rider ELR for existing customers, as you mentioned in
25 response to one of my questions, and those existing

1 customers have to meet certain eligibility
2 requirements, and then the stipulation expands to
3 include up to 75,000 kW of additional curtailable
4 load. Is that your understanding in the stipulation?

5 A. That was one of the modifications.

6 Q. And are you aware, sir, that the December
7 stipulation was modified to increase the amount of
8 additional curtailable load that would be allowed to
9 participate up to 136,250 kW?

10 A. Yes.

11 Q. And it's your understanding that under
12 the stipulation, rider ELR is only available to
13 customers who have historically been eligible to
14 participate or take service pursuant to rider ELR, is
15 that correct?

16 A. That's one of the requirements, yes.

17 Q. Okay. So no new customers, a customer in
18 your hypothetical that relocates to the state of
19 Ohio, a new manufacturer deciding to create jobs and
20 locate to the state of Ohio, would not be eligible to
21 take service pursuant to the ELR; is that correct?

22 A. As it's structured and has been
23 structured for the last -- in the last ESP.

24 Q. Okay. And under the December
25 stipulation, the historical eligible customers will

1 receive \$10 per kW per month credits; is that
2 correct?

3 A. Total, yes.

4 Q. Okay. So let's talk about the breakdown.
5 The stipulation provides for two \$5 per kW per month
6 credits; is that correct?

7 A. It is.

8 Q. Okay. And the first \$5 per kW per unit,
9 per curtailable-load credit is an economic
10 development credit which will be collected through
11 rider EDRB; is that correct, or which is rider EDRB?

12 A. Yes.

13 Q. And on pages 11 and 12 of your testimony,
14 you describe that the \$5 of credit was collected in
15 the economic development rider to reflect that it is
16 an economic development tool for Ohio communities; is
17 that accurate?

18 A. Where are you?

19 Q. Pages 11 and 12 of your testimony, starts
20 at the bottom, line 28. You're talking about
21 economic development. You believe that the \$5 credit
22 was collected in the economic development rider
23 because it is an economic development tool; is that
24 accurate?

25 A. That's the way it wound up. That has

1 changed over time, and the -- but it is, in fact -- I
2 agree with the statement that I made here.

3 Q. And you believe that that economic
4 development would benefit all customers in those Ohio
5 communities; is that accurate?

6 A. I don't know that it will benefit all of
7 them in terms of each individual. I think as the
8 community as a whole, yes, I think it will.

9 Q. Okay. And if the Commission agrees with
10 you and finds that this is an economic development
11 tool, shouldn't all customers benefiting from the
12 economic development pay for that benefit?

13 A. Well, my preference is that -- and what
14 I've testified to in this case and in prior cases as
15 well, is the interruptible component, the capacity
16 component of this is too low, and that's the thrust
17 of my testimony, that whether you have this economic
18 development component of it there doesn't negate the
19 fact that, in my opinion, the value of the capacity
20 that's included in ELR is greater than \$10.

21 So as I mentioned a while ago, the
22 history and the context of the development of ELR is
23 kind of important because originally the
24 interruptible component was less than \$2. The
25 economic development component was \$8 something.

1 That changed to \$5 and \$5 over time during the ESP,
2 subsequent to ESPs.

3 But, in my opinion, throughout all of
4 those, the value of that capacity was greater than
5 \$10 anyway. So whether there was an economic
6 development component or not, the value of the
7 interruptibility of the capacity component was more
8 than compensating for the total value of the ELR
9 credit.

10 Q. So I'm trying to understand. On page 21,
11 you mentioned economic development and page 28 over
12 to 29, you talk about an economic development
13 benefit. Are you now telling me that there is no
14 economic development benefit, it's purely the value
15 of the capacity resource?

16 MR. LAVANGA: Counsel, what pages are you
17 at? You cited pages that -- his testimony goes to
18 page 15.

19 MS. BOJKO: I'm sorry. Page 8, line 21.

20 Q. Page 8, line 21 and then page 11, lines
21 28, 29 that we were just discussing over to page the
22 12, you talk about an economic development impact,
23 and that's what I was referencing. So do you believe
24 that there's an economic development benefit of the
25 rider?

1 A. Yes.

2 Q. Okay.

3 A. As I said earlier, I think there is, but
4 what I've been trying to say in a number of ESP cases
5 and other cases, add this one as well, is that the
6 interruptibility, the capacity component itself, is
7 more than a combination of what is classified now as
8 the ELR credit and the EDR credit combined since the
9 EDR is linked to this ELR product.

10 Q. Okay. And we'll get to the capacity
11 side. Right now I'm just talking about the \$5
12 economic development, and, as I understood your
13 testimony, you believe this is a benefit to all
14 Ohio's -- or the surrounding communities.

15 So I was asking you that if you believe
16 that it is an economic development benefiting more
17 than just the manufacturer, industrial customer that
18 receives it, then shouldn't it be paid by all
19 customers that receive the benefit?

20 A. Whether it is or isn't, I mean, I don't
21 know whether it should be. Again, within the context
22 of the development of the interruptible program in
23 Ohio, it has been the general policy for years to
24 link these two.

25 Q. Okay. And do you understand that the

1 economic development rider credit, the one \$5 credit,
2 is only collected from two commercial classes of
3 customers, two classes of commercial, GS and GP
4 customers; is that accurate?

5 A. Yes.

6 Q. Let's turn to the second piece, which I
7 think you've been trying to talk about. The second
8 credit is an ELR credit and that equals \$5 per kW per
9 month by unit of curtailable load; is that correct?

10 A. It is.

11 Q. And that \$5 ELR credit is collected in
12 DSE-1, and that's collected from all customers except
13 for ELR customers; is that correct?

14 A. Yes.

15 Q. On page 8 of your testimony, line 8, you
16 explain that currently the companies bid the capacity
17 resource into the PJM market and then credit the
18 rider mechanism with revenues that they may receive
19 for compensation of participation in that PJM market;
20 is that correct?

21 A. Yes.

22 Q. And in this case, sir, you are
23 recommending that the Commission require the
24 companies to bid the capacity resource into the PJM
25 market; is that correct?

1 A. Yes.

2 Q. And then you're also recommending that
3 the companies credit the rider mechanism with
4 100 percent of the revenues that they may receive for
5 compensation of participation in that PJM market.

6 A. I am.

7 Q. And isn't it true, sir, that the
8 stipulation does not include such a requirement?

9 A. As specified here, I think you're right.

10 Q. And isn't it true, sir, that in practice,
11 the companies currently only credit 80 percent of the
12 capacity revenues back to customers?

13 A. I think that number is right. I'm not
14 sure.

15 Q. On page 12 of your testimony, you argue
16 that \$10 total credit is reasonable because it is
17 close to the cost of CONE in PJM. Do you see that?

18 A. Yes.

19 Q. And CONE is the estimated cost of new
20 entry; is that accurate?

21 A. Yes.

22 Q. Which is the estimated cost of
23 constructing new generation capacity; is that
24 correct?

25 A. Yes.

1 Q. And isn't it true, sir, that CONE is an
2 administratively determined value, not a market-based
3 value?

4 A. Yes.

5 Q. Isn't it also true that staff filed
6 testimony in this case opposing the use of CONE as a
7 method for compensating ELR customers because the
8 companies are not providing generation to its
9 distribution customers on a cost-of-service basis?

10 A. There was testimony by staff that said
11 that the companies were basing the ELR credit on
12 CONE, and I'm not sure that was right. So I don't
13 want to try to characterize what the staff meant or
14 was trying to imply. I simply read what they said.

15 Q. I saw that as well, sir. But as far as
16 the CONE component, we can talk to Mr. Scheck when he
17 gets on the stand. I'm assuming that he meant other
18 intervenors or parties are suggesting CONE. But
19 under that assumption, talking about the CONE
20 component, isn't it true that staff's rationale for
21 not basing the ELR credit on CONE was because the
22 companies are no longer providing generation to its
23 distribution customers on a cost-of-service basis?

24 A. Well, there's two parts of the question
25 that you have. One that we're talking about here is

1 that there is -- neither I nor the company has taken
2 a position on the development of this, has said that
3 the value of the credit has to be CONE. In fact, the
4 credit that's been put forward for capacity is \$5.
5 It's not 10. It's not 12. It's not 13. It's 5.

6 What I said in my testimony is that the
7 credit value is a number which is different than CONE
8 and that CONE was used simply as a benchmark, and, in
9 my opinion, is a benchmark against which to value
10 whatever number the Commission says.

11 As I've said before, at one time the
12 value of the credit was less than \$2. It's now \$5.
13 I've continuously recommended that it be set higher
14 than that. But I think that CONE essentially sets
15 the upper limit in terms of the framework that I'm
16 looking at of which the value of that credit, you
17 know, could be set.

18 Q. Just so we're clear, the total credit
19 that an ELR customer gets is \$10. Yes, there are two
20 components, but the total credit that is recognized
21 by the customer is \$10 and that other customers have
22 to pay \$10; is that correct?

23 A. That's correct. The \$10 is not the value
24 of CONE in any planning year that I'm familiar with
25 within PJM.

1 Q. Well, the Commission has -- are you aware
2 that the Commission recently approved an
3 interruptible program for Duke?

4 A. No, I haven't examined it at all.

5 Q. So you don't know that the interruptible
6 credit was set at 50 percent of CONE in the Duke
7 case, which was around \$4.88 at the time of the
8 hearing.

9 A. As I said, I don't know. I didn't review
10 it.

11 Q. Are you aware that the Commission
12 recently approved a lower interruptible credit for
13 AEP?

14 A. I am familiar with that. It's \$8.62,
15 which when I saw that, and that was simply as I read
16 it, didn't have any economic development specific
17 piece in it. It was simply an interruptible credit,
18 which would mean -- imply, at least to me it did,
19 that it was \$3, whatever it was, higher than the \$5
20 ELR capacity credit.

21 Q. I believe it was \$8.21. Does that sound
22 accurate?

23 A. It's \$8-something, yes. I agree with you
24 there. But whatever it was, it was higher than the
25 ELR credit itself.

1 Q. But it's lower than the \$10 ELR credit
2 that customers receive through the FirstEnergy
3 stipulation, isn't it?

4 A. It is. And, again, the products that as
5 I read the Commission's order and looked at the rate
6 that was being proposed, it did not appear to be
7 identical to ELR either.

8 Q. So you believe or you would recommend
9 that the ELR credit be increased to something higher
10 than \$5 and that the EDR credit then could become
11 zero dollars?

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

14 MS. BOJKO: I'm asking if he believes
15 that.

16 A. What I believe is that --

17 EXAMINER CHILES: There's an objection
18 pending.

19 MS. BOJKO: I'll rephrase.

20 EXAMINER CHILES: Thank you.

21 Q. (By Ms. Bojko) So would you recommend to
22 the Commission that the Commission eliminate the \$5
23 economic development rider and increase the ELR rider
24 above \$5 to the \$8.21 set by AEP?

25 A. I wouldn't characterize it as that. I

1 wouldn't agree with that. What I would like to see
2 is an interruptible credit that's at least equal to
3 the combined EDR, ELR components of the current
4 interruptible program that's in place with the
5 FirstEnergy companies. And, again, as I said two or
6 three times before, the mix of those in the \$10 has
7 changed over time.

8 Q. And, sir, you believe that rider ELR as
9 proposed by the stipulation is a demand-response tool
10 that reduces the companies' peak demand; is that
11 accurate?

12 A. Certainly for -- yes.

13 Q. And sir, you are not providing testimony
14 either in your written testimony or here today on the
15 purchase power agreement or the associated rider RRS
16 that the companies are proposing in its application,
17 are you?

18 A. No.

19 MS. BOJKO: Thank you.

20 Your Honor, I have no further questions.

21 EXAMINER CHILES: Thank you, Ms. Bojko.

22 Mr. Dougherty.

23 MR. DOUGHERTY: No questions, your Honor.

24 EXAMINER CHILES: Mr. Hays.

25 MR. HAYS: No questions, your Honor.

1 EXAMINER CHILES: Mr. Lindgren.

2 MR. LINDGREN: No questions, your Honor.

3 MS. BOJKO: Thank you for your time, sir.

4 MR. RANDAZZO: Sam Randazzo.

5 MS. BOJKO: Your Honor, we specifically
6 addressed this before at the start of the hearing.

7 EXAMINER PRICE: Mr. Randazzo is in the
8 room and as we all know, we discussed this
9 repeatedly, we have two hearings going on
10 simultaneous, and we have tried to work around that.
11 But I am certain Mr. Randazzo would not ask a
12 friendly cross question of this witness, and if he
13 does, then we'll deal with that.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Randazzo:

17 Q. Sir, my name is Sam Randazzo. I'm
18 general counsel for the Industrial Energy Users of
19 Ohio, and I have a couple of questions related to the
20 operation of how demand response is treated in the
21 PJM system. Are you with that subject area?

22 A. Generally.

23 Q. Do you know what the add-back function is
24 in the PJM structure?

25 A. No.

1 Q. I would ask you to assume hypothetically
2 that when demand response is bid into the PJM
3 capacity market, PJM adds back to the zone the amount
4 of capacity that is bid in PJM for purposes of
5 determining the capacity obligation of the zone. Are
6 you willing to accept that? Do you understand that?

7 A. I have read that, yes.

8 Q. And if I call that the add-back function,
9 would that be a convenient way to describe what I've
10 just --

11 A. Yes.

12 Q. Okay. So is it your understanding that
13 when demand response is bid into PJM, the value of
14 the capacity value of the demand response actually
15 increases the capacity obligation of the zone from
16 which the capacity resource comes?

17 A. It's not negated or offset.

18 Q. Right. And, on the other hand, if demand
19 response was used to reduce the demand within the
20 zone coincident with the five hours that PJM uses to
21 determine the capacity obligation of the zone, it
22 would reduce the capacity obligation for the zone,
23 correct?

24 A. To that extent, yes.

25 Q. So if there is a quantitative analysis,

1 that could and should take place to determine whether
2 it is better to use demand response to reduce the
3 capacity obligation or you get more value from
4 bidding that demand response into the PJM capacity
5 market, correct?

6 A. There are analyses that could be made.
7 Whether they should be or required, you know, I don't
8 have an opinion on it.

9 Q. So in recommending that the capacity
10 value of interruptible customer be bid into PJM, are
11 you suggesting that we should forego that type of
12 analysis to determine the best value for customers
13 from the demand response?

14 A. No. The recommendation to require the
15 companies to bid the ELR capacity into the PJM
16 auctions arose several years ago in discussions and
17 the evolution of ELR, and it was Nucor's position,
18 and mine at that time, that this product had value,
19 and one would hope that that value was extracted in
20 some way in markets, or however it could be
21 maximized, but the idea was to maximize the value.
22 At that time the recommendation that I made, and
23 which is continued here in this testimony, was simply
24 that the capacity be bid into the demand programs of
25 PJM.

1 Now, if someone wants to do another
2 analysis and comes up with an assessment that there
3 is a more cost-effective better way that creates
4 greater value for this product, then I would
5 certainly be open to examining it.

6 Q. And you haven't done that assessment.

7 A. I have not in this case, no.

8 Q. Have you examined it for Nucor?

9 A. No.

10 Q. Why not?

11 A. I wasn't asked to.

12 Q. Do you think it would be prudent to do
13 that type of analysis before commanding that demand
14 response be bid into the PJM market?

15 A. Well, the recommendation that I had here,
16 again, was that no one else, to my knowledge, has put
17 forward an alternative in terms of testimony or in
18 terms of the filing or in terms of anything that's
19 been done, I haven't seen an alternative proposed.
20 So I simply took the one that is historical, it's a
21 legacy, and I said, "Let's continue at least with
22 this."

23 Q. I appreciate the context that you
24 provided.

25 MR. RANDAZZO: Your Honors, I also

1 appreciate the accommodation to allow me to ask
2 questions, notwithstanding Ms. Bojko's concerns.

3 That's all I have.

4 EXAMINER CHILES: Thank you. Do the
5 companies have any cross?

6 MR. KUTIK: No, your Honor.

7 EXAMINER CHILES: Is there redirect for
8 this witness?

9 MR. LAVANGA: Can I have five minutes,
10 your Honor?

11 EXAMINER CHILES: Absolutely. We'll take
12 a five-minute break.

13 (Recess taken.)

14 EXAMINER CHILES: Let's go ahead and go
15 back on the record.

16 Mr. Lavanga, redirect?

17 MR. LAVANGA: No redirect, your Honor.

18 EXAMINER CHILES: Thank you. You are
19 excused.

20 MR. LAVANGA: At this time Nucor moves
21 for admission of Nucor Exhibit 1.

22 EXAMINER CHILES: Are there any
23 objections to the admission of Nucor Exhibit 1?

24 Hearing none, Nucor Exhibit 1 will be
25 admitted.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER PRICE: Mr. Williamson.

3 MR. WILLIAMSON: Yes, sir. Wal-Mart
4 calls Steve Chriss to the stand.

5 (Witness sworn.)

6 EXAMINER PRICE: Please be seated and
7 state your name and business address for the record.

8 THE WITNESS: My name is Steve W. Chriss,
9 C-H-R-I-S-S, and my business address is 2001 SE 10th
10 Street, Bentonville, Arkansas, 72716-0550.

11 EXAMINER PRICE: You may proceed.

12 - - -

13 STEVE W. CHRISS

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

16 CROSS-EXAMINATION

17 By Mr. Williamson:

18 Q. Mr. Chriss, could you describe your role
19 with Wal-Mart, please?

20 A. I'm senior manager energy regulatory
21 analysis.

22 MR. WILLIAMSON: Your Honor, I'd like to
23 have marked for identification as Wal-Mart Exhibit 1
24 the direct testimony and exhibits of Steve W. Chriss
25 which were previously filed with the Commission and

1 served on the parties and provided to the court
2 reporter.

3 EXAMINER PRICE: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Mr. Chriss, do you recognize Wal-Mart
6 Exhibit 1 as your direct testimony and exhibits?

7 A. Yes.

8 Q. And does it consist of 15 pages of
9 questions and answers and two internal exhibits
10 identified as SWC-1 and SWC-2?

11 A. Yes.

12 Q. And was Wal-Mart Exhibit 1 prepared by
13 you or under your direct supervision?

14 A. Yes.

15 Q. And although this testimony was filed
16 quite sometime ago, if I were to ask you the same
17 questions as they appear today, would your answers
18 materially be the same?

19 A. They would; however, for some of the
20 data, such as the return-on-equity data, that would
21 have been updated because we have progressed ten
22 months since this was filed.

23 Q. But you're not suggesting to make those
24 additions at this time.

25 A. No.

1 MR. WILLIAMSON: Your Honor, I would
2 tender Mr. Chriss for cross-examination.

3 EXAMINER PRICE: Thank you.

4 Mr. Alexander, I assume you want to go
5 after the other intervenors to avoid any friendly
6 cross issues?

7 MR. ALEXANDER: That's fine, your Honor.

8 EXAMINER PRICE: Mr. Hays.

9 MR. HAYS: No questions, your Honor.

10 EXAMINER PRICE: Mr. O'Brien.

11 MR. O'BRIEN: No questions, your Honor.

12 EXAMINER PRICE: Mr. Dougherty.

13 MR. DOUGHERTY: No questions, your Honor.

14 EXAMINER PRICE: Ms. Bojko.

15 MS. BOJKO: No questions, your Honor.

16 EXAMINER PRICE: Ms. Ryan.

17 MS. RYAN: No questions, your Honor.

18 EXAMINER PRICE: Mr. Soules.

19 MR. SOULES: No questions, your Honor.

20 EXAMINER PRICE: Mr. Lavanga.

21 MR. LAVANGA: No questions, your Honor.

22 EXAMINER PRICE: OEG.

23 MS. COHN: No questions, your Honor.

24 EXAMINER PRICE: Ms. Willis.

25 MR. WILLIS: No questions, your Honor.

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EXAMINER PRICE: MR. ALEXANDER.

- - -

CROSS-EXAMINATION

By Mr. Alexander:

Q. Mr. Chriss, my name is Trevor Alexander. We spoke during your deposition. I'm one of the lawyers.

Let's start on pages 5 and 6 of your testimony where you discuss the different rate schedules which were in effect for the companies. Let me know when you're there.

A. I'm there.

Q. You have not quantified what the national average is for riders per utility; is that correct?

A. That's correct.

Q. And you are not proposing the deletion of any specific riders in this proceeding, correct?

A. That's correct.

Q. And Wal-Mart could calculate its current rate as a GS customer if it wanted to, correct?

A. We can. It's just a more extensive analysis than with most of the other utilities with which we do business.

Q. Well, to speak of the other utilities with which you do business, you recently testified in

1 both the Duke and Ohio ESP proceedings; is that
2 correct?

3 A. That's correct.

4 Q. And in both of those proceedings, you
5 also commented on the number of riders which were in
6 place at those utilities.

7 A. That's correct. Their rates and
8 structures are similarly complicated.

9 Q. And so your issue is not so much with the
10 companies' riders in particular, but rather with a
11 general preference for base-rate cases over riders?

12 A. It's both base-rate cases as well as
13 reducing the number of schedules that have to be
14 examined in order to perform a rate analysis.
15 Ultimately, we are lucky in that we have the internal
16 capabilities to be able to spend the time to do very
17 extensive analyses, but not all customers have that
18 option, and even with that, these are very
19 complicated schedules to deal with.

20 Q. Well, you've not calculated how many
21 riders a base case filing would eliminate, correct?

22 A. I have not. Ultimately things that are
23 distribution-cost related should be rolled into base
24 rates. But that, again, would be a topic for
25 base-rate cases.

1 MR. ALEXANDER: Your Honor. I move to
2 strike everything after the word "ultimately."

3 MR. WILLIAMSON: Your Honor, he allowed
4 to explain his answer.

5 EXAMINER PRICE: As has been our practice
6 in this proceeding, everybody gets one warning.

7 Mr. Chriss, this will constitute your one
8 warning. Please listen carefully to counsel's
9 questions and answer that question and only that
10 question. If there's any context or additional
11 information, I'm sure Mr. Williamson will be happy to
12 ask you that on redirect.

13 Q. (By Mr. Williamson) Please turn your
14 attention to page 10, line 1, where you reference
15 "regulatory oversight," and let me know when you're
16 there?

17 A. I'm there.

18 Q. Here when you reference "regulatory
19 oversight," you're referring to the level of
20 regulatory oversight traditionally found in a
21 vertically integrated rate case?

22 MR. WILLIAMSON: Your Honor, he's
23 mischaracterizing the witness' testimony. If he
24 wants to frame that more into a question, that would
25 be more appropriate.

1 EXAMINER PRICE: Mr. Alexander, please
2 rephrase.

3 MR. ALEXANDER: Sure.

4 Q. (BY Mr. Alexander) When you use the
5 phrase 'regulatory oversight,' you're referring to
6 the level of regulatory oversight for a traditionally
7 vertical rate case, correct?

8 A. That's correct.

9 Q. So let's talk about what you believe to
10 be the process proposed by the companies, and I'd
11 like to use some definitions here so we know what
12 we're talking about. First, costs which were
13 incurred prior to December 31, 2014, can we agree to
14 refer to those as "legacy generation costs"?

15 A. Yes.

16 Q. And costs after December 31, 2014, can we
17 refer to those as "going-forward costs"?

18 A. Okay.

19 Q. So, first, focusing on the legacy
20 generation costs, is it your understanding that the
21 companies have produced the details of those
22 components to the intervenors in this proceeding?

23 A. That's generally my understanding, yes.

24 Q. And you understand that in this hearing,
25 the parties had the opportunity to ask questions

1 about those cost components?

2 A. That's my understanding.

3 Q. And now let's focus on going-forward
4 costs. You understand the companies have proposed a
5 staff audit for going forward costs.

6 A. That's my understanding.

7 Q. And your concern about going-forward
8 costs is that Ms. Mikkelsen's testimony does not
9 specifically address intervenor participation in
10 those proceedings, correct?

11 A. That's one of the concerns, yes.

12 Q. And you are not aware of any limit on
13 staff's ability to review going-forward costs in the
14 proposed PPA, correct?

15 A. That would depend on what was being
16 reviewed. It's one thing to review costs. It's
17 another for the Commission to have the authority to
18 determine what decisions are made in the incurrence
19 of those costs. So can the Commission say let's not
20 operate that plant, let's shut that plant down, those
21 sorts of decisions, the more operational decisions,
22 which do roll -- ultimately become cost decisions,
23 but there are decisions made prior to that, so more
24 resource-planning-type decisions and what that sort
25 of oversight would look like.

1 MR. ALEXANDER: Could I have that
2 question and answer read back, please?

3 EXAMINER PRICE: You may.

4 (Record read.)

5 Q. So, Mr. Chriss, were you answering there
6 with regard to whether the Commission could review
7 costs prospectively before they're incurred?

8 A. Well, I was ultimately trying to answer
9 your question about what the limit was in terms of
10 staff's review, and one thing that is not clear to me
11 is when we talk about what is the limit, merely
12 things will happen and those costs will show up for
13 audit, or does the Commission and staff in its review
14 have any ability to determine what happens in the
15 things that happen over here?

16 Q. And I want to focus on the first issue
17 you raised, which is once a cost was incurred,
18 wouldn't you agree there's no limit on staff's
19 ability to review those costs, those going-forward
20 costs, correct?

21 A. That would be my general understanding.

22 Q. Please turn your attention to lines 5
23 through 7 staying on page 10.

24 A. I'm there.

25 Q. And you believe that the costs associated

1 with rider RRS could exceed those from a vertically
2 integrated utility because of the proposed ROE in
3 rider RRS.

4 A. Yes.

5 Q. And other than the ROE or return on
6 equity, there are no other issues which lead you to
7 believe that the PPA costs would exceed those of
8 vertically integrated utility, correct?

9 A. That is the primary concern.

10 Q. You don't recall ever looking at the term
11 sheet between FE and the companies, correct?

12 A. I don't recall.

13 Q. And so your testimony is not based on any
14 of the provisions of the term sheet itself, correct?

15 A. That's correct.

16 Q. Please turn your attention to page 13,
17 line 17. Let me know when you're there.

18 A. I'm there.

19 Q. You're aware that capital costs are
20 amortized over a period of time, correct?

21 A. That's correct.

22 Q. And you were not aware of anything which
23 obligates customers to pay capital costs after the
24 15-year term of the proposed PPA?

25 A. My understanding is that the PPA goes for

1 15 years and that would be the term of the rate.

2 Q. So customers would not be obligated to
3 pay capital costs after the 15-year term of the PPA.

4 A. That's my understanding.

5 Q. And you would agree that FES has an
6 incentive to control costs to the extent FES would be
7 responsible for those costs after rider RRS expires?

8 A. Yes. To the extent that they planned to
9 operate the plants past, they would certainly have an
10 incentive there.

11 Q. And you don't recall whether the term
12 sheet allows the companies to review all planned
13 investment?

14 A. My understanding from review of testimony
15 is that there is some involvement on FirstEnergy's
16 distribution companies' behalf in that process.

17 Q. And let's just take a quick step back.
18 In this proceeding we've agreed to identify Toledo
19 Edison and Ohio Edison, Cleveland Electric
20 Illuminating Company as "the companies."

21 A. Okay.

22 Q. So when you hear "the companies," you've
23 understood me to refer to those three distribution
24 companies?

25 A. Yes.

1 Q. And when I refer to "FES," you understand
2 I'm referring to FirstEnergy Solutions.

3 A. Yes.

4 Q. Thank you. And so you agree that FES is
5 obligated to perform all operating work in accordance
6 with good utility practice?

7 A. That's my understanding from the
8 testimony.

9 Q. Now, I'd like to turn to your discussion
10 of return on equity. You are not proposing a
11 specific ROE estimate in your testimony, correct?

12 A. That's correct.

13 Q. You believe that the purpose of regulated
14 return on equity is to provide a return to
15 shareholders based on the market costs of equity,
16 correct?

17 A. Yes. And it compensates them for the use
18 of their equity relative to the risk of getting that
19 return.

20 Q. And the cost of equity would change
21 depending on the type of entity examined, correct?

22 A. When looking at the returns that are
23 authorized around the country for different kinds of
24 utilities, there's certainly a difference between the
25 wires-only companies, such as the companies, versus

1 vertically integrated utilities, yes.

2 Q. And at pages 11 to 13 of your testimony,
3 you discuss the point returns on equity approved by
4 utility commissions during the period from 2012 to
5 2014.

6 A. That's correct.

7 Q. And each of the returns on equity you
8 cite went into effect shortly after those decisions
9 were issued?

10 A. Generally, yes.

11 Q. And the data you cite is only from
12 base-rate cases, correct?

13 A. That's correct.

14 Q. And so none of the cases then would
15 involve any long-term purchase power agreements.

16 A. That's correct.

17 Q. And each return on equity is targeted for
18 the specific rate case in which it is issued,
19 correct?

20 A. Yeah. Every Commission looks at the
21 evidence in its particular case and makes a
22 determination based on those facts.

23 Q. And each of those rate cases contained in
24 addition to base rates a variety of riders?

25 A. Some did, some didn't. It just depends.

1 Q. And you have not conducted any analysis
2 to determine the potential effect of those riders on
3 the ROEs which were ultimately approved and included
4 in your attachment?

5 A. I have not. Though, a number of
6 commissions will provide commentary or adjustments in
7 their orders in that regard.

8 Q. And you are not aware of how the
9 utilities referenced in your Exhibit 2 compared to
10 FirstEnergy Solutions in terms of their credit
11 rating?

12 A. I am not.

13 Q. And you would agree that FES would have a
14 separate risk profile from the companies in Exhibit 2
15 because each of those companies is regulated while
16 FES is unregulated?

17 A. I do agree that FES is unregulated, and
18 as such, would be looked at differently.

19 Q. And each of the companies in your Exhibit
20 2 are regulated, correct?

21 A. The returns that are listed in there are
22 for the regulated business.

23 Q. Now, some vertically integrated utilities
24 also participate in the competitive market, correct?

25 A. Define "participate."

1 Q. They participate in the PJM wholesale
2 markets for energy and capacity.

3 A. That's true.

4 Q. And, in fact, even outside of PJM
5 markets, some vertically integrated utilities can
6 participate in their respective competitive markets.

7 A. That's correct.

8 Q. And you don't know how the companies
9 listed in Exhibit 2 compare to FES in terms of their
10 percentage of revenue from the competitive market.

11 A. I do not.

12 Q. But you do have a general sense of the
13 capital structures for the entities in Exhibit 2, and
14 you believe those range around 48 to 52 percent
15 equity; is that right?

16 A. That's the general range, yes.

17 Q. And your Exhibit 2 excludes certain
18 categories of data; is that correct?

19 A. That's correct.

20 Q. And so your Exhibit 2 would exclude
21 certain dockets from Virginia, like their incentive
22 documents?

23 A. That's correct.

24 Q. And it would exclude certain cases from
25 Texas?

1 A. Yes, the transmission company ROEs are
2 excluded.

3 Q. That would be -- strike that.

4 Your Exhibit 2 excludes transmission
5 company outages, correct?

6 A. Correct.

7 Q. And your Exhibit 2 also excludes certain
8 ROEs awarded in Texas?

9 A. Yes. So in construction of the data set,
10 anything labeled "limited issue rider" is excluded.

11 Q. And so your Exhibit 2 also excludes cases
12 with a single issue?

13 A. Yeah. They are for base-rate cases.

14 Q. So, for example, your data does not
15 capture the results of the 2012 AEP Ohio capacity
16 case here in Ohio?

17 A. That's correct.

18 Q. And your Exhibit 2 does not include the
19 AEP Ohio capacity case because it's not a base-rate
20 case?

21 A. Correct. It would be categorized in the
22 limited issue.

23 Q. But the cases which you identify in
24 Exhibit 2 do include distribution only rate cases,
25 correct?

1 A. Yes, and those are marked as
2 "distribution only."

3 Q. But even though you included the
4 distribution-only rate cases, you believe the most
5 analogous comparison is to a vertically integrated
6 utility because of the presence of generation here?

7 A. Correct.

8 Q. You believe the calculation of ROEs
9 should be based on exposure to business risk, broader
10 market risk, ability to attract capital, and customer
11 impact; is that correct?

12 A. That's correct.

13 Q. And you did not personally do an analysis
14 to determine what would be the appropriate return on
15 equity based on the factors you just identified,
16 correct?

17 A. I did not.

18 Q. And you did not do any analysis to
19 determine how FES compares to the group identified in
20 Exhibit 2?

21 A. That's correct.

22 Q. And you would agree that generally a
23 utility can file a base rate case as often as it
24 would like?

25 A. Subject to the rules of the jurisdictions

1 in which it operates.

2 Q. And some jurisdictions who have more rate
3 cases have rules which obligate a utility to not file
4 a rate case for a period of time?

5 A. That's correct. So, for example, a state
6 like Nevada, they run their rate cases once every
7 three years, and it's on a set schedule.

8 Q. So for your Exhibit 2, each of the
9 returns on equity you examined looked at the
10 appropriate return on equity for a specific year,
11 correct?

12 A. For the test year in question.

13 Q. And you don't know whether any of the
14 returns on equity you cite in your testimony included
15 a term premium, correct?

16 A. To my understanding -- well, I have not
17 done that analysis.

18 Q. But it was your understanding that none
19 of them do include a term premium.

20 A. Yeah.

21 Q. And you were not specifically aware of
22 any case, either by operation of a settlement
23 agreement or by operation of law, where the utility
24 was obligated to stay out and not file a rate case
25 for more than four years; correct?

1 A. I know when we did the deposition, my
2 knowledge at that time was four, but there is, I
3 believe, Mid-American and Iowa does have a ten-year.

4 Q. So outside of Mid-American and Iowa,
5 you're not aware of any other utility that has more
6 than four-year stay-out?

7 A. That's correct.

8 Q. And you would agree with me that there's
9 a difference between return on equity which is only
10 in effect until the next rate base case and return on
11 equity that is locked in place for 15 years?

12 A. They can certainly be viewed differently.

13 Q. You, in fact, viewed them differently,
14 correct?

15 A. I would view them differently.

16 Q. You would agree that interest rates are
17 currently low by historical standards?

18 A. That's my understanding.

19 Q. And you would agree interest rates could
20 rise in the future?

21 A. They could go up or down.

22 Q. And if interest rates were to rise to the
23 level they were at in the 1970s, you would agree that
24 the cost of capital would go up as well, correct?

25 A. There would certainly be an impact if

1 that were the case.

2 Q. And the impact would be the cost of
3 capital would rise?

4 A. Yes. My understanding is the interest
5 rates were very high at that time.

6 Q. So if interest rates and cost of capital
7 rise, that would potentially lead to an increase in
8 approved returns on equity, correct?

9 A. It could, subject to all the other
10 factors that the Commission determines or uses when
11 they make those determinations.

12 Q. And while you are not proposing any
13 specific term premium in this proceeding, you would
14 agree there's logic to including a term premium when
15 setting an ROE for a 15-year period?

16 A. There would certainly be a logic there.
17 Whether or not the Commission determines -- that's
18 ultimately up to the Commission's discretion if they
19 determine that's the direction they want to go with
20 this case.

21 Q. But you haven't done any analysis to
22 determine what the size of the term premium should
23 be, correct?

24 A. I have not.

25 Q. All right. Please turn your attention to

1 page 14, line 6, where you discuss bypassability.

2 Let me know when you're there.

3 A. I'm there.

4 Q. Please suppose that in a certain year
5 rider RRS was a credit to customers. So in that
6 year, if rider RRS were bypassable, then shopping
7 customers would have an incentive to return to
8 nonshopping status, correct?

9 A. That would be correct.

10 Q. Similarly, suppose in a certain year
11 rider RRS were charged to customers. If the rider
12 were bypassable, customers would have an incentive to
13 shop in that year, correct?

14 A. That's correct.

15 Q. So making rider RRS bypassable would
16 accelerate shopping during periods of low prices and
17 accelerate return to SSO service during periods of
18 high prices, correct?

19 A. It could do that.

20 Q. So if the Commission were to agree to
21 make rider RRS bypassable, you would support a
22 provision which would prohibit shopping customers
23 from receiving the benefits of rider RRS in any year
24 in which the rider is a credit, correct?

25 A. Could you refresh my recollection? Did

1 we discuss that in the deposition?

2 Q. Do you have a copy of your --

3 EXAMINER PRICE: I think you need to
4 answer the question, and then we'll get to the
5 deposition if necessary.

6 Q. Would you like me to repeat the question?

7 EXAMINER PRICE: We'll have the reporter
8 read it back.

9 (Record read.)

10 THE WITNESS: Repeat that one more time.

11 (Record read.)

12 A. It would certainly make sense to look at
13 those provisions. I'm trying to recall what I said
14 in my deposition. I'm sorry. I don't want to go
15 against whatever I answered. I just don't recall
16 whatever my answer was.

17 EXAMINER PRICE: Mr. Chriss, you have to
18 remember the Bench doesn't have your deposition.

19 THE WITNESS: I know, and I'm looking at
20 several people who do.

21 MR. WILLIAMSON: Just answer the question
22 based on what you think right now.

23 THE WITNESS: I mean, there would
24 certainly be logic in order to ensure that rider is
25 not gained.

1 Q. (By Mr. Alexander) And you personally
2 would agree that shopping customers -- strike that.

3 And you personally believe if the
4 Commission were to agree to make rider RRS
5 bypassable, you would support a provision which would
6 prohibit shopping customers from returning to rider
7 RRS in any years in which the rider was a credit?

8 A. I'd certainly not oppose that. There
9 would be logic -- it's logical to have provisions
10 that avoid using it for gaining purposes.

11 Q. Please turn your attention to page 14,
12 line 17, where you address the Ohio Revised Code, and
13 let me know when you're there.

14 A. I'm there.

15 Q. Now, here you're offering a legal
16 analysis of the company's proposal, correct?

17 MR. WILIAMSON: I object. He clearly
18 states in his testimony at line 17 he's not an
19 attorney, so he's obviously not providing a legal
20 analysis.

21 EXAMINER PRICE: Sustained.

22 Q. Okay. In this section, you're
23 interpreting the provisions of Ohio Senate Bill 221.

24 A. That was the question?

25 Q. Yes.

1 A. Yes. I look at it, and on its face as a
2 non-attorney, it would appear to be the provision of
3 generation service.

4 Q. And then you interpret Ohio Section
5 4928.02(H), correct?

6 A. Yes. I state that the -- subject to me
7 not being an attorney, I state, "The provision of
8 market price mitigation for the use of the FES and
9 OVEC generation assets as proposed by the Companies
10 is a generation-related service and, on its face,
11 would appear to be prohibited by the statute."

12 MR. ALEXANDER: I move to strike
13 everything after "yes."

14 MR. WILLIAMSON: I have no objection to
15 that. He simply restated what's already in the
16 record.

17 EXAMINER PRICE: Move to strike is
18 granted.

19 Q. (By Mr. Alexander) Please turn your
20 attention to page 15, line 3. Now, when you offered
21 this opinion, you did not take into account the
22 Commission's decision in the AEP Ohio capacity case,
23 Case No. 10-2929, correct?

24 A. I did not.

25 Q. And you also did not take into account

1 the Commission's decision in the AEP Ohio ESP
2 proceeding, Case No. 11-346?

3 A. I did not.

4 Q. And you testified in the AEP Ohio ESP
5 proceeding, correct?

6 A. I did.

7 Q. And you are aware that the Commission
8 provided a stability charge to AEP Ohio in that
9 proceeding?

10 A. I am.

11 Q. And you're also aware that the Commission
12 ordered AEP Ohio to corporately separate from that
13 proceeding?

14 A. That's my understanding.

15 Q. And you are aware that AEP Ohio provided
16 a portion of that stability charge to its corporate
17 affiliate after corporate separation was complete?

18 A. That's my understanding.

19 Q. You also testified in the Duke Energy
20 Ohio ESP proceeding, Case No. 11-3549, correct?

21 A. That's correct.

22 Q. And Wal-Mart was a party to the
23 stipulation in that proceeding?

24 A. We were.

25 Q. Now, the Duke stipulation provided a

1 stability charge to Duke Energy Ohio as well,
2 correct?

3 A. That's my understanding.

4 Q. And the Duke stipulation also required
5 Duke Energy Ohio to corporately separate?

6 A. That's my recollection.

7 Q. And the Duke stipulation also allowed
8 Duke to transfer funds to its corporate affiliate
9 after corporate separation, correct?

10 A. That's my understanding.

11 Q. And you did not take the Duke stipulation
12 into account when reaching your conclusion regarding
13 this statute, correct?

14 A. I did not.

15 Q. And Wal-Mart was also a party to the most
16 recent Dayton Power & Light ESP proceeding, Case No.
17 12-426, correct?

18 A. That's correct.

19 Q. And you testified in that case as well,
20 correct?

21 A. I did.

22 Q. And the Commission awarded Dayton Power &
23 Light a stability charge in that proceeding as well?

24 A. That's my recollection.

25 Q. And the Dayton Power & Light stability

1 charge was associated with a generation revenue
2 deficiency?

3 A. That's my understanding.

4 Q. And Dayton Power & Light was permitted to
5 transfer generation-related revenue to its corporate
6 affiliate after corporate separation, correct?

7 A. That's my understanding.

8 Q. And you did not take the Commission's
9 decision in the Dayton Power & Light case into
10 account when you reached your interpretation of Ohio
11 Revised Code Section 4928.02(H), correct?

12 A. I did not.

13 Q. And you believe that the Commission
14 violated section 4928.02(H) when it awarded the
15 stability charges we just discussed?

16 A. Well, my understanding of the situations
17 is different. So FirstEnergy Solutions is a wholly
18 separate entity. There's no transition in play. My
19 understanding is that a lot of what -- a lot of the
20 discussion around the stability charge was around
21 those transitions, and so in this case, we're looking
22 at a completely separate entity. FES isn't --
23 FirstEnergy is not corporately separated as part of
24 this docket.

25 MR. ALEXANDER: Your Honor, I move to

1 strike the entire answer. The question related to
2 whether he believes the Commission violated Section
3 4928.02(H) in those proceedings. I did not ask about
4 this case.

5 MR. WILLIAMSON: He's explaining his
6 answer. He was not offering a "yes" or "no" answer.
7 He was providing an explanation.

8 EXAMINER PRICE: The difficulty is you
9 actually asked a compound question because you asked
10 a question that had embedded in it four different
11 situations. So why don't we go through each of the
12 situations, and he can answer the question, and we'll
13 leave his testimony as it stands right now.

14 Q. (By Mr. Alexander) Do you believe that
15 the Commission violated Revised Code 4928.02(H) when
16 it issued its decision in the AEP Ohio ESP
17 proceeding?

18 MR. WILLIAMSON: I don't see how this is
19 foundational to his testimony where he is providing
20 in his testimony an interpretation of the statute as
21 it applies to FES in this case.

22 EXAMINER PRICE: It's fair for -- I'm
23 going to overrule your objection. I think it's fair
24 for FirstEnergy to explore whether in similar
25 situations he thinks the Commission order violated

1 this policy provision.

2 You can answer the question.

3 A. Again, my recollection of the
4 circumstances is that they were different and that it
5 was proposed by those utilities as a tool in order to
6 deal with the transition. I'm not an attorney, and I
7 haven't reviewed those testimonies, but if I were, I
8 would look to see what sort of -- what I had said
9 about that, and those were several years ago. But
10 through the course of testimony, I don't think it's
11 something that we would have specifically supported.
12 Again, I haven't reviewed those testimonies lately.

13 In the case of Duke, you know, the
14 stipulation resolves all issues in the case as
15 essential. There's a lot of give and take in them.
16 These ESP dockets are dockets that deal with an
17 enormous number of issues, and so the stipulation is
18 what it is.

19 MR. ALEXANDER: Your Honor, I move to
20 strike the entire answer. I asked about the AEP
21 decision only. I don't think I got an answer to that
22 question.

23 EXAMINER PRICE: I don't think you got an
24 answer to the question either. We're going to begin
25 striking everything with "In the case of Duke," but

1 we will direct you to, if you could, answer the
2 question "yes" or "no" as posed, or explain why you
3 cannot.

4 MR. WILLIAMSON: Your Honor, I would ask
5 for clarification that he's not being asked to
6 provide a legal conclusion.

7 EXAMINER PRICE: I think that's well
8 established at this point. Again, this is also a
9 policy provision in the revised code, so it's not
10 unfair for him to testify about it or for him to be
11 cross-examined.

12 MR. WILLIAMSON: I think he may be
13 concerned he's offering a legal conclusion, and he's
14 not. He stated on the record he's not an attorney.

15 EXAMINER PRICE: We're not assuming
16 you're giving a legal conclusion.

17 Let's have Mr. Alexander's last question
18 back, and we'll have him explain "yes," "no" or why
19 he cannot.

20 (Record read.)

21 EXAMINER PRICE: Mr. Alexander, please
22 repose your question.

23 And, again, the same caution to the
24 witness. He's going to ask you a question that tends
25 to a "yes" or "no" answer, and you need to answer

1 "yes" or "no" or explain why you cannot.

2 Q. (By Mr. Alexander) Mr. Chriss, do you
3 believe the Commission violated Revised Code Section
4 4928.02(H) when it issued its decision in the AEP
5 Ohio ESP proceeding?

6 A. I don't know without looking back at the
7 order and reviewing the order.

8 Q. Mr. Chriss, do you recall being deposed
9 in this proceeding?

10 A. I do.

11 Q. And do you recall the court reporter was
12 present at that deposition?

13 A. I do.

14 Q. And do you recall swearing an oath to
15 tell the truth?

16 A. I do.

17 Q. Do you have a copy of your deposition
18 with you today?

19 A. I do not.

20 MR. ALEXANDER: May I approach, your
21 Honor?

22 EXAMINER PRICE: You may.

23 Q. Turn to page 74 starting at line 4 and,
24 let me know when you're there.

25 A. I'm there.

1 Q. Okay. Did I ask you the question: "Do
2 you believe that the commission violated section
3 4928.02(H) in either the AEP, Duke, or DP&L
4 decision?"

5 Answer: Yeah, I mean, I think that,
6 ultimately, those dollars shouldn't go to the
7 unregulated affiliates."

8 Did I read that correctly?

9 A. You did.

10 MR. WILLIAMSON: Your Honor, I would just
11 interject, right below that is an objection to the
12 questioning based on the fact that it is requesting
13 that the witness provide a legal conclusion, and he
14 has stated that he is not an attorney.

15 EXAMINER PRICE: Well, I think that
16 appears to me to be addressing the question after the
17 one that -- the question and answer after that
18 Mr. Alexander just read. So overruled.

19 Q. Mr. Chriss, do you believe that the
20 Commission violated Section 4928.02(H) when it
21 awarded the stability charge to Dayton Power & Light
22 in its ESP proceeding?

23 A. I will stand by my answer. I think that
24 they may have. Again, I'm not an attorney.

25 Q. And, Mr. Chriss, do you believe the

1 Commission violated Section 4928.02(H) when it
2 awarded a stability charge to Duke in its ESP
3 proceeding?

4 A. Same answer.

5 MR. ALEXANDER: No further questions,
6 your Honor.

7 EXAMINER PRICE: Mr. Lindgren.

8 MR. LINDGREN: No questions, your Honor.

9 EXAMINER PRICE: I just have one question
10 before we go on to redirect.

11 Mr. Alexander asked you a question about
12 interest rates, and you indicated you think they
13 could go up or down? Am I recalling that correctly?

14 THE WITNESS: That's correct.

15 EXAMINER PRICE: But short-term interest
16 rates are at -- lending is at zero is that correct?

17 THE WITNESS: I haven't looked at them
18 recently, but I'm ultimately -- I mean, they probably
19 can't go negative, but when you look at any sort of
20 future movement, it could go up or down.

21 EXAMINER PRICE: But there's not a lot of
22 downside left to go.

23 THE WITNESS: There's not a lot of
24 downside when you get to zero.

25 EXAMINER PRICE: Redirect.

1 MR. WILLIAMSON: No, sir, no redirect. I
2 would move my Wal-Mart exhibit.

3 EXAMINER PRICE: Any objection to the
4 admission of Wal-Mart Exhibit 1?

5 Hearing none, it will be admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 EXAMINER PRICE: Let's take ten minutes.
8 Let's go off the record.

9 (Recess taken.)

10 EXAMINER PRICE: Now, let's go back on
11 the record. Ms. Willis.

12 MS. WILLIS: Thank you, your Honor.
13 OCC calls to the stand Mr. David J.
14 Effron.

15 (Witness sworn.)

16 EXAMINER ADDISON: Thank you. Please be
17 seated.

18 - - -

19 DAVID J. EFFRON
20 being first duly sworn, as prescribed by law, was
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 - - -

24 By Mr. Willis:

25 Q. Good morning, Mr. Effron.

1 A. Good morning.

2 Q. Mr. Effron, do you have before you what
3 has been marked --

4 MS. WILLIS: OCC would ask to mark as
5 Exhibit No. 18 the direct testimony of David J.
6 Effron submitted December 22nd, 2014.

7 EXAMINER ADDISON: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. (By Ms. Willis) Mr. Effron, do you have
10 in front of you what has been marked for
11 identification purposes as OCC Exhibit No. 18?

12 A. Yes, I do.

13 Q. And can you identify that for me?

14 A. That's my prefiled direct testimony in
15 this case.

16 Q. And, Mr. Effron, for purposes of this
17 proceeding, by whom are you employed and in what
18 capacity?

19 A. I'm self-employed doing business as
20 Berkshire Consulting Services offering assistance to
21 intervenors in utility matters.

22 Q. And for purposes of this proceeding, who
23 have you been employed by?

24 A. Office of Consumers' Counsel.

25 Q. Thank you. Now, you have in front of you

1 OCC Exhibit No. 18, and was that exhibit prepared by
2 you or under your direct supervision and control?

3 A. Yes, it was.

4 Q. And do you have any additions,
5 corrections, or deletions to that testimony?

6 A. I do not.

7 Q. And if I were to ask you the questions
8 that are posed in OCC Exhibit No. 18 today, would
9 your answers be the same?

10 A. Yes, they would.

11 MS. WILLIS: Your Honor, at this time I
12 would offer Mr. Effron for cross-examination.

13 EXAMINER ADDISON: Thank you.

14 MR. KUTIK: At this time will the Bench
15 entertain motions to strike before the beginning of
16 cross-examination?

17 EXAMINER ADDISON: Yes, Mr. Kutik.

18 MR. KUTIK: Your Honor, may I approach?

19 EXAMINER ADDISON: You may.

20 MR. KUTIK: Your Honor, I would like to
21 provide the Bench with copies of Mr. Effron's
22 deposition.

23 MS. WILLIS: May I have a moment, your
24 Honor, so I can locate my copy as well?

25 EXAMINER ADDISON: You may.

1 MR. KUTIK: Your Honor, specifically, I
2 move to strike page 5, line 2 through 6, and
3 Attachment DJE, Attachment 1, which are references to
4 an article by Ken Costello and the article itself.

5 I'd refer the Bench to page 40 of
6 Mr. Effron's deposition, and there, your Honor, I
7 asked him, starting at line 6: "Now, one thing you
8 did attach to your testimony is an article from Ken
9 Costello, a principal at the National Regulatory
10 Research Institute, correct?"

11 Answer: "Correct."

12 Question: "And you did not review this
13 article specifically for the purposes of this case,
14 correct?"

15 Answer: "That's correct."

16 Question: "You had no role in writing
17 this article, correct?"

18 Answer: "That's correct."

19 Question: "And the article is not quoted
20 in your testimony, correct?"

21 Answer: "Correct."

22 Question: "You did not rely on this
23 article to come up with your opinion in this case,
24 correct?"

25 Answer: "I did not rely on it, that's

1 correct."

2 Question: "Would it be fair to say that
3 this article is attached merely as something for the
4 Commission to have as a reference?"

5 Answer: "I believe that's a fair
6 characterization."

7 And then on page 41, I asked him, at line
8 6, Question: "Now, are you familiar with the work of
9 Mr. Costello?"

10 Answer: "Not beyond this article, no."

11 Question: Are you familiar with the work
12 of the National Regulatory Research Institute?"

13 Answer: "I've seen other publications by
14 them over the years."

15 Then on page 43 I asked him, starting at
16 line 11: "Would you regard the work of Mr. Costello
17 as authoritative?"

18 Answer: "I haven't done that kind of
19 review."

20 Question: "Okay. Would you review the
21 work -- would you regard the work of the National
22 Regulatory Research Institute as authoritative?"

23 Answer: "I would have the same, same
24 response."

25 Question: "The answer is you could not

1 do that today?"

2 Answer: "Yeah. I would rather not
3 characterize it as being authoritative or otherwise."

4 Your Honor, my objection with respect to
5 this document is that it is hearsay and it meets no
6 criteria for admissibility under the rules of
7 evidence as an exclusion to hearsay.

8 The witness specifically disclaimed it as
9 being authoritative work. The witness did not rely
10 on it. The witness didn't write it, and so at this
11 point, your Honor, it basically serves no purpose and
12 has no evidentiary basis.

13 EXAMINER ADDISON: Ms. Willis, response?

14 MS. WILLIS: Thank you, your Honor. We
15 would believe, your Honor, that this article is an
16 exception to hearsay falling under the market reports
17 or commercial publications exception 803.17, and is
18 also, your Honor, information testified -- or
19 perceived by the expert that is permissible under
20 Evidence Rule 703.

21 MR. KUTIK: Your Honor, the witness
22 specifically disclaimed relying on it, so that takes
23 out any reference or any reliability of 703.

24 With respect to the market report, as
25 just a glance at the article indicates, it is not a

1 market report in terms of being able to compile data
2 or show something that's relied upon by individuals
3 for specific facts. Rather, it is commentary on what
4 is good policy and what is not good policy, not the
5 facts and circumstances obtained in the market.

6 EXAMINER ADDISON: Ms. Willis, response?

7 MS. WILLIS: Your Honor, it could also be
8 considered not for the purposes of -- that we could
9 consider it and admit it for purposes of being other
10 than for the truth asserted, so it would not then
11 fall into hearsay.

12 EXAMINER ADDISON: Mr. Kutik, last word?

13 MR. KUTIK: Your Honor, the only reason
14 it's being admitted is for the supposed policy
15 observations that it made. The truth of those
16 observations is what it's relevant to, if anything.

17 EXAMINER ADDISON: Thank you.

18 At this time, I will grant the motion to
19 strike.

20 Any other matters, Mr. Kutik?

21 MR. KUTIK: Your Honor, that concludes my
22 motion to strike.

23 EXAMINER ADDISON: Thank you.

24 Mr. Hays, do you have any questions?

25 MR. HAYS: No questions.

1 EXAMINER ADDISON: Mr. Dougherty.
2 MR. DOUGHERTY: No questions, your Honor.
3 EXAMINER ADDISON: Ms. Ghiloni.
4 MS. GHILONI: No questions.
5 EXAMINER ADDISON: Mr. Ryan.
6 MS. RYAN: No questions, your Honor.
7 EXAMINER ADDISON: Mr. Soules.
8 MR. SOULES: No questions, your Honor.
9 EXAMINER ADDISON: Mr. Lavanga.
10 MR. LAVANGA: No questions, your Honor.
11 EXAMINER ADDISON: Ms. Cohn.
12 MS. COHN: No questions, your Honor.
13 EXAMINER ADDISON: Mr. Kumar.
14 Okay, I apologize. Sorry. I'm getting
15 ahead of myself. Thank you.
16 Mr. Kutik.
17 MR. KUTIK: Thank you, your Honor.
18 - - -
19 CROSS-EXAMINATION
20 By Mr. Kutik:
21 Q. Good morning, Mr. Effron.
22 A. Good morning, Mr. Kutik.
23 Q. Berkshire Consulting, I think you just
24 said earlier, is just you, correct?
25 A. That's correct.

1 Q. And the business address that you gave,
2 that's your home address? That's your house?

3 A. Yes, that's correct. It's an office
4 separated from the rest of the house.

5 Q. Okay. Now, you've never worked for an
6 electric utility before, correct?

7 A. That's correct.

8 Q. You've never designed a distribution,
9 electric distribution system?

10 A. I have not.

11 Q. You've never developed a plan to
12 determine when to replace aging infrastructure?

13 A. I have not.

14 Q. And you've not been involved and never
15 participated in a utility's formulation of its
16 capital budget?

17 A. Not from the perspective of participating
18 with the utility. I reviewed them in the context of
19 cases I've been involved in over the years.

20 Q. But not in terms of helping the utility
21 do that, is that correct?

22 A. That's correct.

23 Q. And measurements of reliability are not
24 within your area of expertise, correct?

25 A. That is correct.

1 Q. And you're not a rate of return expert?

2 A. I am not.

3 Q. And you're not an expert on what might be
4 an adequate rate of return?

5 A. That's correct.

6 Q. Now, you've testified in a number of
7 cases before this Commission, correct?

8 A. Correct.

9 Q. And in almost all the cases, you've been
10 a witness for the Office of Consumers' Counsel.

11 A. That's correct, the great majority of
12 them, yes.

13 Q. And the other cases that you've been
14 involved in, you've testified either on behalf of
15 consumers or consumer representatives?

16 A. Yes.

17 Q. None of those cases did you testify on
18 behalf of utility companies?

19 A. I have not testified on behalf of utility
20 companies.

21 Q. Nor on behalf of the staff?

22 A. No.

23 Q. What I said was correct?

24 A. That's correct.

25 Q. Now, you were retained in this case or

1 for this case in late October of 2014.

2 A. I think that's right as I sit here. It's
3 been a while.

4 MR. KUTIK: May I approach, your Honor?

5 EXAMINER ADDISON: You may.

6 MR. KUTIK: Your Honor, I would like to
7 have marked as the next exhibit Companies' Exhibit
8 52.

9 EXAMINER ADDISON: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. (By Mr. Kutik) Mr. Efron, the document
12 that I've placed before you I've asked to have the
13 Bench identify as Companies' Exhibit 52. You
14 recognize that document, do you not?

15 A. Yes.

16 Q. And that is the contract that you have in
17 this case, correct?

18 A. It appears to be, yes.

19 Q. And this provides a fee amount that you
20 were not to exceed, correct?

21 A. Correct.

22 Q. And this amount was the subject of some
23 negotiation, was it not?

24 MS. WILLIS: Objection.

25 EXAMINER ADDISON: Grounds?

1 MS. WILLIS: Relevance, your Honor.

2 EXAMINER ADDISON: Mr. Kutik.

3 MR. KUTIK: Your Honor, if I can have a
4 few more questions. The relevance will become
5 apparent.

6 EXAMINER ADDISON: I'll allow a little
7 leeway.

8 THE WITNESS: May I have the question
9 again, please?

10 EXAMINER ADDISON: You may.

11 (Record read.)

12 A. I'm trying to recall. Any negotiation
13 was pretty limited, as I recall.

14 Q. But there was some negotiation about
15 this?

16 A. There was some discussion. There might
17 have been. I don't know if I'd call it negotiation.

18 Q. Fair enough. So there was some
19 discussion about what the proper amount of the bill
20 would be?

21 A. As I recall, I think there was, yes.

22 Q. And this contract amount that appears in
23 here was based upon your work at \$150 per hour,
24 right?

25 A. Yes.

1 Q. And so the estimate that you had for the
2 work that you need in this case was 130 hours,
3 correct?

4 A. Correct.

5 Q. And you thought 130 hours was sufficient
6 for the work to do whatever work that you needed to
7 do to provide the opinions that you needed to provide
8 in this case, correct?

9 A. That was my estimate at the time, yes.

10 Q. Now, would it be fair to say that some
11 parts of your testimony here are essentially cut and
12 pasted from testimony in other cases?

13 MS. WILLIS: Objection.

14 EXAMINER ADDISON: Grounds?

15 MR. KUTIK: Let me finish my question.

16 Q. Specifically in the most recent ESP case
17 for Ohio Power.

18 MS. WILLIS: Argumentative.

19 MR. KUTIK: Your Honor, I believe that's
20 an accurate characterization of what he did, word for
21 word.

22 EXAMINER ADDISON: Overruled.

23 A. The testimony on pages 4 through page 6
24 of line 13, it's similar to my testimony in the AEP
25 case. I don't know if cut and paste would be a

1 proper characterization, but it's certainly similar.

2 Q. Certainly would you agree that there are
3 large parts or certainly several questions and
4 answers that you transposed from Ohio Power testimony
5 to this testimony?

6 A. Well, again, I didn't do a review and
7 compare what I said here to my testimony in Ohio
8 Power, but there's three questions there that are
9 similar.

10 MR. KUTIK: May I approach, your Honor?

11 EXAMINER ADDISON: You may.

12 MR. KUTIK: Your Honor, I would like to
13 have marked as Companies' Exhibit 53 the Direct
14 Testimony of David J. Effron in Case No.
15 13-238-EL-SSO, et al.

16 EXAMINER ADDISON: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. Mr. Effron, I've placed before you what
19 we've asked to have marked as Companies Exhibit 53.
20 Do you recognize that as the testimony you provided
21 on behalf of OCC in the Ohio Power ESP case?

22 A. Yes.

23 Q. Now, I'd ask you to refer to page 1 of
24 your testimony in this case.

25 MS. BOJKO: Excuse me, Your Honor. Is

1 this the most recent ESP case? We were not given
2 copies for my records. Was the case number 13?

3 MR. KUTIK: Yes, Case No. 13-2385.

4 MS. BOJKO: Thank you.

5 Q. (By Mr. Kutik) Mr. Effron, would you
6 agree with me that page 1 of both pages is the same
7 except for the case number?

8 A. Yes, that's my qualifications which
9 substantially is the same.

10 Q. Would you agree with me, turning to page
11 2 of each of the testimonies, that page 2 of your
12 testimony in this case through line 19 is the same as
13 page 2 of your Ohio Power testimony?

14 A. Same answer.

15 Q. So that's a yes, correct?

16 A. Yes, it's my statement of qualifications.
17 It's pretty much the same now as it was then.

18 Q. Let me have you refer to page 4 of your
19 testimony. And would you agree that question and
20 answer 10, except for the reference to "companies"
21 and "AEP" is essentially the same?

22 A. The first paragraph is the same. The
23 second paragraph, except for the name of the company
24 and first couple sentences, is the same, although
25 it's my understanding that my testimony now in the

1 present case that begins at the top of page 5 at line
2 2 isn't really part of my testimony.

3 Q. That's correct.

4 A. That would be the distinction then.

5 Q. Would it be fair to say that question and
6 answer 11 that appear on page 5 of your testimony
7 here is the same as appear on page -- as appears on
8 page 5 of the Ohio Power testimony?

9 A. It appears to be.

10 Q. And would it be fair to say that question
11 and answer number 12 is the same in both testimonies
12 except for the reference to "the companies?"

13 MS. WILLIS: Your Honor, at this point
14 I'm going to object.

15 EXAMINER ADDISON: Grounds?

16 MS. WILLIS: I don't see the relevance.
17 Are we going to go through every line for this
18 witness, every line and compare it to prior
19 testimonies? I don't understand the point, and I
20 think it's irrelevant.

21 EXAMINER ADDISON: Mr. Kutik.

22 MR. KUTIK: Your Honor, I believe the
23 Commission should understand what thought process,
24 what thought detail, what analysis went into the
25 witness' testimony. If it's a mere repetition of

1 something he said before, that's certainly something
2 the Commission could consider.

3 EXAMINER ADDISON: Objection overruled.

4 THE WITNESS: May I have the question
5 again, please.

6 EXAMINER ADDISON: You may.

7 (Record read.)

8 A. Yes. It would not be fair to say that.

9 Q. Except for the last sentence, would it be
10 essentially the same?

11 A. No, not on the copy I have in front of me
12 here, and top page 6, in the Ohio Power case there's
13 a sentence there at lines 1 through 6. There's no
14 similar sentence in the testimony in the prior case.

15 Q. Thank you, sir.

16 A. I'm not finished.

17 Q. Okay. Go ahead.

18 A. On page 6 of the present case, a response
19 to question 12, the answer at lines 5 through 6,
20 there's a sentence there that did not appear in my
21 testimony in the Ohio Power case. So, I would say
22 those answers are not the same.

23 Q. Thank you, sir.

24 A. You're welcome.

25 Q. Now, on page 9 of your testimony in this

1 case -- strike that.

2 Now, for purposes of this case or for
3 reaching your opinions in this case, you didn't
4 review the ESP statute, correct?

5 A. It's been a long time. When you say
6 "review," I might have looked at it, not in the sense
7 of trying to provide some kind of legal analysis of
8 it, but it's possible I looked at it some time over
9 the course of the case. I just don't recall as I sit
10 here.

11 Q. Isn't it true the last time you looked at
12 it would have been a while ago?

13 A. If I looked at it, it would have been a
14 while ago, true.

15 Q. And you didn't review the law and
16 statutes in other states to see if they authorize a
17 rider that recovers capital additions, correct, for
18 purposes of your work here?

19 A. I do not recall making a specific review
20 of statutes in other cases regarding the recovery of
21 particular costs in the preparation of my testimony
22 here.

23 Q. So the answer to my question is yes?

24 A. As best as I can recall, I did not review
25 other statutes in other states in the preparation of

1 my testimony here.

2 Q. Now, you know that some other states do
3 have such riders, correct?

4 A. Yes, I am aware of that.

5 Q. And among the states in which you are
6 aware that have riders like this are Rhode Island,
7 Massachusetts, Illinois and Pennsylvania, correct?

8 A. That would depend on how you define like
9 this. Those states do have riders that allow for the
10 recovery of capital costs. Obviously, it's not
11 exactly the same as the rider that's in existence
12 here, but they do recovery of capital costs.

13 Q. Are you familiar with an organization
14 called the Edison Electric Institute?

15 A. Generally familiar, yes.

16 Q. Have you read their publications from
17 time to time?

18 A. Over the years I have.

19 MR. KUTIK: May I approach, your Honor?

20 EXAMINER ADDISON: You may.

21 MR. KUTIK: Your Honor, we'd like to have
22 marked as Company Exhibit 54 a document from the
23 Edison Electric Institute Entitled, Alternative
24 Regulation for Evolving Utility Challenges: An
25 Updated Survey.

1 EXAMINER PRICE: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. Mr. Effron, have you ever seen this
4 before?

5 A. I don't recall having seen it.

6 Q. Okay. I'd like to have you refer to page
7 or table 1. Does looking at that page or that table
8 refresh your recollection as to whether any other
9 states other than Rhode Island, Massachusetts,
10 Illinois, or Pennsylvania have capital addition
11 riders?

12 MS. WILLIS: Objection.

13 EXAMINER ADDISON: Grounds?

14 MS. WILLIS: Lack of foundation. The
15 witness said he can't recall seeing this document.
16 There is no foundation on the record at this point to
17 cross-examine the witness on.

18 MR. KUTIK: Your Honor, I asked him to
19 look at this purely for purposes of refreshing his
20 recollection. I can have him look at anything to
21 refresh his recollection. I could have him look at
22 my credit card. It doesn't really matter.

23 EXAMINER ADDISON: Objection overruled.

24 A. I'm not clear on the question. My
25 recollection of what?

1 Q. Sir, do you recall other than those
2 states that I've just mentioned, Rhode Island,
3 Massachusetts, Illinois, or Pennsylvania, whether any
4 other states have capital addition riders?

5 A. I haven't done that analysis.

6 Q. Sir, I want you to look at both Table 1
7 and Table 2 of this document and ask you if it
8 refreshes your recollection as to whether there are
9 any other states that have capital addition riders?

10 MS. WILLIS: Your Honor, I object.

11 EXAMINER ADDISON: Grounds?

12 MS. WILLIS: There is no foundation laid.
13 We don't know what this document is, where it came
14 from, who sponsored this document. We don't know
15 this document is what it's supposed to be. We don't
16 know the truth of the matter asserted in this
17 document.

18 Mr. Kutik is trying to bring into
19 evidence a document that has no foundation through a
20 refreshing recollection, and that is not -- the
21 witness has testified it does not refresh his
22 recollection. And to his recollection, he identified
23 the states that have riders. That was what
24 Mr. Efron testified to.

25 Showing him a document that has a list

1 of -- purports to have a list of states with riders
2 does not refresh his recollection. It just is merely
3 a way to get the information into the record. If the
4 company wants the information in the record, it needs
5 to produce a witness that can authenticate and
6 testify to this document and to the riders.

7 MR. KUTIK: I believe Ms. Willis is
8 testifying now on behalf of the witness. The witness
9 hasn't indicated that his testimony hasn't been
10 refreshed looking at this document. That's all I've
11 asked him to do and that's where we are on the
12 record.

13 EXAMINER PRICE: I mean, his response to
14 "Did it refresh your recollection " was, "I haven't
15 performed the analysis," which was not what the
16 question asked. The question is did it refresh his
17 recollection, so he hasn't actually responded to the
18 question.

19 MR. KUTIK: Yes, your Honor.

20 A. When you say "recollection," I don't
21 think I stated any recollection one way or the other.
22 I don't have any recollection to be refreshed or to
23 be not refreshed. I don't know what goes on in these
24 other places where I haven't testified.

25 Q. Well, sir, you have testified in other

1 states, have you not? You have a list in your
2 testimony of the states.

3 A. Yes.

4 Q. So my question simply is, sir, given your
5 experience in those other states, if you were to look
6 at Table 1 and Table 2 and see if it refreshes your
7 recollection as to whether there are riders that
8 allow for recovery of capital additions in any other
9 states you've testified in.

10 MS. WILLIS: Objection, your Honor.

11 EXAMINER ADDISON: I think we've covered
12 this already. I'm going to allow the question.

13 A. This document was prepared, based on the
14 cover here, in January of 2013. You asked me
15 questions regarding jurisdictions which I testified
16 in and been a part of utility matters in recent
17 years. I can testify to what goes on in those
18 jurisdictions.

19 These other jurisdictions, many of them
20 which I have testified in, has been many years since
21 I've testified in them. Things have changed then. I
22 don't know what goes on in many of those
23 jurisdictions since last time I testified there, and
24 there's no recollection I have really one way or the
25 other of these other jurisdictions what goes on there

1 and what has gone on there since the last time I
2 testified. There's nothing to recall.

3 Q. Sir, you testified in Alabama, correct?

4 A. Many years ago.

5 Q. Okay. And all I'm asking you is does
6 this document, Table 2, refresh your recollection as
7 to whether Alabama allows riders for capital
8 additions.

9 A. What I can say there is the last time I
10 testified there, as I recall, it did not.

11 Q. All right.

12 A. I don't know what's going on there since
13 then. I don't have -- I do not know what their
14 regulatory framework is since the last time I
15 testified there, which was probably 20 years ago. I
16 have nothing to recall.

17 Q. All right. With respect to Colorado, you
18 testified in that state, right?

19 A. Again, many years ago.

20 Q. Would your answer be the same with
21 respect to Colorado looking at Table 2?

22 A. Yes, it would.

23 Q. You testified in Connecticut, correct?

24 A. Many years ago.

25 Q. And would your answer be the same looking

1 at Table 2?

2 A. Yes.

3 Q. You testified in Florida, correct?

4 A. Again, not for many years.

5 Q. Would your answer be the same looking at
6 Table 2?

7 A. It says what it says. I don't know what
8 goes on there now.

9 Q. You testified in Georgia, correct?

10 A. Not for many years.

11 Q. And would your answer be the same looking
12 at Table 2?

13 A. Yes.

14 Q. You testified in Indiana, correct?

15 A. Not recently.

16 Q. And would your answer be the same looking
17 at Table 2?

18 A. Again, I don't know what goes on there.

19 Q. With respect to Kansas, you testified
20 there, correct?

21 A. Sometime in the early 1990s.

22 Q. Would it be fair to say, looking at Table
23 2, that does not refresh your recollection as to
24 whether Kansas allows for capital addition riders?

25 A. I have no idea what they do there now.

1 There's nothing -- I don't recall -- there's nothing
2 for me to recall what their status was as of 2013. I
3 just don't know, and I never knew.

4 Q. All right. You testified in Kentucky,
5 correct?

6 A. That's probably 30 years ago.

7 Q. Would it be fair to say, looking at Table
8 2, it does not refresh your recollection as to
9 whether Kentucky allows capital addition riders?

10 A. I have no idea what they do there now.

11 Q. You testified in Maine, correct?

12 A. Yes. That wasn't quite as long ago, but
13 it's been some years.

14 Q. And looking at Table 2 does not refresh
15 your recollection as to whether Maine allows capital
16 addition riders?

17 A. Again, this table -- it says what it
18 says. I don't know what goes on there.

19 Q. You testified in Massachusetts, correct?

20 A. Yes.

21 Q. And would it be fair to say that looking
22 at Table 2 does not refresh your recollection as to
23 whether Massachusetts allows capital addition riders?

24 A. I don't need to look at this table to
25 know what Massachusetts does. They do have capital

1 recovery riders in Massachusetts for gas companies.

2 That, I am aware of.

3 Q. Okay. You testified in New Jersey,
4 correct?

5 A. The last time was probably over 20 years
6 ago.

7 Q. Okay. And would it be fair to say
8 looking at Table 2 does not refresh your recollection
9 as to whether New Jersey allows for capital addition
10 riders?

11 A. Again, I don't know what goes on there.

12 Q. You testified in New York, correct?

13 A. But not recently.

14 Q. All right. You did testify in New York,
15 correct?

16 A. Yes, some years ago.

17 Q. Would it be fair to say that looking at
18 Table 2 does not refresh your recollection as to
19 whether New York allows for capital addition riders?

20 A. Again, I don't know what they do there,
21 no.

22 Q. You testified in Pennsylvania, correct?

23 A. Yes.

24 Q. And I think you told me that Pennsylvania
25 does allow for capital addition riders, correct?

1 A. Yes, that's my understanding, yes.

2 Q. You testified in South Carolina, correct?

3 A. Many years ago.

4 Q. And would it be fair to say that looking
5 at Table 2 does not refresh your recollection as to
6 whether South Carolina allows for capital addition
7 riders?

8 A. They do what they do. I don't know.

9 Q. Would your answer be the same -- your
10 answers be the same with respect to Vermont?

11 A. Yes.

12 Q. And for the state of Virginia?

13 A. Yes.

14 Q. Now, you didn't review the reports of the
15 auditors for the companies in the DCR audit
16 proceedings that the companies have had, correct?

17 A. I believe at the time of the deposition I
18 said I had looked at them. It depends on what you
19 mean by "review." I had looked at them briefly.

20 Q. All right. So you have looked at them.

21 A. I've looked at them since the time of the
22 deposition, yes.

23 Q. All right. And you didn't do any audit
24 of rider DCR?

25 A. I did not, no.

1 Q. And you didn't review the specific
2 projects or additions that were included for cost
3 recovery in rider DCR?

4 A. That's correct.

5 Q. And you didn't do a study of consumer
6 perceptions regarding reliability?

7 A. I did not and I have not.

8 Q. And you didn't do any study or analysis
9 regarding consumer perceptions about rate cases?

10 A. That's correct.

11 Q. You didn't do any financial analysis or
12 calculations of anything to do with rider RRS,
13 correct?

14 A. That's correct.

15 Q. And you didn't review the companies'
16 tariffs in any detail in this case?

17 A. I probably looked at them over the course
18 of my review. I did not do any kind of fine-bore
19 analysis on them.

20 Q. And you're not aware of what other cost
21 tracker riders the companies may have.

22 A. I've seen a listing of them. I couldn't
23 cite them all to you as I sit here, though, but I'm
24 sure it's in the record here.

25 Q. But you didn't, correct?

1 A. I looked at it. As I said, I did not do
2 a review myself in any detail of the riders other
3 than the ones I address in my testimony.

4 Q. So you are aware that the companies have
5 other cost tracker riders.

6 A. Yes.

7 Q. And you didn't review the companies'
8 capital budgeting and planning process, correct?

9 A. Other than the way it might have been
10 discussed in the audits, I didn't review the process
11 myself.

12 Q. You did no financial analysis of the
13 companies other than what's reflected in your
14 testimony, fair to say.

15 A. I've looked at financial reports since
16 the time that I prepared my testimony.

17 Q. All right. But for purposes of your
18 testimony, you did no financial analysis of the
19 companies other than what's reflected in your
20 testimony, correct?

21 A. We're going back some time now. If I
22 did, it was nothing that was extensive in any way,
23 put it that way.

24 Q. Fair enough. Now, you're aware that
25 Mr. Fanelli has made some comments about plant

1 additions and the trends of the plant additions,
2 correct?

3 A. I'm generally aware.

4 Q. And you have no basis to dispute
5 Mr. Fanelli's comments in that regard?

6 A. I don't want to say I necessarily agree
7 with them all as I sit here, because it's not in
8 front of me. I'm not comfortable saying that I
9 wouldn't dispute any of them if I saw them and had a
10 chance to think about them and maybe discuss them.
11 But my testimony in the case is what it is, but I
12 don't want to say I agree with everything that he
13 said as I sit here.

14 Q. Let me refer you to your deposition, sir,
15 page 31, please. And specifically I want to refer
16 you to your testimony starting at line 20. Did I not
17 ask you the following questions and did you not give
18 the following answers starting at line 20.

19 Question: "Do you recall any company
20 witness making representation about plant trends,
21 plant addition trends?"

22 Answer: "I guess it would depend on how
23 you define trend, but I believe Mr. Fanelli presented
24 testimony on what the average plant additions were
25 since the Companies' last rate case."

1 Question: "Would it be fair to say if
2 you disputed Mr. Fanelli's comments in that regard,
3 you would have included that in your testimony?"

4 Answer: "Again, I guess it depends on
5 what you mean by dispute. I didn't dispute his
6 calculation of the average. I think there might have
7 been some differences I had with -- I had with him
8 regarding the relevance of the averages for the
9 purpose of setting the cap."

10 Question: "Right. But in terms of how
11 he described the trend, you had no reason to dispute
12 what he said?"

13 Answer: "I didn't -- I don't dispute the
14 mathematics of what he said."

15 That was the testimony in your
16 deposition.

17 MS. WILLIS: Objection.

18 EXAMINER ADDISON: Grounds.

19 MS. WILLIS: That's improper impeachment.
20 Those are different questions. Those are not the
21 same questions he's asking now. So it's improper use
22 the deposition transcript for impeachment.

23 EXAMINER ADDISON: Mr. Kutik.

24 MR. KUTIK: Your Honor, the testimony he
25 gave today differed with respect to the question

1 about whether he disagreed with Mr. Fanelli's
2 comments about plant trends, and that's what -- plant
3 trend additions, and that's why I asked him. He had
4 one answer today. He didn't know whether he disputed
5 it today or not, and he gave another answer in his
6 deposition.

7 MS. WILLIS: Your Honor, I think if we
8 look at the record at the questions that -- the
9 question he asked Mr. Effron, it is not the same
10 question as was asked in the deposition.

11 EXAMINER PRICE: I think the last
12 question is exactly what he asked in the deposition.
13 The previous questions were not necessarily the same,
14 but the last question he asked is exactly what he
15 asked in the deposition.

16 MS. WILLIS: I think that Mr. Effron was
17 asked whether he disagreed with any of Mr. Fanelli's
18 statements about the trends, and this is not --
19 that's not the same question.

20 EXAMINER PRICE: The last question he
21 used the phrase "you do not dispute what he said."
22 You have no grounds to dispute what he said.

23 MS. WILLIS: Can we go back to the
24 question that he asked and have that question reread
25 so that we can do an accurate comparison?

1 EXAMINER PRICE: Sure.

2 MS. WILLIS: Thank you, your Honor.

3 (Record read.)

4 MS. WILLIS: My objections stand, your
5 Honor.

6 EXAMINER ADDISON: At this time, I'm
7 going to overrule the objection. Please proceed,
8 Mr. Kutik.

9 MR. KUTIK: Thank you, your Honor.

10 Q. (By Mr. Kutik) You would agree with me,
11 sir, that it's not unusual to have base -- it's not
12 unusual to have base rates and cost tracker riders in
13 existence for a utility at the same time.

14 A. I would agree with that.

15 Q. And you would also agree with me that
16 there are some benefits to cost tracker riders?

17 EXAMINER PRICE: Mr. Effron, could you
18 turn your microphone back on?

19 Q. Do you want my question again, sir?

20 A. No, I recall it. For certain types of
21 costs, I would agree that there are benefits to cost
22 trackers that can be justified.

23 Q. Would you agree with me that riders like
24 rider DCR are one way to remove the disincentive to
25 invest in infrastructure?

1 A. I think, at least in theory, a utility
2 with public service obligation should be required to
3 make the necessary investments to provide safe,
4 reliable, and adequate service whether there's a
5 rider or not. Whether that creates or removes
6 disincentives in the utility's own mind is hard for
7 me to characterize.

8 Q. Would you agree with me that commissions
9 have found that having riders like rider DCR would be
10 a way of removing the disincentive to invest in
11 infrastructure?

12 A. As I sit here, I can't recall whether
13 there are commission decisions that say that
14 explicitly. It's possible.

15 MR. KUTIK: May I approach, your Honor?

16 EXAMINER ADDISON: You may.

17 Q. Mr. Effron, we earlier talked about the
18 fact that you gave testimony in the Ohio Power case,
19 correct?

20 A. Yes.

21 Q. And one of the subjects you testified on
22 was AEP's proposal to have a rider that would recover
23 capital additions and capital investments, correct?

24 A. Yes.

25 Q. And you gave a deposition in that case,

1 did you not?

2 A. Yes.

3 Q. And I've placed before you what appears
4 to be a copy of that deposition transcript, right?

5 A. Yes.

6 Q. And let me have you refer to page 22 of
7 your deposition in the Ohio Power case. And let me
8 refer you specifically to line 16 on page 22. And
9 did you not give the following answer to the
10 following question:

11 Question: "So you think trackers are
12 important to remove any disincentive to invest in the
13 infrastructure; is that what you said?"

14 Answer: "Well, I think commissions have
15 found that it would -- that it would be a way of
16 removing any disincentive. I think there are
17 probably other ways of accomplishing the same thing.
18 That's one way to do it."

19 Was that your testimony in your
20 deposition in the Ohio Power case?

21 A. That's what I stated here. I might have
22 had something in my mind when I said that, but since
23 that time a year and a half ago, it's not in my
24 memory anymore. But I can't cite you anything as I
25 sit here where commissions have found that

1 exclusively.

2 MR. KUTIK: I move to strike, your Honor.
3 I only asked if that was his testimony in the Ohio
4 Power deposition.

5 EXAMINER ADDISON: Ms. Willis.

6 MS. WILLIS: Your Honor, he was just
7 giving context in explaining his answer. It is a
8 little odd we're talking about a deposition in
9 another case and that's being used to impeach when a
10 different question was asked. It's just a response
11 that he's looking at. I don't think it's really
12 proper use of a deposition transcript for impeachment
13 purposes because the same question was not asked.
14 He's just picking a response that he liked that
15 favors him that he wants to point to, but it was not
16 the same question.

17 MR. KUTIK: I used the question, your
18 Honor, that had the same words that Mr. Efron used
19 under oath in the Ohio Power case that he refuses to
20 adopt in this case. So I think certainly it's fair
21 impeachment.

22 Then now to my motion, the question was
23 simply, "Was that your testimony in the Ohio Power
24 deposition?"

25 EXAMINER ADDISON: I believe it was the

1 same question posed; however, as to the motion to
2 strike, I'm going to go ahead and deny that at this
3 time, just to be consistent with our practice of
4 allowing the witness to have one more elaborate
5 answer.

6 But I will direct you, Mr. Effron, to
7 just simply listen to counsel's questions and answer
8 that question alone from this point forward.

9 Thank you.

10 Q. (By Mr. Kutik) Would you agree with me,
11 sir, that riders like rider DCR provide an incentive
12 for utilities to replace rather than maintain
13 equipment?

14 A. They can, yes.

15 Q. And would you agree with me that it is
16 not a proper regulatory practice to have utilities
17 run equipment to failure?

18 A. I'm not an engineer myself, I would agree
19 with that as a general proposition as somebody's
20 who's not an engineer. I've heard over the years
21 that some utilities have adopted a kind of approach
22 "if it's not broke, don't fix it," and as long as
23 it's working and it's something that could be
24 replaced with little cost and quickly, that they will
25 run some noncritical parts until they fail and then

1 replace them. But, again, I'm not an engineer, so
2 I'm replying in that context.

3 Q. All right. Would you agree with me, sir,
4 though, recognizing you're not an engineer, that it
5 is not a proper regulatory practice to have utilities
6 run equipment to failure.

7 A. I would say not if it's going to cause
8 any great dislocation, that's certainly true. If
9 it's something where there's a very low cost to
10 failure or not a lot of the problems associated with
11 the failure and, again, it can be rectified quickly
12 and at low cost, there might not be anything wrong
13 with that. Again, but I'm not an engineer.

14 Q. All right. Sir, let me refer you to your
15 Ohio Power deposition, and particularly page 37. Are
16 you there, sir?

17 A. Yes.

18 Q. And did you not answer the following
19 question the following way starting at line 4.

20 Question: "Okay. Would you agree that
21 it's not a proper regulatory practice to have a
22 utility run its equipment to failure?"

23 Answer: "Well, again, I'm not an
24 engineer. I think it sounds like the kind of thing
25 that utilities would want to avoid."

1 Is that your testimony in the Ohio Power
2 deposition?

3 MS. WILLIS: Objection.

4 EXAMINER ADDISON: Grounds.

5 MS. WILLIS: The answer was not
6 inconsistent with what his response was today. This
7 is improper use of a deposition for impeachment.
8 Mr. Effron said, "I am not an engineer," and he went
9 on to explain. It is not inconsistent with what he
10 said.

11 Just because counsel wants words that
12 were used that may be more favorable to his opinion
13 from a prior deposition in a different case is not a
14 reason for us to allow that into the record. He
15 testified his testimony was not inconsistent.

16 MR. KUTIK: Your Honor, here he gave a
17 very equivocal answer. In his deposition, he did
18 not.

19 EXAMINER PRICE: Could I have the last
20 answer read back, please?

21 (Record read.)

22 EXAMINER ADDISON: Objection overruled.

23 Q. (By Mr. Kutik) Sir, the question was,
24 "Was that your Ohio Power deposition?"

25 A. That was taken out of context. You have

1 to look at that question and answer.

2 EXAMINER ADDISON: Mr. Effron, if you
3 could just listen to Mr. Kutik's question and then
4 respond at that time.

5 Q. Was that your testimony in your
6 testimony?

7 A. It was taken out of context.

8 EXAMINER ADDISON: Let's go off the
9 record for a moment.

10 (Discussion off the record.)

11 EXAMINER ADDISON: Let's go back on the
12 record.

13 Q. (By Mr. Kutik) Sir, was that your
14 deposition testimony, yes or no?

15 A. That wasn't the complete testimony. That
16 was a part of the testimony.

17 Q. Thank you, sir.

18 A. That's the way I would answer it.

19 Q. Thank you. Now, would it be fair to say
20 that an important incentive for cost control by
21 regulated utilities is the threat of disallowance
22 from a retrospective review?

23 A. I would say that's generally true.

24 Q. And in contrast to base-rate cases, cost
25 trackers offer a utility the advantages of shortening

1 the lag between the occurrence of costs and its
2 recovery in rates?

3 A. Yes, that's true.

4 Q. In contrast to base-rate cases, cost
5 trackers can offer a utility the advantage of
6 increasing cost recovery certainty?

7 A. That's a little harder to answer. It
8 might. In theory, the recoverability of the costs
9 shouldn't depend on whether the recovery takes place
10 to a rider or in base rates. In practice, it
11 probably makes the recovery more likely.

12 Q. Would you also agree with me, sir, that
13 cost trackers can lower a utility's risk and thus
14 increase its access to capital.

15 A. It could lower its risk, certainly.
16 Whether it increases access to capital is probably a
17 little outside my area of expertise.

18 Q. Would you agree that's true in theory?

19 A. Again, it's outside of my area of
20 expertise. Having said that, it could be true,
21 certainly.

22 Q. Would you also agree with me, sir, with
23 increased access to capital, utilities could have a
24 higher credit rating that in turn could lower the
25 cost of financing capital projects?

1 A. It's possible.

2 Q. Now, you're aware that there is a statute
3 in Ohio that authorizes ESPs, correct?

4 A. I'm generally aware of that, yes.

5 Q. And you're also aware that that statute
6 authorizes single-issue ratemaking, correct?

7 A. I don't have the statute in front of me.
8 I don't know whether that language appears in it
9 explicitly or not as I sit here.

10 Q. Do you know whether the statute
11 authorizes -- well, would it be fair to say that you
12 don't know whether the statute authorizes incentive
13 ratemaking?

14 A. As I sit here, I couldn't comment on
15 that.

16 Q. Now, you're aware, are you not, that the
17 companies have had rider DCR since the approval of
18 their second ESP?

19 A. Yes.

20 Q. And you're aware that other companies in
21 Ohio have capital addition or infrastructure
22 improvement riders, correct?

23 A. Yes.

24 Q. Rider DCR has remained unchanged since
25 its inception except for the annual caps on recovery.

1 A. I believe that's correct.

2 Q. And the purpose of the rider is to
3 capture increases in revenue requirements related to
4 plant additions since the last base rate case?

5 A. That's the intent, yes.

6 Q. The recovery under the rider is not
7 automatic; is that correct?

8 A. It can be subject to audit and
9 disallowances.

10 Q. Now, would it be fair to say that in
11 looking at the companies' experience with rider DCR
12 and the DCR audit proceedings, you have no criticisms
13 of the auditors of the companies' DCR riders,
14 correct?

15 A. I wasn't asked to review that, so no, I
16 have not undertaken a review of the audits to
17 determine whether I would have any criticisms or not.

18 Q. Okay. You are aware, though, are you
19 not, having now reviewed the audit reports in those
20 cases that the auditors did review the companies'
21 capitalization policy, correct?

22 A. To the best of my recollection, yes.

23 Q. And would it also be true to say that you
24 have no reason to believe that the companies have not
25 kept their books and records in accordance to GAAP,

1 G-A-A-P or the FERC system of accounts?

2 A. I have no reason to believe that.

3 Q. And you're not aware of any specific
4 uncontrolled costs that were incurred by the
5 companies and sought to be recovered under rider DCR,
6 correct?

7 A. I have not undertaken that kind of
8 review, so I'm not aware.

9 Q. Now, you are aware, are you not, that as
10 a result of the audits, there have been
11 disallowances?

12 A. There were some disallowances, yes.

13 Q. Now, the personnel that you've worked
14 with at OCC, you believe that they're pretty well
15 familiar with the FERC system of accounts?

16 MS. WILLIS: Objection.

17 EXAMINER ADDISON: Grounds?

18 MS. WILLIS: Relevance.

19 EXAMINER ADDISON: Mr. Kutik.

20 MR. KUTIK: I'll make it relevant in my
21 next question or two, your Honor.

22 EXAMINER ADDISON: I'll provide a little
23 leeway.

24 A. I really haven't quizzed them on that.
25 My impression is that the technical staff seems to be

1 aware of the requirements of the uniform system of
2 accounts. The attorneys might have some familiarity
3 with it, but my impression would be probably not to
4 the degree of the technical staff.

5 Q. Thank you. Let me ask you this. Is it
6 your testimony that you don't recall if OCC has
7 participated in any of the companies DCR audit
8 proceedings?

9 A. It depends on what you mean by
10 "participate." I believe they were parties to those
11 proceedings.

12 Q. And did you review the filings by OCC in
13 those cases?

14 A. I reviewed the comments in one of the
15 cases. Just to clarify, that was since the time of
16 the deposition.

17 Q. Fair enough. And you make certain
18 recommendations of things that should be looked into
19 in your testimony on pages 20 and 21, correct?

20 A. Yes.

21 Q. And would you agree with me that at least
22 in the comments that you reviewed, the OCC did not
23 raise any of those issues.

24 A. I don't recall having seen anything where
25 they would have raised those issues.

1 Q. Do you recall which case you reviewed
2 comments for?

3 A. I cannot cite you a docket number as I
4 sit here.

5 Q. Was it only -- go ahead.

6 A. I saw the comments in the -- I think it
7 was the audit for the 2013 -- it was 2012 or 2013
8 plant additions, but I can't say for sure on that as
9 I sit here. But I did see some comments that they
10 had submitted.

11 Q. Now, the net capital additions included
12 for recognition under rider DCR reflect gross
13 plant-in-service not approved in the companies' last
14 distribution rate case less growth and accumulated
15 depreciation reserve and accumulated deferred income
16 tax associated with plant-in-service since the
17 companies' last distribution rate case, correct?

18 A. Yes.

19 Q. And this is a formula that the Commission
20 approved in ESP II, correct?

21 A. Yes.

22 Q. And so the first part of the formula with
23 respect to gross plant-in-service would entail costs
24 in FERC account numbers 101, which is gross
25 plant-in-service and 106 which is completed

1 construction not classified?

2 A. Yes.

3 Q. And so the take away is that -- and then
4 we take away first the increase since the last case
5 in accumulated reserves for depreciation in FERC
6 account 108?

7 A. Yes.

8 Q. And also growth and accumulated deferred
9 income taxes found in FERC account numbers 281 and
10 282?

11 A. To the extent there was any in 281 or any
12 changes, I believe that's generally correct;
13 although, I had trouble replicating what was going on
14 in the changes and deferred taxes, but it would
15 include those accounts.

16 Q. I'm asking the way you understand it's
17 supposed to work. So what I said was correct?

18 A. I don't know whether the Commission
19 specified -- I don't recall as I sit here whether the
20 Commission actually specified the deferred tax
21 accounts that went into the formula or not. They
22 might have, but I don't recall.

23 Q. Now, would it be fair to say that you
24 don't know whether as part of the Commission's
25 approval of the formula for rider DCR there was any

1 discussion of the review of or the effect on account
2 Nos. 190, 192, 230, 254 or 283?

3 A. I don't know what went into the
4 determination of the formula and that level of
5 detail.

6 Q. Now, you've done a calculation for a
7 return on equity for the companies in this case,
8 correct?

9 A. Yes.

10 Q. And that isn't the calculation that would
11 be used to determine whether the companies have --
12 whether the companies have earnings that produce a
13 return on equity above the significantly excessive
14 earnings test, correct?

15 A. That's correct. It's not the formula
16 that's used in the significantly excess earnings
17 test.

18 Q. Okay. And with respect to the SEET, that
19 comes from the General Assembly, correct?

20 A. Again, I haven't reviewed the statutes,
21 but I can accept that representation.

22 Q. And it would require a refund if rates
23 under the ESP resulted in utilities earning above
24 what would be considered an excessive return,
25 correct?

1 A. That's my understanding.

2 Q. And this would include revenues from cost
3 tracker riders, correct?

4 A. Yes.

5 Q. And you're not aware that the companies
6 have ever been found to have exceeded the SEET?

7 A. I don't know of that having happened, no.

8 Q. And you don't know if any electric
9 company in Ohio has ever been found to have exceeded
10 the SEET threshold?

11 A. Not as I sit here, no.

12 Q. Now, your return on equity calculation
13 also includes certain type of revenue and expenses
14 that would not be included in a base rate case,
15 correct?

16 A. That's correct.

17 Q. And your calculation includes revenues
18 and expenses from riders, correct?

19 A. That's correct.

20 Q. And those riders or those expenses and
21 revenues of riders would not be included in a base
22 rate case?

23 A. They would not. They should
24 approximately offset each other.

25 MR. KUTIK: Could we go off the record,

1 your Honor.

2 EXAMINER ADDISON: You may.

3 (Discussion off the record.)

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

6 Q. (By Mr. Kutik) Your calculation also
7 would include the sale and leaseback revenues,
8 correct?

9 A. It would include revenues and expenses
10 which, again, should offset.

11 Q. And those may or may not be included in
12 the base rate calculation, correct?

13 A. Correct.

14 Q. And your calculation did not include any
15 adjustments to certain expenses that might normally
16 be adjusted in the rate case, correct?

17 A. No, that was not the intent of the
18 analysis.

19 Q. So what I said was correct?

20 A. Yes, that's correct.

21 Q. And such adjustments would be things like
22 depreciation or property taxes?

23 A. Well, it includes depreciation and
24 property taxes as they were actually incurred in
25 2013. It would not reflect any adjustments to those

1 expenses that could possibly be made in a rate case.

2 Q. So the answer to my question is, yes,
3 they didn't include adjustment for things that might
4 take place for things like depreciation or property
5 tax.

6 A. It didn't reflect adjustment of those
7 actual expenses, that's correct.

8 Q. Now, you also used the companies' cost of
9 debt from its last rate case, correct?

10 A. Yes.

11 Q. And you believe that it's likely that
12 that cost of debt would have changed to today?

13 A. It's highly likely that it would have
14 changed, yes.

15 Q. And would it also be true that your
16 calculation doesn't reflect the fact that the
17 companies' revenue requirement under DCR has exceeded
18 its caps?

19 A. My understanding was in 2013, it did not
20 exceed the caps.

21 Q. All right. Do you know whether the
22 companies' revenue requirements have been exceeded in
23 any years, sir?

24 A. In any year? I have not done that
25 analysis.

1 Q. All right. So if it had been exceeded in
2 the year that you studied, your calculation would not
3 include that, correct?

4 A. There was no adjustment for that, but
5 that shouldn't have any effect on the earned return
6 if the company keeps its books on an accrual basis.

7 Q. Now, if the company did exceed its
8 revenue caps in the year that you studied, then the
9 ROE would be lower pursuant to your calculation,
10 correct?

11 A. I don't see how.

12 Q. Okay. You included only one adjustment
13 to rate base, and that was for the RCP deferrals,
14 correct?

15 A. I adjusted the rate base as it appeared
16 in the DCR filing for the deferred charges.

17 Q. For the RCP?

18 A. The RCP deferred charges, yes.

19 Q. And that was found in account 182.3,
20 correct?

21 A. I could accept that subject to check. It
22 might have been 186, but it might have been 182.3 as
23 well.

24 Q. And your calculation of rate base did not
25 include any other adjustments for other regulatory

1 assets under 182.3, correct?

2 A. That's correct, yes.

3 Q. And it didn't include any adjustments
4 that might occur under deferred income tax related to
5 assets under account 190?

6 A. I did not adjust the rate base for that.
7 Although, I did analyze that and didn't deem any
8 adjustments to be necessary for that.

9 Q. You didn't make any, correct?

10 A. I didn't make any, because I didn't think
11 it was appropriate.

12 Q. And you didn't make any adjustments for
13 allowances for working capital, correct?

14 A. I believe that was zero in the last rate
15 case, so I did not. I should clarify that. It was
16 either zero or negative, I believe, in the last rate
17 case. But I didn't make any rate-based deduction for
18 any negative working capital, no.

19 Q. Well, the answer to my question is, yes,
20 you did not make any adjustments for allowances on
21 working capital, correct?

22 A. That's correct.

23 Q. Thank you. Now, you used Mr. Woolridge's
24 recommendations as a comparison, correct?

25 A. That was one comparison I did. I also

1 did a comparison based on the authorized returns from
2 the companies' last rate case.

3 Q. Let's talk about Mr. Woolridge's return.
4 You did compare it to his return recommendation,
5 didn't you?

6 A. That was one of the comparisons I did,
7 yes.

8 Q. And his calculation was for a return
9 relative to rider RRS, correct?

10 A. Yes.

11 Q. And that would be a return that would be
12 paid to FirstEnergy Solutions, correct?

13 A. That's correct, and I discussed that with
14 Mr. Woolridge, and I believe it was covered in his
15 testimony.

16 Q. Well, isn't it true that you don't know
17 how he derived his long-term debt figure?

18 A. I did not analyze that. I took the
19 number that he gave me.

20 Q. So you can't say what companies' cost of
21 debt he used?

22 A. I do not know that, no.

23 Q. And you don't know if Mr. Woolridge
24 testified that the long-term cost of debt for FES
25 should be used for determining returns to the

1 companies.

2 A. Again, I took what the numbers were, and
3 I didn't try to get behind them.

4 Q. And you don't know whether Mr. Woolridge
5 testified that the capital structure used to
6 determine returns for FES should be used for the
7 companies?

8 A. Again, I didn't get behind his numbers.
9 I used -- I incorporated them in one of my analyses.

10 Q. Now, would it also be true to say that
11 you didn't need to do any sensitivity analysis for
12 your calculation because of the magnitude of the
13 figure that you derived?

14 A. When you say "need to," I did not do
15 that, but it certainly could be done if one thought
16 it was appropriate.

17 Q. And you didn't do that, correct?

18 A. I did not do that, no, but the numbers
19 are there; and anybody who wanted them, they could.

20 Q. So the answer to my question is yes?

21 A. I had not done a sensitivity analysis
22 when I prepared my testimony. Since the deposition,
23 I looked at the effect of changing some of the
24 variables, but I didn't see it necessary to make any
25 modifications to my testimony.

1 Q. And that was because of the magnitude of
2 the figure that you derived, correct?

3 A. I don't want to say that it was because
4 of the magnitude of the figure. I think any
5 sensitivity analysis there would have to be a very
6 large swing in the inputs to make the excess
7 disappear. I think that the magnitude made any kind
8 of sensitivity less critical, but I don't want to sit
9 here and say that if it had been a lesser magnitude,
10 then I would have done the sensitivity analysis. I
11 still might not have.

12 Q. Is the answer to my question yes?

13 A. It is what it is.

14 Q. All right. May I have you refer to your
15 deposition, sir, page 71. Are you there, sir?

16 A. Yes.

17 Q. And did you not answer the following
18 questions in the following way, starting at line 1.

19 "Question: And on line 11 you say,
20 "However, given the magnitude of the differences
21 between the earned ROEs and the presently authorized
22 ROE, I believed -- I believe that the analysis on
23 schedule DJE-1 strongly implies that the utilities
24 have excess revenues. Do you see that?"

25 Answer: "Yes."

1 Question: "So you believe that simply
2 because of the magnitude of the difference you didn't
3 need to do any kind of sensitivity analysis to check
4 your numbers, correct?"

5 Answer: "I didn't do a sensitivity
6 analysis. The numbers are what they are. Obviously,
7 if you changed the inputs, the earned return
8 calculation would change."

9 Question: "But you feel confident in
10 your conclusion because of the magnitude of the
11 difference, corrected?"

12 Answer: "I believe it's a strong
13 implication, yes, because of the magnitude of the
14 difference."

15 That was your deposition testimony, was
16 it not?

17 A. Yes, it was.

18 MR. KUTIK: Thank you, your Honor. I
19 have no further questions.

20 EXAMINER ADDISON: Thank you, Mr. Kutik.
21 Let's go off the record.

22 (Discussion off record.)

23 EXAMINER ADDISON: Let's go back on the
24 record.

25 Mr. Lindgren, you didn't have any

1 questions, correct?

2 MR. LINDGREN: That's correct, your
3 Honor.

4 EXAMINER ADDISON: Thank you.
5 Any redirect, Ms. Willis?

6 MS. WILLIS: Your Honor, if I may have a
7 five-minute chat with my witness, that would be
8 great.

9 EXAMINER ADDISON: You may.

10 (Recess taken.)

11 EXAMINER ADDISON: Any redirect,
12 Ms. Willis?

13 MS. WILLIS: No, your Honor. Thank you.

14 EXAMINER ADDISON: Thank you.

15 Mr. Efron, you're excused. Thank you
16 very much.

17 EXAMINER ADDISON: Ms. Willis.

18 MS. WILLIS: At this time, we would move
19 for the admission of OCC Exhibit No. 18.

20 EXAMINER ADDISON: Any objections?

21 MR. KUTIK: Just subject to our motion to
22 strike, your Honor.

23 EXAMINER ADDISON: With that, the
24 remaining portion of OCC Exhibit 18 will be admitted
25 into evidence.

1 MS. WILLIS: Thank you, your Honor.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 EXAMINER ADDISON: Mr.. Kutik.

4 MR. KUTIK: Your Honor, the only exhibit
5 that we wish to offer at this time is Company Exhibit
6 52.

7 EXAMINER ADDISON: Any objections?

8 MS. WILLIS: Yes, your Honor, we would
9 object on the basis of relevancy.

10 EXAMINER ADDISON: Mr. Kutik.

11 MR. KUTIK: Your Honor, as I think we
12 attempted to establish the witness reached an
13 agreement with the witness -- or the witness reached
14 an agreement with OCC with respect to the extent of
15 his work, and we believe that it's appropriate for
16 the Commission to understand that and to inject any
17 potential excuses that OCC may have that while this
18 witness didn't get to do this or this witness didn't
19 get to do that because of some limitation, we
20 affirmatively deny that there was any limitation in
21 his work. So that's the purpose for which it's
22 offered.

23 EXAMINER ADDISON: Ms. Willis.

24 MS. WILLIS: Your Honor, I don't think
25 that establishes relevancy. I think it's

1 argumentative and it's rather insulting as well. And
2 I would also point out that this was not
3 authenticated. He identified that it is his
4 contract, but it is hearsay and no foundation.

5 EXAMINER ADDISON: Mr. Kutik, last word.

6 MR. KUTIK: Your Honor, he said it was
7 his contract. It's between OCC and the witness.
8 There's no further authentication to be made or
9 foundation to be laid.

10 EXAMINER ADDISON: The objection is
11 overruled. At this time we will admit Companies'
12 Exhibit No. 52 into evidence.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 EXAMINER PRICE: At this time, we will
15 adjourn for lunch, and we will return at 1:30.

16 Thank you all.

17 Let's go off the record.

18 (At 12:13 p.m. a lunch recess was taken
19 until 1:30 p.m.)

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1 Thursday Afternoon Session,
2 October 1, 2015.

3 - - -

4 EXAMINER PRICE: Mr. Dougherty, call your
5 next witness.

6 MR. DOUGHERTY: The Ohio Environmental
7 Council and Environmental Defense Fund call Cheryl
8 Roberto.

9 (Witness sworn.)

10 EXAMINER PRICE: Please be seated. State
11 your name and business address for the record.

12 THE WITNESS: Cheryl Roberto, 576 South
13 Third Street, Columbus, Ohio.

14 EXAMINER PRICE: Please proceed.

15 MR. DOUGHERTY: Thank you.

16 - - -

17 CHERYL ROBERTO

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

20 DIRECT EXAMINATION

21 By Mr. Dougherty:

22 Q. Ms. Roberto, did you file testimony in
23 this proceeding?

24 A. Yes.

25 MR. DOUGHERTY: Your Honors, I would like

1 marked as OEC/EDF Exhibit 1, the Direct Testimony of
2 Cheryl Roberto filed on December 22nd, 2014.

3 EXAMINER PRICE: It is so marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MR. DOUGHERTY: As well as OEC/EDF
6 Exhibit 2, the Supplemental Testimony of Cheryl
7 Roberto filed on the 11th of May, 2015.

8 EXAMINER PRICE: It also will be so
9 marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. (By Mr. Dougherty) Ms. Roberto, do you
12 have in front of you what has been marked as OEC/EDF
13 Exhibit 1?

14 A. Yes, I do.

15 Q. Can you identify that for the record?

16 A. Exhibit 1 is my Direct Testimony and
17 Exhibit 2 is the Supplemental Direct Testimony.

18 Q. Thank you. And do you have any changes
19 to make to your testimony?

20 A. Only address and title. My address is
21 the address I gave when I first sat down, and I am no
22 longer Associate Vice President for the Environmental
23 Defense Fund, although I'm appearing today on behalf
24 of EDF as a consultant.

25 Q. Thank you. Other than those changes, if

1 I asked you the questions in OEC/EDF Exhibits 1 and
2 2, would your answers be the same?

3 A. Yes.

4 MR. DOUGHERTY: Your Honors, I offer
5 Ms. Roberto for cross-examination.

6 EXAMINER PRICE: Thank you.

7 Mr. Hays?

8 MR. HAYS: No questions, your Honor.

9 EXAMINER PRICE: For Cleveland.

10 MS. RYAN: No questions, your Honor.

11 EXAMINER PRICE: Sierra Club.

12 MR. SOULES: No questions.

13 EXAMINER PRICE: Nucor.

14 MR. LAVANGA: No questions, your Honor.

15 EXAMINER PRICE: Consumers' Counsel.

16 MS. WILLIS: No questions, your Honor.

17 EXAMINER PRICE: Mr. Alexander.

18 MR. ALEXANDER: Yes, your Honor. Thank
19 you.

20 MR. RANDAZZO: Your Honor, I had a
21 question so that you could stick me in whatever order
22 you felt would be appropriate.

23 EXAMINER PRICE: Why don't you go ahead
24 before Mr. Alexander.

25 - - -

1 CROSS-EXAMINATION

2 By Mr. Randazzo:

3 Q. Ms. Roberto, we know each other so I
4 won't bother with introductions. Good to see you
5 again.

6 A. Good to see you.

7 Q. In your testimony on a couple of
8 occasions you refer to the PJM open access tariff,
9 for example, at page 5, line 22 and, I'm talking
10 about your initial testimony or your direct
11 testimony, correct?

12 A. Yes, I see that.

13 Q. Okay. Have you read the tariff?

14 A. I've read the sections related to Part V.

15 Q. So you only know what's in Part V of the
16 tariff?17 A. You know, as I'm sitting here, I can't
18 actually tell you which sections I've read
19 completely. I know I've flipped through it over the
20 years any number of times.21 Q. Well, what is it on the bottom of page 5
22 you talk about the significance of Part V of the PJM
23 open access tariff. What is that statement based on?

24 A. Reviewing the tariff.

25 Q. So you've only reviewed Part V of the

1 tariff or you reviewed portions of Part V or you
2 reviewed all the tariff? Which is it?

3 A. As I'm sitting here, I recall sitting
4 down and starting with this section, and I probably
5 paged through others that would have been relevant,
6 but I don't -- I can't tell you which they were right
7 now.

8 Q. So are you aware of any other provisions
9 in PJM's open access tariff that would deal with how
10 to manage a reliability-related event?

11 A. I don't recall other sections other than
12 what I reviewed in preparation for this testimony.

13 Q. Do you agree that PJM has responsibility
14 for maintaining reliability of the grid in real time?

15 A. Yes.

16 Q. And as a result of that responsibility
17 and the discharge of its duties, in order to maintain
18 reliability, one of the things that PJM might do is
19 to curtail load, correct?

20 A. Yes.

21 Q. And has that happened?

22 A. Yes.

23 Q. And there have been reliability must-run
24 agreements in place within PJM for quite a while,
25 correct?

1 A. I don't know what "quite a while" is but
2 they do exist.

3 Q. Last five years?

4 A. Yes.

5 Q. Okay. So did the curtailment of load
6 occur during periods of time there were reliability
7 must-run agreements in place?

8 A. Could you define what you mean by
9 "curtailment"?

10 Q. Frequency reduction or absolute
11 reductions in load, max gen alerts, all of those
12 would qualify in my definition.

13 A. Then yes.

14 Q. So the existence of a reliability
15 must-run agreement doesn't necessarily mean customers
16 aren't subject to curtailment risk, right?

17 A. The existence of a reliability must-run
18 contract does not negate the possibility that PJM
19 will take any of the actions you described.

20 Q. Now, what other things does PJM do under
21 the open access tariff, if you know?

22 A. Could you be more precise with your
23 question?

24 Q. Are you aware of anything else that PJM
25 does under the open access tariff?

1 MR. DOUGHERTY: Your Honor, if he's going
2 to ask questions about the tariff, could he at least
3 put the tariff in front of her if he's asking these
4 questions of her?

5 EXAMINER PRICE: I think he's just asking
6 her knowledge of what's in the tariff and what else
7 it covered.

8 Q. Let me withdraw the question and see if I
9 can make it simpler. Ms. Roberto, are you aware of
10 any functional -- other functional responsibilities
11 that reside within PJM, for example, responsibility
12 for providing transmission?

13 A. Yes.

14 Q. And is it your understanding that PJM has
15 exclusive responsibility and jurisdiction over
16 transmission?

17 A. As regulated by FERC, yes.

18 Q. And if you know, does PJM have authority,
19 if you know -- you're a lawyer, right?

20 A. I am.

21 Q. And so if you know, does PJM have
22 authority to direct the construction of generation if
23 it is needed?

24 A. It does not.

25 Q. If there is a reliability-related issue

1 from a planning perspective -- you understand
2 planning perspective versus real-time perspective?

3 A. I believe I understand, but perhaps when
4 you have your question, if I have any additional
5 question, I'll ask it.

6 Q. I didn't want to presume. So we'll
7 assume we're each talking to each other in ways that
8 we understand each other, and if that breaks down,
9 you'll let me know.

10 A. I will.

11 Q. So from a planning perspective, which is
12 a longer-term perspective, dealing with how PJM
13 manages its reliability, if there is a
14 reliability-related issue, is it correct that PJM
15 will direct the construction of transmission?

16 A. It will identify the need for
17 transmission.

18 Q. And before somebody can retire a
19 generating unit that may give rise to a reliability
20 problem, PJM would insist upon modifications in the
21 transmission system; is that correct?

22 THE WITNESS: Could the question be
23 reread back to me?

24 EXAMINER PRICE: Please.

25 MR. RANDAZZO: I'll withdraw the

1 question.

2 THE WITNESS: Okay. Thank you.

3 Q. Now, you speak in your direct testimony
4 and your supplemental testimony to the use of a
5 competitive procurement process, correct, for
6 generation?

7 A. Yes.

8 Q. And, however, you also have been a
9 forceful advocate for portfolio management, correct?

10 MR. DOUGHERTY: Objection. Relevance.

11 EXAMINER PRICE: Mr. Randazzo?

12 MR. RANDAZZO: I'm about to connect the
13 dots, your Honor.

14 EXAMINER PRICE: We'll give Mr. Randazzo
15 a little bit of leeway to connect the dots.

16 A. I'm a passionate advocate of energy
17 efficiency.

18 Q. Energy efficiency mandates, correct?

19 A. I am supportive of Senate Bill 221's
20 requirements.

21 Q. Why do you struggle with the use of the
22 word "mandates"? I'm curious.

23 A. I'm trying to be accurate.

24 Q. Okay. So you are supportive of the
25 provisions in Ohio law that require customers to pay

1 for energy efficiency that is beneficial to other
2 customers?

3 A. I am supportive of requirements in Ohio
4 law that mandate the distribution companies to
5 require energy efficiency at a minimum of the
6 benchmarks that are identified in the statute.

7 Q. And it is your view that by doing that,
8 we can displace the need for generation resources,
9 correct?

10 A. For every kilowatt saved, it does not
11 need to be generated.

12 Q. And you support the use of nonbypassable
13 charges to fund the energy efficiency requirements
14 that are in Ohio law? I didn't use "mandate."

15 MR. DOUGHERTY: Thank you.

16 MR. RANDAZZO: I knew you'd appreciate
17 it.

18 A. That's one means that we can achieve
19 additional energy efficiency. I'm supportive of it,
20 yes.

21 Q. So you support -- as I read the totality
22 of your views on this subject, you support
23 competitive procurement for generation but
24 nonbypassable charges for energy efficiency that
25 displaces the need for generation. Is that a fair

1 summary of your position?

2 A. I support competitive procurement, yes,
3 and I support the nonbypassable energy efficiency
4 charge which supports the utility programs. I don't
5 understand the juxtaposition, so I'll just take those
6 as two separate statements.

7 Q. Okay. That's probably as far as I'm
8 going to get you to go, so I'll quit.

9 Now, with regard to PJM's
10 responsibilities, we talked about generation in your
11 testimony and you talked about reliability must-run
12 agreements, Section V of the PJM open access tariff.
13 Is there any other functional responsibility that
14 you're aware of that PJM performs?

15 A. I'm not sure what you're asking me.
16 Perhaps you can frame it differently.

17 Q. I'm really trying to understand the scope
18 of your knowledge on the subject area that you
19 discussed in your testimony which refers to a section
20 of the PJM tariff. So are you aware of any other
21 functional responsibilities beyond the Section V
22 reliability must-run and beyond the transmission
23 functional responsibility that we discussed already?
24 Are you aware of any other responsibilities in PJM?

25 A. As I'm sitting here, I cannot think of

1 anything else to offer.

2 MR. RANDAZZO: Thank you very much.

3 That's all I have, your Honors. Thank you.

4 EXAMINER PRICE: Thank you.

5 Ms. Bojko.

6 MS. BOJKO: No questions, your Honor.

7 EXAMINER PRICE: Thank you.

8 Mr. Alexander. Thank you for being
9 patient.

10 MR. ALEXANDER: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Alexander:

14 Q. Good afternoon, Ms. Roberto.

15 A. Good afternoon.

16 Q. You provided testimony in this proceeding
17 about the proposed agreement between the companies
18 and FirstEnergy Solutions; is that correct?

19 EXAMINER PRICE: Could I have the
20 question back again?

21 MR. ALEXANDER: I'm going to do
22 definitions next your Honor.

23 EXAMINER PRICE: I just want to hear the
24 question back again.

25 (Record read.)

1 A. I think of my testimony as concerning the
2 rider proposed by the company more than the
3 agreement, but I suppose they're intertwined.

4 Q. Sure. And I'm just trying to do
5 definitions at this point. Are you aware in this
6 proceeding that we've agreed to define the companies
7 as the three distribution utilities?

8 A. I will use that definition.

9 Q. Okay. And we've agreed to define
10 FirstEnergy Solutions as FES.

11 A. I will use that definition.

12 Q. Okay. Thank you. Now, you have not
13 reviewed the proposed term sheet between the
14 companies and FES, correct?

15 A. No. I'm sorry, I have not reviewed the
16 term sheet.

17 Q. And could you turn to page 3, line 18 of
18 your direct testimony, Exhibit 1, and tell me when
19 you're there.

20 A. I'm there.

21 Q. At this line you refer to the plants as
22 old; is that correct?

23 A. I actually just state their age.

24 Q. You agree that not every component in the
25 plant is the same age as the plant themselves,

1 correct?

2 A. Yes.

3 Q. And you have not seen any studies
4 regarding whether Sammis or Davis-Besse will be able
5 the to operate through the year 2031, correct?

6 A. I have not seen any such study.

7 Q. And you have not personally done any
8 analysis to determine whether Sammis or Davis-Besse
9 will be able to operate through the year 2031,
10 correct?

11 A. I have done no such analysis.

12 Q. And directing your attention to page 3,
13 line 24, where you discuss the alleged risk to
14 customers of the plants remaining operational. Let
15 me know when you're there.

16 A. I'm there.

17 Q. Isn't it true you have not quantified the
18 risk to customers if the plants will remain
19 operational?

20 A. I have not quantified the risk.

21 Q. Now, directing your attention to page 4,
22 line 1 where you discuss the risk that Davis-Besse
23 will not be relicensed. Let me know when you're
24 there.

25 A. I'm there.

1 Q. Isn't it true you have not quantified the
2 risk that Davis-Besse will not be relicensed?

3 A. I have not quantified the risk to
4 relicensing.

5 Q. And isn't it true you have not reviewed
6 the renewal application for Davis-Besse?

7 A. I have not reviewed the renewal
8 application.

9 Q. And isn't it true you are not aware of
10 any licensing application which has been denied by
11 the Nuclear Regulatory Commission?

12 A. I'm not aware of an application that's
13 been denied.

14 Q. And turning to your discussion of
15 reliability must-run, which is throughout your
16 testimony, specifically you can focus on page 14,
17 line 14. Let me know when you're there.

18 A. I'm there.

19 Q. You believe that if the retirement of the
20 plants created a reliability concern, then the plants
21 could continue to run under an RMR contract, correct?

22 A. Yes.

23 Q. And you understand, the RMR contract is
24 created by PJM's open access transmission tariff?

25 A. Yes.

1 Q. And the RMR contract is voluntarily on
2 the part of the generation owner, correct?

3 A. That's my understanding, yes.

4 Q. And PJM does not have the ability to
5 require generators to stay in the market, correct?

6 A. That is true.

7 Q. And you would agree that plants operating
8 under an RMR are dispatched out of economic order to
9 the extent they are required before reliability,
10 correct?

11 A. Yes, that's my understanding.

12 Q. So plants under an RMR could be
13 dispatched before another plant that has lower costs,
14 correct?

15 A. Yes.

16 Q. And the costs of an RMR contract is paid
17 by the transmission users within the territory
18 impacted by reliability concern, correct?

19 A. Yes.

20 Q. And the RMR contract remains in place as
21 long as the plant is needed to maintain or to meet
22 the reliability concern.

23 A. Yes.

24 Q. And you are not providing any testimony
25 in this proceeding regarding the costs of meeting any

1 of the reliability concerns which may be impacted by
2 the closure of the plants, correct? Would you like
3 me to repeat the question?

4 A. (Indicates affirmatively.)

5 Q. You're not providing any testimony in
6 this proceeding regarding the costs of meeting any
7 reliability concerns which may be implicated through
8 the closure of the plants, correct?

9 A. Okay. I've heard your question, but I
10 don't think I understand it.

11 Q. Okay. You understand if the plants were
12 to close, it may require transmission upgrades. Do
13 you understand that?

14 A. I do.

15 Q. And are you offering any opinion in this
16 proceeding regarding the cost of meeting any
17 reliability concerns which may be implicated by the
18 closure of the plants?

19 A. I am not offering an opinion as to what
20 it would cost to build transmission or any net gains
21 that may be available because of available power or
22 capacity because of the transmission. No, I've not
23 done that analysis.

24 Q. And, again, throughout your testimony,
25 you used the word "subsidy." In particular, you can

1 look at page 5, line 1, just for reference. Let me
2 know when you're there.

3 A. I see the word "subsidizing."

4 Q. Sure. And you would define a subsidy as
5 a payment above the market price; is that correct?

6 A. I'm using the word subsidizing in that
7 way here, yes.

8 Q. And any payments which result in
9 below-market pricing would not be a subsidy, correct?

10 A. Well, I don't discuss that. I'm using
11 subsidizing in the manner we just discussed, an
12 above-market payment in this section of my testimony.

13 Q. I didn't ask you about your testimony. I
14 asked whether you would agree that any payment which
15 results in a below-market price would not be a
16 subsidy, correct?

17 A. I would not use the word "subsidy" in
18 that way, no.

19 MR. ALEXANDER: Could I have that
20 question and answer reread?

21 EXAMINER PRICE: You may.

22 (Record read.)

23 Q. So the answer to my question was yes?

24 A. I'm agreeing with you, I would not use
25 the word subsidy in that way.

1 Q. Thank you. I'd like you to consider a
2 hypothetical. Suppose that the state of Ohio
3 provides a solar panel developer with a \$50 million
4 grant to locate in the state of Ohio. Do you
5 understand the hypothetical?

6 A. I understand your hypothetical.

7 Q. Okay. Now, you would consider that grant
8 to be a subsidy, correct?

9 A. I suppose it's a subsidy to the operation
10 of the plant.

11 Q. And you have no opinion as to whether the
12 subsidy to that solar panel manufacturer would harm
13 the solar panel market, correct?

14 A. I'm not offering an opinion on that, no.

15 Q. Now, turning to page 19, line 12, where
16 you discuss energy diversity, let me know when you're
17 there.

18 A. I'm on page 19, line 12, but I don't see
19 anything about diversity.

20 Q. I think I have a bad reference there.
21 Just a moment.

22 Would you agree that the benefits of
23 energy diversity to security affordability and
24 reliability are well documented?

25 A. Yes.

1 Q. And you believe it is not the
2 responsibility of the PUCO to ensure the diversity of
3 electricity resources; is that correct?

4 A. The Public Utilities Commission needs to
5 take into account the goals of the state of Ohio, and
6 the diversity and reliability of the supply are
7 included in those goals.

8 Q. So you believe it is the responsibility
9 of the PUCO to determine diversity of electricity
10 resources.

11 A. No. But I'm suggesting that it's a
12 policy outcome that should be taken into account in
13 decisions that the PUCO undertakes within its
14 authority.

15 Q. Turn to page 10 of your direct testimony
16 where you discuss the Solomon decision. Let me know
17 when you're there.

18 A. I'm there.

19 Q. Now, the Solomon case involved preemption
20 under the Federal Power Act, correct?

21 A. That's my recollection.

22 Q. The Federal Power Act permits state
23 regulators to set retail rates for energy sold to
24 customers, correct?

25 A. Yes.

1 Q. And the Federal Power Act permits state
2 regulators to set retail distribution rates, correct?

3 A. Yes.

4 Q. And the Federal Power Act permits
5 bilateral wholesale power purchase agreements,
6 correct?

7 A. It does.

8 Q. And the bilateral power purchase
9 agreements are fairly common in PJM, correct?

10 A. That's true.

11 Q. And, specifically, bilateral power
12 purchase agreements between electric distribution
13 utilities and wholesale generation providers are
14 common in PJM?

15 A. Yes.

16 Q. And the Federal Power Act does not
17 preempt state regulators from authorizing
18 distribution utilities from entering into power
19 purchase agreements as a buyer, correct?

20 A. I believe that's true.

21 Q. And the Federal Power Act does not
22 preempt state regulators from requiring distribution
23 utilities to enter into power purchase agreements as
24 buyers, correct?

25 A. I also think that's true.

1 Q. An example of state activity in this
2 regard would be a state directing a distribution
3 utility to enter into a long-term power purchase
4 agreement for renewable resources, correct?

5 A. That would be an example.

6 Q. And you would agree that states can
7 require electric distribution utilities to purchase
8 particular quantities of energy or capacity from
9 particular kinds of generation resources, correct?

10 A. Yes.

11 Q. And the Federal Power Act does not
12 prohibit states from regulating electric distribution
13 utility purchases to support fuel diversity, correct?

14 A. It doesn't limit the ability of the
15 Commission to do it for any reason. So fuel
16 diversity would be an added limitation that -- it
17 doesn't make any sense.

18 Q. So I'll ask that a different way.

19 A. Thank you.

20 Q. I think we're on the same page. The
21 Federal Power Act does not prohibit states from
22 regulating EDU purchases, correct?

23 A. That's correct.

24 Q. And so the Federal Power Act similarly
25 would not prohibit states from regulating EDU

1 purchases to support reliability, correct?

2 A. I don't believe there's any limitation on
3 that.

4 Q. And you would agree there's no federal
5 law prohibiting states from instructing the
6 distribution utility to make a purchase to support
7 reliability.

8 A. I'm unaware of a limitation.

9 Q. Now, focusing on Ohio, if an EDU proposes
10 a power purchase agreement for renewable resources as
11 part of an electric security plan, then you believe
12 the Commission could approve that proposal, correct?

13 A. The limitations on the Commission's
14 authority are inside of Chapter 4928, and there has
15 to be a specific reason. If it's under an Electric
16 Security Plan, then it has to be some authorized
17 reason to do that.

18 Q. And so my question was, if an EDU
19 proposes to enter into a power purchase agreement for
20 renewable resources as part of its electric security
21 plan, then you would agree that Ohio law allows the
22 Commission to approve that EDU proposal, correct?

23 A. Under what provision of Ohio law? Under
24 which section of the ESP statute are you proposing
25 that it would be authorized?

1 Q. So is your answer that you're not aware
2 of what part of Section 143 would authorize the
3 Commission to do that?

4 MR. DOUGHERTY: I'm going to object. His
5 hypothetical is obviously incomplete here based on
6 her previous two answers to his question.

7 EXAMINER PRICE: Why is it obviously
8 incomplete?

9 MR. DOUGHERTY: Well, she had answered
10 that there are different steps that have to be met in
11 order for that particular scenario to be approved.
12 He hasn't spelled out what -- whether it meets any of
13 those particular parameters. He just says, "If
14 there's a renewable project in an ESP, can they
15 approve it?"

16 EXAMINER PRICE: Overruled.

17 MR. ALEXANDER: Would you like the
18 question to be reread?

19 THE WITNESS: Please.

20 (Record read.)

21 A. My answer is that it could be
22 responsible, but I don't know which section, and you
23 would have to find a section to make it lawful. As
24 I'm sitting here, I can't tell you which section that
25 would be or if it exists.

1 Q. For example, could the Commission find
2 that requiring the EDU to enter into that power
3 purchase agreement for renewable resources was
4 appropriate to stabilize rates under (B) (2) (h)?

5 A. The Commission could come to that
6 conclusion.

7 Q. And so would it be fair to say that
8 you're aware of no federal law which prohibits states
9 from selecting a desired generation resource mix for
10 the state of Ohio?

11 A. I think I answered that already, that I
12 agree I'm aware of no federal law that would prohibit
13 that.

14 Q. Please turn to page 14, line 18 where you
15 address the Clean Power Plan and let me know when
16 you're there.

17 A. I'm there.

18 Q. So you don't know whether the companies
19 took the operational costs associated with the Clean
20 Power Plan into account in their estimates in this
21 proceeding, correct?

22 A. I do not know.

23 Q. Please turn to page 15. It starts at
24 line 1 and then continues for several pages. We
25 discuss recovery transition costs. Are you there?

1 A. Yes.

2 Q. Now, transition costs are what was
3 referred to at the time as stranded costs, correct?

4 A. I think that's what people used
5 colloquially.

6 Q. And you don't know whether those
7 transition costs from the year 2000 have been fully
8 depreciated yet, correct?

9 A. I don't know.

10 Q. And you don't know whether the companies
11 were authorized to accelerate depreciation of their
12 stranded assets and write those off their books,
13 correct?

14 A. I don't recall.

15 Q. And you would agree that under a properly
16 functioning market, generation plant owners can
17 decide whether it makes sense for me to enter into
18 long-term power purchase agreements?

19 A. I would agree that's entirely outside the
20 regulatory construct.

21 Q. And you would agree that nothing in Ohio
22 law prohibits generation plants from entering into
23 power purchase agreements after the end of the
24 transition period?

25 A. There's no limitation on Ohio law.

1 Q. Turning your attention to page 16, line 6
2 where you discuss the companies LTR filing. Let me
3 know when you're there.

4 A. I'm there.

5 Q. You don't know whether the forecasted
6 usage in the companies' long-term forecast report
7 cited in your testimony is based on price forecasts,
8 correct?

9 A. I don't know how the forecast was
10 constructed.

11 Q. And you also don't know whether the
12 forecast is based on a price forecast, correct?

13 A. I don't know how it was constructed.

14 Q. And so when you drafted your testimony,
15 you had not reviewed any discovery responses from the
16 companies to OEC which addressed how the LTR
17 forecast was created, correct?

18 A. I did not.

19 MR. ALEXANDER: Your Honor, may I
20 approach?

21 EXAMINER PRICE: You may.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. (By Mr. Alexander) Ms. Roberto, I've
24 just handed you what has been marked for
25 identification as Companies' Exhibit 55, which is

1 labeled as Discovery Responses to EDF Interrogatory
2 Set 4-INT-58 and -59. I've stapled those together,
3 but they are two separate responses. Do you have
4 that in front of you?

5 A. I do.

6 Q. Have you ever seen this document before?

7 A. I have not.

8 MR. SOULES: Excuse me, your Honor.

9 Could we get the names of the discovery responses
10 again?

11 MR. ALEXANDER: OCC Set 4 -- OEC Set
12 4-INT-58 and -59.

13 MR. SOULES: Thank you.

14 Q. (By Mr. Alexander) I'm not sure if I
15 misspoke the first time I identified these or not,
16 Ms. Roberto, so I'm going to ask you again. Have you
17 seen companies' Exhibit 55 before?

18 A. I have not seen the document that you
19 handed me before.

20 Q. Okay. Well, have you seen the discovery
21 response to OEC Set 4, Interrogatory 59, which is
22 page 2 of Exhibit 55?

23 A. I'm assuming what you handed me is
24 Exhibit 55. It's not stamped, but I have not seen
25 this before.

1 Q. And this discovery response denies that
2 the companies made assumptions as to wholesale energy
3 and capacity prices in their long-term forecast
4 report, correct?

5 MR. DOUGHERTY: The document says what it
6 says.

7 EXAMINER PRICE: I'm not sure what your
8 objection is. What's your grounds, Mr. Dougherty?

9 MR. DOUGHERTY: I withdraw it. Go ahead.

10 A. The companies' response to Set 4
11 Interrogatory 059 is no.

12 Q. And you did not rely on this when
13 drafting your testimony at page 16.

14 A. I did not.

15 Q. And are you aware of anything in the
16 companies' long-term forecast report itself which
17 indicates that it is based on a forecast of energy
18 and capacity prices?

19 A. No.

20 Q. And you cannot point to anything in the
21 companies' LFTR filing or elsewhere which supports
22 your assertion that the companies made assumptions as
23 to wholesale energy and capacity prices, correct?

24 A. I'm sorry, can you refer me back to the
25 section of my testimony that we're talking about?

1 I've closed it up.

2 Q. Sure. We're referring to page 16, and
3 it's lines 6 to 7.

4 A. Could you repeat your question, or would
5 you like me --

6 Q. I'm happy to repeat it.

7 A. Okay.

8 Q. You cannot point to anything in the LFTR
9 report itself or otherwise which supports your belief
10 that the companies made assumptions as to wholesale
11 energy and capacity prices, correct?

12 A. That's correct.

13 Q. Turn your attention to page 16, line 20,
14 where you discuss market function. Let me know when
15 you're there.

16 A. I'm there.

17 Q. Now, at line 20 going to line 21, you
18 provide the opinion that today's wholesale energy and
19 capacity markets are functioning effectively,
20 correct?

21 A. I do.

22 Q. And there's no distinction between the
23 wholesale energy and capacity market in the
24 companies' service territory versus the territories
25 of the other Ohio distribution utilities, correct?

1 A. It's all PJM.

2 Q. Was that a yes?

3 A. That's a yes, it's all PJM.

4 Q. And you believe that the PJM energy and
5 capacity markets were also functioning effectively in
6 the year 2012, correct?

7 A. Yes.

8 Q. Now, if you could turn to your
9 supplemental testimony, I believe it's OEC Exhibit 2,
10 starting at page 2, line 17, let me know when you're
11 there.

12 A. I'm there.

13 Q. Now, take a step back. In your
14 supplemental testimony you address, among other
15 things, the four factors identified by the Commission
16 in the AEP Ohio decision, correct?

17 A. Yes.

18 Q. And at page 2, line 17, you're discussing
19 the first factor identified by the Commission,
20 correct?

21 A. Yes.

22 Q. And as you say at line 6, still staying
23 on page 2, page 2, line 6, the Commission's opinion
24 and order listed the factor as financial need of the
25 generation plant, correct?

1 A. Yes.

2 Q. And it's your position that the need
3 identified by the Commission is the financial health
4 of the regulated utility's sister company, not the
5 regulated utility, correct?

6 A. In my testimony I provide a framework
7 that I'm recommending that the Commission consider in
8 evaluating the first prong of their test.

9 Q. Okay. Before we get to your framework, I
10 want to focus on a statement at page 2, line 16. It
11 says, "The evaluation is to be conducted of the
12 financial health of the regulated utility's
13 competitive sister company, not the regulated
14 utility." Do you see that?

15 A. I am at the section of my testimony that
16 you're referencing.

17 Q. Okay. So you believe the Commission held
18 that the evaluation was to be the financial health of
19 FES as a whole, correct?

20 A. I think the Commission simply said it
21 wanted to think about the financial need of the
22 generating plant, and what I'm proposing is how it
23 might want to think about it. I don't believe it
24 gave any indication of how it intended to think about
25 it. It just provided those words, "the financial

1 need."

2 Q. Sure. And I guess maybe let's take a
3 step back. We agree the Commission said financial
4 need of the generation plant. And so you don't read
5 the words generation plant to mean Sammis and
6 Davis-Besse, correct?

7 A. I think the question is more how do I
8 read financial need.

9 Q. Well, I want to focus on the words
10 "generation plant." We'll get to your recommendation
11 in a minute. When you read the words "generation
12 plant," do you read those to be referring to Sammis
13 and Davis-Besse, or do you read those to be referring
14 to FES as a whole?

15 A. I do read generation plant as the plants
16 proposed in FirstEnergy's application.

17 Q. And now getting to your recommendation,
18 at line 20, you suggest the Commission should
19 actually consider the need of FirstEnergy Corp., the
20 parent entity, correct?

21 A. Yes.

22 Q. And you are not offering any opinion in
23 this case as to whether FirstEnergy Corp. has the
24 ability to withstand the losses at the plants,
25 correct?

1 A. Correct.

2 Q. And please direct your attention to page
3 3, line 11 where you reference 12.4 billion in
4 shareholder equity. Do you see that?

5 A. I do.

6 Q. And you believe that shareholder equity
7 represents the value and excessive costs that the
8 corporation holds and has available for investment or
9 payout to investors, correct?

10 A. It could also include what's already
11 invested. Maybe you better repeat your question.
12 Maybe I didn't understand.

13 Q. Sure. Do you believe the phrase
14 "shareholder equity" on the balance sheet represents
15 the value and excessive costs that the corporation
16 holds and has available for investment or payout to
17 investors?

18 A. I believe it's the investors' share of
19 the company.

20 Q. So is that a yes with that additional
21 clarification?

22 A. I'm not sure.

23 Q. Okay. Do you recall being deposed in
24 this case?

25 A. Yes.

1 MR. ALEXANDER: Your Honor, may I
2 approach?

3 EXAMINER PRICE: You may.

4 Q. Ms. Roberto, you were deposed twice in
5 this proceeding, direct?

6 A. Yes.

7 Q. And the second of those depositions took
8 place on June 22nd, 2015?

9 A. I don't recall the dates. I was deposed
10 twice.

11 Q. And you recall a court reporter was
12 present at those depositions?

13 A. Yes.

14 Q. And you recall swearing in to tell the
15 truth?

16 A. I do.

17 Q. Okay. Could you turn to page 35 of your
18 second deposition starting at line 10. Are you
19 there?

20 A. I am.

21 Q. And did I ask you the question: "Can you
22 explain what shareholder equity represents on a
23 balance sheet? "

24 You say, answer: "It's, in essence, the
25 value and excessive costs that the corporation holds

1 and has available for investment or for payout to the
2 its investors."

3 Did I read that correctly?

4 A. You did, but I think I was wrong.

5 Q. Well, you would agree with me that
6 shareholder equity can be increased for reasons other
7 than retained earnings, correct?

8 A. Yes, I do.

9 Q. And you would agree with me that
10 shareholder equity does not necessarily correlate to
11 cash on hand?

12 A. Absolutely, I do.

13 Q. So you would agree with me that
14 FirstEnergy Corp. does not have \$12.4 billion of cash
15 on hand to subsidize the plants, correct?

16 A. Yes, I agree, that's true.

17 Q. And you would agree that adjustments to
18 goodwill will also impact shareholder equity.

19 A. Yes.

20 Q. Okay. Now, please turn to page 5, line
21 1, where you discuss distributive generation. Let me
22 know when you're there.

23 A. I'm there.

24 Q. And you would agree that traditional
25 baseload generation, like the plants, provides

1 significant benefits to reliability, correct?

2 A. Yes.

3 Q. And one of the benefits provided by the
4 plants is voltage regulation?

5 A. Yes.

6 Q. And solar resources do not provide
7 voltage regulation benefits, correct?

8 A. No.

9 Q. And you would agree that traditional
10 baseload generation, like the plants, have a series
11 of obligations into the PJM markets, such as
12 must-offer requirements, correct?

13 A. If they bid in, yes.

14 Q. When you say "if they bid in," you mean
15 if they bid into the capacity market?

16 A. Yes.

17 Q. And do you know whether traditional
18 baseload generation resources are required to bid
19 into the capacity market as well?

20 A. I don't actually know if there's a
21 requirement for them to participate in the capacity
22 auction.

23 Q. So going back to solar resources, you
24 would agree that distributive generation assets like
25 solar do not have must-offer obligations into the

1 energy market, correct?

2 A. Any generation that participates in the
3 capacity market has the obligation to offer that, as
4 you're identifying. So it's possible that a
5 distributive generation resource, like a co-gen
6 facility, could have that obligation. It's not
7 whether it's centralized or distributed. It's
8 whether or not it's participated in the capacity
9 auction.

10 Q. Sure. And I'm focusing on distributive
11 solar. So are you aware of any distributed solar
12 generation resource which has cleared the PJM
13 capacity auction?

14 A. I'm not aware of any.

15 Q. So to the extent that a solar resource
16 has not cleared in the capacity auction, you would
17 agree it does not have a must-offer obligation into
18 the energy market, correct?

19 A. Yes.

20 Q. You are not aware of any type of
21 distributed generation which has a must-offer
22 obligation into the energy market, correct?

23 A. Well, as I said, any generation resource
24 that bids into the capacity market has the
25 obligation. I simply don't know if a distributed

1 resource has participated in that market or not.

2 Q. Okay. So you're not aware of any
3 distributed generation resource which has cleared the
4 PJM capacity market?

5 A. I'm not. But that's not to say I would
6 be either, aware of it that is.

7 Q. And turning now to page 4, line 3, of
8 your supplemental testimony where again you reference
9 RMR arrangements. Are you there?

10 A. I am.

11 Q. You understand that during the RMR
12 period, money is spent on transmission upgrades to
13 maintain reliability once the plant retires, correct?

14 A. Yes.

15 Q. And the cost of transmission upgrades
16 during the RMR period is passed on to customers,
17 correct?

18 A. Yes.

19 Q. And at the end of the RMR period, the
20 plants can either close or repay all RMR payments to
21 PJM and remain open.

22 A. That's my understanding.

23 Q. And you are not aware of any plant which
24 has ever reopened after an RMR contract, correct?

25 A. Again, I'm not. But I wouldn't

1 necessarily be aware of one either.

2 Q. Now, turning your attention to page 7,
3 line 16, where you discuss economic harm from
4 distorting the wholesale market, do you see that?

5 A. Yes.

6 Q. Now, you believe that if rider RRS was a
7 charge to customers, it would cause economic harm in
8 years in which it's a charge to customers, correct?

9 A. It would certainly be an economic harm
10 during those years, but I would also suggest that the
11 mere fact that the agreement exists is a deterrent to
12 other competitors. So even in the years when it's
13 not a payment to generation, I believe it represents
14 a distorting factor in the market.

15 MR. ALEXANDER: Your Honor, I move to
16 strike everything after the magic word "but" that I
17 identified earlier in the proceeding.

18 EXAMINER PRICE: Can I have the question
19 and answer back again.

20 (Record read.)

21 EXAMINER PRICE: Mr. Dougherty.

22 MR. DOUGHERTY: The witness explained the
23 answer.

24 EXAMINER PRICE: Motion to strike is
25 granted.

1 Q. (By Mr. Alexander) Ms. Roberto, you've
2 not quantified the alleged economic harm referenced
3 in this line, correct?

4 A. I have not.

5 Q. And you would agree that the economic
6 benefits potentially caused by providing lower prices
7 in years in which rider RRS is a credit is also not
8 addressed in the companies' analysis, correct?

9 A. Could you repeat your question?

10 Q. Certainly. You would also agree that the
11 economic benefits caused by providing lower prices in
12 the years in which rider RRS is a credit is also not
13 addressed in the companies' analysis, correct?

14 A. I am misunderstanding your question.

15 Q. I'm going to withdraw the question.
16 Let's look at page 7, line 18 where you address
17 potential economic benefits for new plants. Are you
18 there?

19 A. I'm there.

20 Q. At this point, we don't know whether any
21 new plants will be built to replace the plants if
22 they were to close, correct?

23 A. I don't think that's correct. I mean,
24 I'll just say no. No.

25 Q. In this line, you specifically refer to

1 "new plants which might be built," correct?

2 A. I do.

3 Q. Okay. So you're not referring to
4 specific plants which you know will exist, you're
5 referring to potential hypothetical plants which may
6 be built in the future, correct?

7 A. I'm suggesting that new plants will come
8 on line.

9 Q. Well, you say new plants might be built,
10 correct? So they may or may not come on line.

11 A. That is true.

12 Q. And we don't know the payroll of these
13 hypothetical new plants, correct?

14 A. No.

15 Q. And we also don't know the tax impact of
16 these hypothetical new plants, correct?

17 A. Well, they're hypothetical.

18 Q. So the answer to my question is yes.

19 A. We do not know the payroll of the
20 hypothetical plant.

21 Q. And this question was actually we don't
22 know the tax impact of the hypothetical impact.

23 A. Nor do we know the tax impact of the
24 hypothetical plant.

25 Q. And we also don't know the location of

1 the hypothetical new plant that will be constructed.

2 A. We do not know the location of the
3 hypothetical plant.

4 Q. And so you can't quantify the impact of
5 this hypothetical new plant without that information,
6 but -- well, let me rephrase that. Strike that.

7 You believe an economist could quantify
8 the impact of this hypothetical new plant without
9 that information, correct?

10 A. I think an economist would make a number
11 of forecast assumptions, as economists do, and come
12 up with an analysis.

13 Q. But you personally cannot quantify the
14 impact of this hypothetical new plant without that
15 information we just discussed, correct?

16 A. I personally would not do the analysis at
17 all. I would rely on an economist.

18 Q. And you can't identify any economist
19 which has quantified hypothetical new plants without
20 that information we just discussed, correct?

21 A. An economist would create assumptions
22 about those factors.

23 Q. My question was, you can't identify any
24 economist who has performed an economic impact
25 analysis without knowing the location, the payroll,

1 and the tax impact of the plant, correct.

2 A. An economist would be required to make
3 assumptions about those factors in an analysis.

4 Q. But you can't identify any economist who
5 has actually made that set of assumptions and
6 quantified the economic impact of a hypothetical new
7 plant; is that correct?

8 A. That's correct.

9 Q. Okay. And you're not aware of any
10 proceeding in which an economist has quantified the
11 economic impact of a hypothetical new plant in the
12 manner you suggest, correct?

13 A. For replacement of these coal plants, no.

14 Q. Not for replacement of these coal plants.
15 You cannot identify any proceeding where an economist
16 has calculated the hypothetical economic impact of a
17 plant which has not yet been built without that
18 information on payroll, location, and tax impact,
19 correct?

20 A. Not without making assumptions about
21 those factors.

22 Q. You're not aware of any proceeding in
23 which an economist has made those assumptions and
24 created a hypothetical economic impact, correct?

25 A. Not as I'm sitting here.

1 Q. Please turn your attention to page 9,
2 line 19, where you discuss the companies' billing
3 systems. Let me know when you're there.

4 A. I'm there.

5 Q. You are not familiar with any third party
6 who has requested use the companies' billing system
7 to finance energy efficiency programs, correct?

8 A. That's true.

9 Q. And when you say it would be more costly
10 than sending a space ship to Mars, you are using
11 hyperbole, correct?

12 A. Oh, come on, I said that in a deposition.
13 Yes.

14 Q. You may have noticed a trend today.
15 Everything is something you said in the deposition.

16 And you are not aware of any discovery
17 response nor any testimony in this proceeding about
18 the feasibility or costs of allowing a third party to
19 use the companies' billing system, correct?

20 A. Correct.

21 MR. ALEXANDER: Trevor further, your
22 Honor. Thank you.

23 EXAMINER PRICE: Thank you.

24 Mr. McNamee.

25 MR. MCNAMEE: Thank you. No questions.

1 EXAMINER PRICE: Redirect?

2 MR. DOUGHERTY: Can I get two minutes?

3 EXAMINER PRICE: You may.

4 Let's go off the record, two minutes.

5 (Recess taken.)

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

8 MR. DOUGHERTY: No redirect, your Honor.

9 EXAMINER PRICE: Thank you.

10 No other questions, you're excused.

11 Thank you.

12 MR. DOUGHERTY: Your Honor, I'd like to
13 move for the admission of OEC/EDF Exhibits 1 and 2.

14 EXAMINER PRICE: Any objections to
15 admission of OEC EDF Exhibits 1 and 2?

16 Seeing none, they'll be admitted.

17 (EXHIBITS ADMITTED INTO EVIDENCE.)

18 MR. ALEXANDER: Your Honor, I move for
19 the admission of Company Exhibit 55.

20 EXAMINER PRICE: Any objection to the
21 admission of Company Exhibit 55?

22 MR. DOUGHERTY: No.

23 EXAMINER PRICE: Okay. It will be
24 admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 EXAMINER PRICE: Ms. Ryan, call your next
2 witness.

3 MS. RYAN: Your Honor, on behalf of the
4 City of Cleveland, I call Garrett Cole.

5 (Witness sworn.)

6 EXAMINER PRICE: Please be seated and
7 state your name and business address for the record.

8 THE WITNESS: My name is Garrett Cole
9 business address is 1850 Parkway Place, Suite 800,
10 Atlanta, Georgia.

11 EXAMINER PRICE: Please proceed.

12 MS. RYAN: Thank you.

13 - - -

14 GARRETT COLE

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

17 DIRECT EXAMINATION

18 By Ms. Ryan:

19 Q. Mr. Cole, by whom are you employed for
20 this matter and in what capacity?

21 A. I'm working for the City of Cleveland,
22 testifying here in this proceeding on the application
23 of the companies.

24 Q. Okay. And on your ledge, you have a copy
25 of a document that I asked to be marked as City of

1 Cleveland Exhibit 1, and it's on your ledge as well.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

5 (Discussion off the record.)

6 EXAMINER PRICE: Back on the record.

7 MS. RYAN: Your Honor, it's on your ledge
8 as well.

9 EXAMINER PRICE: Thank you.

10 Q. (By Ms. Ryan) Can you identify the
11 document?

12 A. Yeah. This is my direct testimony in the
13 proceeding.

14 Q. And was that testimony taken and filed on
15 December 22nd, 2014?

16 A. Yes, it was.

17 Q. Thank you. Was your testimony prepared
18 by you or under your direction and supervision?

19 A. Yes.

20 Q. Do you have any corrections or additions
21 to your testimony?

22 A. I do not.

23 Q. If I were to ask you the questions
24 contained in City of Cleveland Exhibit 1 today on the
25 stand, would your answers to those questions be the

1 same as if you did on December 22nd, 2014?

2 A. Yes, I would.

3 MS. RYAN: I move for the admission of
4 City of Cleveland Exhibit 1 subject to
5 cross-examination.

6 EXAMINER PRICE: Thank you. We'll defer
7 ruling on the motion for admission of the exhibit
8 until after cross-examination.

9 Ms. Bojko.

10 MS. BOJKO: I have no questions, your
11 Honor, thank you.

12 EXAMINER PRICE: Mr. Soules.

13 MR. SOULES: No questions, your Honor.

14 EXAMINER PRICE: Mr. Dougherty.

15 MR. DOUGHERTY: No questions.

16 EXAMINER PRICE: Mr. Lavanga.

17 MR. LAVANGA: No questions.

18 EXAMINER PRICE: Ms. Cohn.

19 MS. COHN: No questions.

20 EXAMINER PRICE: Mr. Lang.

21 MR. LANG: Thank you, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Lang:

25 Q. Good afternoon, Mr. Cole.

1 A. Hi, Mr. Lang.

2 Q. How have you been?

3 A. Good.

4 Q. I've seen you sitting in the back waiting
5 all day to finally take the stand.

6 A. That's right.

7 Q. It's good to be finally up. You're an
8 employee of GDS Associates in Georgia, correct?

9 A. Yes, sir.

10 Q. And, in fact, you've been employed with
11 GDS since you were a college undergrad, correct?

12 A. That's correct.

13 Q. So between May of 2001 and May 26, 2003,
14 you were an intern at GDS while you were in college,
15 correct?

16 A. That's correct.

17 Q. And then when you graduated from college
18 in May of 2003, GDS hired you on as an engineer,
19 correct?

20 A. True.

21 Q. And then about three and-a-half years
22 later in December of 2006, you received your
23 professional engineer license from the state of
24 Georgia, correct?

25 A. That's true.

1 Q. And you and your firm, GDS, provide
2 consulting services to multiple utilities and
3 cooperative utilities; is that correct?

4 A. That is correct.

5 Q. You and your firm, you do not provide or
6 represent investor-owned utilities, correct?

7 A. Not typically, no.

8 Q. And the City of Cleveland you're
9 appearing here on behalf of today, Cleveland would be
10 your one client in Ohio, correct?

11 A. That's correct.

12 Q. Now, you and your firm have provided
13 consulting work for the City of Cleveland in the
14 past, correct?

15 A. That is correct.

16 Q. And one of those consulting projects that
17 your firm was involved in was for Cleveland Public
18 Power involving the levelizing of purchase power
19 costs, correct?

20 A. Yes.

21 Q. And what your firm was involved in with
22 the levelizing of purchase power costs, that was
23 using an energy adjustment charge, correct?

24 A. That's correct.

25 Q. And the purpose of the energy adjustment

1 charge was to stabilize retail rates for the
2 utilities' customers, correct?

3 A. Right, as a mechanism to account for
4 various costs that are incurred by Cleveland Public
5 Power.

6 Q. And, in fact, you agree that retail
7 customers view stabilization of rates as an important
8 factor with regard to obtaining reliable electric
9 service, correct?

10 A. Rate stability, among other things, among
11 other factors that are important to consider as well.

12 Q. So the answer is yes, you agree with
13 that.

14 A. Yes, that's one of the factors.

15 Q. And you also agree that electric
16 generation reliability is important for retail
17 customers, correct?

18 A. Yes, it is.

19 Q. Now, on page 2 of your testimony, line
20 16, you refer to strategic power supply, and by that
21 you mean planning to meet load requirements utilizing
22 power supply resources; is that accurate?

23 A. Sure.

24 Q. And your experience is in helping
25 multiple utilities examine their electric needs and

1 the most viable resources to meet those needs,
2 correct?

3 A. In cooperatives in addition to
4 municipals.

5 Q. That's fair. And so your experience is
6 that when municipal utilities and cooperatives are
7 trying to find resources to meet their electric
8 needs, they will obtain those resources through
9 either a purchase power agreement or PPA or by
10 purchasing an ownership interest, correct?

11 A. That's correct.

12 Q. Now, at GDS you were also involved and
13 have been involved personally in market forecasting
14 for your clients, correct?

15 A. That is correct.

16 Q. And among other things, you forecast PJM
17 capacity and energy prices, correct?

18 A. That's true.

19 Q. And, on occasion, you have forecasted PJM
20 capacity and energy prices out 30 to 40 years,
21 correct?

22 A. That's correct.

23 Q. So as an example, if you have a client
24 interested in entering into a 30-year PPA, you would
25 provide capacity energy price forecast to that

1 customer for that 30-year period, correct?

2 A. Yes, that could to be a request a client
3 would make of us.

4 Q. And with doing that long-term
5 forecasting, you use dispatch modeling, correct?

6 A. That could be one of the tools utilized.

7 Q. Now, you're aware that some, but not all,
8 of your dispatch modeling uses hourly dispatch,
9 correct?

10 A. It can use a variety of different
11 dispatch mechanisms, so one of those could be hourly.

12 Q. And so you would use a variety -- when
13 you say a variety of dispatch mechanisms, you could
14 dispatch using different time periods, correct?

15 A. That's correct.

16 Q. And there are times when you have done
17 long-term dispatch modeling when you've determined
18 that it was reasonable to dispatch over longer
19 periods than hourly, correct?

20 A. I'm not here to specifically comment on
21 other assumptions or other projects, but, yes, there
22 can be times where you might use that.

23 Q. Yes, absolutely. Just so we're clear, I
24 understand you probably have nondisclosure agreements
25 with various clients. The questions I have I'm

1 trying to make sure don't impinge on any of those.

2 If any of those do, please let me know.

3 A. Absolutely. Thank you.

4 Q. So on page 2 of your testimony, line 22,
5 you refer here to "market hedging strategy and
6 implementation," and by that you mean the development
7 of PPAs for available market supply; is that right?

8 A. Market supply, among other generating
9 resources that might be useful in a portfolio.

10 Q. And you agree that in competitive
11 markets, generation sellers and purchasers can use
12 long-term PPAs to hedge against market risk.

13 A. Certainly.

14 Q. And, in fact, you assist your utility
15 clients with hedging strategies using PPAs that can
16 extend out 15 years or longer, correct?

17 A. Correct.

18 Q. Now, you agree that the energy business
19 is in a state of continuous flux; is that right?

20 A. I don't know that I've made that
21 assertion in my testimony, but, yes, the environment
22 is certainly changing every day.

23 Q. And with regard to that, you believe that
24 the natural gas market has been volatile in recent
25 years, correct?

1 A. I don't have an opinion on the volatility
2 of the market with respect to this testimony.

3 EXAMINER PRICE: Could I have that
4 question and answer back?

5 (Record read.)

6 EXAMINER PRICE: Can I ask you to please
7 give a more responsive answer to counsel's question?
8 Do you need the question back?

9 THE WITNESS: Yes, I'd love to have the
10 question again.

11 EXAMINER PRICE: Please have the question
12 again.

13 (Record read.)

14 A. By "recent years," what do you mean?

15 Q. Well, let's take a specific example.
16 You're certainly aware of the extreme volatility in
17 natural gas prices back in the 2008 time period,
18 correct?

19 A. I am aware of that.

20 Q. And you're not offering an opinion here
21 today regarding natural gas price increases in future
22 years, correct?

23 A. Correct.

24 Q. And you have no opinion regarding the
25 rate at which retail energy prices will increase in

1 future years, correct?

2 A. Correct.

3 Q. Now, you do agree that the companies'
4 customers -- let me back up, and I think you've heard
5 this in the back of the room, but when we were
6 talking about companies, you understand we're talking
7 about the three utilities, Ohio Edison, Toledo Edison
8 and CEI?

9 A. I do.

10 Q. Great. So you do agree that the
11 companies' customers face energy pricing risks,
12 correct?

13 A. Yes.

14 Q. And you would agree that resource
15 diversity can provide some protection to retail
16 customers against energy price risk, correct?

17 A. Well, I think protection against energy
18 price risk has to include more factors than just
19 diversity, but diversity would be one of the factors
20 that one might consider.

21 Q. So you would agree that resource
22 diversity as one of the factors does provide
23 protection to retail customers against energy price
24 risk.

25 A. It can.

1 Q. And now in preparing your testimony, you
2 did not review the term sheet that sets out the terms
3 of the companies' proposed power purchase agreement
4 in this proceeding, correct?

5 A. That is correct.

6 Q. And the only document you reviewed in
7 preparing your testimony was the application that was
8 filed in this proceeding; is that correct?

9 A. Yes, I reviewed the application filed in
10 this proceeding.

11 Q. And as part of preparing your testimony,
12 you did not review any documents that relate to the
13 costs of the Sammis plant; is that correct?

14 A. That's correct, I'm not providing an
15 opinion on the costs.

16 Q. And you have not reviewed any documents
17 relating to the costs of the Davis-Besse plant,
18 correct.

19 A. Not specifically, no.

20 Q. And is it true that you have not done any
21 energy industry research that has been published?

22 A. Can you be more specific, the nature of
23 the research?

24 Q. Well, have you done any energy industry
25 research that has been published?

1 A. None that I can recall. By published,
2 you mean me personally having it published or it's
3 published as a result of the entities that I work
4 for?

5 Q. Published in general publications, energy
6 industry publications, that kind of material.

7 A. I have not.

8 Q. And you have not had any experience
9 regarding state utility commission approval of retail
10 rate stability mechanisms; is that fair?

11 THE WITNESS: Can you read back that
12 question, please?

13 (Record read.)

14 A. Not directly, no.

15 Q. And prior to filing your testimony, you
16 did not review the statute in Ohio that authorizes
17 electric security plans; is that right?

18 A. I did not.

19 Q. And you are not familiar with either
20 Senate Bill 3 or Senate Bill 221 and their impact on
21 the electric industry in Ohio; is that correct?

22 A. Not in particular, no.

23 Q. Now, on page 4, line 3, of your
24 testimony, you use the word "prudence." Now, you are
25 not familiar with what prudence means in the utility

1 commission regulatory environment, correct?

2 A. Perhaps I'm not -- I'm not sure.

3 Q. Well, to be more specific, you're not
4 attempting to use the word "prudence" in the same way
5 that state commissions would use it in reviewing a
6 traditional rate-making proposal, correct?

7 A. I'm not certain what definition you're
8 implying, so I'm not sure.

9 Q. So in terms of that environment I just
10 described, that traditional rate-making proposal,
11 you're not familiar with what prudence means in that
12 environment, correct?

13 A. Okay.

14 Q. Do you agree?

15 A. I agree that I don't know what definition
16 you're implying right now.

17 Q. Okay. And well for you, prudence means
18 appropriateness, correct?

19 A. Yes, you could say that's the definition
20 I'm using in it.

21 Q. And you believe that the PUCO's role in
22 this proceeding is to review the prudence of the
23 electric security plan that has been submitted by the
24 companies, correct?

25 MS. RYAN: Objection, your Honor. I

1 don't know where that's been stated. I don't think
2 that is a part of his testimony.

3 EXAMINER PRICE: He's got to say that,
4 not you.

5 MS. RYAN: Well, I think he's being
6 misled here.

7 EXAMINER PRICE: Could I have the
8 question back again?

9 (Record read.)

10 EXAMINER PRICE: Overruled.

11 A. I believe I'm providing testimony on, as
12 you phrase, the appropriateness of the proposal with
13 respect to its process. That's the main thrust of my
14 testimony.

15 Q. And with that answer, are you saying that
16 your answer to my question is, no, you do not believe
17 that the PUCO is reviewing the prudence of the
18 electric security plan.

19 A. I believe the PUCO is reviewing the
20 prudence of the electric security plan.

21 Q. Okay. And your understanding is that the
22 companies are asking the PUCO to approve the
23 companies' purchase of approximately 3,200 megawatts
24 of supply from FirstEnergy Solutions, correct?

25 A. Correct.

1 Q. And your understanding is that the
2 companies are asking the PUCO to approve the PPA
3 between the companies and the FES that would reflect
4 that power purchase, correct?

5 A. That's correct.

6 Q. Now, on page 5 of your testimony, the
7 question and answer about securing long-term resource
8 supply, you're answering that question from the
9 perspective of securing long-term supply for retail
10 end user customers; is that correct?

11 A. So by retail end-user customers, you mean
12 the retail customers that the companies serve; is
13 that correct?

14 Q. Yes, right, not the utility purchasing
15 the supply, but the retail end-user customer that
16 would be using the supply. And so with that
17 clarification, I'll just ask you again, when you're
18 answering this question about securing long-term
19 resource supply, your perspective is securing
20 long-term supply for those retail end-use customers,
21 correct?

22 A. I believe so, as resources that the
23 companies will use to serve the total needs of their
24 retail end-use customers.

25 Q. And still on page 5 on line 10, there's a

1 reference, you refer to long-term asset investments
2 ten years or more. Do you see that reference?

3 A. I do.

4 Q. And there you chose ten years as
5 representative of a point at which market prices are
6 known and traded to some degree, correct?

7 A. Correct, that was my judgment of the
8 length in time where one might put a point of
9 demarcation on known energy prices as they might be
10 traded today.

11 Q. And when you review the prudence of a
12 proposed PPA, you are not including within that
13 review the system reliability benefits that could
14 accrue from the transaction; is that correct?

15 A. I haven't analyzed this situation in
16 particular. Reliability could be one of those
17 benefits.

18 Q. And when you say you haven't analyzed
19 this situation, you mean what's proposed by the
20 companies in this case?

21 A. I haven't provided specific analytics
22 regarding the system reliability benefits of these
23 plants.

24 Q. However, you are recognizing that there
25 could be system reliability benefits; you're saying

1 it's not something you've looked at, correct?

2 A. Right, there could be benefits as a
3 result of those units.

4 Q. Now, with regard to PPAs entered into by
5 investor-owned utilities, you have not studied how
6 often those types of PPAs result from RFPs or IRPs,
7 correct?

8 A. Correct, I have not studied that.

9 Q. And you've not reviewed any studies on
10 that particular topic; is that fair?

11 A. Yes.

12 Q. And you do not know how often RFPs or
13 IRPs, integrative resource plans, are used by
14 investor-owned utilities in restructured states,
15 correct?

16 A. I'm not providing testimony as to how
17 often a specific process is used.

18 Q. So the answer to my question is, you do
19 not know how often RFPs or IRPs are used by
20 investor-owned utilities in restructured states?

21 A. IRPs and RFPs are often used as tools to
22 evaluate these types of proposals, but I don't know
23 exactly how often they're utilized.

24 Q. Now, still on page 5, lines 18 and 19,
25 you state that "the known availability of certain

1 resources might be the impetus to issue a public
2 RFP." With respect to that statement, Mr. Cole, you
3 do not know whether in this case there are resources
4 known to be available, correct?

5 A. I don't know if there are resources known
6 to be available, but I indicate that a process of
7 competitive procurement would help to address whether
8 there are or are not.

9 MR. LANG: Your Honor, I'd move to strike
10 from the "but" to the end of the answer.

11 MS. RYAN: Your Honor, he answered the
12 question and he explained his answer.

13 EXAMINER PRICE: Could I have the
14 question and answer back again.

15 (Record read.)

16 EXAMINER PRICE: Mr. Cole, you need to
17 answer counsel's question and only counsel's
18 question. If you believe that there's additional
19 explanation or context needed, your counsel can ask
20 you that on redirect.

21 So we will go ahead and grant the motion
22 to strike.

23 Q. (By Mr. Lang) You're not aware of any
24 other package of Ohio baseload coal and nuclear
25 assets available in the market today, are you?

1 A. No, I'm not personally aware.

2 Q. Now, if I can have you turn to page 6 of
3 your testimony, and I think starting around line 14,
4 you discuss the companies' competitive bidding
5 process used to supply standard service offer
6 customers. Is it fair that you view the companies'
7 CBP methodology as providing customers a hedge
8 against prevailing market prices in the short term?

9 A. That's correct, it is a process to
10 provide a hedge in the short-term market.

11 Q. Now, with respect to the companies' rider
12 RRS, you understand that will be set annually?

13 A. I do.

14 Q. And thus since it's set annually, you
15 understand it will change once a year?

16 A. Correct.

17 Q. And with regard to whether rider RRS will
18 be a charge or credit, neither you nor anyone else at
19 GDS performed modeling as a check against the
20 companies' forecast, correct?

21 A. That's correct.

22 Q. Now, on page 7, line 16, are you there?

23 A. I am.

24 Q. And you refer there to annual energy
25 requirements. What you have in mind when you're

1 referring to annual energy requirements is you're
2 referring to the standard service offer load or the
3 nonshopping load of the companies, correct?

4 A. That is correct.

5 Q. Now, on page 8, lines 5 through 7, where
6 you talk about comparing the long-term costs of
7 Davis-Besse and Sammis to natural gas-fired
8 alternatives, that's not an analysis that you have
9 performed, correct?

10 THE WITNESS: Can you repeat that
11 question, please?

12 MR. LANG: Could I have it read back,
13 please.

14 EXAMINER PRICE: Please.

15 (Record read.)

16 A. That's correct, I haven't personally
17 performed that analysis.

18 Q. And you do not have an opinion on what
19 that analysis would show, correct?

20 A. Correct, I don't have an opinion on what
21 the result of that analysis would demonstrate.

22 Q. Now, you are aware that the variable
23 costs of generating units generally determines the
24 order in which units are dispatched into the PJM
25 energy markets, correct?

1 A. Correct.

2 Q. And you understand that the variable
3 costs of Davis-Besse, the nuclear plant, result in
4 Davis-Besse running often in the market because
5 higher cost units are setting the marginal price,
6 correct?

7 A. As a result of the variable costs, that's
8 correct.

9 Q. And your understanding is the same for
10 the Sammis units as well, that their variable costs
11 of those resources is lower than the marginal price
12 establishing the prevailing market price in the
13 majority of hours; is that your understanding?

14 A. Yes, that's my understanding.

15 Q. Now, on the bottom of page 8, line 17,
16 where you refer to "environmental risk," the only
17 specific environmental regulation that you have in
18 mind is the Clean Power Plan; is that correct?

19 A. Yes, that's the one I indicate
20 specifically on line 20 of page 8.

21 Q. And you have not reviewed what historical
22 capital expenditures or environmental upgrades have
23 been made, specifically at the Sammis plant, correct?

24 A. I was not asked to review those in
25 detail, no.

1 Q. And you've not analyzed the upgrades, if
2 any, that might be required at Sammis to comply with
3 environmental regulations, correct?

4 A. Again, same answer.

5 Q. So with the same answer, it's correct,
6 you have not done an analysis?

7 A. That I wasn't asked to perform that
8 analysis in detail.

9 Q. And just so the record is clear, I
10 understand you were not asked to perform that
11 analysis. I want to confirm you have actually not
12 performed that analysis.

13 A. Correct.

14 Q. And you have not done any research to
15 determine whether any upgrades or retrofits for
16 environmental compliance will be required at Sammis
17 over the next 15 years, correct?

18 A. That's correct.

19 Q. And you've not reviewed what Sammis'
20 current environmental controls are; is that right?

21 A. I'm not aware of them specifically, no.

22 Q. So you have no opinion regarding whether
23 the Sammis plant had capital expenditures that are
24 included in the companies' 15-year forecast in this
25 case are sufficient to fund whatever environmental

1 upgrades or retrofits might be required over that
2 15-year period, correct?

3 A. Can you repeat that, please?

4 MR. LANG: If I could have it read back,
5 please.

6 (Record read.)

7 THE WITNESS: Can you read it one more
8 time, please.

9 (Record read.)

10 A. No, I don't have a specific opinion on
11 that.

12 Q. And just to put a point on it, you have
13 no opinion, correct, not just a specific opinion?

14 A. Right.

15 Q. Now, you have had some experience
16 regarding how significant capital investments made at
17 generating units are amortized; is that correct?

18 A. Correct, I have had some experience with
19 that.

20 Q. And you understand that those types of
21 investments typically are amortized over a long
22 period of time.

23 A. Typically, that's the case.

24 Q. So I ask you a hypothetical. I'd like
25 you to assume that the 15-year power purchase

1 agreement is in place between the companies and FES,
2 and then assume that in the tenth year of the PPA,
3 which would be the year 2025-2026, FES proposes and
4 completes a \$50 million capital investment at the
5 Sammis plant. Are you following the hypothetical?

6 A. I am.

7 Q. And then assume that that \$50 million
8 capital expenditure is amortized out to the year
9 2050. First question, in that hypothetical, your
10 understanding would be that FES would have to fund
11 the entire upfront cost of that \$50 million capital
12 investment, correct?

13 THE WITNESS: Can you repeat the
14 hypothetical, please?

15 EXAMINER PRICE: Let's have the reporter
16 read it back.

17 (Record read.)

18 A. In your hypothetical, the investment
19 begins before the end of the 15-year PPA, correct?

20 Q. Yes. So in year 10 of 15, correct.

21 A. And also in your hypothetical, it was
22 amortized over some longer period that extends
23 outside of the term of the PPA?

24 Q. Correct.

25 A. It's my understanding that for the

1 remaining portion of the term, customers will be
2 responsible for the environmental upgrade cost
3 associated with those types of decisions.

4 Q. I think you actually -- you jumped ahead
5 to my second question, which was for any of the
6 amortized portion of that investment that is
7 amortized outside of that remaining five years of the
8 PPA, that would be solely the responsibility of FES
9 as set forth in the proposed transaction; is that
10 fair?

11 A. Outside the term of the 15 years, FES is
12 responsible. The customers are also responsible
13 inside the term of the 15 years.

14 Q. And you agree that with regard to the
15 costs that are on FES's books at the end of the PPA
16 term, FES has an incentive to manage its costs,
17 right?

18 A. To the extent the costs carry over beyond
19 the term of the 15 years, I agree that FES has an
20 incentive.

21 Q. And still in the same hypothetical,
22 there's not just that incentive of the costs that
23 carry over, FES also has the -- FES also needs to
24 have the cash available upfront to make that
25 \$50 million investment, right?

1 A. That's my understanding.

2 Q. Now, if the Clean Power Plan results in a
3 carbon tax of some form, your belief is that that
4 carbon tax would put upward pressure on market
5 prices, correct?

6 A. Yes.

7 Q. And so one result of such a carbon tax
8 would be to increase the value of Davis-Besse, the
9 nuclear plant, correct?

10 A. That would be one result, among others.

11 Q. And with regard to recent coal plant
12 retirements, you've not studied -- you've not
13 personally studied what the causes of those
14 retirements have been, correct?

15 A. Are you asking the question generally?

16 Q. Generally.

17 A. I am generally aware of the causes of
18 many coal plant retirements.

19 Q. So have you personally studied the causes
20 of coal plant retirements?

21 A. In various client projects I have
22 reviewed those causes.

23 Q. Mr. Cole, do you remember your deposition
24 being taken in this case?

25 A. I do.

1 Q. And do you remember that was in February
2 of this year, February 11th?

3 A. I'll take your word for it. I don't
4 remember the exact day.

5 MR. LANG: And, your Honors, may I
6 approach?

7 EXAMINER PRICE: You may.

8 Q. Mr. Cole, when you were deposed, do you
9 remember a court reporter being there?

10 A. I do.

11 Q. And you were sworn in and swore to tell
12 the truth, correct?

13 A. Correct.

14 Q. Now, on -- if I could ask you -- let me
15 find the right page. If I could ask you to turn to
16 page 143, are you there?

17 A. I am.

18 Q. All right. And then if you can read
19 along starting at line 1 -- actually, down at the
20 bottom, page 142 is the question starts with, "Yeah."

21 At the top of 143 it says "With regard to
22 recent -- we can limit it to recent coal-fired
23 generating unit retirements. Have you studied what
24 the causes of those retirements have been?"

25 And your answer was, "I have not

1 personally studied that, no."

2 Did I read that correctly?

3 A. Yes, you did.

4 Q. Thank you. Now, on page 9 of your
5 testimony, lines 7 through 11, you describe a
6 scenario in which additional coal-fired resources
7 retire and are replaced by NGCC resources, so I
8 wanted to step through that scenario. And you would
9 agree the first step is that the retirement of those
10 coal resources would result in a greater reliance on
11 the remainder of the resources?

12 A. Can you repeat that question, please?

13 Q. I can ask it again. The first step of
14 this scenario, would you agree, is that the
15 retirement of coal resources would result in greater
16 reliance on the remainder of the resources?

17 A. Yes.

18 Q. And your belief is that that greater
19 reliance on the remaining resources would put upward
20 pressure on the marginal price in the market,
21 correct, as we move up the dispatch stack to units
22 that are less efficient?

23 A. Correct.

24 Q. And that would mean, it's your testimony
25 here, that NGCC units and the remaining baseload

1 units would operate with higher capacity factors than
2 is typical today in the current market, correct?

3 A. Yes, the capacity factors would operate
4 at a higher level. But I'd like to clarify the
5 previous question. Can you restate the previous
6 question?

7 EXAMINER PRICE: I think that if you need
8 to clarify your answer, that's something you will
9 want to do on redirect. I think he wants to continue
10 with his line of questioning. He wants to continue
11 it.

12 MR. LANG: Your Honor, I think that would
13 be the best approach. Thank you.

14 Q. (By Mr. Lang) Now, on page 9, line 13,
15 you use the term "risk profile." Sir, you're using
16 the term "risk profile" when referring to natural
17 gas-fired combined cycle resources. Do you see that
18 reference, Mr. Cole?

19 A. I do.

20 Q. Great. Now, if you were comparing the
21 risk profile of a coal or a nuclear unit to that of a
22 natural gas combined cycle unit, one factor you would
23 consider would be the benefits of on-site fuel
24 availability that the coal or nuclear unit has,
25 correct?

1 A. That would be one of many factors.

2 Q. And you have not compared the risk
3 profile of new NGCC units to the Davis-Besse nuclear
4 plant, correct.

5 A. I haven't.

6 Q. Now, your understanding is that the
7 energy from the Sammis and Davis-Besse plants
8 currently is being sold by FES to retail end-use
9 customers; is that correct?

10 THE WITNESS: Can you reread back that
11 question, please.

12 EXAMINER PRICE: Please.

13 (Record read.)

14 THE WITNESS: Read it one more time,
15 please.

16 (Record read.)

17 A. That is my understanding, the mechanics
18 of which I don't fully understand.

19 Q. Now, you do know that FES today offers
20 the capacity from Sammis and Davis-Besse into the PJM
21 capacity market, correct?

22 A. I am aware of how they offer their
23 capacity and energy into the market, which doesn't
24 also demonstrate to us their potential use of the
25 generation as it relates to bilateral transactions,

1 for example.

2 Q. Okay. So you said you're aware of how
3 they offer capacity and energy. So just to stay on
4 capacity for this question, you are aware that FES
5 offers their capacity from Sammis and Davis-Besse
6 into the PJM capacity market, right?

7 A. Correct.

8 Q. And then FES bids the energy from Sammis
9 and Davis-Besse into the PJM energy markets, correct?

10 A. Presently they don't necessarily have a
11 requirement to do so.

12 Q. So when you say they presently don't have
13 a requirement to do so, is that based on your reading
14 of the PJM tariff?

15 A. Well, with respect to the capacity
16 market, they could enter into a bilateral transaction
17 and not necessarily have to bid it into the capacity
18 market, as an example.

19 Q. Okay. So backing up, since we were
20 talking about the energy markets, do you know whether
21 FES with the Sammis and Davis-Besse plants have a
22 must-offer requirement with regard to energy with the
23 PJM energy markets?

24 A. Yes. They are offered into the energy
25 market.

1 Q. Now, if the proposed PPA is entered into,
2 the companies will offer the capacity from Sammis and
3 Davis-Besse into PJM's capacity market; is that your
4 understanding?

5 A. That is my understanding.

6 Q. So the only thing that changes is that
7 instead of FES offering the capacity into PJM, the
8 companies will offer the capacity into PJM, correct?

9 A. Again, I'm not -- we don't have a
10 transparent understanding of how FES might otherwise
11 have utilized the capacity and bilateral
12 transactions, but I agree that's how they're
13 presently bidding it into the market.

14 Q. So assuming that FES is currently
15 offering a capacity into the PJM capacity market,
16 under the PPA, the only thing that would change would
17 be that the companies would be offering the capacity
18 from those plants into the PJM capacity market,
19 correct?

20 THE WITNESS: Can you read back that
21 question, please?

22 (Record read.)

23 A. Assuming they were presently doing that,
24 that is correct.

25 Q. And under the PPA, you understand that

1 the companies also will bid the energy from Sammis
2 and Davis-Besse into the PJM energy markets, correct?

3 A. I do.

4 Q. And then that energy would flow
5 eventually to retail end-use customers, correct?

6 A. That's right.

7 Q. So at the wholesale level, the energy and
8 capacity are not removed from the wholesale markets,
9 correct?

10 A. Assuming -- can you repeat your question?

11 Q. I can just read it again.

12 A. Okay.

13 Q. So at the wholesale level, the energy and
14 capacity from the Sammis plant and Davis-Besse
15 plants, whether the PPA is in place or not, is not
16 removed from the wholesale markets, correct?

17 A. That assumes that FES's ongoing decision
18 is to bid it into the capacity market. They do have
19 an opportunity to offer that capacity to other
20 counter-parties on a bilateral agreement.

21 Q. And they certainly have the opportunity
22 to enter into a PPA with the companies to do that,
23 correct?

24 A. That is true.

25 Q. Now, so as we've discussed capacity and

1 energy as it's treated under the PPA, the way that
2 generation interacts with the market is not changing,
3 correct?

4 A. Again, that assumes that FES' strategy
5 would be to continue bidding it into the capacity and
6 energy market as opposed to some other bilateral
7 transaction.

8 Q. So your answer to my question is yes?

9 THE WITNESS: Can you read back the
10 question, please.

11 (Record read.)

12 A. It's only not changing if FES wouldn't
13 choose to enter into some other bilateral arrangement
14 on its own.

15 EXAMINER PRICE: I think counsel asked
16 you a question that lends itself to a "yes" or "no"
17 answer, so I'd appreciate if you'd answer "yes" or
18 "no" or explain why you cannot. Let's have the
19 question again.

20 A. Okay. I'll just answer it yes.

21 Q. Thank you. Now, on page 10 of your
22 testimony, lines 2 and 3, last page, when you refer
23 to retail marketers, you're referring there to the
24 wholesale suppliers that are participating in the
25 companies' SSO auctions; is that right?

1 A. I'm referring to the whole -- they're
2 both wholesale suppliers that participate in the SSO
3 auctions, as well as retail suppliers in that they
4 have retail business as well.

5 Q. So you're saying to the extent the
6 wholesale suppliers in the SSO auction may also have
7 a retail business, that would make that same entity a
8 wholesale and a retail provider, is that the point
9 you were making?

10 A. Correct, depending upon how you would
11 look at them and the business they're proposing to
12 perform.

13 Q. And, now, you think of the bids into the
14 companies' SSO auction as a retail transaction,
15 correct?

16 A. I think I've referred to it as retail
17 marketers, but I think of the bids to the SSO as a
18 wholesale transaction.

19 Q. Can I take you to your deposition, page
20 165?

21 A. Okay.

22 Q. And I'll start on line 24 of page 165 and
23 then I'll read over to the top of page 166.

24 On line 24, the question starts: "Okay.
25 You believe that retail marketers bid into the

1 companies' SSO supply procurement auctions?"

2 And your answer is, "Yes, I think of
3 those as retail transactions."

4 Did I read that correctly?

5 A. I think I actually answered it
6 incorrectly. It was the end of a long day. You are
7 reading that correctly.

8 Q. Thank you. Now, with regard to whether
9 rider RRS will impact the ability of the companies'
10 customers to shop for retail electric generation
11 service, you do not have an opinion as to whether
12 that will occur or not, correct?

13 A. Can you repeat the question, please?

14 Q. Sure. And I'll move it around just a
15 little bit. Maybe it will make a little bit more
16 sense.

17 You do not have an opinion regarding
18 whether rider RRS will impact the ability of the
19 companies' customers to shop for retail electric
20 generation service, correct?

21 A. Yes, sir.

22 Q. And still on page 10, the very first
23 line, line 1, you refer to "upward price pressure,"
24 and there you're focusing on the supply cost of the
25 marketer bidding into the companies' SSO auction,

1 correct?

2 THE WITNESS: Could you read back that
3 question, please.

4 (Record read.)

5 A. I intended to mean the upward price
6 pressure being the pressure on retail offers from
7 these same marketers to customers with choice. I
8 think there was some confusion in the interpretation
9 of my opinion previously.

10 Q. So to take you to page 169 of your
11 deposition, starting at line 18, I asked you: "In
12 terms of the upward price pressure that you're
13 talking about, what you're focusing on is the impact
14 on the supply cost of the marketer that's bidding in
15 the CBP auction for the standard service offer
16 product. Is that right, or do I have that wrong?"

17 You asked me to -- you asked to have it
18 read again. It was read again. And your answer was:
19 "I think that's right. The end of a long day, I
20 think that's right."

21 And that was the conclusion of the
22 deposition. Did I read that correctly?

23 A. Again, it was a very long day, and I was
24 having trouble understanding your question during
25 that deposition. So I'm saying that answer

1 differently. I think I got it wrong there.

2 Q. Okay. Now, you are not aware that the
3 companies' proposal includes an audit process that
4 would be lead by the PUCO staff; is that right?

5 THE WITNESS: Can you repeat that
6 question?

7 (Record read.)

8 A. I'm not familiar with the audit process.

9 Q. Let's try this as a hypothetical. So
10 assume that the PUCO staff has the ability to review
11 the reasonableness of the revenues and the costs that
12 are included in rider RRS, and also assume that the
13 PUCO staff has the ability to adjust rider RRS upon a
14 finding of unreasonableness. You would agree that
15 would give the companies an incentive to ensure the
16 units' output levels are maximized, correct?

17 A. Yes, I agree that that would be one
18 incentive.

19 Q. And another hypothetical. Assume that in
20 the PPA between FES and the companies, FES is
21 required to perform all operating work in conformance
22 with good utility practice, and then also assume that
23 the companies could refuse to pay for costs incurred
24 by FES that are not in conformance with good utility
25 practice. Under those assumptions, FES would have an

1 incentive with regard to proper operation of the
2 plants, correct?

3 A. Correct. They would have an incentive.

4 Q. Just one or two more questions, I think,
5 just to clear something up. With regard to the
6 questions I just asked you in the last 15 minutes
7 where I referred to your deposition, you said you had
8 misspoken in your deposition. Did you have an
9 opportunity to review your deposition and make
10 corrections?

11 A. I haven't reviewed the deposition. I
12 recall that many of those questions in the deposition
13 were fairly unclear in our exchange, so I was
14 attempting to use this opportunity to clarify it.

15 Q. So you don't remember receiving an errata
16 sheet so that you could note corrections in the
17 deposition.

18 A. Can you clarify what you mean by errata
19 sheet?

20 Q. Okay. That probably answers my question.
21 You don't remember receiving a sheet describing --
22 actually, the transcript that I gave you, if you
23 could turn to, I think, probably the -- I think it's
24 the second-to-last page. In the very back of that,
25 does that include an errata or not?

1 A. I'm sorry. The back of the transcript?

2 Q. Yeah. I'm just asking whether you see
3 any pages for signature at the back of that
4 transcript.

5 A. Of the deposition?

6 Q. Correct.

7 EXAMINER PRICE: I think he's referring
8 to the final page.

9 THE WITNESS: The disclosure? And what
10 are you asking about the disclosure?

11 EXAMINER PRICE: Do you have page 174?

12 MR. LANG: Your Honor, I don't know if
13 his copy has it.

14 THE WITNESS: I don't have it.

15 MR. LANG: That's what I was trying to
16 determine.

17 EXAMINER PRICE: Do you want me to give
18 him my copy?

19 MR. LANG: Please.

20 Q. (By Mr. Lang) Mr. Cole, can you look
21 at -- it should be at the very back, page 177.

22 EXAMINER PRICE: That copy only goes to
23 174.

24 MR. LANG: We must have missed those at
25 the end, your Honor. That's fine. We'll leave it

1 unclear.

2 Your Honor, those are all the questions I
3 have.

4 EXAMINER PRICE: Mr. McNamee.

5 MR. MCNAMEE: No questions.

6 EXAMINER PRICE: Redirect.

7 MS. RYAN: We would like to redirect.

8 EXAMINER PRICE: Do you need a couple
9 minutes?

10 MS. RYAN: Yes, please.

11 EXAMINER PRICE: Let's take a break until
12 4:04. Let's go off the record.

13 (Recess taken.)

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

16 Redirect.

17 MS. RYAN: We have no further questions,
18 your Honor.

19 EXAMINER PRICE: Thank you.

20 Ms. Addison.

21 EXAMINER ADDISON: No questions.

22 EXAMINER PRICE: You're excused. Thank
23 you.

24 Ms. Ryan, do you want to renew your
25 motion to admit -- don't worry about it.

1 We're going to go ahead and admit
2 Cleveland 1.

3 MR. LANG: No objection, your Honor.

4 EXAMINER PRICE: Hearing none, it will be
5 admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 EXAMINER PRICE: Let's go off the record
8 for a minute.

9 EXAMINER CHILES: Let's go ahead and go
10 back on the record.

11 Mr. Kumar.

12 MR. KUMAR: The OCC would like to call
13 Beth Hixon to the stand, and we'd like to have her
14 direct testimony marked as OCC Exhibit 19.

15 EXAMINER CHILES: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 - - -

18 BETH E. HIXON

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

21 DIRECT EXAMINATION

22 By Mr. Kumar:

23 Q. Would you please state your full name and
24 business address for the record.

25 A. My name is Beth E. Hixon, business

1 address is 10 West Broad Street, Suite 1800,
2 Columbus, Ohio, 43215.

3 Q. Are you the same Beth Hixon whose direct
4 testimony was filed in these cases?

5 A. Yes.

6 Q. On whose behalf do you appear?

7 A. On the office of the Ohio Consumers'
8 Counsel.

9 Q. Do you have your prepared testimony with
10 you on the stand?

11 A. Yes, I do.

12 Q. Do you have any changes or corrections to
13 your testimony?

14 A. Yes, I have a couple corrections and one
15 change.

16 Q. Could you please list them?

17 A. If you turn to page 8, at footnote 11 the
18 citation to 2-3 should be 23-24.

19 And then on page 11, line 7, the term
20 "non-recovery" should read "non-collection."

21 And then finally on my attachment BEH-1
22 which is testimony submitted, there's a correction on
23 the case that is listed as Dominion East Ohio
24 "08-729." That should be "07-829."

25 And then since this testimony was

1 submitted, I have two additional cases in which I've
2 submitted testimony. That would be Duke Energy Ohio,
3 Case No. 14-841-EL-SSO submitted in 2014, and AEP
4 Ohio Case No. 14-1639-EL-RDR submitted in 2015.
5 That's it.

6 Q. With those changes and corrections, if I
7 were to ask you today the same questions found in
8 your direct testimony, OCC Exhibit No. 19, would your
9 answers be the same?

10 A. Yes, they would.

11 MR. KUMAR: The OCC moves for the
12 admission of Exhibit 19, and we'd like to tender this
13 witness for cross-examinations.

14 EXAMINER CHILES: We'll defer ruling on
15 the admission; however, your admission is noted.

16 Mr. Hays.

17 MR. HAYS: No questions.

18 EXAMINER CHILES: Mr. Randazzo.

19 MR. RANDAZZO: Yes, your Honor. Thank
20 you.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Randazzo:

24 Q. Good afternoon, Ms. Hixon.

25 A. Good afternoon.

1 Q. I want to talk to you a little bit about
2 some of the matters in your testimony primarily
3 dealing with the PJM open access transmission tariff,
4 the ATSI or American Transmission Systems, Inc.,
5 formula rate tariff, as well as the Federal Energy
6 Regulatory Commission. Those are all items you
7 mentioned in your testimony, correct?

8 A. Yes, those are mentioned in my testimony.

9 Q. Okay. Now, on page 3, you mention at
10 line 17 the ATSI, and again, ATSI is American
11 Transmission Systems, Inc., formula rate. Can you
12 tell me what you mean by "formula rate"?

13 A. My general understanding is that ATSI has
14 a tariff through which they charge for their
15 transmission services that is approved at FERC, and
16 it is a formula rate -- kind of by its definition,
17 there is formula that determines what price will be
18 charged.

19 Q. Okay. And, if you know, is that a
20 formula that is guided by what I will call
21 traditional ratemaking, traditional cost-service
22 ratemaking?

23 A. I am really not familiar with how that
24 rate is calculated beyond the aspects that are
25 described in my testimony.

1 Q. Now, within the FirstEnergy structure, as
2 you note in your testimony, ATSI is the affiliate
3 that has responsibility for operating the
4 transmission system that is connected to the electric
5 distribution utilities that are part of the
6 FirstEnergy system; is that correct?

7 A. That's my understanding.

8 Q. And the rates and charges and quality of
9 service that ATSI provides, is it also your
10 understanding that that's all subject to the
11 exclusive jurisdiction of FERC?

12 A. I know generally that ATSI's rates are
13 set through the Federal Energy Regulatory Commission.
14 I would be hesitant to say exclusive because I don't
15 know that.

16 Q. Well, you indicate in your testimony with
17 regard to the legacy MTEP cost that the Federal
18 Energy Regulatory Commission is the entity that would
19 determine whether or not those costs are includable
20 within the ATSI formula rate; is that correct?

21 A. That's correct.

22 Q. So am I to understand that it's your view
23 that only the Federal Energy Regulatory Commission
24 would have that responsibility?

25 I'll withdraw the question.

1 Now, is it also correct that within the
2 structure, the FirstEnergy structure, the electric
3 distribution utilities purchase transmission service
4 from ATSI pursuant to rates set by the Federal Energy
5 Regulatory Commission?

6 A. That's my understanding.

7 Q. And is the rate a rate of ATSI, or is it
8 a PJM rate, if you know?

9 A. From my review of the proceedings related
10 to the legacy MTEP and RTEP that I have in my
11 testimony, it's my understanding that ATSI files the
12 tariff rate but that PJM is also involved.

13 Q. And is it your understanding that PJM
14 actually bills and collects -- is it your
15 understanding that PJM is actually the entity that
16 bills and collects for transmission services?

17 A. I'm not familiar enough with the specific
18 physical activity to say that definitely.

19 Q. Well, you say at page 6, line 11 and 12,
20 in parentheses, "(billed to the Companies and then
21 passed on to retail customers)." Somebody is billing
22 the FirstEnergy electric distribution utilities for
23 transmission.

24 A. Yes, and it's my general understanding
25 it's a PJM billing.

1 Q. Okay. And, now, have you reviewed the
2 open access transmission tariff that applies to the
3 ATSI zone?

4 A. No.

5 Q. Do you know anything about what types of
6 customers are eligible to take service out of that
7 open access transmission tariff?

8 A. Not specifically, beyond my understanding
9 of the FirstEnergy utilities in the case of these
10 costs.

11 Q. Are you aware of whether customers,
12 end-use customers, in states like Ohio that have
13 unbundled transmission service are eligible to take
14 service from the open access transmission tariff
15 approved by FERC?

16 MR. KUMAR: Objection, your Honor. The
17 witness has already stated she's not read the open
18 access transmission tariff.

19 EXAMINER CHILES: I'll allow the
20 question. She can answer if she knows.

21 THE WITNESS: Could I have the question
22 repeated, please.

23 EXAMINER CHILES: You may.

24 MR. RANDAZZO: Do you want it repeated,
25 or would you like it read?

1 THE WITNESS: Could I have it read,
2 please?

3 (Record read.)

4 A. My level of awareness on that would be in
5 regards to, for example, the project pilot that's
6 proposed under the stipulation that seems to indicate
7 that such customers could, but; beyond that, I don't
8 have an understanding of it.

9 Q. Fair enough. So you haven't looked at
10 the PJM tariff to determine whether or not end-use
11 customers in the state of Ohio are eligible customers
12 for purposes of the open access transmission tariff?

13 A. No. As I've said, I've not looked at the
14 open access transmission tariff.

15 Q. Are you aware of anybody on the OCC team,
16 including internal or external witnesses, that has
17 done that?

18 A. No, I'm not aware of anyone that has.

19 Q. Okay. Now, page 7 beginning at the
20 sentence that starts on line 13, it ends on line 16,
21 you indicate that "Those MTEP costs charged by PJM to
22 the Companies" -- and here you're using "charged by
23 PJM," right?

24 A. Yes.

25 Q. -- "could be collected from Ohio retail

1 customers through the Utilities' Non-Market-Based
2 Services Rider (Rider NMB)", correct?

3 A. That's correct.

4 Q. And are you aware of any other tariffs of
5 the FirstEnergy electric distribution utilities that
6 deal with how customers or CRES suppliers might
7 obtain transmission services? And let me be more
8 specific. Are you familiar with rider TAS?

9 A. I'm familiar in that I know that it
10 exists, but the specifics of it and what it covers at
11 this particular point in time, I'm not aware of.

12 Q. And are you aware that the FirstEnergy
13 electric distribution utilities also have a supplier
14 tariff?

15 A. I know they have a supplier tariff, yes.

16 Q. And the supplier tariff deals with the
17 relationship between the competitive retail electric
18 services providers and the electric distribution
19 utilities; is that correct?

20 A. My general understanding from the name of
21 it, I would say yes, that's what it is. I have not
22 reviewed that tariff.

23 Q. Do you know -- okay. So you have not
24 reviewed that tariff, and am I to presume from that
25 you would not be aware as to whether or not that

1 supplier tariff deals with how transmission service
2 is to be provided or obtained by competitive retail
3 electric service providers?

4 A. Since I've not reviewed that tariff, I do
5 not know.

6 Q. Now, it's my understanding from the
7 Consumers' Counsel testimony, not only yours, but
8 others, that OCC has no problem with a nonbypassable
9 NMB rider; is that a fair statement?

10 A. I'm not testifying on the NMB rider, and
11 I'm not aware that OCC has taken a position on that.

12 Q. Let me ask it this way. You're familiar
13 with the provisions in the law -- and I'm not asking
14 you a legal question. But you're familiar with the
15 provisions in the law as a result of your
16 responsibilities on what can be contained in an
17 electric security plan; is that a fair statement?

18 MR. KUMAR: I'm going to object at this
19 point.

20 EXAMINER CHILES: Grounds?

21 MR. KUMAR: Relevance. I'm not sure how
22 this is relevant to Ms. Hixon's testimony.

23 EXAMINER PRICE: Mr. Randazzo.

24 MR. RANDAZZO: Your Honor, it's a
25 foundation question. I have one more in this area

1 and I will be done.

2 EXAMINER PRICE: Overruled.

3 MR. RANDAZZO: You may answer.

4 A. Could you please repeat that?

5 Q. Sure. Based upon your responsibilities
6 at OCC, am I correct that you are familiar with
7 things that can be included within an electric
8 security plan?

9 A. Yes.

10 Q. Based upon that knowledge, are you aware
11 of anything that suggests that it is possible to put
12 a nonbypassable transmission rider in an electric
13 security plan?

14 MR. KUMAR: I'm going to object here to
15 the point at which Mr. Randazzo's question asks the
16 witness for a legal conclusion.

17 EXAMINER CHILES: Ms. Hixon, you're not
18 an attorney, are you?

19 THE WITNESS: No, I'm not.

20 EXAMINER CHILES: We will note for the
21 record that you are not an attorney, but you can
22 answer the question, if you can.

23 A. Off the top of my head and my familiarity
24 with what we would call Senate Bill 221, I'm not
25 aware of anything specifically that indicates that

1 that's one of the elements that a company may
2 propose. I am aware, however, that FirstEnergy has
3 one, and so there's probably a Commission order
4 somewhere indicating how or why that occurred.

5 MR. RANDAZZO: Okay. Fair enough. And
6 as I promised, that's my last question. Thank you.

7 EXAMINER CHILES: Thank you.

8 EXAMINER CHILES: Ms. Ghiloni.

9 MS. GHILONI: No questions.

10 EXAMINER CHILES: Mr. Soules.

11 MR. SOULES: No questions, your Honor.

12 EXAMINER CHILES: Mr. Dougherty.

13 MR. DOUGHERTY: No questions.

14 EXAMINER CHILES: Mr. Lavanga.

15 MR. LAVANGA: No questions.

16 EXAMINER CHILES: Ms. Kyler Cohn.

17 MR. COHN: No questions.

18 EXAMINER CHILES: Ms. Dunn.

19 MS. DUNN: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. Dunn:

23 Q. Good afternoon, Ms. Hixon.

24 A. Good afternoon.

25 Q. If you could please turn to your

1 testimony, page 1, line 16. On that line you
2 indicated that in May 1982 you were employed as a
3 researcher by OCC, correct?

4 A. Yes.

5 Q. And as a researcher, you don't recall
6 working on transmission issues, correct?

7 A. I do not recall working on transmission
8 issues as a researcher.

9 Q. And also on page 1, line 16 to 17, you
10 indicated that in 1984 you were promoted to utility
11 rate analyst supervisor, correct?

12 A. Yes.

13 Q. And you had similar duties as a
14 research -- when you had the researcher position but
15 with increasing responsibilities, correct?

16 A. Correct.

17 Q. And also during your time as the utility
18 rate analyst supervisor, you do not recall working on
19 transmission issues in that position either, correct?

20 A. I do not recall working on transmission
21 issues in that position.

22 Q. And then, finally, still on page 1, line
23 18 to 19, you indicate from approximately
24 November 1987 to April 1998, you worked for Berkshire
25 Consulting, correct?

1 A. Correct.

2 Q. Is that the same Berkshire Consulting as
3 Mr. Effron?

4 A. Yes, it is.

5 Q. And in that position, you did not handle
6 or provide consulting regarding transmission issues,
7 correct?

8 A. Correct, I did not.

9 Q. And you never filed testimony at FERC,
10 correct?

11 A. No, I have not filed testimony at FERC.

12 Q. And there are specific individuals at OCC
13 who have expertise in FERC issues, correct?

14 A. Yes.

15 Q. And you are not one of those individuals,
16 correct?

17 A. Correct.

18 Q. And I'm going to go ahead and turn to
19 your attachment BEH-1, and looking at the list of
20 testimony that you filed here, not only on behalf of
21 OCC, but also as an employee of Berkshire, is it fair
22 to say that only Case 13-1406-EL-RDR was a case that
23 involved transmission issues?

24 A. Not completely. The case that you cited
25 was a specific transmission case. The other cases

1 may have included transmission issues, but I was not
2 involved in them.

3 Q. Is it fair to say that of the testimony
4 you filed, Case No. 13-1406 is the only case in which
5 you filed testimony relating to transmission issues?

6 A. Yes, that's correct.

7 Q. And that case involved proposed
8 adjustments that AEP Ohio wanted to make to its
9 transmission cost recovery rate, correct?

10 A. Yes.

11 Q. And that case did not in any way deal
12 with MTEP or RTEP charges, correct?

13 A. No, it did not deal with MTEP or RTEP.

14 Q. And, likewise, that case did not in any
15 way deal with legacy MTEP or RTEP charges, correct?

16 A. Correct, it did not.

17 Q. And then turning to page 3 of your
18 testimony, other than the opinions expressed on page
19 3 of your testimony, you do not offer any other
20 opinions related to any other aspect of the ESP,
21 correct?

22 A. The ESP in this case proposed by
23 FirstEnergy, no. The only item I'm testifying on is
24 page 3 and the rest of my testimony.

25 Q. And I believe you indicated in response

1 to one of Mr. Randazzo's questions that you
2 understand ATSI is the transmission affiliate of the
3 companies, correct?

4 A. Yes.

5 Q. And I know we didn't clear this up on the
6 record, but when I say "companies," can we agree that
7 means Ohio Edison, the Cleveland Electric
8 Illuminating Company, and the Toledo Edison Company?

9 A. Yes.

10 Q. And MTEP costs are MISO transmission
11 expansion costs, correct?

12 A. Yes.

13 Q. And MTEP costs represent costs for
14 projects that MISO plans to undertake to expand its
15 transmission system, correct?

16 A. Yes.

17 Q. And legacy MTEP costs are basically costs
18 that MISO approved prior to ATSI's move from MISO to
19 PJM, correct?

20 A. Yes.

21 Q. And would you agree that legacy MTEP
22 costs are a type of MTEP cost?

23 A. If the universe is MTEP costs and there's
24 different types, that is one of them, yes.

25 Q. Now, you don't know whether the legacy

1 MTEP costs referred to in your testimony are costs
2 incurred from projects that ATSI owned, correct?

3 A. No, I don't. I didn't review the nature
4 of the legacy MTEP costs to specific projects owned
5 by particular companies.

6 Q. And you don't know the date that ATSI
7 sought to leave MISO, correct?

8 A. I don't know that exact date, no.

9 Q. And on page 8, line 1, of your testimony,
10 you reference June 2011 as the date ATSI exited from
11 MISO, correct?

12 A. Yes. That June 2011 date is referring to
13 the case and the costs associated with that exit.
14 That was the date that was used by FERC in referring
15 to the exit.

16 Q. You don't specifically know whether FERC
17 conditionally approved ATSI's request to withdraw
18 from MISO to join PJM, do you?

19 A. I don't know the specifics of that, no.

20 Q. Ms. Hixon, were you present at this
21 hearing when Ms. Mikkelsen testified?

22 A. No, I was not.

23 Q. Have you reviewed any transcripts from
24 this hearing so far?

25 A. I looked through the transcripts of her

1 cross, some of her cross.

2 Q. Did you review anything in the
3 transcripts related -- during Ms. Mikkelsen's cross
4 related to MTEP and RTEP?

5 A. Yes, I did.

6 Q. You did not have that information
7 available, though, when you drafted your testimony,
8 correct?

9 A. No, I could not.

10 Q. And you also did not have that
11 information available when I took your deposition,
12 correct?

13 A. No, I could not have.

14 Q. You don't know prior to ATSI's exit from
15 MISO, how MISO charged ATSI for MTEP costs, correct?

16 A. No, I do not.

17 Q. You don't know prior to ATSI's exit from
18 MISO, how MISO charged the companies for MTEP costs,
19 correct?

20 A. No, I do not.

21 Q. And because you don't know how ATSI was
22 charged for MTEP charges prior to ATZI's exit from
23 MISO, you also don't know whether MISO changed the
24 manner in which it charged ATSI for MTEP costs,
25 correct?

1 A. If I don't know the way it was, no, I
2 could not have known if it had changed or if it did
3 change.

4 Q. And would your answer be the same if I
5 changed -- well, I'll just go ahead and ask the
6 question. Let's not get confused.

7 If the answer is the same, likewise,
8 because you don't know how the companies were charged
9 for MTEP costs prior to ATSI's exit from MISO, you
10 also don't know whether MISO changed the manner in
11 which it charged the companies for MTEP costs?

12 MR. KUMAR: Your Honor, may I have that
13 question reread? I would ask counsel to rephrase the
14 question --

15 EXAMINER CHILES: Let's have counsel
16 repeat it and if you need to object.

17 Q. (By Ms. Dunn) Ms. Hixon, because you
18 don't know how the companies were charged for MTEP
19 costs prior to ATSI's exit from MISO, you also don't
20 know whether MISO changed the manner in which it
21 charged the companies for MTEP costs, correct?

22 A. I really thought you'd already asked me
23 that question.

24 Q. I asked you as it relates to ATSI.

25 A. ATSI was the first one?

1 Q. Yes.

2 A. It would apply for both ATSI's and the
3 companies. If I don't know the way it was, I can't
4 know whether it changed.

5 Q. Thank you. And you don't know whether
6 MISO currently charges the transmission owner or the
7 load-serving entity for MTEP costs, correct?

8 A. We're talking about MTEP in general, not
9 legacy MTEP?

10 Q. Correct.

11 A. Given that a tariff was filed to charge
12 the EDU, it would seem that that's who's charged.

13 Q. What do you mean by the tariff charged?

14 A. Given that a tariff was filed at FERC so
15 that a charge could be made to the utilities, it
16 would seem that that's how it's charged now.

17 Q. If you could go ahead and -- do you have
18 your deposition available?

19 A. I do.

20 MS. DUNN: Your Honor, may I approach?

21 EXAMINER CHILES: You may.

22 Q. Ms. Hixon could you please turn to page
23 40 of your deposition testimony, I'm going to start
24 at line 24. I asked: "Do you know if MISO
25 charges" -- turning to page 41, line 1 --

1 "transmission -- currently charges the transmission
2 owner or the load-serving entity or wholesale retail
3 suppliers?"

4 Line 4, Answer: "I don't know."

5 Did I read that correctly?

6 A. Yes, you read it correctly.

7 Q. Now, Ms. Hixon, the companies currently
8 have an ESP, correct?

9 A. I'm sorry. Could you please repeat that?

10 Q. Sure. The companies currently have an
11 ESP in place, correct?

12 A. Yes.

13 Q. And that would be ESP III, correct?

14 A. Yes.

15 Q. And in its order approving ESP III, the
16 Commission approved that MTEP costs that are charged
17 to the companies will be recovered from customers
18 through rider NMB, correct?

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

21 EXAMINER CHILES: You may.

22 (Record read.)

23 A. Yes, that is correct.

24 Q. And you agree that if the companies
25 cannot charge customers MTEP costs through rider NMB,

1 then customers will not pay MTEP costs, correct?

2 A. Correct.

3 Q. Turning to page 4 to 5 of your testimony,
4 lines 19 to 22, and then continuing to 1 to 6, in
5 that section I just referenced, you outline the
6 commitment that the companies made in ESP II,
7 correct?

8 A. Yes, I do.

9 Q. And that same commitment exists in the
10 current ESP III period, correct?

11 A. Yes, I believe that commitment carried
12 forward.

13 Q. And on page 5, line 14 to 16 of your
14 testimony, you reference Ms. Mikkelsen's direct
15 testimony in this case where she indicates that the
16 companies "'have made payments of just over
17 \$80 million' for PJM legacy RTEP costs for which they
18 have not sought to charge customers." Correct?

19 A. Yes, that's what the testimony says.

20 Q. Therefore, at that point in time -- and
21 what I mean by that point in time, I mean
22 Ms. Mikkelsen's direct testimony -- customers in the
23 FirstEnergy territories have received the benefit of
24 not having to pay \$80 million in legacy RTEP costs,
25 correct?

1 A. Yes, as of that time.

2 Q. And that amount, that \$80 million, could
3 be different as we sit here today, correct?

4 A. Yes, it could.

5 Q. And at least at the time of your
6 testimony, the companies' commitment of up to
7 \$360 million had not yet been met, correct?

8 A. No. Since only 80 million had not yet
9 been -- I hate to use double negatives -- not yet
10 been non-collected, but correct.

11 Q. And assuming the \$360 million commitment
12 has not been met as of June 1st, 2016, this
13 commitment will continue into the ESP IV period,
14 correct?

15 A. If you're saying hypothetically
16 June 2016, is that the date that you used?

17 Q. Yes, June 1st, 2016.

18 A. I don't know what will be at that
19 particular point in time, but if \$360 million had not
20 been passed through to customers at that point, the
21 commitment would not have been fulfilled -- will not
22 have been fulfilled.

23 Q. And assuming \$360 million commitment
24 continues into the ESP IV period, the companies'
25 customers will continue to receive a benefit to the

1 extent that legacy RTEP costs are charged to the
2 companies and the customers do not pay those amounts,
3 correct?

4 MR. KUMAR: Objection. That assumes
5 facts not in evidence.

6 EXAMINER CHILES: Ms. Dunn.

7 MS. DUNN: Your Honor, it was a
8 hypothetical, and it was pretty simple. Assuming the
9 companies haven't met the \$360 million commitment,
10 the companies' customers will continue to receive the
11 benefit I just outlined in my question.

12 EXAMINER CHILES: Overruled.

13 A. To the extent that the companies are
14 charged for legacy MTEP and do not charge customers,
15 the customers would continue to receive a benefit up
16 until the 360 million.

17 Q. In ESP IV, the companies are seeking to
18 continue recovering MTEP costs through rider NMB,
19 correct?

20 A. Yes.

21 Q. If the companies have are not charged
22 MTEP costs, then the customers are also not charged
23 MTEP costs through rider NMB.

24 A. If the customers are not charged MTEP,
25 they cannot charge customers.

1 Q. And the customers are currently not
2 paying legacy MTEP charges, correct?

3 A. Well, as I state in my testimony, and as
4 Ms. Mikkelsen points out, those charges have not been
5 allowed to be charged by FERC to the companies and
6 so, therefore, the customers are not paying them.

7 Q. On page 8, lines 3 to 5 of your
8 testimony, you cite to a May 11th, 2011 FERC order,
9 correct?

10 A. Could you give me the line number again,
11 please?

12 Q. Sure, page 8, lines 3 to 5.

13 A. Yes, I refer to a May 2011 order.

14 Q. And line 3 to 5 of your testimony is not
15 a direct quote from the FERC order, correct?

16 A. No, it is not. If it was, I would have
17 included that as a quotation marks.

18 Q. And you cite to paragraph -- Ms. Hixon,
19 do you have the order you're referencing with
20 footnote 10 in front of you, or would you like a
21 copy?

22 A. I'd like a copy, please.

23 MS. DUNN: Your Honor, may I approach?

24 EXAMINER CHILES: You may.

25 Q. Ms. Hixon, could you turn to page 24 of

1 the FERC order that I just handed to you.

2 A. I have that.

3 Q. Okay. And lines 3 to 5, you were
4 specifically interpreting paragraph 60 of the FERC
5 order, correct?

6 A. Yes.

7 Q. And you agree that suspension does not
8 mean a final decision, correct?

9 A. Are you talking about the word
10 "suspension" in that paragraph? If so, could you
11 point that out?

12 Q. Sure. Yes.

13 MR. KUMAR: Also, your Honor, I'd like to
14 object to that question to the extent it requires a
15 legal conclusion.

16 EXAMINER CHILES: We previously noted for
17 the record that Ms. Hixon is not an attorney. We'll
18 note that again.

19 With that clarification, you may answer,
20 if you know.

21 Q. Ms. Hixon, per your request, I'm
22 referring to "Accordingly, we will accept and suspend
23 ATSI's proposed revisions to the PJM OATT to add its
24 formula rate for the ATSI zone."

25 So in that term "suspend," you would

1 agree that suspend does not mean a final decision,
2 correct?

3 A. I'm not sure that the word "suspend"
4 there doesn't mean a final decision.

5 Q. Ms. Hixon, could you please turn to your
6 deposition testimony?

7 A. Um-hmm.

8 Q. I think I'll go ahead and start for
9 context on page 47, line 4, and bear with me. I'll go
10 through and just read a couple of questions before.

11 "Okay. Where on page 24 did the
12 Commission say what you're saying in Lines 3 to 5?"

13 Answer: "At the order that you've given
14 me in Exhibit 5?"

15 "Yes, in Exhibit 5."

16 Answer: "On page 24, Paragraph 60, it
17 says: We will accept and suspend the proposed
18 revision to add to its formula rate as -- and I'm
19 paraphrasing here -- as set forth in the Appendix,
20 subject to refund and ATSI, make a compliance filing
21 within 30 days removing from its formula rates the
22 following costs, and that's the quote that I have
23 there."

24 Question: "It didn't -- but FERC didn't,
25 quote, deny PJM's request. The word denial doesn't

1 appear in 60, correct?"

2 Answer: "The word denial is not in that
3 statement, no."

4 "So you're not saying that Lines 3
5 through 5 are a direct quote from the order, are
6 you?"

7 Answer: "No, I did not. I don't have it
8 listed as a quote."

9 Then on page 48, line 17: "Would you
10 agree a suspension is also not a final decision?"

11 Answer: "Yes."

12 Did I read that correctly?

13 MR. KUMAR: Your Honor, I'd like to
14 object, improper impeachment. Ms. Hixon's previous
15 answer is not inconsistent with her answer she gave
16 on the stand today.

17 MS. DUNN: Your Honor, I asked her if the
18 word "suspend" in paragraph 60 meant did not mean a
19 final decision. She indicated a different answer. I
20 read up further on to page 47 to give context that we
21 were talking about the same order, and I asked her at
22 her deposition that if she agreed suspension is also
23 not a final decision where she said yes, so it was
24 proper impeachment.

25 EXAMINER CHILES: Objection is overruled.

1 MS. DUNN: Is my last question pending,
2 if I read that correctly?

3 EXAMINER CHILES: I believe that it's
4 still pending.

5 A. I believe you read the parts of the
6 transcript correctly. I didn't exactly follow where,
7 but subject to me checking the transcript against
8 what you read, I think you read that correctly.

9 Q. Thank you. You agree that FERC -- you
10 agree that FERC left the door open that ATSI could
11 seek recovery of MTEP costs through its formula rate
12 at some time in the future, correct?

13 A. As I state in my testimony, the decision
14 from FERC is not final. That's why I believe it's
15 premature for the Commission to even consider a
16 decision, and so yes.

17 MS. DUNN: Your Honor, I would move to
18 strike everything before "yes."

19 MR. KUMAR: Your Honor, I object to that.
20 She's clearly explaining her answer. It's clearly
21 relevant.

22 MS. DUNN: It was a "yes" or "no"
23 question, your Honor.

24 EXAMINER CHILES: Give me a minute here.

25 MS. DUNN: Sure.

1 EXAMINER CHILES: Could I have the
2 question and answer reread, please.

3 (Record read.)

4 EXAMINER CHILES: I'm going to deny the
5 motion to strike.

6 But, Ms. Hixon, please listen carefully
7 to the question and answer the question.

8 THE WITNESS: Yes.

9 EXAMINER CHILES: Thank you.

10 Q. And if FERC permits ATSI to include MTEP
11 costs in its formula rate, then the companies would
12 be charged those costs, correct?

13 A. Yes.

14 Q. And then the companies in turn would
15 recover those costs through customers in rider NMB,
16 correct?

17 A. They could charge customers those costs
18 through NMB, rider NMB.

19 MS. DUNN: No further questions, your
20 Honor.

21 Thank you, Ms. Hixon.

22 EXAMINER CHILES: Thank you, Ms. Dunn.

23 Mr. McNamee.

24 MR. MCNAMEE: No questions.

25 EXAMINER CHILES: Mr. Kumar, redirect.

1 MR. KUMAR: May we have five minutes,
2 your Honor.

3 EXAMINER CHILES: Absolutely. We'll take
4 a five-minute break.

5 (Recess taken.)

6 EXAMINER CHILES: Let's go ahead and go
7 back on the record.

8 Mr. Kumar, redirect?

9 MR. KUMAR: Just one question, your
10 Honor.

11 - - -

12 REDIRECT EXAMINATION

13 By Mr. Kumar:

14 Q. Do you have your deposition?

15 A. Yes, I do.

16 Q. Could you turn to page 40 and 41.

17 A. I have that.

18 Q. You were earlier asked a question
19 regarding -- in your deposition on page 40, line 24
20 through page 41, line 4, you were asked a question
21 regarding how MISO charges transmission charges to an
22 owner or load-serving entity in your deposition.

23 A. I see that.

24 Q. And today you were asked a certain
25 question about that. Do you remember that question?

1 A. Yes.

2 Q. Was your answer that you gave today
3 consistent with your deposition?

4 THE WITNESS: Your Honors, actually it
5 was inconsistent, and that's my fault because of what
6 I thought I heard today. As soon as she read the
7 deposition question, as is apt to happen between MTEP
8 and RTEP, I got the two confused, and I definitely
9 didn't know then, and I still don't know how MISO
10 charges MTEP. My answer in regards to what Ms. Dunn
11 said, even though what I heard was RTEP, was that
12 because we were discussing RTEP here and there was a
13 tariff, I knew it was charged by tariff. So I didn't
14 want to leave the impression that my knowledge was
15 incorrect. It was mistaken. I misheard.

16 MR. KUMAR: I have no further questions.

17 EXAMINER CHILES: Thank you, Mr. Kumar.
18 Recross?

19 MS. DUNN: No, your Honor. Thank you.

20 EXAMINER CHILES: I have no further
21 questions. Thank you, Ms. Hixon. You are excused.

22 MR. KUMAR: Your Honor.

23 EXAMINER CHILES: Yes, Mr. Kumar.

24 MR. KUMAR: I would ask for the admission
25 of OCC Exhibit 19.

1 EXAMINER CHILES: Are there any
2 objections to the admission of OCC Exhibit 19?

3 MS. DUNN: No.

4 EXAMINER CHILES: Hearing none, it is
5 admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 EXAMINER CHILES: If there's nothing
8 further, we will adjourn until 9:00 tomorrow morning.
9 Thank you.

10 Let's go off the record.

11 (The hearing adjourned at 5:04 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, October 1, 2015, and carefully compared with my original stenographic notes.

Carol A. Kirk, RPR, RMR.

(CAK-79412)

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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 10/01/15 - Volume XXI electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.