

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PROCEEDINGS

before Mr. Gregory Price, Ms. Mandy Chiles, and
Ms. Megan Addison, Attorney Examiners, at the Public
Utilities Commission of Ohio, 180 East Broad Street,
Room 11-A, Columbus, Ohio, called at 9:00 a.m. on
Tuesday, October 6, 2015.

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VOLUME XXIV

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- - -

4864

INDEX

- - -

WITNESSES	PAGE
Matthew I. Kahal	
Direct Examination by Mr. Stinson	4868
Cross-Examination by Mr. Kutik	4871
Bruce H. Burcat	
Direct Examination by Mr. O'Donnell	4929
Cross-Examination by Mr. Randazzo	4931
Cross-Examination by Ms. Dunn	4935
Cross-Examination by Mr. Kurtz	4954
Redirect Examination by Mr. O'Donnell	4960
Recross-Examination by Mr. Randazzo	4968
Recross-Examination by Ms. Dunn	4977
Joseph E. Bowring	
Direct Examination by Mr. Mayes	4977
Cross-Examination by Ms. Bojko	4986
Cross-Examination by Mr. Randazzo	4991
Cross-Examination by Mr. Kurtz	4993
Cross-Examination by Mr. Kutik	5005
Redirect Examination by Mr. Mayes	5040
Recross-Examination by Mr. O'Brien	5041
Recross-Examination by Ms. Bojko	5042
Recross-Examination by Mr. Kutik	5043
David Scarpignato	
Direct Examination by Mr. Petricoff	5052
Cross-Examination by Mr. Randazzo	5062
Cross-Examination by Mr. Kutik	5073
Cross-Examination by Mr. Kurtz	5111
Redirect Examination by Mr. Petricoff	5121
Recross-Examination by Mr. Kurtz	5131
Recross-Examination by Mr. Kutik	5135

- - -

4865

INDEX (Continued)

EXHIBITS

- - -

COMPANIES EXHIBITS

IDENTIFIED ADMITTED

74	- Multi-page document with cover page entitled "Local Area Unemployment Statistics Map."	4898	4926
75	- State of the Market Report for PJM, 5/15/2014	5007	5050
76	- State of the Market Report for PJM, 8/14/2015	5008	5050
77	- Analysis of the 2016/2017 RPM Base Residual Auction, 4/18/2014	5009	5050
78	- Analysis of the 2017/2018 RPM Base Residual Auction, 10/6/2014	5009	5050
79	- Capacity Resource Offer Prices for 2016/17 Delivery Year	5015	5050
80	- Capacity Resource Offer Prices for 2017/18 Delivery Year	5015	5050
81	- Harvard Business Review, "The Five Competitive Forces that Shape Strategy" by Michael E. Porter	5104	5138

- - -

OCC/NOPEC EXHIBITS

IDENTIFIED ADMITTED

7	- Direct Testimony of Matthew I. Kahal	4868	4925
8	- Supplemental Direct Testimony of Matthew I. Kahal	4869	4925

4866

INDEX (Continued)

- - -

IMM EXHIBITS

IDENTIFIED ADMITTED

1	- Direct Testimony of		
	Joseph E. Bowring	4980	5048

- - -

MAREC EXHIBITS

IDENTIFIED ADMITTED

1	- Direct Testimony of		
	Bruce H. Burcat	4927	4978

2	- Supplemental Direct Testimony		
	of Bruce H. Burcat	4928	4978

- - -

RESA EXHIBITS

IDENTIFIED ADMITTED

1	- Direct Testimony of		
	David Scarpignato	5052	5138

	- Changes to Qualification		
	of Witness Scarpignato	5052	5138

- - -

1A

4867

1 Tuesday Morning Session,
2 October 6, 2015.

3 - - -

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

12 My name is Mandy Chiles, and with me is
13 Gregory Price and Megan Addison, and we are the
14 attorney examiners assigned by the Commission to hear
15 this case. We will waive appearances from the
16 attorneys, but would anyone like to enter an
17 appearance this morning?

18 MR. MAYES: I would like to enter an
19 appearance. I'm Jeffrey Mayes, general counsel for
20 Monitoring Analytics, acting in the capacity of the
21 Independent Market Monitor for PJM.

22 EXAMINER CHILES: Thank you.

23 MR. O'DONNELL: Terrence O'Donell with
24 Dickinson Wright representing Mid-Atlantic Renewable
25 Energy Coalition.

1 MR. BURCAT: Bruce Burcat with
2 Mid-Atlantic Renewable Energy Companies.

3 EXAMINER CHILES: Thank you.

4 Are we ready to proceed this morning?

5 MR. STINSON: Yes, your Honor. OCC and
6 NOPEC would call Dr. Kahal.

7 (Witness sworn.)

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 - - -

10 MATTHEW KAHAL

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

13 DIRECT EXAMINATION

14 By Mr. Stinson:

15 Q. Mr. Kahal, would you please state your
16 full name and business address for the record.

17 A. Yes. My name is Matthew Kahal. That's
18 spelled K-A-H-A-L. Business address is 1108 Pheasant
19 Crossing, Charlottesville, Virginia 22901.

20 Q. I've placed before you your direct
21 testimony, which is marked OCC/NOPEC Exhibit 7. Do
22 you have that?

23 A. I have my own copy.

24 Q. You can use your own copy.

25 A. Okay. Thank you. Yes, I have the direct

1 testimony.

2 Q. And was your direct testimony prepared by
3 you or under your direct supervision?

4 A. Yes, it was prepared by me.

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

7 A. I have one deletion to that direct
8 testimony.

9 Q. Can you describe that, please?

10 A. Yes. That's at page 28. There's -- at
11 page 28 there's a footnote No. 20, and that footnote
12 is to be deleted. That's the only change to the
13 direct testimony I have.

14 Q. Thank you. If I were to ask you the same
15 questions in your direct testimony, would your
16 answers, as amended, be the same?

17 A. Yes.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. You also have before you your
20 supplemental direct testimony which has been marked
21 as OCC and NOPEC Exhibit 8.

22 A. Yes, I have that.

23 Q. And was that testimony prepared or was
24 that supplemental direct testimony prepared by you or
25 under your supervision?

1 A. Yes, it was prepared by me.

2 Q. Do you have any additions, deletions, or
3 corrections to that testimony.

4 A. Yes, there are a couple of deletions.

5 Q. Go ahead.

6 A. At page 29 of that testimony, the
7 sentence at line 4 that states "In addition" and goes
8 through line 5. That sentence is to be deleted.

9 In addition on that page, along with the
10 deletion of that sentence, the referenced footnote at
11 line -- excuse me -- that's numbered 33, that
12 footnote is to be deleted as well.

13 Q. Do you have any other corrections?

14 A. Yes. At page 37, at line number 14, the
15 sentence that begins "Witness Sioshansi" and that
16 sentence concludes at line 17, that sentence is to be
17 deleted.

18 Q. Thank you. If I were to ask you the same
19 questions in your supplemental direct testimony,
20 would your answers, as amended, be the same?

21 A. They would.

22 MR. STINSON: At this time, your Honor, I
23 move the admission of OCC and NOPEC Exhibit 7 and 8
24 subject to cross.

25 EXAMINER CHILES: Thank you. We will

1 defer ruling on those exhibits. At this time we will
2 proceed with cross-examination.

3 Before we proceed with cross-examination,
4 do we have any motions?

5 Mr. O'Donnell?

6 MR. O'DONNELL: No questions.

7 EXAMINER CHILES: Mr. Mendoza?

8 MR. MENDOZA: No questions, your Honor.

9 EXAMINER CHILES: Mr. Kurtz?

10 MR. KURTZ: If I could go after the
11 company, please, your Honor.

12 EXAMINER CHILES: Sure.

13 Mr. Kutik.

14 MR. KUTIK: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Kutik:

18 Q. Good morning, sir.

19 A. Good morning.

20 Q. Would you agree with me that the energy
21 industry has undergone some changes in last five to
22 ten years?

23 A. Yes.

24 Q. I want to talk to you a little bit about
25 your experience. Your last teaching position was

1 around 1980.

2 A. That's correct.

3 Q. And both of your teaching positions were
4 nontenured track, correct?

5 A. Yes, instructor-type positions.

6 Q. Thank you. And your last publication was
7 in 2008?

8 A. Yes.

9 Q. And your last conference presentation was
10 in 2004?

11 A. I think that's right, yes.

12 Q. And the last case involving an electric
13 utility before your recent SSO cases in Ohio was
14 1988?

15 A. Oh, I'm sorry. Did you mean my last case
16 in Ohio?

17 Q. Yes, other than the SSO cases.

18 A. I think that's right, yes, other than the
19 three SSO cases that I've done within, I guess, the
20 last two years.

21 Q. Now, you haven't done any studies of the
22 Ohio retail electric market, correct?

23 A. That's right.

24 Q. And you haven't reviewed the PUCO website
25 regarding shopping information, correct?

1 A. No. I mean, I've seen some shopping
2 statistics, but no, I haven't gone on the website to
3 do any kind of a systematic-type search, which I
4 think that's what you're talking about.

5 Q. Yes, it is. So your answer would be no,
6 you haven't done that?

7 A. Oh, I have not, that's right. In the
8 sense that you're talking about, I think.

9 Q. Yes. And you haven't done any study of
10 the Ohio economy, correct?

11 A. Recently, no.

12 Q. Now, you would not consider yourself an
13 expert on the design of a distribution system,
14 correct?

15 A. That's right. I'm not an engineer, and I
16 would consider that to be an engineering task.

17 Q. And, similarly, you would not consider
18 yourself an expert on planning system improvements.

19 A. Only the economic aspects, not the
20 engineering aspects.

21 Q. And, similarly, with respect to the
22 engineering aspects of making judgments about
23 repairing and replacing an engineering system, you
24 wouldn't consider yourself an expert on that?

25 A. That's right, not on the engineering

1 aspect, you're correct.

2 Q. But you do know something about the PJM
3 market, correct?

4 A. Yes.

5 Q. And would you agree with me that PJM has
6 on the order of 200,000 megawatts of capacity
7 resources?

8 A. That's a rough ballpark number. I
9 believe that's in the ballpark of the amount of
10 capacity in PJM.

11 Q. And 80 to 90 percent of that is in-ground
12 capacity?

13 A. Yeah. In-ground meaning physical
14 capacity, yes, that sounds about right.

15 Q. There are areas within PJM that are
16 nonretail choice areas, correct?

17 A. There are.

18 Q. And there are vertically integrated
19 utilities that provide generation and distribution
20 service to customers in those areas, correct?

21 A. That's right. It's not the majority, but
22 those areas within PJM do exist.

23 Q. And these utilities offer their
24 generation into the PJM capacity market, correct?

25 A. As far as I know, I believe that's

1 correct. I haven't verified that, but that's my
2 understanding of the way they normally operate.

3 Q. And this amount of generation comprises
4 about 15 to 20 thousand megawatts.

5 A. It may be more than that. I mean, that
6 would be ballpark. It might be as much as 30,000,
7 but that's, you know, a rough, rough estimate.

8 Q. And you know that a FirstEnergy affiliate
9 owns regulated generation in PJM, correct?

10 A. FirstEnergy affiliate? Subsidiary?

11 Q. A subsidiary of FirstEnergy Corp.

12 A. Yes, a subsidiary of the FirstEnergy
13 Corp., I think we're talking about Mon Power.

14 Q. Now, within PJM, you would agree with me
15 that the overwhelming percentage of retirements in
16 the last few years have been retirements of
17 generation plants that have been coal-fired, correct?

18 A. Yes, certainly in terms of the number of
19 megawatts, yes.

20 Q. And the overwhelming percent of
21 generation additions have been gas-fired, correct?

22 A. Yes. Again, in terms of megawatts, yes.

23 Q. Now, I want to talk to you about two
24 developments in the PJM market since you filed your
25 testimony. One of those is the capacity performance

1 rules. You're aware of those, right?

2 A. Yes.

3 Q. And you would agree with me that those
4 rules have had and will likely have the effect of
5 increasing capacity prices?

6 A. Yes.

7 Q. Another development has been the Clean
8 Power Plan, you're aware of that?

9 A. Yes, the final rule -- I can't remember
10 the date when it was issued, but I think it was over
11 the summer.

12 Q. Yes. And you would agree with me that
13 all else equal, the Clean Power Plan will tend to
14 increase natural gas prices by increasing demand for
15 natural gas.

16 A. As compared to not having the Clean Power
17 Plan, if it didn't exist, yes.

18 Q. Now, you are also aware, are you not,
19 that FERC has rules or tariffs that deal with market
20 manipulation, correct?

21 A. There are tariffs that govern behavior of
22 generators in RTOs that are FERC jurisdictional
23 tariffs. In terms of an actual rulemaking that the
24 FERC has done that defines market manipulation, that
25 I'm not so sure that there's an actual rule.

1 There's -- I think that there's an investigation of
2 that now that's taking place in FERC where it's just
3 beginning, but there are tariffs that govern the
4 behavior of market participants.

5 Q. And you're aware that there are tariffs
6 that deal with the subject of market manipulation,
7 correct?

8 A. I don't know if it uses the term "market
9 manipulation," but that certainly is related to
10 market manipulation issues, if that's helpful.

11 Q. And FERC has used its authority to impose
12 fines to deter market manipulation, correct?

13 A. Punish and deter, yes.

14 Q. Now, I want to talk to you a little bit
15 about rider RRS and the economic stability program
16 that's been proposed by the companies.

17 A. Certainly.

18 Q. Would it be correct to say that you're
19 not sure if the companies are seeking Commission
20 approval of a PPA?

21 A. I'm not 100 percent sure since I haven't
22 actually seen the PPA.

23 Q. And you would agree with me that rider
24 RRS does not set the price that the companies would
25 pay under a PPA, correct?

1 A. As the concept has been discussed, rider
2 RRS does not set the price. If a PPA goes forward,
3 is conected and is approved, presumably that's what
4 would set the price.

5 Q. The PPA?

6 A. Yes.

7 Q. So the answer to my question was yes?

8 A. Yes.

9 Q. And you don't know if rider RRS would not
10 dictate who would offer the plant's output into the
11 PJM market?

12 MR. STINSON: Could I have that reread,
13 please.

14 EXAMINER CHILES: You may.

15 (Record read.)

16 A. You phrased it as "would not," negative?

17 Q. Yes, I did.

18 A. My understanding is that rider RRS does
19 not address that.

20 Q. Now, you believe, do you not, that the
21 proposed transaction would be purely financial and
22 not physical, correct?

23 A. That's my understanding as to the concept
24 that's being proposed.

25 Q. And one of the reasons for that is that

1 the plant's output will not be used to displace the
2 power procured for SSO load by the companies?

3 A. That's correct, not only SSO load but
4 also for shopping customers, it wouldn't displace
5 their load either.

6 Q. You anticipated my next question.

7 A. Okay. Good.

8 Q. Now, the companies would have the right
9 to audit FES's books. You understand that, correct?

10 A. Yes. There are audit rights -- let me
11 put it this way. It's a little hard to say that for
12 sure because I haven't seen the contract. I have to
13 rely on the proposed term sheet. Based upon the
14 proposed term sheet, I believe that that's
15 anticipated.

16 Q. And the companies under the term sheet
17 would also be consulted on capital projects, correct?

18 A. There is a consultative process that's
19 described in the term sheet for capital additions.

20 Q. Now, you haven't done any modeling on the
21 effect of rider RRS on wholesale energy or capacity
22 markets in PJM, correct?

23 A. I have not modeled that, no.

24 Q. And you have done no analysis on the
25 amount of generation that would have to change its

1 behavior to affect capacity prices, correct?

2 A. That's correct.

3 Q. And you would agree with me that if
4 customers receive a credit under rider RRS, rider RRS
5 does not create a subsidy, correct?

6 A. I have to clarify what you mean by
7 customers receiving a subsidy -- a credit. If you
8 mean this is anticipated to be 15 years, so if what
9 you mean is they receive a net credit over the
10 15-year term, in other words, ratepayers are coming
11 out ahead on this for the full 15 years of the PPA,
12 assuming there is a PPA, then I would agree with the
13 statement that you made. I assume that you didn't
14 mean that, you know, if it was just one year.

15 Q. Now, I want to talk to you about your
16 evaluation of the ESP under the ESP versus MRO test.

17 A. Sure.

18 Q. Now, it's your view that there is no ESP
19 that should be approved by the Commission, correct?

20 A. That's right.

21 Q. And you would advocate a policy where no
22 ESP would ever be approved by the Commission,
23 correct?

24 A. That's correct.

25 Q. And you base this opinion that you just

1 had on the Opinion and Order in PUCO case No.

2 12-3151-EL-COI which you cite in your testimony?

3 A. I cite to that. That's, obviously, not
4 the total basis of my opinion, but sure I cite to
5 that in my testimony.

6 Q. And that was Commissioner Schnitzer's
7 concurring opinion?

8 A. Yes.

9 Q. And you recognize that a concurring
10 opinion is not the controlling opinion?

11 A. It's the majority opinion is the
12 controlling opinion, so you're correct.

13 Q. Now, you also recognize that the
14 statement that you quote from the then chair of the
15 Commission can be fairly read as advice to the
16 legislature as to what the legislature should do?

17 A. I don't disagree with that statement.

18 Q. And there were other filings in that
19 case. You're aware of that, correct?

20 A. Yes. I didn't -- I mean, I wasn't in the
21 case. I didn't participate, but sure, there were
22 lots of things filed in the case.

23 Q. And would it be fair to say that you
24 didn't review those other filings?

25 A. That's correct.

1 Q. So you don't know whether OCC made any
2 filings in those cases, in that case?

3 A. I believe they made a filing. I'm not
4 familiar with it.

5 Q. Would it be fair to say that since you
6 haven't read the filing that OCC, you believe, made,
7 you don't know if OCC argued for the elimination of
8 ESPs or not?

9 A. I don't know what positions OCC took in
10 that case.

11 Q. And would your policies be the same for
12 any filings that NOPEC might have made?

13 A. Correct.

14 Q. Now, under the terms of the ESP versus
15 MRO test, you would agree with me that one must
16 evaluate all the terms and conditions of the ESP?

17 A. Yes. It's an aggregate test.

18 Q. So this includes or this would mean,
19 though, in your view, not including any costs or
20 benefits that resulted from prior ESPs, correct?

21 A. That's right. Another way of stating it
22 is it's an incremental test.

23 Q. Now, you're aware that the Commission has
24 considered qualitative aspects of ESPs in its
25 determination or review of the ESP versus MRO test in

1 other ESPs?

2 A. They have. I haven't reviewed every one,
3 but the ones that I've reviewed, they did address
4 qualitative issues.

5 Q. And the Commission has also approved ESPs
6 where the ESP rates were higher than MRO?

7 A. Yes. I would clarify that just to say
8 the ESP costs -- costs and rates, were higher than
9 the MRO, but they had -- I can think of at least one
10 case where they did that where for other reasons they
11 decided that the ESP still should be approved with
12 whatever modifications they made to it.

13 Q. Now, as an economist, you understand that
14 it's appropriate for the Commission to consider
15 nonprice factors for an ESP in the ESP versus MRO
16 test?

17 A. It could be, yes.

18 Q. Now, you also understand that there is an
19 Ohio statute that sets out energy policies for the
20 state, correct?

21 A. Yes.

22 Q. And you did no analyses of whether the
23 ESP complies with the policies set out in that
24 statute, correct?

25 A. You mean for this case?

1 Q. Yes.

2 A. Yes. In this case, I didn't go through
3 and do a systematic review of that issue, that's
4 correct.

5 Q. You believe that there is, though, a
6 state energy policy that addresses the state's
7 effectiveness in the global economy?

8 A. That's correct, I agree, that's one of
9 the policies, yes.

10 Q. But you don't know if the Commission has
11 a charge to address economic development, correct?

12 A. A charge to address economic development?
13 By "charge" I assume you mean like a mandate?

14 Q. A charge.

15 A. That's just something that's not clear to
16 me. I don't think I can answer that.

17 Q. Okay. Do you know whether they have --
18 isn't it true you don't know whether the Commission
19 has a statutory charge to address economic
20 development?

21 A. A statutory charge, if charge means the
22 same thing as mandate, then I don't know. I know
23 that they can address it. I don't know if they're
24 required to address it.

25 Q. Now, the Commission can consider rate

1 stability in making its ESP versus MRO determination,
2 correct?

3 A. Certainly.

4 Q. And companies can offer features in ESP
5 that has the effect of stabilizing rates?

6 A. Yes.

7 Q. Including a hedge product?

8 A. Yes.

9 Q. I want to talk to you a little bit about
10 your analysis, your quantitative analysis, of the ESP
11 versus MRO test.

12 A. Yes.

13 Q. And your analysis includes a figure for
14 the cost of rider DCR, correct?

15 A. It does.

16 Q. And you're --

17 A. Actually, excuse me. It includes a
18 range.

19 Q. Fair enough. And you're aware that the
20 Commission has, for purposes of the ESP versus MRO
21 test, treated the rider DCR and riders like it such
22 as AEP Ohio's rider DIR as a wash, having no effect
23 on the test because expenses under rider DCR could be
24 recovered under an MRO versus a base rate case?

25 A. Or plural, rate cases. What stands out

1 is the last ESP case for the FirstEnergy Companies.
2 I believe they may have even used the term "wash,"
3 but I can't remember.

4 Q. And you're also aware -- well, I'll back
5 up.

6 You participated, did you not, in the AEP
7 ESP Case No. 13-2385?

8 A. I did.

9 Q. And you read the opinion in that case?

10 A. Yes.

11 Q. And would it be fair to say in that case,
12 the Commission also determined that AEP's similar
13 rider to rider DCR for purposes of the MRO test
14 should not be factored in for quantitative analysis?

15 A. That's right, with the caveat that they
16 actually modified the companies' proposal. They
17 modified it quite a bit. But then after their
18 modification that they made to it, they then
19 determined that it wasn't a positive or negative
20 factor, I guess a wash, to use the term that we've
21 been using.

22 Q. Thank you. Now, in terms of -- I'm going
23 to back up.

24 For lack of a better term, your primary
25 analysis in terms of quantification of the ESP versus

1 MRO test, you only take the rider RRS figures for the
2 term of the ESP, correct?

3 A. Well, I do it both ways.

4 Q. Right. But initially that's one way you
5 did it?

6 A. That's the preferred way. Basically my
7 testimony says let's look at it both ways. The first
8 way I looked at it was for the three-year time
9 period.

10 Q. And with respect to looking at it the
11 second way, the 15-year time period, you take
12 Mr. Wilson's figures, correct?

13 A. That's correct. He has three scenarios.
14 For purposes of presenting ESP figures, I used his
15 medium scenario.

16 Q. And as you mentioned, he has three cases,
17 and the first two are based upon the Energy
18 Information Administration's forecast for natural gas
19 prices, correct?

20 A. That's right, yes.

21 Q. And then he uses Company Witness Lisowski
22 and Company Witness Rose's information?

23 A. Yes. To my knowledge, he did not change
24 the companies' projections of their O&M cost and cap
25 adds. My understanding is that he just accepted that

1 information.

2 Q. Now, using the reference case for the
3 EIA, that was Mr. Wilson's first case, correct?

4 A. Correct.

5 Q. And it's, I want to say, many millions of
6 dollars as a wash, but it's essentially a wash?

7 A. Oh, I think when you take into account,
8 you know, the enormous potential for monitoring
9 error, I think it's fair to call it a breakeven.

10 Q. And the second case he uses, as
11 Mr. Wilson, a high oil and gas resource case,
12 correct?

13 A. The EIA high oil and gas resource, yes.

14 Q. And you've seen that case before,
15 correct?

16 A. I'm aware of it. It's not anything I've
17 really studied.

18 Q. Have you seen the annual energy outlook
19 that Mr. Wilson uses?

20 A. I have. I mean, it's a report that I
21 routinely reference and use in other cases. I didn't
22 study it specifically for this case, because that
23 wasn't my assignment, but it's a document I'm
24 generally familiar with.

25 Q. So the answer to my question is you've

1 seen it before?

2 A. Oh, sure, yeah.

3 Q. And you're aware that the natural gas
4 prices that are projected in the Ohio oil and gas
5 research case are well below the other cases that the
6 other five -- the four main cases that the EIA looks
7 at in its AEO?

8 A. Yes. I think in your question you said
9 "research" and you meant "resource."

10 Q. Yes. Thank you.

11 You would agree with me that oil prices
12 are currently low?

13 A. Compared to where they've been in about
14 the last ten years, yeah. I'm loving it.

15 Q. And do you know that as far as natural
16 gas price forecasts, that EIA includes in its AEO,
17 there's a low price forecast, low oil price forecast?

18 A. Yes, it's a low case.

19 Q. And would it be fair to say that if we
20 used that low case, it would be much closer to the
21 reference case?

22 A. I would have to verify that. If you want
23 to suggest that's the case, I'm not disputing that.

24 Q. Now, Mr. Wilson's third case is based
25 upon natural gas futures prices, correct?

1 A. Yes.

2 Q. And would you agree with me that most
3 forecasters don't use futures prices beyond the first
4 few, perhaps, three years because after that, the
5 futures market is thin?

6 A. Right. I think you're referring to
7 long-term studies. If they were doing long-term
8 studies, they may very well for the first few years
9 use the futures market. But then they -- excuse me.
10 When I say the "futures market," I'm talking about
11 the CME futures markets for standard products like
12 the Henry Hub, something like that. I think that's
13 what we're talking about.

14 And that's information that's readily
15 available, and they might use it for the first couple
16 of years, but if you're talking about a figure, let's
17 say, that's published on the CME website going out
18 five years, ten years, they would -- typically they
19 wouldn't grab a figure like that. Rather what they
20 would do is they might take it just for the first
21 couple of years, and then attach an escalation figure
22 to it.

23 Q. Now, would you agree with me -- so is the
24 answer to my question yes?

25 A. Yes, with just adding a little bit more

1 explanation, yes.

2 Q. Would you agree with me that
3 historically, gas prices have been volatile and
4 probably more volatile than most other commodities?

5 A. They have been volatile. I'm not in a
6 position to say they have been more volatile than
7 most other commodities. Most other commodities being
8 things like food products, metals and -- I haven't
9 done those calculations. I would say that natural
10 gas has been more volatile than certain other energy
11 commodities. I think it's fair to say that.

12 Q. Would it be also fair to say that you
13 would not expect gas prices to be flat and unchanged
14 over eight years?

15 A. I would love it if it was true that they
16 were unchanged over ten years. I wouldn't really
17 expect that.

18 Q. Now, you did not do any forecasts for
19 this case, correct?

20 A. That's correct.

21 Q. And you did not model the impact of rider
22 RRS, correct?

23 A. Model it in the sense that Mr. Ruberto
24 did or Mr. Wilson, I did not.

25 Q. And would it also be fair to say you did

1 not do a typical bill analysis?

2 A. I did not calculate typical bills. I did
3 calculate total numbers, but not typical bills.

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

5 A. That's correct.

6 Q. And the only typical bill analysis you've
7 seen has been one that was done by the companies,
8 correct?

9 A. The companies are the only party that, to
10 my knowledge, have done a typical bill analysis.

11 Q. So the answer to my question is yes.

12 A. That's right. It was more than one
13 witness that did it, but yes.

14 Q. And did you review the typical bill -- I
15 take it then you reviewed the typical bill analysis
16 that was attached to the companies' application?

17 A. Yes. I actually saw two of them, two
18 typical bill analysis.

19 Q. I'm getting to the second one, perhaps.

20 A. Okay. Thank you.

21 Q. Is the second one that you saw, that was
22 in discovery, a discovery response?

23 A. No. It was actually in the companies'
24 workpapers. There was one attached to the
25 application. I think it was Attachment 7. It may

1 have been discussed here in hearings. And then there
2 was another one that was, I believe, in the
3 companies' workpapers. I don't know if that's
4 something that's in the record or not.

5 Q. Okay.

6 A. But that's where I saw the other one.

7 Q. And would it be fair to say, sir, that in
8 looking at the typical bill analysis, either one that
9 you looked at, for most rate classes and most usage,
10 rates went up -- or, rates went up in the first year
11 but then down in the second and third years of the
12 ESP?

13 A. They went up, right. They went up in the
14 first year as compared to ESP III. That's the
15 comparison that was made, and then they -- from after
16 year 1, they went down a little bit, and they went
17 down a little bit further in the year 3 as compared
18 to year by year, but not as compared to ESP III.

19 Q. Okay.

20 A. That would be the best description I
21 could give you.

22 Q. Thank you. Now, I want to talk to you a
23 little bit about the qualitative aspects of the ESP.
24 Would you agree with me that Ohio has a role to play
25 in the development of generation in Ohio?

1 A. I would think so.

2 Q. And PUCO has a role in ensuring
3 reliability for electric customers?

4 A. Yes. It has a role to play with regard
5 to reliability, yes.

6 Q. Now, with regard to the retirement of the
7 plants in question here, I want to ask you some
8 questions about your own background. You've never
9 had a decision-making role in buying or selling a
10 retirement power plant, correct?

11 A. Not a decision-making role, per se, no, a
12 recommendation role.

13 Q. Haven't seen information on the finances
14 of the FES plants at issue here, correct?

15 A. Well, no, that's not true. I've seen the
16 information that's in the record in this case.

17 Q. From Mr. Moul?

18 A. Yeah. I'm trying to remember whether
19 there was anyone else. Certainly it's from Mr. Moul.
20 I mean, there's also from other witnesses, too. It's
21 not just him. I'm thinking of Dr. Kalt, for example.

22 Q. All right. Is it true that you haven't
23 reviewed any information on FES's debt?

24 A. No, other than what was in Mr. Staub's
25 testimony, no, which was not very much.

1 Q. And you don't know how much additional
2 debt FirstEnergy Corp. can take without affecting its
3 credit rating, correct?

4 A. No, I don't, because that would depend on
5 many variables.

6 Q. Now, you know that FES has deactivated a
7 number of coal-fired plants located along Lake Erie
8 in 2014 and this year, correct?

9 A. I know that they deactivated a number of
10 coal units yes.

11 Q. And you know that FirstEnergy Solutions
12 announced scheduling plans to repower two units with
13 biomass at the R. E. Burger plant in Shadyside, Ohio.

14 A. I'll take your word for it. That's not
15 something that I follow.

16 Q. And you also are aware that in 2013, FES
17 deactivated Hatfields Ferry and Mitchell power
18 stations?

19 A. Yes.

20 Q. Now, you've done no modeling on the
21 consequences of retirement of plants in question,
22 correct?

23 A. No. I'm not sure which consequences
24 you're referring to, but I guess for purposes of your
25 question, it may not matter since I didn't do any.

1 Q. Right. And from a reliability
2 standpoint, the location of a particular plant may be
3 relevant, you would agree with that, correct?

4 A. You're asking me whether location
5 matters? Sure, of course it does.

6 Q. And you would also agree with me that
7 voltage support is necessary to maintain the
8 stability of the grid?

9 A. Absolutely.

10 Q. And for voltage support, the location of
11 the plant is very relevant, correct?

12 A. Location of the relationship between the
13 location of the plant and load is relevant for the
14 voltage support issue along with the characteristics
15 of the generating units.

16 Q. And you would agree with me, would you
17 not, that the plants in question here provide
18 economic benefits to their local areas?

19 A. They do.

20 Q. And they provide things like providing
21 employment and paying property taxes?

22 A. Yes.

23 Q. And if the plants would close, that would
24 have a property tax impact?

25 A. It would. I mean, presumably it would

1 unless it was replaced by something that was
2 comparable.

3 Q. Okay. And the plants, you would agree,
4 are major employers in their respective geographic
5 areas?

6 A. They are.

7 Q. And you don't know who other major
8 employers in that area might be?

9 A. I don't know the names of the other major
10 employers.

11 Q. Or the unemployment rates in those areas?

12 A. I have a general understanding of the
13 unemployment rates. Maybe not precise, but I know,
14 in general, what the unemployment rate situation is.

15 Q. Would looking at figures from the Bureau
16 of Labor Statistics be information that you would
17 rely upon to form a view as to the unemployment rates
18 in those areas?

19 A. Yes. The Bureau of Labor Statistics has
20 unemployment rates by state and by counties.

21 MR. KUTIK: May I have a moment, your
22 Honor?

23 EXAMINER CHILES: You may.

24 MR. KUTIK: Your Honor, we would ask to
25 have marked as Company Exhibit 74 a multi-page

1 document that starts with a page that's entitled
2 "Local Area Unemployment Statistics Map."

3 EXAMINER CHILES: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Mr. Kahal, I've handed you what we have
6 asked to have marked for identification as Company
7 Exhibit 74. Does this appear to be data from the
8 Bureau of Labor Statistics?

9 A. It does. On their website, if you
10 actually go to their website, it's in color, which
11 would be a lot nicer.

12 Q. I agree, sir. And do you know -- and it
13 lists here, does it not, the various counties in Ohio
14 and their unemployment rates?

15 A. It does, for July of 2015, yes.

16 Q. And you are aware, are you not, the
17 counties in which the plants are located?

18 A. The two plants that are at issue in this
19 case, yes, I am aware of that. The Sammis, I think,
20 is located in Jefferson County and Davis-Besse in
21 Erie County.

22 Q. And if we look at this table, and
23 particularly on the second page, we see the
24 unemployment rate for Jefferson County is
25 7.4 percent?

1 A. Yes.

2 Q. And do you know where the Davis-Besse
3 plant is located?

4 A. Erie County.

5 Q. How about Ottawa County? Does that sound
6 familiar?

7 A. You could be right. I thought it was
8 Erie County. But Ottawa County, yes, and the number
9 is 5.2 percent.

10 Q. Now, I want to talk to you a little bit
11 about retail rates and prices in Ohio. Would it be
12 fair to say that you have not studied the change in
13 prices experienced by customers as they've switched
14 contracts?

15 A. We're talking about switching retail
16 suppliers?

17 Q. Or going from one contract to another in
18 a retail -- with the same retail supplier.

19 A. That's correct. I mean, for
20 nonresidential customers, it's generally not public
21 information.

22 Q. And you've also not done a study of the
23 change in retail generation rates from nonshopping
24 customers as EDUs have switched from ESP to ESP?

25 A. From one three-year period to the next;

1 is that what you're referring to?

2 Q. Yes.

3 A. That's correct.

4 Q. I want to talk to you a little bit more
5 about rider DCR.

6 A. Sure.

7 Q. You understand that rider DCR is to
8 recover costs related to investments or expenditures
9 intended, in part, to provide reliability benefits,
10 correct?

11 A. Yes.

12 Q. And you would agree with me that
13 reliability adds value for customers?

14 A. Absolutely.

15 Q. And you're aware that there have been
16 cost tracker rider proceedings in Ohio?

17 A. Yes.

18 Q. And if the Commission in those cases
19 finds that costs are not prudent, the Commission has
20 the authority to disallow certain costs being
21 recovered under those riders?

22 A. That's my understanding, that the
23 Commission has the authority to disallow imprudently
24 incurred or unreasonable costs.

25 Q. And you have not participated in cost

1 tracker rider audit proceedings in Ohio?

2 A. In Ohio, I have not, that's correct.

3 Q. And you have not reviewed cost tracker
4 rider audit proceedings in Ohio?

5 A. That's right, I have not been involved in
6 any of those proceedings.

7 Q. And that includes proceedings to audit
8 rider DCR, correct?

9 A. That's correct.

10 Q. Would it be also correct to say you
11 haven't been involved in a base rate case in Ohio for
12 many, many years?

13 A. It's been quite a while since I've been
14 involved. I was trying to remember when, but it's
15 been quite a while, you're correct.

16 Q. And you believe that there is less risk
17 associated with recovery of costs through a cost
18 tracker than a base rate case, correct?

19 A. There's less risk, yes.

20 Q. And one of the reasons is because you
21 think that prudence review disallowances are rare,
22 correct?

23 A. That's been my experience, that prudence
24 disallowances in tracker proceedings are rare. I
25 think the second reason that's very often cited is

1 there's less regulatory lag.

2 Q. I was going to ask you that.

3 A. There is less -- yes, there's less
4 regulatory lag.

5 Q. Thank you for anticipating my question.

6 It's your view that customers -- I'll
7 back up.

8 You would agree with me, would you not,
9 that customers are unwilling to pay more to avoid
10 outages? That's a view you have adopting
11 Mr. Williams' testimony, correct?

12 A. I don't know whether -- I think that
13 that's a reference to some surveys, customer surveys,
14 that have been done. I don't have firsthand
15 knowledge of that being true.

16 Q. And any comments that you would have on
17 customer perceptions would be based upon
18 Mr. Williams' testimony?

19 A. That's right, I didn't get involved with
20 reviewing those customer surveys and that sort of
21 thing.

22 Q. And, again, you've anticipated my next
23 question, so I appreciate that.

24 Now, I want to talk to you a little bit
25 about Mr. Effron's calculations regarding earnings.

1 You agree with me that what he did was not a base
2 rate return calculation, correct; in other words, a
3 return calculation one would make in a base rate
4 case?

5 A. No, it is. I think that what I explained
6 in my testimony, is that it's not at the same level
7 of detail. It's not that its conceptually different.

8 Q. It's not the same level of detail?

9 A. It's not the same level of detail as what
10 would take place in a rate case where witnesses will
11 be introducing adjustments and normalizations and all
12 kinds of myriad of things that go on in a rate case.

13 Q. So there might be a variety of
14 adjustments and a variety of normalizations that
15 might occur in a base rate case not reflected in
16 Mr. Effron's calculations?

17 A. That's correct. I don't think he tried
18 to represent it otherwise.

19 Q. And would it also be fair to say that
20 Mr. Effron's calculations are not the formula that
21 would be used for the SEET, S-E-E-T?

22 A. Oh, no, no. He wasn't trying to simulate
23 a SEET type of presentation. He was simply trying to
24 present, as I understand it, what the companies'
25 experience, based upon the most recent data that he

1 had in terms of their earnings under distribution
2 service.

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

4 A. It's different than a SEET, yes.

5 Q. And it's your understanding that the SEET
6 acts as a mechanism for limiting earnings in an ESP?

7 A. In a fashion, yes.

8 Q. And you understand that that's part of
9 the ESP statute, correct?

10 A. Yes.

11 Q. And unlike as with a base rate case, to
12 obtain approval of an ESP under the ESP statutory
13 test, there's no rate base necessary to be shown,
14 correct?

15 A. I think you're referring to the filing
16 requirements?

17 Q. Yes.

18 A. To my knowledge, there isn't a specific
19 rule that requires that being filed when one makes an
20 ESP application.

21 Q. Or for a rate of return either, correct?

22 A. Or the presentation of a rate of return.
23 Now, there is financial information projections that
24 are part of the filing.

25 Q. My question is about a rate of return.

1 A. That doesn't include a rate of return.
2 That includes financial information.

3 Q. Now, you haven't reviewed any orders in
4 any of the companies' SEET proceedings, correct?

5 A. I have not been involved in any SEET
6 proceedings or reviewed SEET orders.

7 Q. I want to ask you a few questions or
8 maybe one or two about Rider GDR.

9 A. Yes.

10 Q. You understand, do you not, that under
11 the companies' proposal to obtain any recovery, the
12 companies would first have to apply for approval for
13 recovery of some type of cost, correct?

14 A. That's correct.

15 Q. And then they would have to come in to
16 show the amount of the costs sought to be recovered
17 or, perhaps, a projection of that cost?

18 A. I think that's the proposal as to how it
19 would work.

20 Q. Now, I have one, I think, final line of
21 questions that I want to talk to you about, and
22 that's relating to stipulations and your review about
23 the stipulations in this case. You reviewed at least
24 one Commission case on the standards for approval of
25 a stipulation, correct?

1 A. Yes, specifically the -- I think it's the
2 ESP III case, which resulted in a stipulation, and
3 there was pretty extended discussion about that in
4 the Commission order.

5 Q. And you haven't been involved in
6 negotiations of any of the stipulations in this case,
7 correct?

8 A. Oh, I have not, no.

9 Q. And you have no information on any
10 involvement that OCC may have had in any negotiation
11 with respect to a stipulation or any issue of
12 settlement, correct?

13 A. That's correct, I have no knowledge of
14 what their participation in the settlement process,
15 if any, has been.

16 Q. And your answer would be the same for
17 NOPEC, correct?

18 A. My answer would be the same for NOPEC,
19 that's correct.

20 Q. And you don't know if there was any party
21 precluded from having an opportunity to participate
22 in the settlement process?

23 A. That's correct.

24 Q. And you would agree with me that no
25 stakeholder's interest is more important than any

1 other stakeholder's interest, correct?

2 A. I would have -- the best answer I can
3 give you, I have no basis for saying that one
4 stakeholder's interest should be elevated over
5 another stakeholder's interest. That's the best
6 answer I can give you.

7 Q. And you don't believe that OCC or NOPEC
8 should have a veto over stipulations, correct?

9 A. I don't believe that any individual
10 single party should have a veto, that's correct.

11 Q. Now, you're aware that the signatory
12 parties included representatives of commercial
13 customers, industrial customers, and municipalities,
14 correct?

15 A. Yes.

16 Q. But you don't know if any signatory party
17 represents residential customers, correct?

18 A. The general body of residential customers
19 of the three utilities, I don't know that any of them
20 represent them.

21 Q. Okay. Well, isn't it true that you don't
22 know if any signatory party represents residential
23 customers at all?

24 A. That's correct, I don't. I don't know
25 what their specific representation is.

1 Q. And you don't know if there are any side
2 agreements not reflected in the stipulation as
3 amended?

4 A. That's correct, I have no knowledge of
5 any side agreements.

6 Q. You don't know if the signatory parties
7 were represented by experienced counsel?

8 A. I'm agnostic on that in that I can't
9 comment on the capabilities of the counsel that were
10 involved.

11 Q. In fact, you don't know those counsel?

12 A. I don't know them, no.

13 Q. That's a good reason to be agnostic.

14 A. I agree.

15 Q. Now, you have a view, do you not, that
16 the signatory parties did not do an independent
17 analysis, correct?

18 A. I have a view that I don't know that they
19 have. I've seen no evidence that they have.

20 Q. Okay.

21 A. What they may have done and not provided
22 is something that's unknowable to me.

23 Q. You wouldn't consider a party that merely
24 read the filings and then came to a conclusion about
25 the benefits of the stipulation as a party that had

1 done an independent analysis, correct?

2 A. I wouldn't consider that to be an
3 independent analysis, just reading the filing.

4 Q. But you understand that a party could
5 come to a conclusion regarding the benefits of a
6 stipulation without doing what you would consider to
7 be an independent analysis.

8 A. They can come to any conclusion they
9 want, sure.

10 Q. Now, your belief that the parties didn't
11 do an independent analysis is based upon three
12 things; one, that you don't believe any signatory
13 party provided any substantively supported testimony;
14 two, signatory parties objected to discovery
15 regarding what analysis they did; and three, to the
16 extent the signatory parties answered this discovery,
17 it showed that they had not done any bill impact
18 analysis, correct?

19 A. Well, all those statements are true. But
20 just to clarify, I'm not saying that because they
21 didn't answer the discovery that by itself means that
22 they didn't do an analysis. I'm simply saying it
23 simply means that by not responding to the discovery
24 or objecting to the discovery, that I can't document
25 that they have.

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

2 A. With that clarification, I think the
3 answer is yes.

4 Q. Now, do you know who Nucor Steel is?

5 A. Yes.

6 Q. And you understand that Nucor Steel is a
7 signatory party.

8 A. Yes.

9 Q. Do you know a party called the Ohio
10 Energy Group or OEG?

11 A. I don't know who their members are.

12 Q. I didn't ask you that; whether you knew
13 that OEG is a party.

14 A. Oh, that they're a party, yeah. I don't
15 have a knowledge of who they are, but I know they're
16 a party.

17 Q. Do you understand that OEG was a
18 signatory to the stipulations in this case?

19 A. I believe so. I would have to check who
20 signed the stipulation.

21 Q. Would you like to do that, sir, or will
22 you accept that?

23 A. I'll accept it.

24 Q. And it's true, is it not, that both Nucor
25 Steel and OEG sponsored witnesses in this case that

1 testified in support of the stipulation?

2 A. I didn't read their testimony that way.
3 I read the testimony of Dennis Goins and I read the
4 testimony of Steve Baron. I certainly did not read
5 the testimony of either witness as being a
6 full-throated support for the entire stipulation. I
7 read their testimony as being support for aspects of
8 it.

9 Q. All right. But you did read their
10 testimony?

11 A. Oh, yes.

12 Q. And the testimony, at least in your view,
13 made statements in favor of parts of the stipulation?

14 A. Yes, of components of the stipulation.
15 As an example, Dr. Goins testified strongly in favor
16 of the interruptibility credit, but really not much
17 else about the rest of the stipulation.

18 Q. Now, with respect to the signatory
19 parties' answers to discovery, you would agree with
20 me that many of those parties objected to the
21 discovery that's attached to your testimony on at
22 least one of three grounds, maybe combinations of
23 these three grounds: Attorney/client privilege, work
24 product, and confidential settlement talks?

25 A. Yes.

1 Q. And you're aware that each of those
2 grounds may be a basis for not otherwise responding
3 to discovery?

4 A. Absolutely.

5 Q. And since you're not an attorney, you're
6 not in the position to judge the merits of those
7 objections, correct?

8 A. No, I'm not. I've had pretty extensive
9 experience with settlement processes. I don't find
10 any of this surprising.

11 Q. All right. And you're not aware, are
12 you, that OCC or NOPEC moved to compel any response
13 to challenge the validity of any of the objections?

14 A. Not to my knowledge.

15 Q. Now, would it be fair also to say that
16 your primary problem with the stipulation as amended
17 is that it includes riders RRS, DCR, and ELR?

18 A. Yes. Those are the biggest problems.

19 Q. And with regard to rider ELR, you don't
20 know of any CRES providers that provide interruptible
21 rates, correct?

22 A. I don't have firsthand knowledge of CRES
23 providers that provide interruptible features to
24 their service.

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

1 A. Yes.

2 Q. And you're not aware of any recent
3 Commission decisions regarding the need to continue
4 interruptible rates?

5 A. No.

6 Q. Now, regarding the policy issues
7 discussed in the stipulation as amended, on the issue
8 of the alleged selection or regarding stranded costs,
9 regarding the policy issues in the stipulation
10 regarding the issues of stranded costs, you were not
11 involved in any electric transition plan case in
12 Ohio, correct?

13 A. That's correct. I'm a little bit
14 confused by the question, though, because I didn't
15 think stranded costs were addressed in the
16 stipulation. Am I misunderstanding the question?

17 Q. Did you include commentary about stranded
18 costs in your supplemental testimony, sir?

19 A. I did. I thought you were referring to
20 the stipulation.

21 Q. I'm sorry, in your supplemental
22 testimony.

23 A. In the supplemental testimony, yes.

24 Q. And so let's get back to my question,
25 which I think you've answer but just for clarity.

1 You were not involved in any electric transition case
2 in Ohio?

3 A. That's correct.

4 Q. And you don't remember reading any
5 opinions in those cases, correct?

6 A. I'm pretty sure I didn't.

7 Q. And you don't know when the transition
8 period was, correct?

9 A. I know the general time frame. I don't
10 know precise dates.

11 Q. Or when it ended?

12 A. Again, the same thing. I don't know
13 precise dates. I don't know the general time frame.

14 Q. And you don't know what a rate certainty
15 plan or what a rate stability plan is?

16 A. Those are terms that I don't recognize.

17 Q. And you don't remember reading any
18 decisions about the companies' plans with respect to
19 a rate certainty plan or rate stabilization plan?

20 A. That's correct.

21 Q. And you don't know the mechanism for the
22 companies' collection of stranded costs?

23 A. The rate mechanism, I don't know what
24 rate mechanism was used for the company to collect
25 its stranded costs.

1 Q. And you don't know if the companies'
2 rates went up or down during the transition period,
3 correct?

4 A. That's right, I don't know the history of
5 the companies' rates during that period.

6 Q. And regarding the issue of stranded
7 costs, would it be fair to say you're relying solely
8 on Dr. Rose's testimony?

9 A. Yes.

10 Q. And no other source?

11 A. In terms of the quantitative numbers, I'm
12 relying on his representation of the \$7 billion
13 collection of stranded costs. I'm relying on him for
14 that.

15 Q. On a slightly different subject, would
16 you agree with me that you would not define
17 reasonably priced service as service that's priced as
18 low as possible?

19 MR. STINSON: Could I have that question
20 reread, please?

21 EXAMINER CHILES: You may.

22 (Record read.)

23 A. We are talking about electric service, is
24 that what you mean?

25 Q. Yes.

1 A. In the context of electric service,
2 that's not a definition I would use.

3 MR. KUTIK: May I have a minute, your
4 Honor?

5 EXAMINER CHILES: You may.

6 MR. KUTIK: I have no further questions.
7 Thank you.

8 EXAMINER CHILES: Thank you.

9 Mr. Kurtz?

10 MR. KURTZ: No questions.

11 EXAMINER CHILES: Mr. McNamee?

12 MR. MCNAMEE: No questions. Thank you.

13 EXAMINER CHILES: Mr. Stinson?

14 MR. STINSON: Could we take just one
15 moment, your Honor?

16 EXAMINER CHILES: Sure.

17 (Discussion off the record.)

18 EXAMINER CHILES: Let's go back on the
19 record.

20 Mr. Stinson?

21 MR. STINSON: We have no redirect, your
22 Honor.

23 EXAMINER CHILES: Thank you very much.

24 EXAMINER PRICE: I've got questions. Not
25 so fast.

1 Mr. Kahal, could you turn to page 26 of
2 your testimony?

3 THE WITNESS: The direct, sir?

4 EXAMINER PRICE: The direct, yes.

5 THE WITNESS: Yes, I have that.

6 EXAMINER PRICE: In the answer to
7 question 26, you discuss giving equal weight to the
8 benefits from both Mr. Rose's projections and
9 Mr. Wilson's projections; is that right?

10 THE WITNESS: That's correct.

11 EXAMINER PRICE: So we have a number of
12 projections in front of us. Do you think it's too
13 crude of a mechanism for the Commission to take the
14 average of all the projections that we have in front
15 of us?

16 THE WITNESS: Too crude? I mean, that's
17 one thing that the Commission should do. I think
18 that -- now, I don't want to speak for Mr. Wilson,
19 but I do think that it's important to recognize that
20 there's a lot of uncertainty in these numbers, and
21 the fact that we have comparing Mr. Rose, that is,
22 companies' Mr. Rose and Mr. Wilson, there's a spread
23 of \$6 billion. Mr. Wilson's case that has the lowest
24 prices is almost a \$4 billion detriment. Mr. Rose's
25 produces a benefit of 2 billion, so that's a spread

1 of 6 billion. That's really huge. And the
2 Commission could do a lot of things. I mean, they
3 could average Mr. Wilson's numbers with Mr. Rose's
4 numbers if they thought they were of equal validity.

5 EXAMINER PRICE: So if we had other
6 projections, three or four projections, that the
7 Commission thought were equally valid, it would not
8 be incorrect or not be invalid to aggregate them and
9 take the average?

10 THE WITNESS: If they thought they were
11 equally validly, that would be one way of looking at
12 a possible expected outcome. They could do that. I
13 wasn't trying to advocate that, but that's something
14 that they could do.

15 EXAMINER PRICE: I understand. I'm
16 struggling with all the projections we have and how
17 we can make some sense of them of.

18 THE WITNESS: Yeah. I mean, planners
19 struggle with that question all the time.

20 EXAMINER PRICE: If you could turn to
21 your supplemental testimony.

22 THE WITNESS: Yes.

23 EXAMINER PRICE: Page 17. Is all of your
24 knowledge of Ohio law derived from Dr. Rose?

25 THE WITNESS: Oh, no. I've read the

1 statute. It's been called the ESP statute.

2 EXAMINER PRICE: Perfect. You discussed
3 in your testimony that Dr. Rose describes his
4 firsthand experience with involvement in Senate Bill
5 3, is that right?

6 THE WITNESS: Yes.

7 EXAMINER PRICE: And you quote him
8 saying, "After the enactment of Senate Bill 3, market
9 forces are to determine which power plants should be
10 operated and which power plants should be retired if
11 they're inefficient and uneconomic."

12 THE WITNESS: Yes.

13 EXAMINER PRICE: And we're moving through
14 a deregulated environment, correct?

15 THE WITNESS: Exactly, yes.

16 EXAMINER PRICE: Are you familiar with
17 Senate Bill 221 which was enacted in 2008?

18 THE WITNESS: I don't know the
19 legislation by the numbers, by their Senate bill
20 numbers, so I'm not entirely sure. What I have
21 reviewed is the statute --

22 EXAMINER PRICE: I'll get to that, don't
23 worry. You do not recall what Senate Bill 221 is?

24 THE WITNESS: No.

25 EXAMINER PRICE: You know if Dr. Rose has

1 any firsthand experience with Senate Bill 221?

2 THE WITNESS: I don't know that.

3 EXAMINER PRICE: Do you know whether or
4 not Senate Bill 221 changed 4928.14 to delete the
5 words "market-based from" the standard service offer?

6 THE WITNESS: Don't know that.

7 EXAMINER PRICE: Do you know whether
8 Senate Bill 221 amended 4928.17 to change the
9 statutes on corporate separation?

10 THE WITNESS: That, I don't know.

11 EXAMINER PRICE: Do you know whether
12 Senate Bill 221 enacted 4928.143?

13 THE WITNESS: I don't know.

14 EXAMINER PRICE: You are familiar --

15 THE WITNESS: I don't recognize that
16 bill, so I can't answer those questions.

17 EXAMINER PRICE: You are familiar with
18 4928.143, the ESP statute?

19 THE WITNESS: Yes, the ESP statute,
20 right.

21 EXAMINER PRICE: And that has an
22 automatic fuel adjustment clause provision -- an ESP
23 can have an automatic fuel adjustment clause?

24 THE WITNESS: It provides for that. I
25 guess it's an option, would be the best way I would

1 put it.

2 EXAMINER PRICE: But that wouldn't be a
3 market force, right? If an ESP had an automatic fuel
4 adjustment clause, that would not be something you
5 would say is characteristic of market forces
6 determining price?

7 THE WITNESS: Generally not. It's
8 possible that someone could enter into -- let me put
9 it this way. I have a lot of experience with PPAs in
10 competitive wholesale markets, and it is not
11 uncommon, based on my experience, for market PPAs to
12 have pass-throughs of cost items. That happens.

13 And if that was the case, I wouldn't
14 necessarily say that's nonmarket, but I think that
15 what you're alluding to is something like an
16 automatic fuel clause is kind of more characteristic
17 of the traditional regulated model.

18 EXAMINER PRICE: Are you familiar with
19 what CWIP provisions are, construction work in
20 progress provisions?

21 THE WITNESS: Yes.

22 EXAMINER PRICE: And you're aware
23 4928.143 allows construction work in progress
24 provisions?

25 THE WITNESS: It provides for that as a

1 possibility that the Commission could approve.

2 EXAMINER PRICE: It allows for it.

3 THE WITNESS: It allows for it.

4 EXAMINER PRICE: Would you consider a
5 CWIP provision to be something characteristic of a
6 market-based system?

7 THE WITNESS: Generally, no.

8 EXAMINER PRICE: Are you aware that
9 4928.143(B)(2)(c) allows a utility to submit an
10 application to construct a power plant --

11 THE WITNESS: Yes.

12 EXAMINER PRICE: -- and receive rate of
13 return regulation on that?

14 THE WITNESS: Yes.

15 EXAMINER PRICE: Is that a characteristic
16 of a market-based system?

17 THE WITNESS: Generally not.

18 EXAMINER PRICE: Based on all that we've
19 talked about, isn't it possible that 221 moved the
20 policy of the state away from a strict deregulated
21 environment to something else entirely different?

22 THE WITNESS: I can't argue with you one
23 way or the other, because I don't think that I've
24 actually seen that legislation.

25 EXAMINER PRICE: Under 143, 4928.143, is

1 there any requirement that rates be set for the
2 standard service offer based upon a market system?

3 THE WITNESS: As being the only way of
4 doing it I think is the context of your question.

5 EXAMINER PRICE: Yes.

6 THE WITNESS: No, it doesn't require that
7 as being the only way of doing it. I think as you
8 correctly indicated, it actually provides for the
9 possibility of constructing new power plants to serve
10 load.

11 EXAMINER PRICE: Thank you. Finally, you
12 indicated in your testimony prudence -- you found
13 that prudence disallowances are rare; is that
14 correct?

15 THE WITNESS: Under trackers, yes.

16 EXAMINER PRICE: If a company filed an
17 application for an amount, it doesn't matter what the
18 amount is, and then later a stipulation was reached
19 for a lower amount, would you consider that to be --
20 and the Commission approved the stipulation for the
21 lower amount, would you consider that to be a
22 disallowance?

23 THE WITNESS: No, I wouldn't -- no, I
24 wouldn't consider that to be a disallowance. I would
25 consider that to be an agreement reached by the

1 parties based upon any number of considerations,
2 including litigation risk.

3 EXAMINER PRICE: That's fair. Are you
4 aware whether in the last ten years the Commission
5 has disallowed significant portions of storm damage
6 recovery costs by Duke Energy Ohio?

7 THE WITNESS: I have heard of -- yes, I
8 had heard that there was a disallowance. I can't
9 remember what the reasons for it were.

10 EXAMINER PRICE: Are you aware of whether
11 in the last five years the Commission has disallowed
12 significant recovery of fuel charges by Dayton
13 Power & Light? Not significant, but disallowed some
14 portion of fuel charges.

15 THE WITNESS: No, I'm not familiar with
16 the Dayton case. I had heard of the Duke case.

17 EXAMINER PRICE: Are you aware of whether
18 in the last five years the Commission has disallowed
19 fuel costs submitted by American Electric Power,
20 Ohio, AEP Ohio?

21 THE WITNESS: I don't know.

22 EXAMINER PRICE: Are you aware of whether
23 in the last five years the Commission has disallowed
24 the recovery of certain alternative energy portfolio
25 standard costs incurred by FirstEnergy?

1 THE WITNESS: Yes, I had heard of that.

2 EXAMINER PRICE: What's your definition
3 of rare? I'm sorry. That was argumentative. You
4 don't have to answer that. Thank you. You're
5 excused.

6 EXAMINER CHILES: Mr. Stinson.

7 MR. STINSON: Yes, your Honor. At this
8 time, OCC and NOPEC would move OCC and NOPEC Exhibits
9 7 and 8.

10 EXAMINER CHILES: Are there any
11 objections to OCC and NOPEC Exhibits 7 and 8?

12 Hearing none, they will be admitted
13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 MR. KUTIK: Your Honor, we move for the
15 admission of Company Exhibit 74.

16 EXAMINER CHILES: Are there any
17 objections to the admission of Company Exhibit 74?

18 MR. STINSON: I would object to the
19 extent, your Honor, that we covered during
20 cross-examination the Ohio unemployment rates in the
21 involved counties. Attached is also unemployment
22 information considering Indiana and the United
23 States, which were not covered. We would object to
24 the inclusion of the Indiana and U.S. rates, those
25 pages.

1 MR. KUTIK: Your Honor, the witness
2 identified this document as being statistics from the
3 Bureau of Labor Statistics which were reliable and he
4 relied upon in his work generally. The fact that we
5 didn't talk about specific statistics is not a basis
6 for objection. The foundation has been laid.

7 EXAMINER CHILES: The objection is
8 overruled. We will admit the entirety of Company
9 Exhibit 74.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 EXAMINER CHILES: At this time, we'll
12 take a ten-minute break and we will return at 10:40.
13 Thank you.

14 Off the record.

15 (Recess taken.)

16 EXAMINER ADDISON: Let's go back on the
17 record at this time.

18 Mr. O'Donnell, please call your next
19 witness.

20 MR. O'DONNELL: I'll call Bruce Burcat
21 with Mid-Atlantic Renewable Energy Coalition, and
22 he's the executive director.

23 (Witness sworn.)

24 EXAMINER ADDISON: You may proceed,
25 Mr. O'Donnell.

1 MR. O'DONNELL: We've introduced
2 Mr. Burcat's direct testimony, and we don't have any
3 questions for him at this time.

4 EXAMINER ADDISON: Would you like to mark
5 that as an exhibit?

6 MR. O'DONNELL: Yes, your Honor. We
7 could mark that as Exhibit A.

8 How about MAREC Exhibit No. 1?

9 MR. O'DONNELL: Yes, your Honor. That
10 would be perfect.

11 EXAMINER ADDISON: Thank you. It will be
12 so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MS. DUNN: Your Honor, could we go off
15 the record for a moment?

16 EXAMINER ADDISON: Let's go off the
17 record.

18 (Discussion off the record.)

19 EXAMINER ADDISON: Let's go back on the
20 record.

21 Did you have any other exhibits to mark,
22 Mr. O'Donnell?

23 MR. O'DONNELL: No.

24 EXAMINER ADDISON: The amended
25 supplemental testimony filed on --

1 MR. O'DONNELL: The amended supplemental
2 testimony we'll mark as MAREC Exhibit 2.

3 EXAMINER ADDISON: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 EXAMINER ADDISON: Mr. Burcat, you didn't
6 have any revisions or changes to your testimony as
7 filed?

8 THE WITNESS: There were no changes, but
9 I would say in my supplemental testimony we updated
10 the exhibit that was in my direct testimony, just for
11 clarification purposes.

12 EXAMINER ADDISON: Thank you for that
13 clarification.

14 MS. DUNN: Your Honor, may we go off the
15 record for one moment?

16 (Discussion off the record.)

17 EXAMINER ADDISON: Let's go back on the
18 record.

19 Any questions, Mr. Randazzo?

20 MR. RANDAZZO: Well, your Honor, I do
21 have a couple of questions, but there's a process by
22 which prepared testimony can come into the record,
23 and I do not believe that process has been followed
24 here. So I think there's a major problem with
25 anybody doing cross-examination at this point.

1 It's rather -- it's like an exhibit. It
2 has to be sponsored, and I don't believe
3 Mr. O'Donnell has properly sponsored the exhibits for
4 this witness, so I'll object.

5 EXAMINER ADDISON: Let's go off the
6 record for a moment.

7 (Discussion off the record.)

8 EXAMINER ADDISON: Let's go back on the
9 record.

10 Mr. O'Donnell.

11 MR. O'DONNELL: Thank you, your Honor.
12 We'll lay a foundation for Mr. Burcat's testimony to
13 introduce it into the record.

14 EXAMINER ADDISON: Thank you.

15 - - -

16 BRUCE H. BURCAT
17 being first duly sworn, as prescribed by law, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 By Mr. O'Donnell:

21 Q. Mr. Burcat, did you file testimony in
22 this case?

23 A. Yes, I did.

24 Q. And can you identify the testimony for
25 the record?

1 A. Yes. I filed direct testimony on
2 December 22nd, labeled the Direct Testimony of Bruce
3 Burcat, and it's consisting of -- we didn't,
4 unfortunately, number those pages, 14 pages of
5 testimony and one exhibit, one attachment.

6 Q. And, Mr. Burcat, did you also file
7 supplemental testimony in the case?

8 A. Yes, we did.

9 Q. Can you identify that?

10 A. Yes. It's the supplemental testimony of
11 Bruce Burcat filed on May 11th, 2015. It's five
12 pages of testimony and one attachment.

13 Q. Okay. And that's your testimony in this
14 case. If we were to ask you the same questions in
15 that testimony today, would you answer the same way,
16 or do you have any amendments to that testimony that
17 you'd like to make?

18 A. No, other than just the clarification
19 that I made earlier on the record.

20 MR. O'DONNELL: Okay. Thank you.

21 Your Honor, anything further that we need
22 to do foundationally?

23 EXAMINER ADDISON: I believe this witness
24 is available for cross-examination, unless
25 Mr. Randazzo has any other objections.

1 MR. RANDAZZO: We'll move on, your Honor.

2 EXAMINER ADDISON: Thank you. Please
3 proceed, Mr. Randazzo.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Randazzo:

7 Q. Sir, my name Sam Randazzo. I'm general
8 counsel for the Industrial Energy Users of Ohio and a
9 member of the firm McNees, Wallace & Nurick.

10 Can you tell me how you define renewable?

11 A. How I define renewable?

12 Q. Yes.

13 A. Just renewable or renewable energy?

14 Q. We'll start with renewable resource.

15 A. A renewable resource is typically a
16 zero-emitting resource that is indefinite in its
17 ability to, you know, for the resource itself to be
18 obtained and used for generation in electricity.

19 Q. Mandates that require subsidies for
20 renewable resources?

21 A. Well, we support, certainly, policies
22 that facilitate the development of those resources
23 because of their positive effects on the environment
24 as well as economical impacts to the jurisdictions
25 that they're located, among a number of other

1 benefits.

2 Q. Okay. Can you answer my question? Does
3 your organization support state mandates that require
4 customers to have a portion of their energy uses
5 coming from renewable resources?

6 A. Well, maybe if you could define mandates,
7 but we support policies like renewable portfolio
8 standards, sure, that encourage the use of renewable
9 energy in a utility or suppliers portfolio of energy
10 resources.

11 Q. And so we are not dealing with the word
12 "mandates." When you say "standards," would it be
13 fair to say that if we substituted "requirements" for
14 your choice of the word "standards," that your
15 statement would remain unchanged?

16 A. On the case of renewable portfolio
17 standards, that is a requirement in some states and
18 some states its voluntary.

19 Q. And do you know what the case is in Ohio?

20 A. Right now there's a freeze, so there
21 aren't -- there isn't a requirement at the moment for
22 additional resources.

23 Q. And do you know what happens if there's
24 no further legislation in Ohio? Do you know what
25 happens effective January 1, 2017?

1 A. Yes. The freeze is over and the
2 requirements are started up again at that point in
3 time consistent with the statute.

4 Q. And you're supporting the resumption and
5 the escalation in what you call standards, what I
6 call mandates?

7 A. Yes.

8 Q. And do those standards result in
9 nonbypassable charges being imposed on customers?

10 A. In Ohio?

11 Q. Yes.

12 A. Not that I'm aware of, no.

13 Q. Would you agree that -- well, strike
14 that.

15 Do you believe that what you call
16 standards, what I call mandates, effectively
17 subsidize the market entry of renewable resources in
18 Ohio?

19 A. No. I think it creates a fair playing
20 field.

21 Q. And how about the production tax credit
22 that wind resources receive, would you agree that
23 that's about 2.3 cents a kilowatt-hour?

24 A. Yes, that's what it is currently.

25 Q. And do you regard that as a subsidy for

1 renewable resources?

2 A. I look at it as the same type of thing.
3 It's a policy to support the development of renewable
4 energy throughout the country. It's a federal
5 policy, not a state policy.

6 Q. And to the extent that there were
7 property tax breaks in Ohio for wind resources, would
8 you regard that as a subsidy?

9 A. No.

10 Q. Why not?

11 A. I don't see tax credit as something that
12 reduces the level of tax, but it's the project -- the
13 project gets developed, and there's still tax
14 payments being made by the entity. I think it's a
15 tool that's used commonly, not just in this state but
16 in a number of states for a variety of different
17 purposes, and so I don't see it in the same way as
18 you see it.

19 Q. And would you regard requirements in the
20 wholesale market that permit wind resources to come
21 and go without obligation to be a subsidy?

22 MR. MENDOZA: Objection, vague. Come and
23 go has no -- it's impossible to understand.

24 MR. RANDAZZO: I'll strike the question.
25 That's all I have. Thank you.

1 EXAMINER ADDISON: Thank you,
2 Mr. Randazzo.

3 Mr. Mendoza?

4 MR. MENDOZA: No questions, your Honor.

5 EXAMINER PRICE: Ms. Petrucci?

6 MS. PETRUCCI: No questions.

7 EXAMINER ADDISON: Mr. Sauer?

8 MR. SAUER: No questions, your Honor.

9 EXAMINER ADDISON: Ms. Dunn?

10 MS. DUNN: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Dunn:

14 Q. Good morning, Mr. Burcat.

15 A. Good morning.

16 Q. My name is Carrie Dunn. We've not met
17 personally before, but I'm counsel for the Ohio
18 Edison, the Cleveland Electric Illuminating Company,
19 and the Toledo Edison Company. If I refer to the
20 term "companies," can we agree I mean those three
21 entities I just identified?

22 A. Yes.

23 Q. And you're here on behalf of the
24 Mid-Atlantic Renewable Energy Coalition, correct?

25 A. Correct.

1 Q. Can we refer to that throughout our
2 discussion as MAREC?

3 A. Yes. I know it's a mouthful otherwise.

4 Q. Thank you. I'm going to go ahead and
5 start with MAREC Exhibit 1, your direct testimony,
6 and you previously indicated that there are no page
7 numbers. I'm going to represent that I'm going to
8 start page 1 as the place where you say, "Please
9 state your name and business address," okay?

10 A. Okay.

11 Q. And on page 1 of your direct testimony,
12 it states that MAREC's membership, in part, consists
13 of wind developers, correct?

14 A. Correct.

15 Q. And for the time being, MAREC's focus is
16 primarily on wind energy, not solar or other types of
17 renewables, correct?

18 A. That's correct.

19 Q. And some of your members have an interest
20 in developing wind projects in Ohio, correct?

21 A. That is correct.

22 Q. And some of your members have permitted
23 wind farms, but they're not operational or under
24 construction at this point in time, correct?

25 A. Yes.

1 Q. And in Ohio, the Ohio Power Siting Board
2 is responsible for issuing permits to wind farm
3 developers, correct?

4 A. Yes.

5 Q. Now, simply because a wind developer
6 receives a permit from the Ohio Power Siting Board,
7 it does not necessarily mean the developer will
8 actually construct the wind farm, correct?

9 A. That's correct.

10 Q. Or that the wind farm will become
11 operational, correct?

12 A. Yes.

13 Q. And sitting here today, there are two
14 operating wind developments in Ohio operated by MAREC
15 members, correct?

16 A. That's correct.

17 Q. And there are 11 permitted wind projects
18 in Ohio that are either not constructed or
19 operational, correct?

20 A. That's my understanding, but they're not
21 all MAREC members.

22 Q. Thank you for the clarification.

23 I also want to focus now on what
24 documents you reviewed from this case in preparing
25 both of your testimonies. For example, you did read

1 parts of the application the companies filed,
2 correct?

3 A. Yes.

4 Q. And you also reviewed Jay Ruberto's
5 testimony, correct?

6 A. That's correct.

7 Q. Is it fair to say for your direct
8 testimony that you limited your review to those two
9 items?

10 A. The application and Jay Ruberto's
11 testimony -- no, I looked at other -- in general, I
12 looked at other things. I looked at statutory
13 authority and some other issues that would arise. I
14 did some searches. I did some general research. We
15 also used a document -- I know I raised this at the
16 deposition, but we looked at a document that showed
17 the specifics on -- some of the specifics on -- let's
18 see, I guess that was the Blue Creek Wind Farm.

19 Q. And I don't think my question may have
20 been very clear. But as far as what the companies
21 filed in this case, is it fair to say that you
22 limited your review to the application and Jay
23 Ruberto's testimony?

24 A. For the direct testimony?

25 Q. Yes.

1 A. I would say that's primarily correct, but
2 I did look at -- well, from the companies'
3 information, yes.

4 Q. Thank you. And I'm going to go ahead and
5 turn to page 4 of your direct testimony. And the
6 first answer paragraph, so the first paragraph at the
7 top, in that paragraph, you're discussing the
8 proposed transaction from the companies, correct?

9 A. Correct.

10 Q. And today you are not offering an opinion
11 relating to whether or not the proposed transaction
12 is legal under Ohio or federal law, correct?

13 A. That's correct.

14 Q. You are also not offering an opinion as
15 it relates to the structure of the proposed
16 transaction, correct?

17 A. In terms of that project, yes.

18 Q. And you're also not offering an opinion
19 on rider RRS, correct?

20 A. Correct.

21 Q. In your testimony, you are proposing a
22 similar recovery mechanism, but for a purchase power
23 agreement for renewable energy, correct?

24 A. Yes, I would say it's very similar.

25 Q. And you're also not offering any other

1 opinions on any other aspect of the companies'
2 proposed transaction, correct?

3 A. I would say that -- I mean, we do talk --
4 you're talking about the direct testimony still or
5 the supplemental direct testimony?

6 Q. Your direct testimony.

7 A. No, not in the direct testimony.

8 Q. And I'm going to go ahead and turn to
9 page 6 of your testimony, your direct testimony.

10 A. Okay.

11 Q. And looking at the graph on page 6, you
12 show a rise from 2013 up of the average annual LMP,
13 correct?

14 A. Correct.

15 Q. And that rise is likely a result of the
16 polar vortex, correct?

17 A. I can't say it's totally as a result of
18 that. I could say that that's probably a piece of
19 that, but I think there's probably other reasons
20 involved in that. I mean, we know that natural gas
21 prices have jumped around a little bit, maybe not as
22 much in those earlier years, but that could be a big
23 piece of it as well.

24 MS. DUNN: Your Honor, may I approach?

25 EXAMINER ADDISON: You may.

1 Q. Mr. Burcat, I've handed you a copy of
2 your deposition. Could you please turn to page 24.
3 And starting on line 22, you state:

4 "And in our testimony -- and let me find
5 the page, on page -- I apologize for not having put
6 page numbers on this, but basically page 6, there's a
7 graph listed as PJM West Average Annual LMP from 2001
8 to 2014, which shows the extreme price volatility of
9 energy prices from the time of 2001 to 2013. And
10 even in 2013 you can see the price going into 2014
11 jump pretty significantly in that time frame

12 "And that's very likely related due to
13 the condition we had last winter with the polar
14 vortex jumping prices on a temporary basis."

15 Did I read that correctly?

16 A. Yeah. Maybe too much reliance on that
17 particular condition. I mean, part of the concern
18 with the polar vortex is the lack of natural gas
19 availability to run generation at that time. So, I
20 mean, I think certainly natural gas, whether it was
21 through that particular event and possibly prices in
22 general for natural gas, that those maybe combined
23 could have created the volatility at that point.
24 But, yeah, the polar vortex was clearly a factor in
25 that.

1 MS. DUNN: Your Honor, at this time I'd
2 like to move to strike everything after the word
3 "yes." I do understand we've had the so-called
4 Mulligan rule; however, I believe my question was
5 pretty straightforward, "if I read that correctly."
6 Anything after "yes" is clearly not explaining or
7 putting in context and it can be dealt with on
8 redirect, if necessary.

9 EXAMINER ADDISON: I'm going to deny the
10 motion to strike.

11 But, Mr. Burcat, if you could simply
12 answer counsel's question. Mr. O'Donnell can raise
13 any additional information that you'd like to be put
14 on the record during redirect.

15 Q. (By Ms. Dunn) Go ahead and turn to page
16 7, please, of your direct testimony. And on page 7,
17 you state that "The W. H. Sammis plant is exposed to
18 coal-price fluctuations," correct?

19 A. That is correct.

20 Q. You do not know what Sammis pays for its
21 coal, correct?

22 A. That is correct.

23 Q. You do not know what coal contracts
24 Sammis has now, correct?

25 A. I do not.

1 Q. And you do not know what coal contracts
2 Sammis will have in the future, correct?

3 A. That's correct.

4 Q. And earlier you discussed with
5 Mr. Randazzo state incentives for renewable energy as
6 well as production tax credits. Wind facilities also
7 received accelerated depreciation, correct?

8 A. That's correct, like a number of other
9 types of businesses.

10 MS. DUNN: Your Honor, I move to strike
11 "like every other type of businesses."

12 EXAMINER ADDISON: Mr. O'Donnell, do you
13 have a response?

14 MR. O'DONNELL: I think that the
15 statement was perfectly appropriate given that
16 depreciation is not an energy-specific incentive.

17 EXAMINER ADDISON: I'm going to grant the
18 motion to strike after "that's correct."

19 Q. (By Ms. Dunn) Mr. Burcat, for PJM RPM
20 auctions, the PJM average capacity factor for wind is
21 13 percent, correct?

22 A. Yes. However, I think there's been some
23 significant changes moving forward in the RPM
24 auction.

25 MS. DUNN: Your Honor, I would move to

1 strike everything after the word "yes."

2 EXAMINER ADDISON: Mr. O'Donnell?

3 MR. O'DONNELL: Well, then we request she
4 clarify the question in the first place. Could we
5 have it reread?

6 EXAMINER ADDISON: You may.

7 (Record read.)

8 MS. DUNN: I'm sorry, your Honor. Could
9 we go off the record?

10 (Discussion off record.)

11 MR. O'DONNELL: Thank you for repeating
12 the question. I think given that the question just
13 said "for auctions" and didn't specify which auctions
14 or a time frame, that Mr. Burcat's answer was
15 perfectly appropriate because he's trying to provide
16 context so he's not misrepresenting something in this
17 proceeding.

18 MS. DUNN: Your Honor, he did answer
19 "that's correct" and then did go on to say the rest
20 of his sentence.

21 EXAMINER ADDISON: I'll grant the motion
22 to strike.

23 Mr. O'Donnell, you can raise that issue
24 on redirect.

25 MR. O'DONNELL: Thank you, your Honor.

1 Q. (By Ms. Dunn) Mr. Burcat, I believe you
2 previously discussed the Blue Creek Wind Farm. MAREC
3 has not done an analysis on the cost of operating the
4 Blue Creek Wind Farm versus the cost of operating
5 Sammis or Davis-Besse, correct?

6 A. Yes.

7 Q. And MAREC has not done an analysis on the
8 cost of operating the Paulding Wind Farm versus the
9 cost of operating Sammis or Davis-Besse, correct?

10 A. Yes.

11 Q. Turning to page 12 of your testimony,
12 your direct testimony --

13 A. Okay.

14 Q. -- at the bottom in the bullet points you
15 list the general economic development benefits of
16 adding approximately 800 megawatts of Ohio wind
17 energy to the companies' ESP, correct?

18 A. Yes.

19 Q. And as a basis for this information, you
20 utilized the Blue Creek Wind Farm fact sheet,
21 correct?

22 A. That's correct.

23 Q. And you scaled the information on that
24 fact sheet up for the 800-megawatt facility?

25 A. Well, clarification, it's 800 megawatts

1 of wind energy. It's not for one particular
2 facility. It could be multiple facilities, but
3 that's what we did for the 800-megawatt total.

4 Q. And, for example, the Blue Creek wind
5 farm had \$2.7 million in annual local tax payments.
6 You scaled that up to \$7.2 million for 800 megawatts
7 of wind energy?

8 A. That's correct.

9 Q. And MAREC did not do a formal study
10 relating to the economic benefits of its proposed
11 800 megawatts of wind energy?

12 A. We did not.

13 Q. And for purposes of your direct
14 testimony, you did not review the companies'
15 testimony filed related to the economic development
16 benefits of maintaining Sammis or Davis-Besse,
17 correct?

18 A. Well, are you saying for the direct?

19 Q. Yes.

20 A. That's correct.

21 Q. MAREC did not do an analysis as to
22 whether new transmission would be needed as a result
23 of its proposal, correct?

24 A. We did not -- can you repeat the
25 question?

1 Q. Sure. MAREC did not do an analysis as to
2 whether new transmission would be needed as a result
3 of its proposal?

4 A. We did not do an analysis.

5 Q. And in preparation of both your direct
6 testimony and your amended supplemental testimony,
7 you did not review any of the EPA's modeling for the
8 Clean Power Plan, correct?

9 A. Well, we did look at EPA's outputs in
10 certain respects for developing our numbers on the
11 schedule attached to the supplemental testimony.

12 Q. For preparation of your direct testimony,
13 you did not review any of the EPA's modeling for the
14 Clean Power Plan?

15 A. No. We did the same thing for the
16 particular -- in fact, it's even labeled in the
17 exhibit itself, so we did look at that.

18 Q. Could you please open your deposition
19 that I handed you previously, page 70, starting at
20 line 10.

21 Question: "Did you personally review any
22 of the EPA's modeling for the Clean Power Plan?"

23 Answer: "Their modeling? Not their
24 modeling. I have looked at some of their data, but
25 not the modeling"

1 Did I read that correct?

2 A. Yes. And I believe that's my answer.

3 Q. You do not know if Sammis is compliant
4 with MATS requirements, correct?

5 A. That's correct.

6 Q. MAREC has also not done a study on the
7 cost of utilizing wind renewables to comply with the
8 Clean Power Plan as compared to other options to
9 comply, correct?

10 A. MAREC has not performed that study, but
11 there have been definitely other studies that we have
12 looked at that do discuss compliance from the aspect
13 of utilizing wind for compliance purposes.

14 MS. DUNN: Your Honor, I would move to
15 strike everything after the word "but."

16 EXAMINER ADDISON: Mr. O'Donnell?

17 MR. O'DONNELL: That's fine. No
18 objection.

19 EXAMINER ADDISON: Motion to strike is
20 granted.

21 Q. Turning to your direct testimony,
22 Attachment 1, you did not create Attachment 1 to your
23 direct testimony, correct?

24 A. I did not. It was under my supervision.

25 Q. And Attachment 1 to the amended

1 supplemental testimony, you did not create that
2 either, correct?

3 A. Well, based on -- I did not -- I had a
4 hand in some of the changes that were made to that
5 particular attachment based on my review of the
6 earlier attachment, the subsequent review of the
7 earlier attachment.

8 Q. Just for clarification, should Attachment
9 1 to your direct testimony be disregarded and
10 replaced by the updated attachment to your amended
11 supplemental testimony?

12 A. It should be, because Attachment 1, while
13 basically correct, there's a couple of minor errors
14 in it, but based on the minor errors and the fact
15 that it actually provides too much detail, some of
16 the information is relevant for what we are trying to
17 present there, yes, I would say we're at this point
18 relying solely on the updated schedule in the
19 supplemental testimony.

20 Q. Turning to your amended supplemental
21 testimony, looking at the updated exhibit, the
22 capacity factor -- I'll let you get there. I
23 apologize.

24 A. Yes.

25 Q. The capacity factor, the 59.45 for

1 Sammis --

2 A. Yes.

3 Q. -- that's using a straight average of all
4 of the Sammis units, correct?

5 A. Yes. That's my understanding, yes.

6 Q. And the updated exhibit does not use a
7 weighted average of the Sammis units even though the
8 Sammis units are different sizes, correct?

9 A. Probably -- I would say that's correct,
10 yes.

11 Q. And the 14.52, that's the interim EPA
12 goal, correct?

13 A. That's correct?

14 Q. And there are final goals now for Ohio,
15 correct?

16 A. That's correct. They've increased.

17 Q. And in developing the updated exhibit,
18 the capacity factor you used for wind was 33 percent,
19 correct?

20 A. That's correct.

21 Q. Now, this updated exhibit is not an
22 actual illustration of how the wind offset would be
23 treated under the Clean Power Plan, correct?

24 A. Well, I mean, the final plan has changed
25 somewhat since the rules were finalized on August the

1 3rd of this year, so I think there's still a lot of
2 discussion between the -- in the states, and states
3 aren't going to have their final rules required until
4 September of 2016. So I would say we can't tell at
5 this time if this is the exact methodology that will
6 be utilized in Ohio.

7 Q. And in developing the updated exhibit,
8 did MAREC review the technical support document from
9 the EPA for Carbon Pollution Emission Guidelines for
10 Existing Stationery Sources, Electric Utility
11 Generating Units regarding State Plan Considerations?

12 A. I missed some of that, could you repeat
13 the question?

14 Q. In developing Attachment 1, did MAREC
15 review the technical support Document from the EPA
16 for Carbon Pollution Emission Guidelines for Existing
17 Stationery Sources, Electric Utility Generating Units
18 Regarding State Planning Considerations?

19 A. Again, this is -- we reviewed the data,
20 but not the specific guidelines.

21 Q. So the answer to my question is no,
22 correct?

23 A. Yes.

24 Q. So MAREC did not review the EPA's methods
25 and tools for quantifying avoided CO-2 emissions from

1 end-use energy efficiency and renewable energy?

2 A. I missed that again.

3 Q. Sure. So MAREC did not review the EPA's
4 methods and tools for quantifying avoided CO-2
5 emissions from end-use energy efficiency and
6 renewable energy?

7 A. I would say that I think that's correct,
8 yes.

9 Q. And, for example, MAREC -- strike that.

10 So on the updated exhibit, MAREC took the
11 total CO-2 emissions from Sammis, divided it by the
12 total generation output from Sammis and wind
13 combined, to come up with the 17.54 number, which is
14 emissions -- CO-2 emissions from wind?

15 A. That is correct.

16 Q. Turning to page 3 of your amended
17 supplemental testimony, and you state towards the
18 bottom that "it does not appear that the applicant
19 intends to provide a plan for compliance with pending
20 environmental regulations," correct?

21 A. I'm sorry. What line is that?

22 Q. Sure. I can't tell what line, but if you
23 look at the question, "Does the applicant's plan
24 provide."

25 A. Yes.

1 Q. And then the second line down, it does
2 not appear that the applicant intends to provide such
3 a plan for compliance with pending environmental
4 regulations in this proceeding. That's what I meant.

5 A. That's correct, yes.

6 Q. Okay. And since your testimony, I think
7 you just said that the final rules for the Clean
8 Power Plan have been published, correct?

9 A. That is correct.

10 Q. Have you reviewed the errata filed by
11 Mr. Evans on September 14th, 2015?

12 A. I have not.

13 Q. And then turning to page 4 of your
14 testimony, in the middle of the page, there's a
15 paragraph that starts with "Other relevant
16 testimony." You acknowledge on that page that you
17 did not review the unredacted version of Mr. Evans'
18 testimony where he discusses how Sammis can help Ohio
19 meet the proposed Clean Power Plan, correct?

20 A. That's correct.

21 Q. And is it fair to say that you also did
22 not review the unredacted version of any errata that
23 Mr. Evans filed on September 14th, 2015?

24 A. That's correct.

25 Q. And I believe you acknowledged earlier

1 that under the final rules for the Clean Power Plan,
2 Ohio will have a choice of what its state
3 implementation plan will be, correct?

4 A. There are various options.

5 MS. DUNN: Your Honor, I have no further
6 questions.

7 Thank you, Mr. Burcat

8 EXAMINER ADDISON: Thank you.

9 Mr. Kurtz?

10 MR. KURTZ: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Kurtz:

14 Q. Just very briefly, Mr. Burcat. Good
15 morning.

16 At the very beginning of your testimony,
17 you described your organization as generally designed
18 to promote renewables in the PJM footprint; is that
19 correct?

20 A. Yes.

21 Q. Okay. What I want to do is ask you when
22 you list ten of the nine PJM states plus the District
23 of Columbia, I just want to ask you, I'm going to go
24 state by state, tell me if there is a mandatory
25 renewable portfolio standard by state to the extent

1 you know.

2 And, by the way, will you define
3 "mandatory renewable portfolio standard" before we
4 start?

5 A. Well, mandatory is not the word I was
6 using.

7 Q. What word do you want to use?

8 A. I would say there are requirements in
9 various states.

10 Q. As opposed to voluntary, what should we
11 call it? As opposed to voluntary, what is --

12 A. I would say required.

13 Q. Required RPS?

14 A. Yes.

15 Q. And what is a required RPS?

16 A. What is a required RPS?

17 Q. Yes.

18 A. It's a state statute or act. In some
19 cases, it's actually implemented by a Commission or a
20 public utility type commission in various states. So
21 it doesn't necessarily have to come from statute if
22 they have broad authority. But it's usually an
23 escalating amount of renewable energy that must be
24 purchased by the supplier of electricity to its
25 customers.

1 Q. Okay.

2 MR. O'DONNELL: Your Honor, may I just
3 object on the grounds of vagueness. I think we're
4 struggling with this term "requirement" that
5 Mr. Randazzo is using "mandated" and "required" RPS,
6 because in Ohio -- or I shouldn't say in Ohio, just
7 generally when it comes to the word "requirement."

8 Obviously, the Ohio RPS contains, in the
9 first instance, what appears to be a requirement, "a
10 utility shall," but then it contains a number of off
11 ramps and caveats such as cost cap and force majeure
12 provision, which, of course, the Commission has
13 granted in the past.

14 So I think the word "requirement," since
15 we are trying to define the term, might not
16 necessarily describe the policy that we're trying to
17 talk about here.

18 MR. KURTZ: That's why I asked the
19 witness to describe what he meant by not mandatory
20 but required. Anything as possessed to voluntary,
21 that's what I want to get at. Is that good enough?

22 THE WITNESS: I think it is --

23 EXAMINER PRICE: Mr. Burcat, one moment.

24 Well, I agree that the witness has
25 already provided a definition, and as long as we

1 have -- he understands the question as posed, I don't
2 have an issue with this line of questioning as is.

3 Mr. O'Donnell, if you have an objection, please do so
4 prior to the witness giving an answer. That way, we
5 can all make sure we're on the same page while I rule
6 on the objection.

7 MR. O'DONNELL: Yes, your Honor.

8 Q. (By Mr. Kurtz) So let's go by state.

9 A. Okay.

10 Q. And a nonvoluntary or required RPS
11 standard, Delaware, yes, no, or you don't know?
12 Delaware?

13 A. Delaware has an RPS that's not voluntary.

14 Q. So that's a yes? Is that a yes?

15 A. Yes.

16 Q. Okay.

17 MR. MENDOZA: Objection. The question
18 was about nonvoluntary or required, and so it's
19 compound, and it's compounding the same problem that
20 we've had here, which is we have --

21 MR. KURTZ: I'm trying to bend over
22 backwards to be as clear as possible.

23 EXAMINER ADDISON: Just rephrase your
24 question to use the definition or the word that he
25 provided.

1 Q. (By Mr. Kurtz) The required RPS, as you
2 have defined it, yes, no, or I don't know. Delaware?

3 A. I would say it's yes.

4 Q. Illinois?

5 A. Illinois is not in my territory.

6 Q. So you don't know?

7 A. Well, I understand they have one, but I
8 don't know the details of it.

9 Q. Is that a yes?

10 A. I can't answer that question. I don't
11 have the details.

12 Q. Indiana?

13 A. It's not in my territory.

14 Q. Kentucky?

15 A. Not in my territory.

16 Q. Maryland?

17 A. That would be a yes.

18 Q. Michigan?

19 A. It's not in my territory.

20 Q. New Jersey?

21 A. Yes.

22 Q. North Carolina?

23 A. Yes.

24 Q. Ohio?

25 A. Ohio is not the case at the moment since

1 there's a freeze. And I would say the caveat that
2 Mr. O'Donnell presented previously applies in all of
3 these states. There are off ramps. There are ways
4 to -- like, for instance, in Delaware there's a cost
5 cap provision in that state and there are cost cap
6 provisions in other states.

7 Q. Pennsylvania?

8 A. Yes.

9 Q. Tennessee?

10 A. It's not one of my jurisdictions.

11 Q. Virginia?

12 A. It's what they call a voluntary standard.

13 Q. So that would be a no?

14 A. No.

15 Q. West Virginia?

16 A. That's a no.

17 Q. District of Columbia?

18 A. That would be a yes. All with the same
19 caveats.

20 MR. KURTZ: Thank you, sir. No further
21 questions.

22 EXAMINER ADDISON: Thank you, Mr. Kurtz.
23 Mr. McNamee?

24 MR. MCNAMEE: I have no questions. Thank
25 you.

1 EXAMINER ADDISON: Any redirect,
2 Mr. O'Donnell?

3 MR. O'DONNELL: Yes, your Honor.

4 - - -

5 REDIRECT EXAMINATION

6 By Mr. O'Donnell:

7 Q. Mr. Burcat, on the subject of mandates
8 and requirements, Mr. Kurtz already elicited some of
9 this information. Could you talk about why the word
10 "mandate" might not be necessarily appropriate as
11 commonly understood if -- well, if these portfolio
12 standards as you described them have certain
13 provisions that while they may appear mandatory, that
14 word might be causing confusion.

15 MR. RANDAZZO; I'll object.

16 MS. DUNN: I'll object as well.

17 EXAMINER PRICE: Grounds?

18 MR. RANDAZZO: Improper form of the
19 question. The question was, "Can you talk about
20 this?" There's no way for us to anticipate and
21 logically form an appropriate objection to the
22 testimony when it's an invitation to the witness to
23 just talk about stuff.

24 MR. O'DONNELL: I can rephrase it.

25 EXAMINER ADDISON: Thank you.

1 Q. (By Mr. O'Donnell) Mr. Burcat, why do you
2 believe the term -- you've said to Mr. Randazzo you
3 didn't think the term "mandate" was appropriate. Why
4 not?

5 A. I think for a lot of the reasons you
6 spoke about. But generally that there are these off
7 ramps. There are cost caps in states like Ohio, even
8 though the RPS is frozen at the moment. There are
9 states like Delaware with an off ramp, and there are
10 other states in that required, but these state
11 statutes are very complicated.

12 There are a number of provisions,
13 especially respecting the costs of renewables that
14 might be used, and so it's very hard to say that they
15 are mandatory requirements on the utilities when they
16 do have means to back out under certain
17 circumstances.

18 MS. DUNN: Your Honor, I would move to
19 strike Mr. O'Donnell's previous question before
20 Mr. Randazzo's objection and Mr. Burcat's reference
21 to what his counsel just said.

22 EXAMINER ADDISON: Mr. O'Donnell, do you
23 have a response?

24 MR. O'DONNELL: I mean, I rephrased the
25 question in accordance with the ruling from the

1 Bench, so I don't see why it needs to be stricken.

2 MR. MENDOZA: What is the grounds of the
3 motion to strike the counsel's statement?

4 MS. DUNN: The original question that he
5 made was a narrative, and it was then objected to by
6 Mr. Randazzo. Then he rephrased his question to ask
7 an appropriate question, and then Mr. Burcat
8 indicated "what my counsel just said," and he would
9 have been referring to Mr. O'Donnell's previous
10 narrative, which is why I'm asking to have the
11 narrative stricken and his response, the first part
12 of his response, which was "what he just said."

13 MR. O'DONNELL: Your Honor, I don't think
14 the witness was referring to that at all.

15 EXAMINER ADDISON: At this time I'm going
16 to deny the motion to strike. It seems a lot of the
17 information that was covered during Mr. Burcat's
18 response was also included in the line of questioning
19 from Mr. Kurtz.

20 MS. DUNN: Thank you, your Honor.

21 EXAMINER ADDISON: Thank you.

22 Please proceed, Mr. O'Donnell.

23 Q. (By Mr. O'Donnell) Mr. Burcat, you
24 testified on direct and were asked several questions
25 about volatility. Do you have an opinion on price

1 volatility of renewables versus nonrenewables?

2 MS. DUNN: Your Honor, I object that
3 that's outside the scope of my direct or
4 cross-examination.

5 MR. O'DONNELL: He was asked specifically
6 about the graph that shows price volatility and was
7 asked about volatility and whether he knew about
8 Sammis' coal contracts and whether they are fixed or
9 volatile. This is exactly the same subject of that
10 question, your Honor.

11 MS. DUNN: Your Honor, if I may respond.
12 The question Mr. O'Donnell asked was price volatility
13 of renewables, and I never broached the subject of
14 price volatility of renewables.

15 EXAMINER ADDISON: I tend to agree with
16 Ms. Dunn. The objection is sustained.

17 MR. O'DONNELL: Thank you, your Honor.

18 Q. (By Mr. O'Donnell) Mr. Burcat, in your
19 questioning by Ms. Dunn, you were asked about the
20 price volatility of coal and, in particular, the
21 Sammis plant. I believe you testified that you
22 weren't aware of specific contracts that existed for
23 the Sammis plant, but do you have an opinion on the
24 general volatility of coal?

25 A. Yes.

1 MS. DUNN: Your Honor, I would also
2 object on the basis that I asked him just very
3 specific questions about whether he knew about coal
4 contracts with Sammis. I did not open the door for
5 questions about coal price volatility.

6 EXAMINER ADDISON: Mr. O'Donnell?

7 MR. O'DONNELL: She asked if he has an
8 opinion on -- he testified on direct about price
9 volatility of coal. She asked about coal contracts.
10 I think it's only fair that he's able to provide the
11 basis for his opinions since she asked the question.

12 MS. DUNN: Your Honor, if I may respond.

13 EXAMINER ADDISON: Of course, Ms. Dunn.

14 MS. DUNN: My three specific questions
15 were: Do you know what Sammis pays for coal? Do you
16 know what contracts Sammis has? And do you know what
17 contracts it will have in the future? None of those
18 questions opened the door to discuss coal price
19 volatility.

20 MR. O'DONNELL: Your Honor, the original
21 foundation for the question had to do with the
22 volatility shown in the graph.

23 EXAMINER ADDISON: Thank you, both. I'm
24 going to allow the question. There was references to
25 Mr. Burcat's testimony on page 7 of his direct

1 testimony as to the Sammis plants' exposure to coal
2 price fluctuations.

3 Do you need to have that question reread,
4 Mr. Burcat?

5 THE WITNESS: I think I do at this point.

6 EXAMINER ADDISON: Could we have the last
7 question reread, please.

8 (Record read.)

9 A. Yes. Well, first of all, in regards to
10 that question, coal prices as opposed to wind, energy
11 and solar energy are not something that you could
12 determine today. So even those contracts, most
13 contracts for coal are usually passing through the
14 pricing of coal, and that creates volatility.

15 And there's all sorts of factors related
16 to that, but certainly a 15-year purchase power
17 agreement is so far out into the future that there's
18 bound to be some significant price volatility with
19 coal.

20 On the other hand, when you're talking
21 about wind energy, when a purchase power agreement is
22 signed and executed, you know the price of the wind
23 energy throughout the term of the contract, it's
24 almost 100 percent stable because you know exactly
25 what that price is, and it usually is fairly level

1 throughout the term, and there might be a small
2 incremental inflation adjustment in some contracts.
3 It depends on the negotiations. But it acts as a
4 significant hedge to the pricing of a -- pricing from
5 fossil fuels, like coal and natural gas, that have
6 historic volatility as shown in that graph.

7 MS. DUNN: Your Honor, I would move to
8 strike everything after the "on the other hand" when
9 he discusses renewable energy. The question from
10 Mr. O'Donnell asked for coal fluctuations or
11 volatility, and he answered that and went on to
12 discuss renewable.

13 Previously you did not allow a question
14 about renewable energy and the volatility because I
15 did not open the door, so that should be stricken as
16 well.

17 EXAMINER ADDISON: Mr. O'Donnell.

18 MR. O'DONNELL: I think when asked about
19 volatility, it's perfectly appropriate to draw
20 contrast between a fuel source that has volatility
21 and one that doesn't. It's part and parcel of the
22 same question.

23 EXAMINER ADDISON: I agree with Ms. Dunn.
24 Motion to strike will be granted for everything after
25 "on the other hand," starting with "on the other

1 hand."

2 Please continue, Mr. O'Donnell.

3 MR. O'DONNELL: Thank you, your Honor.

4 Q. (By Mr. O'Donnell) Mr. Burcat, you were
5 asked about the Clean Power Plan and the proposal's
6 impact on the Clean Power Plan and the work MAREC did
7 to analyze that. Can you outline why you believe
8 wind energy would help this proposal and its
9 compliance with the Clean Power Plan?

10 MR. RANDAZZO: I object.

11 EXAMINER ADDISON: Grounds?

12 MR. RANDAZZO: Leading question.

13 EXAMINER ADDISON: Would you care to
14 rephrase, Mr. O'Donnell?

15 Q. (By Mr. O'Donnell) Mr. Burcat, do you
16 think that the MAREC proposal helps this plant's
17 compliance with the Clean Power Plan?

18 A. Absolutely. That's the whole basis of my
19 testimony.

20 Q. And why do you believe that, sir?

21 A. Because of the zero-emitting resource
22 that wind is and when combined with and basically
23 used as an offset to the coal, the emissions, the
24 requirement emissions from the coal plant, it acts as
25 a significant offset as our schedule shows in the

1 supplemental testimony.

2 Q. Thank you, Mr. Burcat. Follow-up
3 question. Do you believe that there are any prior
4 decisions of this Commission that also support that
5 interpretation?

6 MS. DUNN: Your Honor, I object. That's
7 outside the scope of my direct -- or excuse me,
8 cross-examination, and also as Mr. O'Donnell just
9 indicated, it was a follow-up to his last question,
10 so it's not appropriate on redirect.

11 EXAMINER ADDISON: Objection sustained.

12 MR. O'DONNELL: I don't have any further
13 questions.

14 EXAMINER ADDISON: Thank you,
15 Mr. O'Donnell.

16 Mr. Randazzo?

17 MR. RANDAZZO: I do.

18 - - -

19 RECROSS-EXAMINATION

20 By Mr. Randazzo

21 Q. Sir, your counsel asked you about your
22 proposal and how it might help with regard to
23 compliance with the Clean Power Plan, otherwise known
24 as the EPA's regulations to reduce the amount of
25 carbon dioxide emissions, correct?

1 MR. MENDOZA: Objection.

2 EXAMINER ADDISON: Grounds?

3 MR. MENDOZA: I think that name for the
4 regulation was invented by counsel.

5 EXAMINER ADDISON: Care to rephrase,
6 Mr. Randazzo.

7 Q. (By Mr. Randazzo) Sir, you agree the
8 Clean Power Plan that your counsel referenced to you
9 involves regulations to reduce the emissions of
10 carbon dioxide?

11 A. It does. And one of its main building
12 blocks is wind and solar energy to get there.

13 Q. And your proposal is focused on wind,
14 right?

15 A. Our proposal is focused on wind.

16 Q. Do you know how many megawatts of
17 renewable resources have been certified by the state
18 of Ohio to obtain RECS? First of all, so Mr. Mendoza
19 doesn't object, do you know what a REC is?

20 A. You're asking me what a REC is?

21 Q. Yes.

22 A. Renewable energy credit.

23 Q. Yes, sir. So do you know how many
24 megawatts of renewable resources have been certified
25 by the state of Ohio to receive renewable energy

1 credits?

2 A. Well, presumably some of it is coming
3 from out of state, so I don't know. I know it's
4 coming from in state, which is just over
5 300 megawatts of --

6 Q. Of what?

7 A. Of wind energy, and then it's the 880,060
8 hours times that to get to the megawatt-hours.

9 Q. I asked you about megawatts.

10 A. I told you what megawatts is, just over
11 300 megawatts.

12 Q. And it's your understanding --

13 A. But that's not what's coming from out of
14 state.

15 Q. It's your understanding --

16 MR. O'DONNELL: I'm going to object.
17 Also, it's unclear if he's talking about megawatts
18 that are permitted or sited or operational. I think
19 he said certified at one point. There's just a lot
20 of metrics here.

21 MR. RANDAZZO: This is the witness that
22 said his proposal would help reduce the carbon
23 dioxide emissions. So we're going to find out a
24 little bit what his proposal actually does.

25 EXAMINER ADDISON: That's correct,

1 Mr. Randazzo. But make sure the record is clear
2 enough so the record can be clear.

3 MR. RANDAZZO: Your Honors, I asked him
4 if he was aware of how many megawatts of renewable
5 energy resources have been certified by the state of
6 Ohio.

7 EXAMINER ADDISON: And he answered that
8 question.

9 MR. RANDAZZO: I don't know how I can
10 make it any clearer.

11 Q. (By Mr. Randazzo) Do you know the
12 answer?

13 A. I'm assuming that what they're certifying
14 is the megawatt-hours, but not specifically the
15 megawatts.

16 Q. Have you had occasion to review the
17 Public Utilities Commission of Ohio's website to
18 identify the total renewable energy credits measured
19 in capacity that have been certified by the state of
20 Ohio?

21 A. If that's -- no, I'm not sure it would be
22 labeled that particular way.

23 Q. And would you accept, subject to check,
24 that total renewable energy credits certified by the
25 state of Ohio is in excess of 5000 megawatts?

1 MR. O'DONNELL: Objection. A REC is not
2 a megawatt.

3 EXAMINER ADDISON: Please rephrase.

4 MR. O'DONNELL: A REC is a megawatt-hour.

5 EXAMINER ADDISON: Please rephrase,
6 Mr. Randazzo.

7 Q. (By Mr. Randazzo) Are you aware that the
8 total renewable energy capacity that has been
9 certified by the state of Ohio to receive RECS is in
10 excess of 5000 megawatts?

11 A. I am not aware of that number, whatever
12 it means.

13 Q. Do you know what percentage of those
14 renewable energy resources are solar?

15 A. No, I do not.

16 Q. Is solar a zero-emission resource?

17 A. Yes, it is.

18 Q. Is hydroelectric generation capability a
19 zero-emitting resource?

20 MR. O'DONNELL: Your Honor, I want to
21 object again. He represents MAREC. He's focused on
22 the wind industry. This is not the subject of his
23 testimony or any of the questions here today.

24 MR. MENDOZA: Your Honor, I'd further
25 like to object. We've gone beyond the scope of

1 redirect. He started off asking about questions that
2 were specifically about the Clean Power Plan, which I
3 think was permissible. Now, we're talking about
4 aspects of renewable energy that he could have asked
5 on the first go-around.

6 EXAMINER ADDISON: I tend to agree.
7 Let's move on, Mr. Randazzo.

8 Q. (By Mr. Randazzo) Sir, do you know
9 whether -- have you done any analysis to determine
10 whether or not the nonwind renewable resources might
11 provide a basis of compliance for the Clean Power
12 Plan that is less expensive than your proposal?

13 A. I have not.

14 Q. Why not?

15 A. I mean, we're early in this process, and
16 wind energy under the Clean Power Plan, especially
17 the final rule that's been laid out on August 3rd,
18 indicates that wind is an extremely cost-effective
19 way of complying with, in part, the Clean Power Plan.

20 I've seen studies out there that
21 basically say it, and the problem with -- you know,
22 although solar is an excellent resource, as far as
23 I'm concerned, you cannot deploy it in anywhere close
24 to the volumes that you can employ wind in a
25 cost-effective way.

1 Q. Now, your counsel asked you about
2 volatility of renewable resources. Do you recall
3 that question?

4 A. Yes.

5 MR. O'DONNELL: Your Honor, I believe the
6 question wasn't permitted.

7 EXAMINER ADDISON: That's correct,
8 Mr. Randazzo.

9 MR. RANDAZZO: I thought the question was
10 permitted up to the point where the witness answered
11 beyond the scope of the permissible question. Where
12 the witness was not permitted to go was to talk about
13 volatility in coal.

14 MR. O'DONNELL: No.

15 EXAMINER ADDISON: I believe it may have
16 been the opposite of that, correct?

17 MR. O'DONNELL: We'll object because we
18 weren't allowed to ask that.

19 MR. RANDAZZO: I'll withdraw the
20 question.

21 EXAMINER ADDISON: Thank you.

22 Q. (By Mr. Randazzo) Do you agree that the
23 Clean Power Plan imposes an obligation on states to
24 submit a statewide compliant plan?

25 A. Yes.

1 Q. Have you done any analysis to determine
2 how your proposal could be integrated into a
3 statewide compliance plan?

4 A. I think that is something that's going to
5 be determined by the state.

6 Q. I asked you if you've done any analysis
7 to determine how your proposal would be integrated
8 into a statewide plan.

9 A. We have not done an analysis on that, but
10 I feel certain that it could be integrated into a
11 state compliance plan.

12 MR. RANDAZZO: Your Honor, I move to
13 strike after when he began to say "I feel certain it
14 could be."

15 EXAMINER ADDISON: Mr. O'Donnell.

16 MR. O'DONNELL: He was asked if he had
17 done an analysis, and he provided the analysis that
18 he believes could easily be integrated into a plan.
19 That's answering the question. That's not going
20 outside the scope of anything.

21 EXAMINER ADDISON: I don't think he's
22 saying he provided an analysis, but I'm going to deny
23 the motion to strike.

24 Q. (By Mr. Randazzo) Are you aware that
25 there are generating units in the state that are not

1 owned and operated by investor-owned utilities?

2 A. Yes.

3 Q. Would those also be subject to potential
4 impact from the Clean Power Plan?

5 A. It's a statewide plan, yes.

6 Q. Would municipal electric utilities also
7 be subject to the Clean Power Plan?

8 A. Yes. That's assuming they own
9 generation.

10 Q. Have you done any analysis to determine
11 how your proposal would affect the compliance options
12 that are available to the state?

13 A. I've not done a specific analysis on
14 that.

15 Q. Have you done any analysis?

16 A. No.

17 MR. RANDAZZO: Thank you. That's all I
18 have.

19 EXAMINER ADDISON: Thank you.

20 Mr. Mendoza?

21 MR. MENDOZA: No questions, your Honor.

22 EXAMINER PRICE: Ms. Petrucci?

23 MS. PETRUCCI: No questions.

24 EXAMINER PRICE: Mr. Sauer?

25 MR. SAUER: No questions, your Honor.

1 EXAMINER ADDISON: Ms. Dunn?

2 MS. DUNN: Thank you, your Honor.

3 - - -

4 RECROSS-EXAMINATION

5 By Ms. Dunn:

6 Q. Mr. Burcat, you don't know whether Sammis
7 has long-term fixed contracts for coal, correct?

8 MR. O'DONNELL: Objection. She already
9 asked the question.

10 MS. DUNN: It's a different question,
11 your Honor.

12 EXAMINER ADDISON: I'll allow the
13 question.

14 A. I do not know that answer, yes.

15 Q. And you have a yellow pad up there with
16 you today, correct?

17 A. Yes, I do.

18 Q. And does that yellow pad contain notes
19 that you brought up there with you today?

20 A. Yeah. I jotted down a few notes before I
21 walked up here, like any witness would.

22 Q. In responding to Mr. O'Donnell's
23 questions on redirect, you were referring to those
24 notes?

25 A. I was not.

1 MR. DUNN: Thank you, your Honor. I have
2 no further questions.

3 EXAMINER ADDISON: Thank you.

4 Mr. Kurtz?

5 MR. KURTZ: No questions.

6 EXAMINER ADDISON: Mr. McNamee?

7 MR. MCNAMEE: No questions. Thank you.

8 EXAMINER ADDISON: Mr. Burcat, you're
9 excused.

10 THE WITNESS: Thank you.

11 EXAMINER ADDISON: Thank you.

12 Mr. O'Donnell, would you like to move for
13 the admission of MAREC Exhibits 1 and 2 into the
14 record?

15 MR. O'DONNELL: So moved, your Honor.

16 EXAMINER ADDISON: Any objections?

17 Thank you. Hearing none, MAREC Exhibit 1
18 and No. 2 will be admitted.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 EXAMINER ADDISON: Let's go off the
21 record for a moment.

22 (Discussion off the record.)

23 EXAMINER PRICE: Mr. Mayes, you may call
24 your witness.

25 MR. MAYES: I'm Jeffrey Mayes, general

1 counsel of Monitoring Analytics, acting in the
2 capacity as the independent market monitor for PJM.

3 I have with me Dr. Bowring. Dr. Bowring
4 is the president of Monitoring Analytics, and he is
5 also the market monitor for PJM as defined in the PJM
6 tariff.

7 (Witness sworn.)

8 EXAMINER PRICE: Dr. Bowring, please
9 state your name and business address for the record.

10 THE WITNESS: Joseph Bowring. We are in
11 Norristown, Pennsylvania, 19066.

12 EXAMINER PRICE: Thank you.

13 Please proceed, Mr. Mayes.

14 - - -

15 JOSEPH E. BOWRING
16 being first duly sworn, as prescribed by law, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Mayes:

20 Q. The market monitor filed testimony on
21 December 22nd, 2014. Do you have a copy of that
22 testimony, Dr. Bowring?

23 A. Yes.

24 MR. MAYES: I would move for -- I would
25 like to mark that testimony as IMM-1.

1 EXAMINER PRICE: It will be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. So, Dr. Bowring, is this testimony that
4 you prepared?

5 A. Yes.

6 Q. Do you have any corrections?

7 A. No.

8 Q. Would your answers be the same today as
9 they were then?

10 A. Yes.

11 MR. MAYES: I would move to enter into
12 the record the direct testimony of Joseph E. Bowring
13 on behalf of the Independent Market Monitor for PJM.

14 EXAMINER PRICE: We'll defer ruling of
15 your motion for admission until complete with
16 cross-examination.

17 Ms. Bojko.

18 MR. KUTIK: Your Honor, before we begin,
19 I have a motion to strike.

20 EXAMINER PRICE: Mr. Kutik.

21 MR. KUTIK: Your Honor, the companies
22 would move to strike starting on page 3, line 13, the
23 sentence beginning with the word "both" and the
24 footnote it relates to, footnote 1 to that page.

25 This seeks to characterize the decisions

1 in the two cases cited, and similar to the discussion
2 that was had with respect to OCC Witness Ferrey, it
3 is improper for parties to render opinions as to what
4 happened or what was decided in particular cases.
5 Witnesses are supposed to provide either facts or
6 opinions on their expertise. Issues with respect to
7 legal matters are for the Commission to decide, and
8 particularly the interpretation of cases with respect
9 to -- and particularly with respect to interpretation
10 regarding the Federal Power Act, which is what these
11 cases related to. So on those grounds, we move to
12 strike.

13 EXAMINER PRICE: Mr. Mayes, response?

14 MR. MAYES: We object. We think that
15 that sentence is fine. It states his opinion on
16 these cases as they relate to consistency with
17 competition, and so it's not just about the legal
18 finding of those cases. It's about the relevance of
19 those cases to competition.

20 And I would note that we have had a lot
21 of discussion, even just today, about what has been
22 going on in other states. So it seems that the
23 companies have already conceded these sorts of things
24 are relevant to their case.

25 MS. BOJKO: Your Honor, may I be heard?

1 EXAMINER PRICE: Ms. Bojko.

2 MS. BOJKO: Your Honor, Judah Rose
3 footnote 1 and 11 of the companies' testimony cited
4 to the recent District of Columbia Circuit Case, DC
5 Circuit Case regarding capacity performance and
6 regarding issues before the Federal Energy Regulatory
7 Commission, OEG Witness Baron.

8 EXAMINER PRICE: Ms. Bojko, slow down.
9 And who objected to that footnote?

10 MS. BOJKO: I don't know, your Honor,
11 because it's typically in this situation that people
12 can give regulatory opinions of what goes on in other
13 regulatory jurisdictions and the company did it.

14 EXAMINER PRICE: So there was no ruling
15 on that footnote; is that correct?

16 MS. BOJKO: Not to my knowledge, your
17 Honor. It was allowed in the record and consistent
18 with it being allowed into the record, other
19 witnesses testifying on similar subject matters
20 should also be able to have their opinion heard and
21 in the record.

22 The Commission should want a complete
23 docket, a complete evidentiary record in which to
24 base its decision, and that includes counterarguments
25 to the exact thing raised by the companies in their

1 testimony, and that's exactly what the intervenors
2 did. They filed testimony in response to the
3 companies' testimony.

4 EXAMINER PRICE: If you've got an
5 instance of us denying a motion to strike, I'll hear
6 it. But if it's an instance of nobody made a motion
7 to strike, therefore, you should allow this, I don't
8 think that's an analogous situation. You can put the
9 question to the Bench, and so you didn't get a
10 ruling.

11 MS. BOJKO: I believe in your companies'
12 Witness Strah, if I recall correctly, footnotes 1, 2,
13 and 3, discussions of the New York State Commission
14 decisions in those cases, there was a motion to
15 strike that was denied.

16 EXAMINER PRICE: Fair enough.

17 Mr. Kutik, care to respond to that?

18 MR. KUTIK: Yes, your Honor. The
19 Commission -- or what was happening in those
20 testimonies is that the witness was describing the
21 facts and circumstances of those cases and what the
22 proposal was with respect to those facilities at
23 issue in those cases. Here the witness is giving his
24 opinion on what these cases said in terms of the
25 matters of the law.

1 MR. MAYES: Your Honor, the market
2 monitor is willing to agree the purpose of that
3 statement can be confined to the same purpose the
4 companies used to support their reference to a case.

5 MR. KUTIK: This doesn't describe the
6 facts or the proposals that were at issue in those
7 cases.

8 MR. MENDOZA: Your Honor, if I may.

9 EXAMINER PRICE: Mr. Mendoza.

10 MR. MENDOZA: The entire statement the
11 witness is offering that subsidies for generation in
12 this case are similar to those that were overturned
13 by the Third and Fourth Circuit in those other cases,
14 and I think this is an important issue for the
15 Commission to consider, and this is an important
16 witness who can talk about those issues.

17 And I think the key part of that sentence
18 is that he alleges that the subsidies are analogous,
19 which is a factual claim, and he's just adding that
20 last clause after both is just a summary of the
21 holdings of those cases, and it's true that those are
22 legal conclusions, but it gives context to the
23 factual claim he's making.

24 And I would note, like Ms. Bojko, that
25 many of their witnesses have -- many of the

1 companies' witnesses have included discussions of
2 case law in their testimony.

3 MR. KUTIK: And none of those, your
4 Honor, were objected to. And we are not objecting,
5 your Honor, to his analogy to what was happening in
6 New Jersey or Maryland, nor are we objecting, at
7 least at this point, for parties to be able to argue
8 whatever they want to argue about the two cases that
9 they cite here in footnote 1. The point is that
10 that's a subject of briefs. It's not a subject of
11 testimony.

12 MR. MAYES: Your Honor, that statement
13 represents the witness' opinion on the meaning of
14 those cases, and it's very relevant to his testimony
15 here.

16 EXAMINER PRICE: That's Mr. Kutik's
17 point, that he's drawing a legal conclusion. I don't
18 think --

19 MR. MAYES: No, the meaning in the
20 sense -- with the meaning in the sense of competitive
21 markets, not a legal conclusion. We're willing to
22 conclude it does not represent a legal conclusion.

23 MR. KUTIK: Your Honor, what this will
24 force me to do if you don't strike it, is I will then
25 present to this witness the opinions in those cases

1 and discuss what those cases say and don't say,
2 which, again, is more appropriate for briefs rather
3 than cross-examination.

4 EXAMINER PRICE: Now, you've just said
5 something that would really interest the Bench.

6 Okay. We're going to grant the motion to
7 strike, although, I'm very intrigued by Mr. Kutik's
8 possibilities. We're going to grant the motion to
9 strike.

10 MR. KUTIK: You can look forward to the
11 briefs.

12 EXAMINER PRICE: We'll have an
13 opportunity to do some briefs, so the motion to
14 strike will be granted.

15 Any other further motion to strike?

16 MR. KUTIK: No, your Honor.

17 EXAMINER PRICE: Ms. Bojko.

18 MS. BOJKO: Thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By MS. Bojko:

22 Q. Good afternoon, Mr. Bowring.

23 A. Good afternoon.

24 Q. My name is Kim Bojko, and I represent the
25 Ohio Manufacturers' Association's Energy Group in

1 this proceeding.

2 On page 2 of your testimony on lines 3
3 and 5, you use the term "FirstEnergy." What do you
4 mean by the use of FirstEnergy in this context?

5 A. When I use the term "FirstEnergy," I'm
6 referring to the entirety of the FirstEnergy
7 companies all owned by the single parent company.

8 Q. And, sir, why do you use the term
9 "FirstEnergy" interchangeably throughout the
10 testimony to refer to both the companies' provisions
11 as well as the FirstEnergy Corp.?

12 MR. KUTIK: Objection.

13 EXAMINER PRICE: Grounds?

14 MR. KUTIK: Well, your Honor, as the
15 Bench is aware, OMA really has no adversity to the
16 subject matter of this witness' testimony, and at
17 this point, the question is designed to elicit
18 friendly cross.

19 EXAMINER PRICE: I think Ms. Bojko is
20 fully aware of the prohibition on friendly cross. It
21 doesn't sound like a very friendly question to me.

22 MR. KUTIK: I'll guarantee the answer
23 will be friendly, your Honor.

24 EXAMINER PRICE: Let's hear the answer
25 and, then we'll go from there.

1 MR. KUTIK: Fair enough, your Honor.

2 A. So if I remember, you're asking why I
3 interchangeably used these terms?

4 Q. Yes.

5 A. Because there's one company here, one
6 company making decisions, and that's really the
7 essence of the case, one company with different
8 affiliates shifting costs between the two.

9 MR. KUTIK: Move to strike.

10 EXAMINER PRICE: Granted.

11 MS. BOJKO: The entirety of the answer,
12 your Honor?

13 EXAMINER PRICE: Yes.

14 MS. BOJKO: I think he's entitled to
15 explain what terms he uses and why he's using it and
16 in what context.

17 EXAMINER PRICE: I think you demonstrated
18 Mr. Kutik's point, this is friendly cross. If you
19 have adverse questions to ask this witness because
20 you are adverse, both parties are adverse to what
21 each other's position is, if you have adverse
22 questions to ask this witness, you should ask them
23 now.

24 MS. BOJKO: Your Honor, it was a
25 clarifying question of what is meant by terms in the

1 testimony.

2 EXAMINER PRICE: I've made my ruling,
3 Ms. Bojko. It's time to move on.

4 Q. (By Mr. Bojko) Sir, would you oppose
5 rider RRS, even if it turned out to be profitable for
6 ratepayers for the entire term of the PPA?

7 A. Yes.

8 Q. Are you opposed to renewable purchase
9 power agreements, sir?

10 MR. KUTIK: Objection.

11 EXAMINER PRICE: I want to hear the
12 answer to this one. Overruled.

13 A. I'm not sure that's a well-defined term,
14 but if it looked like this, then yes.

15 EXAMINER PRICE: Are you opposed to
16 renewable mandates?

17 THE WITNESS: As a general matter, I'm
18 opposed to subsidies that affect market outcomes.

19 EXAMINER PRICE: Do you believe a
20 renewable portfolio standard or renewable mandate
21 depending on your choice of term is a subsidy?

22 THE WITNESS: Yes.

23 EXAMINER PRICE: Thank you.

24 Q. (By Ms. Bojko) And, sir, do you believe
25 that the renewable PPAs may serve a different purpose

1 to meet such things as mandates?

2 MR. RANDAZZO: I object.

3 EXAMINER PRICE: Grounds?

4 MR. RANDAZZO: It's redirect on your
5 Honor's cross-examination.

6 MR. KUTIK: I'd join.

7 EXAMINER PRICE: Overruled. I think we
8 may have found a position that this witness is
9 adverse to OMAEG.

10 MS. BOJKO: I don't know about that
11 characterization, your Honor.

12 MR. KUTIK: If that's not true, your
13 Honor, I would object.

14 MR. RANDAZZO: Somebody is wrong here.

15 EXAMINER PRICE: Well, we'll allow this
16 one.

17 THE WITNESS: All right. Sorry. Could
18 you give me the question again?

19 EXAMINER PRICE: Let's read the question
20 back, again.

21 (Record read.)

22 A. So if the question is if renewable
23 portfolio standards are a response to mandates or a
24 form of implementing mandates, then that's true,
25 they're implementing mandates.

1 MS. BOJKO: Your Honor, I have no further
2 questions. Thank you.

3 EXAMINER PRICE: Mr. Mendoza?

4 MR. MENDOZA: No questions, your Honor.

5 EXAMINER PRICE: I'm coming back to the
6 signatory parties after the nonsignatory parties.

7 Mr. Petricoff?

8 MR. PETRICOFF: No questions, your Honor.

9 EXAMINER PRICE: Mr. O'Brien?

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

11 EXAMINER PRICE: Mr. Sauer?

12 MR. SAUER: No questions, your Honor.

13 EXAMINER PRICE: Mr. Randazzo?

14 MR. RANDAZZO: Just a couple.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Randazzo:

18 Q. Dr. Bowring, welcome to Ohio.

19 A. Thank you.

20 Q. Counsel, Ms. Bojko, to my right actually
21 took most of my questions. Thank you.

22 But with regard to renewable mandates or
23 standards or requirements, can those also have
24 impacts on the available cash flow to other
25 generation technologies?

1 MR. MENDOZA: Objection. Compound.

2 EXAMINER PRICE: Let's have the question
3 back again.

4 MR. RANDAZZO: I'll try again.

5 EXAMINER PRICE: Okay.

6 MR. RANDAZZO: I don't know what's
7 compound about it, but I'll try again.

8 Q. (By Mr. Randazzo) With regard to state
9 portfolio mandates, can compliance with those
10 mandates impact the available cash flow to
11 nonmandated generating technologies?

12 A. Yes, to the extent that they're
13 subsidies, which I believe they are, subsidies change
14 the outcome of competitive markets, and when other
15 sources of supply are mandated and subsidized, it
16 tends to reduce prices and, therefore, reduces
17 revenues to other forms of generation.

18 Q. And is it true that in the PJM wholesale
19 structure that at times wind resources have been
20 negative prices into the wholesale market?

21 A. Wind resources at times have offered in
22 at negative prices, yes.

23 Q. And have they cleared at negative prices?

24 A. Yes.

25 Q. Which when wind, a resource clears in the

1 PJM market, that means it's been accepted for
2 dispatch, correct?

3 A. Yes.

4 Q. And would you regard that, in other
5 words, the ability of a particular type of generating
6 technology to bid a negative price and be accepted by
7 PJM, to be an anti-competitive condition?

8 A. It's a result of subsidies. Those
9 subsidies are affecting market outcomes, and in this
10 case resulting in lower prices and lower revenues to
11 other forms of generation.

12 MR. RANDAZZO: That's all I have. Thank
13 you very much.

14 EXAMINER PRICE: Thank you.

15 Mr. Kurtz?

16 MR. KURTZ: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Kurtz:

20 Q. Good afternoon, Dr. Bowring.

21 You filed essentially identical testimony
22 in the AEP case as you did in this case, is that
23 correct?

24 A. Very close, yes, same points.

25 Q. And you were deposed in both cases.

1 A. Yes.

2 Q. Am I correct that in your AEP deposition,
3 you testified that you had not reviewed -- that you
4 did not know that Ohio allowed for CWIP on new
5 generation built by a distribution utility?

6 A. I was not asked that question.

7 Q. Before you filed testimony, did you
8 review 4928.143, the ESP statute?

9 A. No.

10 Q. Will you turn to page 4 of your
11 testimony. I want to read just a short two sentences
12 beginning on line 4 to put things in a little bit of
13 context.

14 You testify that "A sustainable market
15 design means a market design that results in
16 appropriate incentives to retire units and to invest
17 in new units over time such that reliability is
18 ensured as a result of the functioning of the market.
19 There are at least two broad paradigms that could
20 result in such an outcome."

21 Did I read that correctly?

22 A. Yes.

23 Q. Then you describe the market paradigm,
24 the next couple sentences, which has most importantly
25 an energy and capacity market; is that correct?

1 A. Yes.

2 Q. Then you describe a quasi-market paradigm
3 where energy is procured in the market, in the LMP,
4 but that capacity or need for investment is done
5 through long-term-contract model or the
6 cost-of-service model; is that correct?

7 A. Yes.

8 Q. Okay. What I'd like to do is -- are
9 these generally the market paradigm or the
10 quasi-market paradigm by state, or do you have both
11 within a state?

12 A. It's possible they're both within a
13 state.

14 Q. Okay. Let me go by state in PJM and tell
15 me if that state is a market paradigm, a quasi-market
16 paradigm, or something different, or both. Delaware?

17 A. Okay. So maybe -- I'm not sure I'm going
18 to be able to give you a comprehensive answer. I'm
19 not sure I've thought about whether every state is
20 best characterized by market or quasi-market. I'll
21 be happy to respond to that question, but I'm not
22 sure I can do it accurately sitting here.

23 Q. Can you respond as to Delaware? Is that
24 a market paradigm or quasi-market paradigm?

25 A. I don't evaluate state by state. I'm

1 interested in the broader PJM market which, as you
2 know, incorporates multiple states. So if you're
3 asking whether in Delaware there's some quasi-market
4 elements, sure. There are other subsidies to forms
5 of generation in probably almost every state in PJM.

6 Q. Okay. Well, I want to understand your
7 testimony, and ultimately I want to understand where
8 Ohio fits into these two paradigms. Delaware allows
9 for customer choice, correct?

10 A. Yes.

11 Q. And do the investor-owned utilities still
12 own generation, or are they divested?

13 A. I think generally they're divested.

14 Q. Why wouldn't that be a market paradigm?

15 A. Generally it is. There are -- to the
16 extent that Delaware has RECS, then that's a
17 nonmarket. We're talking about subsidies there, so
18 there are lots of exceptions across the footprint of
19 PJM; but, nonetheless, PJM is broadly characterized
20 by the market paradigm, but there are clearly
21 exceptions. It's not a perfect market paradigm.

22 Q. Does Delaware have municipal utilities or
23 rural electric cooperatives that still own generation
24 and they do not allow customer choice for those
25 customers?

1 A. Yes.

2 Q. Illinois, is that generally market
3 paradigm or quasi-market paradigm?

4 A. As I said, I can give you a better
5 answer -- if you're interested in a detailed answer
6 from me, I can give it to you afterwards. If you
7 want me to go through this state by state, we could
8 do that. As I said, every state has elements of
9 quasi-market, particularly to the extent that they
10 allow for solar and nonsolar renewable RECS.

11 Q. I do want to go state by state.

12 A. That's fine.

13 Q. Illinois, is that market paradigm or
14 quasi-market paradigm?

15 A. Generally market.

16 Q. Does Illinois have municipal or
17 cooperative utilities that still own generation and
18 do not allow for customer choice?

19 A. Yes.

20 Q. Indiana, market paradigm or quasi-market
21 paradigm?

22 A. Generally quasi-market. It depends on
23 what you mean -- I assume you mean the entire state?

24 Q. They have no customer choice for
25 investor-owned or any utility customers, correct?

1 A. Yes.

2 Q. Kentucky?

3 A. There are elements of market, but there's
4 certainly elements of quasi-market.

5 Q. There's no overall customer choice in
6 Kentucky, is there?

7 A. I'm not sure. I didn't define the
8 quasi-market paradigm having to do with customer
9 choice. I don't recall.

10 Q. Well --

11 A. I don't believe that was the premise of
12 your question.

13 Q. Okay. Does Kentucky procure resources
14 through long-term contracts or cost-of-service
15 regulation?

16 A. Yes.

17 Q. So why --

18 A. I'm sorry. Kentucky itself, as a state
19 obviously doesn't do that, just to be clear.

20 Q. Do the investor-owned cooperative and
21 municipal-owned utilities in Kentucky procure
22 generation through the cost-of-service model?

23 A. Yes.

24 Q. So that would be the quasi-market
25 paradigm?

1 A. Unless to the extent they're relying
2 entirely on that. They also participate in markets,
3 so it's not entirely quasi-market.

4 Q. Well, even -- let's take Maryland, market
5 paradigm or quasi-market paradigm?

6 A. Maryland also has -- Maryland also has --
7 Maryland also has cooperatives.

8 Q. They have cooperatives that own
9 generation and do not have customer choice, but the
10 rate -- but the investor-owned utilities have
11 divested, and there is choice.

12 A. Yes.

13 Q. So would that be for the investor-owned
14 utilities the market paradigm?

15 A. Generally, yes.

16 Q. Here's a good one. Michigan where they
17 have 10 percent shopping and 90 percent cost of
18 service, how would you characterize that one?

19 A. As you know, only a very tiny part of
20 Michigan is in PJM, but as a general matter, the
21 state I would say is not in the market paradigm.

22 Q. The M portion of INM, Indiana-Michigan --

23 A. Yes.

24 Q. The M portion of INM, which is Indiana
25 and Michigan Power, which is an AEP affiliate, so

1 that part of the state would be -- well, let's -- New
2 Jersey, market paradigm, quasi-market?

3 A. There are munis in Maryland as well, but
4 generally market.

5 Q. So the investor-owned utilities have
6 divested. There is choice for the ratepayers of the
7 investor-owned utilities in New Jersey?

8 A. Yes.

9 Q. But they have municipal utilities that
10 still own generation and there is no customer choice.

11 A. For those customers.

12 Q. All the municipal utilities that own
13 generation in PJM, they do participate in the energy
14 and capacity markets, do they not?

15 A. Yes. I'm sorry. So as you know, there
16 are some exceptions, and anyone who elects to be an
17 FRR entity is not participating in the capacity
18 market, although they are participating in the energy
19 market and are subject to reliability rules.

20 Q. Well, the only FRR fixed resource
21 requirement entities in PJM are only the AEP
22 affiliates, Appalachian Power, Indiana-Michigan,
23 Kentucky Power, and, I guess, Duke Energy Kentucky as
24 well is an FRR, correct?

25 A. I'm not sure what your question is.

1 Q. Well, you were making a distinction that
2 FRR entities do not participate in the capacity
3 markets, and I was just naming the FRR entities that
4 I know.

5 A. Okay. That was not an exhaustive list,
6 if that's your question.

7 Q. Okay. FRR entities can participate in
8 the capacity market if they meet certain reserve
9 requirements. Isn't there an extra 3 percent
10 holdback they have to get over before they can
11 participate?

12 A. FRR entities do not generally participate
13 in the capacity market. They are allowed to buy if
14 they need to or to sell a small amount of excess
15 capacity in the market, but it's recognized that any
16 more than that would be an inappropriate subsidy
17 intervention in the market and, therefore, they're
18 not allowed to.

19 Q. PJM-wide is 1,300 megawatts that the FRR
20 entities are allowed to participate in the market.

21 A. I'm not exactly sure what the number is,
22 but it's fairly small.

23 Q. North Carolina, is that a market paradigm
24 or quasi-market paradigm?

25 A. Only a small part of North Carolina is

1 PJM, but I would say that's generally nonmarket or
2 quasi-market.

3 Q. Ohio?

4 A. Generally market paradigm.

5 Q. How would you know that if you had not
6 reviewed the ESP statute before filing your
7 testimony?

8 A. Since I haven't reviewed it, I'm not sure
9 how to answer the question. I'm not sure what it has
10 to do with your question to me about whether it's
11 market or quasi-market. My definition has nothing to
12 do with your statute.

13 Q. Well, do you recognize from your
14 deposition or elsewhere that under Ohio law,
15 investor-owned utilities are allowed to build power
16 plants and charge customers on a nonbypassable
17 cost-of-service basis?

18 A. I recognize that, but I also don't recall
19 the last time that occurred.

20 Q. Well, it has not occurred -- well, it has
21 for renewables. But let me go back to my question.
22 Your position is that Ohio is a market paradigm
23 state?

24 A. Generally.

25 Q. Okay. Yet when writing this testimony,

1 you had not reviewed the ESP statute to form a basis
2 for that conclusion, correct?

3 MS. BOJKO: Objection, your Honor.

4 EXAMINER PRICE: Grounds?

5 MS. BOJKO: It's argumentative.

6 EXAMINER PRICE: It's asked and answered.

7 MS. BOJKO: That too.

8 Q. Pennsylvania, quasi-market paradigm or --

9 A. Generally market paradigm.

10 Q. But Pennsylvania does have municipal
11 utilities that have cost-of-service generation?

12 A. Yes.

13 Q. And that cost-of-service generation does
14 participate in the PJM capacity markets?

15 A. Yes.

16 Q. Tennessee, quasi-market or market?

17 A. Quasi-market.

18 Q. Is TVA allowed to participate in the PJM
19 capacity markets, or is that selling outside of the
20 fence, so to speak?

21 A. Any entity that has generation can
22 participate in the PJM market, including TVA.

23 Q. That's a huge utility, that's a huge
24 enterprise, correct?

25 MS. BOJKO: Objection.

1 Q. How big is TVA's --

2 EXAMINER PRICE: Pending objection.

3 Grounds?

4 MS. BOJKO: He just rephrased. I mean,
5 he's testifying instead of asking the witness
6 questions. Assumes facts not in evidence.

7 Q. (By Mr. Kurtz) Do you know how many
8 megawatts TVA has?

9 A. I do not.

10 Q. Virginia, market paradigm or quasi-market
11 paradigm?

12 A. Quasi.

13 Q. And they have municipal utilities as well
14 that participate in the market, as well as the
15 investor-owned utilities; is that correct?

16 A. Yes.

17 Q. West Virginia?

18 A. Quasi.

19 Q. District of Columbia?

20 A. Market paradigm, generally.

21 Q. Okay. You've already testified as to
22 your position on renewals, so that's fine.

23 MS. BOJKO: Objection, your Honor.

24 MR. KURTZ: Let me rephrase, because I
25 may be done.

1 EXAMINER PRICE: We're going to ignore
2 Mr. Kurtz's editorial comments.

3 MS. BOJKO: And strike them from the
4 record?

5 EXAMINER PRICE: We're just going to
6 satisfy ourselves with ignoring them.

7 MR. KURTZ: I am done. Thank you, your
8 Honor.

9 EXAMINER PRICE: Thank you.

10 Mr. Kutik?

11 MR. KUTIK: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Kutik:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. It is correct, is it not, that you are
18 testifying for the first time at the Public Utilities
19 Commission of Ohio in this case?

20 A. Yes.

21 Q. And so let me ask you a couple questions
22 about yourself. You joined PJM in March of 1988,
23 correct?

24 A. No, March 8th, 1998.

25 Q. 1999?

1 A. I'm sorry. 1999. Now, you've got me
2 confused.

3 Q. To be clear, you joined PJM in
4 March 1999.

5 A. March 8, 1999.

6 Q. And your position then was market
7 monitor.

8 A. Yes.

9 Q. And you had that position until the
10 creation of Monitoring Analytics, correct?

11 A. Yes.

12 Q. And marketing analytics, we might regard
13 that as a spinoff of the PJM market monitoring unit,
14 correct?

15 A. The name is Monitoring Analytics, not
16 marketing analytics.

17 Q. Okay. And it's an LLC?

18 A. Yes.

19 Q. And you are the only member of the LLC?

20 A. Yes.

21 Q. Now, would it be fair to say that among
22 the functions of the market monitor within PJM is to
23 monitor, report on, and recommend changes to the PJM
24 rules?

25 A. Yes.

1 Q. And another one of those functions is
2 to -- or in looking at recommendations for how the
3 rules are working, one of the goals that you have is
4 to assure that there are competitive outcomes in PJM,
5 correct?

6 A. Yes.

7 Q. Now, you and your firm also publish
8 reports from time to time, correct?

9 A. Yes.

10 Q. And some of those reports are entitled
11 "State of the Market."

12 A. Yes.

13 Q. And those reports are intended to capture
14 the most significant issues that confront the market?

15 A. Yes.

16 MR. KUTIK: Your Honor, at this time we
17 would like to have marked as Company Exhibit 75 a
18 document entitled "State of the Market Report for
19 PJM" dated May 15, 2014.

20 EXAMINER PRICE: It will be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. KUTIK: We'd also like to have marked
23 at this time, your Honor, as Company Exhibit 76 a
24 document entitled State of the Market Report for PJM
25 dated April 13, 2015 -- excuse me -- August 13, 2015.

1 EXAMINER PRICE: That will also be so
2 marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

5 EXAMINER PRICE: You may.

6 Q. Doctor, I have handed you, and my
7 colleague, Mr. Harvey, has handed you Company
8 Exhibits 75 and 76. Do you have those?

9 A. Yes. 75 is Q1?

10 Q. Yes. Q1, '14 and Company Exhibit 76 is
11 Q2, 2015?

12 A. Yes.

13 Q. You have those in front of you.

14 A. I do.

15 Q. And these are the State of the Market
16 reports for May 15, 2014 and April 13, 2015, correct?

17 A. Yes.

18 Q. And you were the principal author of
19 these documents?

20 A. Yes.

21 Q. You also prepared or you and your firm
22 also publish reports entitled Analysis of Base
23 Residual Auctions, correct?

24 A. Yes.

25 Q. And you have published reports for the

1 2016-'17 BRA and 2017-'18 BRA?

2 A. Yes.

3 MR. KUTIK: Your Honor, we'd like to have
4 marked at this time as Company Exhibit 77, a document
5 entitled Analysis of 2016/2017 RPM Base Residual
6 Auction dated April 18, 2014.

7 EXAMINER PRICE: Be so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MR. KUTIK: We'd like to have marked as
10 Company Exhibit 78 a document entitled Analysis of
11 the 2017/2018 RPM Base Residual Auction dated October
12 6, 2014.

13 EXAMINER PRICE: Also be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

16 EXAMINER PRICE: You may.

17 MR. MENDOZA: Your Honor, may I ask a
18 point of clarification?

19 EXAMINER PRICE: We'll get these
20 distributed. Then we'll move on to your
21 clarification.

22 Q. Doctor, I've handed you what has been
23 marked for identification as Company Exhibits 77 and
24 78. And you recognize these as the reports from
25 Monitoring Analytics regarding the base residual

1 auctions for 2016-'17 and 2017-'18, correct?

2 A. Yes.

3 EXAMINER PRICE: Mr. Mendoza, you have an
4 issue?

5 MR. MENDOZA: I have a question about the
6 Market Monitor Report. I was wondering if the
7 document included all, the appendices --

8 MR. KUTIK: Honor, I'm cross-examining
9 the witness at this point. If he has questions, he
10 could have asked questions. If he wants to make some
11 other point at some other time, that's fine, but I'd
12 like to continue my cross-examination.

13 EXAMINER PRICE: I'd appreciate an
14 answer. Is this the full document, with all
15 appendices?

16 MR. KUTIK: Your Honor, what I'll say is
17 this is a document that -- I'll start with Exhibit
18 75. Exhibit 75 is a document that has page numbers
19 that go from 1 to 409, and Exhibit 76 is a document,
20 not including the cover and table of contents, that
21 goes from page 1 to 471.

22 EXAMINER PRICE: Okay. That will work.

23 Q. (By Mr. Kutik) Were you the principal
24 author of the documents that we've identified as
25 Company Exhibit 77 and 78?

1 A. Yes.

2 Q. And do you intend in these documents,
3 that is, Exhibit 77 and 78, to capture what you
4 thought were the significant facts arising from those
5 auctions?

6 A. Yes.

7 Q. Now, one of the things that you do in
8 these base residual auction analyses is to total the
9 total capacity offered in the auction, correct?

10 A. Yes.

11 Q. And we can see that, for example, in the
12 report dated April 18, 2017, Company Exhibit 77, we
13 can see that in Table 6 on page 44, I believe,
14 correct?

15 A. I didn't hear a question.

16 Q. I'm sorry. My answer was correct. My
17 question was you see that data with respect to the
18 total amount offered into the auction on Table 6 on
19 page 44, correct?

20 A. Yes.

21 Q. And UCAP that was 169,159.7, correct?

22 A. So that is total cleared if you're
23 looking at the row halfway down the table.

24 Q. And total offer was 184,380?

25 A. I'm not sure what you're looking at.

1 Q. Okay. To determine the total offered,
2 total amount of capacity offered into the BRA, we
3 would look at the -- we could look at either column,
4 but looking at the UCAP column, we would see number
5 184,380, correct?

6 A. Yes.

7 Q. All right. And that represents, if you
8 look over to the right-hand column, 91 percent was
9 generation, 91.5 percent was generation, correct?

10 A. Yes. And just so we're clear, the number
11 you described is available capacity; it's not the
12 total offered in, just for clarity.

13 Q. Okay.

14 A. Yes. And then the percentages are the
15 percentage of generation offered DR and EE.

16 Q. And the generation offered was
17 91.5 percent. The DR offered was 7.9 percent and the
18 EE offered was .6 percent, correct?

19 A. Yes.

20 Q. And then you also show the total amount
21 that's cleared, correct?

22 A. Yes.

23 Q. And that number under the UCAP column is
24 169,159.7, correct?

25 A. Sorry. So, yes, that's right. Yes.

1 Q. And looking at the 2017/2018 report, we
2 would see a similar analysis on page 47 of the
3 report, correct?

4 A. Yes.

5 Q. And what we'd see here, looking at
6 similar numbers that we looked at, the table in the
7 prior report, we would see under the UCAP column on
8 the row that says "Total offered," 178,138.5,
9 correct?

10 A. Yes.

11 Q. And of that amount, 92.9 percent was
12 generation, 6.3 percent was DR and .7 percent was EE,
13 correct?

14 A. Yes.

15 Q. Now, you also have information on --
16 well, strike that.

17 Let me refer you back to Exhibit 77,
18 April of 2014 report, the 2016-'17 auction, and
19 specifically refer you to Table 3 on page 20.

20 Are you there?

21 A. Yes.

22 Q. And Table 3, one of the lines indicates
23 "Existing generation sources as price takers." Do
24 you see that?

25 A. Yes.

1 Q. And what it shows there is that a 519 of
2 100 -- excuse me, 1,199 of the generation resources
3 offered constituted existing generation resources as
4 price takers; is that correct?

5 A. Yes.

6 Q. And we would see a similar analysis with
7 respect to your report dated October 6th, 2014 for
8 the 2017/2018 auction that we marked as Exhibit 78,
9 correct?

10 A. Yes.

11 Q. And that also would be on page 22, Table
12 3?

13 A. That's correct.

14 Q. And what we would see there is out of
15 1,202 generation resources offered, 637 were existing
16 generation resources as price takers.

17 A. Yes.

18 Q. You were also aware, are you not, that
19 PJM publishes some information on the prices offered
20 by capacity or by generation owners or capacity
21 resource owners, correct?

22 A. Sorry. I'm not sure quite what you're
23 asking me.

24 Q. Well, have you seen any data that PJM
25 publishes on capacity resource offer prices for a

1 particular delivery year?

2 A. I have. The reason I'm pausing is
3 there's been some discussion over the years about
4 what they're allowed to publish and what not they're
5 allowed to published, so they've done things that
6 FERC ultimately told them not to do, so I'm not sure
7 exactly what you're referring to.

8 Q. But you have seen some data?

9 A. Certainly.

10 MR. KUTIK: Your Honor, at this time we
11 would like to have marked as Company Exhibit 79 a
12 document, a one-page document, entitled "Capacity
13 Resource Offer Prices for 2016/17 Delivery Year."

14 EXAMINER PRICE: Be so marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. KUTIK: And we'd also like to have
17 marked for identification Company Exhibit 80,
18 "Capacity Resource Offer Prices for 2017/18 Delivery
19 Year."

20 EXAMINER PRICE: Also so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. KUTIK: May I approach?

23 EXAMINER PRICE: You may.

24 Q. (By Mr. Kutik) Doctor, have you seen the
25 information that's shown in Exhibit 79 and 80 before?

1 A. I'm sure I've seen these slides, yes.

2 Q. You recognize these as slides that are
3 published by PJM.

4 A. Yes.

5 Q. And what this shows is a certain amount
6 of capacity resources that offer, for example, at a
7 price of zero, correct?

8 A. Yes.

9 Q. We also see a certain amount of
10 generation resources that offered at between zero and
11 \$100.

12 A. Yes.

13 Q. And then for over 200, correct?

14 A. Yes.

15 Q. And Exhibit 79 shows that information for
16 the 2016-'17 BRA, correct?

17 A. Yes.

18 Q. And Exhibit 80 shows that same
19 information for the 2017-2018 BRA, correct?

20 A. Yes.

21 Q. Now, one of the things that your office
22 also does is monitor retirements, correct?

23 A. Yes.

24 Q. And would you agree with me that the
25 large percentage of retirements in the last four or

1 five years have been coal-fired units?

2 A. Yes.

3 Q. You'd also agree with me, would you not,
4 that the overwhelming percentage of additions in the
5 last four or five years within PJM have been
6 gas-fired, natural gas-fired units, correct?

7 A. Yes.

8 Q. Now, you would agree with me that the PJM
9 capacity market rules are not perfect, correct?

10 A. Yes.

11 Q. In fact, that's something you've stated
12 from time to time?

13 A. Yes.

14 Q. And would you also agree with me that
15 capacity prices have been suppressed by a number of
16 market design features?

17 A. Yes.

18 Q. And the rules relating to demand response
19 have had a price suppression effect, correct?

20 A. Yes.

21 Q. And, for example, you've determined that
22 the impact of continued inclusion of a limited DR
23 product in the capacity market on the 2016-'17 BRA
24 was about \$4.6 billion?

25 A. Are you referring to some particular

1 document I have in front of me? That sounds
2 approximately correct. I'm not -- I don't want to
3 argue with you, but I just want to check the number.

4 Q. Sure. Could you look at what we've
5 marked as Exhibit 75, which is your State of the
6 Market report dated May 15th, and particularly on
7 page 1 of that document. Tell me when you're there.

8 A. I'm there.

9 Q. And in the --

10 A. I see the number. The answer is yes.

11 Q. Thank you. And would it be fair to say
12 that in that auction the total value of capacity sold
13 was 5.5 billion?

14 A. Yes.

15 Q. And a month earlier in your BRA report,
16 you had observed that if no DR had been offered into
17 the market in 2016-'17 BRA, revenues would have
18 increased by \$5.5 billion, correct?

19 A. I'm assuming you're reading it correctly.

20 Q. All right. Well, let's look at the
21 report, if you'd like.

22 A. Okay.

23 Q. Let's look at Exhibit 77, which is the
24 2016-'17 BRA analysis. Let me have you look at page
25 5 at the bottom. Are you there, sir?

1 A. I am.

2 Q. And the last sentence it says, "If only
3 generation in Annual DR were offered in the 2016/2017
4 RPM base residual auctions, total RPM market revenues
5 for the 2016/2017 RPM Base Residual Auction would
6 have been \$10,141,586,456. If there were no offers
7 for the DR in 20162017 RPM Base Residual Auction,
8 total RPM market revenues for the 2016/2017 RPM Base
9 Residual Auction would have been 15,630,600,107, an
10 increase of 5,489,013,652 or 54 percent compared to
11 the results with only Annual DR."

12 A. Yes.

13 Q. I read that correctly?

14 A. Very well.

15 Q. Now, I want to follow up on some
16 questions and answers that took place during your
17 examination with Mr. Kurtz. It is correct to say, is
18 it not, that there are generators in PJM that receive
19 cost-based generation from ratepayers as part of
20 bundled retail rates that also offer that generation
21 into the PJM capacity markets, correct?

22 A. I'm not sure -- if the question was are
23 there generation owners who receive cost-of-service
24 revenues and then offer those units into the RPM
25 auction, the answer is yes.

1 Q. And there is -- and some of this
2 generation is owned by vertically integrated
3 utilities in nonretail choice states?

4 A. Yes.

5 Q. And the amount of this generation is a
6 significant number, correct?

7 A. I don't know what you mean by that.

8 Q. Okay.

9 A. The number is what it is.

10 Q. All right. Do you remember me taking
11 your deposition, sir?

12 A. I do.

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

14 EXAMINER PRICE: You may.

15 Q. Dr. Bowring, you recall, as I just said,
16 I took your deposition, and at the deposition you
17 took an oath to tell the truth, correct?

18 A. Yes.

19 Q. And you did tell the truth?

20 A. Yes.

21 Q. And you also took the opportunity after
22 the deposition was over and after the deposition was
23 transcribed, you wanted the opportunity to review
24 your deposition transcript, correct?

25 A. Yes.

1 Q. Now, I want to refer you to page 40 of
2 your deposition. Are you there, sir?

3 A. Yes.

4 Q. And starting at line 8, did you give the
5 following answers to the following questions:

6 Question: "Is there some generation in
7 PJM that is owned by fully integrated utilities or
8 vertically integrated utilities operating in a
9 non-retail choice state?"

10 Answer: "Yes."

11 Question: "And are you aware with
12 respect to those generators whether they offer their
13 generation into the PJM capacity market?"

14 Answer: "Yes."

15 Question: "Do you know how much
16 generation that entails?"

17 Answer: "Again, I don't know off the top
18 of my head."

19 Question: "All right. Can you give me
20 an approximation?"

21 Answer: "I am not sure that number is
22 not confidential, but it's a significant number."

23 That was your deposition testimony, was
24 it not?

25 A. Yes.

1 Q. Now, one of those generation owners
2 receiving cost-based generation from retail customers
3 and offering generation into the PJM market is
4 Dominion, correct?

5 A. Yes.

6 Q. And that's in Virginia, correct?

7 A. Yes.

8 Q. Now, before I get to Dominion, I want to
9 just, perhaps, clarify some of your answers in
10 response to questions from Mr. Kurtz. Would it be
11 fair to say that most of Pennsylvania is within PJM?

12 A. I believe it all is. Well, actually,
13 there may be some tiny exceptions, so the answer is
14 yes.

15 Q. And part of West Virginia is in PJM?

16 A. Yes.

17 Q. And part of Kentucky is in PJM?

18 A. Yes.

19 Q. Part of Indiana is in PJM?

20 A. Yes.

21 Q. I think you said a tiny part of Michigan
22 is in PJM?

23 A. I think the tiny part applies to many of
24 those states.

25 Q. And with respect to the part of Virginia

1 that's in PJM, Virginia has cost-of-service
2 regulation for generation, correct?

3 A. Yes.

4 Q. And the same is true with West Virginia?

5 A. Yes.

6 Q. And Kentucky?

7 A. Yes.

8 Q. And Indiana?

9 A. Yes.

10 Q. And Michigan?

11 A. Yes.

12 Q. Now, going back to Dominion, it's correct
13 to say that Dominion owns approximately
14 18,000 megawatts of generation capacity?

15 A. Yes.

16 Q. And that's roughly 10 percent of the
17 total capacity in PJM?

18 A. Roughly.

19 Q. And Dominion bids both into the capacity
20 and energy markets, correct?

21 A. Yes.

22 Q. Dominion has recently built and put into
23 service a number of new generation facilities,
24 correct?

25 A. Yes.

1 Q. One of those new generation facilities is
2 the Bear Garden unit or plant, correct.

3 A. Yes.

4 Q. And that's a 589-megawatt natural gas
5 combined cycle plant, correct?

6 A. I believe so.

7 Q. And another Dominion plant is the
8 Virginia City Hybrid Energy Center, correct?

9 A. Yes.

10 Q. And that's in service now, correct?

11 A. I believe so.

12 Q. Another plant that's in service recently
13 is Dominion's Warren County Power Station, correct?

14 A. Yes.

15 Q. And that's a natural gas combined cycle
16 plant.

17 A. Yes.

18 Q. Dominion also plans a facility for the
19 Brunswick County Power Station, correct?

20 A. You're asking me if they're planning one?

21 Q. Yes, a planned facility.

22 A. I believe so.

23 Q. And that's a 1,300-megawatt combined
24 cycle plant or will be, correct?

25 A. I believe so.

1 Q. Another planned facility is Dominion's
2 Greensville Power Station, correct?

3 A. Yes.

4 Q. And that planned unit is for
5 1,555 megawatts as a natural gas combined cycle
6 plant, correct?

7 A. I believe so?

8 Q. And you would expect that all of these
9 units, to the extent they exist, to the extent they
10 will exist, have been or will be offered into PJM,
11 correct?

12 A. Yes.

13 Q. Would it be also fair to say that there
14 are -- I think as you mentioned to Mr. Kurtz, there
15 are some cooperatives within PJM, correct?

16 A. Yes.

17 Q. And these are nonprofit entities that
18 recover the cost of generation through retail rates,
19 correct?

20 A. Yes.

21 Q. One of those cooperatives is Eastern
22 Kentucky Power Cooperative?

23 A. Yes.

24 Q. And that owns four plants that
25 approximate about 3,000 megawatts?

1 A. That sounds right.

2 Q. And they, that as EKPC, bids its capacity
3 into PJM, into the PJM markets, correct?

4 A. Yes.

5 Q. You're also aware of an entity called
6 American Municipal Power, correct?

7 A. Yes.

8 Q. That is a member of PJM, correct?

9 A. Yes.

10 Q. And owns generation on behalf of
11 municipally owned electric systems, correct?

12 A. Yes.

13 Q. And the net cost of operating that
14 generation is passed through to members and
15 eventually to ratepayers of members, correct?

16 A. Yes.

17 Q. And with respect to American Municipal
18 Power, it offers its generation into the PJM market,
19 correct?

20 A. Sorry. I thought you just -- did you ask
21 the same question? Maybe I didn't understand.

22 Q. Well, does AMP offer its generation into
23 the PJM markets?

24 A. It doesn't do it directly. I believe so.

25 Q. Now, as market monitor, one of the

1 things, one of your special statuses is that you get
2 to see the offers that entities make into the
3 capacity and energy markets, correct?

4 A. We do see the offers.

5 Q. And would it be fair to say that you have
6 never brought a complaint to the enforcement
7 authorities at FERC against Dominion for how its bid
8 its capacity or energy into the PJM market?

9 A. The status of our referrals is actually
10 confidential.

11 Q. Well, isn't it true that you have never
12 brought a complaint against EKPC?

13 A. The status of our referrals is
14 confidential, if that's what you're asking about.

15 MR. MAYES: Objection. Can you clarify
16 the meaning of complaint that you're using?

17 Q. Dr. Bowring, do you remember being
18 deposed in the AEP ESP case?

19 A. Yes.

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

21 EXAMINER PRICE: You may.

22 Q. Dr. Bowring, I've handed you a copy of a
23 document. Is that the transcript of your deposition
24 in the AEP case?

25 A. Yes.

1 Q. And that was earlier this week, was it
2 not, or last week, I guess?

3 A. Friday.

4 Q. And like with the deposition in this
5 case, you took an oath to tell the truth in that
6 case, did you not?

7 A. Yes.

8 Q. Let me refer you, sir, to page 55 of that
9 transcript. Are you there?

10 A. Yes.

11 Q. And let me refer you specifically to line
12 15. Did you not give the following answer to the
13 following question:

14 Question: "Have you ever brought a
15 complaint to PJM or FERC about the way that Eastern
16 Kentucky Power Cooperative bids at its plants?"

17 Answer: "I don't believe -- I don't
18 believe so."

19 A. That is what I said, and I think it's
20 consistent with what I just told you.

21 Q. Well, isn't it true that you have never
22 brought a complaint to PJM or FERC about the way that
23 American Municipal Power bids its capacity?

24 A. Okay. So just to be clear, referrals,
25 which is a form of a complaint, I assume, in the way

1 you're using the term are confidential, so I can't
2 answer the question about referrals. Have we said
3 anything public about it? No.

4 Q. Okay. Well, again, let me refer you to
5 your deposition, sir, page 58. At the bottom of page
6 58, starting at line 23, do you not answer the
7 following questions the following way --

8 A. Sorry. What page are you on?

9 Q. Page 58, starting at line 23.

10 Question: "Have you ever brought a
11 complaint to PJM or FERC about AMP's bidding behavior
12 in the capacity auctions?"

13 Answer: "No."

14 That was your deposition testimony, was
15 it not?

16 A. Yes.

17 MS. BOJKO: Objection. Your Honor.

18 EXAMINER PRICE: Grounds?

19 MS. BOJKO: This is improper impeachment.
20 He did not say -- he said we did not make a formal
21 public complaint, but we cannot discuss referrals,
22 and that's a different entity. Mr. Kutik was not the
23 deposer asking questions, so he has no idea of what
24 the intent of the deposer was at the time, thus it's
25 improper impeachment.

1 EXAMINER PRICE: Overruled. It's plain
2 language. He asked the same question.

3 MS. BOJKO: And the witness clarified.

4 EXAMINER PRICE: Mr. Mayes can provide
5 any context to the Bench on redirect if he thinks
6 that that's appropriate.

7 MR. MAYES: The meaning of the term
8 "complaint," as I think the witness has already
9 testified, sometimes people use that to mean
10 referral. Sometimes they mean it to mean a filing
11 under Section 206 of the Federal Power Act.

12 EXAMINER PRICE: I think now you're
13 testifying, Mr. Mayes. Again, I'm not saying this is
14 no -- this is certainly legitimate topic for inquiry,
15 but you should do it on redirect.

16 MR. MAYES: I think the witness has
17 already testified on that point.

18 EXAMINER PRICE: If you're happy with the
19 record, then so am I.

20 MR. MAYES: Yes, your Honor.

21 Q. (By Mr. Kutik) Now, Dr. Bowring, you've
22 used the word "subsidy" in your testimony, correct?

23 A. Yes.

24 Q. And, in fact, you've used that word
25 today, correct?

1 A. Yes.

2 Q. In your view, generation owners, like
3 Dominion, are receiving a subsidy, correct?

4 A. Yes.

5 Q. But recovery of cost of service for
6 generation that would otherwise be recovered in the
7 wholesale market is -- I'll back up.

8 Would it be fair to say that the receipt
9 by Dominion of cost-based recovery from retail
10 customers is not inconsistent with PJM rules?

11 A. That is correct.

12 Q. Now, I want to switch to a slightly
13 different topic. Would you agree with me that there
14 are many generation owners that offer PJM into --
15 well, that offer generation into the PJM market at
16 zero, correct?

17 A. Yes.

18 Q. And we saw several exhibits or two
19 exhibits before that show that, correct?

20 A. Yes.

21 Q. And you would agree with me that there is
22 nothing in your reports about offering in at zero as
23 being improper, correct?

24 A. Yes, zero offers can be consistent with
25 competitive offers, and there's certainly no rule of

1 offering in at zero.

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

3 A. The answer is the answer I gave.

4 Q. My question was, there's nothing in your
5 reports that says that's improper, correct?

6 A. Well, I think I probably have exhausted
7 recall of everything I said in the report. I mean,
8 if you'd allow me to explain the answer, I'd be happy
9 to. If you don't want me to, I'm not sure I can
10 answer the question.

11 Q. All right. You are familiar with
12 something called the minimum offer pricing rule,
13 correct?

14 A. Yes.

15 Q. Would it be correct to say that that does
16 not apply to existing generation?

17 A. Yes.

18 Q. And it has never applied to existing
19 generation, correct?

20 A. Yes.

21 Q. And Davis-Besse and Sammis would be
22 considered existing generation for purposes of the
23 MOPR, correct?

24 A. Yes.

25 Q. And the two OVEC plants involved in the

1 proposed transaction would be considered existing
2 generation for MOPR purposes, correct?

3 A. Yes.

4 Q. And you argued at one point that existing
5 generation, like Dominion, should be subject to the
6 MOPR, correct?

7 A. We argued that Dominion should be subject
8 to the MOPR.

9 Q. And PJM did not -- or, excuse me, but
10 FERC did not accept your view, correct?

11 A. There was a settlement and FERC accepted
12 the settlement, which included Dominion.

13 Q. Isn't it true that your view did not
14 prevail?

15 A. That is correct.

16 Q. I want to talk to you a little bit about
17 the companies' proposal in this case. Would it be
18 fair to say you do not recall whether the companies
19 are asking the Commission to approve a PPA?

20 A. The companies are asking for -- the
21 companies are asking for the transfer of the
22 responsibility for paying certain assets to the
23 customers, and the form of it is through a PPA, I
24 believe.

25 MR. KUTIK: Move to strike as

1 nonresponsive.

2 EXAMINER PRICE: I'm not going to strike
3 your answer, but I'm going to warn you to please be
4 more responsive to the counsel going forward, and if
5 you could give a more straightforward response to the
6 previous question, I'd appreciate it.

7 THE WITNESS: Okay. Sorry. Could you
8 tell me the question again?

9 EXAMINER PRICE: The court reporter will
10 read it back.

11 (Record read.)

12 A. Yes.

13 Q. And you don't recall reviewing the term
14 sheet between the companies and FES, correct?

15 A. I've read the companies' filing and the
16 companies' witnesses' testimony.

17 Q. So is the answer to my question, yes, you
18 don't recall reviewing the term sheet?

19 A. I don't recall if it was included in
20 those documents, that's correct.

21 Q. And you don't know if there is only one
22 contract or more than one contract as proposed,
23 correct?

24 A. Yes.

25 Q. And you understand that under the

1 companies' proposal, the Commission would not be
2 asked to determine what the price of the generation
3 received under the PPA to be offered into the market
4 would be, correct?

5 A. Sorry. I didn't understand what you were
6 asking.

7 Q. Sure. Let me try to repeat it.

8 You understand that under the companies'
9 proposal, the Commission would not be asked to
10 determine the price of generation under the PPA, what
11 that would be offered into the market at, correct?

12 A. So can I try to rephrase the question to
13 see if I have it?

14 Q. Sure.

15 A. So you're asking me whether the
16 Commission is determining the price at which this
17 capacity would be offered in the PJM market?

18 Q. Yes.

19 A. That is correct.

20 Q. And would it be fair to say that rider --
21 let me ask you a different question.

22 The price that the companies would pay
23 FES under the PPA would not be set by the Commission,
24 correct

25 A. I don't know.

1 Q. You understand that rider RRS would be
2 either a retail charge or credit, correct?

3 A. Yes.

4 Q. And rider RRS would reflect the netting
5 of the amounts that the companies paid FES and the
6 market revenues received by the companies via
7 whatever output of the plants was sold into the
8 market, correct?

9 A. Again, I'm not quite sure what you're
10 asking.

11 Q. All right. So you don't understand that
12 there is a netting in rider RRS of what the companies
13 would pay FES and what the companies would receive
14 from the market in offering the output of the plants
15 into the PJM markets.

16 A. I understand there's a netting.

17 Q. Okay. Now, would it also be correct to
18 say that as far as the companies are concerned, rider
19 RRS is to act as a pass-through?

20 A. Yes.

21 Q. And the recovery from the companies'
22 customers of costs paid by the companies to FES would
23 not be automatic, correct?

24 A. There is a provision for a review, yes.

25 Q. But the Commission would also have the

1 right to review the companies' bidding behavior into
2 the PJM market, correct?

3 A. Yes.

4 Q. You didn't do an analysis of the
5 companies' projection of costs and revenues under
6 rider RRS, correct?

7 A. I didn't think it was necessary, that's
8 correct.

9 Q. And you didn't do an analysis of
10 Mr. Rose's energy or price capacity forecast,
11 correct?

12 A. Yes.

13 Q. And you believe that even if rider RRS
14 results in a credit for customers, the rider would be
15 providing a subsidy, correct?

16 A. Yes.

17 Q. And that would be true even if rider RRS
18 provided a credit for its entire term?

19 A. Yes.

20 Q. Now, I understand, sir, that you've
21 reviewed the PUCO's order in the prior AEP ESP case,
22 correct?

23 A. How do I understand that? I'm sorry.
24 I'm not supposed to ask questions. I'm not sure what
25 you're referring to, I'll put it that way.

1 Q. You testified in or you plan to testify
2 in a case involving AEP, correct?

3 A. Yes.

4 Q. And you understand that that's a case
5 that involves AEP's PPA rider, correct?

6 A. Yes.

7 Q. And you understand that the PPA rider was
8 established in AEP's most recent ESP case, correct?

9 A. Yes.

10 Q. And you read the order in that case from
11 the Commission, correct?

12 A. I just don't recall having -- I don't
13 recall the details of it, but I probably read it.

14 Q. Now, it would be correct to say, sir,
15 that you do not have an opinion that that case, that
16 is, the AEP ESP case, was wrongly decided, correct?

17 A. Correct.

18 Q. And would it be fair to say that supply
19 diversity is an appropriate factor for the Commission
20 to consider in evaluating proposals like the riders
21 that were at issue -- or that are at issue in this
22 case or in AEP's PPA rider case?

23 A. Yes.

24 Q. Would you also agree with me, sir, that
25 compliance with environmental regulations and with

1 pending environmental regulations is similarly an
2 appropriate factor for the Commission to consider?

3 A. Yes.

4 Q. Do you further agree that the impact of
5 closure of generation plants and the impact that it
6 would have on electric prices and the resulting
7 effect on economic development within the state is a
8 similarly and appropriate factor for the Commission
9 to consider?

10 A. Sorry. "Similarly and appropriate" is
11 what you said?

12 Q. Yes.

13 A. Yes.

14 MR. KUTIK: May I have one minute, your
15 Honor?

16 EXAMINER PRICE: You may.

17 (Discussion off the record.)

18 MR. KUTIK: I have no further questions.

19 Thank you, Dr. Bowring.

20 EXAMINER PRICE: Thank you.

21 Mr. McNamee?

22 MR. MCNAMEE: I have no questions. Thank
23 you.

24 EXAMINER PRICE: Mr. Mayes, redirect?

25 MR. MAYES: Yes, I have redirect.

1 - - -

2 REDIRECT EXAMINATION

3 By Mr. Mayes:

4 Q. Dr. Bowring, is there anything in any of
5 your answers that you would like to clarify?

6 MR. KUTIK: I object.

7 MR. MAYES: It's not a leading question.

8 MR. KUTIK: But it calls for an
9 incredibly detailed and unobstructed narrative and
10 that's improper.

11 EXAMINER PRICE: I think you have to
12 narrow your redirect a little more than that.

13 Let's go off the record.

14 (Discussion off the record.)

15 Q. (By Mr. Mayes) We discussed at some
16 length your various reports and the State of Monitor
17 Report and Base Residual Auction analysis or
18 conclusions about the capacity market. Have there
19 been any developments regarding the capacity markets
20 that might cause that information to be less relevant
21 today?

22 A. Well, there's certainly been significant
23 developments since our last BRA report was done. I
24 think it's widely known, probably been discussed
25 here, that the capacity performance changes to the

1 capacity -- you're causing it -- that the capacity
2 performance modifications to the capacity market were
3 put in place recently and affected the most recent
4 base residual auction, which was for years '18-'19.
5 The net effect of that was to remove some of the
6 issues that we had with the capacity market design
7 resulting in higher clearing prices throughout the
8 PJM footprint.

9 MR. MAYES: That concludes my redirect.

10 EXAMINER PRICE: Thank you.

11 Mr. O'Brien, recross?

12 MR. O'BRIEN: Thank you, your Honor.

13 - - -

14 RECROSS-EXAMINATION

15 By Mr. O'Brien:

16 Q. Just one question, Dr. Bowring.

17 Mr. Kutik asked you a number of questions about
18 Dominion in Virginia. To your knowledge, does
19 Virginia regulation allow Dominion to recover
20 generation costs from facilities that are
21 specifically excluded from providing retail
22 generation service to Dominion's Virginia customers?

23 MR. KUTIK: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. KUTIK: Friendly cross.

1 EXAMINER PRICE: That's also outside the
2 scope of redirect.

3 MR. KUTIK: That, too.

4 MR. O'BRIEN: I thought I'd try, your
5 Honor.

6 EXAMINER PRICE: Good try.

7 MS. BOJKO: I do have one.

8 EXAMINER PRICE: Ms. Bojko.

9 MS. BOJKO: Thank you.

10 - - -

11 RECROSS-EXAMINATION

12 By Ms. Bojko:

13 Q. Your counsel just asked you about the
14 recent developments in the capacity performance being
15 included in the recent BRA auctions. Has your
16 testimony here today changed based on the recent
17 developments in the capacity auctions, which include
18 the capacity performance modifications that you
19 mentioned?

20 MR. KUTIK: Objection.

21 EXAMINER PRICE: Grounds?

22 MS. BOJKO: Friendly cross.

23 EXAMINER PRICE: I'll allow this one.

24 A. No.

25 MS. BOJKO: Thank you. No further

1 questions.

2 EXAMINER PRICE: Mr. Mendoza?

3 MR. MENDOZA: I have a question.

4 EXAMINER PRICE: Promise me it will be
5 unfriendly.

6 MR. MENDOZA: I think I will pass then,
7 actually. I thought I would take a shot given your
8 previous ruling, but I can't make that --

9 EXAMINER PRICE: It seemed unfriendly
10 when she asked it.

11 Mr. Petricoff?

12 MR. PETRICOFF: No questions.

13 EXAMINER PRICE: Mr. Sauer?

14 MR. SAUER: No questions.

15 EXAMINER PRICE: Mr. Randazzo?

16 MR. RANDAZZO: No questions.

17 EXAMINER PRICE: Mr. Kurtz?

18 MR. KURTZ: No questions.

19 EXAMINER PRICE: Mr. Kutik?

20 MR. KUTIK: Your Honor, may I proceed?

21 EXAMINER PRICE: Thank you.

22 - - -

23 RECROSS-EXAMINATION

24 By Mr. Kutik:

25 Q. It is correct that there were a number of

1 units that offered in in terms of the last BRA as
2 price takers?

3 A. The nature of offer has changed in that
4 auction, so certainly some did offer as price takers.

5 Q. Okay. And that included both the BRA and
6 the transition auctions, correct?

7 A. I'm not sure that it did include the
8 transition auctions. To answer the question
9 accurately, I would need to check.

10 Q. Well, would you agree that one of the
11 effects of the capacity performance rule is that it
12 has increased capacity prices?

13 A. Yes.

14 Q. And there is also a proposal, is there
15 not, or perhaps it's a rule now, regarding a change
16 in the rules relating to offer caps, correct?

17 A. Yes.

18 Q. And that is to set the cap at a
19 percentage of CONE, correct?

20 A. Not entirely.

21 Q. All right. Well, do you believe that
22 that offer cap change will put upward pressure on
23 capacity prices, and you believe that; do you not?

24 A. I believe it will result in higher
25 prices.

1 MR. KUTIK: No further questions. Thank
2 you, your Honor.

3 EXAMINER PRICE: Thank you.

4 Mr. McNamee?

5 MR. MCNAMEE: No questions. Thank you.

6 EXAMINER PRICE: Ms. Addison?

7 EXAMINER ADDISON: No questions.

8 EXAMINER PRICE: Ms. Chiles?

9 EXAMINER CHILES: No questions.

10 EXAMINER PRICE: I just have a couple
11 questions.

12 THE WITNESS: Sure.

13 EXAMINER PRICE: Turning to your
14 testimony at page 3, line 12.

15 MR. KUTIK: I'm sorry, your Honor.

16 EXAMINER PRICE: Page 3, line 12 of the
17 testimony, you have a brief discussion or abbreviated
18 discussion of the subsidy question in New Jersey and
19 Maryland, is that correct?

20 THE WITNESS: Yes.

21 EXAMINER PRICE: And you believe the
22 situations where analogous, even though New Jersey
23 and Maryland involve construction of generation and
24 in this case it's existing generation?

25 THE WITNESS: Yes.

1 EXAMINER PRICE: You indicated that --
2 I'm trying to listen to your opposition to long-term
3 contracts. If hypothetically a company were to
4 propose a long-term contract for renewable energy,
5 10, 15 years, you would oppose that as a market
6 subsidy?

7 THE WITNESS: So, first of all, I don't
8 have opposition to long-term contracts.

9 EXAMINER PRICE: I misunderstood
10 something then.

11 THE WITNESS: Long-term contracts are
12 fine as long as they're market based. So there are
13 lots of long-term contracts. But, nonetheless,
14 everyone in the PJM market is required to offer their
15 capacity into the market. So as long as the
16 long-term contract doesn't constitute a subsidy --
17 this, for example, lots of units, brand new units,
18 are being built enter into energy takeoff long-term
19 contracts with someone willing to guarantee them a
20 price for energy, that's fine.

21 So I have no objection to long-term
22 contracts, only when they're a vehicle for providing
23 subsidies. And in the case of renewables, the same
24 issues apply. If someone was entering into a
25 long-term contract really for the purpose of making

1 an out-of-market payment that those resources would
2 not receive in the market, that would be a subsidy as
3 well. But it's not the long-term contract, it's the
4 fact that these payments are not consistent with the
5 competitive market.

6 EXAMINER PRICE: Okay. Does opposition
7 to renewable energy mandates and their impact on the
8 market extend to energy efficiency mandates?

9 THE WITNESS: Okay. Just so we're clear,
10 my view on all of these things is that markets work
11 better without subsidies, and those do constitute
12 subsidies and subsidies for energy efficiency
13 function the same way that subsidies for wind or
14 solar function, or they can function that way.

15 EXAMINER PRICE: So you're opposed to
16 them?

17 THE WITNESS: Yes. When they operate, a
18 subsidy is, in effect, competitive prices, yes.

19 EXAMINER PRICE: Thank you. You're
20 excused.

21 THE WITNESS: Thank you.

22 EXAMINER PRICE: At this time, we will
23 rule on Mr. Mayes' motion for admission of IMM
24 Exhibit 1. We will grant it subject to the motion to
25 strike.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 MR. KUTIK: Your Honor, at this time
3 we'll move for the admission of Company Exhibit 75,
4 76, 77, 78, 79 and 80.

5 EXAMINER PRICE: Any objection to the
6 admission?

7 MR. PETRICOFF: Yes, your Honor. I would
8 like to object. We have no objection to the
9 relatively few pages, there were two tables that were
10 cited in what are 1,000 pages of documents which were
11 not handed out, and I think it's wrong to have all of
12 that come into the record. I think it ought to be
13 limited to just the pages that were referenced in the
14 cross-examination, and I think that those pages ought
15 to be made available by filing them into the record
16 so we can have them for briefs.

17 MR. KUTIK: Your Honor, this witness
18 authenticated all the documents, and he also
19 indicated that he -- or the documents are supposed to
20 indicate significant and substantial issues within
21 PJM. I think the entire document is fair game to be
22 commented on and to be briefed.

23 EXAMINER PRICE: Mr. Petricoff, is your
24 concern the fact that the documents have not been
25 handed out, or is your concern the fact that the

1 documents are so voluminous?

2 MR. PETRICOFF: C, all of the above. And
3 let me explain why. There's no question about the
4 authenticity. We're not challenging the
5 authenticity. But in 1,000 pages, there might be a
6 lot of items that could end up in briefs that could
7 be cited that weren't part of the discussion and
8 aren't relevant. And I can't articulate to you why
9 it isn't relevant because nobody has seen it. These
10 are not documents that were produced in discovery.
11 They just showed up today, and they were not passed
12 out to everybody.

13 EXAMINER PRICE: In terms of passing them
14 out, I assume, Mr. Mayes, these documents are
15 available on your website?

16 MR. MAYES: That's correct.

17 EXAMINER PRICE: So there's easy access
18 to these documents. In terms of relevance, that's a
19 matter for your reply brief.

20 Frankly, generally it's been our practice
21 to submit the complete document and not omit parts of
22 documents. I think we've taken administrative notice
23 of major sections of the tariff, for example. So if
24 there's a relevance issue that comes up, you can take
25 care of it on brief.

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1 MR. PETRICOFF: Thank you.

2 EXAMINER PRICE: At this time, we will
3 admit Company Exhibit 75, 76, 77, 78, 79 and 80.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 EXAMINER PRICE: Let's at this point
6 adjourn for lunch. We'll return at 2:30. Let's go
7 off the record.

8 (At 1:18 p.m. a lunch recess was taken
9 until 2:30 p.m.)

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1 Tuesday Afternoon Session,
2 October 6, 2015.

3 - - -

4 EXAMINER PRICE: Mr. Petricoff, you may
5 call your next witness.

6 MR. PETRICOFF: Thank you, your Honor.
7 At this time we'd like to called David Scarpignato to
8 the stand.

9 (Witness sworn.)

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

12 THE WITNESS: Hello. I'm David
13 Scarpignato with Calpine Corporation. The address is
14 875 15th Street, Suite 700, Washington DC 20005.

15 EXAMINER PRICE: Please proceed,
16 Mr. Petricoff.

17 MR. PETRICOFF: Yes, your Honor. Has the
18 witness been sworn in?

19 EXAMINER PRICE: Yes.

20 MR. PETRICOFF: At this point I'd like to
21 have marked as RESA Exhibit 1 the direct prepared
22 testimony of David Scarpignato, and I'd also like to
23 have marked as RESA Exhibit 1A an errata sheet for
24 changes to that testimony that we'll go over here
25 momentarily.

1 EXAMINER PRICE: Be so marked.

2 (EXHIBITS MARKED FOR IDENTIFICATION.)

3 - - -

4 DAVID SCARPIGNATO

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

7 DIRECT EXAMINATION

8 By Mr. Petricoff:

9 Q. Mr. Scarpignato, do you recognize what --
10 first of all, do you have a copy of what we've just
11 marked as RESA Exhibit 1 and RESA Exhibit 1A?

12 A. I have this (indicating).

13 Q. That's 1A.

14 EXAMINER PRICE: Mr. Petricoff, we don't
15 have copies of 1A.

16 MR. PETRICOFF: I'm sorry, your Honor.

17 Q. Mr. Scarpignato, let's start with RESA
18 Exhibit 1. Do you have a copy with you of your
19 direct prepared testimony?

20 A. Yes, I do.

21 Q. And was that prepared by you or under
22 your direction?

23 A. Yes.

24 Q. And was it submitted to the Commission on
25 December 22nd, 2014?

1 A. Yes.

2 Q. And have there been any changes in your
3 position that have taken place since December 22nd of
4 2014?

5 A. Yes.

6 Q. Could you tell us about that?

7 A. I am now with Calpine Corporation and the
8 address has changed. The title has stayed the same,
9 and I've been employed there since April 2016.

10 Q. And do you have --

11 A. '15. Thank you.

12 Q. And the changes in terms of your position
13 and the date that you started with Calpine are
14 reflected in Exhibit 1A?

15 A. Correct.

16 Q. And I notice that the job
17 responsibilities and duties appear to be the same
18 other than the change of the name; is that correct?

19 A. Yes. At a high level, that's correct.

20 Q. Does Calpine belong to RESA? Are they
21 members of RESA?

22 A. Calpine does not belong to RESA, but
23 Calpine purchased Champion Energy on October 1st, the
24 other day, and Champion is a member of RESA.

25 Q. And you are here on behalf of RESA?

1 A. I am here on behalf of RESA.

2 Q. The first four questions that we have now
3 redone by virtue of RESA Exhibit 1A, if I asked you
4 the other questions in your direct prepared testimony
5 that was filed on December 22nd, would your answers
6 be the same?

7 A. Yes.

8 Q. Are there any other changes or amendments
9 you would like to make?

10 A. No.

11 MR. PETRICOFF: Your Honor, at this time
12 the witness is available for cross-examination.

13 EXAMINER PRICE: Mr. Kutik.

14 MR. KUTIK: We have some motions to
15 strike. Our first motion to strike, your Honor, is
16 directed to page 16, and, particularly, your Honor,
17 the sentence that begins on line 6. It says "For
18 example," and goes to line 8 and ends with the
19 footnote No. 2. So we would move to strike that
20 sentence and the two footnotes on the grounds that
21 the sentence relies on hearsay, particularly it
22 appears that one is -- the first footnote on a report
23 by the Brattle Group, another report by Sargent &
24 Lundy; and the second footnote appears to be
25 something from SNL, but it isn't apparent exactly

1 what it is, so there's no foundation to establish
2 that it meets any of the exceptions to the hearsay
3 rule.

4 EXAMINER PRICE: Mr. Petricoff?

5 MR. PETRICOFF: Yes, your Honor. As to
6 the question on hearsay, these are publicly available
7 sources. The Internet sites are presented. The
8 value of the source can obviously be addressed in
9 cross-examination, and the Commission can give the
10 proper weight to it.

11 EXAMINER PRICE: Do you have personal
12 knowledge of the statements made in your testimony?

13 THE WITNESS: Yes.

14 MR. KUTIK: Do you mean with respect to
15 the facts of that particular sentence?

16 EXAMINER PRICE: Yes, with respect to the
17 facts of that particular sentence.

18 THE WITNESS: Can the reporter repeat the
19 question so I understand what you're asking?

20 EXAMINER PRICE: I'll ask it again. Do
21 you have personal knowledge of the facts contained in
22 that sentence?

23 THE WITNESS: If you mean by personal
24 knowledge, am I the one that obtained the knowledge,
25 yes.

1 EXAMINER PRICE: Where did you obtain the
2 knowledge?

3 THE WITNESS: I obtained the knowledge
4 from publicly available sources that I have listed
5 there. Nobody else handed them to me. It's not
6 unusual to talk about heat rates in my industry.

7 EXAMINER PRICE: Okay. We will grant the
8 motion to strike at this time. It is hearsay.

9 MR. KUTIK: Our next motion, your Honor,
10 or might be two motions because they're both on the
11 same grounds, is directed to some sentences on page
12 31, and actually it starts on line 21 with the
13 sentence that begins "As an example," and our motion
14 continues on to page 32, line 5, and we would have a
15 similar motion, your Honor, with respect to the
16 sentence that begins on line 5 on page 32 to the end
17 of that paragraph that ends on line 10.

18 These sentences report statements that
19 are in Attachments 4 and 5 to the witness' testimony.
20 Attachments 4 and 5, your Honor, appear to be letters
21 from third parties to others, and so they are
22 statements of the declarants that are outside the
23 hearing room, and they are statements, your Honor,
24 that are not of parties, and certainly nothing in
25 these letters satisfies any of the exceptions of the

1 hearsay rule.

2 EXAMINER PRICE: Mr. Petricoff?

3 MR. PETRICOFF: Your Honor, may I have a
4 minute to review the sentences?

5 EXAMINER PRICE: You may.

6 Just to clarify, you're not striking the
7 example -- the sentence on line 20, "For example, PJM
8 load forecasts in 2008-'12 were significantly off
9 from the estimates"?

10 MR. KUTIK: I'm sorry. I didn't hear
11 your reference.

12 EXAMINER PRICE: Line 20, you are not
13 including that sentence?

14 MR. KUTIK: On page 32?

15 EXAMINER PRICE: 31.

16 MR. KUTIK: That's correct, your Honor.
17 I'm not striking that sentence.

18 MR. PETRICOFF: Well, your Honor, in
19 terms of the Attachment 4, this letter basically is a
20 public letter that was filed by public officials with
21 the PJM, and, I assume, is available on the records
22 of PJM, and, therefore, I think it does fit the
23 hearsay example for a public document.

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

25 EXAMINER PRICE: Are you making the same

1 argument about the second one, Attachment 5?

2 MR. PETRICOFF: I hadn't got to that one
3 yet. I thought I'd take the first one first.

4 EXAMINER PRICE: You may respond.

5 MR. KUTIK: Your Honor, the public
6 records exception are records of a public entity, a
7 governmental entity, additionally with a duty to
8 report the facts or circumstances that are in that
9 document. These are simply statements of these
10 various parties about certain facts that they allege
11 to exist. It's classic hearsay.

12 EXAMINER PRICE: I'm going to grant the
13 motion to strike as to the first sentence and
14 attachment.

15 As to the second sentence, Mr. Petricoff?

16 MR. PETRICOFF: Well, your Honor, I'm
17 going to make a very similar argument. Once again,
18 PJM is a public quasi-governmental agency
19 Correspondence as docketed is open for the public to
20 see, and, therefore, I think it deserves treatment
21 here as a public document and exception to the
22 hearsay rule.

23 EXAMINER PRICE: Thank you. We'll grant
24 the motion to strike. The difficulty is Mr. Kutik
25 cannot cross-examine the underlying statements to

1 test the veracity. I understand what you're saying
2 about it's available, but he has no ability to
3 dispute these underlying facts.

4 MR. PETRICOFF: I understand that he
5 doesn't have the, if you will, declarant here to do
6 it, but I think when looking at the way it is used
7 within the testimony, it is to support the issue as
8 opposed to being in there only for the truth of its
9 assertion in that case. I think it does -- it is
10 covered by the hearsay rule.

11 EXAMINER PRICE: Thank you. I am
12 granting the motion to strike.

13 MR. PETRICOFF: I understand, your Honor.
14 That's fine.

15 MR. KUTIK: Your Honor, for our last
16 motion to strike, we direct your attention to page
17 34, and we would move to strike in their entirety
18 question and answers 52 and 53. This is very similar
19 to the discussion we had this morning with
20 Dr. Bowring. This is a discussion of two cases, four
21 opinions, and is more appropriate for a brief and not
22 for an opinion by a witness and cross-examine on that
23 opinion.

24 EXAMINER PRICE: Mr. Petricoff?

25 MR. PETRICOFF: Yes, your Honor. I think

1 I want to start by talking about the answer to 53
2 first and then move back to 52. In 53,
3 Mr. Scarpignato indicates that he's not a lawyer, but
4 the purpose here is to -- but he is an expert in PJM
5 affairs and is on the PJM committees, including the
6 MOPR committee, and so he is saying that the
7 compensation schemes that were proposed in Maryland
8 and New Jersey are similar to the application in the
9 matter at bar.

10 That, I think, is not a legal matter, and
11 he should be able to do it. So I think it makes
12 sense in the context to leave the fact that they were
13 struck down in, but if, in fact, the concern is he's
14 raising a legal opinion or making a legal decision, I
15 think that should be limited to just taking out the
16 words "struck down" on line 1 on page 35.

17 MR. MENDOZA: Your Honor, may I?

18 EXAMINER PRICE: You may.

19 MR. MENDOZA: I'd like to add similar to
20 the discussion we had this morning, this is all
21 factual comparison of the schemes that were
22 overturned in New Jersey and Maryland and comparing
23 those to the proposal here, so this is appropriate
24 testimony for this witness. It's a factual
25 comparison of the two programs.

1 EXAMINER PRICE: Mr. Kutik.

2 MR. KUTIK: Your Honor, this testimony,
3 and particularly the footnotes, quote at length from
4 the opinion, and so, again, we're talking about the
5 necessity of sitting here and debating what the
6 opinion said and didn't say.

7 EXAMINER PRICE: The issue I think that
8 Mr. Petricoff has raised is that it's not unfair, is
9 if we struck the footnotes, would you still have an
10 issue with the remainder of the testimony?

11 MR. KUTIK: With Mr. Petricoff's
12 additional strike, your Honor?

13 EXAMINER PRICE: Yes.

14 MR. KUTIK: So that sentence now would
15 read how, your Honor?

16 EXAMINER PRICE: "I simply want to point
17 out that the compensation scheme proposed by the
18 Companies is nearly identical to the ones in Maryland
19 and New Jersey," and strike the footnotes.

20 MR. KUTIK: That would be acceptable,
21 your Honor.

22 EXAMINER PRICE: Okay. The motion to
23 strike will be granted in part and denied in part.

24 MR. PETRICOFF: Your Honor, I think in
25 keeping with the logic, then, we would not contest

1 taking out Q52 and A52 because I think that goes
2 along with --

3 EXAMINER PRICE: Question 52 and answer
4 52, those will be stricken also.

5 MR. KUTIK: That concludes my motion.

6 EXAMINER PRICE: Thank you.

7 Mr. Mendoza?

8 MR. MENDOZA: No questions, your Honor.

9 EXAMINER PRICE: Mr. Sauer?

10 MR. SAUER: No questions, your Honor.

11 EXAMINER PRICE: Mr. Randazzo?

12 MR. RANDAZZO: Yes, a few.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Randazzo:

16 Q. Good afternoon, sir.

17 A. Hello.

18 Q. As compared to Direct Energy, is Calpine
19 in the generation business?

20 A. As compared to Direct Energy?

21 Q. Right.

22 A. Direct Energy is not in the generation
23 business as far as what most people think of as a
24 generator. If you're talking about resources in PJM,
25 they're still not the same, but Direct Energy has

1 demand response resources.

2 Q. And Calpine is a merchant generator firm;
3 is that correct?

4 A. Correct.

5 Q. Now, on page 2 of your testimony, at line
6 16 -- starting on line 16 and ending on line 18, I
7 just want to make sure I've got this correct. You're
8 saying that the testimony that you are presenting may
9 represent the position of RESA as an organization,
10 but may not represent the views of any particular
11 RESA member; is that correct?

12 A. That's correct.

13 Q. And yet you're testifying on behalf of
14 RESA; is that correct?

15 A. Yes, I am testifying on behalf of RESA.

16 Q. Now, in your testimony, you talk about
17 rider RRS. Would it be correct, sir, that regardless
18 of what happens, how the Commission disposes of the
19 issues related to rider RRS, that purchase power
20 agreements are still going to exist to supply the
21 generation requirements of retail customers, correct?

22 A. Is it a legal question?

23 Q. No, just commercial practice. There has
24 to be both sale and purchase power agreements
25 upstream of every retail purchase power agreement,

1 correct?

2 A. I don't know. I'm an expert in business
3 rules and regulatory affairs and stakeholder
4 processes at PJM, so I'm not sure what's required for
5 a bilateral to be set up in the first place. I'm
6 aware of people that enter into bilaterals, but I'm
7 not as familiar with whether they're legal or not
8 legal.

9 Q. That really wasn't my question.

10 A. Sorry about that.

11 Q. Let's try it again. Would it be correct,
12 sir, that for every retail purchase agreement of
13 electricity, there is a corresponding wholesale
14 transaction?

15 A. A one-to-one ratio, no.

16 Q. And how is it that retail customers
17 obtain purchased electricity?

18 A. Through typically -- although there's
19 different setups, typically through a load-serving
20 entity of some sort.

21 Q. And would the retail customer need to
22 enter into some sort of agreement to purchase that
23 electricity?

24 A. Well, for instance, PJM will charge the
25 load-serving entity the price to purchase all the

1 capacity. I'm sorry. I'm trying to follow you.

2 Q. I'm sure it's my questions.

3 Are you aware of how retail electric
4 customers in Ohio receive generation supply?

5 A. Not intimately, no.

6 Q. At all?

7 A. At all, yes.

8 Q. And what's your understanding?

9 A. My understanding is that at a wholesale
10 level, there's typically load-serving entities of
11 some sort that you can buy the power from those
12 load-serving entities, buy the generation or the
13 supply to supply those to the end-use customers. So
14 there's a wholesale transaction where I'm heavily --
15 where I know a lot of the rules and hope to help out
16 here.

17 And then there's the retail side of
18 things where I'm not as intimately involved, but I
19 believe that then the LSE has to have some kind of
20 rate on file. Whether the LSE makes money or uses
21 money is kind of irrelevant from an LSE's
22 perspective -- I mean, not from the LSE's perspective
23 but customer's perspective because they sign up for a
24 rate usually. And I think the other way to get
25 retail service in Ohio is through more of a standard

1 offer service through the companies.

2 Q. And would it be your understanding that
3 there are agreements in both cases? In other words,
4 if customers, retail customers, are obtaining
5 generation supply through what you call a
6 load-serving entity, there would be agreements
7 associated with that transaction?

8 A. Yeah. The load-serving entities have a
9 reliability assurance agreement that they sign with
10 PJM to purchase the wholesale power. They also are
11 signatories to the PJM operating agreement, and they
12 probably sign other things too.

13 Q. Now, at page 6 of your testimony, line
14 14, beginning with the sentence that starts on that
15 line, you indicate that "PJM would need to do
16 something." Is it your understanding that PJM has a
17 unilateral ability to act in the areas that you
18 described in your testimony?

19 A. I believe in the operating agreement.
20 You're testing my memory a little bit. I believe in
21 the operating agreement, it has -- PJM itself has a
22 responsibility to maintain efficient markets. That's
23 my recollection. I don't have the document in front
24 of me.

25 Q. More specifically, sir, if PJM was going

1 to make any changes of the type that you describe in
2 your testimony, wouldn't it need to make an
3 application to the Federal Energy Regulatory
4 Commission?

5 A. Well, there's multiple ways that that can
6 occur.

7 Q. Answer my --

8 MR. PETRICOFF: He was answering. He
9 should be allowed to finish.

10 EXAMINER PRICE: First allow the witness
11 to finish his answer. Then you can move to strike
12 anything you think is nonresponsive.

13 MR. RANDAZZO: I'll withdraw the
14 question.

15 Q. To the extent that PJM would change its
16 rules related to such things as the minimum offer
17 price rule, would it need to seek approval of the
18 Federal Energy Regulatory Commission?

19 A. If PJM initiated, yes.

20 Q. Well, that's what you're talking about in
21 your testimony, if the PJM initiated something,
22 right?

23 A. This relates to the question I was trying
24 to answer before.

25 MR. RANDAZZO: I'll withdraw my question,

1 your Honor.

2 MR. PETRICOFF: Your Honor, he should be
3 allowed to finish regardless.

4 EXAMINER PRICE: The question is
5 withdrawn. Let's just move on.

6 Q. Now, with regard to -- were you here
7 earlier today to hear Dr. Bowring's testimony?

8 A. Yes, I was.

9 Q. Did you hear him discuss his views that
10 the renewable mandates are subsidies?

11 A. I heard parts of it. I was reading a
12 little bit during the testimony.

13 Q. Did you hear that?

14 A. I think I heard that, but, again, I was
15 coming in and out of the conversation.

16 Q. Has Dr. Bowring or PJM done anything to
17 address those subsidies?

18 A. The subsidies for --

19 Q. As renewable energy resources.

20 A. Yes. There was huge discussion in the
21 PJM stakeholder process where I primarily do my
22 business. Market monitor also operates in that
23 environment, and I think it was the market's
24 reliability committee. We discussed changing the
25 MOPR a few years back related to something that

1 happened in Maryland and New Jersey. That was
2 related to new resources, though, not existing
3 resources. And in that regard, there were
4 stakeholders pushing -- a strong push and market
5 monitor, if I recall -- and I'm not the market
6 monitor, so I'm recalling what he said. The market
7 monitor pushed very strongly that the MOPR should be
8 more expansive and not just be limited to more of the
9 traditional types of resources; CT, CC, and coal.

10 So back then, yeah, I recall him
11 potentially trying to get the renewables for
12 basically the new-entry renewables I'm referring to,
13 just to be clear, the new-entry renewables to prevent
14 them from offering in at zero. Ultimately, though,
15 he was not successful with that, and obviously the
16 stakeholders take different positions. There's over
17 900 stakeholders in PJM.

18 Q. And it's clear to you that PJM never
19 modified the minimum offer price rule to deal with
20 the subsidies for renewable resources; is that
21 correct?

22 A. Oh, it's very clear, yes.

23 Q. Now, at page 13 of your testimony,
24 actually line 19 and 20 in response to question 23,
25 you mentioned deliverability limits. Do you see

1 that?

2 A. Yes.

3 Q. Now, would deliverability limits be the
4 same as transmission constraints?

5 A. Deliverability limits are a type of
6 transmission constraint, but there are other types of
7 transmission constraints, too. So if you're asking
8 if it's a subset of that, I can say yes. Is that
9 what you're asking?

10 Q. Right.

11 A. Yes.

12 Q. And page 22 at the bottom of the page,
13 the sentence that starts on line 23, when you say,
14 "Where the market location is incapable of
15 responding," would it be fair to say that what you're
16 referring to there is where the capacity resource is
17 located within a particular zone are incapable of
18 responding? Would that be a fair way to more
19 specifically state what you're getting at there?

20 A. No, not completely.

21 Q. Well, can we start in part at what you're
22 getting at?

23 A. Yes.

24 Q. So when generation resources or capacity
25 resources located within a particular zone in PJM are

1 inadequate to satisfy the load within that zone,
2 would one of the responses from PJM be to require the
3 construction of transmission?

4 A. Feel free to strike this, but I think
5 what you're trying to ask me -- I think what you're
6 trying to ask me is more related to where would new
7 capacity locate, because that's what the question is
8 kind of relating to. And if new capacity -- you can
9 strike it if you want. If new capacity is not there,
10 then what happens is, yeah, PJM would do a
11 transmission build. If existing capacity is already
12 there, there's nothing to build.

13 And the third topic, which you might
14 eventually ask me about, is if something retires, and
15 if something retires and then is not replaced by
16 something else, then you also see transmission build.
17 If that helps -- sorry.

18 Q. Well, we got there eventually. Thank
19 you.

20 Now, if you know, do you know what
21 position RESA took or Calpine took or Direct Energy
22 took with regard to the above-market capacity pricing
23 authorized by this Commission for AEP Ohio?

24 MR. PETRICOFF: Object as to Direct
25 Energy and Calpine. He is the RESA witness and

1 cannot answer for the rest of it.

2 EXAMINER PRICE: He can answer if he
3 knows.

4 A. No.

5 Q. Did you evaluate the positions that have
6 been taken or review the positions that have been
7 taken by RESA in other Ohio Commission cases for
8 purposes of preparing your testimony?

9 A. I think RESA took a position, especially
10 in New Jersey, and I have a vague recollection of
11 reviewing that.

12 Q. Okay. Other than that, anything else?
13 I'm talking about Ohio Commission decisions.

14 A. Ohio Commission decisions, I'm sorry, I
15 did not answer that question correctly.

16 Q. That's okay.

17 A. The answer would be no.

18 MR. RANDAZZO: That's all I have. Thank
19 you.

20 EXAMINER PRICE: Thank you.

21 Mr. Kurtz?

22 MR. KURTZ: Could I go after the company;
23 your Honor?

24 EXAMINER PRICE: You may.

25 Mr. Kutik?

1 - - -

2 CROSS-EXAMINATION

3 By Mr. Kutik:

4 Q. Good afternoon, sir.

5 A. Good afternoon.

6 Q. Let's see if I can get a couple things
7 straight first off. Your former employer was an
8 entity called Direct Energy, LLC, correct?

9 A. Correct.

10 Q. And there were two affiliates that Direct
11 Energy, LLC, had. One was Direct Energy Services,
12 LLC, and another was Direct Energy Business, LLC,
13 correct?

14 A. Those were two affiliates. If you're
15 saying that's all of them --

16 Q. No, I'm saying there were those two among
17 others.

18 A. Among others.

19 Q. And as far as you know, both of those
20 companies are certified to be CRES providers in the
21 state, correct?

22 A. Correct.

23 Q. But your direct employer, Direct Energy,
24 LLC, was not certified, correct?

25 A. I believe that's correct.

1 Q. Now, you then left the Direct Energy
2 family and you went to Calpine in April of this year,
3 correct?

4 A. Correct.

5 Q. And so you were not then working for a
6 business affiliated with a CRES provider until a week
7 ago?

8 A. Yeah, October 1st.

9 Q. Okay. Now, you don't hold any positions
10 in RESA, correct?

11 A. No, I do not.

12 Q. And until a couple weeks ago, maybe this
13 week, last week, you were not -- or Calpine was not a
14 member of RESA, correct?

15 A. Correct.

16 Q. And you don't hold an office or you're
17 not on any committees at RESA?

18 A. No, I'm not.

19 Q. Now, would it be fair to say you don't
20 have experience doing a forecast or projection of
21 market prices, correct?

22 A. Correct.

23 Q. And you have not on a regular basis
24 provided regulatory monitoring or advocacy services
25 to your employers letting to Ohio, correct?

1 A. I hate to do this, but can you repeat the
2 question.

3 (Record read.)

4 A. Correct. Sorry, Mr. Kutik.

5 Q. We'll mispronounce each others' names and
6 I will not be offended if you won't.

7 A. Maybe we should go with first names.

8 Q. Or sir.

9 A. Sir.

10 Q. You can call me counsel. I can call you
11 sir.

12 Now, the first time that you knew
13 anything about the possibility of testifying is when
14 your counsel at Direct approached you and told you
15 that they wanted you to testify?

16 A. Correct.

17 Q. And before then, you had not reviewed the
18 companies' filings in this case, correct?

19 A. That's correct.

20 Q. In fact, you've mainly gained your
21 understanding about what the companies are proposing
22 through counsel and reading some of the companies'
23 filings, correct?

24 A. That's correct.

25 Q. And you reviewed the companies'

1 application and some, but not all, of the companies'
2 testimony, correct?

3 A. That is correct.

4 Q. And certainly you reviewed the documents
5 that were cited in your testimony?

6 A. That's correct.

7 Q. But you don't recall reviewing any
8 documentation that outlines what the proposed
9 transaction between the companies or FES would be,
10 correct?

11 A. I know there's a PPA, but I don't know,
12 again, whether it's going to be allowed or not
13 allowed or how it's allowed and those types of
14 things.

15 Q. Let's get back to my question. My
16 question was, you don't recall reviewing any
17 documentation that outlines what the proposed
18 transaction between the companies or FES would be,
19 correct?

20 A. I think that's correct.

21 Q. Now, in coming to your opinions in this
22 case, you did not speak with anyone from PJM,
23 correct?

24 A. Not on this issue, correct.

25 Q. Or with the PJM market monitor, correct?

1 A. That's correct.

2 Q. And you don't specifically recall reading
3 the ESP statute for purposes of your testimony or
4 preparing your testimony?

5 A. Correct.

6 Q. And you don't know if there is a statute
7 relating to anti-competitive subsidies, correct?

8 A. I'm trying to remember the last time I
9 talked to you. I might have come to an understanding
10 that there is one.

11 Q. Well, at the time that you wrote your
12 testimony, would it be fair to say that you didn't
13 know whether there was a statute relating to
14 anti-competitive subsidies?

15 A. Correct.

16 Q. And do you believe that the ESP statute
17 requires an ESP every three years, correct?

18 A. Correct.

19 Q. Now, you didn't do any modeling of rider
20 RRS, correct?

21 A. Did you say modeling?

22 Q. Yes, I did.

23 A. No, I did not do any modeling of RRS.

24 Q. And you didn't develop any forecast of
25 the prices or costs for purposes of this case for

1 rider RRS?

2 A. That's correct.

3 Q. You didn't do any modeling or forecasting
4 of PJM, correct, for purposes of this case?

5 A. That's correct.

6 Q. And you're certainly not an expert in the
7 Ohio retail electric market?

8 A. That's correct.

9 Q. You don't have any opinions as to the
10 competitiveness of the Ohio retail market, correct?

11 A. Based on data, no. I more look at rules
12 and how they interact with the competitiveness in an
13 area.

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

15 A. I think so.

16 Q. You haven't reviewed and are not familiar
17 with the amount of shopping that takes place in Ohio,
18 correct?

19 A. No.

20 Q. What I said was correct?

21 A. Correct. Thank you.

22 Q. And you haven't reviewed any filings in
23 prior ESPs, correct?

24 A. For Ohio?

25 Q. Yes.

1 A. Correct.

2 Q. Now, your job, at least at Direct Energy,
3 did not include working with retail customers
4 directly, correct?

5 A. Typically not.

6 Q. And you've done no research in retail
7 customer preferences, correct?

8 A. No research as I would use the word
9 "research."

10 Q. And you're not aware of any studies on
11 retail customer preferences, correct?

12 A. I may be aware of studies. I may have
13 read something, but I'm certainly not -- I can't cite
14 what those examples would be, but I'm sure I probably
15 read things over the years.

16 Q. None come to mind that you could talk
17 about intelligently today, correct?

18 A. Correct.

19 Q. And you have very limited knowledge of
20 the products offered, for example, by Direct Energy
21 affiliates in Ohio, correct?

22 A. I have no direct knowledge of the
23 products offered?

24 Q. No. I said you have very limited
25 knowledge.

1 A. Oh, yes, correct.

2 Q. Now, I want to talk to you a little bit
3 about what you understand about the companies'
4 proposals in this case. You believe that the
5 companies are seeking approval of a PPA, correct?

6 A. I probably read a little bit into that
7 statement. I believe they're seeking approval of the
8 PPA costs to be passed on to the end distribution
9 customers.

10 Q. Is the answer to my question yes?

11 MR. PETRICOFF: Objection, your Honor.
12 He answered the question.

13 MR. KUTIK: I'm not sure he did, your
14 Honor. That's why I'm asking the question again.

15 EXAMINER PRICE: Objection is overruled.
16 Please go ahead and answer the question.

17 THE WITNESS: Can you repeat the question
18 again?

19 EXAMINER PRICE: The question is, is the
20 answer to my question yes.

21 MR. PETRICOFF: Your Honor, may I have
22 the question before that question read back?

23 MR. KUTIK: I can repeat it, your Honor.

24 Q. (By Mr. Kutik) Isn't it true that you
25 believe the companies are seeking approval of the

1 PPA?

2 A. No, not without the other context that I
3 provided. I think if somebody asked me that
4 question, I would read the rest of what I said
5 before.

6 MR. KUTIK: Okay. May I approach, your
7 Honor?

8 EXAMINER PRICE: You may.

9 Q. Sir, I've handed you what appears to be a
10 transcript from a deposition that I took of you on
11 February 4, 2015.

12 MR. PETRICOFF: Your Honor, may I have a
13 moment to get my copy of the transcript?

14 EXAMINER PRICE: You may.

15 MR. PETRICOFF: I'm ready now.

16 Q. Is that correct, sir?

17 A. That's correct.

18 Q. And you recall having your deposition
19 taken, correct?

20 A. Correct.

21 Q. And at that deposition, you swore an oath
22 to tell the truth?

23 A. Yes.

24 Q. And at the deposition, I asked you
25 whether you wanted to take the opportunity after the

1 deposition was transcribed to read the record and
2 make any corrections?

3 A. Correct.

4 Q. And you took that opportunity; did you
5 not?

6 A. I did.

7 Q. Now, I want to refer you, sir -- I want
8 to refer you, sir, to page 78 of your deposition.
9 Are you there?

10 A. Not yet. Yes, sir.

11 Q. Starting at line 1, did you not answer
12 the following questions the following way:

13 Question: "All right. Now, I want to
14 ask you a question. I want to ask you a little about
15 what -- about your understanding about what the
16 companies have proposed. In this case is it your
17 understanding that the companies are seeking approval
18 of a purchase power agreement?"

19 Answer: "Yeah, I would call it a
20 purchase power agreement, yeah."

21 Question: "So the answer is yes?"

22 Answer: "Yes."

23 That was your deposition testimony,
24 correct?

25 A. Correct.

1 Q. Thank you. Now, you believe that the
2 companies proposed to have the PUCO set or approve
3 the price to be paid under the proposed PPA, correct?

4 A. The price under the PPA is not specified
5 until after -- until after you estimate it for each
6 year, and then there's a true-up with it. So I'm
7 not -- I don't think there's an actual dollar figure
8 upfront that you see.

9 Q. But RRS, as far as you're concerned, will
10 set the price that the companies will pay FES in the
11 future if approved, correct?

12 A. Yeah. It will determine the payments.

13 Q. So the answer is yes?

14 A. I'm worried about the last one where I
15 read into your question and you missed a piece of it,
16 so I'm trying to make sure I understand your question
17 and add what my interpretation of your question is.

18 Q. So, again, the answer to my question is
19 yes?

20 A. No. The answer is what I provided
21 earlier.

22 Q. Let me refer you again to your
23 deposition, sir. And let me refer you specifically
24 to page 78 again.

25 A. Okay.

1 Q. Did you not give the following answer to
2 the following question starting at line 23 on page
3 78.

4 Question: "All right. So your
5 understanding is the companies propose that the PUCO
6 set the price that FES, FirstEnergy Solutions, would
7 pay the companies, correct?"

8 Answer: "Not at this -- they will not do
9 that at this point, but at some point in the future
10 after they have already agreed to the concept, they
11 will."

12 Was that your answer, sir?

13 A. Yes, that's consistent with my answer
14 here.

15 Q. Well, we can agree to disagree on that,
16 sir. You believe that the companies would have no
17 risk of nonrecovery under this proposal, correct?

18 A. I believe they would have no risk of
19 nonrecovery for costs that are, I guess, within
20 normal costs, prudent-type costs, obviously, the
21 prudency-type review. But assuming that they do
22 everything reasonably, using terminology I know,
23 according to good utility practice and all that,
24 which may not be optimal, which is good utility
25 practice, it may not be good as a competitive market

1 would produce, yes, I think they would recover
2 100 percent.

3 Q. All right. So there is a risk, however,
4 that the Commission could find that certain costs
5 that the companies paid FES were not reasonable,
6 correct?

7 A. There is a risk.

8 Q. And if that happened, the companies then
9 would not recover that portion of the costs that they
10 paid to FES, correct? That's how you understand it
11 works, right?

12 A. Correct.

13 Q. Now, you understand that the companies
14 propose, as we just talked about, the PUCO would have
15 a right to audit the PPA's cost, correct?

16 A. Correct.

17 Q. But you think if the PUCO said that the
18 costs were improper, the companies wouldn't have to
19 pay FES for those costs, correct?

20 A. Yeah, in very general-speak.

21 Q. Now, you don't know whether under the
22 companies' proposal, the Commission would have the
23 ability to review the companies' bidding behavior,
24 that is, how the plant's output was offered into the
25 PJM markets, correct?

1 A. Correct.

2 Q. But you understand that the companies do
3 not propose that the PUCO establish or order the
4 manner in which the plants' capacity or energy would
5 be bid into the markets?

6 A. Yes.

7 Q. You understand that the companies will be
8 offering capacity, energy, and ancillary service into
9 those respective markets, correct?

10 A. Yes.

11 Q. And you don't know who owns the plants;
12 is that correct?

13 A. Not 100 percent certain, especially about
14 the OVEC plants.

15 Q. All right. And you don't know if the
16 companies propose one contract or more than one
17 contract, correct?

18 A. I do not know.

19 Q. You understand that the energy purchased
20 under the proposed transaction would not be used by
21 the companies to displace SSO load procured during
22 the auction, correct?

23 A. I might have to rethink that one a little
24 bit.

25 Could the reporter read it back one more

1 time just to make sure I don't answer this
2 incorrectly?

3 EXAMINER PRICE: Yes, please.

4 (Record read.)

5 A. When you say "energy," you're talking
6 capacity energy or just energy?

7 Q. Energy.

8 A. Yes.

9 Q. And you also understand that the energy
10 purchased by the companies would not be directly
11 provided to shopping customers?

12 A. Not directly, correct.

13 Q. Would it be fair to say that you don't
14 know if FES would be required under the proposed
15 transaction to use good utility practices?

16 A. It would be fair to say I don't know
17 that, but it would also be fair to say that most
18 things that you see written in the industry usually
19 refer to good utility practice.

20 Q. But you don't know?

21 A. I don't know.

22 Q. And you don't know whether if FES failed
23 to do so, the companies would not be obligated to pay
24 for any costs relating to those practices that were
25 not consistent with good utility practice?

1 A. Yeah, I don't know what the causes are
2 for that.

3 Q. And would it be fair to say that you
4 don't know if FES would be required under the
5 proposed transaction to pay upfront for any capital
6 expenditures?

7 A. No, I would not know that.

8 Q. And you don't know whether FES would be
9 prohibited under the proposed transaction from
10 accelerating depreciation unless the companies
11 agreed?

12 A. No, I would not know that either.

13 Q. Now, regarding rider RRS, you understand
14 that it's a generation-related rider, correct?

15 A. Yes.

16 Q. And if capacity prices went up, the rider
17 RRS charge would move in a positive direction for
18 customers, correct?

19 A. The RRS is related to energy and
20 capacity. So if the capacity went in one direction
21 so that the resources cleared more money there and
22 you still have to look at the energy market, the
23 capacity markets is less than 20 percent of the
24 marketplace. The energy and ancillary services are
25 the bulk.

1 Q. Let me refer you to your deposition, sir,
2 page 91.

3 Did you not give the following answer to
4 the following question starting at line 2:

5 Question: "That's correct. So that if
6 capacity prices went up, the way the companies have
7 proposed how rider RRS would work, the rider RRS
8 charge would move in a positive direction for
9 customers?"

10 Answer: "Correct."

11 That was your deposition testimony,
12 correct?

13 A. It has to be taken in context with line
14 9 --

15 Q. Is that your deposition testimony, sir?

16 MR. PETRICOFF: Your Honor, he's allowed
17 to finish.

18 EXAMINER PRICE: Number one, go ahead and
19 finish your answer.

20 A. It has to be taken in context with line 9
21 on page 90. Just because the price of capacity
22 market goes up doesn't mean that the costs of the
23 units weren't out of market. You would have to go
24 above a certain level is another reason.

25 Q. Are you done?

1 MR. PETRICOFF: Move to strike, your
2 Honor.

3 EXAMINER PRICE: Grant the motion to
4 strike.

5 You need to listen carefully to counsel's
6 questions and answer the question and only that
7 question. On redirect, Mr. Petricoff will have a
8 chance to ask any questions that might give the
9 Commission the context that you feel the Commission
10 should know or any other information you think the
11 Commission should know about the answer.

12 Q. So I read that correctly, correct?

13 A. You read my deposition correctly.

14 Q. Now, I'm going to ask you some questions
15 about PJM. Would it be fair to say that easily
16 160,000 megawatts of generation have been bid into
17 the PJM auctions for planning years 2015-'16 and
18 later?

19 A. I believe that's the approximate number,
20 yes.

21 Q. And you are familiar with the term
22 "regulated generation," are you not?

23 A. Yes.

24 Q. And would it be fair to say that
25 regulated generation would include generation owned

1 by vertically integrated utilities within PJM's
2 footprint but also located in nonretail choice
3 states?

4 A. Yes.

5 Q. And those generators are receiving
6 generation-related compensation through bundled
7 retail rates, correct?

8 A. Correct.

9 Q. And part of the rates paid by
10 distribution customers would, therefore, include a
11 generation-related component, correct?

12 A. I don't know how the individual retail
13 rates are structured, if they put that into an
14 individual component or if they bundle it with
15 something else.

16 Q. But in some part of the overall rates
17 that are paid by those customers would be generation
18 cost recovery?

19 A. Correct.

20 Q. And you also understand that some of the
21 generation that's owned by that regulated generation
22 that appears in PJM is bid into the PJM markets,
23 correct?

24 A. Correct.

25 Q. And with respect to the regulated

1 generation in PJM, Virginia Power or Dominion is one
2 example, correct?

3 A. Correct.

4 Q. Now, would it also be fair to say that
5 there is also plenty of generation PJM that offers
6 into the RPM auctions at zero?

7 A. Yes.

8 Q. And you would think that over -- or you
9 believe that over 50 percent of the generators do
10 that, correct?

11 A. That would be reasonable, yes.

12 Q. Now, I want to talk to you a little bit
13 about your comments on the minimum offer pricing
14 rule. You follow FERC's orders on that; do you not?

15 A. Yeah. I follow the outcome of them as
16 far as the concepts are concerned and how they relate
17 to business rules for us to follow, not the legality
18 of it.

19 Q. Sure. And you understand that the MOPR
20 currently does not apply to nuclear or coal
21 facilities, correct?

22 A. I might be incorrect then, because I
23 thought it applied to coal facilities, new coal
24 facilities.

25 Q. All right. So you believe that it

1 currently does not apply to nuclear facilities; is
2 that correct?

3 A. I think it would probably apply to a new
4 nuclear facility, but I may be wrong.

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

6 EXAMINER PRICE: You may.

7 MR. KUTIK: Your Honor, I'd like to hand
8 to the witness -- I don't intend to mark this,
9 because I believe it's something the Commission could
10 take administrative notice of -- an order of the
11 Federal Energy Regulatory Commission In the Matter of
12 the PJM Interconnection, LLC, and PJM Power Providers
13 Group versus PJM Interconnection, LLC, FERC Docket
14 Number ER11-2875-000, et al., an order issued on
15 April 12, 2011.

16 Q. (By Mr. Kutik) Sir, I've handed you the
17 order that I've just described. You recognize this
18 as an order of the FERC?

19 A. Yes.

20 Q. And I want to refer you to page 7. Are
21 you there, sir?

22 A. Yes, I am.

23 Q. And I want to refer you specifically to
24 page -- to footnote 16. Do you see that?

25 A. Yes, I do.

1 Q. Does that refresh your recollection as to
2 whether the MOPR applies to nuclear coal facilities?

3 MR. PETRICOFF: Your Honor, I want to
4 object. At this point it's the -- the foundation
5 question was did you recognize this as an order of
6 the Federal Energy Regulatory Commission? But we
7 don't know whether he has seen this, read this, or
8 understood it, and it's unfair to give him something
9 that he doesn't know and then ask him questions from
10 specific pages.

11 MR. KUTIK: I merely asked if it
12 refreshed his recollection, your Honor. Apparently
13 he was having problems with recalling what the detail
14 of the rule was.

15 MR. PETRICOFF: The point was he hasn't
16 said yet whether he recognized this.

17 MR. KUTIK: He doesn't have to recognize
18 it.

19 EXAMINER PRICE: Let's allow the
20 refreshed recollection question, and then we'll go on
21 from there.

22 A. I appreciate showing me this. No, I did
23 not realize this.

24 Q. Okay. So it does refresh your
25 recollection, sir, that the MOPR does not apply to

1 nuclear, coal facilities?

2 A. Yes.

3 Q. Would it also be true to say the MOPR for
4 such facilities is set at zero?

5 MR. PETRICOFF: Can I get a clarification
6 as to what facilities?

7 MR. KUTIK: Coal and nuclear.

8 A. I think it's -- based on what you just
9 showed me, I think the answer is yes, but MOPR
10 currently only applies to new generation.

11 Q. And you've anticipated my next question.
12 Would it be fair to say that the MOPR does not apply
13 to existing generation facilities?

14 A. Correct.

15 Q. And would it be fair to say that in April
16 of 2011, PJM proposed extending the MOPR for all new
17 resources after the BRA in which the resource first
18 cleared? Do you recall that?

19 A. Yes, I recall that.

20 Q. And the Commission rejected that,
21 correct, the FERC?

22 A. I don't recall if I've ever seen it, but
23 I believe you if you're implying that it did.

24 Q. Well, let me see if I can refresh your
25 recollection again.

1 A. I appreciate that.

2 Q. Could you look at page 52 of the
3 April 12, 2011 order that I just handed you.

4 A. Page which one? Which page?

5 Q. 52.

6 A. 52.

7 Q. In paragraph 172 to 174. And the
8 Commission found that PJM's proposed revision was not
9 just and reasonable?

10 A. Correct.

11 EXAMINER PRICE: Excuse me, Mr. Kutik.

12 Are you having your recollection
13 refreshed, or are you learning new things?

14 THE WITNESS: As far as in the
15 stakeholder process where that issue is discussed, I
16 know all about it, and I know the stakeholders wanted
17 to change it. I know the market monitor wanted to
18 change it.

19 Once it was filed at FERC, I'm learning
20 new things on what rulings necessarily came out.
21 Usually if a ruling comes out requiring us to do
22 something, then it comes back to the stakeholder body
23 and I see it again, and then we have to figure out
24 how to implement the order. If it doesn't get
25 approved, it doesn't necessarily come back to me to

1 figure out how to implement it with the other
2 stakeholders in PJM.

3 Q. (By Mr. Kutik) Now, are you aware also
4 that the FERC again considered proposals to revise
5 the MOPR in 2013?

6 A. There was at least two times, so, yeah,
7 2013 is probably correct.

8 Q. And one of those proposals was to include
9 it extending the mitigation period, correct?

10 A. Correct.

11 Q. And that was also rejected, correct?

12 A. Correct.

13 Q. Now, I want to talk to you about your
14 comments about what happened -- or your comments
15 about what you believe PJM would do if the Commission
16 here approves the companies' ESP; in particular, you
17 said that with respect to PJM's response to what
18 happened in New Jersey and Maryland.

19 Would it be fair to say that in both of
20 those states, it was proposed or established that the
21 generator would be in charge of bidding the capacity
22 and energy into the wholesale market?

23 A. They would be in charge of it, but they
24 would be directed to put it -- to offer it in in such
25 a way that it cleared.

1 Q. And in both states, the generator was
2 required to bid the capacity in a certain way that
3 you just mentioned, correct?

4 A. Correct.

5 Q. And in both states the rules establish a
6 specific price or formula by which the generation
7 would be paid, correct?

8 A. You mean outside the capacity market,
9 correct?

10 Q. Yes.

11 A. Yes.

12 Q. And in both states, the generation was
13 going to be new generation?

14 A. Correct.

15 Q. Now, it's also fair to say that in April
16 of 2011, the FERC decided to eliminate the exception
17 for state-mandated generation to some degree,
18 correct?

19 A. Correct.

20 Q. And the FERC was still concerned about,
21 quote, uneconomic entry, correct?

22 A. Correct.

23 Q. And that means new facilities, correct?

24 A. It means uneconomic new facilities.

25 Q. Now, the FERC has never suggested or made

1 any effort to apply MOPR to existing facilities,
2 correct?

3 A. Not in PJM, but I don't know elsewhere.

4 Q. Fair enough. And FERC has not approved
5 any effort to require -- well, strike that.

6 I want to talk to you a little bit about
7 the polar vortex. You don't know what FirstEnergy
8 plants were out during the polar vortex, correct?

9 A. I'm not sure of all the plants that were
10 out during the polar vortex, and the polar vortex
11 wasn't one day; but since then, I've heard of a
12 couple that have been out.

13 Q. Well, certainly you didn't know what
14 FirstEnergy plants were out during the polar vortex
15 when you wrote your testimony, fair to say?

16 A. Yes.

17 Q. And PJM has put -- has, in fact, adopted
18 proposals to change the rules as a result of the
19 polar vortex, correct?

20 A. Yes.

21 Q. And, particularly, that's the capacity
22 performance rules, correct?

23 A. And another filing that they did at FERC,
24 I don't know the docket numbers, but they changed
25 requirements about things like outside management

1 control excuses for not being there, but it wasn't
2 actually the CP filing. So they've done a few
3 things.

4 MR. KUTIK: Your Honor, may I have the
5 question reread, please?

6 EXAMINER PRICE: You may.

7 (Record read.)

8 MR. KUTIK: And the answer, please?

9 (Record read.)

10 MR. KUTIK: Move to strike, your Honor.

11 MR. PETRICOFF: Your Honor, if I may, I
12 think he's merely completing the answer to the
13 concept that they were looking at, what is being
14 covered by the CP rules, and he's indicating there's
15 important information that's relevant to what is in
16 and out, but it's not in the CP rule, per se.

17 EXAMINER PRICE: I'm going to avoid
18 answering by invoking the one Mulligan for this
19 particular witness.

20 But in the future, if you could please
21 focus on counsel's question and answer only that
22 question.

23 THE WITNESS: I will try my best.

24 Q. (By Mr. Kutik) So let's go back to my
25 question, which is isn't it true that one of the

1 proposals that was created as a result of the polar
2 vortex was the capacity performance proposal, which
3 ultimately became the capacity performance rule,
4 correct?

5 A. That question, correct.

6 Q. There's also a proposal to change the
7 offer cap to a percentage of net CONE, correct? To,
8 I guess I should say, a higher percentage of net
9 CONE, correct?

10 A. Correct.

11 Q. And you believe that these proposals and
12 this rule will put upward pressure on capacity
13 prices, correct?

14 A. Correct.

15 Q. You would agree with me that the
16 overwhelming majority of retirements in PJM in the
17 last five years have been coal-fired, correct?

18 A. Correct.

19 Q. You would also agree with me that the
20 overwhelming additions in PJM in the last five years
21 have been gas-fired units, correct?

22 A. Correct.

23 Q. And would you also agree with me that gas
24 plants represented proportionately a higher
25 percentage of plants with problems during the polar

1 vortex than other fuel-type plants?

2 A. Correct.

3 Q. You are aware, are you not, of some
4 hedging strategies for retail electric service
5 providers, correct?

6 A. Correct.

7 Q. And you know what they were for at least
8 three of your employers, Baltimore Gas & Electric,
9 Old Dominion Electric Cooperative and Direct Energy,
10 correct?

11 A. Yes.

12 Q. And I assume that you've become aware of
13 hedging strategies at your new employer, Calpine?

14 A. No, I have not.

15 Q. You were at least aware of hedging
16 strategies of the three other employers that you
17 have. And would it be fair to say that you don't
18 know for sure what other companies do with respect to
19 their hedging strategies?

20 A. I believe that's correct.

21 Q. And one strategy that you're aware of is
22 long-term bilateral contracts for fuel?

23 A. Correct.

24 Q. Another strategy is relying on your
25 own -- or that entity's own generation?

1 A. Correct.

2 Q. Another strategy is buying futures?

3 A. Correct.

4 Q. But NYMEX and other exchanges don't go
5 out very far, correct?

6 A. Correct.

7 Q. And your understanding is that the NYMEX
8 futures market is generally illiquid beyond three
9 years?

10 A. Correct.

11 Q. Now, you're not an economist, are you?

12 A. No, I'm not.

13 Q. And you've never done a market power
14 analysis for purposes of this case?

15 A. No, I have not.

16 Q. And you don't know if FES has been able
17 to exercise market power, correct?

18 A. No.

19 Q. Now, for the ATSI region, you don't
20 consider that to be a separate market, correct?

21 A. No.

22 Q. What I said was correct?

23 A. No, what you said is incorrect.

24 Q. Let me refer you, sir, to your
25 deposition, page 136.

1 MR. PETRICOFF: 136?

2 MR. KUTIK: Yes.

3 Q. Let me know when you're there, please.

4 A. I'm at page 136.

5 Q. And did you not provide the following
6 answer to the following question starting at line 24
7 at page 136:

8 Question: "Would you consider ATSI to be
9 a separate market?"

10 Answer: "No."

11 That was your deposition testimony, was
12 it not?

13 A. Correct.

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

15 EXAMINER PRICE: You may.

16 MR. KUTIK: Your Honor, we would like to
17 have marked for identification as Company Exhibit 81
18 an article from the Harvard Business Review called
19 "The Five Competitive Forces that Shape Strategy," by
20 Michael E. Porter.

21 EXAMINER PRICE: It will be so marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. Now, sir, in your testimony, you refer to
24 something called Porter's five forces, correct?

25 A. Correct.

1 Q. And that Porter is Michael E. Porter,
2 correct?

3 A. Correct.

4 Q. You are familiar or you've seen this
5 article before from Professor Porter?

6 A. I believe so.

7 Q. And between Professor Porter and you,
8 would he be more authoritative as to what those
9 forces are and how they should be used?

10 A. No.

11 Q. Okay. So you think that you're more of
12 an authority on Porter's five forces than Professor
13 Porter; is that your testimony?

14 A. No. You said in how they're used.

15 Q. Okay. So in terms of how they should be
16 used, you would be more authoritative than Professor
17 Porter; is that your testimony?

18 A. Not how they should be used, but how they
19 are used, which I think is your original question.

20 Q. No. My question is how they should be
21 used. Are you more authoritative than Professor
22 Porter on how Porter's five forces should be used?

23 A. Should be used?

24 Q. Yes.

25 A. In a general context.

1 Q. In any context.

2 A. To say yes and no. In a general sense,
3 he's more authoritative, and in a detailed sense as
4 far as applying them to the industry where you have
5 knowledge of the different forces at play, the person
6 in that market, industry, would be more
7 authoritative.

8 Q. Okay. But in terms of how the analysis,
9 the general structure of the analysis, you would
10 concede that Professor Porter be more authoritative
11 than you?

12 A. Yes.

13 Q. Now, would it be fair to say that these
14 forces that Professor Porter describes help companies
15 understand the structure of an industry and stake out
16 a position that is more profitable and less
17 vulnerable to attack?

18 A. In a general sense, yes, but I'm not sure
19 if it's granular enough to say that.

20 Q. So you're generally agreeing with my
21 proposition?

22 A. Probably the market within the industry.

23 Q. Well, let me refer you, sir, to page 2 of
24 this document, the page that's numbered 2. You
25 state -- you see the top, sir, there's a statement

1 that says, "awareness of the five forces can help a
2 company understand the structure of its industry and
3 stake out a position that is more profitable and less
4 vulnerable to attack."

5 A. I see that.

6 Q. Would you agree with that?

7 A. Yes. From a general high level, yes.

8 Q. Would you also agree that good industry
9 analysis does not just list pluses or minuses, but
10 sees an industry in overall systemic terms?

11 A. Yes.

12 Q. And when using Porter's five forces,
13 analysts look at industry structure quantitatively
14 rather than be satisfied with lists of quantitative
15 factors?

16 A. Yeah, I believe that.

17 Q. Now, defining the industry is important
18 when using Porter's five forces, correct?

19 A. Correct.

20 Q. And the industry here is the PJM
21 wholesale market for electricity, correct?

22 A. That's the market in the industry.

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

24 A. No.

25 Q. Let me refer you to your deposition, sir,

1 page 167. Are you there, sir?

2 A. Not yet. One second. I am there.

3 Q. Did you not give the following answers to
4 the following questions starting at line 16:

5 Question: "In your testimony when you
6 are discussing Porter's five factors, what industry
7 are you discussing?"

8 Answer: "We're discussing market models
9 within the electric utility industry."

10 Question: "Okay. Are you talking about
11 the wholesale market for electricity?"

12 Answer: "Yes."

13 Question: "Are you talking about the PJM
14 wholesale market for electricity?"

15 Answer: "Yes."

16 That was your deposition testimony, was
17 it not?

18 A. Correct.

19 Q. And you would agree with me, would you
20 not, that wholesale power is not a substitute for
21 wholesale power?

22 A. I don't think that that's -- you just
23 want me to say yeses and nos. Can you repeat the
24 question again?

25 Q. Wholesale power is not a substitute for

1 wholesale power?

2 A. Wholesale power can be a substitute for
3 wholesale power.

4 Q. Let me refer you to your deposition, sir,
5 page 168. Did you not give the following answer to
6 the following question starting at line 16:

7 Question: "That wasn't my question. My
8 question is, is he -- is a substitute for wholesale
9 electric power wholesale electric power?"

10 Answer: "No."

11 That was your deposition testimony, was
12 it not?

13 A. Yes.

14 Q. Now, would it also be fair to say that
15 customers of wholesale power in PJM are the LSEs?

16 A. Largely, yes.

17 Q. And the bargaining power of load-serving
18 entities is influenced by the PJM's rules, correct?

19 A. Yes.

20 Q. And suppliers to generators would be
21 entities like fuel suppliers or suppliers of
22 machinery for plants, correct?

23 A. I apologize. I zoned out for a second.
24 I was thinking about the last question.

25 Q. Sure. Can it be read, please, your

1 Honor?

2 EXAMINER PRICE: Yes.

3 (Record read.)

4 A. Correct.

5 Q. Now, on a different topic, you're
6 familiar with the RMR process, correct?

7 A. A level of familiarity.

8 Q. You have a general familiarity?

9 A. Yes.

10 Q. And you understand that part of that is a
11 notice requirement that a generator must give PJM
12 before the unit retires, correct?

13 A. Correct.

14 Q. And that's a three-month requirement,
15 correct?

16 A. Correct.

17 Q. And you don't know if the PUCO could
18 require a longer notice period, correct?

19 A. No, I don't know.

20 Q. And you would agree with me, would you
21 not, that Ohio has a role to play in the development
22 of generation within its borders?

23 A. Yes.

24 Q. And a state might have an interest in
25 having a generation plant with the jobs that a

1 generation plant would support, correct?

2 A. I assume they would.

3 Q. And a state might also have an interest
4 in reliability for its citizens, correct?

5 A. Yes.

6 MR. KUTIK: May I have a minute, your
7 Honor?

8 EXAMINER PRICE: You may.

9 Q. Is it your understanding, sir, that the
10 RMR is voluntary?

11 A. Yes.

12 MR. KUTIK: I have no further questions.
13 Thank you, sir.

14 EXAMINER PRICE: Thank you.

15 Mr. Kurtz?

16 MR. KURTZ: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Kurtz:

20 Q. Good afternoon, sir.

21 A. Hi. How are you doing?

22 Q. To the best of your knowledge, in New
23 Jersey and Maryland schemes, scenarios that you refer
24 to in your testimony, would you agree that the
25 purpose of those programs was to affect wholesale

1 capacity pricing?

2 A. That is my opinion, but I can't -- I
3 think that's what you're asking me. If you're asking
4 me do I have proof of that, no, I do not.

5 Q. Is that your understanding of why the
6 stakes did that, to reduce capacity pricing in those
7 zones?

8 A. It's more my theory than understanding.

9 Q. Okay. What is the purpose of the minimum
10 offer price rule?

11 A. It's to prevent market power by buyers to
12 artificially drive down the costs that the overall, I
13 guess, market entity is paying by actually spending
14 money on a resource and offering it in below its
15 actual costs.

16 Q. I think you agreed with Mr. Kutik that
17 the minimum offer price rule does not apply to any
18 existing power plants?

19 A. Correct.

20 Q. And the minimum offer price rule does not
21 apply to new wind generation?

22 A. Correct.

23 Q. Does not apply to new solar?

24 A. Correct.

25 Q. Does not apply to new coal?

1 A. Correct.

2 Q. And it basically only applies to new gas
3 combustion turbines and combined cycles, correct?

4 A. Correct.

5 Q. Calpine Corporation, your current
6 employer, is a major owner of merchant power plants;
7 is that correct?

8 A. Yes.

9 Q. All else equal, would an increase in
10 capacity pricing in the PJM markets increase
11 Calpine's profits?

12 MR. PETRICOFF: Your Honor, I'm going to
13 object. He's not here on behalf of Calpine.

14 Q. Who are you here on behalf of?

15 A. RESA.

16 MR. KUTIK: Well, your Honor, it goes to
17 credibility.

18 MR. KURTZ: I'll just change the
19 examples.

20 Q. Do any of the RESA members own
21 generation, or was that just the P3 Group in this
22 proceeding?

23 A. You know, I'm not sure if some of the
24 RESA members -- oh, wait. Yeah, some of them do.

25 Q. Okay. As to those RESA members that own

1 generation, would an increase in wholesale capacity
2 pricing improve their profits, all else equal?

3 A. All else equal, yes.

4 Q. And then by the same token, an increase
5 in wholesale capacity prices would drive up rates
6 that consumers ultimately pay, all else equal?

7 A. No, not necessarily, because you used the
8 word "ultimately," because ultimately implies
9 long-term.

10 Q. No. I meant if the cost of capacity goes
11 up that the load-serving entities have to pay to
12 provide service, wouldn't that result in higher
13 prices to consumers?

14 A. No, not necessarily in the long term,
15 because the capacity construct is constructed in
16 behavior that actually -- when you get more
17 generation in the capacity market, especially
18 reliable generation -- I'm going off topic. Do you
19 want me to keep going?

20 Q. Not in the long term, but in the short
21 term certainly would raise prices on consumers,
22 correct?

23 A. Correct.

24 Q. You mentioned there's 900 stakeholders in
25 the PJM process.

1 A. Over 900.

2 Q. What committees are you on?

3 A. I'm on quite a few. I probably can't
4 recall them all. Now, although there's 900 members,
5 I will point out they don't necessarily all go to all
6 the meetings, but there's a lot there. The members
7 committee is the highest level committee at PJM. I'm
8 on that, and the committee below --

9 Q. Stop there. How many members are on the
10 member committee?

11 A. The member committee is made up of voting
12 members as opposed to members. Voting -- well,
13 members attend too, but the voting members are what
14 we kind of count. Voting members -- I'm not sure. I
15 think it's 200 something.

16 Q. So whenever there's an important
17 proposal, those 200 members vote yes or no on the
18 proposal?

19 A. If they show up, yeah.

20 Q. So are there -- when there's a member
21 committee meeting, how many members typically show up
22 for an important meeting?

23 A. Well, there's two -- I'm sorry. I forgot
24 the question.

25 Q. How many members show up to an important

1 member meeting typically?

2 A. Let me see. I've never looked around to
3 count it. There's two ways of showing up. One is
4 via teleconference, and the other way is in person.
5 I think for a typical MC, probably see, I'm guessing,
6 maybe 80 or so voting members.

7 Q. So there's a very large conference room
8 and some people participate by teleconference?

9 A. Correct.

10 Q. Okay. And so during an important vote,
11 do you confer with other members to see how they're
12 going to vote and how you're going to vote? Is there
13 any prohibition against that?

14 A. There's no prohibition against that.

15 Q. So is there a certain amount of
16 negotiation that goes on?

17 A. Yes.

18 Q. Why do people refer to the PJM capacity
19 process as a market?

20 A. They don't. They do sometimes, but when
21 you get down to the details of it, most people refer
22 to it as a capacity construct.

23 Q. Okay. Because it isn't really a true
24 market. It's maybe a construct intended to get to
25 market-based results, but it's not a market like

1 there was a market for most products?

2 A. No. You have a supply stack in the
3 capacity market which is like a typical market, but
4 only in some respects. Most of the time, the
5 capacity market -- I call it market. If I misuse the
6 terms, I apologize, but that's how we all just talk
7 nowadays.

8 So with the capacity, you get a supply
9 stack, and even that is usually cost-mitigated
10 offers. If you had a true market, you would have
11 competitive forces disciplining those offers which
12 would lead to the need for less cost capping.

13 I think there's been two incremental
14 auctions where they actually had the supply stack,
15 not BRAs but incremental auctions where they actually
16 had a supply stack where you weren't cost mitigated,
17 which would be more market-like. And then the other
18 reason it's more of a construct, which is what most
19 people refer to, is because the demand curve is
20 administratively set.

21 Q. Is the starting point for the demand
22 curve, the administratively set demand curve, the net
23 CONE?

24 A. CONE. It's cost of new entry.

25 Q. Is that the starting point for the

1 development of the demand curve?

2 A. It is on the Y axis, but not on the X
3 axis.

4 Q. Net CONE is the net cost of new entry, so
5 it's the cost of a combined cycle plant, the capital
6 cost, the property taxes, the carrying charges, the
7 depreciation, less forecasted market revenues for
8 energy and capacity?

9 A. Yeah. They do a hypothetical reference
10 resource to determine that. It's not always a CC,
11 though. Sometimes it's a CT.

12 Q. I said combustion turbine. If I said --

13 A. It's not always a CT then. Sometimes
14 it's a CC.

15 Q. Which would change all the economics?

16 A. Actually, I don't personally -- I mean
17 I'm not an analyst I think as someone was pointing
18 out earlier. But it doesn't appear to me that it
19 changes things a whole lot between which one you
20 pick.

21 Q. So is it fair -- the administratively
22 determined demand curve, is it fair to say that
23 dozens or scores or hundreds of assumptions go into
24 that?

25 A. I'm thinking through what they are. Just

1 give me a second.

2 Q. Just as to net CONE, wouldn't it be fair
3 that there are dozens or scores of assumptions that
4 go into that calculation?

5 A. Yes.

6 Q. And then once you start there, aren't
7 there many more assumptions that have to be made
8 about the slope of the demand curve?

9 A. Well, it's administratively set. But in
10 administratively setting it, yeah, you have to -- I
11 don't know if you make assumptions or you set it to
12 produce a certain type of outcome. Like the less
13 slope it has, the more stability it's supposed to
14 give to the capacity prices from year to year.
15 Things like that come into play.

16 Q. So this is why PJM sometimes decides
17 whether to go with a vertical or sloping demand
18 curve, and if there's a slope, what the slope should
19 be and should there be ceilings, that type of thing.

20 A. They actually changed the demand curve
21 not too long ago and pushed it out from net CONE and
22 made it either convex or concave.

23 Q. Can you think of any other commodity in
24 the United States that is administratively set with
25 such interaction as the capacity in PJM? There's no

1 committee setting natural gas prices or oil prices or
2 anything like that, is there?

3 A. No. I'm thinking back to
4 telecommunication days, there might have been a
5 parallel with the AT&T -- a long time ago, though.
6 They might have.

7 Q. Anything recent or current?

8 A. For commodities? I mean, if you look
9 globally, I suppose, you know, NOPEC is a cartel, but
10 let's just keep it limited to the United States. In
11 the U.S., I can't think of anything.

12 MR. KURTZ: Thank you, sir. No more
13 questions.

14 EXAMINER PRICE: Mr. McNamee?

15 MR. MCNAMEE: No questions.

16 EXAMINER PRICE: Ms. Addison?

17 EXAMINER ADDISON: No questions.

18 EXAMINER PRICE: Ms. Chiles?

19 EXAMINER CHILES: No questions.

20 EXAMINER PRICE: Mr. Petricoff, redirect?

21 MR. PETRICOFF: Could we have five
22 minutes?

23 EXAMINER PRICE: You may. Let's go off
24 the record.

25 (Recess taken.)

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

3 Mr. Petricoff, redirect?

4 MR. PETRICOFF: Thank you, your Honor.

5 - - -

6 REDIRECT EXAMINATION

7 By Mr. Petricoff:

8 Q. Mr. Scarpignato, do you remember earlier
9 this afternoon when Mr. Kutik asked you if you were
10 familiar with regulated generators like Virginia
11 Power, and I think you gave a longer list?

12 A. Yes.

13 Q. What is the difference between in your --
14 what is the difference that you see between a
15 regulated generator like Virginia Power and the kind
16 of subsidies that would flow under rider RRS in Ohio
17 as proposed?

18 A. In Dominion, Virginia Power pay it
19 through to ratepayers, and in Ohio it sounds like it
20 would be paid more by ratepayers. But in Dominion,
21 they get a return based on an individual filing. In
22 other words, if they have a rate approved and during
23 the year they don't make money with the units or as
24 much they expected to make, whatever return they were
25 looking for, they can't just go and collect that from

1 the ratepayers retroactively for that year. So
2 they're wearing risk in the marketplace.

3 Eventually they can go in for a rate
4 case, but when I was with, for instance, Baltimore
5 Gas & electric, it was a long period of time before
6 they would go in for retail rate cases. It wasn't
7 every year. This is formulaic in Ohio. Every year
8 they're going to update and true-up their costs so
9 that their risk is drastically reduced for them?
10 FirstEnergy Solutions Company in getting the revenues
11 and returns it's looking for. It's guaranteed.

12 In most of the other regulated states,
13 you can argue that it's being paid for by somebody
14 else, but they're not necessarily wearing the risk.
15 It would be individual rate cases, not necessarily
16 every year, that would look at that, and you could --
17 if one of the Dominion resources did not clear RPM
18 and the Commission felt like maybe it wasn't a wise
19 decision by Dominion, they may not allow that in its
20 future retail rates.

21 Here, whether it clears RPM or not,
22 whether it was a good resource to pick or not, you're
23 guaranteeing that you're going to make those
24 customers whole to their guaranteed rate of return if
25 they made prudent decisions. Lots of people make

1 prudent decisions based on the information they had
2 at the time, turn out not to be the right market
3 solutions, and that's not necessarily not prudent.
4 But in Ohio, those types of charges might actually be
5 passed on -- looks like they would be passed on to
6 the ratepayers, because I don't know that it fails a
7 prudence review of any sort. So that's kind of the
8 major difference.

9 Once again, in other states where they
10 have regulated generation, they're not necessarily --
11 the ratepayers are not necessarily wearing the risk
12 that that generation is uneconomic in the wholesale
13 markets. In Ohio, the ratepayers are wearing that
14 risk.

15 Q. Earlier Mr. Kurtz asked you a question
16 about the effects of an increase in capacity prices.
17 Would an increase in capacity prices at PJM
18 necessarily result in a higher credit or reduced
19 subsidies to the retail customers under rider RRS?

20 A. I recall being asked -- I think this is
21 the question, whether CP -- with CP there would be
22 more pressure for capacity prices to be higher, and I
23 answered that, yes, there would be more pressure for
24 higher capacity prices. Higher capacity prices would
25 result in an increased likelihood that the PPA units,

1 I'll call them that, would clear an RPM. It doesn't
2 guarantee they'll clear, but it increases the
3 likelihood that they will clear. And even if they
4 have costs in excess and there's no MOPR and all
5 that, there's still the chance that the credit is not
6 higher, and there's still a very good chance that
7 the -- if it's not a credit, there would be a charge,
8 that the charge is more; in other words, it would be
9 a negative impact.

10 And the reason for that is the capacity
11 market makes up less than 20 percent of the PJM
12 system. I believe last time I looked, I think for
13 2014, it was about 12.5 percent. But you could look
14 it up in the State of the Market report that was
15 distributed earlier.

16 So just because you have increased
17 capacity revenues which would reduce any rider
18 charges that have to occur doesn't mean your actual
19 overall costs are less. It doesn't necessarily -- it
20 doesn't necessarily reduce the rider charge or
21 increase the rider credit.

22 And the reason for that is the energy and
23 ancillary service markets. If you have bad
24 generation -- I'm using the term "bad" kind of
25 loosely here. If you have bad generation that clears

1 in the capacity market and you force it to clear
2 rather than something new that's highly efficient in
3 the energy market and has redundant backup and things
4 like that that are types of reliability requirements
5 out of CP because it's relatively newer.

6 These energy costs under CP can actually
7 be higher. The actual unit that you cleared in the
8 capacity market might have less run hours than a
9 newer source that could displace it in the capacity
10 market and it might also not be available in a time
11 of need, and there's lots of issues with that.

12 So when we calculate the credit, it's not
13 just did you get more from the capacity market. It's
14 the combination of the capacity market with the
15 energy market. A resource that is not highly
16 efficient is likely to increase the energy costs.

17 Q. And the answer you just gave, you
18 indicated that capacity was 20 percent. What is the
19 other 80 percent?

20 A. Well, the other approximately 80 percent
21 is the energy and ancillary services market, is what
22 I'm referring to. I'm not looking transmission and
23 distribution and those types of things. I'm looking
24 more at the wholesale marketplace. Maybe I'm
25 looking -- I'm not looking at distribution charges

1 and those types of taxes.

2 Q. And when you're talking about 80 percent
3 for energy and ancillary services and 20 percent,
4 this is the wholesale energy -- total wholesale
5 energy price?

6 MR. KUTIK: Objection. Leading.

7 EXAMINER PRICE: Sustained.

8 Q. Could you explain to us here what --
9 because you've talked about a price. What price were
10 you describing when you had these percentages?

11 A. It's not a price. It's the amount of
12 revenue that goes towards it and the amount of
13 revenue in the wholesale electric marketplace that
14 goes towards capacity payments is less than
15 20 percent, 20 percent or less. It changes from year
16 to year. The energy and ancillary service
17 statements, which are also part of the electric
18 wholesale costs, make up approximately the other
19 80 percent.

20 So you could have -- you could clear an
21 expensive unit in the capacity market by offering it
22 in below its cost and you have some subsidy to make
23 it up. That subsidy, you could say there's a
24 tendency for that subsidy to be reduced by the higher
25 capacity price from CP, but the bulk of your costs

1 are in the energy and ancillary energy market, so a
2 small move there with a more inefficient unit that
3 you're keeping around actually increases your --
4 potentially on the energy side, it's a very negative
5 impact, especially if you don't have run hours.

6 Q. One last question. Earlier you were
7 asked about whether the new capacity procedure would
8 increase revenues for generators. Would the new
9 rules -- could the new rules actually decrease
10 revenues for generators?

11 A. Can I assume we're talking about the
12 capacity performance rules?

13 Q. Yes.

14 A. Yes. With the question regarding
15 capacity performance rules, when you look at it very
16 narrowly, and you say what is the impact going to be
17 on the capacity market? You will see the capacity
18 market prices tend to be higher, as was indicated
19 earlier, which would reduce the subsidy-type effect.

20 The problem is CP also introduces other
21 rules, and we talk about the energy market. Well,
22 the energy market and the CP penalties -- there's
23 something called CP penalties, performance penalties,
24 basically. If you're not there when you're needed
25 during an emergency event in PJM, you get charged

1 over \$3,000 per megawatt-hour for every hour you're
2 not there.

3 So if you're looking -- if you're looking
4 at a unit that's, say, 1,000 megawatts, something
5 similar to Besse, and it happens not to be there
6 during a capacity performance event, that resource or
7 whoever is entering into the market -- not the
8 resource. Whoever is entering into the PJM market,
9 whoever sold it as a capacity resource -- and I don't
10 know if they have bilateral agreements to deal with
11 this or not, but it's something that should be
12 checked out -- those CP penalties in 20 hours of
13 emergency, in just 20 hours would erase 100 percent
14 of your capacity revenues.

15 In 30 hours of an emergency, which we've
16 had in years like 1994 when there was rotating
17 blackouts in PJM, you would eliminate 150 percent of
18 your capacity revenues for that resource. So for
19 1,000 megawatts of resources that don't show up, the
20 capacity performance penalty could be as high as
21 about -- I believe it's about \$300 million.

22 If you think of the polar vortex, the
23 uplift that everybody complained about was
24 approximately \$500 million. This is a huge sum for
25 \$1,000 resource not being there -- I mean a

1 1,000-megawatt resource not being there.

2 So the penalties would have to be paid by
3 that resource, and I don't know if the ratepayers
4 ultimate pay that penalty, but that's an interesting
5 question.

6 Now, let's look at the flip side of that.
7 Now, let's pretend -- not the flip side, but another
8 side, the other side to the same exact issue. Now,
9 let's look at FirstEnergy, and let's pretend they
10 have other units in Ohio besides the PPA units.
11 Let's say that Besse trips, and those other units in
12 that FirstEnergy Solutions have actually
13 overgenerated. They produce more than their unforced
14 capacity times the P factor, and when they do that,
15 they'll actually get a bonus payment. So you have
16 the ratepayers in a situation I'm describing, you
17 have the ratepayers paying millions, maybe hundreds
18 of millions of dollars to FirstEnergy Solutions for
19 overperforming with other units.

20 So Besse underperformed, paid the
21 penalties. Does that mean -- I don't know the answer
22 to this. Does that mean the ratepayers are paying
23 that CP penalty? Because it is huge. We talked
24 about a capacity market being about \$2.5 billion.
25 Now I'm talking about penalties of about 300 million

1 for one unit. So those penalty dollars might
2 actually go to some of the other FirstEnergy
3 resources. If they overperformed, it definitely
4 will.

5 I don't know if there's a mechanism in
6 order to get some of that money back or not, but with
7 capacity performance in place, you really need to
8 look at what's happening with the capacity
9 performance penalties and what's happening with the
10 capacity performance bonuses.

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

13 EXAMINER PRICE: You may.

14 (Record read.)

15 MR. PETRICOFF: I have no further
16 questions, your Honor.

17 EXAMINER PRICE: Thank you.

18 Mr. Randazzo?

19 MR. RANDAZZO: No questions. Thank you.

20 EXAMINER PRICE: Mr. Mendoza?

21 MR. MENDOZA: No questions, your Honor.

22 EXAMINER PRICE: Mr. Kurtz?

23 MR. KURTZ: No.

24 EXAMINER PRICE: Mr. Sauer?

25 MR. SAUER: No questions.

1 Mr. Kurtz?

2 MR. KURTZ: I actually do have a few
3 questions.

4 - - -

5 RECROSS-EXAMINATION

6 By Mr. Kurtz:

7 Q. Is it, of course, true that any unit that
8 clears the capacity performance market could be
9 subject to penalties?

10 A. Correct.

11 Q. But it's also true that they could be the
12 recipient, they could be the recipient of bonus
13 payments also, correct?

14 A. Yeah. If they asked me about the
15 reception of revenues, I would have brought that up.
16 The other side, like you said, is you could be the
17 recipient of revenues, and if you get those extra
18 revenues, again, I don't know what happens to them,
19 but it's really something I think the Commission
20 should look at.

21 Q. Well, the construct is whatever units are
22 penalized during an emergency hour that funds a pool
23 of money that goes to the units that did perform in
24 the form of bonus payments.

25 A. Not that performed, that overperformed.

1 Q. Excuse me. That overperformed in the
2 form of bonus payments, so it's a closed loop.
3 Penalties fund the bonuses, and so if these units
4 receive bonus payments, they could get lots of extra
5 money.

6 A. Yeah, they could get extra -- they could
7 get extra money, but it's not a closed loop. Some of
8 the penalties that -- for instance, if Besse wasn't
9 available, it doesn't even have to trip, it just has
10 to not be available, would go to other FirstEnergy
11 Resources and other PPAs.

12 Q. It's a closed loop within PJM. PJM
13 doesn't keep any of the penalty money. It flows it
14 all back to the overperformers in the form of bonus
15 payments?

16 A. Correct. PJM, although it's an LLC and
17 could operate at a profit, it operates at a zero
18 profit. It's not a nonprofit, but operates at zero
19 profit.

20 Q. So the penalty bonus structure would be
21 good for the PPA units if they overperform and could
22 be bad if they underperform.

23 A. Well, if they overperform, it could be
24 good. If they underperform, it could be good for
25 other units outside of them.

1 Q. It would be bad for the PPA units if they
2 underperformed during an emergency because they could
3 be penalized?

4 A. The PPA units are still owned by
5 FirstEnergy Solutions, so I get a little confused. I
6 understand your questions. I just don't have the --
7 I don't know the answer to some of these.

8 Q. Well, you do agree that the PPA units
9 could receive bonus payments or be assessed penalty
10 charges?

11 A. Correct.

12 Q. One last question. The regulated units
13 in Virginia or elsewhere in PJM that operate on a
14 cost-of-service basis, those units could actually
15 achieve more than the authorized rate of return, in
16 other words, they could overearn as well as
17 underearn?

18 A. That's correct. That's part of a market
19 mechanism. That's competition at its best. That
20 is --

21 Q. I was talking about the cost-of-service
22 units like Dominion.

23 A. Right.

24 Q. So that's not competition. I mean, they
25 could overearn or underearn the regulated return?

1 A. They're incentivized to operate more
2 efficiently so they could overearn. Eventually there
3 will be regulatory lag where somebody -- and this is
4 why I get into the ultimate question. So over time
5 you go back in for a rate case, and because you have
6 a natural inclination to perform better, as you say
7 make extra earnings, when you go in for your next
8 rate case, that's kind of seen, even if it's five
9 years down the road. So sometimes in regulatory, I
10 take a longer-term look at things, but I understand
11 what you're saying.

12 Q. Did your counsel tell you about the
13 multiple commission factors that they will review in
14 approving a PPA?

15 MR. PETRICOFF: I was going to object.

16 MR. KURTZ: I'll withdraw the question.

17 MR. PETRICOFF: What his counsel told him
18 is privileged.

19 MR. KURTZ: That's fine.

20 Q. (By Mr. Kurtz) Do you know that in
21 evaluating a PPA the Commission will look at the
22 shareholder/ratepayer balance of risk and reward?

23 A. I don't know it, but I assume they would.

24 MR. KURTZ: Okay. Thank you.

25 EXAMINER PRICE: Mr. Kutik.

1 - - -

2 RECROSS-EXAMINATION

3 By Mr. Kutik:

4 Q. Now, it's correct, is it not, that having
5 regulated generation in PJM offer its generation into
6 the PJM markets is acceptable under the PJM rules,
7 correct?

8 A. Existing generation?

9 Q. Yes.

10 A. Yes.

11 Q. There's no prohibition if those units
12 offer at zero?

13 A. There's no prohibition.

14 Q. And that's allowed by the market rules,
15 correct?

16 A. Yes.

17 Q. Now, you haven't been involved in a base
18 rate case in Ohio, have you?

19 A. No.

20 Q. In your discussions about Virginia Power,
21 would it be fair to say in following your answer to
22 Mr. Kurtz, that if Virginia Power received additional
23 or higher revenues year to year as a result of their
24 participation in PJM markets, the customers would not
25 receive any credit for those, correct?

1 A. No, not correct.

2 Q. All right. There is no rider that you're
3 aware of that would allow them to enjoy that credit,
4 correct?

5 A. Correct.

6 Q. Now, would it be fair to say that you're
7 not familiar with the details of the operations of
8 the FES plants?

9 A. That's correct.

10 Q. So you don't know the relative efficiency
11 of Davis-Besse or Sammis, do you?

12 A. No, I do not.

13 Q. And would it also be fair to say since
14 you haven't read any documentation regarding the
15 outline of the proposed transaction in this case, you
16 don't know whether any capacity performance penalties
17 or any capacity performance bonus payments would go
18 to the companies or FirstEnergy Solutions, correct?

19 A. I think I know, but I'm not 100 percent
20 certain.

21 Q. So you don't know?

22 A. Not 100 percent certain. I'm not
23 100 percent certain of those things.

24 Q. Now, you were aware, were you not, of the
25 capacity performance proposal when you wrote your

1 testimony in this case?

2 A. Not the current construct. It's
3 changed --

4 Q. That's not my question, sir. You were
5 aware of the capacity performance proposal, correct?

6 A. Which proposal?

7 Q. Were you aware of a capacity performance
8 proposal that PJM was considering?

9 A. Yes.

10 Q. And that was in existence at the time you
11 wrote your testimony, was it not?

12 A. That one was.

13 MR. KUTIK: That's all the questions I
14 have. Thank you, your Honor.

15 EXAMINER PRICE: Thank you.

16 Mr. McNamee?

17 MR. MCNAMEE: No, thank you. No
18 questions.

19 EXAMINER PRICE: Thank you. You're
20 excused.

21 Mr. Petricoff?

22 MR. PETRICOFF: At this point, your
23 Honor, we move to introduce into evidence RESA
24 Exhibit 1 and RESA Exhibit 1A.

25 EXAMINER PRICE: Any objection?

1 MR. KUTIK: Subject to motion to strike,
2 your Honor.

3 EXAMINER PRICE: Subject to motion to
4 strike.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 MR. KUTIK: Your Honor, we move for the
7 admission of Company Exhibit 81.

8 EXAMINER PRICE: Any objection?

9 That will be admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 EXAMINER PRICE: With that, we will
12 adjourn for the evening. We'll commence again at
13 9:00 with Mr. Haugen and Mr. White.

14 Thank you.

15 (The hearing adjourned at 4:50 p.m.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is
3 a true and correct transcript of the proceedings
4 taken by me in this matter on Tuesday, October 6,
5 2015, and carefully compared with my original
6 stenographic notes.

7
8
9 Carol A. Kirk, RPR, RMR.

10 (CAK-79476)

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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 10/06/15 - Volume XXIV electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.