

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of Ohio Edison:
Company, The Cleveland :
Electric Illuminating :
Company, and The Toledo :
Edison Company for : 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. :

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PROCEEDINGS

before Mr. Gregory Price, Ms. Mandy Chiles, and
Ms. Megan Addison, Attorney Examiners, at the Public
Utilities Commission of Ohio, 180 East Broad Street,
Room 11-A, Columbus, Ohio, called at 10:00 a.m. on
Monday, October 5, 2015.

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

- - -

1 APPEARANCES:

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

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

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

17 On behalf of the Applicants.

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

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

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

On behalf of the Ohio Partners for
Affordable Energy.

1 APPEARANCES: (Continued)

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

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

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

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

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

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

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

On behalf of the Sierra Club.

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

On behalf of the Industrial Energy Users
of Ohio.

1 APPEARANCES: (Continued)

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

6 On behalf of IGS Energy.

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

12 On behalf of The Kroger Company.

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

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

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

On behalf of the Staff of the PUCO.

1 APPEARANCES: (Continued)

2 Kravitz, Brown & Dortch, LLC
3 By Mr. Michael D. Dortch
4 and Mr. Richard R. Parsons
5 65 East State Street, Suite 200
6 Columbus, Ohio 43215

7 On behalf of Dynegy, Inc.

8 Carpenter Lipps & Leland LLP
9 By Ms. Kimberly W. Bojko
10 Ms. Rebecca L. Hussey
11 Ms. Danielle Ghiloni
12 280 North High Street, Suite 1300
13 Columbus, Ohio 43215

14 On behalf of the Ohio Manufacturers'
15 Association Energy Group.

16 Carpenter Lipps & Leland LLP
17 By Mr. Joel E. Sechler
18 280 North High Street, Suite 1300
19 Columbus, Ohio 43215

20 On behalf of EnerNOC, Inc.

21 Boehm, Kurtz & Lowry
22 By Mr. Michael L. Kurtz
23 Mr. Kurt J. Boehm
24 Ms. Jody Kyler Cohn
25 36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

On behalf of the Ohio Energy Group.

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

On behalf of the Environmental Law &
Policy Center.

1 APPEARANCES: (Continued)

2 Stone Mattheis Xenopoulos & Brew, PC
3 By Mr. Michael Lavanga
4 Mr. Garrett A. Stone
5 Mr. Owen J. Kopon
6 1025 Thomas Jefferson Street, N.W.
7 Eighth Floor West Tower
8 Washington, D.C. 20007-5201

9 On behalf of the Nucor Steel Marion, Inc.

10 Barth E. Royer, LLC
11 By Mr. Barth E. Royer
12 2740 East Main Street
13 Bexley, Ohio 43209

14 and

15 Taft, Stettinius & Hollister LLP
16 By Mr. Adrian D. Thompson
17 200 Public Square, Suite 3500
18 Cleveland, Ohio 44114-2300

19 On behalf of the Cleveland Municipal
20 School District.

21 Spilman, Thomas & Battle, PLLC
22 By Mr. Derrick Price Williamson
23 Ms. Carrie Harris
24 Ms. Lisa Hawrot
25 1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, Pennsylvania 17050

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

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

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

On behalf of the Ohio Hospital
Association.

1 APPEARANCES: (Continued)

2 Ohio Environmental Council
3 By Mr. Trent A. Dougherty
4 and Mr. John Finnigan
5 1145 Chesapeake Avenue, Suite I
6 Columbus, Ohio 43212

7 On behalf of the Ohio Environmental
8 Council and the Environmental Defense
9 Fund.

10 Mr. Thomas R. Hays
11 8355 Island Lane
12 Maineville, Ohio 45039

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

16 Ice Miller, LLP
17 By Mr. Christopher Miller,
18 250 West Street, Suite 700
19 Columbus, Ohio 43215-7509

20 On behalf of the Association of
21 Independent Colleges and Universities of
22 Ohio.

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

On behalf of the Ohio Power Company.

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

On behalf of Material Sciences
Corporation.

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

1 APPEARANCES: (Continued)

2 Kegler, Brown, Hill & Ritter
3 By Mr. Christopher J. Allwein
4 and Ms. Margeaux Kimbrough
5 Capitol Square, Suite 1800
6 65 East State Street
7 Columbus, Ohio 43215-4294

8 On behalf of the EverPower Wind Holdings,
9 Incorporated.

10 City of Cleveland
11 By Ms. Kate E. Ryan
12 Assistant Director of Law
13 601 Lakeside Avenue, Room 106
14 Cleveland, Ohio 44114

15 On behalf of the City of Cleveland.

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20
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Monday Morning Session,

October 5, 2015.

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EXAMINER ADDISON: The Public Utilities Commission has set for hearing at this time and place Case No. 14-129-EL-SSO, being In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide a Standard Service Offer pursuant to RC 4928.143 in the Form of an Electric Security Plan.

My name is Megan Addison and with me are Gregory Price and Mandy Chiles and we're the attorney examiners assigned by the Commission to hear this case. We will dispense with taking appearances this morning.

Mr. Sauer, are you ready to call your next witness.

MR. SAUER: We are, your Honor, thank you. The OCC calls Professor Steven Ferrey to the stand and would like his direct testimony marked as OCC Exhibit 20.

In addition, we would ask that the professor's amended direct testimony dated October 1st, 2015 be marked as OCC Exhibit 21.

1 EXAMINER ADDISON: So marked.

2 (EXHIBITS MARKED FOR IDENTIFICATION.)

3 EXAMINER ADDISON: Please proceed,
4 Mr. Sauer

5 MR. SAUER: Thank you, your Honor.

6 - - -

7 STEVEN FERREY

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

10 DIRECT EXAMINATION

11 By Mr. Sauer:

12 Q. Please state your full name and business
13 address for the record.

14 A. Steven Ferrey. I'm a professor of law at
15 Suffolk University Law School in Boston, which is 120
16 CK Tremont Street, Boston Massachusetts.

17 Q. And are you the same Steven Ferrey whose
18 direct testimony was filed in this case?

19 A. Yes, I am.

20 Q. On whose behalf do you appear?

21 A. On behalf of the Ohio Consumers' Counsel.

22 Q. And do you have your prepared testimony
23 with you on the stand?

24 A. Yes, I do.

25 Q. And did you prepare the testimony or have

1 it prepared at your direction?

2 A. I did.

3 Q. And do you have any additional changes or
4 corrections to your direct testimony other than those
5 that appear in OCC Exhibit 21?

6 A. Yes. I have four small changes on pages
7 11 and 12, if I may.

8 MS. BOJKO: Excuse me. Could you turn
9 your microphone on, please?

10 A. I said I have changes on pages 11 and 12
11 of the testimony. If I may, first on page 11, line
12 18, after the word "particulate," I would like to add
13 "and sulfur dioxide."

14 The second change is on the same page 11
15 on line 21. After the word "for," I would like to
16 add "SO-2 and."

17 On page 12 of my testimony, on line 8,
18 after the word "matter," I would like to add "and
19 SO-2."

20 Also, on page 12, line 9, after the
21 initials "tby," I'd like to add "of SO-2 in certain
22 areas." And those are my changes.

23 Q. And if I asked you today the same
24 questions found in your direct testimony in OCC
25 Exhibit 20 and amended direct testimony appearing in

1 OCC Exhibit 21, would your answers be the same except
2 for the changes made to your direct testimony made on
3 the stand?

4 A. It would.

5 MR. SAUER: The OCC would move for the
6 admission of OCC Exhibit 20 and 21 and tender this
7 witness for cross-examination.

8 EXAMINER ADDISON: We will defer ruling
9 on the motion until after cross-examination has been
10 completed.

11 Mr. Parram, do you have any questions?

12 MR. PARRAM: No, your Honor.

13 MR. LANG: Your Honor, may I make a
14 motion to strike, please.

15 EXAMINER ADDISON: You may.

16 MR. LANG: Your Honor, the motions
17 involve Mr. Ferrey's testimony on page -- starts at
18 page 27, line 8, running through page 32. There's
19 two pieces to this. They're related. First is the Q
20 and A, question and answer, 39. On page 27 on lines
21 8 through 14, in this section, the witness is drawing
22 a legal conclusion based on Ohio law, and, in
23 particular, the Keco decision regarding the impact of
24 a severability provision in the electric security
25 plan.

1 He's not addressing the form of the
2 severability provision, but the legal result of the
3 of the severability provision. He's stated his legal
4 opinion, which infringes on the sole province of the
5 Commission to reach legal conclusions.

6 Professor Ferrey is an attorney; however,
7 he's not a licensed attorney in Ohio, and he was not
8 retained by Consumers' Counsel to provide legal
9 assistance, legal services. Even if he were a
10 licensed attorney in Ohio, it would still be improper
11 under the Ohio rules of evidence to provide testimony
12 regarding legal analysis or legal conclusions, which
13 is what he's doing in this answer 39.

14 There are many Ohio court decisions
15 excluding testimony, whether it's lay or expert, that
16 is providing legal conclusions. One court decision
17 of interest is CK Wagenheim versus Alexander Grant,
18 19 Ohio F.3rd 7. It's Franklin County Court of
19 Appeals, 1983. The issue is with regard to legal
20 conclusions. What the courts typically say is it
21 infringes on the province of the tribunal, in this
22 case, the Commission. The issue is that the expert
23 witness is not providing any fact or opinion as an
24 expert that can be helpful to the tribunal in making
25 the decision because the tribunal is the one that

1 reaches the legal conclusions in the case, not the
2 experts.

3 So I would -- that's the first part of
4 this, is that specific question and answer I move to
5 strike. Related to that, on the same grounds is the
6 remainder of page 27 running through the end of page
7 32, question and answers 40 through 49.

8 What the witness is doing hear is making
9 legal argument based on a mischaracterization of
10 company Witness Moul's testimony that the PUCO's
11 approval of rider RRS in a manner that would
12 authorize a wholesale power arrangement could violate
13 the Federal Power Act.

14 Now, besides mischaracterizing Mr. Moul's
15 testimony, Mr. Ferrey is addressing federal
16 regulation of wholesale power sales. Mr. Ferrey
17 actually makes clear that that regulation of federal
18 power sales is not within the jurisdiction of the
19 Commission. We would agree, and as a result, not
20 only is this discussion on pages 27 through 32
21 improper, it's also irrelevant to the Commission's
22 determination in this case. It does not provide
23 probative value.

24 The PUCO's authority to review the ESP is
25 defined by Ohio law. Nowhere within the scope of

1 that review is included review or approval of
2 wholesale power sales, which is the topic of
3 Professor Ferrey's testimony in this section, nor are
4 the companies asking the PUCO to approve a wholesale
5 power sale, thus these questions 40 through 49 and
6 the answers attached to should be stricken both as
7 improper legal analysis and legal conclusions and
8 also irrelevant under Rules 401 and 403.

9 Thank you, your Honor.

10 EXAMINER ADDISON: Thank you.

11 Mr. Sauer, do you have a response?

12 MR. SAUER: Thank, your Honor. It's
13 clear that under the rules of evidence a witness
14 cannot provide legal conclusions. What Professor
15 Ferrey is doing is offering his understanding and his
16 interpretation as a regulatory expert, and we're in
17 week 6 of the hearing where countless witnesses have
18 been permitted as regulatory experts to provide
19 opinions and interpretations on many legal issues
20 including contract interpretations under the PPA term
21 sheet, permissibility of regulations under the
22 4928.143. Environmental regulations have been -- the
23 requirements of environmental regulations have been
24 discussed as well.

25 EXAMINER PRICE: But in all fairness,

1 nobody has discussed cases the way this witness has
2 discussed what cases say. I agree that we've allowed
3 people to interpret regulations, and I agree that
4 we've allowed people to discuss statutes and policy
5 provisions, but what I cannot recall off the top of
6 my head is anybody talking about what this case means
7 and what that case means.

8 MR. SAUER: Well, the Commission's teed
9 this up, your Honor, by asking the companies for a
10 severability provision, which will allow in the event
11 a PUCO order approving the RRS is overturned by a
12 court of competent jurisdiction, and Professor Ferrey
13 is just laying out the risks that could occur if that
14 happens, and he's giving occurrences where in New
15 Jersey and Maryland there's been state actions where
16 PPAs were approved by the commissions in those states
17 and later overturned by a court of competent
18 jurisdiction.

19 Our concern, and as he lays out in his
20 testimony, is that if there is a situation where
21 rider RRS is approved and the litigation takes
22 numerous years and there have been collections under
23 rider RRS, customers could be harmed by that event in
24 the event there couldn't be a refund of those
25 collections. So I think his testimony is relevant.

1 It goes --

2 EXAMINER PRICE: Why can't you make those
3 arguments on brief? If you're talking about Keco,
4 why can't you talk about Keco in your brief?

5 MR. SAUER: Your Honor, that's possible,
6 too. We'd like to have the opportunity to present
7 direct evidence to the Bench, and the Bench can give
8 it the weight the Bench determines it deserves.

9 EXAMINER PRICE: So you agree he's giving
10 a legal opinion? You just want us to hear it.

11 MR. SAUER: No, I think he's laying out
12 for the Bench the risk that may be present if rider
13 RRS is approved.

14 EXAMINER ADDISON: Mr. Lang, do you have
15 anything to add?

16 MR. LANG: Your Honors, with regard to
17 the severability analysis, there are -- I believe it
18 was two questions and answers, 37 and 38, I did not
19 move to strike because that does not involve the
20 legal analysis. That then starts on questions 39 and
21 following. So I believe that the motion I've made is
22 properly limited to his legal analysis, not to a
23 description of, for example, the Commission's
24 discussion and the AEP order of a severability
25 provision where he's discussing kind of the fact of

1 the severability provision I did not move to strike.

2 Where he is discussing or providing his
3 legal analysis, that's the part I have moved to
4 strike and the companies move to strike. This
5 issue -- the statement that he's providing
6 interpretation as a regulatory expert, again, this is
7 legal discussion. It's not regulatory analysis.
8 It's not policy discussion.

9 The Bench has distinguished between, for
10 example, discussions of 4928.02 as policy versus
11 providing legal analysis and conclusions, which is
12 what this witness is doing. One, the policy
13 analysis -- the analysis of regulatory policy, the
14 Bench has permitted witnesses to provide. This is a
15 different issue, which is legal analysis and
16 conclusions. It's not policy; therefore, I believe
17 it's improper. And as Attorney Examiner Price noted,
18 it can be made on brief.

19 MS. BOJKO: Your Honor, may I be heard,
20 please?

21 EXAMINER ADDISON: You may.

22 MS. BOJKO: There's company testimony in
23 the record that talks about what happened in choice
24 in different states. It talks about West Virginia.
25 It talked about different programs in different areas

1 in different states. I see a question and answer 40
2 and 41 doing the same thing, talking about what
3 happened in New Jersey, what happened in Maryland.

4 There's also been discussion in the
5 companies' testimony about the severability clause
6 and the lack of risk that it poses on customers in
7 this case, so I think that we have every right to
8 explore the alternative. If the company is going to
9 put these things in their testimony and the
10 Commission is going to ask for these factors in how
11 the companies' application meets or doesn't meet the
12 factors, then intervenors need the opportunity to
13 present testimony that does just that, and that's
14 what several of these Q and As do.

15 Without the citations, they do exactly
16 what the other companies' witnesses did. We went
17 through testimony -- I can't recall the witness right
18 now sitting here today after six weeks of hearing,
19 but he went through several state cases and what they
20 did or did not do with regard to choice programs and
21 different alternatives.

22 EXAMINER PRICE: You're going to have to
23 do better than "I remember a witness at some point
24 discussing some case." It's been six weeks.

25 MR. MENDOZA: Your Honor, may I be heard.

1 EXAMINER ADDISON: Yes, Mr. Mendoza.

2 MR. MENDOZA: I would note some of the
3 statements in these sections do not relate
4 exclusively to legal issues. Some are factual
5 statements. For example, in question and answer 48,
6 without looking at every statement in there, the
7 witness talks about how the application for the
8 Commission would affect wholesale rates and makes
9 factual -- essentially factual statements about how,
10 I guess he's talking about rider RRS, I assume, would
11 impact wholesale rates, and those statements are
12 factual conclusion.

13 EXAMINER PRICE: That's true. But if we
14 start parsing through there and carving out this line
15 and that line, it's not really going to be his
16 testimony anymore, is it? I mean, I understand what
17 you're saying. I wish there was a cleaner way to
18 allow some of what he's saying and not all of it.

19 EXAMINER ADDISON: At this time, we are
20 going to grant in part and deny in part the motion to
21 strike. We will grant the motion to strike from the
22 footnote No. 18, indicated on page 27 through page
23 32, line 14; however, we will deny the motion to
24 strike for lines 8 through 14 on page 27 up to the
25 footnote. Any additional arguments can be made on

1 brief.

2 MR. LANG: Thank you, your Honor.

3 EXAMINER ADDISON: Did you have any other
4 motions to strike, Mr. Lang?

5 MR. LANG: That was it, your Honor.
6 Thank you.

7 EXAMINER ADDISON: Ms. Bojko, do you have
8 any questions for this witness?

9 MS. BOJKO: I do not, your Honor, thank
10 you.

11 EXAMINER ADDISON: Mr. Mendoza.

12 MR. MENDOZA: No questions, your Honor.

13 EXAMINER ADDISON: Mr. Kurtz?

14 MR. KURTZ: Your Honor, if I could go
15 after the company, I probably don't, but I think
16 that's the way we've been proceeding.

17 EXAMINER ADDISON: Certainly, Mr. Kurtz.
18 Mr. Lang?

19 MR. LANG: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Lang:

23 Q. And good morning, Professor Ferrey.

24 A. Good morning, Mr. Lang.

25 Q. You've been a law professor since 1985,

1 correct?

2 A. That is correct.

3 Q. And, however, with regard to the purpose
4 of your retention in this matter, you are not
5 offering legal assistance to the Office of Consumers'
6 Counsel, correct?

7 A. Yes, that's correct.

8 Q. And the Office of Consumers' Counsel did
9 not retain you to assist them with legal services,
10 correct?

11 A. Correct.

12 Q. Now, take you back a little in time back
13 to the 1970s. You were in a two-year Master's
14 program at UC Berkeley, correct?

15 A. I was.

16 Q. And that was in the mid-1970s.

17 A. That was, yes.

18 Q. During that time you took some classes in
19 energy that were offered at UC Berkeley?

20 A. I did, yes.

21 Q. Was that part of the Master's program or
22 were those undergraduate classes?

23 A. Those were largely part of the Master's
24 program.

25 Q. So just some of them were undergraduate

1 classes.

2 A. No, they were not undergraduate classes,
3 no. I did a joint law degree and Master's degree,
4 and there would have been energy classes in the
5 Master's program that I focused on.

6 Q. Now, since that time you have not
7 received any technical education in environmental
8 studies, correct?

9 A. That is correct.

10 Q. And you've not received any education or
11 training with regard to power plant operations; is
12 that correct?

13 A. That is correct.

14 Q. And you have not received any education
15 or training that would be specific to pollution
16 controls at electric generating facilities, correct?

17 A. That is correct.

18 Q. And you also do not -- fair to say you do
19 not have any practical experience in operating a coal
20 or nuclear plant?

21 A. That is correct.

22 Q. Is it also true that you have not had any
23 responsibility for operating or designing pollution
24 controls at fossil generating stations?

25 A. That is correct.

1 Q. Now, you are familiar with generally that
2 PJM has energy and capacity markets, correct?

3 A. Yes.

4 Q. However, you have not had any education,
5 training, or experience involving the bidding of
6 energy into the PJM energy markets, correct?

7 A. That is correct with respect to PJM.

8 Q. And you have not had any education,
9 training, or experience involving the offering of
10 capacity into the PJM capacity markets, correct?

11 A. That is correct for PJM.

12 Q. And you have not done any studies looking
13 at the impact of environmental regulations on the
14 dispatch of generating units into PJM's energy
15 market, correct?

16 A. Correct.

17 Q. Now, you are aware that the USEPA has
18 issued carbon regulations referred to as the Clean
19 Power Plan, correct?

20 A. Correct.

21 Q. Is it true that you have not analyzed the
22 legality of the Clean Power Plan?

23 A. I have not done a formal analysis of the
24 legality of it. I am aware of possible concerns.

25 Q. And with regard to being aware of

1 possible concerns, that's simply a reference to that
2 there may be litigation upcoming -- well, current and
3 upcoming involving the Clean Power Plan, correct?

4 A. Both that there is litigation going on
5 and upcoming, as well as there has been debate in the
6 Congress as to its potential legality or illegality.

7 Q. Now, for purposes of identification of
8 reaching the conclusions that are set forth in your
9 testimony, you did not conduct any studies in order
10 to enable you to reach those conclusions, correct?

11 A. I did no independent studies, as I
12 understand you to mean "studies."

13 Q. And you did not do any analysis specific
14 to the Sammis plant for purposes of preparing your
15 testimony, correct?

16 A. That is correct.

17 Q. Now, if you can turn to page 4 of your
18 testimony. Now, on page 4 in the middle of the page,
19 you list five emission categories, and you say
20 they're either the focus of EPA regulations either
21 recently instituted or likely to be instituted,
22 correct?

23 A. Yes.

24 Q. And when you use the word "pending" in
25 your testimony, you mean regulations that are final

1 as well as regulations that are proposed but not yet
2 final, correct?

3 A. Correct.

4 Q. Now, with regard to the environmental
5 regulations related to the emissions that you have
6 here on page 4 -- let's back up. Do you agree that
7 there are environmental regulations that are not
8 source-specific?

9 A. Yes.

10 Q. And environmental regulations that are
11 not source-specific simply means that the USEPA's
12 regulations do not set limits on specific sources,
13 correct?

14 A. Some of them do not, correct.

15 Q. And carbon regulation under Clean Air Act
16 Section 111(d) known as the Clean Power Plan, that
17 would be an example of a regulation that is not
18 source-specific, correct?

19 A. That is not source-specific pending state
20 compliance with that and no federal implementation
21 plan substituted because of state inaction, correct.

22 Q. And there's certainly nothing in the
23 Clean Power Plan federal provisions that are directed
24 at specific emission sources of carbon, correct?

25 A. Yes. In this initial implementation,

1 they're directed at state compliance, which is not
2 source-specific.

3 Q. And then would you also agree that
4 regulation of sulfur dioxide, nitrogen oxide,
5 particulate matter and ozone under the national
6 ambient air quality standards are also not
7 source-specific.

8 A. Under the National Ambient Air Quality
9 Standards, the restrictions or requirements are
10 regional, and they are not source-specific; although,
11 there are other permit requirements that can be
12 source-specific.

13 Q. Now, you have not made any particular
14 assessments of the specific impact on the Sammis
15 plant of any of the environmental regulations
16 described on page 4 and the following pages of your
17 testimony, correct?

18 A. That is correct.

19 Q. And you are not offering an opinion that
20 any of these proposed regulations will have a
21 significant impact specifically on the Sammis plant,
22 correct.

23 A. I'm not offering an opinion specifically
24 either way.

25 Q. And it's also fair to say that the

1 Davis-Besse plant would not be particularly affected
2 by any of these air regulations.

3 A. That is -- yes, as a general statement,
4 that's true.

5 Q. With respect to these five categories
6 that you discuss in your testimony, and they're
7 listed on page 4, you have not identified any that
8 will cause the Sammis plant to incur additional
9 costs, correct?

10 A. I have not made an effort to identify any
11 that would require incursion of additional costs as
12 opposed to existing costs.

13 Q. And is it correct that you have not
14 reviewed the companies' 15-year cost forecast for the
15 Sammis plant, the Davis-Besse plant, and the OVEC
16 interest that's been submitted in this case?

17 A. Not for purposes of my testimony, no.

18 Q. And if you haven't done it for purposes
19 of your testimony, you haven't done it for any other
20 reason, correct?

21 A. That's correct; although, I have seen
22 some of the testimony that has been given.

23 Q. Now, if I could take you back to page 21
24 of your testimony, I'm going to skip around a little
25 bit here. Down at the bottom of page 21, starting at

1 line 18 and continuing through the end of the page
2 there, you're referring to Company Witness Moul's
3 supplemental testimony, and at line 20, you have a
4 reference to the Sammis plant air quality control.

5 With regard to that air quality control
6 project that Mr. Moul references, is it fair to say
7 that you do not know whether that AQC project where
8 it's performed in the past will be performed in the
9 future?

10 A. I've not particularly looked at what will
11 be required in the future. I'm just referencing
12 Mr. Moul's statement.

13 Q. And with regard to the AQC project, do
14 you know whether that project has been completed?

15 A. I know that there have been substantial
16 investments in air quality control at Sammis. I
17 don't know whether it's completed at this time or
18 not.

19 Q. In preparing your testimony, did you
20 review Company Witness Harden's testimony regarding
21 the operational characteristics and environmental
22 controls at the Sammis plant?

23 A. I don't recall if I did or didn't.

24 Q. So is it fair to say you do not know
25 whether the costs of the AQC project are already

1 included in the companies' 15-year forecast?

2 A. I assume that a fair degree of those
3 costs are included in the 15-year forecast. The
4 evaluation I have made here is whether these plants
5 are likely to be cost effective to be run in the
6 current phase and/or with any new improvements that
7 are required under the Clean Power Plan.

8 MR. LANG: Could I have his answer read
9 back, please?

10 EXAMINER ADDISON: You may.

11 MR. SAUER: Thank you.

12 (Record read.)

13 Q. So, Professor Ferrey, your response was
14 you assume a fair degree of the AQC project costs are
15 included in the companies' cost forecast. Do you
16 know whether all of those costs are included in the
17 companies' cost forecast?

18 A. Well, I don't know whether there will be
19 any future costs and whether there are other
20 maintenance costs associated with the operation of
21 the air quality control mechanisms.

22 Q. Now, in preparing your testimony, you did
23 review Company Witness Evans' supplemental testimony
24 filed on May 4th, 2015, addressing environmental
25 issues, is that true?

1 A. I did, yes.

2 Q. And you read in his testimony that
3 there's a 2005 consent decree between the United
4 States and Ohio Edison that sets SO-2 emission limits
5 for each individual unit at Sammis. Do you remember
6 that?

7 A. I do recall there was a substantial
8 investment in the 2005 period, yes, sir.

9 Q. And with respect to the consent decree
10 that's in his testimony, did you review that consent
11 decree to see how its limits on SO-2, NOx, and
12 particulate matter compare to the National Ambient
13 Air Quality Standards?

14 A. I did not.

15 Q. And just so I'm clear, did you review the
16 consent decree for any purpose?

17 A. I did not.

18 Q. So as we sit here today, you do not -- is
19 it correct that you do not know whether the Sammis
20 plant has any court-imposed SO-2 or NOx emission
21 limits?

22 A. I believe in the consent decree it does
23 have certain investments that have been committed to,
24 yes.

25 Q. But that's not something you've reviewed,

1 and so you're assuming that; you don't actually know
2 that, correct?

3 A. I did not review it, yes.

4 Q. Do you know whether the AQC project
5 that's referenced in Company Witness Moul's testimony
6 is the result of the 2005 consent decree?

7 A. Specifically, I do not know. As I
8 recall, there were investments, substantial
9 investments, made in the 2005 period and, perhaps,
10 some subsequently, perhaps five years subsequently.

11 Q. Now, on page 5 of your testimony, if I
12 could have you turn there. And, Professor Ferrey, on
13 page 5 of your testimony, you're providing some
14 general discussion of sulfur content and particulate
15 matter content of different fuel types.

16 Is it correct that your understanding of
17 sulfur content and particulate matter content for
18 different fuel types is based on work you did for a
19 client in the late 1990s and early 2000s?

20 A. Well, I think I'm knowledgeable generally
21 about what is in the literature on this, and it is
22 correct in the late 1990s and since then I have
23 worked for clients that have been concerned with
24 fossil fuel emission output.

25 Q. Understanding that you have done other

1 work, your understanding of the sulfur content and
2 the particulate matter content for different fuel
3 types is based on the work that you did in the late
4 1990s and early 2000s, correct?

5 A. And the current literature.

6 Q. Now, with regard to the Clean Power Plan
7 relating to carbon emissions you start discussing on
8 page 6, continuing on pages 7 and additional pages of
9 your testimony, at a high level, you'll agree that
10 the Clean Power Plan will not eliminate carbon
11 emissions at existing fossil fuel plants in the
12 United States, correct?

13 A. In its current form, it will not,
14 correct.

15 Q. And the Clean Power Plan leaves room for
16 many coal-fired power plants to continue to operate
17 through 2030 and beyond, correct?

18 A. It does leave room for many fossil plants
19 to operate. There are a multitude of decisions that
20 states will have to make to exactly how that sorts
21 out. But, yes, it leaves room, potentially leaves
22 room.

23 Q. And you have not done any analysis or
24 conducted any studies regarding what the impact of
25 the Clean Power Plan will be, correct?

1 A. I've done no independent studies,
2 correct.

3 Q. Now, you've attached to your testimony
4 the PUCO's comments on the proposed Clean Power Plan
5 that was submitted to the USEPA on December 31, 2014,
6 correct?

7 A. Correct.

8 Q. Now, the PUCO in its comments estimated
9 that redispatching gas units out of order ahead of
10 coal units could cost Ohio consumers approximately
11 \$2.5 billion each year by 2025. You actually cite
12 that at the top of page 20 of your testimony,
13 correct?

14 A. I do, yes.

15 Q. And by citing it in your testimony at the
16 top of page 20, are you representing that you agree
17 with the PUCO's modeling of redispatching gas units
18 out of order?

19 A. No, I'm not saying I agree with it.
20 Obviously, this depends -- dispatch is a larger
21 function of the independent system operator and which
22 one belongs, and, obviously, fuel prices have
23 continued to change since these comments. So -- and
24 we also do not know what new units will be available
25 or precisely what demand will be.

1 So I'm not saying I necessarily agree
2 that this cost will be there. Certainly the
3 independent system operators dispatch largely based
4 on costs, and they seek to minimize costs over the
5 course of an operating day.

6 Q. You haven't done any modeling of the type
7 that the PUCO staff did that's referenced in the
8 comments; is that correct?

9 A. That is correct.

10 Q. However, you would agree that there could
11 to be a significant upward impact on retail energy
12 prices depending upon how Ohio and other PJM states
13 decide to implement the Clean Power Plan, correct?

14 A. There could be an impact in that
15 direction. There also could be a downward impact, so
16 it depends on fuel prices. It depends on new
17 available units. It depends on under the Clean Power
18 Plan whether states try to operate regionally or
19 operate individually. It depends on whether they use
20 a mass base standard or a rate base standard. It
21 depends on whether they allow new entrance extra
22 credits between 2018 and 2021. It depends on whether
23 they include new gas combined cycle plants within the
24 111(d) Clean Power Plan program or whether they
25 don't. There are a variety of elections that will

1 occur not only in Ohio, but in all of the 13 PJM
2 states and the bordering MISO states.

3 MR. LANG: Your Honor, at this time I
4 would move to strike his response everything after
5 "there could be," which was responsive to my
6 question, and then I think the rest was an
7 explanation that if he wanted to, he could provide on
8 redirect.

9 EXAMINER ADDISON: Mr. Sauer, do you have
10 a response.

11 MR. SAUER: He was providing context to
12 the question that was asked.

13 EXAMINER ADDISON: Thank you. At this
14 time I'm going to deny the motion to strike.

15 But I will also direct, Mr. Ferrey, if
16 you could just answer the question posed by counsel.
17 Then Mr. Sauer can bring any additional information
18 out on redirect.

19 Q. (By Mr. Lang) Professor Ferrey, you
20 amended your testimony to make reference to the final
21 Clean Power Plan, correct.

22 A. Yes, I did.

23 Q. You agree that Ohio is not obligated to
24 implement any of what are called the building blocks
25 that are in the Clean Power Plan.

1 A. Yes. Ohio has discretion as to how to
2 meet the standard.

3 Q. And the final Clean Power Plan does not
4 place limits on carbon emissions from specific
5 coal-fired power plants, correct?

6 A. That is correct. It calculates based
7 on -- for a state, based on individual existing power
8 plant and their emissions, but it does not place
9 going-forward requirements on specific plants.

10 Q. Now, let me make sure I have it right.
11 On page 7, lines 14 and 15, you state that the Clean
12 Power Plan "could affect the frequency of dispatch
13 orders and protocols for coal plants' dispatch."

14 You have not studied whether the Clean
15 Power Plan will affect the frequency of dispatch
16 orders and protocols for the Sammis plant, correct.

17 A. That is correct.

18 Q. And also on page 7, line 10, of your
19 testimony, where you say, "In some states this
20 constitutes up to a 50% cut in carbon emissions," but
21 the reference to "some states" does not include Ohio,
22 correct?

23 A. Ohio has a somewhat lesser cut in carbon
24 emissions than the maximum, which is just slightly
25 less than 50 percent in some other states.

1 Q. I believe I asked you earlier if you had
2 done modeling specific to redispatch under building
3 block 2. Is it true that you have not done any
4 modeling of the impact of the Clean Power Plan?

5 A. That is correct.

6 Q. And you've not reviewed any modeling of
7 the impact of the Clean Power Plan specific to the
8 Sammis plant, correct.

9 A. That is correct, other than having seen
10 some of the testimony in this proceeding.

11 Q. Now, on page 8 of your testimony, where
12 you start discussing the Cross State Air Pollution
13 Rule or CSAPR, and the discussion here on page 8 is
14 copied from or paraphrasing of information on the
15 USEPA's website; is that correct?

16 A. Let me look at it. Not having EPA's
17 website in front of me, I'm not sure of the degree to
18 which it paraphrases or doesn't.

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

20 EXAMINER ADDISON: You may.

21 MR. LANG: Companies' Exhibit 66.

22 EXAMINER ADDISON: So marked.

23 MR. LANG: Your Honors, if I could have
24 this document, has the title "Cross State Air
25 Pollution Rule" at the top of it, if I could have

1 that marked as Companies' Exhibit 66, please.

2 EXAMINER ADDISON: I believe it's been
3 marked.

4 MR. LANG: Thank you.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. Professor Ferrey, are you familiar with
7 this document? It's actually a printout from the EPA
8 website.

9 A. I accept it as coming from the EPA
10 website. I'm not sure the degree to which I'm
11 familiar with it.

12 Q. With regard to the CSAPR rule in
13 particular, have you reviewed the information
14 available on the EPA website to identify what updates
15 have occurred with regard to the CSAPR rule or to
16 follow events related to the CSAPR rule?

17 A. I have followed events in terms of it
18 being upheld, yes.

19 Q. Let's back up a little.

20 MR. LANG: Your Honors, if I could
21 approach and have a separate document marked as
22 Companies' Exhibit 67.

23 EXAMINER ADDISON: You may approach.

24 This document will be marked as
25 Companies' Exhibit 67.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Professor Ferrey, do you have in front of
3 you what has been marked as Companies' Exhibit 67?

4 A. Yes, I do.

5 Q. And this would be at least the first ten
6 pages or so of the document cited on page 8 in your
7 footnote 8 as 76 Federal Register 48208; is that
8 right?

9 A. That is correct.

10 Q. And your page 8, you also have pinpoint
11 citation to page 48216, and you'll recognize that as
12 the last page of the companies' Exhibit 67, correct?

13 A. I do see that page.

14 Q. So is Companies' Exhibit 67 the content
15 and executive summary of the CSAPR rule that was
16 published on August 8th, 2011, that you reference in
17 your testimony?

18 A. I do reference this in my testimony.

19 Q. On page 8 of your testimony, line 8, you
20 say that CSAPR applies to fossil fuel fired power
21 plants in 27 Eastern states, including Ohio. And
22 that 27 states would be what is addressed in
23 August 8th, 2011 rule, correct?

24 A. Yes.

25 Q. And since this rule was issued, there was

1 also a separate proceeding involving CSAPR which had
2 the effect of adding an additional state, so it's now
3 28 states, correct?

4 A. I believe that's correct.

5 Q. And on Companies' Exhibit 66 from the EPA
6 website, in that first paragraph, it now says that
7 CSAPR requires a total of 28 states to reduce their
8 SO-2 and NOx emissions, correct?

9 A. Where are you reading from?

10 Q. The other exhibit I gave you, Companies'
11 Exhibit 66 on CSAPR, in the first paragraph, six
12 lines down, it says, "CSAPR now requires a total of
13 28 states."

14 A. Yes, it does.

15 Q. And sorry to jump back and forth, but to
16 take you back to Companies Exhibit 67, the 2011 rule
17 that was issued, on page 48209, do you see in the far
18 right column there's an Executive Summary?

19 A. Yes.

20 Q. And in the second sentence of that
21 Executive Summary, it says, "In this final rule, EPA
22 finds that emissions of SO-2 and NOx in 27... states
23 contribute significantly to nonattainment or
24 interfere with maintenance..., " and it goes on. Do
25 you see that statement?

1 A. I do.

2 Q. Do you agree that CSAPR as a rule
3 addresses cross-state transmission of SO-2 and NOx?

4 A. Yes.

5 Q. Now, in your testimony on page 8,
6 starting at line 10 going through line 13, you say,
7 "CSAPR specifically requires significant reductions
8 in SO-2, NOx, and Hazardous Air Pollutants, including
9 mercury." You agree that the reference to "hazardous
10 air pollutants including mercury" is incorrect?

11 A. Well, it's a secondary reference, because
12 NOx and SO-2, when you reduce them, also have the
13 effect of reducing other precursors that they are
14 part of and typically also reduce mercury.

15 Q. However, your testimony states that
16 "CSAPR requires significant reductions."

17 Professor Ferrey, if you could turn your
18 microphone on again, please. Sometimes it will cut
19 out.

20 The only reductions required by CSAPR are
21 SO-2 and NOx, correct

22 A. That is correct.

23 Q. And when you have the reference at the
24 end of line 12 going to 13 where you say, "as well as
25 certain fine particulate PM 2.5 precursor emissions,"

1 those fine particulate PM 2.5 precursor emissions are
2 SO-2, correct?

3 A. I think that's what it says. It says
4 that SO-2 and it is the precursor emission there.

5 Q. Now, on Companies' Exhibit 66, which is
6 the website from the EPA, I'm comparing that to your
7 testimony on page 8, lines 9 and 10. Your testimony
8 says, "CSAPR requires such to significantly improve
9 air quality by reducing power plant emissions."

10 Is this website where you carried over
11 the statement that's in your testimony on page 8,
12 lines 9 and 10, and I'm referring specifically to,
13 again, the first paragraph of Company Exhibit 66
14 where it says, starting in the second line, "This
15 rule, known as the Cross State Air Pollution Rule
16 (CSAPR), requires states to significantly improve air
17 quality by reducing power plant emissions." So the
18 only difference between the website -- the website
19 says "states." Your testimony says "such," correct?

20 A. The CSAPR requirements are on states,
21 yes.

22 Q. And I guess my question is, is this
23 website statement, is that where you carried over the
24 statement that's in your testimony on page 8, lines 9
25 and 10?

1 A. I don't understand the question.

2 Q. Is Company Exhibit 66, and particularly
3 the first paragraph of Company Exhibit 66, your
4 source material for the statement that you have on
5 page 8 and actually your answer 10 on page 8, but in
6 particular the sentence that you have on lines 9 and
7 10?

8 A. I don't know that Exhibit 66, which is a
9 screen shot of one of the EPA websites, is the source
10 or not of my statement.

11 Q. With regard to your answer 11 on page 8,
12 referring to the "part of a suite of other state and
13 federal rules, together, are designed to result in
14 power plant emissions reductions of 73 percent for
15 SO2 and 54 percent for NOx," if you look at the back
16 page of Company Exhibit 66, the first full paragraph
17 there that starts, "CSAPR will take effect starting,"
18 and then is that next sentence, the source of
19 material for your answer 11 on page 8?

20 A. Yes.

21 Q. Now, as originally enacted, CSAPR was
22 supposed to commence January 1 of 2012; is that your
23 understanding?

24 A. Yes. It was promulgated, if I recall
25 correctly, in 2011 to replace the CAIR program, which

1 had been stricken by the DC Circuit as impermissible
2 from a few years earlier.

3 Q. And then this rule that was issued in
4 2011 was subject to litigation again, so it did not
5 go into effect in 2012, correct?

6 A. Correct.

7 Q. And is it your understanding that the
8 first phase of CSAPR went in effect January 1, 2015?

9 A. It is.

10 Q. Do you agree that CSAPR addresses
11 interstate transport of what's referred to as the
12 criteria pollutants that are addressed by the
13 National Ambient Air Quality Standards?

14 A. I do, yes.

15 Q. And there are six criteria pollutants,
16 correct?

17 A. Correct.

18 Q. Mercury is not one of those six, correct?

19 A. That is correct, it is considered a
20 hazardous air pollutant under Section 112 of the
21 Clean Air Act.

22 Q. That's dealt with in the Mercury and Air
23 Toxics Standards Act, correct?

24 A. Yes, and otherwise in other sections that
25 deal with it.

1 Q. Now, CSAPR is implemented through state
2 implementation plans, correct?

3 A. Correct.

4 Q. You have not looked at Ohio state's
5 implementation plan for CSAPR; is that correct?

6 A. I have not.

7 Q. And is it fair to say you have not
8 studied whether the Sammis plant is in compliance
9 with CSAPR?

10 A. That is correct. I have read the
11 testimony of some company witnesses that suggest that
12 it is in compliance. I've been more concerned with
13 the cost aspects rather than the specific compliance
14 or noncompliance today.

15 Q. However, just to be clear, you haven't
16 identified any cost aspects of CSAPR that would be
17 specific to the Sammis plant, correct.

18 A. I have not attempted to, and I have not
19 done so.

20 Q. Now, on page 9 of your testimony at line
21 9, you refer to EPA letters that were sent out in
22 March of 2015. With regard to those letters, you
23 don't know if one was sent to the state of Ohio,
24 correct?

25 A. I have not attempted to determine that,

1 no.

2 Q. Is it your testimony that the letter
3 involved area designations for the 1-hour SO-2
4 standard?

5 A. Yes.

6 Q. Now, on page 9, lines 17 through 19, you
7 have a sentence there that lists five counties in
8 Ohio that have been designated nonattainment for the
9 1-hour SO-2 standard, correct?

10 A. Yes.

11 Q. And Jefferson County is not one of those
12 counties, correct?

13 A. That is listed on page 9?

14 Q. Oh, I'm sorry. Jefferson County is one
15 of those counties, correct?

16 A. Correct.

17 Q. And, however, only the southern half of
18 Jefferson County where the city of Steubenville is
19 located is what's designated as nonattainment,
20 correct?

21 A. That is my understanding, yes.

22 Q. The northern part of Jefferson County
23 where the Sammis plant is located is not designated
24 nonattainment, correct?

25 A. That is my understanding.

1 Q. Now, your discussion on page 9 of the
2 large source area designations is drawn from an EPA
3 fact sheet that you reviewed, correct?

4 A. Where are you referencing this, please?

5 Q. Well, let me just ask you if that's true.
6 Is your understanding of the large source area
7 designations on page 9 in reference to this letter
8 that went out in March of 2015, your understanding of
9 that is drawn from an EPA fact sheet; is that true or
10 not?

11 A. It's drawn from EPA information. I'm not
12 sure I would call it a fact sheet, but publicly
13 available information.

14 MR. LANG: Your Honor, may I approach?

15 EXAMINER ADDISON: You may.

16 MR. LANG: Your Honor, could I have
17 marked as Company Exhibit 68 this fact sheet that at
18 the top of it says it relates to "Area Designations
19 for the National Air Quality Standard for Sulfur
20 Dioxide Established in 2010?"

21 EXAMINER ADDISON: So marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. Professor Ferrey, if you could review
24 Company Exhibit 68, and let me know if you recognize
25 this as the EPA fact sheet that relates to the

1 March 2015 EPA letters that you reference on page 9
2 of your testimony?

3 A. Okay. I've had a chance to look at this.

4 Q. Okay. And back to my question, do you
5 recognize this as USEPA fact sheet that describes the
6 March 2015 EPA letters that went out with regard to
7 large designation of large pollution sources?

8 A. Yes, I think that is true.

9 Q. And in your testimony on page 9, lines
10 10-11, you specifically state that the letter
11 involved counties in states that have large pollution
12 sources, and the EPA actually identified those large
13 pollution sources for the states based on EPA data,
14 correct?

15 A. Yes, they did.

16 Q. And let me make sure I get the number
17 right. There were 69 sources that were identified,
18 correct?

19 A. Well, having not counted them, I think
20 that's roughly correct, yes.

21 Q. And I'm referencing the second page of
22 the document under No. 2 AEP A has identified 69
23 sources to meet these criteria. So you would agree
24 EPA identified 69 sources.

25 A. What page are you on, again?

1 Q. On the second page under numeral 2, lower
2 case a.

3 A. And it says -- oh, I see where you are
4 now. Yes. Okay.

5 Q. So the only two sources identified in
6 Ohio are the Gavin plant and Zimmer plant, correct.

7 A. With regard to the 1-hour SO-2 standard,
8 that's the only two that have been identified.

9 Q. Do you understand that with the 1 -- with
10 regard to the 1-hour SO-2 standard, Ohio has a state
11 implementation plan addressing counties that are in
12 nonattainment for that particular standard?

13 A. Yes.

14 Q. However, you have not reviewed Ohio's
15 state implementation plan for the 1-hour SO-2
16 standard, correct?

17 A. Correct.

18 Q. And you do not know what Ohio's state
19 implementation plan for the 1-hour SO-2 standard
20 includes, correct?

21 A. Correct.

22 Q. And you do not know whether or not Ohio
23 has adopted an allowance system to implement CSAPR,
24 correct?

25 A. I believe it has.

1 Q. So is that something you've identified
2 since your deposition?

3 A. I don't know whether I've identified it
4 since my deposition. My general understanding is it
5 uses an allowance system, but I've not specifically
6 focused on that.

7 Q. And you have not studied the impact of
8 CSAPR on the Sammis plant specifically, correct?

9 A. Correct.

10 Q. So what you provide in your testimony is
11 a discussion of hypothetical impacts that CSAPR might
12 have on fossil plants generally, correct?

13 A. It's just a statement that it will have
14 an impact on a number of states and a number of
15 fossil plants, correct.

16 Q. And you do not know whether CSAPR will
17 have any impact on the Sammis plant, correct.

18 A. I have not studied whether it will have
19 any particular impact on the Sammis plant.

20 Q. So the answer to my question is correct,
21 you don't know.

22 A. Correct, I've not made any independent
23 assessment of that.

24 Q. And you do not know whether the 1-hour
25 SO-2 National Ambient Air Quality standard will have

1 any impact on the Sammis plant, correct?

2 A. You're saying beyond any impact that it
3 may already have had; is that the nature of your
4 question?

5 Q. If you can ask that again.

6 A. I'm sorry. You're saying -- you're
7 asking me whether I know whether it will have an
8 impact beyond any financial impacts that have already
9 been absorbed?

10 Q. Any impact at all from today through the
11 next 15 years.

12 A. Well, if Sammis is already meeting the
13 standard, it may have already had a financial impact.
14 If for some reason it does not meet the standard, of
15 which I have no basis to assume that it does not,
16 then it could have an additional financial impact.

17 Q. Professor Ferrey, do you remember being
18 deposed on June 19th, 2015, correct?

19 A. I do.

20 Q. And that would have been a telephonic
21 deposition where you were in Boston at the time.

22 A. Correct.

23 Q. And there was a court reporter there that
24 took down my questions and your answers and, among
25 other things, swore you in and you agreed to tell the

1 truth, correct?

2 A. Correct.

3 MR. LANG: Your Honors, may we approach?

4 EXAMINER ADDISON: You may.

5 Q. Professor Ferrey, do you have a copy of
6 your deposition transcript in front of you from the
7 June 19th, 2015, deposition?

8 A. Yes, I do.

9 Q. If I could ask you to turn to page 74.
10 Are you there?

11 A. Yes, I am.

12 Q. Great. Now, on line 6, I'm going to read
13 along -- I'm going to read. If you can follow along,
14 ROSE please.

15 On line 6 I asked the question: "And you
16 do not know whether the 1-hour SO2 NAAQS will have
17 any impact on Sammis itself, correct?"

18 And you answer: "Correct."

19 Did I read that correctly?

20 A. You did, and I think that is consistent
21 with what I just said.

22 Q. Now, you do not know whether the NOx
23 National Ambient Air Quality Standard will have any
24 impact on the Sammis plant, correct.

25 A. And as I asked you before, are you saying

1 any additional impact?

2 Q. If you could answer my question, please.

3 A. Okay. Let me try. Going forward from
4 now, I have not made any assessments and do not know
5 whether there will be any additional impact from NOx
6 regulation on Sammis.

7 Q. So the answer to my question is yes, you
8 do not know.

9 A. Going forward, I do not know.

10 Q. While you're limiting it by saying "going
11 forward," the answer, in fact, is you do not know,
12 correct?

13 MR. SAUER: Objection.

14 EXAMINER ADDISON: Overruled.

15 A. You asked me just a few moments ago
16 regarding past expenditures at Sammis, and I said
17 that in response to your question I knew that there
18 had been substantial expenditures in the past to
19 control several criteria pollutants, and I have not
20 made a study and do not know going forward whether
21 there will be any additional impact or not.

22 MR. LANG: If I could have you turn to
23 your deposition, same page, 74, starting at line 9, I
24 asked you:

25 "And you do not know whether the NOx

1 NAAQS will have any impact on the Sammis plant
2 itself, correct?"

3 And you answered: "Correct."

4 Did I read that correctly.

5 A. You did, and I think that's consistent
6 with what I just said.

7 Q. Now, you do not know whether the
8 eight-hour ozone NAAQS will have any impact on the
9 Sammis plant, correct?

10 A. I've done no specific evaluation,
11 correct. I do not know whether it will have a future
12 impact on the Sammis plant.

13 Q. And you do not have any facts -- switch
14 gears a little bit. Let's talk about particulate
15 matter. You do not have any facts suggesting that
16 the Sammis plant is not currently in compliance with
17 the PM 2.5 National Ambient Air Quality Standards,
18 correct?

19 A. And that is correct, and it's because I
20 have not studied it, not because I've studied it and
21 reached a particular conclusion.

22 Q. Now, with regard to when we refer to the
23 PM 2.5 standard, PM 2.5, is that EPA's shorthand way
24 of referring to fine particulate matter?

25 A. It is, yes.

1 Q. Great. Now, on page 11 of your
2 testimony, lines 19 through 23, you say EPA is
3 concerned there are too few air sampling stations.
4 Would you agree that EPA expressed this concern as a
5 nationwide concern, not specific to Ohio?

6 A. I do. It involves many states.

7 Q. And you do not know whether Ohio has too
8 few air sampling stations, correct?

9 A. That is correct.

10 Q. In fact, you do not know how many
11 monitors Ohio has, correct?

12 A. I've not studied that, correct.

13 Q. And you do not know how Ohio's number of
14 air monitors compares to other states, correct?

15 A. Correct.

16 Q. And you are not aware that the state of
17 Ohio currently monitors its Sammis plant particulate
18 matter emissions, correct?

19 A. Did you ask me whether it does or how it
20 does?

21 Q. Let me rephrase. Do you know whether the
22 state of Ohio currently monitors Sammis plant
23 particulate matter emissions?

24 A. Specifically, I do not know whether it
25 does or does not.

1 Q. Now, you do not have a basis for
2 suggesting that the area around the Sammis plant is
3 nonattainment for particulate matter or fine
4 particulate matter, correct?

5 A. Correct.

6 Q. And, in fact, you're aware that EPA has
7 designated the area around Sammis as attainment for
8 fine particulate matter, correct?

9 A. I'd have to go back and check.

10 Q. What would you check?

11 A. I'd check EPA or the state implementation
12 plan. My recollection is that it is not a
13 nonattainment, so I think we're on the same page.

14 Q. If I could have you turn to page 82 of
15 your deposition transcript, please. At line 2 of
16 page 82, I asked you:

17 "And are you aware that the area around
18 the Sammis plant is designated as attainment for
19 particulate matter?"

20 And you answered, "That is my
21 understanding."

22 Did I read that correctly?

23 A. You did.

24 Q. Great.

25 A. And I believe, if I can just finish, I

1 believe that's consistent with me saying I believe --

2 (Discussion off the record.)

3 EXAMINER ADDISON: Sorry for the
4 interruption, Mr. Lang.

5 Can we have the last question and answer
6 back. I just want to make sure we had the witness'
7 full answer on the record.

8 (Record read.)

9 A. I think my answer was that it's not in
10 nonattainment. I indicated that I would have to
11 check as to whether, consequently, it's in attainment
12 or unclassified. I believe that was my full answer.

13 EXAMINER ADDISON: Thank you, Mr. Ferrey.
14 Please proceed.

15 Q. (By Mr. Lang) I think we can agree some
16 of these environmental regulations promote the use of
17 double negatives.

18 A. I couldn't disagree with that.

19 Q. Well, done. Thank you.

20 With regard to classifications, there's
21 three categories of classifications, right?

22 A. Yes.

23 Q. So you have attainment, you have
24 unclassified, and then you have nonattainment,
25 correct?

1 A. Correct.

2 Q. Now, on the top of page 11 of your
3 testimony, you reference the area designations for
4 the 2012 Annual PM 2.5 standard, correct?

5 A. Yes, I do.

6 Q. And you state that for Ohio that includes
7 Cuyahoga and Lorain Counties, correct?

8 A. That is correct.

9 Q. Fair to say you do not know in which part
10 of Ohio those two counties are located.

11 A. I would really need a map to be specific
12 on that. I can tell you generally where they are.
13 Without great precision, my recollection is that
14 Cuyahoga, which is Cleveland, is going to be northern
15 Ohio, and I believe Lorain is to the west of that to
16 some degree, but I would need a map to actually be
17 able to specifically show you exactly.

18 Q. You do agree that those two counties are
19 not immediately proximate to the Sammis plant.

20 A. Yes, I do agree with that.

21 Q. And you do not know whether the
22 prevailing winds from the Sammis plants blow in the
23 direction of Cuyahoga and Lorain Counties, correct.

24 A. I don't know, but I would guess they
25 might even blow the opposite direction.

1 Q. Now, still on page 11, but at the bottom
2 on line 23, you make reference to the proposed data
3 requirements rule, and then going over on to page 12,
4 you state that it will require new monitors by
5 January 2017. Do you see that reference in your
6 testimony?

7 A. Yes.

8 Q. And this is the proposed Data
9 Requirements Rule for the 1-hour SO-2 National
10 Ambient Air Quality Standards, correct?

11 A. That is correct.

12 Q. And you reference this rule with respect
13 to the PM 2.5 NAAQS; however, you have now -- you
14 amended your testimony this morning to add the
15 reference to SO-2, correct?

16 A. I did, yes.

17 Q. So the reference to SO-2 that you added
18 this morning, that's now a reference to the 1-hour
19 SO-2 NAAQS, correct?

20 A. Yes, it is, correct.

21 MR. LANG: Your Honor, if we could
22 approach and have a document marked as Company
23 Exhibit 69.

24 EXAMINER ADDISON: You may approach, and
25 it will be so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Professor Ferrey, do you have in front of
3 you what has been marked as Company Exhibit 69? At
4 the top it says, "Fact Sheet, Proposed Data
5 Requirements Rule for the 1-Hour Sulfur Dioxide
6 Primary National Ambient Air Quality Standard or
7 NAAQS.

8 A. Yes, I do.

9 Q. And do you recognize this as the USEPA
10 fact sheet for the proposed Data Requirements Rule
11 that you discuss in your testimony starting at the
12 bottom of page 11 and going on to page 12?

13 A. Yes.

14 Q. With regard to your statement that the
15 EPA will require new monitors by January 2017, in
16 actuality, the proposal wants to give states the
17 flexibility to characterize air quality using either
18 monitors or modeling, correct?

19 A. Correct. States did have an option of
20 modeling or actually monitoring by 2017.

21 Q. And then if monitors are used, any new
22 designations would be based on three years of data,
23 correct?

24 A. The SO-2 standard, the one-hour standard
25 does have a three-year monitoring accumulation. So

1 it would be based on three years of data.

2 Q. So the earliest you would have a
3 nonattainment designation under this Data
4 Requirements Rule as a result of monitoring would be
5 2020, correct?

6 A. Assuming that there are no other monitors
7 there to register, the additional monitors that would
8 be implemented would get data in 2017, 2018, 2019, so
9 that would be approximately correct. It would be in
10 that 2019-'20 period when one would know on
11 designations.

12 Q. On page 12, lines 8 and 9, you say, "The
13 EPA will monitor every source with the potential to
14 emit greater than 1,000 tons per year," and this
15 morning you add to that "of SO-2 in certain areas,"
16 correct?

17 A. Correct.

18 Q. So at the time you filed your testimony,
19 you did not know whether that was 1000 tons per year
20 of SO-2 or of particulate matter, correct?

21 A. I'm trying to recall. That may or may
22 not have been correct. That may have been correct.

23 Q. And at the time you had your deposition
24 taken, you couldn't remember whether that was 1,000
25 tons per year of SO-2 or particulate matter, correct?

1 A. I think that might have been true, yeah,
2 during the deposition.

3 Q. Now, what has been marked as Company
4 Exhibit 69, if I can ask you to -- this is the fact
5 sheet for the proposed Data Requirements Rule for the
6 one hour SO-2 standard. If I could ask you to look
7 at -- it would be the third bullet point that has the
8 three subparts under it showing Option 1, Option 2,
9 and Option 3; do you see that?

10 A. I do.

11 Q. And what you have in your testimony is
12 referring to the sources that emit greater than
13 1000 tons per year. That would be a reference to
14 Option 1, correct?

15 A. It would be a reference to Option 1,
16 correct.

17 Q. And Option 1 would relate to sources of
18 greater than 1,000 tons of SO-2 in metro areas with
19 population greater than 1 million, correct?

20 A. Yes.

21 Q. Now, when you say on page 12, lines 18
22 and 19 of your testimony, that the Data Requirements
23 Rule will be finalized in 2015, that has proven true,
24 it has been finalized, correct?

25 A. I believe it was finalized in August of

1 this year.

2 Q. So a final version was issued on
3 August 10th of 2015; is that your memory?

4 A. That's approximately correct, yes.

5 Q. Have you read the final Data Requirements
6 Rule?

7 A. I've probably not read it all the way
8 through. I have looked at it.

9 Q. Do you agree that the final Data
10 Requirements Rule requires states to characterize air
11 quality around sources that emit 2,000 tons per year
12 or more of SO-2?

13 A. I would have to look at it again.

14 MR. LANG: Your Honors, may we approach?

15 EXAMINER ADDISON: You may.

16 MR. LANG: Your Honors, can I have marked
17 as Company Exhibit 70 the fact sheet for the final
18 Data Requirements Rule?

19 EXAMINER ADDISON: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. Professor Ferrey, if you could take a
22 moment to look at what has been marked as Company
23 Exhibit 70, and if you can let us know whether you
24 recognize that as the USEPA Fact Sheet for the Final
25 Data Requirements Rule issued in August of 2015.

1 A. Yes, I believe it is.

2 Q. Does this help you specifically in the
3 second bullet point remember that the final rule
4 applies to sources that emit 2,000 tons per year or
5 more of SO-2?

6 A. Yes.

7 Q. And the final rule also gives the Ohio
8 EPA and other agencies the flexibility to use either
9 modeling or monitoring, correct?

10 A. It does, yes.

11 Q. And to close the discussion on one point
12 we just talked about a little bit earlier, if you
13 look at page 2, the fourth bullet point down relating
14 to using monitors, you see that if monitors are used,
15 the data would be collected for calendar years 2017
16 through 2019.

17 A. Correct, and I believe that's similar to
18 an earlier answer I gave to you.

19 Q. Absolutely. And then so you would agree
20 based on that, that the earliest a designation could
21 be made based on monitoring would be sometime in
22 2020?

23 A. That's correct, I suppose we would know
24 at the end 2019 what the data is, but it would be
25 2020.

1 Q. Fair to say you do not know whether the
2 final Data Requirements Rule will have any
3 applicability to the Sammis plant?

4 A. I do not know whether it will or will
5 not, correct.

6 Q. On page 12 of your testimony, lines 13 to
7 15, you make reference there to Reasonably Achievable
8 Control Technology. Fair to say you do not know
9 whether the Sammis plant has Reasonably Achievable
10 Control Technology?

11 A. I do not specifically know. I would
12 assume the states that would require that, but I have
13 not looked specifically at Sammis.

14 Q. Now, I'm going to move to page 13 where
15 you start your discussion of ozone regulations. With
16 regard to the Sammis plant and the area around the
17 Sammis plant, you do not know whether that area was a
18 nonattainment area for ozone, correct?

19 A. I have not looked at that, no.

20 Q. Now, transportation, such as cars and
21 trucks, is a significant source of ozone, correct?

22 A. Yes, correct, of precursors of ozone.

23 Q. And on page 13 of your testimony, lines
24 18 through 20, you list counties in Ohio that are
25 nonattainment for ozone, correct?

1 A. Yes.

2 Q. And I'll get it right this time,
3 Jefferson County is not one of those counties,
4 correct?

5 A. Correct.

6 Q. Now, all of these counties, your
7 understanding is, are metro areas of Ohio with a lot
8 of car and truck emissions, correct?

9 A. Again, I would need to get a map to be
10 specific, but I know that several of them are, yes.

11 Q. And you do understand that Sammis, the
12 Sammis plant, is not located in a metro area of Ohio,
13 correct?

14 A. I do understand that, correct.

15 Q. And you do not know if any of the
16 counties listed on page 13 are downwind of Sammis,
17 correct?

18 A. I would suppose that they are not
19 downwind of Sammis, but I have not specifically
20 studied that, no.

21 Q. Now, the precursors for ozone are NO_x and
22 volatile organic compounds, correct?

23 A. Correct.

24 Q. And a precursor is what?

25 A. A precursor is a chemical that reacts in

1 the atmosphere to form the target chemical.

2 Q. So in addition to auto emissions, ozone
3 can be -- ozone can result from the precursors that
4 are emitted from such things as lawn mowers and
5 outdoor grills, correct?

6 A. Those would produce volatile organic
7 compounds, yes.

8 Q. And also VOCs, or volatile organic
9 compounds, in things like solvents and paints,
10 correct?

11 A. They can, that's correct.

12 Q. So you understand there are many existing
13 programs to limit ozone precursors, including
14 volatile organic compounds in solvents and paints,
15 correct?

16 A. Correct.

17 Q. There's also programs to limit ozone
18 precursors that are in auto emissions, correct?

19 A. Correct.

20 Q. And as auto emissions are reduced and
21 VOCs are reduced, ozone concentrations are also
22 reduced, correct?

23 A. Yes, correct. As precursors are
24 diminished, the ozone production would be diminished.

25 Q. Now, are you aware of the corporate

1 average fuel economy or CAFE standards for
2 automobiles?

3 A. I am.

4 Q. And those CAFE standards have been
5 reducing ozone levels across the U.S., correct?

6 A. From vehicles, correct.

7 Q. And there are also new CAFE standards
8 running out to 2025 that will have the effect of
9 continuing to reduce emissions of ozone precursors,
10 correct?

11 A. Let me give you a qualified yes, in that
12 you are correct that they will reduce emissions per
13 mile driven. I suppose the alternate question is
14 with oil prices coming down, the reports are that
15 people are buying larger vehicles and perhaps tending
16 to drive more, so there are various factors that
17 would.

18 Yes, the CAFE standards per mile driven,
19 if you have a new vehicle and if it's compliant, I
20 suppose not a Volkswagen, it will reduce in the
21 future the standard per mile driven.

22 Q. And the federal government has also
23 issued standards similar to the CAFE standards for
24 medium- and heavy-duty trucks; is that correct?

25 A. Correct.

1 Q. Now, you understand that the
2 nonattainment designations specifically for the ozone
3 NAAQS are based on three years of data, correct?

4 A. That is correct. It's an eight-hour
5 standard using three years of data.

6 Q. With regard to the nonattainment
7 designations that you reference on page 13 of your
8 testimony, you do not know when those designations
9 were made; is that correct?

10 A. No, I have not specifically gone back to
11 look at the year they were designated.

12 Q. And as a result, you do not know what
13 three-year period of data was used to make the
14 nonattainment designation, correct?

15 A. Correct.

16 Q. Now, on page 14 of your testimony, you
17 state that the EPA is considering a change to the
18 eight-hour ozone standard, correct?

19 A. Yes.

20 Q. And you note that the EPA staff
21 recommended a standard in the range of 65 to 70 parts
22 per billion, correct?

23 A. That is correct.

24 Q. And you also know as of October 1, that
25 the EPA has announced that the new eight-hour -- has

1 announced the new eight-hour ozone standard, correct?

2 A. Correct.

3 Q. And the new eight-hour ozone standard
4 announced is 70 parts per billion, correct?

5 A. I believe, yes.

6 Q. Now, as we had discussed, as a result of
7 multiple federal and state programs, ozone levels
8 have been trending downward, correct?

9 A. Ozone levels have been trending downward,
10 yes.

11 Q. And EPA has projected that a vast
12 majority of counties in the U.S. will meet the
13 standard of 70 parts per billion without any
14 additional action because of the existing programs
15 already in place, correct?

16 A. The EPA has projected that a number of
17 areas will be able to get down to 70 parts per
18 billion.

19 Q. Well, and, in fact, based on an existing
20 measurements, a number of areas are already under 70
21 parts per billion, correct?

22 A. There are areas that are under 70 and
23 areas that are not, yes.

24 Q. Professor Ferrey, have you reviewed the
25 USEPA fact sheet on the final ozone standard that was

1 issued October 1?

2 A. I have not.

3 Q. We'll move on. Now that the EPA has set
4 a new standard for eight-hour ozone, do you
5 understand that there's a process that the states
6 follow regarding that that would again involve a
7 state implementation plan?

8 A. Yes, that's correct.

9 Q. And would you also believe there's a
10 possibility of litigation that could delay the impact
11 of the new ozone standard?

12 A. There's always a possibility of
13 litigation on revised and lowered standards, yes.

14 Q. Do you agree it will take a few years for
15 area designations to be updated based on three years
16 of data and then for the state implementation plans
17 to be drafted?

18 A. It will take some time, yes.

19 Q. Would you agree that three years of data
20 that will be used for eight-hour ozone standard are
21 the years 2014 through 2016?

22 A. That sounds correct, yes.

23 Q. Now, you have not made any determination
24 that a revised eight-hour ozone standard will have
25 any effect on the Sammis plant or on Jefferson

1 County, Ohio, correct?

2 A. That is correct.

3 Q. Moving to page 16 of your testimony where
4 you refer to the Mercury and Air Toxics or MATS, I
5 just have a couple questions about that. You do not
6 have any information that the Sammis plant is not
7 currently in compliance with MATS, correct?

8 A. Correct.

9 Q. And you have no reason to believe that
10 the Sammis plant will have to incur additional costs
11 to comply with MATS, correct?

12 A. I have no reason to believe that it will
13 or won't, yes, correct.

14 Q. And you have not evaluated whether the
15 MATS regulations could affect the frequency of
16 dispatch of the Sammis plant, correct.

17 A. Correct.

18 Q. Now, the Michigan versus EPA decision
19 that you reference in your testimony, that was issued
20 in late June of this year, is that right?

21 A. Yes, at the end of the term.

22 Q. And the decision was, very shorthand and
23 high level, that the EPA had to consider the cost
24 impact of the MATS regulations.

25 A. Yes, that's a summary of the basis of it

1 being overturned and remanded.

2 Q. Now, is it your understanding that the
3 MATS regulation is still in effect or not?

4 A. I believe it has not been vacated.

5 Q. Now, I'll take you back to page 35 of
6 your testimony. Here you have a discussion, I
7 believe it's around line 14 --

8 A. Yes.

9 Q. -- that you state that the price of
10 natural gas has dropped, among other commodities,
11 correct?

12 A. Yes, I do.

13 Q. And you're not offering an opinion that
14 the price of natural gas will not increase over the
15 next 15 years, correct?

16 A. I'm not offering an opinion that it will
17 not increase over the next 15 years.

18 Q. And you're not forecasting energy prices
19 for any period in the future, correct?

20 A. That is correct.

21 Q. Now, if I can swing you back to page 3 of
22 your testimony, please, at the bottom of page 3, you
23 have a discussion about waiting until, you refer to,
24 "regulations, plans, and effects of these several
25 pending regulations are known and manifest in

1 subsequent state and federal decisions."

2 So I wanted to ask you in your view, the
3 regulations, plans, and effects won't be known and
4 manifest until sometime between 2020 and 2022 with
5 respect to the Clean Power Plan, correct?

6 A. With respect to the Clean Power Plan, I
7 think we will have a reasonable idea of what state
8 plans are within three years when they are filed in
9 2018. At that point, things will start to move a
10 little bit. Litigation, as you mentioned, may be
11 still going or not. But, yeah, the first
12 requirements on the states has now been moved back
13 from 2020 to 2022. The plans will be required by
14 2018. So it will be somewhere in that period from
15 2018 to 2021 when we would see the final shape.

16 Q. And is it correct on page 3 where you
17 refer to "subsequent state decisions," is that a
18 reference to the state implementation plans that are
19 required for the National Ambient Air Quality
20 Standards and for the Clean Power Plan?

21 A. Yes, it is, and specifically the Clean
22 Power Plan.

23 Q. So with respect to the Clean Power Plan,
24 state implementation plans may not be final until
25 September of 2018, is that right?

1 A. The plans may not be filed with EPA until
2 2018, correct.

3 Q. And then certainly the impact of those
4 plans won't be known for years after that, correct?

5 A. Well, assuming that there is no challenge
6 to the specific state plan, per se, things will start
7 to go in motion to meet the standards that become
8 effective in 2020 now with the two-year delay, 2022,
9 I'm certain.

10 Q. Thank you. And do you also believe that
11 we'll likely see years of litigation involving the
12 Clean Power Plan?

13 A. I think it is fair to say that we will
14 see years, plural, of litigation. I'm not sure it
15 will go to the end of the 2021 period that you're
16 describing, but I think we will probably see at least
17 a couple of years of that, yes.

18 MR. LANG: Okay. Could I have one
19 moment, your Honor?

20 EXAMINER ADDISON: You may.

21 MR. LANG: That concludes my cross.
22 Thank you, your Honor.

23 And thank you, Professor Ferrey.

24 EXAMINER ADDISON: Thank you, Mr. Lang.

25 Mr. Kurtz.

1 MR. KURTZ: Thank you, your Honor. Just
2 ten minutes or so.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Kurtz:

6 Q. Good afternoon, Professor Ferrey.

7 A. Good afternoon, sir.

8 Q. Let me talk about the Clean Power Plan.

9 A. Okay.

10 Q. The final rule was issued in August of
11 this year, correct?

12 A. Correct.

13 Q. So it's a state-by-state compliance
14 program.

15 A. It is a state-by-state compliance
16 program, correct.

17 Q. And so what the EPA did is it took CO-2
18 emissions from 2012 baseline year and then made
19 emission reduction requirements off of that; is that
20 correct?

21 A. Yes.

22 Q. Okay. And there's two forms of
23 compliance. A state can adopt a rate-based approach,
24 which is pounds of CO-2 per megawatt-hour, or
25 mass-based approach, which is a gross amount of tons

1 of CO-2 emitted per year.

2 A. That is one of numerous options that
3 states, yes, in terms of various choices they can
4 make.

5 Q. Do you know of any state that's going to
6 go the -- that's talking about the rate-based
7 approach?

8 A. Well, I don't think we know yet. There
9 is -- I guess we should say talk among various folks
10 that think a mass-based approach might be a more
11 cost-effective way to go. But these are -- certainly
12 a rate-based approach plant by plant has some
13 advantages and disadvantages.

14 Q. Well, let's go for an example on the
15 rate-based approach. If your state is comprised of
16 100 percent coal-fired generation and relatively the
17 same heat rate, relatively the same heat input of the
18 coal that goes into the plant, you'll have a uniform
19 mass -- excuse me, uniform rate, 2,000 pounds per
20 megawatt-hour, roughly, or one ton per megawatt-hour?

21 A. Roughly.

22 Q. So if you've got a uniform starting
23 point, if you go with a rate-based approach, then the
24 coal plant requirements that occur in your state
25 don't really help you because you don't change the

1 average.

2 A. That's correct, you would not change the
3 average.

4 Q. Do you go with a mass-based approach, the
5 coal plant retirements reduce the actual amount of
6 tons admitted, so that's a benefit, correct?

7 A. Yeah. I know you're assuming, again,
8 it's 100 percent coal plants, which characterize
9 somewhat of an extreme situation.

10 Q. I wanted to use it as an example. Let's
11 go with the mass-based approach, because I think
12 that's simpler. Probably most states will go with
13 that. That's what the FIP is, isn't it, the Federal
14 Implementation Plan, a form of mass-based approach?

15 A. The FIP, if it becomes necessary for the
16 federal government to implement it, they would come
17 back with a rate-based approach in the FIP.

18 Q. A rate-based approach or a mass-based?

19 A. I thought they were coming back with a
20 rate-based approach.

21 Q. Cap and trade, mass-based approach.

22 A. Well, cap and trade would be mass-based.

23 Q. Right. Okay. Let's stick with the
24 mass-based approach. Do you know how many tons of
25 CO-2 was in Ohio's baseline 2012?

1 A. I believe, subject to check, that their
2 baseline was roughly 1,900.

3 Q. That's the rate. The mass?

4 A. Oh, the mass? I do not know.

5 Q. 102 million tons?

6 A. Okay. I haven't looked at that.

7 MR. MENDOZA: Objection. I just object
8 to Mr. Kurtz testifying.

9 MR. KURTZ: I didn't think I was.

10 Q. Okay. So the 2012 baseline was about 102
11 million tons of CO-2 total, professor; is that your
12 recollection?

13 A. I don't specifically recollect that.

14 Q. Do you know what the percent reduction
15 Ohio needs to get achieved by 2030, the final year of
16 the phase-in?

17 A. Subject to check, my recollection was
18 that it was approximately 37.5, 37.4 percent.

19 Q. All right. This is clear, isn't it, that
20 as coal plants require in a state, the amount of CO-2
21 emitted -- as coal plants retire after the 2012
22 baseline, the amount of CO-2 emitted under a
23 mass-based, cap and trade approach, goes down
24 naturally. Would you agree with that?

25 A. It does go down. I suppose it depends on

1 what, if anything, it's replaced by in the state or
2 not.

3 Q. That's a 111(b) issue. Let's talk about
4 that later.

5 A. Okay.

6 Q. But the coal plant retirement, there's
7 been a lot of evidence in this record, do you know,
8 of the significant amount of coal plant retirements
9 that are going to occur -- that have occurred since
10 2012 and that will occur before 2022, the first year
11 of compliance?

12 A. There have been a significant number of
13 coal plant retirements recently, and there are, at
14 least, projections that more are coming.

15 Q. So as the state of Ohio retires coal
16 plants, it is complying with the mass-based approach
17 under the Clean Power Plan naturally; do you agree?

18 A. Under a mass-based approach, there would
19 be fewer tons of power plant CO-2 emissions if
20 coal-fired power plants ceased operating, and there
21 was nothing else particularly adding to it, yes,
22 under your assumption.

23 Q. So let's just use an extreme example. If
24 Sammis was the only power plant operating in the
25 state of Ohio that was in the 2012 baseline, there

1 would be no cost of compliance. The state would
2 comply, just by virtue of everything else that
3 retired. Would you agree with that?

4 A. I somewhat lost your question there.
5 Could you --

6 Q. I was trying to make an extreme example.
7 If Sammis was the only plant that was in the 2012
8 baseline, the only fossil generation in the 2012
9 baseline --

10 A. Okay.

11 Q. -- that was still operating, then the
12 state would be in compliance, and there would be no
13 cost to Sammis. It would just be by virtue of
14 everything else is gone. Would you agree -- I know
15 it's an extreme example, but would you agree --

16 A. So you're saying -- what I'm having
17 trouble understanding, you're saying there were other
18 plants, and if those other plants closed leaving
19 Sammis? Is that --

20 Q. Yes.

21 A. Okay. I'm sorry. I didn't quite
22 understand that. Yes, if other plants were to
23 retire, the remaining plants would be able to absorb
24 some of the quotient of mass-based emissions.

25 Q. The only sort of question is whether or

1 not new gas -- first of all, you can't build a new
2 coal plant under the existing EPA rules, as a
3 practical matter; would you agree?

4 A. You're going back to 111(b) that you
5 mentioned a minute ago. But the standard in 111(b)
6 for steam-fired coal plants is generally assumed to
7 be somewhat at least restrictive or prohibitive of
8 new coal plants as opposed to natural gas plants.

9 Q. Right. You would have to have some form
10 of carbon sequestration to build a new coal plant
11 under the 111(b) rules, correct?

12 A. I think that's correct, yes.

13 Q. So given the technology, no new coal
14 plants can be built as a practical matter?

15 A. Well, I'm not sure I know that none can
16 be built as a practical matter. It certainly
17 suggests that plants could be repowered with
18 different fuels that are at existing plants, if gas
19 were available or other fossil fuels were available.

20 Q. But new coal, not repowering old coal
21 with gas.

22 A. I'm not sure that nothing could be built,
23 because there are possibilities to try to sequester
24 coal to get down to a relatively restrictive
25 standard, but I think it is projected to be unlikely

1 that new coal plants will be built.

2 Q. Let's talk about new gas, because that's
3 really what we're seeing in Ohio, right?

4 A. Yes.

5 Q. New combined cycle gas units?

6 A. Yes.

7 Q. If a combined cycle gas unit was under
8 construction in 2012, it clearly counts, its
9 emissions count, under the mass-based approach,
10 correct?

11 A. Yes.

12 Q. Now, if a new plant is built,
13 construction begins after the 2012 baseline, there's
14 a question, isn't there, under the Clean Power Plan
15 rule as to whether or not those units would be
16 treated under 111(d), existing fossil units, or
17 111(b), new units?

18 A. Yes. There's an option for states either
19 to include new power plants in the mass, if you will,
20 or to exclude them. So states have that option state
21 by state in each state.

22 Q. Why would Ohio ever include those
23 emissions if it went with a mass-based approach if
24 you could exclude them and deal with them under
25 111(b)? Those emissions wouldn't even count,

1 correct?

2 A. Those emissions would not count in terms
3 of the Clean Power Plan, but Ohio has one of the
4 higher limits; so, therefore, if there are power
5 plants that come in that are relatively low CO-2
6 emitting facilities, they have tremendous advantage
7 to earn credits or some sort of benefit by coming
8 under a relatively high standard, which Ohio has.

9 This will be -- under the Clean Power
10 Plan and depending upon what other states decide to
11 do, there are 13 states in PJM, a number of states in
12 MISO and Ohio could end up being a place that becomes
13 extremely attractive for new constructed combined
14 cycle plants that get well under the threshold.

15 Q. I understand that answer if Ohio adopted
16 a rate-based approach, because a combined cycle would
17 reduce the average CO-2 emitted per megawatt-hour.

18 A. Right.

19 Q. But I don't see that at all under a
20 mass-based approach. Why would the state ever, say,
21 count new gas units under a mass-based approach if
22 you have an option not to?

23 A. Well, I mean, that's up to each state,
24 and we have a number of states, and the uncertainty I
25 think is that Ohio is in a multi-state market with

1 PJM. It borders states that are in another MISO
2 market, and there are very different decisions that
3 states can make individually or they can combine
4 regionally. If they combine regionally, I agree a
5 mass-based approach is the probably -- a mass-based
6 approach is the only practical way.

7 Q. So if by virtue of the retirement of the
8 existing coal power plants, the number of CO-2
9 emissions go down naturally, and if Ohio opts for
10 treating new combined cycle under 111(b) so that
11 those emissions don't count in the allowances that
12 were allocated, it could be that Clean Power Plan
13 compliance is not incredibly costly or difficult for
14 Ohio; would you agree with that?

15 A. It could or could not be, yes, I agree.
16 There's a possibility there, depending on how many
17 other retirements there are. Again, the standard
18 changes from 2022. It ramps down towards the 2030
19 amount that we were discussing, so Ohio slides from a
20 pounds-per-megawatt limit initially, if memory serves
21 me right, of 1,501 pounds per megawatt-hour down to
22 1,191, which is not an insubstantial decrease.

23 Q. And that's, again, the, rate-based
24 approach. If we go with a mass-based approach, we go
25 from about 102 million in the baseline to 73 million,

1 73.8 million, in the final year of compliance, 2030,
2 with a ramping beginning in 2022.

3 A. Correct, approximately. Again, I haven't
4 done the numbers.

5 Q. So if there are a lot of coal
6 retirements, the remaining coal plants standing could
7 be in a pretty -- or a position that isn't that
8 difficult to comply?

9 A. It is possible if there is a significant
10 amount of retirements reducing the CO-2 emissions
11 commensurate with that 37 percent decrease that
12 Ohio's required to meet, which, again, is not
13 insubstantial.

14 MR. KURTZ: Thank you, Your Honor. No
15 more questions.

16 EXAMINER ADDISON: Thank you, Mr. Kurtz.
17 Mr. McNamee.

18 MR. MCNAMEE: No questions.

19 EXAMINER ADDISON: Any redirect,
20 Mr. Sauer?

21 MR. SAUER: May we have a couple minutes,
22 your Honor?

23 EXAMINER ADDISON: You may.

24 Let's go off the record.

25 (Recess taken.)

1 EXAMINER ADDISON: Let's go back on the
2 record.

3 Mr. Sauer.

4 MR. SAUER: Thank you, your Honor.

5 - - -

6 REDIRECT EXAMINATION

7 By Mr. Sauer:

8 Q. Professor Ferrey, you were asked some
9 questions today regarding analyses you may have
10 performed regarding compliance with -- I'll rephrase.

11 Professor Ferrey, you were asked some
12 questions this morning about your analysis of Sammis'
13 compliance with various environmental regulations.
14 Is it important to your conclusions whether you have
15 individually analyzed plant environmental compliance?

16 A. I don't believe that it's important
17 whether I've looked at individual plants. There has
18 been testimony in the record from company witnesses
19 as to the compliance with existing environmental
20 regulations. And as Mr. Lang and I were talking
21 about, it really appears that we are talking about
22 two distinct periods in the proposed RRS rider period
23 of 15 years from 2016 to 2031.

24 As Mr. Lang's question suggested, there's
25 a period of, perhaps, five years during which there

1 will be data taken, requirements assessed as to
2 whether plants are in compliance or not as data is
3 gathered, and certainly in that period, the Clean
4 Power Plan has no direct effect, as we've looked at.

5 So we can think -- I think of those first
6 five years as period one, and I suppose the question
7 for the Commission, as I see it under the RRS and the
8 proposed term sheet for the PPA, is is this something
9 that should be approved for the 15 years or for the
10 first period.

11 In that first period, I guess the
12 question to me is have the plants with all the
13 significant environmental improvements that they have
14 made, are they able to operate in the PJM market cost
15 effectively.

16 There has been data -- and I know some of
17 it is confidential, so I will not specifically speak
18 about it. But there has been testimony about by the
19 company as to the positive or negative earnings
20 during recent years coming in. And we have
21 Mr. Moul's testimony, which, along with Mr. Evans'
22 testimony I referenced in my own personal testimony
23 which indicates that he thinks not only Sammis and
24 Davis-Besse but also the OVEC plant future is
25 uncertain without the proposal before the Commission.

1 So looking backwards as to profit and
2 loss and looking forward to Mr. Moul's testimony in
3 this next five-year period, I believe the question is
4 does the RRS offer a proposal that should be approved
5 and go forward. Mr. Moul's testimony, as I
6 indicated, I see as somewhat different than
7 Mr. Evans' testimony in terms of the state of the
8 economic impacts of the plants.

9 There's a second period, which I think of
10 as the last ten years of the proposed period, which
11 would be roughly 2021 to 2031. And what changes then
12 is there is the Clean Power Plan, and Ohio and every
13 other state and every other region and FirstEnergy in
14 the various states in which it operates will need to
15 comply across the board with however that is
16 determined by the states.

17 And I believe that is something that is
18 extremely difficult to understand in full because of
19 so many states, so many regions, and, as I mentioned
20 earlier to Mr. Kurtz's questions, the number of
21 choices that states have.

22 One of the things that I was struck by is
23 I've seen comments from one of the companies'
24 spokespeople, Stephanie Walton, who has stated on a
25 couple of occasions that, in her view or the

1 companies' view, the future impacts of the Clean
2 Power Plan are indeterminate for the next three
3 years, and I would agree with that. I think my
4 testimony is that certainly for the next three years
5 and, perhaps, a year or two longer, Mr. Lang
6 mentioned the possibility of litigation which is now
7 starting, that it is extremely difficult to know the
8 impact that will be folded into the RRS and through
9 the eventual PPA.

10 So I think the question is in that first
11 period, are we optimistic in the next five years this
12 will be cost effective based on past data and
13 Mr. Moul's or other testimony before the Commission?
14 And in the second period of the last ten years of
15 this, is there any confidence to make a decision,
16 unless there's some banding in the agreements as to
17 the price or sharing of risk or other provisions.
18 And I've mentioned that I don't think severability is
19 particularly -- is particularly a lone salvation.

20 MR. LANG: Your Honor.

21 EXAMINER ADDISON: Mr. Lang.

22 MR. LANG: I'd move to strike his answer.
23 I know it was extremely long. But I'd move to strike
24 his answer when he starts talking about other company
25 witnesses and his review of their testimony and the

1 impact of that on his conclusions, particularly when
2 he starts discussing Company Witness Moul's
3 testimony.

4 That's beyond the scope of anything that
5 we discussed. It's improper to add in this
6 proceeding at this time on redirect, particularly,
7 you know, after talking about his review of the
8 company witness testimony at some point. He then
9 went on to talk about the review of a company
10 spokesperson.

11 So I would move to strike. I think the
12 first few sentences of his answer can stand as
13 responsive to the question that Mr. Sauer asked him.
14 I think the rest should be stricken as beyond the
15 scope of redirect and violating, in addition, Rules
16 401 and 403 as being not probative to the issues
17 before the Commission.

18 EXAMINER ADDISON: Mr. Sauer, response.

19 MR. SAUER: He was responding to the
20 question, your Honor, and provided background that he
21 relied upon in preparing his testimony and the other
22 issues that he raised that I asked him.

23 EXAMINER PRICE: May I have the question
24 back, please.

25 (Record read.)

1 EXAMINER ADDISON: At this time, we will
2 grant in part the motion to strike regarding the
3 company's spokesperson. I believe the sentence
4 beginning with "One of the things I was struck by"
5 and ending "I would agree with that" will be struck.

6 MR. SAUER: Thank you, your Honor.

7 Q. (By Mr. Sauer) Professor Ferrey, could
8 you turn to FE Exhibit No. 68.

9 A. Yes, I believe I have that in front of
10 me.

11 Q. On page 1 of 4, in Indiana, Jefferson
12 County, do you see Clifty Creek?

13 A. Yes, I do see that.

14 Q. What are the implications of Clifty Creek
15 appearing on this schedule as one of the 69 sources?

16 A. It seems to put this -- EPA seems to put
17 this in a different category than the Sammis plant in
18 terms of required additional modeling or monitoring
19 for the sulfur dioxide one-hour standard in terms of
20 determining whether there's still attainment.

21 So while agreeing with the former
22 questions regarding Sammis, Clifty Creek may be in a
23 different situation going forward in terms of that
24 area and monitoring or modeling.

25 Q. You received some questions regarding

1 Sammis' compliance with various environmental
2 regulations. Are you aware that there are seven
3 units at the Sammis power plant?

4 A. Yes, I'm aware that there are seven units
5 and there are differences.

6 Q. How do those differences in the units
7 impact their compliance?

8 MR. LANG: Objection, your Honor.

9 EXAMINER ADDISON: Grounds?

10 MR. LANG: Again, it's beyond the scope
11 of my questioning and also foundation. There's
12 been -- I specifically asked the witness whether he
13 had any experience with regard to plant operations,
14 whether he had any knowledge of the specific
15 characteristics of the Sammis plant. He does not.

16 So coming in again on redirect and
17 talking about things that he has no knowledge of is
18 not only beyond the proper scope of what he can be
19 asked on redirect, it's asking him to contradict his
20 earlier testimony that he has no knowledge of
21 specific Sammis plant operations.

22 EXAMINER ADDISON: Mr. Sauer?

23 MR. SAUER: I don't recall him being
24 asked specifically about the plant operations or how
25 the plant compliance would be attained, in

1 particular, given the various units that are at the
2 Sammis plant.

3 EXAMINER ADDISON: I'm going to sustain
4 the objection.

5 Q. Professor Ferrey, you were asked some
6 questions regarding Clean Power Plan compliance and
7 compliance by Ohio. What are the concerns regarding
8 identifying what the compliance plans for Ohio would
9 be at this point in time?

10 A. Well, the compliance plans for Ohio are
11 really affected by all the other states in regions in
12 which it participates, so it is not only what Ohio
13 decides, it's what the neighboring states decide.

14 So as a member of PJM, there are a total
15 of 13 states. As a member of -- as a neighbor of
16 some MISO states, many of which are regulated
17 differently at the retail level than Ohio, there are
18 other states. There are a variety of factors that
19 states can choose from, following to some of
20 Mr. Kurtz's questions, in deciding how to implement
21 the Clean Power Plan.

22 So as Mr. Kurtz and I discussed, there's
23 a decision as to whether new projects will be within
24 the Clean Power Plan or will not be in the Clean
25 Power Plan, and that's going to be independently made

1 by the 13 PJM states in, let's say, a handful of
2 neighboring MISO states.

3 There are determinations as to whether a
4 rate-based or a mass-based form of regulation will be
5 implemented independently in each of those states.
6 There are regional implications because, obviously,
7 FirstEnergy is a regional company. Power is traded
8 regionally, and there are interesting issues as to
9 how states will try to overlap or not overlap.

10 States also in another regard can give
11 early credits, if they wish to, for renewables, for
12 principally solar and wind, that are installed
13 between 2018 and 2021. That is somewhat like a --
14 it's not equivalent to, but it would have similar
15 impact to renewable energy credits at the state level
16 if states elect to give additional credit value to
17 that.

18 Obviously, there are differences between
19 plants that would be merchant plants in some states
20 and regulated plants in other states. There are also
21 issues as to whether or not trading would be allowed
22 between states of credits. So that's probably a half
23 dozen or so different significant choices that each
24 state makes.

25 If we have 13 PJM states and another

1 handful of neighboring MISO states, we have 20
2 states, each of which can make a half dozen
3 fundamental decisions that directly or indirectly
4 affect the power market in which Ohio Power and
5 FirstEnergy power is traded.

6 So if you take 20 states to the sixth
7 power -- I'm not sure I'm doing the math right, but
8 there obviously are a large number of decisions that
9 will complicate that second period of time which,
10 let's say, approximately the 2021 to 2031 period of
11 the RRS, the second two-thirds of the RRS, which
12 create great uncertainty.

13 If nothing else, I think there needs to
14 be some ways to try to bound or limit that
15 uncertainty in a way that the Commission decides is
16 appropriate.

17 MR. SAUER: Thank you, professor. I have
18 no further questions.

19 EXAMINER ADDISON: Thank you, Mr. Sauer.

20 Ms. Bojko, any questions?

21 MS. BOJKO: No questions.

22 EXAMINER ADDISON: Mr. Mendoza?

23 MR. MENDOZA: No questions.

24 EXAMINER ADDISON: Mr. Lang, any
25 questions?

1 MR. LANG: Hold on, please.

2 No recross, your Honor.

3 EXAMINER PRICE: Mr. Kurtz?

4 MR. KURTZ: Just one thing.

5 - - -

6 RECROSS-EXAMINATION

7 By Mr. Kurtz:

8 Q. Professor, one thing I don't quite agree
9 with is this choice that you say states would have as
10 to whether to include the new natural gas plants in
11 the 111(d) or 111(b).

12 For a new gas plant, isn't the 111(b)
13 requirement 1,100 pounds of CO-2 per megawatt-hour?

14 A. For some plants, it's 1,100 pounds, and
15 for some plants, it's 1,000 pounds.

16 Q. So for a new combined cycle with a 7,000
17 heat rate, they have no problem meeting that, do
18 they?

19 A. They should be able to meet that, I would
20 think.

21 Q. Right. So if they can meet the 111(b),
22 no problem in the natural gas combined cycle, why
23 would a state, any state, ever want to include them
24 in the 111(d) and have them increase the amount of
25 tons that will go into your mass-based account?

1 A. Well, I suppose -- and I can't speak for
2 the states, of course, and it's too new to really
3 know what states will do. But the assumption is that
4 the plant would only be -- well, my assumption is the
5 plant would only be built if it thought it could
6 operate cost effectively at what it projected to be
7 trading rates in PJM, or wherever it is, whatever
8 MISO or other regulatory system it's in.

9 And if a plant came in, one assumes that
10 it would displace perhaps, depending obviously on the
11 price of natural gas, which has been relatively low
12 with the Henry Hub and at various markets recently,
13 and the idea is it would displace some of the higher
14 heat rate plants. If it does that, that plant coming
15 in by itself might displace a larger fraction of
16 units.

17 Q. Well, if the combined cycle is a 111(b)
18 unit, it doesn't need allowances. All it needs to do
19 is meet the 1,000 or 1,100 tons or pounds of CO-2 per
20 megawatt-hour. It would not even be covered under
21 the cap and trade program.

22 A. You're saying if they did not include it?

23 Q. Yes.

24 A. If they did not include it, but that's an
25 option that each state has, whether to include it or

1 not. If a state went to a credit system, it's
2 possible that that new combined cycle plant would
3 even get credits. It would get credits, perhaps, at
4 an average rate that would be above what its actual
5 emissions were. That would give it tradeable credits
6 if the state allowed it to trade. So that would
7 actually be a way that some states may or may not
8 elect to incentivize certain new construction.

9 Q. Well, I don't want to belabor it. My
10 understanding of the rule from all the utilities I've
11 spoken to is that it's just not clear how new gas
12 units are going to be treated, and that's one of the
13 big uncertainties, not that states have an option.
14 Having the option would be great. Does that resonate
15 with you at all?

16 MS. BOJKO: Objection, your Honor.

17 EXAMINER ADDISON: Grounds, Ms. Bojko?

18 MS. BOJKO: First of all, it's hearsay
19 because he's saying from what he heard from utilities
20 and then he's testifying.

21 MR. KURTZ: I'll rephrase.

22 Q. Do you know if the rule is clear on this
23 issue of how new gas units will be treated?

24 A. I believe it gives states the option to
25 include new gas-fired combined cycle or other units

1 in or outside of the Clean Power Plan Section 111(d)
2 aspects.

3 MR. KURTZ: We'll stick with that. Thank
4 you.

5 EXAMINER ADDISON: Thank you, Mr. Kurtz.
6 Mr. McNamee?

7 MR. MCNAMEE: No, thank you.

8 EXAMINER ADDISON: Professor Ferrey, you
9 are excused.

10 THE WITNESS: Thank you.

11 EXAMINER ADDISON: Mr. Sauer, I believe
12 you had previously moved for the admission of OCC
13 Exhibits No. 20 and 21.

14 MR. SAUER: Yes, your Honor.

15 EXAMINER ADDISON: Are there any
16 objections?

17 Seeing none, these will be admitted.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 MR. SAUER: Your Honor, I'd also like to
20 proffer the testimony of Professor Steven Ferrey
21 filed May 11, 2015. OCC preserves its right under
22 Ohio Rule of Evidence 103 and Rule 4901-1-15(f) of
23 the Ohio Administrative Code to raise the propriety
24 of the attorney examiner's ruling striking portions
25 of Professor Ferrey's testimony on brief.

1 Pursuant to the Rules of Evidence
2 103(A) (2) an "Error may not be predicated upon a
3 ruling which admits or excludes evidence unless a
4 substantial right of the party is affected."

5 And "The ruling is one excluding
6 evidence, the substance of the evidence was made
7 known to the court by offer or was apparent from the
8 context within which questions were asked."

9 Rule 4901-1-15(F) allows for "Any party
10 that is adversely affected by a ruling issued under
11 Rule 4901-1-14 of the Administrative Code or any oral
12 ruling issued during a public hearing or prehearing
13 conference and that (1) elects not to take an
14 interlocutory appeal from the ruling or (2) files an
15 interlocutory appeal that is not certified by the
16 attorney examiner may still raise the propriety of
17 that ruling as an issue for the commission's
18 consideration by discussing the matter as a distinct
19 issue in its initial brief or in any other
20 appropriate filing..."

21 EXAMINER ADDISON: The request is noted,
22 Mr. Sauer. Thank you.

23 MR. SAUER: Thank you, your Honor.

24 EXAMINER ADDISON: Mr. Lang?

25 MR. LANG: Your Honors, I would move

1 Company Exhibits 66 through 70.

2 EXAMINER ADDISON: Are there any
3 objections to Companies' Exhibits 66, 67, 68, 69, and
4 70?

5 Seeing none, they will be admitted.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 EXAMINER ADDISON: Thank you all. At
8 this time we will take a lunch break, and we will
9 return around 2:00. Let's go off the record.

10 (At 12:56 p.m. a lunch recess was taken
11 until 2:00 p.m.)

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Monday Afternoon Session,

October 5, 2015.

- - -

EXAMINER ADDISON: Mr. Kumar, you may
call your next witness.

MR. KUMAR: The OCC would like to call
Dr. Randall Woolridge to the stand and would like to
mark his testimony as OCC Exhibit 22.

EXAMINER ADDISON: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER ADDISON: Please proceed,
Mr. Kumar.

- - -

J. RANDALL WOOLRIDGE, PH.D.

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

DIRECT EXAMINATION

By Mr. Kumar:

Q. Could you please state your full name and
business address for the record.

A. My name is initial J. Randall Woolridge,
and that's spelled W-o-o-l-r-i-d-g-e, and my business
address is 120 Haymaker Circle, State College,
Pennsylvania.

Q. Thank you. Are you the same Dr. Randall

1 Woolridge whose direct testimony was filed in these
2 cases?

3 A. Yes.

4 Q. On whose behalf do you appear?

5 A. OCC.

6 Q. Do you have your prepared testimony with
7 you on the stand?

8 A. I do.

9 Q. And did you prepare your testimony?

10 A. Yes.

11 Q. Do you have any changes or corrections to
12 that testimony?

13 A. I have three corrections. Two of them
14 are on page 29. On line 3, the number at the end of
15 the line should be "2889.7."

16 If you go down to line 7 of that page,
17 the word "over" should be omitted.

18 On page 46, line 5, at the end of the
19 line, it should say "in the proxy groups." There's
20 only one proxy group. "In the proxy group."

21 Q. With those changes and corrections, if I
22 were to ask you the same questions found in your
23 direct testimony that's been marked as OCC Exhibit
24 22, would your answers be the same?

25 A. Yes.

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1 MR. KUMAR: Your Honor, the OCC moves for
2 the admission of Exhibit 22 and would like to make
3 the witness available for cross-examination.

4 EXAMINER ADDISON: We'll defer ruling on
5 the motion until cross-examination has been
6 completed. Thank you, Mr. Kumar.

7 Ms. Bojko, any questions?

8 MS. BOJKO: No, thank you, your Honor.

9 EXAMINER ADDISON: Mr. Mendoza?

10 MR. MENDOZA: No questions, your Honor.

11 EXAMINER ADDISON: Mr. Alexander?

12 MR. ALEXANDER: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Alexander:

16 Q. Mr. Woolridge, good to see you again.

17 A. Good afternoon.

18 Q. Good afternoon. I'd like to begin by
19 addressing your electric proxy group. It's listed in
20 your Exhibit JRW-4. Now, you believe that a proxy
21 group should be comparable to the business being
22 examined, correct?

23 A. I believe -- it should have a risk
24 profile that's similar.

25 Q. And so you believe the peer group should

1 have a comparable risk profile to the entity being
2 examined.

3 A. Yes.

4 Q. And page 3, line 10, you say that -- just
5 let me know when you're there.

6 MR. KUMAR: Is that his testimony?

7 MR. ALEXANDER: Yes.

8 A. Yes.

9 Q. And you say the interest rates are near
10 all-time lows; is that correct?

11 A. Yes.

12 Q. And then at page 21 of your testimony --
13 let me know when you're there.

14 A. Yes.

15 Q. Now, here you address some of the causes
16 of interest rate changes. Would you agree that
17 interest rates have a direct correlation with cost of
18 capital calculations?

19 A. Generally they're related. If interest
20 rates go down, usually cost of capital goes down
21 generally. It's not one-for-one perfect, but
22 generally it's a positive relationship.

23 Q. And you would agree that policies of the
24 Federal Reserve could cause interest rate changes,
25 correct?

1 A. Certainly the Fed impacts short-term
2 rates, certainly much more than long-term rates.

3 Q. And you would agree that the dollar
4 status as a reserve currency could cause interest
5 rate changes?

6 A. It can affect the flow of funds around
7 the world, and in that way affect interest rates.

8 Q. And you would agree the international
9 economy could cause changes in the United States
10 interest rate?

11 A. Certainly we've seen that a lot lately.

12 Q. And you would agree that the risk return
13 of an investment in the United States versus other
14 global investments could also have an impact on the
15 United States interest rates.

16 A. Generally they can -- it's a global
17 phenomenon.

18 Q. And you would agree international trade
19 and currency flows could be a cause of interest rate
20 changes.

21 A. Yes.

22 Q. And you would agree that economic growth
23 could be a cause of interest rate changes.

24 A. Yes.

25 Q. And you would agree that stock market

1 fluctuations could be a cause of interest rate
2 changes.

3 A. Yes. And, again, you know, investors
4 seek out their preferred risk/return relationship.
5 That changes over time, and it can result in funds
6 flowing from one market to another.

7 Q. Now, I'd like to turn your attention to
8 the AEP capacity case that you discuss in your
9 testimony. I'd first like to focus on some timing
10 questions. You are aware that AEP Ohio first
11 proposed the 11.15 percent ROE in Witness Avera's
12 testimony in the AEP Ohio distribution case you cite
13 at page 9 of your testimony, correct?

14 A. Yes.

15 Q. And AEP Ohio offered the testimony of
16 Company Witness Pearce in its capacity proceeding in
17 March of 2012, correct?

18 A. Yes, it did.

19 Q. And Mr. Pearce incorporated Dr. Avera's
20 11.15 percent ROE by reference, correct?

21 A. Yes. Dr. Avera's testimony was from
22 March of 2011.

23 Q. And the settlement in the AEP Ohio
24 distribution case you reference in your testimony was
25 approved by the Commission on December 14th, 2011?

1 A. Yes.

2 Q. And the opinion and order in the AEP Ohio
3 capacity case was issued on July 2nd, 2012, correct?

4 A. Yes, I believe so. I don't think I have
5 that in my testimony, but I think that's correct.

6 Q. And so the Commission was aware at the
7 time it issued its opinion and order in the capacity
8 case that it had not accepted Dr. Avera's
9 11.15 percent recommendation in the distribution
10 cases, correct?

11 A. Yes.

12 Q. And turning to page 3 -- excuse me --
13 page 13, line 11 of your testimony. Let me know when
14 you're there.

15 A. Yes.

16 Q. Now, here you address what Dr. Pearce
17 provided in his testimony in the AEP Ohio capacity
18 case? Actually, strike that. You already addressed
19 it.

20 The AEP Ohio capacity case approved AEP
21 Ohio's requested ROE of 11.15 percent, correct?

22 A. Yes.

23 Q. And you're aware that in the AEP Ohio
24 capacity proceeding Staff Witness Smith recommended
25 return on equity of 10 and 10.3 percent for each of

1 the AEP entities, correct?

2 A. Yeah, I think -- yes, I believe that's
3 true.

4 Q. And the Commission did not adopt Staff
5 Witness Smith's recommendation in the AEP Ohio
6 capacity case, correct?

7 A. That is correct.

8 Q. The Commission adopted Dr. Pearce's
9 recommendation?

10 A. Yes. And I discussed that in my
11 testimony why I think that was erroneous, that it was
12 obviously a very dated number, the 11.15 percent, and
13 so I felt that, you know, it was an inappropriate
14 decision by the Commission.

15 Q. Well, let's talk about that. You say you
16 thought the number was dated. At page 13, line 17,
17 you say that financial conditions were different than
18 they were in early 2011. Do you see that?

19 A. Oh, yeah, I agree. I mean, if you look
20 at the 11.15 percent that was developed by Dr. Avera
21 in 2011, and -- I forget. I have it here in my
22 testimony. He was using projected interest rates for
23 2013 of, like, 5 percent for treasuries and the
24 6 percent for utilities.

25 I mean, obviously in 2013, interest rates

1 were not nearly that. What I'm saying by dated is
2 11.15 percent was developed in 2011 based on
3 projections of interest rates which were about 300
4 basis points above where they are today.

5 MR. ALEXANDER: Your Honor, I move to
6 strike. The question was simply, "Do you see the
7 line reference?"

8 MR. KUMAR: Your Honor, I think
9 Dr. Woolridge's answer adequately responds to
10 Mr. Alexander's question and provides a level of
11 detail that's necessary to understand the context of
12 the question.

13 EXAMINER ADDISON: Consistent with our
14 practice, I think I'm going to deny the motion to
15 strike at this point.

16 But, Dr. Woolridge, I will direct you to
17 just simply listen to Mr. Alexander's questions and
18 respond only to those questions, and Mr. Kumar can
19 bring anything up in redirect that you feel should be
20 on the record.

21 THE WITNESS: Okay. Thank you. I'm
22 sorry.

23 EXAMINER ADDISON: Please proceed,
24 Mr. Alexander.

25 MR. ALEXANDER: Thank you, your Honor.

1 Q. (By Mr. Alexander) So, Dr. Woolridge,
2 you're referencing the 2011 date at that line because
3 that is when Dr. Avera filed his testimony, right?

4 A. Yes.

5 Q. But you don't have any knowledge about
6 what time data the Commission used in reaching its
7 July 2012 decision in the capacity case, correct?

8 A. I do not. I do not know -- to be honest,
9 I'm not sure what all, other than Dr. Pearce's
10 testimony, was presented on cost of capital.

11 Q. So in this paragraph at page 13, line 16,
12 you are comparing rates from 2011 to the present; is
13 that correct?

14 A. Yes. And it was probably likewise
15 comparable to 2013, in that I'm saying that the rates
16 used by Dr. Avera of 5.5 -- 5 to 5.5 for treasuries
17 and the rates 6.2 to 6.4 for AA-rated utilities in my
18 testimony on pages 13 and 14, I give the rates as of
19 when I prepared my testimony, and that's -- they're
20 pretty close to where they were then. They're a
21 little bit below that right now.

22 Q. You would agree that interest rates hit a
23 low in mid-2012, correct?

24 A. Yes, they did.

25 Q. And you would agree that interest rates

1 are currently near all-time lows, correct?

2 A. They're still relatively low, yes, near
3 all-time low.

4 Q. Please turn to your Exhibit JRW-2, Panel
5 B and let me know when you're there.

6 A. Yes.

7 Q. Now, this panel represents the risk
8 premium for BAA-rated bonds over the ten-year
9 treasury yield; is that correct?

10 A. Yes.

11 Q. And you consider the ten-year treasury
12 rate to be the risk-free rate, correct?

13 A. It's probably the most prevalent. I
14 mean, I use -- in my CAPM I use the 30-year. I think
15 the references to ten years is primarily because
16 there's a 50-year record of it. There's a gap when
17 30-year treasuries weren't traded. So I think
18 generally the ten-year now is looked at as the
19 risk-free rate. Also most mortgages are tied to the
20 ten-year.

21 Q. So the purpose of your Exhibit JRW-2
22 Panel B is to show the risk premium for BAA-rated
23 bonds, correct?

24 A. Yes.

25 Q. And focusing on July of 2012, the BAA

1 risk premium was approximately 2.9 percent at that
2 time, correct?

3 A. It was, yeah, around 3 percent,
4 thereabouts.

5 Q. And your graph in JRW-2, Panel B, ends
6 with data as of October of 2014, correct?

7 A. I believe so, yes.

8 Q. And the BAA risk premium was
9 approximately 2.1 percent in October of 2014.

10 A. It was lower, yes. I would agree, yes.

11 Q. And in your capital asset pricing model,
12 you used a 4 percent risk-free rate.

13 A. Yes.

14 Q. And if interest rates were to be higher
15 or lower than you anticipated, that could change the
16 cost of capital that you calculate as well, right?

17 A. Yes.

18 Q. And you would agree that a fixed return
19 on equity could potentially benefit ratepayers if
20 capital costs were to increase, correct?

21 A. Yes, it would.

22 Q. Now, shifting topics, you reviewed
23 Mr. Staub's calculation of the one- and 15-year
24 treasury rates, correct?

25 A. Yes, I have.

1 Q. And you don't have any criticisms of the
2 way Mr. Staub mathematically calculated those average
3 rates, correct?

4 A. No. The way he calculated them in terms
5 of the differences in yields, I agree with he
6 calculated them correctly. I -- obviously, my
7 testimony disagrees with his application, but I think
8 he correctly calculated those numbers.

9 Q. And at page 5, line 1, of your testimony,
10 you address your belief that costs of capital and
11 return on equity could go lower in the future. Do
12 you see that?

13 A. They could. They could go higher.

14 Q. Okay. You would agree that long-term
15 treasury rates are typically higher than short-term
16 treasury rates, correct?

17 A. Yes.

18 Q. And when short-term rates are higher than
19 long-term rates, that is what is known as an
20 inversion?

21 A. Yes.

22 Q. And inversions are very rare, correct?

23 A. That's usually when short-term inflation
24 is very high, yes, like the early 1980s.

25 Q. And long-term rates are typically higher

1 than short-term rates to address the risk of
2 investing over a longer period of time, correct?

3 A. Generally investors want a higher return
4 to invest over a longer period of time.

5 Q. And long-term rates are also typically
6 higher than short-term rates because inflation
7 expectations are built into long-term rates, correct?

8 A. Yes.

9 Q. You are aware that the return on equity
10 proposed by the companies here would be fixed for a
11 15-year period.

12 A. Yes.

13 Q. And despite the fact that the ROE is
14 actually fixed for 15 years, you are suggesting that
15 the term premium should be estimated by a period of
16 less than 15 years, correct?

17 MR. KUMAR: Objection, your Honor.

18 EXAMINER ADDISON: Grounds.

19 MR. KUMAR: Mischaracterizes
20 Mr. Woolridge's testimony.

21 MR. ALEXANDER: I'll rephrase your Honor.

22 EXAMINER ADDISON: Thank you,
23 Mr. Alexander.

24 Q. Could you turn to page 16, line 1, of
25 your testimony.

1 A. Yes.

2 Q. Here you say, "Term premium, if needed,
3 should be estimated by a term premium of less than 15
4 years."

5 A. Yes.

6 Q. So you suggest no term premium because
7 under a normal base rate case structure, utilities
8 can come in for a new rate case when the return on
9 equity needs to be adjusted, correct?

10 A. No. I mean, I would say I suggest no --
11 initially I said I don't have a term rate because --
12 nowhere do we say an ROE is a one-year rate. Now, in
13 Mr. Staub's calculation, he goes from one year to 15
14 years, so effectively saying that's a one-year rate,
15 and we don't use one-year treasury rates when we
16 compute the cost of equity. We don't use one-year
17 growth rates. We use long-term growth rates, so it's
18 a long-term concept.

19 And so I would say if you're comparing
20 one year to 15 year, I don't think that's correct. I
21 said one term. If you want to look at a term, if the
22 Commission decides there should be a term tied to
23 this, in other words, a term premium above, say, what
24 I estimate is the base cost of capital, that should
25 reflect something other than 15 years because the

1 company doesn't come in for a rate case every year.

2 The company has had, what, two rate cases
3 in the last 25 years. So investors, you wouldn't
4 expect them to come in every year. If, as it turns
5 out, you want to base it -- you know, the rate case
6 is where you get to reset your ROE, basically, either
7 up or down.

8 So the way I look at it is ROE is not a
9 one-year rate. Most cases I've been involved with
10 it's in place for five or ten years. You don't
11 have -- some states you have rate cases that come and
12 go, but, for example, with this company, two cases in
13 25 years, that means they could come in -- they've
14 only come in a couple times to reset their rates tied
15 to their ROE.

16 MR. ALEXANDER: Could I have that
17 question read, please?

18 EXAMINER ADDISON: You may.

19 (Record read.)

20 Q. Let's take it step by step, I guess. You
21 agree that under Ohio law a utility is typically
22 allowed to come in for a rate case as often as it
23 would like, correct?

24 A. Yes.

25 Q. And when you say that the companies only

1 came in for a rate case twice in 25 years, the
2 companies have not been legally prohibited from
3 coming in for rate cases more often than that,
4 correct?

5 A. That is correct.

6 Q. You would agree that utilities generally
7 can come in for a new rate case when their return on
8 equity needs to be adjusted, correct?

9 A. Yes, among other things, obviously.

10 Q. For example, utilities could come in for
11 a new rate case if interest rates would increase,
12 correct?

13 A. They could, yes.

14 Q. But if there was a significant change in
15 the next 15 years, FES would differ from that normal
16 model because it would not have the ability to come
17 in for a new rate case, correct?

18 A. Right. And I said in my testimony, I
19 think if the Commission determines some other period
20 was right, then the Commission could do that, say I
21 think the logical thing is this ESP ends in 2019,
22 that if they think the ROE should be reopened then,
23 then that could be part of the decision made by the
24 Commission.

25 Q. And just so we're clear, you have not

1 built any term premium into your analysis proposed
2 return on equity.

3 A. No, I have not.

4 Q. You're not recommending any specific term
5 premium in this case, correct?

6 A. No. I said if the Commission feels one
7 is appropriate, then they could build into it, but I
8 don't think it's appropriate.

9 Q. If you turn to page 5 of your testimony,
10 line 4 --

11 A. Yes.

12 Q. -- you address FES Solutions' historic
13 return on equity; is that correct?

14 A. Yes.

15 Q. And you calculated that historic earned
16 return on equity from FES's financial statements,
17 correct?

18 A. Yes, from the 10-K.

19 Q. And earned return on equity is a
20 backward-looking calculation, correct?

21 A. Yes.

22 Q. And earned return on equities can vary
23 from a preset regulatory rate of return, correct?

24 A. Yes. And, obviously, they don't have a
25 regulatory rate of return at this point.

1 Q. And when calculating an appropriate ROE
2 from a regulatory perspective, that is set on a
3 going-forward basis, correct?

4 A. Yes.

5 Q. And forward-looking costs of capital is
6 not set based on references to historic return on
7 equity, correct?

8 A. No. My point is to highlight the returns
9 that they have been earning.

10 Q. And you are not aware of any jurisdiction
11 in which historic return on equity was used to
12 establish future regulated return on equity, correct?

13 A. No.

14 Q. And if historic return on equity was
15 abnormally high, you would not recommend an upward
16 adjustment in a regulated return on equity, correct?

17 A. No, that's correct. Now, my point here
18 is just that why I thought, you know, my return was
19 certainly good compared to what FES has been earning
20 in the last couple of years. So this has nothing to
21 do with setting one return versus the other. I
22 just -- it's better than it was.

23 MR. ALEXANDER: Your Honor, I move to
24 strike everything after "and."

25 MR. KUMAR: Your Honor, Mr. Woolridge's

1 answer has essential context to the line of
2 questioning Mr. Alexander was asking, and it explains
3 why he had some issues in terms of the question.

4 EXAMINER ADDISON: Mr. Alexander, where
5 were you --

6 MR. ALEXANDER: I believe the answer
7 started with "yes" and then the witness provided his
8 explanation.

9 EXAMINER ADDISON: Can I have the answer
10 read back, please, question and answer.

11 (Record read.)

12 MR. ALEXANDER: Your Honor, the motion to
13 strike is starting with "now." I think I said "and"
14 the first time.

15 EXAMINER ADDISON: I'm going to grant the
16 motion to strike for everything after "now."

17 Q. (By Mr. Alexander) And so when you
18 reference -- you are not suggesting any downward
19 adjustment for the regulated ROE based on the earned
20 ROE's referenced in your testimony, correct?

21 A. Correct.

22 Q. Please turn to page 17, line 1, where you
23 discuss the risk of FES's merchant generation. Let
24 me know when you're there.

25 A. Yes.

1 Q. You've never calculated a proposed return
2 on equity for merchant generator before, correct?

3 A. Correct.

4 Q. Please turn to page 18, line 14, of your
5 testimony. Let me know when you're there.

6 A. Yes.

7 Q. You don't know what the companies have
8 proposed with regard to how legacy generation costs
9 will be reviewed by the Commission, correct?

10 A. Correct.

11 Q. And you don't know what the companies
12 have proposed with regard to how going-forward costs
13 will be reviewed by the Commission, correct?

14 A. I've only reviewed what I have on 18 and
15 19, Dr. Rose's testimony where -- I mean from my
16 mind, I look at it -- I mean, this is all I really
17 reviewed, what's in my testimony.

18 Q. My next question, so the quote on page 19
19 of your testimony is the entirety of your knowledge
20 regarding the companies' proposed review process,
21 correct?

22 A. Yes.

23 Q. And this portion of your testimony arose
24 from your discussions with OCC Witness Ken Rose from
25 a conference call the two of you had?

1 A. Yes.

2 Q. And you don't believe the regulatory
3 oversight issue to be a big issue, correct?

4 A. I don't think it's a huge issue. It's
5 just if you compare this to a rate case, this type of
6 review to a rate case where you have, you know, six
7 months of hearings and intervenors, it's just a
8 lesser -- it's a lesser review process, I'd say.

9 Q. So did you say yes, you don't think it's
10 a big issue with that explanation?

11 A. Yes.

12 Q. And this portion of your testimony has
13 not impacted your calculation of the proposed return
14 on equity, correct?

15 A. No.

16 Q. And you are not recommending any
17 regulatory review process as part of your direct
18 testimony in this case, correct?

19 A. No.

20 Q. No, I'm not correct?

21 A. Oh, I'm sorry. I said no, I'm not -- I'm
22 not proposing any review process.

23 Q. And now let's focus on your Exhibit
24 JRW-4. Let me know when you're there.

25 A. Yes.

1 Q. Now, in this exhibit you provide Standard
2 & Poors' issue or credit ratings, correct?

3 A. Yes.

4 Q. The exhibit itself says S&P bond rating.
5 You actually intended that to be issuer rating.

6 A. Some people call them bond ratings, but
7 what I used were issuer ratings.

8 Q. And Standard & Poor's ratings are
9 different than the Moody's ratings, correct?

10 A. Yes.

11 Q. And would you agree that the Moody's BAA
12 rating is equivalent to the Standard & Poor's BBB
13 rating?

14 A. Yes.

15 Q. And BBB-minus would be equivalent to
16 BAA-3 for Moody's, correct?

17 A. Yes.

18 Q. Now, please turn to your Exhibit JRW-2.
19 And, again, focusing on Panel B. And so what you've
20 done in JRW-2, Panel B, is compared the ten-year
21 Treasury rate to the Moody's BBA-2 rating, correct?

22 A. Yes.

23 Q. And that would be analogous to the
24 Standard & Poor's BBB rating, correct?

25 A. Yes.

1 Q. And FES's credit rating is BAA-3,
2 correct?

3 A. Yes.

4 Q. And that would be analogous to the
5 Standard & Poor's BBB-minus.

6 A. That's correct.

7 Q. And you used BAA2-rated bonds in your
8 Exhibit JRW-2 because that is all you had data for,
9 correct?

10 A. Correct.

11 Q. And if companies are lower rated, that
12 would indicate that they are riskier than
13 higher-rated companies, correct?

14 A. Yes.

15 Q. And, now, turning your attention back to
16 JRW-4, this is the proxy group you used to calculate
17 your proposed return on equity, correct?

18 A. Yes.

19 Q. And this proxy group included utilities
20 ranging from BBB-plus to BBB-minus, correct?

21 A. Yes.

22 Q. And FirstEnergy Corp. is the entity you
23 examined, correct?

24 A. Yes, it's as -- I just listed that as
25 part of the group for comparison purposes. It is

1 part of the group, yes.

2 Q. Right. But what I want to clarify here
3 is you examined FirstEnergy Corp. as opposed to
4 FirstEnergy Solutions, correct?

5 A. As a comparable in this table, yes.

6 Q. And I believe I may have asked this. If
7 I did, I apologize. FirstEnergy Corp. is BBB-minus,
8 correct?

9 A. Yes.

10 Q. In your proxy group, there are seven
11 BBB-plus utilities in the proxy group, correct?

12 A. Yes.

13 Q. And there are 11 BBB utilities in the
14 proxy group, correct?

15 A. Yes.

16 Q. And there are two BBB-minus utilities in
17 the proxy group, correct?

18 A. Yes.

19 Q. Now, you did not examine FES or
20 FirstEnergy Solutions in comparison to the proxy
21 group, correct?

22 A. No, I did not.

23 Q. And you are aware that FirstEnergy
24 Solutions is a stand-alone entity with its own credit
25 rating, correct?

1 A. Yes, I do.

2 Q. And FirstEnergy Solutions is also a
3 BBB-minus, correct?

4 A. It is. And there are very few BBB-minus
5 regulated electric utilities. Obviously, FES has
6 unregulated merchant generation and there's just, you
7 know -- and as I say in my testimony, to me, the
8 contract -- the rider looks like regulated
9 generation, and most of the companies in this group
10 have regulated generation.

11 MR. ALEXANDER: Could I have the question
12 and answer read back, please, your Honor.

13 EXAMINER ADDISON: You may.

14 (Record read.)

15 MR. ALEXANDER: Your Honor, I move to
16 strike everything after "and."

17 MR. KUMAR: Again, your Honor, I think
18 Mr. Woolridge's answer goes to the context and
19 premise of Mr. Alexander questions, so I think it
20 should not be stricken.

21 EXAMINER ADDISON: We will be granting
22 the motion to strike for everything after "and."

23 And, Dr. Woolridge, I'll remind you to
24 just answer the question posed. Thank you.

25 Q. (By Mr. Alexander) Dr. Woolridge, there

1 are no merchant generators in your peer group,
2 correct?

3 A. That is correct.

4 Q. And you did not include any merchant
5 generators because your source of data was Value
6 Line, and Value Line does not include merchant
7 generators in their numbers, correct?

8 A. That's correct, they don't have merchant
9 generators as part of their utility industry.

10 Q. And you also don't include any merchant
11 generators in your peer group because your first
12 criteria required that each entity examined received
13 at least 50 percent of its revenue from regulated
14 operations, correct?

15 A. Correct.

16 Q. So if a merchant generator didn't get
17 50 percent of its revenue from regulated operations,
18 it would not be included in your list, correct?

19 A. That's correct.

20 Q. And do you know if FirstEnergy Solutions
21 gets 50 -- strike that. And you don't know whether
22 FirstEnergy Solutions gets 50 percent of its revenue
23 from regulated operations, correct?

24 A. They do not.

25 Q. And FirstEnergy Corporation has the

1 lowest credit rating of any entity in your peer
2 group, correct?

3 A. Yes.

4 Q. And FirstEnergy Corporation has the
5 lowest return on equity of any entity in your peer
6 group, correct?

7 A. Yes.

8 Q. And FirstEnergy Corporation is generally
9 weaker on average than the rest of your peer group,
10 correct?

11 A. Yes, and I explain why they are in my
12 testimony.

13 Q. And you did not adjust the recommended
14 return on equity in any way to reflect the increased
15 risk of FirstEnergy Corporation as opposed to the
16 rest of your peer group, correct?

17 A. No, I didn't, and I explain that in my
18 testimony.

19 Q. And your proposed return on equity does
20 not make any adjustment to reflect the risk of
21 FirstEnergy Solutions as compared to the peer group,
22 correct?

23 A. No, it does not, and I explain that in my
24 testimony.

25 Q. Turn to page 30, line 21, of your

1 testimony. Are you there?

2 A. I'm sorry. It's page 30?

3 Q. Page 30 starting at -- the sentence
4 starting at line 20 that goes into line 21 where you
5 address the risk associated with cost-based
6 generation as opposed to merchant generation. Do you
7 see that sentence?

8 A. Yes.

9 Q. Well, you would agree that, first of all,
10 you have not calculated the risk of FirstEnergy
11 Solutions as a merchant generator, correct?

12 A. I have not.

13 Q. And you would also agree that even if you
14 were looking at a utility with both regulated and
15 nonregulated operations, that you evaluate the risk
16 of the entity as a whole as opposed to one subpart of
17 the entity, correct?

18 A. I disagree with that to a certain degree.
19 I recognize in terms of the amount of regulated
20 revenue, that part of it as being part of the risk
21 profile.

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

24 EXAMINER ADDISON: You may.

25 (Record read.)

1 Q. So you're only suggesting that the amount
2 of regulated revenue be considered as part of
3 determining of the risk of the entity as a whole.

4 A. Yes. I mean, that's one of the risk
5 factors I look at.

6 Q. But what you're evaluating is the risk of
7 the entity as a whole, not the risk of just the
8 regulated side of the entity, correct?

9 A. Yes, and the credit ratings will take
10 into account things like the unregulated revenue.

11 Q. Please turn to page 32, starting at line
12 10 where you address capital structure. Let me know
13 when you're there.

14 A. Yes.

15 Q. Now, you're proposing that instead of
16 using FirstEnergy Solutions' capital structure, the
17 Commission should use FirstEnergy Corporation's
18 capital structure, correct?

19 A. Yes.

20 Q. And you are also recommending the
21 Commission use the FirstEnergy Solutions' cost of
22 debt; is that correct?

23 A. Yes.

24 Q. And FirstEnergy Solutions' cost of debt
25 is 4.54 percent, correct?

1 A. Yes.

2 Q. And FirstEnergy Solutions currently has a
3 65 percent equity ratio, correct?

4 A. Yes. And the company obviously didn't
5 feel it should propose that equity ratio and uses a
6 50/50 capital structure. So, I mean, I'm not the
7 only one who didn't use FES' capital structure.

8 Q. So FirstEnergy Solutions has 35 percent
9 debt under its actual capital structure, correct?

10 A. Yes.

11 Q. And you would agree that if FirstEnergy
12 Solutions debt was increased from 35 percent to
13 55 percent, that the expected cost of debt would
14 increase, correct?

15 A. It could. It depends when they issued
16 the debt and that sort of thing. Their debt cost
17 rate is low because of when they issued the debt, I
18 presume. But, no, again, the company uses 50/50 as a
19 debt-to-equity capital structure. I used 55 percent
20 debt, 45 percent equity, and that was the difference
21 between the two.

22 MR. ALEXANDER: Could I have the question
23 and answer read, please?

24 EXAMINER ADDISON: You may.

25 (Record read.)

1 Q. So, Doctor, holding all else constant,
2 you would agree if FirstEnergy Solutions debt was
3 increased from 35 percent to 55 percent, then the
4 expected cost of debt would increase, correct?

5 A. Yes. I will agree in the sense that if
6 they used more debt, their financial risk would go up
7 and cost of debt would go up, all else equal.

8 Q. Because holding all else equal, as equity
9 decreases, the relative risk of the firm would
10 increase.

11 A. Yes.

12 Q. And do you believe that if -- strike
13 that.

14 You did not take the impact of the
15 20 percent change you made to the FirstEnergy
16 Solutions equity structure into account when you
17 calculated your cost of debt, correct?

18 A. I did not.

19 Q. And you are not aware of any scholarly
20 papers or articles which support using a parent's
21 capital structure instead of the plant owners',
22 correct?

23 A. No. I mean, I disagree in the sense that
24 some -- I mean, I'm not aware of any particular
25 scholarly papers on this topic. I do know that the

1 way credit ratings come out, the parent capital
2 structure has a big impact on that, but I'm not aware
3 of any studies that demonstrate that.

4 MR. ALEXANDER: Your Honor, I move to
5 strike the reference to how credit ratings are
6 determined. He answered the question at the
7 beginning and then switched to how credit ratings are
8 determined and then came back to the question at the
9 end. So I move to strike everything once he switched
10 to how credit ratings are calculated.

11 EXAMINER ADDISON: Mr. Kumar.

12 MR. KUMAR: Your Honor, I think
13 Mr. Alexander's question mischaracterizes
14 Dr. Woolridge's testimony, and I think Dr. Woolridge
15 is attempting to clear up the issues in that question
16 by his answer.

17 EXAMINER ADDISON: I'm going to grant the
18 motion to strike for the sentence "I do know that"
19 and ending "it has a big impact on that."

20 Q. And, Dr. Woolridge, you are not aware of
21 any other proceeding where the capital structure of
22 the entity which actually owns the assets was changed
23 by such a large margin, correct?

24 A. I don't understand your question.

25 Q. Sure. You've proposed changing the

1 FirstEnergy Solutions capital structure by
2 20 percent, correct?

3 A. No. The companies proposed 50/50. It
4 was 55/45, so I wouldn't say that's 20 percent.

5 Q. Okay. So I'll rephrase. You've proposed
6 changing the FirstEnergy Solutions' capital structure
7 an additional 5 percent over that proposed by the
8 companies in this proceeding, correct?

9 A. Yes.

10 Q. And you are not aware of any other
11 proceeding where the capital structure of the entity
12 which actually owns the assets was altered by that
13 percentage, by 20 percent?

14 A. I'm sorry. Reread that or give me the
15 question again. I didn't quite understand the
16 question.

17 Q. You are not aware of any proceeding in
18 which the capital structure of the entity which
19 actually owns the assets was changed by 20 percent,
20 correct?

21 A. Again --

22 MR. KUMAR: Objection. Your Honor, I
23 think that question mischaracterizes Dr. Woolridge's
24 testimony with regards to how he adjusted capital
25 structure of the companies.

1 EXAMINER ADDISON: Mr. Alexander?

2 MR. ALEXANDER: I've just been informed I
3 said 20 percent and I meant to say 5.

4 EXAMINER ADDISON: Thank you.

5 MR. ALEXANDER: So let me repeat the
6 question and we'll try this again.

7 Q. (By Mr. Alexander) You are not aware of
8 any other proceeding where the capital structure of
9 the entity which actually owns the assets was changed
10 by 5 percent, correct?

11 A. No, I am not, in the strictest terms of
12 how the question was asked.

13 MR. ALEXANDER: Nothing further,
14 Dr. Woolridge. Thank you.

15 EXAMINER ADDISON: Thank you.

16 Mr. Kurtz, any questions?

17 MR. KURTZ: Yeah, I do.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Kurtz:

21 Q. Dr. Woolridge, will you turn to your
22 Exhibit JRW-1. Are you there?

23 A. Yes.

24 Q. Okay. I just want to understand the
25 difference between your proposal and the companies'

1 proposal. For the cost of debt, 4.54 percent, you
2 and the company are in agreement?

3 A. Yes.

4 Q. Cost of equity, 8.7 percent, that's your
5 proposal?

6 A. Yes.

7 Q. What is the company's proposal?

8 A. 11.15 percent.

9 Q. Now, both of those are after-tax returns
10 on equity, correct?

11 A. What's that?

12 Q. Your 8.7 percent?

13 A. 8.75, yes.

14 Q. 8.7 percent?

15 A. 8.7, yes.

16 Q. That's the after-tax return on equity.

17 A. Yes.

18 Q. Do you know what the pretax return on
19 equity would be?

20 A. I do not collect -- I didn't calculate
21 that.

22 Q. Taxes are collected in the rates so in
23 order for the entity to receive that level of profit
24 after tax, correct?

25 A. Yes.

1 Q. And then also you propose a more
2 leveraged capital structure making it 55 percent
3 debt/45 percent equity versus 50/50?

4 A. Yes.

5 Q. Okay. And the revenue requirement effect
6 on your capital structure is to lower the revenue
7 requirement because the cost of debt is less -- the
8 pretax cost of debt is less than the pretax cost of
9 equity --

10 A. Yes.

11 Q. -- correct? Okay. And what you show
12 here, your weighted cost rate, that's the weighted
13 average aftertax cost --

14 A. Yes.

15 Q. -- correct? If we were to gross up the
16 equity return for taxes, it would be much higher?

17 A. Yes.

18 Q. Okay. To give your proposal some
19 real-world impact, what is the dollar impact of just
20 your rate of return. We're talking about
21 capitalization. Just going from 11.15 to 8.7, what
22 is the revenue requirement effect?

23 A. I don't know. I haven't done that
24 calculation.

25 Q. Can you do it?

1 A. I haven't done it.

2 Q. So you're really just giving the
3 Commission this sort of theoretical recommendation?

4 MR. KUMAR: Objection, your Honor.

5 EXAMINER ADDISON: Grounds.

6 MR. KUMAR: Mischaracterizes
7 Mr. Woolridge's testimony and beyond the scope of
8 Mr. Woolridge's testimony.

9 EXAMINER ADDISON: Would you mind
10 rephrasing.

11 Q. So is the Commission supposed to
12 understand what the impact on this case is if they
13 accept your proposal if you haven't done that
14 calculation?

15 A. I just wasn't --

16 MR. KUMAR: Objection, your Honor.

17 A. I just wasn't asked to do that.

18 EXAMINER ADDISON: I'm sorry. The
19 objection is moot since he answered.

20 Please proceed, Mr. Kurtz.

21 Q. Can you do that calculation?

22 A. I don't have the numbers to do it right
23 here.

24 Q. You don't have an order of magnitude
25 of -- if the Commission accepts your recommendation,

1 it's clearly going to reduce the cost-of-service rate
2 from the operating companies to FES, correct?

3 MR. KUMAR: Objection, your Honor. We've
4 already gone -- Mr. Kurtz has already asked and
5 answered -- Mr. Kurtz has already gone into this. I
6 think this is sort of belaboring the point.

7 MR. KURTZ: It's a different point. I'll
8 rephrase.

9 Q. (By Mr. Kurtz) Directionally, if the
10 Commission accepts your proposal, presumably you're
11 making it because it will lower the revenue
12 requirements, therefore, make the RRS either a
13 greater credit or a lesser charge?

14 MR. KUMAR: Objection your Honor. Again
15 that's a mischaracterization of Dr. Woolridge's
16 testimony.

17 MR. KURTZ: Counsel doesn't want the
18 Commission to even get a feel for what is going on.
19 Actually, I would think you would welcome these
20 questions. This is trying to understand
21 directionally what this does to consumers if the
22 Commission accepts this recommendation.

23 EXAMINER ADDISON: I understand,
24 Mr. Kurtz.

25 MR. KURTZ: That's okay. If OCC doesn't

1 want to talk about that, that's fine.

2 Q. (By Mr. Kurtz) Directionally, if the
3 Commission accepts your capitalization
4 recommendation, it will lower the cost-of-service
5 rate from the operating companies to FES, correct?

6 A. Yes.

7 Q. And you haven't done the revenue
8 requirements effect changing the capitalization
9 either, I take it?

10 A. I haven't been asked to do it, and so I
11 haven't done it.

12 Q. Okay. If the Commission accepts your
13 recommendations on 8.7 percent return on equity and
14 55/45 percent capitalization ratio, in your opinion,
15 would FES be fully compensated for the cost of
16 providing generation to the utilities?

17 A. Yes.

18 Q. Yes. So if the Commission were to accept
19 your recommendation, would FES, just from a financial
20 point of view, in any way be subsidized?

21 A. Well, they would be subsidized from the
22 standpoint that their merchant generation would
23 suddenly be part of a regulated generation base.

24 Q. If they accept your recommendations,
25 they'll be fully compensated for the cost of

1 providing generation, correct?

2 A. For the three clients, yes.

3 Q. So if the Commission accepts your
4 recommendation, would FES be financially subsidized?

5 A. It really -- I mean, they would earn a
6 regulated rate of return, and if you call that
7 subsidized, you would call that subsidized. I would
8 say they would earn a regulated rate of return.

9 Q. The proper regulated rate of return, not
10 undercompensation, not overcompensation, if they
11 accept your recommendation?

12 A. Yes.

13 MR. KURTZ; Thank you, your Honors.

14 EXAMINER ADDISON: Thank you, Mr. Kurtz.
15 Mr. McNamee.

16 MR. MCNAMEE: I have no questions. Thank
17 you.

18 EXAMINER ADDISON: Mr. Kumar, any
19 redirect?

20 MR. KUMAR: May we have a few minutes,
21 your Honor.

22 EXAMINER ADDISON: You may. Let's go off
23 the record.

24 (Recess taken.)

25 EXAMINER ADDISON: Any redirect,

1 Mr. Kumar?

2 MR. KUMAR: Just one question.

3 - - -

4 REDIRECT EXAMINATION

5 By Mr. Kumar:

6 Q. Dr. Woolridge, when you conducted your
7 proxy group analysis, why did you include those
8 utilities that you included in your proxy group
9 analysis?

10 A. I included a group of which are regulated
11 utilities that have generation which are rated BBB
12 plus, minus, or BBB. Under the proposal, you're
13 taking the merchant generation of FES and making it
14 regulated generation, so there was no reason to look
15 at merchant generators as the proxy group because
16 this would be four gigawatts of regulated generation.
17 I looked at regulated electric utilities with
18 generation.

19 MR. KUMAR: Thank you. I have no more
20 questions, your Honor.

21 EXAMINER ADDISON: Thank you, Mr. Kumar.

22 Mr. Parram, any questions?

23 MR. PARRAM: No questions, your Honor.

24 EXAMINER ADDISON: Mr. Mendoza?

25 MR. MENDOZA: No questions, your Honor.

1 EXAMINER ADDISON: Mr. Alexander?

2 MR. ALEXANDER: No questions, your Honor.

3 EXAMINER ADDISON: Mr. Randazzo, do you
4 have any questions?

5 MR. RANDAZZO: No questions.

6 EXAMINER ADDISON: Mr. Kurtz?

7 MR. KURTZ: No questions.

8 EXAMINER ADDISON: Mr. McNamee?

9 MR. MCNAMEE: No questions.

10 EXAMINER ADDISON: Dr. Woolridge, you're
11 excused. Thank you very much for your testimony.

12 I believe, Mr. Kumar, previously moved
13 for OCC Exhibit 22 into evidence.

14 Do I hear any objections?

15 MR. ALEXANDER: No, your Honor.

16 EXAMINER ADDISON: Seeing none, it will
17 be admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 EXAMINER ADDISON: At this time we'll
20 take a brief five-minute recess. Let's go off the
21 record.

22 (Recess taken.)

23 EXAMINER PRICE: You may call your next
24 witness.

25 MR. SAUER: OCC calls Scott J. Rubin to

1 the stand. We'd like his direct testimony marked as
2 OCC Exhibit 23 and his Direct Testimony Confidential
3 Version 24C.

4 EXAMINER PRICE: It will be so marked.

5 (EXHIBITS MARKED FOR IDENTIFICATION.)

6 (Witness sworn.)

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

9 THE WITNESS: Scott J. Rubin, 333 Oak
10 Lane, Bloomsburg, Pennsylvania.

11 EXAMINER PRICE: Thank you. You may
12 proceed, Mr. Sauer.

13 MR. SAUER: Thank you, your Honor.

14 - - -

15 SCOTT J. RUBIN

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

18 DIRECT EXAMINATION

19 By Mr. Sauer:

20 Q. Are you the same Scott J. Rubin whose
21 direct testimony was filed in these cases?

22 A. Yes.

23 Q. And on whose behalf do you appear?

24 A. The Ohio Office of Consumers' Counsel.

25 Q. Do you have your prepared testimony with

1 you on the stand?

2 A. Yes.

3 Q. Did you prepare the testimony or have it
4 prepared at your direction?

5 A. It was prepared by me.

6 Q. Do you have any changes or corrections to
7 your direct testimony?

8 A. No.

9 Q. And if I ask you the same questions found
10 in your direct testimony in OCC Exhibit 23 and 24C,
11 would your answers be the same?

12 A. Yes.

13 MR. SAUER: The OCC moves for the
14 admission of OCC Exhibits 23 and 24C and tenders the
15 witness for cross-examination.

16 EXAMINER PRICE: Thank you. Mr. Mendoza.

17 MR. MENDOZA: No questions, your Honor.

18 EXAMINER PRICE: Let's go off the record.

19 (Discussion off the record.)

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

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Randazzo:

25 Q. My name is Sam Randazzo. I am general

1 counsel for an organization known as the Industrial
2 Energy Users of Ohio, and I am part of a firm known
3 as McNees, Wallace & Nuric based in Harrisburg,
4 Pennsylvania.

5 I'd like to turn to page 25 first and I
6 may jump around a little bit, so if I jump around in
7 a way that creates a problem for you, please let me
8 know and we'll sort it out. On page 25, line 16, you
9 refer to the companies' periods of peak demand. Are
10 you referring -- what type of peak demand are you
11 attempting to refer to there?

12 A. I'm referring to the hourly peak demand
13 on the combined distribution system of the three --
14 sorry -- the three companies.

15 Q. Okay. And do you know the degree of
16 coincidence between the hourly distribution system
17 peak demand, the transmission system peak demand, and
18 generation-related peak demand?

19 A. I do not.

20 Q. Do you know what I mean by "coincidence"?

21 A. I do.

22 Q. What is coincidence?

23 A. Occurring at the same time.

24 Q. Right. Not coincidence something
25 happening by happenstance, it's the relationship

1 between one event and another, correct?

2 A. Yes.

3 Q. And so in ratemaking and rate design
4 purposes, when we say there is coincident, when we're
5 talking about coincident demand, we're looking at the
6 combined demand of all customers, correct?

7 A. Yes.

8 Q. And that can be different as between the
9 generation, distribution and transmission components,
10 correct?

11 A. It can be. When we're looking at the
12 particular hour in which a peak occurred, I would be
13 surprised if there is much difference in identifying
14 the hour. I mean the number of kilowatts of demand
15 might be different, but I would expect the hour of
16 the peak to be the same.

17 Q. Okay. But you haven't looked at it for
18 purposes of this proceeding, is that correct? You
19 haven't looked at the degree of coincidence between
20 those three funtionalized demand levels, correct?

21 A. That's correct.

22 Q. Now, beginning at page 3, line 13, you
23 respond to a question asking you to identify your
24 experience that's particularly relevant to the issues
25 in this case. Am I correct that your testimony does

1 not include a proposed rate design for anything; is
2 that correct?

3 A. You are correct.

4 Q. And your testimony -- you haven't
5 proposed a rate schedule for anything, is that
6 correct?

7 A. That's correct.

8 Q. And you have not submitted as part of
9 your testimony a fully allocated cost-of-service
10 study; is that correct?

11 A. That's correct.

12 Q. Do you know what I mean by fully
13 allocated cost-of-service study?

14 A. Yes.

15 Q. What is a fully allocated cost-of-service
16 study?

17 A. No one's asked me to define that before.
18 We all know what a cost-of-service study is. It's
19 taking the utilities' costs, all of their expenses,
20 as well as their rate base, and I hate to use the
21 same term, but allocating that among various
22 functions of the utility and ultimately to the
23 individual customer classes or rate schedules.

24 Q. Now, is there a concept in cost
25 allocation also known as direct assignment?

1 A. Yes.

2 Q. And tell me the difference between direct
3 assignment and fully allocated.

4 A. Well, I wouldn't say there's a difference
5 between the two. Direct assignment is part of
6 performing a fully allocated cost-of-service study.
7 Wherever you can identify the customer class for
8 which an expense is incurred, you directly assign
9 that expense to the customer class. Where you cannot
10 directly assign a cost, then you allocate it.

11 Q. Okay. So for purposes of identifying the
12 cost attributable to a particular rate schedule or
13 class, you would first start with direct assignment
14 where direct assignment has application, and when you
15 are dealing with costs that are common costs, you
16 would move to some system of allocation; is that
17 correct?

18 A. I'm not sure I would do it as a first
19 then second. Usually it's all done as part of an
20 integrated process, but certainly if you can directly
21 assign a cost, you do that. And if you cannot, then
22 you allocate it.

23 Q. Okay. Now, on page 1, line 18, you
24 indicate the principles that you talk about in your
25 testimony include the effect of the proposed

1 stipulations on residential customers. You have not
2 quantified the impact of any of the stipulations on
3 residential customers; is that correct in your
4 testimony?

5 A. That is not correct.

6 Q. And where have you quantified the impact
7 in your testimony?

8 A. Just give me a moment.

9 Q. Sure.

10 A. I would say beginning on page 29 with
11 question 36, and that carries through, it looks like,
12 about the end of page 34 where I quantify the effect
13 of the proposed, what I'm abbreviating as rate HLF,
14 the proposed high-load-factor, time-of-use rate for
15 commercial customers. I estimate the minimum
16 possible cost impact, and the --

17 MR. KUTIK: Your Honor. Your Honor, I
18 just want the witness to be cautioned that he should
19 not reference any confidential figures in the public
20 section.

21 MR. RANDAZZO: My question was about did
22 you quantify, not what you came up with. By sticking
23 with the question, we may be avoiding the risk that
24 Mr. Kutik is sensitive to, and I am as well.

25 A. And I am as well. I was not going to

1 mention any numbers, but you asked me where in the
2 testimony I did that. That is a location where I did
3 that for the proposed high-load-factor, time-of-use
4 rate.

5 Q. Right. And is that the only place in
6 your testimony where you attempted to quantify an
7 impact on residential customers?

8 A. I believe so, yes.

9 Q. Now, you indicate on page 3 at the bottom
10 of the page that you served on the Editorial
11 Committee for the preparation of American Water Works
12 Association's cost allocation manual, correct?

13 A. Yes. The manual covers cost allocation
14 and other aspect of rate setting.

15 Q. Right. And those other aspects would
16 include revenue requirements?

17 A. Yes.

18 Q. And would I be correct that that manual
19 looks to compute revenue requirements based upon
20 accounting cost methodology?

21 A. I'm sorry. I don't follow you.

22 Q. Would that manual be focused on the use
23 of what I'll call traditional ratemaking or
24 cost-based ratemaking for purposes of computing the
25 revenue requirements?

1 A. For purposes of that manual, there are
2 really two types of cost-based ratemaking, what's
3 usually referred to as the utility approach, which is
4 what we're used to dealing with before this
5 Commission, rate-based rate of return, if you will.

6 Q. Right.

7 A. And there's also a cash-needs approach,
8 which is more applicable to government-owned
9 utilities.

10 Q. So a cash-needs approach would apply to a
11 municipal water utility, for example?

12 A. Well, any type of municipal utility, yes.

13 Q. All right. And what you call the utility
14 or rate-based rate-of-return methodology that's in
15 the manual would apply to an investor-owned utility,
16 correct?

17 A. An investor-owned utility, and many
18 municipalities use that method also.

19 Q. Okay. Now, during what period of time
20 were you on the editorial committee?

21 A. Let me see. The manual was published --
22 or the version I worked on was published in 2000. I
23 served on the committee from 1998 to, I believe,
24 2001, and the work on the manual was probably
25 consumed mostly 1999 and maybe the early part of

1 2000.

2 Q. Has the manual that you worked on been
3 updated to reflect changes that have taken place in
4 the water industry?

5 A. Yes. The manual is usually updated about
6 every ten years, and a new version came out. I don't
7 recall the publication date. I think it was 2010 or
8 2012, somewhere in that time frame.

9 Q. Now, page 4, lines 15 through 20, you
10 identify the testimony and exhibits you reviewed to
11 prepare your testimony. Am I correct?

12 A. Yes.

13 Q. Now, did you review for purposes of
14 preparing your testimony the state of Ohio's electric
15 policy that is codified in Section 4928.02 of the
16 Ohio Revised Code?

17 A. I don't believe so, no.

18 Q. Did anybody impart to you the content of
19 that state policy for purposes of preparing your
20 testimony?

21 A. Not by using that citation. I don't know
22 if I was given information that is contained in that,
23 but no one said this is coming out of this statute or
24 something.

25 Q. So for purposes of your testimony,

1 there's nothing in your testimony that is based upon
2 some application of what you would -- information you
3 would regard as being part of Ohio state policy to
4 the facts and circumstances of this case.

5 A. Well, what I was advised by counsel is
6 that --

7 Q. Please be careful here.

8 A. I am. I believe I say this in the
9 testimony as well -- is that the Commission has a
10 policy when reviewing settlements to determine
11 whether they are consistent with the law, obviously,
12 but also with established regulatory ratemaking
13 principles. So that's what I was told about the
14 relevant policy that I should be applying here;
15 essentially, do the proposed stipulations comply with
16 established rate-making principles?

17 Q. Okay. Now, did you review -- for
18 purposes of reaching the conclusions that are
19 reflected in your testimony OCC Exhibit 23, did you
20 review the PJM open access transmission tariff?

21 A. No, not in any detail.

22 Q. Did you review it at all?

23 A. Over the years, I have looked at portions
24 of that tariff. I did not look at anything specific
25 in that for the preparation of my testimony.

1 Q. Okay. And what is your understanding of
2 PJM? What -- just very generally, what is your
3 understanding about the role and function of that
4 organization?

5 A. Sure. PJM is a regional transmission
6 organization serving, I believe, it's 13 states.
7 Their job is to oversee and regulate the bulk power
8 system, the movement of electricity from generation
9 to where the load is being served. That's pretty
10 general.

11 Q. And when you say "movement," could we
12 substitute the word "transmission" for movement?

13 A. Sure.

14 Q. Okay. And the open access transmission
15 tariff, can you give me your understanding of what is
16 contained in that tariff?

17 A. It's a very large document, and it
18 essentially sets out the terms and conditions under
19 which the transmission system operates. There are
20 portions of that tariff that are specific to
21 individual companies in the individual regions within
22 PJM. PJM calls them zones.

23 There are also general terms and
24 conditions that are part of the tariff, and included
25 in that are either rates or formulas for determining

1 rates, for, again, I'll just generally refer to it
2 as, the movement of power. There are many different
3 aspects, or I should say different charges, that PJM
4 imposes for different aspects of that service.

5 Q. And if you know, is PJM subject to the
6 exclusive jurisdiction of the federal energy
7 regulatory Commission?

8 A. You're asking me legally?

9 Q. Sure. If you know.

10 A. That's my understanding, is that the open
11 access transmission tariff is a tariff approved by
12 the Federal Energy Regulatory Commission.

13 Q. And relative to the split of jurisdiction
14 between the Federal Energy Regulatory Commission and
15 state regulatory authorities, like Ohio, is it your
16 understanding that the Federal Energy Regulatory
17 Commission also has exclusive jurisdiction over
18 transmission service?

19 A. That's a more complicated question. It
20 depends on how the transmission service is defined.
21 Within a distribution utility, there can be elements
22 of the distribution network that are at what we would
23 think of as a transmission voltage. So there are
24 rules for determining what is state jurisdictional
25 and what is federal jurisdictional sort of at that

1 dividing line. When you get to distribution
2 voltages, that's state jurisdictional. When you get
3 to very high voltage, there's no question that's
4 federal jurisdictional. In the middle, it might
5 depend on the specific function that's being served.

6 Q. Okay. Now, with regard to the services
7 that are identified in rider NMB, would you agree
8 that those services are subject to the exclusive
9 jurisdiction of the Federal Energy Regulatory
10 Commission?

11 A. My understanding is that rider NMB is
12 defined as providing state jurisdictional cost
13 recovery of charges under the federal jurisdiction.

14 Q. Okay. So with regard to my question, the
15 services that are identified, you would agree that
16 the services that are identified in rider NMB are
17 subject to the exclusive jurisdiction of FERC.

18 A. Well, I really answered your question. I
19 was very careful. I answered it the best way I
20 could. Rider NMB doesn't -- as proposed by the
21 companies, does not identify individual services. It
22 talks about costs incurred by the companies from PJM
23 or the state of Ohio. Now, I don't know what those
24 state of Ohio costs would be, and I don't know under
25 whose jurisdiction they would be imposed or

1 regulated. Certainly costs -- or charges from PJM
2 would be under the federal jurisdiction.

3 Q. Did you review rider NMB for purposes of
4 preparing your testimony?

5 A. Yes.

6 Q. And am I correct that -- strike that.

7 Did you review rider TAS for purposes of
8 preparing your testimony?

9 A. That one does not ring a bell, no.

10 Q. Did you review the supplier tariff for
11 Ohio Edison, Cleveland Electric Illuminating Company,
12 and Toledo Edison for purposes of preparing your
13 testimony?

14 A. Yes.

15 Q. Did you review FERC order -- Federal
16 Energy Regulatory Commission Order 888 for purposes
17 of preparing your testimony?

18 A. No.

19 Q. Did you review any other Federal Energy
20 Regulatory Commission orders dealing with its
21 jurisdiction over transmission service?

22 A. No. It was not relevant to my testimony.

23 Q. Did you review any U.S. Supreme Court
24 decisions dealing with the jurisdiction of the
25 Federal Energy Regulatory Commission over unbundled

1 transmission of service?

2 A. Same answer. It wasn't relevant to my
3 testimony.

4 Q. At page 12, line 9 of your testimony, you
5 indicated that you reviewed applicable rate
6 schedules. What rate schedules did you review?

7 A. I'm sorry. Page 12, line 9?

8 Q. Yes.

9 A. I'm sorry. I don't see that reference.

10 Q. I've obviously got an erroneous reference
11 there. Let's skip that and we'll come back to it.

12 What is your understanding of the
13 function of an electric security plan?

14 A. I'm actually not sure. I mean, I know
15 that there's a thing called an electric security
16 plan, but I'm not sure who or what is supposed to be
17 secured by it.

18 Q. Okay. With regard to customers receiving
19 distribution service from Ohio Edison, Cleveland
20 Electric Illuminating Company, and Toledo Edison,
21 what entity has control over access to and use of the
22 regional high voltage transmission network?

23 A. Sorry. Can I ask you to either restate
24 or ask the reporter to read back the question?

25 Q. Let me do it again. This will make sure

1 that the right question is put. With regard to
2 customers receiving distribution service from Ohio
3 Edison, Cleveland Electric Illuminating Company, and
4 Toledo Edison, what entity has control over access to
5 and use of the regional high voltage transmission
6 network?

7 A. Okay. My understanding is that the
8 transmission network within the region is owned by a
9 FirstEnergy affiliate, ATSI, which we usually refer
10 to as ATSI. I think -- I'm trying to remember what
11 the initials stand for. I don't even remember what
12 they stand for. It's always just ATSI.

13 So that's the entity that owns the
14 transmission network that serves the three
15 distribution utilities. That network is under the
16 control of PJM, and PJM's rates and conditions of
17 service, as we talked about, are regulated by the
18 Federal Energy Regulatory Commission.

19 Q. Have you ever participated in a Federal
20 Energy Regulatory Commission proceeding?

21 A. Many years ago, yes.

22 Q. Was it electric?

23 A. Gosh, we're probably going back 25 years
24 or more. I think there were some electric and
25 natural gas cases I participated in. Don't ask me

1 details. It's much too long ago.

2 Q. Well, you provoke me to ask you details
3 now, but I won't. Have you ever participated in a
4 Federal Energy Regulatory Commission proceeding
5 dealing with the rates, terms, and conditions of
6 transmission service?

7 A. If I did, it would have been 25 years
8 ago. I honestly don't remember the substance of what
9 I dealt with back then, and that's why I asked you
10 not to ask me, because it was too long ago.

11 Q. I didn't ask you about substance or
12 details. I just asked you whether or not you
13 participated in a particular type of case. Do you
14 recall ever participating in a Federal Energy
15 Regulatory Commission proceeding dealing with the
16 rates, terms and conditions associated with electric
17 transmission service?

18 A. I don't recall doing that. If I did, it
19 would have been, as I said, 25 years ago.

20 Q. Now, what is your understanding of which
21 customers are eligible to take transmission service
22 pursuant to the PJM open access transmission tariff,
23 if you have any understanding?

24 A. Sure. Generally the customers are
25 referred to as load-serving entities. So any --

1 well, I mean, an obvious example of a load-serving
2 entity is a distribution utility, like the three
3 distribution companies here, but also I'll call them
4 middlemen, for lack of a better term. But the CRES,
5 the competitive energy suppliers, can be load-serving
6 entities, so that's one category of customer.

7 Generation companies also are
8 transmission customers. They obviously need to move
9 the power from the power plant to the load, and they
10 use the transmission system to do that. So there are
11 also provisions of the tariff that deal with, you
12 know, transmission -- excuse me -- with
13 interconnection for generators and the terms and
14 conditions of that service.

15 Q. Are you aware of whether or not the
16 customers that are eligible to take service under the
17 PJM open access transmission tariff include retail
18 customers in states that have provided retail access?

19 A. I don't know.

20 Q. And I assume you did not know at the time
21 you were preparing your testimony; is that correct?

22 A. Correct.

23 Q. Now, with regard to rider NMB, am I
24 correct that the costs that are recovered through
25 that rider are actually based upon projected costs?

1 A. That's my understanding, yes.

2 Q. And does rider NMB include a
3 reconciliation mechanism?

4 A. I believe so. I don't have the tariff in
5 front of me, but I believe there is a reconciliation
6 that's part of it.

7 Q. And am I correct that that reconciliation
8 occurs on an annual basis?

9 A. I believe it's -- again, without having
10 the tariff in front of me, I know that there is an
11 annual filing. I don't know if there's a provision
12 for intermediate filings if there's significant
13 change. I would just have to look at the tariff to
14 refresh myself on that.

15 Q. I take it as part of your testimony, you
16 weren't asked to look at the features of rider NMB?

17 A. No, I was, and I did review the tariff.
18 I just haven't memorized the tariff, and I don't have
19 it in front of me so I'm giving you the best answer I
20 can from my memory.

21 Q. Is there a reconciliation mechanism in
22 the PJM open access transmission tariff, if you know?

23 A. I don't know.

24 Q. Now, with regard to rider NMB -- let's
25 back up.

1 If I were to use the words "billing
2 determinant," would you have an understanding as to
3 what I was referring to for purposes of rate
4 structure?

5 A. Yes.

6 Q. And tell me what a billing determinant
7 is.

8 A. Billing determinant is the unit to which
9 a charge applies.

10 Q. Okay. And within the rider NMB, what are
11 the billing determinants?

12 A. It depends on the customer class. For
13 customer classes with demand meters, the billing
14 determinants are demand, kilowatts. For customer
15 classes without demand meters, rider NMB is
16 translated into a rate per kilowatt-hour.

17 Q. And when you say customers with demand
18 meters are billed on a demand basis, what demand is
19 used for purposes of rider NMB? Do you know what the
20 billing demand is? Do you know what the statistic
21 is?

22 A. That's something where I would have to
23 look at the tariff to see how that's specifically
24 defined. I know that under the annual process, costs
25 are divided among the customer classes based on four

1 coincident peak demands, but I don't know how the
2 billing demand is determined within a customer class
3 for a specific customer. I don't know if the four
4 coincident peaks are used for that customer or if
5 it's a monthly billing demand or an annual billing
6 demand. I would just have to look at the tariff.

7 Q. Do you have the tariff?

8 A. Not with me, no.

9 MR. RANDAZZO: Does counsel have a copy?

10 MR. KUTIK: I do.

11 MR. SAUER: I don't.

12 A. I have my computer and I have it on
13 there.

14 Q. That's quite all right. I'm happy to
15 share.

16 MR. RANDAZZO: May I approach the
17 witness?

18 EXAMINER PRICE: You may.

19 Q. (By Mr. Randazzo) Sir, I've handed you
20 some sheets from the Cleveland Electric Illuminating
21 tariff that I believe contain rider NMB.

22 A. Just for clarity -- first, I have that.
23 Thank you. And for clarity, this is the existing
24 version of the tariff, the currently effective
25 tariff, not the proposed tariff, but, yes, I have it.

1 Q. Okay. Are you aware of any differences
2 between the current tariff and the proposed tariff?

3 A. There were many differences between the
4 current and proposed tariff.

5 Q. With regard to how -- were there any
6 differences between the billing determinants?

7 A. I don't believe so.

8 Q. Okay. So with regard to rider NMB, does
9 the document that I just gave you refresh your
10 recollection with regard to the billing determinants?

11 A. It does, but only to a limited extent.
12 For the customer classes that are billed based on
13 demand, it says -- excuse me. For all of them except
14 GT, it says per kW of billing demand. For GT it says
15 per kVA of billing demand, and these particular pages
16 of the tariff do not define billing demand. I expect
17 that's defined elsewhere in the terms and conditions
18 of the tariff.

19 Q. And did you attempt -- for purposes of
20 drawing the conclusions in your testimony, did you
21 attempt to identify the billing demand that is used
22 for purposes of rider NMB for those rate schedules
23 that are billed using a billing demand statistic?

24 A. I did not. That was not relevant to my
25 testimony.

1 MR. RANDAZZO: Now, your Honors, I
2 believe I can shorten this up, which I know
3 immediately gets your attention. If it would be
4 appropriate to simply take administrative notice of
5 the existing supplier tariffs, the existing rate
6 schedules, the proposed rate schedules are part of
7 the record, rather than testing the witness'
8 recollection here today based upon the content of
9 those documents, and I'd ask that we do that for
10 administrative convenience if for no other reasons.

11 EXAMINER PRICE: Objections?

12 MR. SAUER: I've got -- is the supplier
13 tariff in the companies' application?

14 MR. RANDAZZO: The supplier tariff is
15 part of the tariff.

16 EXAMINER PRICE: I believe he's asking
17 for the existing supplier tariff.

18 MR. RANDAZZO: That's correct.

19 MR. SAUER: I think that's already been
20 done.

21 EXAMINER PRICE: But also rider NMB's
22 existing tariff; is that right?

23 MR. RANDAZZO: Right. And my
24 recollection is that the PJM open access tariff has
25 already been administratively noticed.

1 EXAMINER PRICE: Yes.

2 MR. SAUER: I don't know about that.

3 EXAMINER PRICE: Certain sections.

4 Section 5 I believe has been. I'm not sure anything
5 else.

6 Well, at this time we'll go ahead to the
7 extent we haven't already taken administrative notice
8 of the supplier tariff, existing supplier tariffs of
9 the three companies, and we'll also take
10 administrative notice of the existing rider NMB
11 tariffs of the three companies.

12 MR. RANDAZZO: Thank you.

13 Q. (By Mr. Randazzo) Now, you mentioned that
14 the costs that are subject to collection through
15 rider NMB are allocated based upon four summer peaks.
16 Do you recall that?

17 A. Yes.

18 Q. And for purposes of residential
19 customers, at least, you've already discussed that
20 whatever costs are allocated to residential customers
21 are collected on a kilowatt-hour basis; is that
22 correct?

23 A. Yes.

24 Q. And based upon your comments, would it be
25 your view that the reason that the costs are

1 collected from residential customers on a
2 kilowatt-hour basis is the result of the lack of
3 metering that's capable of identifying a demand
4 billing statistic?

5 A. I think that's one of the reasons.

6 Q. Do you know of any other?

7 A. The other would be -- well, there are
8 actually many reasons why.

9 Q. I'm not asking you to speculate.

10 A. No. There are many reasons why
11 residential customers are not billed based on demand,
12 even where the newer metering equipment permits that.
13 We could probably spend a couple of hours talking
14 about the pluses and minuses, but right now the
15 simple answer is the billing determinant doesn't
16 exist so the issue isn't even ripe for determination.
17 Once it becomes ripe, there will be a whole host of
18 issues about whether it's appropriate to bill
19 residential customers based on demand rather than on
20 energy consumption.

21 Q. Okay. Now, I think we agreed with this,
22 you agreed with me earlier, but the costs that are
23 subject to recovery under rider NMB are incurred by
24 Cleveland Electric Illuminating Company, Ohio Edison,
25 and Toledo Edison as a result of purchasing

1 transmission and transmission-related services from
2 the PJM open access transmission tariff; is that
3 correct?

4 A. I have to ask you to clarify whether
5 you're talking about the existing tariff or the
6 proposed tariff.

7 Q. The existing tariff.

8 A. Under the existing tariff, what you just
9 stated was correct.

10 Q. Okay. Now, on page 12, line 7 and 8, and
11 I think I've got this correct this time, you indicate
12 that an exemption from rider NMB would violate two
13 principles that you attribute to professor Bonbright,
14 correct?

15 A. Yes.

16 Q. Now, it's been a long time since I've had
17 a conversation with anybody about Professor
18 Bonbright, but I was struck by the fact that you
19 cited his 1961 book.

20 A. That's the one I have on my bookshelf,
21 and I see you have a copy in front of you, too.

22 Q. I do. Did you know him?

23 A. No.

24 Q. Is there anything in Professor
25 Bonbright's book dealing with the Federal Energy

1 Regulatory Commission?

2 A. No. The book was published, I think, in
3 1961, so it predated the Federal Energy Regulatory
4 Commission. That was the old Federal Power
5 Commission at that point.

6 Q. And was there anything in that book
7 dealing with unbundled transmission service and how
8 unbundled transmission service should be priced?

9 A. No. That book establishes the regulatory
10 principles that I think we've all been operating
11 under or trying to operate under for the last 50-some
12 years, but it's not -- obviously, the specific
13 regulators, the specific types of service that are
14 regulated or not regulated have changed over the
15 years, but I think those fundamental principles still
16 apply.

17 MR. KUTIK: Your Honor, I move to strike
18 the answer as nonresponsive, particularly after the
19 word "no."

20 MR. SAUER: Your Honor, the witness was
21 just answering the question and providing context to
22 the question.

23 EXAMINER PRICE: I don't think providing
24 context is appropriate. It's more appropriate for
25 redirect, nonetheless, I'm going to deny the motion

1 to strike. I think Mr. Randazzo asked a fairly
2 open-ended question, and the witness responded to the
3 best of his ability.

4 Q. (By Mr. Randazzo) Would you agree also as
5 we talked about with regard to the American Water
6 Works manual that Professor Bonbright's principles
7 were focused on cost-based ratemaking?

8 MR. SAUER: Could I have that question
9 read back, please.

10 EXAMINER PRICE: You may.

11 MR. RANDAZZO: I'll withdraw the
12 question.

13 Q. Now, the two principles that you
14 attribute to Professor Bonbright, am I correct that
15 those principles are taken from the chapter of the
16 book dealing with rate structure?

17 A. Yes. I think the chapter is called
18 something like Principles of a Sound Rate Structure,
19 something like that.

20 Q. And --

21 A. Sound rate design maybe.

22 Q. Rate structure. In the ratemaking
23 process, the first step is to determine revenue
24 requirements; do you agree?

25 A. Yes.

1 Q. And then the next step would be to assign
2 or allocate the revenue requirement to the various
3 rate schedules; is that correct?

4 A. Yes.

5 Q. And then the rate structure deals with
6 how you would collect the allocated or assigned costs
7 from customers, right?

8 A. Yes.

9 Q. Now, other than the conversation we had
10 earlier with regard to the high-load-factor provision
11 in the settlement, again, it's my understanding you
12 have not attempted to quantify the impact of an
13 exemption from rider NMB on the rate structure or
14 price levels for residential customers; is that
15 correct?

16 A. That's correct. I don't believe that's
17 possible with the information that's available.

18 Q. Now, if a customer is exempt or a CRES
19 provider can procure transmission service directly
20 from the OATT, how are they billed?

21 A. When you say "how are they billed"?

22 Q. How are they billed for transmission
23 service?

24 A. I don't know -- when you say "how," I
25 don't know what you're asking me. I mean, are you

1 asking who bills them?

2 Q. Well, let's start with that. Who bills
3 them?

4 A. They would be billed, I presume, by PJM.
5 I don't know -- I don't know the mechanics of that
6 billing, if it goes from PJM directly to the large
7 customer, if you will, or if it would go through ATSI
8 first, but ultimately it's the PJM charge getting to
9 the individual customer.

10 Q. And what is the billing determinant under
11 the PJM open access tariff?

12 A. Sure. It depends on the service. Some
13 of the PJM services are provided based on demand.
14 Some are provided based on energy consumption.

15 Q. Okay. So let's -- are you familiar with
16 network integration?

17 A. Yes, generally.

18 Q. Transmission service, otherwise known as
19 NITS?

20 A. I'm sorry. I interrupted your question.

21 Q. That's all right.

22 A. Yes.

23 Q. And are you aware of what the billing
24 determinant is for NITS?

25 A. That is billed on demand.

1 Q. What demand?

2 A. I believe it's the four coincident-peak
3 demand.

4 Q. And that is the understanding that you
5 used to prepare your testimony?

6 A. No, I did not need an understanding of
7 that to prepare my testimony.

8 Q. Okay. But that's the understanding that
9 you have, that the NITS service is based upon a
10 billing determinant that looks to four peaks; is that
11 correct?

12 A. Well, the understanding I have is that it
13 is billed on demand. I believe it's called the
14 network service peak load, and then there's a peak
15 load calculation under that. I'm no expert on PJM
16 charges, believe me, so I know it's demand-based. I
17 think it's four coincident peaks, but I'm not
18 100 percent certain of that.

19 Q. But what you are certain about is that if
20 customers are exempt from paying for transmission
21 service under rider NMB, they would still pay for
22 transmission service pursuant to the PJM open access
23 transmission tariff.

24 A. Yes.

25 Q. If you know, does the open access

1 transmission tariff encourage customers to use the
2 transmission system during off-peak conditions?

3 A. I guess I'm not sure I know what you mean
4 by "encourage." That's why I'm pausing. I'm having
5 trouble with that word. If customers use the
6 transmission system during off-peak conditions, it
7 will not increase most costs to the customer. Some
8 costs still would increase. If that's what you mean
9 by encouragement, then fine. If you mean something
10 else, you need to tell me.

11 Q. Well, let me ask it this way. Does the
12 PJM open access tariff send a signal to customers to
13 shift their consumption to off-peak hours?

14 A. For certain services, yes.

15 MR. RANDAZZO: That's all I have. Thank
16 you very much.

17 EXAMINER PRICE: Thank you.

18 Mr. Kutik.

19 MR. KUTIK: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Kutik:

23 Q. Good afternoon. Mr. Rubin, you're not an
24 economist, correct?

25 A. You are correct.

1 Q. And your degrees are in political science
2 and law, correct?

3 A. Yes.

4 Q. And you've been self-employed as an
5 attorney and consultant for 21 years, correct?

6 A. Yes. I hadn't counted them, but that's
7 about right.

8 Q. Glad to provide you with that refresher.

9 A. It's almost 22, I guess.

10 Q. In your work as a self-employed attorney
11 and consultant, you worked in the Pennsylvania Office
12 of the Consumer Advocate for more than ten years,
13 correct?

14 A. Yes.

15 Q. And in your current practice as an
16 attorney, you represent clients before state public
17 utility commissions?

18 A. Yes.

19 Q. Including the International Brotherhood
20 of Electric Workers, various locals?

21 A. Yes.

22 Q. And you represented one of those locals
23 in a matter involving Verizon Communications before
24 the Oregon Public Utilities Commission, did you not?

25 A. I did, yes.

1 Q. And as a result of your work in that
2 matter, you were disciplined, were you not, by the
3 Oregon Supreme Court?

4 MR. SAUER: I'll object.

5 EXAMINER PRICE: Grounds?

6 MR. SAUER: Outside the scope of his
7 testimony.

8 EXAMINER PRICE: Is that it?

9 MR. SAUER: Improper characterization of
10 his testimony.

11 EXAMINER PRICE: I don't believe it's in
12 his testimony, but it certainly is a matter bearing
13 on his credibility. Overruled.

14 A. I was disciplined in Oregon. I don't
15 believe it was by the Supreme Court. I think there's
16 a separate disciplinary authority there, but it may
17 have been the Supreme Court. I don't recall.

18 Q. You were publicly reprimanded in that
19 case.

20 A. Again, I don't have that in front of me.
21 It was a few years ago. I don't recall what the
22 sanction was called. It was basically the lowest
23 level sanction that they have, but yes.

24 Q. And your sanction was for violating a
25 protective order before the Public Utilities

1 Commission, correct?

2 A. Yes. And I'd be happy to explain the
3 context if you'd like it.

4 Q. Just answer my questions, if you could,
5 please.

6 A. Well, I did, yes.

7 Q. And Verizon filed a motion to revoke the
8 IBEW's local's intervention?

9 A. Correct.

10 Q. And as a result of your activities in
11 that case, that motion was granted, was it not?

12 A. Well, the motion was granted and was not
13 opposed.

14 Q. Thank you.

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

16 EXAMINER PRICE: You may.

17 MR. KUTIK: Your Honor, we'd like to have
18 marked as Company Exhibit 71 a document that bears
19 the caption from the Oregon Supreme Court, in the
20 matter of the Complaint as to the Conduct of Scott J.
21 Rubin, Accused, Case No. 10-148.

22 EXAMINER PRICE: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Mr. Rubin, that's the order from your
25 disciplinary case, is it not?

1 A. Yes.

2 Q. And it indicates, does it not, that the
3 court for the disciplinary body found that your
4 actions were knowing, correct?

5 A. Yes.

6 Q. And it found that your actions were also
7 negligent, correct? Under state of mind or mental
8 state, excuse me, on page 16.

9 A. Yes.

10 Q. Now, would it be fair to say that most of
11 your consultant work has been for public advocates or
12 consumer groups?

13 A. Or government-owned utilities, yes.

14 Q. And not investor-owned utilities,
15 correct?

16 A. Correct.

17 Q. And a substantial amount of your work has
18 involved the water industry, correct?

19 A. Yes.

20 Q. And most of your research involves the
21 water industry, correct?

22 A. Yes.

23 Q. And the majority of your work as an
24 expert witness has involved water utilities, correct?

25 A. I haven't counted. The majority is more

1 than 50 percent. It's substantial. I do a lot of
2 electric and natural gas work as well, but as I said,
3 I just haven't counted.

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

5 EXAMINER PRICE: You may.

6 Q. Mr. Rubin, did you testify in a case
7 involving Dayton Power & Light regarding its ESP
8 proposal in a case numbered 12-426-EL-SSO?

9 A. Yes. I mean, I haven't memorized the
10 docket number, but I did testify in a Dayton SSO
11 case.

12 Q. Mr. Rubin, does this appear to be a
13 portion of the transcript to which you testified in
14 that case?

15 A. It appears to be, yes.

16 Q. And I'd like to refer you to your
17 testimony at page 1697.

18 A. I have that. Are there particular line
19 numbers you'd like me to read?

20 Q. No. I will read them. Isn't it true
21 that your testimony in that case, starting at line 9,
22 was as follows:

23 "Question: And then if you go to page 9
24 and you look at the testimony as an expert witness
25 section, I wanted to talk about that for a few

1 minutes with you. You had 132 expert witness
2 engagements, at least that are listed on this chart.
3 Upon my count, at least 81 of those, a little over
4 61 percent, are related to water. Accept that number
5 subject to check?

6 Answer: "Again, I don't think I'd want
7 to check it, but I agree a majority of my work as an
8 expert witness has involved water utilities."

9 That was your testimony then, correct?

10 A. Yes.

11 Q. Now, that testimony was on March 26th,
12 2013, correct?

13 A. Yes.

14 Q. And of that testimony or as of that
15 testimony, you had testified on a couple of matters
16 relating to the Clean Air Act, correct?

17 A. More than a couple, I think. There were
18 several.

19 Q. And you were also involved in some fuel
20 component cases, correct?

21 A. Yes.

22 Q. Prior to this case, you were only
23 involved in one ESP case. That was the Dayton Power
24 & Light case that we just spoke of, correct?

25 A. Yes.

1 Q. Now, since your testimony in the Dayton
2 Power & Light SSO or ESP case, would it be fair to
3 say that none of your cases that you've been involved
4 with as a witness relating to electric utilities have
5 dealt with the recovery of PJM charges?

6 A. That's correct.

7 Q. And none of those cases have dealt with
8 pilot programs.

9 A. You asked me that in the deposition, and
10 I wasn't sure, and I'm still not sure today. There
11 are a couple of cases since the Dayton case where my
12 work was for the staff of a state utility commission,
13 and those were pretty broad assignments. They
14 weren't limited to residential rate design, like much
15 of my work is, and I just don't recall whether there
16 were pilot rates as part of those engagements.

17 Q. Would it be fair to say that since your
18 testimony in the Dayton Power & Light ESP case, none
19 of your cases that involved electric utilities have
20 dealt with time-of-use rates?

21 A. My answer would be the same as what I
22 just gave with pilot programs, and there I'm thinking
23 specifically about a case in Mississippi where I know
24 there were a number of tariff provisions that were
25 being proposed for modification. The utility hadn't

1 had a base rate case in a number of years, and there
2 was a lot that we looked at. I don't recall what
3 actually made it into my testimony in that case, but
4 we looked at a number of different rate-design topics
5 in that case.

6 Q. So would it be fair to say that all but
7 perhaps one or two of those cases since the Dayton
8 Power & Light ESP relating to electric utilities have
9 not dealt with pilot programs?

10 A. Yes, that would be true.

11 Q. And your answer would be the same with
12 respect to time-of-use rates?

13 A. Yes.

14 Q. Now, you would not hold yourself out as
15 an expert in the PJM market, correct?

16 A. Excuse me for a second. Yes, that's
17 correct.

18 Q. And I think you said earlier, and I just
19 want to make sure I have this right, you would not
20 hold yourself out as an expert in PJM charges,
21 correct?

22 A. Yes.

23 Q. Now, for this case, you did not review
24 any of the stipulations in the companies', that is,
25 FirstEnergy companies that we're talking about, prior

1 ESPs, correct?

2 A. To the best of my recollection, that's
3 correct. I know I looked at some of the tariffs and
4 Commission orders. I don't recall looking -- I don't
5 have a specific recollection of looking at the
6 stipulations that would have resulted in those orders
7 or tariffs.

8 Q. So would it be fair to say you don't
9 recall the substance of those stipulations, if you
10 saw them?

11 A. Correct.

12 Q. And you don't know whether as part of any
13 stipulation relating to any of the companies' prior
14 ESPs the companies had proposed new riders, correct?

15 A. Correct. Well, excuse me. With the
16 exception of, if I'm remembering right, I think rider
17 NMB came about in 2008 or 2009, somewhere in that
18 time frame, and I looked at the original -- I believe
19 I looked at the original version of that rider and
20 the Commission order that created it, so I have some
21 familiarity, but not with the terms of the
22 stipulation itself.

23 Q. Thank you. So the answer to my question
24 is you don't know if the prior stipulations had
25 proposed new riders, correct?

1 A. Correct.

2 Q. Now, would it be also fair to say that
3 you are not familiar with the signatory parties in
4 this case, except perhaps for OCC?

5 A. Well, signatory parties to what?

6 Q. I'm sorry. You're not familiar with the
7 signatory parties to the stipulations in this case?

8 A. I don't believe OCC signed any of them.

9 Q. So let me put the question to you again,
10 which I did before. You are not familiar with any of
11 the signatory parties to the stipulations in this
12 case, correct?

13 A. I don't know what you mean by "familiar."
14 I know what some of those entities are. I don't know
15 what other entities are.

16 Q. All right. Well, would it be fair to say
17 that you're not familiar with or have had any
18 dealings with the City of Akron in a case before any
19 regulatory body?

20 A. To the best as I can recall, that's
21 correct.

22 Q. You're not familiar with the City Housing
23 Network.

24 A. Correct.

25 Q. You don't know what it does.

1 A. Correct.

2 Q. You don't know what kinds of customers it
3 may represent.

4 A. I do not.

5 Q. You're also not familiar with the
6 Consumer Protection Association.

7 A. I am not.

8 Q. You don't know what that entity does.

9 A. No.

10 Q. And you don't know what type of customers
11 that entity may represent.

12 A. Correct.

13 Q. You're not familiar with the Council on
14 Economic Opportunities.

15 A. I am not.

16 Q. You don't know what it does.

17 A. No.

18 Q. What I said was correct?

19 A. That is correct.

20 Q. And you don't know what type of customers
21 that entity may represent.

22 A. Correct.

23 Q. You're not familiar with the Citizens
24 Coalition.

25 A. I am not.

1 Q. And you don't know what it does.

2 A. Correct.

3 Q. You don't know what type of customers it
4 represents.

5 A. You are correct again.

6 Q. Now, I want to talk to you about your
7 definition of a pilot program which is in your
8 testimony at page 10, line 14.

9 A. Yes, I have that.

10 Q. Now, would it be fair to say that you can
11 not point me to an Ohio case that uses your
12 definition?

13 A. Correct. I did not look. This is a
14 definition from my experience, not from any specific
15 citation anywhere.

16 MR. KUTIK: Your Honor, I move to strike
17 after the word no.

18 EXAMINER PRICE: I believe, Mr. Rubin,
19 we've given you your one fair warning, so we'll go
20 ahead and grant the motion to strike at this time.

21 Q. In fact, would it be fair to say that you
22 are not familiar with the term "experimental rate"?

23 A. I have not run into that term in any
24 other jurisdiction.

25 Q. So the answer to my question is yes.

1 A. Well, when you say "familiar with the
2 term," I don't know what you mean by that. I know
3 what the words mean. I have not seen that used in a
4 regulatory context in other jurisdictions in which
5 I've participated in cases.

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

7 EXAMINER PRICE: You may.

8 Q. Mr. Rubin, you recall being deposed in
9 this case.

10 A. Yes.

11 Q. Let me hand you a copy of your
12 deposition. Before that deposition, you took an oath
13 to tell the truth.

14 A. Of course.

15 Q. And you did tell the truth.

16 A. Yes.

17 Q. Now, I'd like you to look at page 71 of
18 your deposition transcript, please: Well, first, is
19 this your deposition transcript?

20 A. I assume you've copied it correctly, yes.

21 Q. Okay. It looks familiar to you.

22 A. It does.

23 Q. Please turn to page 71.

24 A. I'm there.

25 Q. Let me refer you to page -- to line 9.

1 Did you give the following testimony in response to
2 the following question:

3 Question: "Okay. Is, in your view, an
4 experimental rate something different than a pilot
5 program?"

6 Answer: "I don't know. This is the only
7 jurisdiction I've ever been in that uses the term
8 experimental rate so I -- I frankly don't know what
9 the Commission means by that."

10 Is that your testimony?

11 A. Yes. And I think it's what I just said a
12 couple of minutes ago, too.

13 Q. Is it true that you do not -- you also
14 don't know if the companies have pilot programs or
15 experimental rates?

16 A. No. I indicated to you during the
17 deposition that I was aware that there were certain
18 pilot rates currently in effect that the company was
19 proposing to -- or originally was proposing to
20 eliminate in this case and at least one of them is
21 now proposing not to eliminate as part of the first
22 stipulation.

23 Q. Okay. So you are aware, then, of the
24 companies' experimental rates?

25 A. Well, you asked me about pilot rates.

1 Q. Well, are you aware of the companies'
2 experimental rates?

3 A. I don't know what -- I don't know what
4 that means. I don't know which of the various riders
5 are set up as, quote, unquote, pilot rates and which
6 are set up as, quote, unquote, experimental rates or
7 if there's a difference between the two.

8 Q. So would it be fair to say you don't
9 recall seeing any tariffs that identified a rate as
10 an experimental rate for the companies?

11 A. I don't recall. That word may be there,
12 but it didn't register.

13 Q. So sitting here today, you can't recall
14 that, correct?

15 A. That's correct.

16 Q. Now, you would agree with me, would you
17 not, that a legitimate purpose of a pilot program
18 would be to evaluate the effects of the program on
19 nonparticipants?

20 A. No. I think we had this discussion
21 during the deposition as well. I would say that is
22 not a purpose of a pilot program. That is something
23 you evaluate as part of the evaluation of the costs
24 and benefits of a pilot program.

25 Q. So that --

1 EXAMINER PRICE: One second, Mr. Kutik.

2 Mr. Rubin, I want to remind you though
3 that we now have the deposition, the examiners have
4 not read the deposition, so when you refer to
5 something that may have happened, we have not
6 necessarily looked at that. So just -- if you'd just
7 give answers to counsel's question without making
8 reference to "we covered that in the deposition," it
9 would be helpful.

10 THE WITNESS: Thank you.

11 Q. (By Mr. Kutik) So you would agree with me
12 then that a legitimate or something that should be
13 done with respect to a pilot program in terms of the
14 evaluation of that program would be to see whether
15 the program has an adverse effect on nonparticipants,
16 correct?

17 A. Yes.

18 Q. And part of the evaluation could also
19 include determining what costs there were to
20 administer the program.

21 A. Yes.

22 Q. Now, you have testified about pilot
23 programs in other jurisdictions.

24 A. I don't recall. I don't think so, but
25 there may have been one or two cases where that came

1 up.

2 Q. Do you recall testifying in the state of
3 New Hampshire regarding a matter for Aquarian Water
4 Company of New Hampshire?

5 A. I believe I've -- well, I know I've
6 testified at least once in a case involving that
7 company in New Hampshire. It may have been more than
8 once.

9 Q. Again, in your testimony in those cases,
10 did you testify on behalf of -- regarding pilot
11 programs?

12 A. Yes. There was a proposed infrastructure
13 surcharge in that case that I believe was set up as a
14 pilot program.

15 Q. Now, going back to talking about what
16 we're doing here in Ohio, you understand that for a
17 pilot rider that is introduced and approved in one
18 ESP, the decision whether to continue that rider
19 would be considered in a subsequent ESP, correct?

20 A. That's my understanding, yes.

21 Q. Now, I think, as you've indicated in your
22 conversation with Mr. Randazzo, you've reviewed the
23 rider NMB tariff, correct?

24 A. Yes.

25 Q. And currently the companies pay certain

1 nonmarket-based charges associated with all the
2 companies' customers whether they shop or not.

3 A. That's my understanding.

4 Q. And you don't know whether that's always
5 been the case.

6 A. Correct.

7 Q. Now, you have also reviewed for purposes
8 of this case some of the companies' filings to
9 support the rider NMB rate that had been filed
10 previous to this case or maybe during this case, but
11 not as part of this case, correct?

12 A. Correct.

13 Q. And you were aware that there is a charge
14 in rider NMB called NITS, correct?

15 A. Yes.

16 Q. And I saw that you indicated to
17 Mr. Randazzo what NITS was, but isn't it true that in
18 your deposition, you couldn't recall what NITS stood
19 for?

20 A. You are correct.

21 Q. And you can't say with any detail what
22 NITS charges detail, correct?

23 A. Correct.

24 Q. And you don't know how much of rider NMB
25 represents NITS, correct?

1 A. Not specifically, no.

2 Q. And you don't know how PJM allocates NITS
3 charges to firms like the companies, correct?

4 A. No, that's not correct.

5 Q. All right.

6 A. I think I discussed that with
7 Mr. Randazzo.

8 Q. Let me refer you to your deposition, sir,
9 and let me refer you specifically to page 44.

10 A. I'm there.

11 Q. At line 19, do you not give the following
12 answer to the following question:

13 Question: "Do you know how PJM allocates
14 its NITS charges to firms like the companies?"

15 Answer: "No."

16 That's what you testified to in your
17 deposition, correct?

18 A. That was a correct answer at that time.

19 Q. Now, in terms of what you reviewed as
20 part of your work on this case, you saw some filings,
21 I think we indicated earlier, from the companies in
22 terms of the rider NMB tariff, correct?

23 A. Yes.

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

25 EXAMINER PRICE: You may.

1 MR. KUTIK: Your Honor, we would like to
2 have marked at this time for identification as
3 Company Exhibit 72 a document, which begins with a
4 letter from Eileen M. Mikkelsen to Barcy McNeal,
5 Commission Secretary, dated May 1, 2015, that
6 attaches a document that's entitled "Nonmarket Based
7 Services Rider (Rider NMB) report in Support of
8 Staff's 2015 Annual Review Submitted by Ohio Edison
9 Company, the Cleveland Electric Illuminating Company,
10 and Toledo Edison Company."

11 EXAMINER PRICE: It will be so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Mr. Rubin, I'm handing you what has been
14 marked for identification as Company Exhibit 72. Do
15 you recognize that as one of the filings that the
16 companies made in support of their rider NMB charge?

17 A. Yes.

18 Q. Now, I'd like you to look at Exhibit A,
19 page 3 of 4.

20 A. Yes, I have that.

21 Q. And that has a listing of the various
22 types of charges that are included in rider NMB,
23 correct?

24 A. Yes.

25 Q. And this, obviously, is heavily redacted,

1 correct?

2 A. It is.

3 Q. And you only saw the public versions,
4 correct?

5 A. Correct.

6 Q. And you did not ask to see the
7 confidential version, correct?

8 A. Correct.

9 Q. Now, would it be fair to say that with
10 respect to the various charges that are listed over
11 on the left-hand side of this page, you don't know
12 how any of those charges are allocated to the
13 companies?

14 A. At the time of my deposition, that was
15 correct. I have more of an understanding today than
16 I did then.

17 Q. Okay. Isn't it true that you didn't know
18 which of these charges are demand allocated versus
19 energy allocated?

20 A. At the time, that was correct. That is
21 no longer correct.

22 Q. So at the time of your testimony, that
23 was correct.

24 A. Yes.

25 Q. Okay. And you don't know a percent of

1 the charges that are allocated based upon demand
2 versus the charges that are allocated based upon
3 energy?

4 A. Correct, I don't need that information.

5 Q. Now, in this case, Ms. Mikkelsen has
6 testified that over 99 percent of the charges in
7 rider NMB are demand allocated, and you can't dispute
8 that, correct?

9 A. I assume that's for a particular time
10 period, and I do not dispute that.

11 Q. And isn't it also true that you don't
12 know what PLC means?

13 A. No, that's not correct.

14 Q. Okay. Well, let me ask you to turn to
15 your deposition, page 43.

16 A. Sure. I can save you the trouble. At
17 that time I did not know what -- you know, recall
18 what the initials stood for?

19 Q. Okay. And so -- well, and isn't it true
20 that at the time of your deposition, you didn't know
21 what the term NSPL stood for.

22 A. Correct. I'm not always great with
23 acronyms.

24 Q. And you don't know -- well, isn't it true
25 that you don't know if NSPL can be allocated to

1 specific customers?

2 A. I'm sorry. Could you rephrase that?

3 Q. Sure. Isn't it true that you don't know
4 if NSPL can be allocated as a cost -- strike that.

5 You don't know if an NSPL-allocated cost
6 can be determined for a specific customer, correct?

7 A. That's not correct.

8 Q. Okay. So NSPLs can be determined for a
9 specific customer, correct?

10 A. Yes.

11 Q. And PLCs can be determined for a specific
12 customer, correct?

13 A. Yes.

14 Q. If a customer participates in the NMB
15 opt-out pilot program, the NMB services for those
16 customers will no longer be paid by the companies,
17 correct?

18 A. That's correct.

19 Q. And the NMB cost for those customers
20 participating in the pilot will be paid by whatever
21 CRES provider the customers receive their retail
22 electric service from, correct?

23 A. Yes.

24 Q. So if customers opt out as part of this
25 pilot program, the companies' NMB costs go down, all

1 things being equal?

2 A. Yes.

3 Q. So if a customer's costs are \$900 for the
4 NMB charges, if the customer leaves, that \$900 goes
5 away, correct, from the companies?

6 A. Just to be clear, the \$900 is what the
7 PJM, if you will, is charging directly to the
8 customer who leaves?

9 Q. No. That the customers' cost charged to
10 the companies before the opt-out is \$900.

11 A. Okay. That's where you lost me. When
12 the company gets those charges from PJM, they're not
13 specific to any one customer, so I'm not sure I
14 follow you.

15 Q. All right. Well, let me refer to your
16 deposition. Maybe you can remember that. Let me
17 refer you to page 99. Are you there?

18 A. Yes.

19 Q. Did you not give the following answers to
20 the following questions starting at line 6.

21 Question: "Sure. Let me ask you about
22 your example, all right? You gave me an example, I
23 believe, where you said assume that the customer is
24 paying \$1000 for these charges, right?"

25 Answer: "Yes."

1 Question: "And assume that the
2 customer's costs are 90 -- are \$900. That was one of
3 your examples, right?"

4 Answer. "Right."

5 Question: "And if that customer leaves,
6 the \$900 of costs that the companies incur, that will
7 go away, right?"

8 Answer: "Right."

9 That was what you testified to, correct?

10 A. Yes, that was in context of a much longer
11 colloquy that we were having. So I understood what
12 you were asking me. If you're asking me the same
13 thing now, I'll give you the same answers. That's
14 easy.

15 Q. Those costs don't get paid by any other
16 customer, correct?

17 A. Those costs do not get paid by anyone
18 else, but it does affect the rates that other
19 customers pay.

20 MR. KUTIK: Your Honor, I move to strike
21 including the word "but" and everything thereafter.

22 EXAMINER PRICE: Mr. Sauer.

23 MR. SAUER: I think the question was
24 open-ended enough that he was answering in the
25 context of the question.

1 EXAMINER PRICE: I disagree. Motion to
2 strike will be granted. That's a proper matter for
3 redirect.

4 Q. Now, if that customer that we were
5 talking about and their rider NMB payment was \$1,000,
6 and if you could specifically identify the costs for
7 each customer, it would be true that everyone else's
8 rates may go up but more in line with their costs,
9 correct?

10 A. Everyone else's rates will go up, but not
11 necessarily more in line with their costs.

12 Q. Let me refer you to your deposition, page
13 100. On page 100, this was a continuation of the
14 hypothetical, correct?

15 A. Yes.

16 Q. All right. And at the bottom of the
17 page, starting at line 23, did I not ask you the
18 following question and did you not give the following
19 answer:

20 "And everyone's rates will go up more in
21 line with their costs, correct?"

22 Answer: "Well, you're assuming that we
23 can identify the costs for each customer, and we
24 can't."

25 Do you see that?

1 A. I believe you left out the word
2 "specifically," but yes, I see it.

3 Q. Thank you. Now, you understand -- well,
4 back up. With respect to a CRES provider, that as
5 part of the NMB opt-out program, the customer goes to
6 and now receives their NMB -- are you with me so far?

7 A. Yes.

8 Q. You don't know if it would be reasonable
9 for a CRES provider who receives NMB charges that are
10 overwhelmingly allocated on a demand basis to attempt
11 to recover that charge on a demand basis, correct?

12 A. Correct. I cannot speak for the CRES
13 providers.

14 Q. Now, you understand that the companies
15 allocate NMB charges to customers based upon four
16 coincident peaks, I think as you mentioned.

17 A. To customer classes, yes.

18 Q. Will you agree with me that four
19 coincident peaks is not the same as PLC or NSPL?

20 A. I don't know with certainty. I believe
21 what you said is correct, but I'm not 100 percent
22 sure.

23 Q. So for the sake of a hypothetical, PJM
24 allocates costs to the LSEs based upon NSPL, and a
25 company allocates based upon 4CP, the result would be

1 that there would be a difference between how the
2 company incurred costs and how the companies
3 allocated those costs?

4 A. That would be correct.

5 Q. Now, in terms of the phrase "load
6 factor," you're familiar with that phrase?

7 A. Yes.

8 Q. A load factor is the ratio of average
9 energy use to peak energy use, correct?

10 A. Yes.

11 Q. And peak demand is not a function of load
12 factor?

13 A. In fact, the opposite is true. Load
14 factor is a function of peak demand, right.

15 Q. So what I said was correct?

16 A. Yes.

17 Q. So we can have high-load-factor customers
18 and low-load-factor customers have similar peak,
19 correct?

20 A. Yes.

21 Q. And both of those customers might pay the
22 same for a demand-allocated and billed charge,
23 correct?

24 A. Yes.

25 Q. Now, I want to talk to you a little bit

1 about the high-load-factor, time-of-use rate. To
2 your knowledge, regarding the companies' current
3 experimental time-of-use rates comes from information
4 that was provided by the companies in response to
5 discovery and the application and the testimony and
6 not from a review of the tariffs themselves, correct?

7 A. I believe that's correct. I may have
8 looked at the tariffs, but I didn't study them in any
9 kind of detail.

10 Q. You don't believe that you looked at the
11 tariff sheet themselves; isn't that true?

12 A. I may have, but it's -- I certainly
13 relied primarily on what the company said about those
14 tariffs in testimony and discovery responses and in
15 the application.

16 Q. And that's what you relied upon for your
17 opinions in the case?

18 A. Yes.

19 Q. Now, would it also be fair to say that
20 you cannot say that encouraging customers to have
21 their headquarters in Ohio would promote economic
22 development?

23 A. Right. I would need more information to
24 know if the location of their headquarters makes any
25 difference.

1 Q. And you don't think that incentivizing
2 companies to establish a headquarters in Ohio would
3 promote job growth here, correct?

4 A. Correct. Well, I don't know without more
5 information. There are -- yeah, there are companies
6 in Ohio that cut jobs in Ohio and there are companies
7 in Ohio that create jobs in Ohio.

8 MR. KUTIK: Move to strike, your Honor.

9 EXAMINER PRICE: The entire thing?

10 MR. KUTIK: Yes, it was a "yes" or "no"
11 answer. I'm not sure I got a "yes" or a "no."

12 EXAMINER PRICE: You didn't get yes or
13 no. We will grant the motion to strike and direct
14 the witness to explain yes or no.

15 Q. Do you need the question again, sir?

16 A. No, I have the question. I believe my
17 answer was I need more information to answer that
18 question.

19 Q. So you cannot say that, correct?

20 A. Not without more information.

21 Q. Now, you understand that there are
22 commercial companies or customers other than grocery
23 stores that might have refrigeration as a major part
24 of their load, correct?

25 A. Certainly.

1 Q. And you understand that to participate in
2 the high-load-factor and time-of-use pilot program, a
3 customer does not have to put all of its accounts
4 into the program, correct?

5 A. I believe the minimum is 30.

6 Q. So the answer to my question is yes.

7 A. I don't know.

8 Q. All right.

9 A. It's not specifically stated in the
10 second stipulation or second supplemental
11 stipulation. It says the customer has to have at
12 least 30 accounts. It doesn't say whether all of
13 them have to be placed in the program or not.

14 EXAMINER PRICE: Mr. Kutik, please be
15 careful to let the witness finish the answer to your
16 question.

17 MR. KUTIK: Thank you, your Honor. I
18 didn't realize I was doing that.

19 Q. Mr. Rubin, may I refer you to page 91 of
20 your deposition.

21 A. I have it.

22 Q. Now, Mr. Rubin, did you not answer the
23 following question in the following way starting at
24 line 8.

25 Question: "Now, as you understand this

1 experimental high load factor, time-of-use rate
2 proposal, if a customer is eligible and participates
3 in the program, is the customer required to put all
4 accounts for that customer into the program?"

5 Answer: "As far as I can tell, no."

6 That was your deposition testimony,
7 correct?

8 A. Well, it was, and I think we had some
9 further discussion after that, and at that point, you
10 weren't allowing me to look at the terms of the
11 stipulation itself so I was doing the best I could
12 from memory.

13 Since then, I've had a chance to review
14 that provision several times, and I believe
15 Ms. Mikkelsen testified on a very similar issue a
16 couple of weeks ago so I have a better recollection
17 today than I did then. So I think, but I'm not sure,
18 that a customer would have to place all of its
19 accounts under the rider, but I don't know because
20 there isn't -- there aren't words on that in the
21 stipulation one way or the other.

22 MR. KUTIK: Your Honor, I move to strike
23 after the word "was" in the first sentence.

24 EXAMINER PRICE: Mr. Sauer?

25 MR. SAUER: He's just providing his

1 understanding of the stipulation.

2 MR. KUTIK: I asked if that was his
3 testimony. He said it was.

4 EXAMINER PRICE: We will grant the motion
5 to strike.

6 And, again, Mr. Rubin, Mr. Sauer will
7 have an opportunity to ask on redirect any additional
8 information that you'd like to share with the
9 Commission.

10 Q. Now, would it also be fair to say,
11 Mr. Rubin, that you're not aware of any time-of-use
12 rates being offered by CRES providers to retail
13 customers?

14 A. Correct.

15 Q. And time-of-use rates may provide price
16 signals that allow customers to modify their behavior
17 or usage. You agree with that, correct?

18 A. They may, yes.

19 Q. And to the extent that time-of-use rates
20 can be certain or stable, they may help customers
21 better estimate the amount of savings that they may
22 obtain by changing their behavior or usage, correct?

23 A. Yes.

24 Q. And any differences with respect to the
25 proposal here between the cost to serve customers

1 under the experimental high-load-factor, time-of-use
2 rate and the revenue collected under that rider would
3 be collected under Rider GCR. You understand that,
4 correct?

5 A. That's what Ms. Mikkelsen said. That's
6 not in the stipulation.

7 Q. That's your understanding, correct?

8 A. I just gave you my understanding. She
9 made that statement. That statement does not appear
10 in the stipulation.

11 Q. All right. So the answer to my question
12 is yes, correct?

13 A. No, sir. The answer to your question is
14 it will be up to the Commission to decide.
15 Ms. Mikkelsen said that is what she believes will
16 happen. That is not stated one way or the other in
17 the stipulation.

18 Q. That is your understanding of what will
19 happen, though, correct?

20 A. My understanding is that the Commission
21 will decide what happens. I gave you my
22 understanding of what the stipulation says and my
23 understanding of what the companies' witness has
24 testified to.

25 Q. All right. Let me then refer you to your

1 deposition again, sir, page 106. Are you there?

2 A. Yes.

3 Q. And I'd like you to refer to page 21, and
4 did you not give the following answers to the
5 following questions:

6 "And any -- apart from administrative
7 costs any overcollection or undercollection of the
8 companies' costs to supply retail electric service to
9 participating customers will be either credited or
10 charged through another rider, correct?"

11 Answer: "Yes."

12 Question: "And do you know what that
13 other rider is?"

14 Answer: "GCR."

15 That was your testimony, correct?

16 A. That is what I said in the context of the
17 deposition.

18 Q. Thank you.

19 A. Excuse me. Can I finish?

20 Q. I thought you were because that was
21 responsive to my question.

22 A. No. In the context of the deposition
23 where on that issue it begins on line 6 at page 106,
24 where you're asking me -- sorry. Well, the question
25 starts on line 6. The real question begins on line

1 12 where you say, "Is it your understanding that the
2 companies propose," and that is what the companies
3 propose, and what I'm saying is what actually happens
4 will be up to the Commission to determine.

5 MR. KUTIK: Your Honor, I move to strike
6 everything after my interruption.

7 EXAMINER PRICE: We will grant the motion
8 to strike everything after your interruption, and I
9 will also ask you not to be argumentative with the
10 witness.

11 Q. Now, it's your understanding that Rider
12 GCR is bypassable, correct?

13 A. Except under certain circumstances, yes.

14 Q. And so only nonshopping customers pay
15 Rider GCR unless those certain conditions happen,
16 correct?

17 A. Correct.

18 Q. And this would include participants under
19 the experimental high-load-factor, time-of-use rate,
20 correct?

21 A. Yes, those participants, if any, would be
22 nonshopping customers.

23 Q. Now, you would also agree with me that a
24 high percentage of residential customers shop,
25 correct?

1 A. I don't know the number of customers. I
2 have a pretty good idea of the percentage of
3 residential energy usage, but not number of
4 customers.

5 Q. Let me refer you to your deposition, sir,
6 page 50. Are you there, sir?

7 A. Yes.

8 Q. And did you not give the following answer
9 to the following question beginning at line 17.

10 Question: "Okay. But you do understand
11 that certainly the large percentage of the companies'
12 customers' load is supplied by providers, correct?"

13 You said, "Yes. And it looks like I was
14 a little low when I said two-thirds."

15 A. Yeah, that was a question about load, not
16 customers.

17 Q. Fair enough.

18 A. I believe just before that you had asked
19 me about customers, and I gave you the same answer.

20 Q. Fair enough. Now, is it true that
21 nonshopping residential customers include so-called
22 PIP customers?

23 A. I think so. I don't know that
24 specifically, but I think that's correct.

25 Q. And would it be fair to say that you

1 don't know if PIP customers' load may be shopped as
2 part of a separate Ohio government agency-run
3 competitive bidding process?

4 A. I do not know.

5 Q. Now, part of the proposed rate structure
6 for this rider includes a capacity charge and an
7 energy charge, correct?

8 A. Excuse me. For which rider?

9 Q. The rider we've been talking about, the
10 high-load-factor, time-of-use rider.

11 A. Okay. Yes.

12 Q. And you are aware that there is a
13 capacity market in PJM, are you not?

14 A. Yes.

15 Q. And PJM procures and provides the
16 capacity in that market.

17 A. Yes.

18 Q. Suppliers get a certain payment for their
19 capacity, correct?

20 A. Yes.

21 Q. And load-serving entities have to make a
22 certain payment to PJM for that capacity.

23 A. Correct.

24 Q. And would it be also true to say you
25 don't know what those payments have been?

1 A. I have a rough idea what they have been
2 and what they will be over the next couple of years.

3 Q. Okay. You didn't know that at the time
4 of your deposition; isn't that true?

5 A. Correct, I did not.

6 Q. And you don't know what capacity costs
7 have been at any -- for any part for the last five
8 years.

9 A. That was true then. That is not true
10 now.

11 Q. And you don't know how capacity rates
12 proposed by the experimental high-load factor, you
13 don't know whether that is higher or lower than the
14 capacity costs over the last five years, correct?

15 A. Well, my answer is the same. I did not
16 know when my testimony was prepared or at the time of
17 the deposition. I have some understanding of that
18 now.

19 Q. Right. And you hadn't made that
20 comparison for purposes of writing your testimony,
21 correct?

22 A. Correct.

23 Q. And you don't know whether capacity is
24 procured by PJM for the entire RTO or independently
25 for each area within PJM like ATSI.

1 A. Again, I did not know that at the time of
2 the deposition. I have some understanding of that
3 now.

4 Q. Okay. So you didn't know it when you
5 wrote your testimony.

6 A. I didn't need to, correct.

7 Q. You don't know whether capacities
8 procured by PJM is done based upon historical peak or
9 forecasted peak?

10 A. Correct.

11 Q. And you don't know if capacity procured
12 for the companies is based upon the PJM peak or the
13 ATSI peak, correct?

14 A. I'm sorry. Could you say that again?

15 Q. Sure. You don't had know if capacity
16 procured for the companies is based upon PJM peak or
17 ATSI peak?

18 A. When you say "procured for the
19 companies," I'm not sure I know what you mean.

20 Q. So you can't answer my question?

21 A. Not the way you stated it, no.

22 Q. Fair enough. Would it be fair to say
23 that you don't know if PJM and ATSI had peaks at the
24 same time in 2013?

25 A. That is not correct.

1 Q. You believe that they occurred on the
2 same day?

3 A. I believed they occurred the same day but
4 in different hours.

5 Q. And would it be fair to say that you
6 cannot tell me what the 2014 PJM peak day was?

7 A. Correct.

8 Q. Or the five highest peaks?

9 A. Correct.

10 Q. And you can't tell me when the PJM peaks
11 were in 2013.

12 A. You said PJM peaks.

13 Q. Yes.

14 A. You used the plural.

15 Q. Yes.

16 A. I'm not sure what you're referring to.

17 Q. Can you tell me when the five highest
18 peaks were in PJM for 2013?

19 A. No.

20 Q. And would it be fair to say that you
21 don't know whether PJM ever had a summer peak in the
22 last five years that did not fall between noon and
23 6:00 p.m.?

24 A. For PJM as a whole, I don't know.

25 Q. Okay. And isn't it true that you don't

1 know whether ATSI ever had a summer peak in the last
2 five years that did not fall between noon and
3 6:00 p.m.?

4 A. I do know that. I discussed that in my
5 testimony.

6 Q. Now, you don't know how capacity costs
7 are assigned to each LSE, correct?

8 A. Correct.

9 Q. And you don't know what a base residual
10 auction is.

11 A. I have some understanding of that.

12 Q. You didn't know at the time of your
13 deposition, did you?

14 A. Correct.

15 Q. All right. And you don't know -- and you
16 didn't know whether that had anything to do with
17 capacity prices charged to LSEs in PJM, correct?

18 A. I did not know then. I have some
19 understanding of that now.

20 Q. Okay. And you didn't know the difference
21 between a base residual auction and an incremental
22 auction, correct?

23 A. My answer is the same. I did not know
24 then. I have some understanding now.

25 Q. And you don't believe that capacity costs

1 that would be allocated to ATSI could be projected
2 during ESP IV?

3 A. Could you say that again?

4 Q. Sure. Isn't it true that you don't
5 believe that capacity costs that would be allocated
6 to ATSI, what the charges would be, could be
7 projected during ESP IV?

8 A. I mean, we have some preliminary
9 indications, but those numbers will change each year.

10 Q. Okay.

11 A. So I don't know what you mean by
12 "projected." I mean, there have been PJM auctions.
13 We know some of the numbers, but there are more
14 auctions to come.

15 Q. Isn't it true that you believe that
16 capacity auction is only held a year ahead in PJM?

17 A. That is not what I believe today. I said
18 something like that, but I wasn't sure, I think, in
19 my deposition. I have a better understanding now
20 than I did then.

21 Q. Let me refer you to your deposition
22 testimony, sir, page 81. Are you there, sir?

23 A. Yes.

24 Q. And on line 5, did you not respond to the
25 following question the following way:

1 Question: "So it's your understanding
2 that the PJM auction that's held is done a year
3 ahead, correct?"

4 Answer: "I believe so, yes."

5 A. On page 81, line 5? I'm sorry. I don't
6 see that.

7 Q. 82. I'm sorry, line 5.

8 A. Okay, I'm with you.

9 Q. Let me start again. Was it your
10 testimony as follows:

11 Question: "So it's your understanding
12 that the PJM auction that's held is done a year
13 ahead, correct?"

14 Answer: "I believe so, yes. And, again,
15 I think we have been making it clear I am no expert
16 on PJM. I mean, we are going by my general
17 understanding and recollection of things I may have
18 read several years ago."

19 That was your deposition testimony,
20 correct?

21 A. It was.

22 Q. Now, isn't it also true that you believed
23 that only part of the PJM capacity costs for the ESP
24 IV period would be known right now?

25 A. I'm sorry, I'm just not clear on the

1 question. Were you asking me what I thought then or
2 what I think now?

3 Q. Well, how about then when you wrote your
4 testimony?

5 A. When I wrote my testimony, this issue was
6 irrelevant, not something I needed to know. So I
7 didn't have an understanding one way or the other.

8 Q. Well, isn't it true that at your
9 deposition, you only believed that part of PJM
10 capacity costs for the ESP IV period would be known
11 right now?

12 A. That is what I said, and that is correct.

13 Q. Now, you have a general understanding of
14 the process by which the companies supply SSO load,
15 correct?

16 A. Yes.

17 Q. And there is an auction process used to
18 select suppliers who will make a commitment to supply
19 SSO load for a particular time period, correct?

20 A. Yes.

21 Q. And you don't know what that period is,
22 correct?

23 A. Sir, what period is?

24 Q. The period that the SSO supply will be
25 provided.

1 A. I'm sorry. I mean, the SSO supply will
2 be provided during the ESP period. I thought that's
3 what you just asked me.

4 Q. And is it your view that an SSO supplier
5 that bids into the competitive bidding process
6 supplies SSO load for the entire ESP period; is that
7 your testimony?

8 A. No. There are different pieces of the
9 auction process.

10 Q. Let me refer you to page 52 of your
11 deposition, sir.

12 A. I have it.

13 Q. Did you not testify as follows starting
14 at line 13:

15 Question: "Do you know how the companies
16 supply the SSO load?"

17 Answer: "I have a general understanding
18 of the process."

19 Question: "What's your understanding?"

20 Answer: "There is a -- an auction
21 process that is used to select suppliers who will --
22 sorry, who make a commitment to supply the SSO load
23 for a, you know, particular time period."

24 Question: "Okay. And do you know what
25 that time period is?"

1 Answer: "No."

2 That was your deposition testimony,
3 correct?

4 A. Yes, it was.

5 Q. Now, you have an understanding that there
6 is a contract that ultimately is entered between
7 winning bidders and the companies with respect to the
8 SSO supply, correct?

9 A. Yes.

10 Q. And you haven't reviewed that contract to
11 understand its price terms, correct?

12 A. Correct.

13 Q. And you don't know if the price paid to
14 winning bidders is a single price or a separate price
15 for energy or for capacity, correct?

16 A. I just said I was not familiar with the
17 specific terms of the contract. All the reporting I
18 have seen by the companies states a price per
19 megawatt-hour or per kilowatt-hour. I don't know if
20 they're reporting what they actually pay or if
21 they're reporting an average.

22 Q. So the answer is you don't know, correct?

23 A. I just explained the extent of my
24 knowledge, that a company reports a price per energy
25 unit. I don't know how the company comes up with

1 that price per energy unit.

2 Q. Again, so you don't know if the contract
3 calls out a single price or a separate price for
4 energy and a separate price for capacity, correct,
5 could you tell?

6 MR. SAUER: Objection, asked and
7 answered.

8 Q. You don't know whether the price paid by
9 a winning bidder is a single price for a delivery
10 period or whether it varies, correct?

11 A. Correct.

12 Q. And you understand that the companies
13 seek to recover the costs paid to wholesale suppliers
14 for SSO load through rider GEN, correct?

15 A. Yes.

16 Q. And you haven't reviewed rider GEN rates
17 offered during ESP III, correct?

18 A. Correct.

19 Q. And you don't know how often rider GEN
20 changes, correct?

21 A. Correct.

22 Q. And you understand that the price that
23 the companies pay for SSO load does not vary with the
24 LMP on a particular day, correct?

25 A. That is correct.

1 Q. And you have not compared the companies'
2 proposed high-load-factor, time-of-use, on-peak rates
3 with an average LMP for the summer hours in any year,
4 correct?

5 A. Correct.

6 Q. And the dates -- and I'm referring now to
7 your attachment SJR-4.

8 A. I have it, yes.

9 Q. You would agree with me that the dates
10 shown on attachment SJR-4 were not picked at random?

11 A. Correct.

12 Q. And it wouldn't surprise you to know that
13 this shows the highest LMP for ATSI in the last five
14 years was on July 18, 2013?

15 A. Correct.

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

17 EXAMINER PRICE: You may.

18 MR. KUTIK: Your Honor, at this time we'd
19 like to have marked as Company Exhibit 73 a
20 multi-page document entitled "Week of July 15th,
21 2013, PJM RTO Operations & Markets, MRC Meeting
22 August 29, 2015."

23 EXAMINER PRICE: It will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MR. KUTIK: May I approach?

1 EXAMINER PRICE: You may.

2 Q. Mr. Rubin, I'm handing you what has been
3 marked for identification as Company Exhibit 73.
4 Mr. Rubin, you've seen that document before, correct?

5 A. Yes.

6 Q. And this is a document that you relied
7 upon and cited in your testimony on page 22 in your
8 footnote 13, correct?

9 A. Yes.

10 Q. And as far as you know, this was prepared
11 by individuals working in PJM's organization?

12 A. Yes.

13 Q. And it's an attempt by the individuals at
14 PJM to outline the events that occurred within PJM.

15 A. During the week of July 15th, 2013, yes.

16 Q. And this is a document to help you
17 understand what was happening that week, correct?

18 A. Yes.

19 MR. KUTIK: May I have a minute, your
20 Honor.

21 EXAMINER PRICE: You may.

22 MR. KUTIK: I have no further questions.
23 Thank you.

24 EXAMINER PRICE: Thank you.

25 Mr. Parram.

1 MR. PARRAM: No questions.

2 EXAMINER PRICE: Mr. Kurtz.

3 MR. KURTZ: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Kurtz:

7 Q. Mr. Rubin, I just want to ask you about
8 the rider NMB opt-out option, okay?

9 A. Sure.

10 Q. Now, you understand that the pilot
11 program is where customers of these various
12 organizations could choose to buy transmission
13 service directly from -- through their CRES directly
14 from PJM instead of buying the same service from the
15 utility?

16 A. In general terms, yes.

17 Q. Okay. Right now --

18 A. Excuse me. Could you use your
19 microphone.

20 Q. Sorry. Okay. Let's just back up, sort
21 of big picture. ATSI is the transmission provider
22 for the three utilities; is that correct?

23 A. Yes.

24 Q. Okay. ATSI also provides transmission
25 service to other load-serving entities within its

1 footprint, Cleveland Municipal Power and Light,
2 whatever the muni system is, and other load-serving
3 entities that need transmission; is that correct?

4 A. To my understanding, yes.

5 Q. Okay. And you were asked a lot of
6 questions about how PJM -- how PJM/ATSI allocates the
7 transmission costs to the load-serving entities,
8 including the three operating utilities, correct?

9 A. I was.

10 Q. Okay. Now, you never said, but that's on
11 a single-hour basis. Did you know that?

12 A. I don't know the details of that
13 calculation.

14 Q. Let me ask you, do you know that for
15 capacity purposes, it's the five PLC, that's how
16 capacity generation, capacity costs are allocated.
17 Were you aware of that?

18 A. My answer is the same. I don't know the
19 details of those allocations.

20 Q. Okay. So let's assume that ATSI
21 allocates transmission costs -- first of all, nothing
22 that we do in this hearing room or nothing related to
23 this issue will change ATSI's revenue requirement,
24 correct? Its costs of providing transmission service
25 won't change. We're just talking about allocations

1 of who pays, correct?

2 A. Sure. We're talking about retail tariff
3 provisions.

4 Q. So the three utilities here buy
5 transmission service from ATSI based upon -- let's
6 just assume based upon their single -- their demand
7 during the ATSI load season single highest hour for
8 any year. First, do you know that to be true or not?

9 A. I don't know.

10 Q. Now, if a customer -- you've postulated
11 that the type of customer that would want to buy
12 transmission service directly from PJM by opting out
13 would be a low-load-factor customer; is that correct?

14 A. Yes.

15 Q. You've made an assumption that a lot of
16 these transmission expenses must be allocated on
17 energy from ATSI to the load-serving entities, and,
18 therefore, the low-load-factor customer would have to
19 pay less because they have low energy usage relative
20 to their peak demand. Isn't that what you assumed
21 would be the motivating factor?

22 A. No, I did not assume that a lot of the
23 costs would be energy related. I assumed that at
24 least some of the costs would be energy related,
25 especially under the proposed changes the company is

1 making to rider NMB.

2 Q. Well, you indicated that Ms. Mikkelsen
3 testified that 99 percent of the transmission costs
4 are demand related and one percent are energy
5 related. Do you recall that?

6 MR. SAUER: Objection. Mischaracterizes
7 his testimony.

8 Q. Explain to me where I'm wrong if I
9 mischaracterized.

10 A. In my understanding, without having it in
11 front of me, is she was talking about what had been
12 done historically. The company is proposing changes
13 to rider NMB. One of those changes is to include
14 emergency energy in rider NMB that's not in there
15 today. That's an energy allocation. I don't know
16 how big emergency energy will be. I don't know if it
17 will be a lot or a little, but it changes the picture
18 of what's in rider NMB and how it's allocated.

19 Q. Do you think that the ATSI transmission
20 costs will be allocated differently to the three
21 utilities versus Cleveland Public Power versus a CRES
22 provider versus anybody else, or do you think that
23 the allocation of ATSI costs will be the same?

24 A. Sir, you're asking about ATSI costs or
25 all PJM costs?

1 Q. The ATSI transmission costs that we're
2 talking about here. Let me -- the ATSI transmission
3 costs that we're talking about here. PJM/ATSI will
4 allocate those to all load-serving entities the same;
5 isn't that right?

6 A. Using the same allocation methods, sure.

7 Q. The way I understood your testimony is
8 you said you essentially concluded that the only
9 reason a customer would choose the opt-out is to save
10 money, correct? That's a legitimate assumption.
11 Isn't that what you assumed?

12 A. Yes.

13 Q. And you assumed the motivating factor or
14 the type of customer would be a low-load customer who
15 would want to buy transmission service directly;
16 isn't that what you conclude?

17 A. Yes. For a customer to save money, they
18 would have to pay less directly to PJM than they pay
19 under the current allocation method that's used, and
20 I gave, you know, in my mind a prime example of that
21 was a low-load-factor customer.

22 Q. Do you understand that load factor really
23 has nothing to do with how their costs are going to
24 be allocated? It's where they fall in that
25 single-hour peak when PJM allocates the ATSI

1 transmission costs. Do you understand that?

2 A. Well, you're talking about the
3 transmission component of all the costs that would be
4 allocated under rider NMB, and on that component, you
5 are correct.

6 Q. And that's the vast majority of the
7 components, isn't it?

8 A. Today, that's true. I don't know that
9 that would be true under the proposed changes the
10 company is -- sorry -- under the changes the company
11 is proposing in rider NMB.

12 Q. Do you recognize that there's no
13 guarantee if a customer chooses to buy transmission
14 service directly that they're going to save money
15 versus buying it from the utility under rider NMB?

16 A. Well, there's no guarantee, but we're
17 talking about very large, sophisticated companies
18 that presumably know what they're doing and aren't
19 going to make stupid decisions. I may be wrong.
20 Maybe they will make stupid decisions.

21 But, you know, the assumption that they
22 would have to be making is that they will save money
23 if they buy these services from their CRES rather
24 than having them allocated through the method the
25 companies use.

1 Q. If the vast majority of the costs are
2 based upon your usage during a single hour in the
3 year, even a large, sophisticated customer might not
4 be able to predict that; do you agree?

5 A. Well, you're asking me how one of your
6 clients is going to make a decision, and I don't know
7 that. All -- I gave you the best I could in my
8 testimony, and I'm trying to do that today, but when
9 you ask me how a particular customer is going to make
10 a decision, you know them a lot better than I do. I
11 don't know.

12 Q. Let's assume that the Commission approves
13 the pilot and allows certain customers to buy
14 transmission directly from PJM. Isn't that by
15 definition a cost-of-service rate if the customer
16 pays exactly what PJM tells them is their cost
17 responsibility?

18 A. Well, to that customer, that would be
19 true. I'm concerned about all the customers who
20 aren't being given that choice, and who are still
21 having their rates determined based on the allocation
22 method that's in rider NMB and whether they will be
23 disadvantaged by allowing a few customers to opt out
24 of that averaging process.

25 Q. But you just agreed that the customers

1 who pay exactly what PJM says they're supposed to pay
2 is a cost-of-service rate by definition, correct?

3 A. To those individual customers, yes. But
4 what about everybody else, is what I'm saying?

5 Q. Well, if the customer pays exactly what
6 PJM says they should pay, which is a cost-of-service
7 rate, you're saying, no, they should be put back in
8 the utility bundle to subsidize the other customers?

9 A. No. What I'm saying is that when you
10 allow a few customers to pull out of a rate-setting
11 method and you don't give anybody else that option,
12 you're being unfair. The only customers who will
13 pull out of that option are those who think they can
14 save money. That will raise the rates to everybody
15 else who's left, some of whom might have been able to
16 save even more money than the customers who were
17 given the option of pulling out. So, you know, we're
18 not talking about somebody subsidizing somebody else.
19 We're talking about basic fairness.

20 Q. Well, isn't it fair that a customer in
21 this pilot who pays exactly what PJM says they're
22 supposed to pay, what's unfair about -- what's unfair
23 about that as to that particular customer?

24 A. As to that customer, that's fine. The
25 problem is the effect that has on all the customers

1 who weren't given that option. Okay. They're still
2 stuck with the way things are being done today, and
3 some of them are being disadvantaged more than the
4 customers who were being given the option.

5 Q. And if the customer who buys transmission
6 directly from PJM pays more than they otherwise would
7 have paid, that will benefit the remaining customers,
8 correct?

9 A. Well, for that one period, and then the
10 customer can opt out and go back. So they're given
11 the option to go ahead and try it, but if you
12 don't -- if you don't like the result, if you
13 calculated wrong, you can come back. So it's --

14 Q. Isn't that the nature of a pilot program,
15 for the Commission to gather data of allowing
16 customers to buy directly from PJM and pay exactly
17 what PJM says they're supposed to pay and determine
18 how that works?

19 A. Well, you asked me about the nature of a
20 pilot program. This, in my opinion, is not
21 structured the way a pilot program is normally
22 structured. Usually there are some criteria for
23 participation based on a customer's characteristics,
24 not a customer's membership in a particular
25 organization. There are evaluation criteria. It's

1 open to all customers who meet certain qualifications
2 as to size or whatever, and that's not how this is
3 structured at all.

4 EXAMINER PRICE: When you speak of your
5 definition of a pilot program, that is your own
6 personal definition of a pilot program and does not
7 necessarily reflect pilot programs OCC may have
8 entered into; isn't that true?

9 THE WITNESS: That's true. I'm basing it
10 on my experience, not on what OCC or the Commission
11 may have said.

12 EXAMINER PRICE: This is not OCC's
13 position what a pilot program is, it's your position?

14 THE WITNESS: OCC will have to speak for
15 itself. I'm giving you my definition of what a pilot
16 program is based on 30-plus years of doing this.

17 EXAMINER PRICE: It wouldn't shock you
18 agree if OCC agreed to pilot programs that didn't
19 meet your criteria?

20 THE WITNESS: I have no idea one way or
21 the other.

22 EXAMINER PRICE: Thank you.

23 Q. Well, what type of data -- if the
24 Commission approves this pilot program, what type of
25 data should the companies collect and keep track of

1 in order so the Commission can make an informed
2 decision as to how the pilot is operated?

3 A. I honestly don't know because I don't
4 know what's being tested here. You're giving a few
5 customers the option of trying to save some money if
6 they think they can. I guess you would measure
7 whether they were successful in saving money. I
8 don't know if it would be possible, it might be, to
9 go back and determine what the rates to other
10 customers would have looked like if the pilot hadn't
11 occurred.

12 That's not much of a test. It's like you
13 pulled out thinking you could save money. Did you or
14 didn't you? I don't know what that's telling us. Is
15 that telling us we should give 100 additional
16 customers the same opportunity or not? I don't know
17 what the criteria are.

18 Q. Are those the best parameters of a study,
19 issues you can come up with?

20 A. As I said, it's not my program. I didn't
21 design it. I'm not sure what the purpose is. From
22 what I read, that's about the best I can figure out
23 from this. It's designed to allow a few customers to
24 save money. The only thing to measure is whether
25 they were successful in doing that and whether it had

1 an impact on other customers.

2 Q. Had the opportunity to save by paying a
3 pure cost-of-service rate as determined by PJM,
4 correct?

5 A. Yes, as opposed to a cost-of-service rate
6 determined under the tariff.

7 MR. KUTIK: Thank you, your Honor.

8 EXAMINER PRICE: Mr. McNamee?

9 MR. MCNAMEE: No questions. Thank you.

10 EXAMINER PRICE: Mr. Sauer?

11 MR. SAUER: Can we have a few minutes?

12 MR. KUTIK: I don't know if Mr. Parram
13 has any questions.

14 MR. PARRAM: I don't have any questions.

15 EXAMINER PRICE: Let's go off the record.

16 (Discussion off the record.)

17 MR. SAUER: A few questions, your Honor.
18 Thank you.

19 - - -

20 REDIRECT EXAMINATION

21 By Mr. Sauer:

22 Q. Mr. Rubin, you were asked quite a few
23 questions about PJM charges and whether you looked at
24 those with any great detail. Can you explain why you
25 didn't review those charges in great detail?

1 A. Sure. The specific details of those
2 charges was not something that was relevant to me or,
3 frankly, is relevant to rider NMB or whether
4 somebody's exempt from the rider or not. Whatever
5 PJM charges the companies for the elements of rider
6 NMB is going to go into that charge, so it didn't
7 matter to me specifically how each of those elements
8 were calculated.

9 The companies had been asked in discovery
10 whether all of those charges were demand related or
11 whether some were energy related. Their response was
12 that there was a mixture. Some were demand related,
13 some were energy related. That was all of the
14 information that I considered relevant in -- sorry --
15 in assessing whether the proposed opt-out from rider
16 NMB would be reasonable and whether it might have an
17 impact on other customers.

18 Q. Thank you. You were asked by the
19 companies about a document that was put before you
20 from the state of Oregon regarding a situation in a
21 case you were involved in; is that correct?

22 A. Yes.

23 Q. And what was your capacity in that case
24 in Oregon?

25 A. I was an out-of-state attorney working

1 with local counsel.

2 Q. And what were the circumstances of that
3 situation?

4 A. Sure. We had received a document from
5 one of the utilities in that case that was marked
6 confidential but that had a page of information that
7 listed as its source filings with the Securities and
8 Exchange Commission. We used information from that
9 page in another proceeding. The companies objected
10 in Oregon claiming that we violated the protective
11 agreement by pulling public information out of a
12 document marked confidential.

13 The Oregon Commission and ultimately the
14 Oregon Supreme Court agreed with the companies'
15 interpretation, so that was technically a violation
16 of the protective agreement. We shouldn't have used
17 anything out of that document without first going
18 through the process of getting the public information
19 removed from the protective order. The procedure in
20 Oregon was not that the companies had to file a
21 redacted version. So all we had was this one
22 document marked confidential, but with a mix of
23 confidential and public information in it.

24 So I was -- I agreed to a reprimand from
25 the Court in Oregon, and so be it. I mean, my client

1 was removed as a party to the case, but my client had
2 already decided to withdraw from the case. So
3 basically we didn't contest the removal because we
4 were going to withdraw anyway.

5 Q. So your client was not prejudiced?

6 A. No, not at all.

7 Q. Have you been reprimanded in any other
8 cases you've been involved in in your 30-year career,
9 Mr. Rubin?

10 A. No, definitely not.

11 MR. SAUER: No further questions, your
12 Honor.

13 EXAMINER PRICE: Thank you.

14 Ms. Bojko, recross?

15 MS. BOJKO: No, thank you.

16 EXAMINER PRICE: Mr. Mendoza?

17 MR. MENDOZA: No questions.

18 EXAMINER PRICE: Mr. Randazzo?

19 MR. RANDAZZO: None.

20 EXAMINER PRICE: Mr. Kutik?

21 RECROSS-EXAMINATION

22 By Mr. Kutik:

23 Q. You had an opportunity to ask OCC to ask
24 for company discovery, correct?

25 A. Yes, sir.

1 Q. And OCC didn't put any limitations on
2 what you could ask with respect to discovery; is that
3 correct?

4 A. Correct.

5 Q. Now, you didn't claim before the Oregon
6 Supreme Court that you had submitted a, quote,
7 technical, end quote, violation, did you?

8 A. I don't recall exactly what we filed. I
9 had conversations with an attorney with the
10 disciplinary authority in Oregon. The result of
11 those conversations was a stipulation that we both
12 signed and that went to the court for approval.

13 That's why I didn't remember the court
14 aspect of it. I was working with a disciplinary
15 attorney there. I explained both orally and in
16 writing the nature of the violation. She understood
17 that and we stipulated to the reprimand, which was,
18 you know, the lowest sanction that the court had
19 available.

20 So that understanding was all there, but
21 actually made it into the order, I don't recall. I
22 mean, we can read it if you like.

23 Q. Okay. There was injury that the Court
24 found as a result of your misconduct, correct?

25 A. Again, I don't recall exactly what the

1 Court said. There was no injury to my client. My
2 client had decided prior to any of this happening
3 that they did not have an ongoing interest in the
4 case and would be withdrawing from the case, so they
5 were not harmed at all.

6 Q. Well, isn't it true that the Court found
7 that Verizon was injured?

8 A. Well, the Court made that finding based
9 on Verizon's pleadings in the case. We did not
10 disclose any information that was confidential to
11 Verizon, and they didn't claim that in the other
12 proceeding where we used the information.

13 You know, they didn't file a protective
14 order or any kind of sanction in the other state
15 where that information was used. They came back to
16 Oregon to try to get a sanction against me, and they
17 were successful, but they didn't try to go protect
18 that information in the other state where it was
19 actually moved.

20 MR. KUTIK: Move to strike, your Honor.

21 EXAMINER PRICE: I'm going to deny the
22 motion to strike.

23 Q. Isn't it true, sir, that the Court found
24 that Verizon was prejudiced by your misconduct?

25 A. As I said, yes, that's in there, based on

1 Verizon's pleadings.

2 Q. Thank you.

3 A. But I'm explaining Verizon's actions
4 which are different.

5 EXAMINER PRICE: Okay. I allowed your
6 explanation the first time. But on my own motion,
7 we're going to strike everything after "yes."

8 MR. KUTIK: No further questions.

9 EXAMINER PRICE: Mr. Parram?

10 MR. PARRAM: No questions, your Honor.

11 EXAMINER PRICE: Mr. Kurtz?

12 MR. KURTZ: No questions.

13 EXAMINER PRICE: Thank you, Mr. Rubin.
14 You are excused.

15 THE WITNESS: Thank you.

16 EXAMINER PRICE: Mr. Sauer.

17 MR. SAUER: Thank you, your Honor. I
18 move for the admission of OCC Exhibits 23 and 24C.

19 EXAMINER PRICE: Any objection?

20 They will be admitted.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 MR. KUTIK: Your Honor, we move for the
23 admission of Companies Exhibit 71, 72 and 73.

24 EXAMINER PRICE: Any objections?

25 MR. SAUER: Your Honor, I object to the

1 admission of Exhibit No. 71. Mr. Rubin in his case
2 in Oregon was an attorney in which case he was a
3 consultant not hired by OCC to represent OCC. It's
4 not relevant to this case and should not be admitted.

5 EXAMINER PRICE: Mr. Kutik.

6 MR. KUTIK: Your Honor, as you aptly
7 noted earlier, it goes to his credibility. With
8 respect to his zealousness and his ability to bend
9 the rules and with respect to the duty of care that
10 he provides in his duties.

11 EXAMINER PRICE: We will overrule the
12 objection. Company Exhibit 71, 72, and 73 will be
13 admitted.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 EXAMINER PRICE: Thank you all. We will
16 begin tomorrow at 9:00 to take Mr. Kahal tomorrow at
17 9:00, and then we will proceed with Mr. Bowring,
18 Mr. Scarpignato, and Mr. Burcat, whatever it is, and
19 then hopefully Mr. Williams.

20 Thank you all. We are adjourned.

21 (The hearing adjourned concluded at 5:29
22 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 Monday, October 5,
2015, and carefully compared with my original
stenographic notes.

Carol A. Kirk, RPR, RMR.

(CAK-79475)

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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 10/05/15 - Volume XXIII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.