

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PROCEEDINGS

before Mr. Gregory Price, Ms. Mandy Chiles, and  
Ms. Megan Addison, Attorney Examiners, at the Public  
Utilities Commission of Ohio, 180 East Broad Street,  
Room 11-A, Columbus, Ohio, called at 9:00 a.m. on  
Thursday, October 8, 2015.

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VOLUME XXVI

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1 Thursday Morning Session,  
2 October 8, 2015.

3 - - -

4 EXAMINER PRICE: Good morning. The  
5 Public Utilities Commission has set for hearing at  
6 this time and place Case No. 14-1297-EL-SSO being In  
7 the Matter of the Application of Ohio Edison Company,  
8 the 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 Gregory Price. With me are  
13 Mandy Willey Chiles and Megan Addison. We're the  
14 Attorney Examiners assigned to preside over today's  
15 hearing.

16 We'll dispense with appearances again.

17 Mr. Petricoff, you may call your next  
18 witness.

19 MR. PETRICOFF: Thank you, your Honor.  
20 At this time we would like to call to the stand Lael  
21 Campbell on behalf of Constellation NewEnergy and  
22 Exelon Generation, LLC.

23 (Witness sworn.)

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

1 THE WITNESS: Lael Campbell, 101  
2 Constitution Avenue, NW, Washington, DC.

3 EXAMINER PRICE: Thank you. Please  
4 proceed, Mr. Petricoff.

5 MR. PETRICOFF: Your Honor, at this time  
6 I'd like to have three exhibits marked. The first,  
7 we'll call them, Exelon Exhibit No. 1, which is the  
8 direct prepared testimony of Lael Campbell filed on  
9 December 22nd.

10 EXAMINER PRICE: Be so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. PETRICOFF: Second I'd like to have  
13 marked as Exelon Exhibit No. 2, the supplemental  
14 direct testimony of Lael Campbell, public version.

15 EXAMINER PRICE: Be so marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. PETRICOFF: And then I guess in  
18 keeping with the numbering convention we've used  
19 before, I'd like to have marked as Exelon Exhibit No.  
20 2A, the confidential version of the supplemental  
21 testimony of Lael Campbell.

22 EXAMINER PRICE: We'll mark that 3  
23 Confidential.

24 MR. PETRICOFF: That's fine, your Honor.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MR. PETRICOFF: That's fine. Thank you,  
2 your Honor. May I have a moment. I want to give  
3 these to the court reporter.

4 - - -

5 LAEL CAMPBELL  
6 being first duly sworn, as prescribed by law, was  
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Petricoff:

10 Q. Mr. Campbell, do you have with you what  
11 has just been marked as Exelon Exhibits 1, 2 and 3?

12 A. I do.

13 Q. And just out of interest, did you bring  
14 anything else to the stand besides that direct  
15 prepared testimony?

16 A. I also have a copy of my deposition  
17 transcript.

18 Q. Anything else?

19 A. That is it.

20 Q. Were these exhibits, Exelon Exhibits 1,  
21 2, and 3, prepared by you or under your direction?

22 A. Yes.

23 Q. Are there any amendments, changes, or  
24 updates that are required?

25 A. Not that I'm aware of.



1           Q.    If I were to ask you today the same  
2           questions that are in Exhibits Exelon 1, Exelon 2,  
3           and Exelon 3, would your answers be the same?

4           A.    Yes.

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

7           EXAMINER PRICE:  Thank you.

8           MR. KUTIK:  Your Honor, at this time will  
9           the Bench entertain motions to strike?

10          EXAMINER PRICE:  We will.

11          MR. KUTIK:  Your Honor, we have seven  
12          motions to strike.  Our first relates to the direct  
13          testimony starting at page 6, and, particularly, your  
14          Honor, we would move to strike the phrase that begins  
15          on line 18 on that page after the "FES," the phrase  
16          "is contrary to Ohio law and Federal law," which goes  
17          over on to line 19.

18          That's a legal conclusion.  As we've  
19          noted with past witnesses, issues with respect to  
20          what may or may not comply or violate Ohio or federal  
21          law are matters for brief and not for witness  
22          testimony and certainly not subject to  
23          cross-examination.

24          EXAMINER PRICE:  Mr. Petricoff.

25          MR. PETRICOFF:  Yes, your Honor.

1 Mr. Campbell is an attorney. I think he is offering  
2 this statement in terms of putting his position and  
3 the position of his company in context, and for that  
4 reason, it should remain.

5 EXAMINER PRICE: Generally, it's been our  
6 precedent here to allow attorneys and nonattorneys  
7 alike to give their opinion on regulatory matters but  
8 to draw the line with federal law.

9 This passing reference is so minor, other  
10 than just simply to state "this is our position" and  
11 does not make an argument, then we're going to deny  
12 the motion to strike on this particular kind of  
13 setting up the context for his argument. So the  
14 motion to strike will be denied.

15 MR. KUTIK: Your Honor, our next motion  
16 is on page 11, and we would move to strike the  
17 testimony beginning at line 3, ending at line 10, the  
18 question and answer No. 16, which relates to the  
19 witness' opinions with respect to Senate Bill 221 and  
20 specifically Ohio Revised Code Section 4928.02(H).

21 EXAMINER PRICE: And, again, consistent  
22 with our rulings in this proceeding thus far, we will  
23 assume that he is simply giving his opinion as to  
24 regulatory matters, and, particularly, this is a  
25 policy provision, and we will deny the motion to

1 strike.

2 MR. KUTIK: Our third motion, your Honor,  
3 relates to page 16 and 17, and specifically, your  
4 Honor, we would move to strike the paragraph that  
5 begins on line 14 and extends over to page 17, ending  
6 on line 4, and we would include in our motion, your  
7 Honor, footnotes 7 and 8. And, further, your Honor,  
8 we would like to provide the Bench with a copy of his  
9 deposition because his deposition testimony provides  
10 the foundation for our motion.

11 May I approach?

12 EXAMINER PRICE: You may.

13 MR. PETRICOFF: Your Honor, may I have a  
14 moment to get to the deposition?

15 EXAMINER PRICE: You may.

16 MR. PETRICOFF: Okay. I'm there.

17 MR. KUTIK: Are you ready, Mr. Petricoff?

18 MR. PETRICOFF: I'm ready.

19 MR. KUTIK: Your Honor, this portion of  
20 the witness' testimony deals with circumstances and  
21 events in the state of New York relating to a certain  
22 facility belonging to an Exelon affiliate. This  
23 witness does not have personal knowledge of this  
24 information.

25 I would direct the Bench's attention to

1 page 71 of Mr. Campbell's deposition. Excuse me.

2 Page 70 first. Now, on page 70 starting at 20, the  
3 colloquy occurred:

4 Question: "Did you have any  
5 responsibility at all with respect to the Ginna  
6 plant?

7 Answer: "No."

8 And then later on on page 71 I asked at  
9 line 7:

10 Question: "Okay. How did you get your  
11 understanding of what the proposal was to support the  
12 continued operations of the Ginna plant? What's the  
13 source of your information?"

14 Answer: Yeah, so the lawyers internally  
15 worked on the case, discussions with them,  
16 discussions with Martin," referring to Martin  
17 Proctor, who he referred to in the previous answer.

18 So this witness does not have personal  
19 knowledge with respect to this information;  
20 therefore, your Honor, we move to strike.

21 EXAMINER PRICE: Mr. Petricoff?

22 MR. PETRICOFF: Yes, your Honor. The  
23 hearsay laws in administrative proceedings are a bit  
24 relaxed in that you can present material that is  
25 brought to you that you didn't do directly;

1 otherwise, we would have an endless parade of people  
2 up here.

3 The point that's being made here, the  
4 advance in the citations that we have here, present  
5 the public record, so that I think we get by the  
6 hearsay, and I think it's an important analogy that  
7 should be made and it should fit within the relaxed  
8 rule for administrative hearings.

9 EXAMINER PRICE: Is this not the exact  
10 same proceeding that was discussed by one of  
11 FirstEnergy's witnesses?

12 MR. MENDOZA: Your Honor, if I may. This  
13 contract was discussed in Witness Strah's testimony,  
14 and we didn't ask, but I think it would be unlikely  
15 that Mr. Strah had personal knowledge of the events  
16 at the Ginna plant, and we did cross-examine him on  
17 that issue, and I think it would make sense to allow  
18 an intervenor provide some perspective on how that  
19 contract relates to the companies' proposal.

20 MR. PETRICOFF: I would supplement by  
21 saying that is probably another exercise of the  
22 relaxed rules on admitting this type of material into  
23 administrative hearing.

24 EXAMINER PRICE: If he didn't object, he  
25 didn't object. If I didn't make a ruling, you can't

1 hold me to consistency. Nonetheless, we will deny  
2 the motion to strike. We understand that he does not  
3 necessarily have personal knowledge, and the  
4 Commission will give the testimony its proper due  
5 weight based upon that consideration.

6 MR. PETRICOFF: Thank you.

7 MR. KUTIK: Your Honor, our next motion  
8 relates to page 18. We would move to strike the  
9 question and answer, your Honor, that begins on line  
10 15, question and answer 28. The question and answer  
11 ends on line 7 on page 19.

12 This, your Honor, is a discussion of the  
13 FERC restrictions on affiliate transactions and this  
14 witness' opinions with respect to whether the  
15 proposed transaction complies or does not comply with  
16 those regulations.

17 EXAMINER PRICE: Mr. Petricoff, you  
18 couldn't have set it up any better by referring to  
19 his upcoming trial brief, but would you care to  
20 respond?

21 MR. PETRICOFF: Yes, your Honor. We  
22 certainly will make the legal arguments in the trial  
23 brief. I think that the purpose of this was not  
24 necessarily to present those briefs here or to make  
25 the argument on the -- legal arguments on the stand,

1 but only to put this in context of how the  
2 Commission, when it goes to view this, must realize  
3 that you have these additional issues as well, and  
4 because I think it is limited to just highlighting  
5 the issues as opposed to arguing the point, that  
6 should be permitted.

7 MR. KUTIK: Your Honor, while I do in my  
8 next motion anticipated question and answer 29, I  
9 meant to refer to question and answer 28.

10 EXAMINER PRICE: Well, that's in there,  
11 too.

12 MR. KUTIK: Okay. I would have the same  
13 grounds for that, your Honor. Of course, that  
14 relates to the witness' opinions with respect to the  
15 cases that he cites on page 19, question and answer  
16 29. So we would move to strike that as well.

17 EXAMINER PRICE: We'll deal with these  
18 together. Mr. Petricoff, do you want to respond to  
19 the question 29 motion to strike as well?

20 MR. PETRICOFF: I think that 28 and 29  
21 basically fall under the same category and would  
22 assert the same argument in defense of 29.

23 EXAMINER PRICE: I'm going to disagree  
24 with you. I think 28 will make a good argument that  
25 he's making a discussion on a policy basis, and he

1 does not have any citations or legal arguments in 28.

2 Twenty-nine is strictly a legal argument,  
3 and so we will grant the motion to strike for  
4 question 29 and deny the motion to strike for 28.

5 MR. KUTIK: Your Honor, our next motion  
6 to strike relates to page 20.

7 EXAMINER PRICE: Mr. Kutik, could you  
8 just give me a second so I could catch up on my notes  
9 here? Thank you.

10 MR. KUTIK: My next motion relates to  
11 page 20, and particularly the sentence that begins on  
12 line 10 and ends on line 14 referring to a NARUC  
13 action or resolution. So we would move to strike  
14 that, as well as the footnote reference, on the  
15 grounds of hearsay.

16 EXAMINER PRICE: Mr. Petricoff?

17 MR. PETRICOFF: Yes, your Honor. The  
18 positions of NARUC are public. They are published  
19 and, therefore, follow in the hearsay -- I'm sorry --  
20 and they are published as part of the regular ongoing  
21 operation of the National Association of Regulatory  
22 Utility Commissioners, and I suspect the  
23 Commissioners here receive them even. Therefore, it  
24 falls under the exemption for hearsay, published  
25 documents.



1           EXAMINER PRICE: I have to admit I think  
2       Former Commission Lesser actually was part of the  
3       process for this resolution. Nonetheless, with all  
4       due respect to Commissioner Lesser, NARUC is not a  
5       public agency, and we will grant the motion to  
6       strike.

7           MR. KUTIK: Our last motion to strike,  
8       your Honor, I think, based upon your rulings, I  
9       understand what your ruling will be, but let me make  
10      my record in any event.

11          It deals with the supplemental testimony,  
12      and specifically, your Honor, on page 9, the sentence  
13      that begins on line 13, ending on line 18, with  
14      respect to what went on in New York. Our basis would  
15      be lack of personal knowledge.

16          EXAMINER PRICE: At least you can give us  
17      credit for consistency. Motion to strike will be  
18      denied.

19          MR. KUTIK: I did and I will, your Honor.  
20      Those are all my motions.

21          EXAMINER PRICE: Thank you.

22          Any other motions to strike?

23          Mr. Mendoza?

24          MR. MENDOZA: No questions, your Honor.

25          EXAMINER PRICE: OMAEG?

1 MS. GHILONI: No questions, your Honor.

2 EXAMINER PRICE: Mr. Moore.

3 MR. MOORE: No questions, your Honor.

4 EXAMINER PRICE: OEG.

5 MR. K. BOHEM: No questions your Honor.

6 EXAMINER PRICE: Mr. Randazzo.

7 MR. RANDAZZO: Just a couple.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Randazzo

11 Q. Sir, in your testimony, you talk about  
12 problems, financial and others, that are confronting  
13 nuclear plants, correct?

14 A. I do discuss the lack of compensation  
15 right now from the market for recognizing  
16 environmental value to nuclear, yes.

17 Q. And in the case of Exelon, Exelon has  
18 been pushing legislation in Illinois that would  
19 provide Exelon with out-of-market compensation for  
20 nuclear plants, correct?

21 A. I don't know how you're describing  
22 out-of-market compensation. We have proposed a  
23 low-carbon portfolio standard which would essentially  
24 be an RPS-like construct that would again provide  
25 compensation to all clean energy resources without

1 discriminating against certain zero carbon resources  
2 over others, so it would include nuclear.

3 Q. Yes, it would include nuclear. And the  
4 Exelon executives have been fairly outspoken that  
5 there is not adequate compensation being provided  
6 from the organized wholesale markets for nuclear  
7 plants; is that correct?

8 A. There have been statements; however, with  
9 the recent capacity performance auctions, we did see  
10 some of our nuclear units that had not cleared in  
11 previous auctions be able to clear and get additional  
12 revenue. So the capacity performance did help  
13 provide additional revenues to those nuclears;  
14 although, some nuclears still did not clear.

15 MR. KUTIK: Your Honor, I move to strike  
16 starting with the word "however." He asked if  
17 executives had made statements, and he confirmed that  
18 those statements were made.

19 MR. PETRICOFF: Your Honor, I think the  
20 question should and the answer should remain. It was  
21 a proper question, and it was answered, and they were  
22 asking -- the question asks for that response.

23 MR. KUTIK: I'm not moving to strike the  
24 question. I'm moving to strike the last part of the  
25 answer.

1 EXAMINER PRICE: Let's have the question  
2 and answer back again, please.

3 (Record read.)

4 EXAMINER PRICE: I think that's a fairly  
5 broad question. We'll deny the motion to strike.

6 Q. (By Mr. Randazzo) If Exelon is successful  
7 in Illinois in getting legislation to provide  
8 additional compensation for nuclear plants in the  
9 manner that you described, will Exelon reduce the  
10 price that it charges to wholesale purchasers?

11 A. I don't understand the question, and I  
12 certainly don't think I'm in a position to answer it.

13 MR. RANDAZZO: That's fine.

14 That's all I have, your Honor.

15 EXAMINER PRICE: Thank you.

16 Mr. Kutik.

17 MR. KUTIK: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Kutik:

21 Q. Good morning.

22 A. Good morning.

23 Q. You're a lawyer?

24 A. I went to law school, and I passed the  
25 bar.

1           Q.    So we'll count that as a yes.  You're not  
2   an economist?

3           A.    I'm not an economist.

4           Q.    Or an accountant?

5           A.    Or an accountant.

6           Q.    Your responsibilities relate to Ohio,  
7   Pennsylvania, and to some extent, Michigan and  
8   Illinois, correct?

9           A.    Correct.

10          Q.    And you have had no responsibility with  
11   respect to the Ginna plant, correct?

12          A.    I had no direct responsibility, correct.

13          Q.    And your information regarding the Exelon  
14   activities regarding Ginna comes from what other  
15   Exelon lawyers told you, correct?

16          A.    Well, and what's in the public record,  
17   yes.

18          Q.    And I want to talk to you a little bit  
19   about your understanding of the companies'  
20   application in this case, and I don't know if your  
21   lawyer advised you, do you understand what we mean by  
22   the term "companies"?

23          A.    That would be -- yes, the FirstEnergy  
24   companies, yes.

25          Q.    The three utilities?

1           A.     The three utilities.

2           Q.     Would it be fair to say that you believe  
3           that the companies are seeking to have the Commission  
4           approve a PPA in this case?

5           A.     That would be one thing that I think the  
6           companies are seeking, yes.

7           Q.     And you believe that rider RRS will set  
8           the price that FES will be paid, correct?

9           A.     Rider RRS will play a role in what FES is  
10          paid. I don't know what you mean by "set the price."

11          Q.     Well, let me refer you to your  
12          deposition, sir.

13          A.     Okay.

14          Q.     Particularly page 26. Excuse me, 28.  
15          Are you there?

16          A.     I am there.

17          Q.     And did you not answer the following  
18          question with the following answer starting at line  
19          3 -- first, you remember that you had a deposition  
20          taken?

21          A.     I do remember that, yes.

22          Q.     And you took an oath to tell the truth?

23          A.     I did.

24          Q.     And you have before you the transcript of  
25          that deposition?

1           A.    I do.

2           Q.    And you had the opportunity in your  
3 deposition to read the transcript -- or, after the  
4 deposition to read the transcript and to make any  
5 corrections?

6           A.    Correct.

7           Q.    So now, with respect to your deposition  
8 testimony on 28, starting at line 3, do you not  
9 answer the following question the following way:

10                   Question: "Okay. Is it your view that  
11 rider RRS will set the wholesale rate that  
12 FirstEnergy Solutions is paid?"

13                   Answer: "Yes."

14                   That was what you said in your  
15 deposition, correct?

16           A.    That is what the transcript says, yes.

17           Q.    And you understand that the Commission  
18 will have a right to audit under the proposal the  
19 costs sought to be netted against revenues under  
20 rider RRS, correct?

21           A.    I do understand that part of the proposal  
22 includes an audit provision.

23           Q.    And would it be fair to say that you  
24 don't know if the Commission's disallowance of any  
25 cost recovery would affect the price that FES would

1 be paid, correct?

2 A. I don't know that.

3 Q. And you don't know if the companies would  
4 have the right to review FES's proposed capital  
5 expenditures, correct?

6 A. The scope of the audit provisions are  
7 very unclear, so that is correct.

8 Q. Now, you also understand, do you not,  
9 that the wholesale price under the proposed  
10 transaction will be set by the PPA contract terms,  
11 correct?

12 A. Sorry. Can you repeat the question?

13 Q. Sure. You understand that the wholesale  
14 price under the proposed transaction will be set by  
15 the PPA contract terms, correct?

16 A. Could you repeat the question one more  
17 time? I'm sorry.

18 MR. KUTIK: May I have it read, your  
19 Honor?

20 EXAMINER PRICE: You may.

21 (Record read.)

22 A. So you're going to have to explain which  
23 transaction we're talking about because there's a  
24 number of transactions that interplay with rider RRS.

25 Q. So let me direct you to your deposition



1 testimony.

2 A. Okay.

3 Q. Particularly on page 28.

4 A. Okay.

5 MR. PETRICOFF: Your Honor, I want to  
6 object. Before we go to the deposition, shouldn't we  
7 get a question asked first, and then if there's  
8 ambiguity or it needs to be impeached, go to the  
9 deposition as opposed to reading the deposition?  
10 Otherwise, this is just an examination of what you  
11 said on a particular line.

12 EXAMINER PRICE: Well, I suspect, having  
13 not read the deposition, I suspect Mr. Kutik is going  
14 to argue there was nothing ambiguous about the  
15 question at the time of his deposition. But I have  
16 not read the deposition, so we'll have to see what  
17 the next question and answer bring us.

18 MR. PETRICOFF: I understand, your Honor.  
19 I withdraw the objection.

20 Q. Let me try it this way, sir, to be fair  
21 to you. You understand that there's a proposed  
22 transaction between FES and the companies that's  
23 being discussed in this case, correct?

24 A. I do.

25 Q. And that's the transaction that I'm

1 talking about.

2 A. Okay. That's helpful. That was the  
3 clarity I was seeking.

4 Q. And so given that definition, sir, would  
5 it be fair to say that you understand that the  
6 wholesale price will be set by the terms of the PPA  
7 once it goes that far?

8 A. So assuming that the PPA is a wholesale  
9 transaction, the wholesale price of that transaction  
10 will be set by the terms of the PPA.

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

12 A. Yes.

13 Q. And you understand that it's proposed  
14 that the companies will purchase the outputs of  
15 certain plants, the Sammis, Davis-Besse and FES's  
16 share of the OVEC plants, correct?

17 A. Correct.

18 Q. And the companies will offer those  
19 outputs as proposed into the PJM markets; you  
20 understand that as well?

21 A. I do. There will be another transaction  
22 where the units are offered into the wholesale  
23 markets, other transactions.

24 Q. And you would agree with me, would you  
25 not, that the wholesale prices that the companies

1 will receive will be set by the companies'  
2 interaction with the PJM markets?

3 A. For the sales into the PJM market, they  
4 will receive revenues from the market, yes.

5 Q. Now, the energy and capacity that will be  
6 provided under the PPA, the proposed PPA, will be  
7 sold into the PJM market and will not be sold by the  
8 companies as part of the SSO service that's to be  
9 provided to nonshopping customers here in Ohio,  
10 correct?

11 A. That is my understanding, yes.

12 Q. So the output will not displace any load  
13 that the companies will purchase to supply SSO load,  
14 correct? That's your understanding?

15 A. Sorry. Could you repeat the question?

16 Q. Let me try it again.

17 A. I think you used "load" twice.

18 Q. The output that the companies purchase  
19 from FES will not displace any load purchased by the  
20 companies under the competitive bidding process used  
21 to supply SSO load, correct?

22 A. I believe that's correct, yes.

23 Q. And the energy and capacity that the  
24 companies receive under this proposed transaction  
25 won't be offered directly to shopping customers,

1 correct?

2 A. That is my understanding, yes, correct.

3 Q. Now, for your work in this case, you did  
4 not review any prior PUCO decisions regarding ESPs,  
5 correct?

6 A. I reviewed the AEP decision.

7 Q. Other than that one?

8 A. Oh, no.

9 Q. Your answer is no?

10 A. Yes.

11 Q. Yes, your answer is no?

12 A. Yes, my answer is no.

13 Q. Okay. And you didn't review any filings  
14 in any prior ESPs except for the testimony of Exelon  
15 and Constellation witnesses, correct?

16 A. Those are the ones I recall reviewing.

17 Q. And that would be Mr. Fein and Mr. --

18 A. Dominguez.

19 Q. Dominguez?

20 A. Yes.

21 Q. You did not forecast or do any forecasts  
22 for any of the proposed ESP or any part of it,  
23 correct?

24 A. Correct.

25 Q. And you did no modeling of the operation

1 of the PJM grid if Davis-Besse or Sammis were to  
2 retire, correct?

3 A. Correct.

4 Q. Now, you follow the developments within  
5 PJM, do you not?

6 A. I do.

7 Q. And you are familiar with the terms PJM  
8 East and PJM West?

9 A. I am.

10 Q. And would PJM West include places like  
11 Ohio and Illinois?

12 A. I wouldn't include it in Illinois, but  
13 I'd include Ohio in there.

14 Q. Now, would you agree -- or do you agree  
15 with the proposition that the PJM capacity market is  
16 a truly competitive market?

17 A. That's a philosophical question in some  
18 ways, but I would agree that the PJM capacity market  
19 is a competitive market, yes.

20 Q. Well, would you agree it's a truly  
21 competitive market?

22 A. It depends on how you define "truly." It  
23 is a competitive market.

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

25 EXAMINER PRICE: You may.

1           Q.    Mr. Campbell, you testified in the AEP  
2    ESP case?

3           A.    I did.

4           Q.    Let me show you a transcript from those  
5    proceedings. Mr. Campbell, let me refer you to page  
6    16 -- I'm showing you volume or parts of Volume VII  
7    from that case, and I'd like you to refer to page  
8    1613, please.

9           A.    Okay. I'm there.

10          Q.    And, Mr. Campbell, did you not give the  
11    following answer to the following question beginning  
12    on line 18:

13                Question: "Okay. Now, do you believe  
14    that -- let's talk about the PJM capacity market  
15    here. Do you believe that that market is a truly  
16    competitive market?"

17                Answer: "I do. I think it's a very  
18    robust, transparent market. You have a lot of  
19    participants and there's a lot of generation that  
20    didn't clear the market, so you have a lot -- a lot  
21    of different market participants in that market,  
22    yes."

23                That was your testimony in the AEP case,  
24    correct?

25          A.    According to this, that is my testimony,

1       yes.

2               Q.     So you would agree that the PJM capacity  
3       market is a very robust and transparent market?

4               A.     That is what I stated then, and I agree  
5       with you now that it is a competitive market, and I  
6       will also agree that it is a truly competitive  
7       market.

8               Q.     And would you also agree that the  
9       overwhelming percent of generation plants that have  
10      retired in PJM are coal-fired or have been  
11      coal-fired?

12              A.     I would agree with that.

13              Q.     And would you also agree that the  
14      overwhelming percent of generation plants that have  
15      been added have been natural gas fired?

16              A.     As far as number of plants, might not be  
17      gas, but as far as megawatts, it would be gas.

18              Q.     Now, within PJM, there are generators  
19      that are vertically integrated utilities, correct?

20              A.     There are.

21              Q.     And these generators are operating in  
22      nonretail choice states, correct?

23              A.     That is correct.

24              Q.     And these utilities charge customers a  
25      bundled rate, to your understanding, correct?

1           A.    To my understanding, correct, yes.

2           Q.    So these companies receive compensation  
3 from distribution customers for generation, correct?

4           A.    Correct.

5           Q.    And these companies also are receiving  
6 compensation for their generation outside the PJM  
7 market, correct?

8           A.    That is correct, under the state -- under  
9 contract with the state, yes.

10          Q.    In your view, these companies are getting  
11 subsidies, correct?

12          A.    I would agree with that.

13          Q.    And you believe that those subsidies are  
14 anti-competitive, correct?

15          A.    I believe that they could have an  
16 anti-competitive impact on the market, yes.

17          Q.    And you recognize, though, that these  
18 utilities have incentives to keep their costs down  
19 and to be efficient, correct?

20          A.    I believe in my deposition I stated that  
21 there's incentives but they're not market-based  
22 incentives.

23          Q.    But there are incentives?

24          A.    There are incentives coming from the  
25 Commission primarily.



1 Q. Now, you're here and you're testifying on  
2 behalf of Exelon and Constellation NewEnergy,  
3 correct?

4 A. I'm here on behalf of Exelon and  
5 Constellation NewEnergy, yes.

6 Q. Isn't it true that it's the view of those  
7 companies that there is not any expectation that  
8 there would be -- that there is an expectation that  
9 there would be no new generation or little new  
10 generation in PJM West?

11 A. I'm aware of new gas units coming up in  
12 Ohio right now, so it's certainly not my awareness.

13 Q. Well, is it Exelon's view that Exelon  
14 does not see new-build generation economics working?

15 A. I'm not familiar with that statement.

16 Q. From time to time, sir, it's true that  
17 you review Earnings Call Transcripts from Exelon  
18 executives or in which Exelon executives participate?

19 A. I have from time to time reviewed  
20 transcripts.

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

22 EXAMINER PRICE: You may.

23 MR. KUTIK: Your Honor, we would ask to  
24 have marked at this time as Company Exhibit 99 Exelon  
25 Corporation FQ1 2015 Earnings Call Transcripts from

1 April 29, 2015.

2 EXAMINER PRICE: Be so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Mr. Campbell, let me hand you what has  
5 been marked for identification as Company Exhibit 99.

6 EXAMINER PRICE: Thank you.

7 Q. Mr. Campbell, does that appear to be a  
8 transcript of an Earnings Call in which Exelon  
9 executives participated?

10 A. That's what -- well, it says -- the front  
11 page says "Earnings Call Transcripts" for Exelon  
12 Corporation.

13 Q. Do you know an individual by the name of  
14 Joseph Nigro?

15 A. I do know Joe Nigro, yes.

16 Q. And Mr. Nigro is the executive vice  
17 president, CEO, for Constellation?

18 A. He is.

19 Q. Let me refer you to page 15 of this  
20 document.

21 A. Okay.

22 Q. And you see at the bottom of that page,  
23 there's a question from a Michael J Lapides?

24 MR. PETRICOFF: Your Honor, at this point  
25 I want to object. There's not been a foundation laid

1 that he has seen this document or is familiar with  
2 this document, and it would be improper to just  
3 cross-examine him cold on a document that he doesn't  
4 see or know.

5 EXAMINER PRICE: Mr. Kutik?

6 Q. Mr. Campbell, have you seen this before?

7 A. I have not.

8 Q. Let me, sir, refer you, then, to the  
9 bottom of the page 14.

10 A. Of this document?

11 Q. Bottom of page 15, yes, sir.

12 A. Okay.

13 Q. And then I want you to look at the bottom  
14 of page 15 and the top of page 16. And when you're  
15 finished reading that, let me know.

16 A. You'd like me to read the response of Joe  
17 Nigro as well?

18 MR. PETRICOFF: Your Honor, I'm going to  
19 object. He answered he hasn't seen the document.  
20 This document is not in evidence at the moment, and I  
21 think it is improper to examine him on it.

22 EXAMINER PRICE: I don't think he's asked  
23 him any questions about this document just yet. He  
24 just asked him to read the document. Let's not get  
25 ahead of ourselves.

1 MR. PETRICOFF: Okay. Thank you, your  
2 Honor.

3 A. Okay.

4 Q. Having read this, Mr. Campbell, I want to  
5 know if that refreshes your recollection as to  
6 whether Exelon executives or Exelon as a corporation  
7 has ever taken the position that it did not see  
8 "newbuild economics work on the Western side of PJM"?

9 MR. PETRICOFF: Your Honor, I will impose  
10 my objection now.

11 EXAMINER PRICE: Mr. Kutik?

12 MR. KUTIK: I only asked if it refreshed  
13 his recollection. He said he wasn't aware of, didn't  
14 know of any, and I'm asking if that refreshed his  
15 recollection. He can say "yes," "no," and move on.

16 A. No. This is the first time I'm reading  
17 these statements, sir.

18 Q. Isn't it true that you believe that in  
19 addition to the vertically integrated utilities in  
20 PJM that there are other generators in PJM that are  
21 getting subsidies, correct?

22 A. Yes.

23 Q. And among the subsidies that some  
24 generators are getting are renewable generators or  
25 renewable facility owners that are getting tax

1 credits, correct?

2 A. That is correct.

3 Q. And would you agree that renewable  
4 facilities that are in states or areas that have  
5 altered energy portfolio standards are receiving  
6 subsidies?

7 A. I'm struggling with the word "subsidy"  
8 only because with alternative portfolio standards,  
9 the states have made a policy determination that the  
10 clean renewable energy has a certain value that  
11 should be compensated. So whether they're getting --  
12 whether compensation for that clean value is a  
13 subsidy or not, I don't know that it's easy to answer  
14 that question.

15 Q. Wouldn't one definition of a subsidy be  
16 receiving compensation out of the PJM market for  
17 generation?

18 A. Well, it's out-of-market compensation.  
19 Whether it's a subsidy or not is different because  
20 you are compensating them for something that the  
21 market -- the PJM market doesn't compensate, but it's  
22 the clean energy value.

23 Q. So, again, sir, you would not say then,  
24 you would disagree, that altered energy standards  
25 provide a subsidy to altered energy facilities; is

1       that correct?

2               A.     Depending how one defines subsidy, that  
3       is correct.

4               Q.     Is that how you would define subsidy?  As  
5       you would define subsidy, alternative energy  
6       standards would not be a subsidy, correct?

7               A.     If you define subsidy as any compensation  
8       outside of the wholesale markets, then, yes, they are  
9       getting a subsidy.

10              Q.     Now, I think as you said in response to  
11       questions from Mr. Randazzo that Exelon took the  
12       position that the Illinois General Assembly should  
13       enact legislation to create a low-carbon portfolio  
14       standard to ensure that the state avoided the  
15       negative consequences of closing nuclear facilities.

16              A.     That would be consistent with my  
17       understanding of the companies' position, yes.

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

19                   EXAMINER PRICE:  You may.

20                   MR. KUTIK:  Your Honor, at this time I  
21       would like to have marked as Company Exhibit 100 a  
22       document from the Exelon website that appears to be a  
23       press release dated April 29, 2015.

24                   EXAMINER PRICE:  Be so marked.

25                   (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MR. KUTIK: And we would ask to have  
2 marked as Company Exhibit 101 another document from a  
3 website called nuclearpowerillinois.com.

4 EXAMINER PRICE: Be so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. Mr. Campbell, I'd like to hand you what  
7 has been marked as Company Exhibit 100 and 101.  
8 Mr. Campbell, do you recognize Exhibit 101 as coming  
9 from Exelon's website?

10 A. That's what the -- there's a web address  
11 on the bottom of the page that indicates Exelon  
12 Corporation, so that would be our company website.

13 Q. And from time to time does the company  
14 put on its website information with respect to its  
15 legislative initiatives?

16 A. Sure, press releases and other things  
17 could be put on the company website, yes.

18 Q. And have you ever seen this press release  
19 before?

20 A. I have not.

21 Q. Let me refer you to Company Exhibit 101.  
22 Let me refer you to the last page. Does this appear  
23 to be a website that is sponsored by Exelon  
24 Generation?

25 A. That is what it says, yes.

1           Q.    And, sir, would you agree with the  
2           statement that despite the clear benefits of the  
3           plants, some Illinois nuclear facilities face a  
4           perfect storm of counterproductive federal energy  
5           policies, market distorting subsidies, and other  
6           economic challenges that threaten their continued  
7           operation?

8           A.    Are you reading -- is there something  
9           you're reading from?

10          Q.    I'm asking if you agree with that  
11          proposition?

12          A.    Can you read it back?

13          MR. PETRICOFF:   Could we have identified  
14          where he's reading from?

15          MR. KUTIK:   I'm reading from my notes.

16          EXAMINER PRICE:   You knew that was  
17          coming.   Let's have it back.

18          (Record read.)

19          A.    The companies' position -- and I agree  
20          with it -- is that the market is failing to properly  
21          compensate clean energy resources, all clean energy  
22          resources and nuclear, for its clean energy value,  
23          and there's a number of factors that are going into  
24          why the market is not providing appropriate  
25          compensation for the zero-carbon resourcing, which do



1 have significant value.

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

3 MR. PETRICOFF: Your Honor, could we have  
4 the question read back?

5 EXAMINER PRICE: You may.

6 The previous question back, please.

7 THE WITNESS: There's pejorative language  
8 in there.

9 EXAMINER PRICE: Let's have the previous  
10 question reread again.

11 (Record read.)

12 EXAMINER PRICE: Keep in mind, the  
13 pending question is, "The answer to my question is  
14 yes?"

15 THE WITNESS: Do you have a question?

16 EXAMINER PRICE: No. That's the pending  
17 question before you.

18 THE WITNESS: Oh, the answer to my  
19 question is yes.

20 A. I'm struggling with the perfect storm,  
21 because I don't know any statements -- if that  
22 statement was made. You know, I believe there has  
23 been some changes to federal market policy with the  
24 capacity market that have helped resolve some of the  
25 problems. So the term "perfect storm" may not apply

1 today. So with that, I will not 100 percent agree  
2 with that statement.

3 Q. So other than the reference to "perfect  
4 storm," you would agree with that statement?

5 THE WITNESS: Can we read it back without  
6 perfect storm?

7 EXAMINER PRICE: Read it back fully.

8 A. Eliminating the "perfect storm" with my  
9 qualifications stated earlier, I would agree that.

10 Q. Do you know whether Exelon ever made a  
11 statement like that?

12 A. I don't.

13 Q. Do you want to look at the second page of  
14 Exhibit 101, please? At the top of the page, could  
15 you read that to yourself, please, and let me know  
16 when you're done?

17 A. I'm done.

18 Q. Does looking at that refresh your  
19 recollection as to whether Exelon ever made that type  
20 of statement?

21 A. I did not know that Exelon had made that  
22 statement. I had never seen that statement before,  
23 nor do I know when the date that statement was made  
24 was.

25 Q. Well, this document refers to an

1       October 2014 study. Do you see that?

2               A.     Um-hmm.

3               MR. PETRICOFF: Objection, your Honor.  
4       He indicated that he had not seen this document.

5               EXAMINER PRICE: I'm not sure he has. I  
6       know he indicated he hadn't seen the press release.

7               Have you seen this website before, this  
8       document before?

9               THE WITNESS: No, I have not.

10              MR. PETRICOFF: In that case, the date is  
11       self-authenticating off of the document that's not  
12       in.

13              EXAMINER PRICE: I agree. Sustained.  
14       Are you aware of this website?

15              THE WITNESS: You know, I am not aware of  
16       this specific website, no.

17              EXAMINER PRICE: And your job is manager  
18       of state government affairs?

19              THE WITNESS: State government affairs,  
20       yeah, but I don't cover Illinois. I mean, I do to  
21       some degree, but I'm not directly involved with our  
22       efforts there, on the LCPS.

23              EXAMINER PRICE: I understand.

24              MR. KUTIK: May I have what the witness  
25       just said because he was talking to you and not into

1 the microphone?

2 EXAMINER PRICE: Yes. Let's read back  
3 the question and answer, or just the answer.

4 (Record read.)

5 MR. KUTIK: Your Honor, at this time I'd  
6 like to have marked as Company Exhibit 102 portions  
7 of the form 8-K from Exelon Corporation and other  
8 entities dated November 10, 2014.

9 EXAMINER PRICE: Be so marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

12 EXAMINER PRICE: You may.

13 Q. Mr. Campbell, let me hand you what has  
14 been marked as Exhibit 102.

15 MR. KUTIK: And, your Honor, in deference  
16 to Mr. Petricoff's objection to large documents into  
17 the record, I do not represent that this is the full  
18 8-K.

19 EXAMINER PRICE: Thank you. And that  
20 will be noted.

21 Q. Mr. Campbell, you would agree with me  
22 this appears to be a portion of Exelon, et al.'s Form  
23 8-K from November of 2014?

24 A. That is what it says it is.

25 Q. And I want to refer you a couple pages

1 back. It says -- the document says "Edison Electric  
2 Institute Financial Conference," Exelon; Exhibit 99.1  
3 at the upper right-hand corner.

4 A. Okay.

5 Q. And then I want you to go about five or  
6 six pages in. There is, it looks like, a PowerPoint  
7 slide of some type that is entitled "IL-Market Based  
8 Solution."

9 A. Okay.

10 Q. And would you agree, sir, that this  
11 represents some advocacy on behalf of Exelon in favor  
12 of a clean energy standard or low-carbon standards  
13 portfolio program?

14 A. That's what it appears to be, yes.

15 Q. And one of the benefits, or among the  
16 benefits -- or, I guess, the main benefit that is  
17 touted in this area is certain benefits that would  
18 obtain if the operations of the plants continued?

19 MR. MCNAMEE: Object.

20 EXAMINER PRICE: Grounds?

21 MR. MCNAMEE: It's not -- it's friendly  
22 cross. They're not hostile here. This is the same  
23 argument the company makes; is it not?

24 EXAMINER PRICE: I think Exelon is  
25 perfectly hostile to the company.

1 MR. KUTIK: This is the very point --

2 MR. MCNAMEE: Okay.

3 MR. KUTIK: -- that in Illinois they are  
4 making the same arguments.

5 EXAMINER PRICE: Overruled.

6 MR. MCNAMEE: Okay.

7 THE WITNESS: So was there a question on  
8 the table?

9 EXAMINER PRICE: Let's have the question  
10 back, please.

11 (Record read.)

12 A. Well, this is discussing a clean-energy  
13 standard, low-carbon portfolio standard, and the  
14 benefits of the low-carbon, clean nuclear generation  
15 to the state of Illinois.

16 Q. Including the continued operation of the  
17 nuclear plants, correct, and the economic benefits  
18 that would come from that?

19 A. I see the benefits of the nuclear fleet.  
20 I don't see the words "continued operation," but  
21 maybe I'm not --

22 Q. Isn't that the natural implication of  
23 that, sir?

24 A. I didn't prepare this so I don't know  
25 what the implication is, but it does discuss the

1 benefits of the Illinois clean energy nuclear fleet,  
2 yes.

3 Q. Have you ever seen the 8-K before?

4 A. This particular 8-K?

5 Q. Yes.

6 A. I helped draft certain sections of the  
7 8-K around the financial reform statements, and I  
8 have read portions of the 8-K from time to time, but  
9 I don't recall reading this particular one.

10 MR. KUTIK: Your Honor, I ask the Bench  
11 take administrative notice of the Form 8-K filed by  
12 Exelon companies, et al. on November 10, 2014.

13 EXAMINER PRICE: Any objection?

14 MR. PETRICOFF: No objection, your Honor.

15 EXAMINER PRICE: We'll take  
16 administrative notice of this document.

17 Mr. Kutik, just to clarify the record,  
18 you're asking for administrative notice of the full  
19 document, not just the excerpts that you produced  
20 today?

21 MR. KUTIK: Actually, your Honor, it will  
22 be fine for us if the Bench would take administrative  
23 notice of Exhibit 99.1, or the document identified at  
24 Exhibit 99.1 in the Form 8-K.

25 MR. PETRICOFF: Your Honor, I'm going to

1 reverse my earlier argument. This one I think the  
2 whole document should come in because he hadn't seen  
3 it. We don't know what is in the rest of it. Unlike  
4 Mr. Bowring, we knew what was in the rest of the  
5 document. The witness hasn't had that advantage.

6 We don't disagree because of the nature  
7 of the document that you could take administrative  
8 notice.

9 MR. KUTIK: I was trying to be amenable  
10 to Mr. Petricoff's strenuous objection the other day,  
11 so that's fine with me.

12 EXAMINER PRICE: I'm the one that brought  
13 it up, but we'll take administrative notice of the  
14 full document.

15 Q. (By Mr. Kutik) Now, one of the pieces of  
16 legislation that your company was in favor of would  
17 require Illinois utilities to purchase low-carbon  
18 energy credits to match 70 percent of the electricity  
19 used on the system, correct?

20 A. That's my understanding, yes.

21 Q. And would it be fair to say that Illinois  
22 nuclear power plants provide 90 percent of the  
23 carbon-free power in Illinois?

24 A. They do.

25 Q. And all the nuclear facilities in



1 Illinois are Exelon's?

2 A. That is my understanding as well, yes.

3 Q. Now, in this case, would it be fair to  
4 say that you don't know if Exelon's position opposing  
5 the companies' proposal would change if the PPA was  
6 limited to Davis-Besse?

7 THE WITNESS: Can you repeat the  
8 question?

9 (Record read.)

10 A. I don't know what the -- yes, the answer  
11 is I don't know.

12 Q. And you would agree with me that you  
13 couldn't rule out that Exelon might withdraw its  
14 objection, correct?

15 A. Understanding that what we propose in  
16 your testimony and what we proposed in Illinois is  
17 different than a PPA, I cannot rule that out.

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

19 A. The answer is yes.

20 Q. Now, in the PJM capacity auctions, you're  
21 aware that there are generators that have offered  
22 their generation in at zero, correct?

23 A. Yes.

24 Q. And there's nothing in the PJM rules that  
25 prohibits generators from offering their generation

1 in at zero, correct?

2 A. Energy markets or capacity markets?

3 Q. Capacity markets?

4 A. I believe there's some rules around new  
5 generation minimum offer price rules, but, yes, in  
6 general, there's not a restriction on generation  
7 offers at zero.

8 Q. Now, would you also agree that a  
9 substantial percentage of generation has bid into the  
10 BRAs at zero?

11 A. I don't know.

12 Q. Have you ever seen any figures from PJM  
13 on that, sir?

14 A. I haven't.

15 Q. Would it be fair also to say that you  
16 don't believe that state commissions should have an  
17 interest in developing or maintaining generation  
18 within the state borders?

19 A. I think what I've stated is that  
20 reliability is a federal function or the RTO's  
21 function, but I could see why a state would have  
22 interest in generation within its borders. I could  
23 see that.

24 Q. Now, you testified in your testimony  
25 about what the -- the Ginna plant, correct, in New

1 York?

2 A. I did.

3 Q. And that is a nuclear facility that is  
4 owned by one of the Exelon affiliates, correct?

5 A. Correct.

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

7 EXAMINER PRICE: You may.

8 MR. KUTIK: Your Honor, I'd like to show  
9 the witness Sierra Club Exhibit 2.

10 EXAMINER PRICE: You may.

11 Q. Mr. Campbell, this is a document that's  
12 already been admitted to the record in this case. Do  
13 you recognize this as a petition in the matter that  
14 you cite in your testimony?

15 A. This does appear to be a petition to  
16 initiate a proceeding relating to examining Ginna,  
17 yes.

18 Q. And this is the proceeding that you cite  
19 in your testimony, correct?

20 A. The overall proceeding, yes. Yes, this  
21 appears to be part of it.

22 Q. And you would agree with me, would you  
23 not, that the -- would it be okay if I just called it  
24 Exelon as opposed to Exelon affiliate?

25 A. Sure.

1           Q.    Would it be true to say Exelon was  
2 seeking the New York Public Service Commission's help  
3 in keeping Ginna operating?

4           A.    I believe the first step we took was to  
5 request a reliability -- that a reliability study be  
6 performed.

7           Q.    That's not my question. My question was  
8 with --

9           MR. PETRICOFF: Objection, your Honor.  
10 He should be allowed to finish.

11          MR. KUTIK: I'm sorry. I thought he had.

12          MR. PETRICOFF: Then you can move to  
13 strike it.

14          MR. KUTIK: I thought he was done.

15          THE WITNESS: No, I was done.

16          EXAMINER PRICE: Okay. We're all good.

17          Q.    (By Mr. Kutik) That wasn't my question.  
18 My question, sir, is simply in this proceeding, the  
19 point of the proceeding, as far as Exelon was  
20 concerned, was to seek the New York Public Service  
21 Commission's help in keeping Ginna operating,  
22 correct?

23          A.    I would agree with that statement, yes.

24          Q.    And among the things that Exelon argued  
25 was that the revenues from the energy capacity market

1 in the New York ISO had been insufficient to cover  
2 the costs of the plant operations, including the  
3 required new capital investment, correct?

4 A. There was a -- yes, we claimed financial  
5 distress.

6 Q. And Exelon also argued that the continued  
7 operation was necessary to ensure reliability,  
8 correct?

9 A. Correct.

10 Q. Thank you. And Exelon also argued that  
11 among other benefits of keeping the Ginna plant in  
12 operation was that the plant employs 700 people  
13 during normal operations and over 800 to 1,000 people  
14 during refueling outages, correct?

15 A. I believe those were factors that we  
16 asked the policymakers to consider, yes.

17 Q. And you also asked the policymakers to  
18 consider that the plant was the largest taxpayer in  
19 the county paying \$10 million in taxes?

20 A. I would think that would be a  
21 consideration as well that we would have asked the  
22 policymakers to consider.

23 Q. And Rochester Gas & Electric received an  
24 order from the New York Public Service Commission to  
25 negotiate a reliability support services agreement,

1 correct?

2 A. Subsequently to a reliability study being  
3 performed to show that there was a reliability need,  
4 they did receive that authorization, yes.

5 MR. KUTIK: Your Honor, I move to strike  
6 everything but "they did receive that authorization."

7 EXAMINER PRICE: Could I have the  
8 question and answer back, please.

9 (Record read.)

10 MR. PETRICOFF: Your Honor, I think that  
11 he is explaining the answer. He's not going into  
12 different territory. It's within the scope of the  
13 question.

14 EXAMINER PRICE: We will consider this to  
15 be his one warning and we will deny the motion to  
16 strike.

17 But, Mr. Campbell, from this point  
18 forward, please listen carefully to counsel's  
19 question and answer, counsel's question and only  
20 counsel's question, and if you think there's  
21 additional information the Bench needs to know,  
22 Mr. Petricoff will be happy to take care of that on  
23 redirect.

24 MR. KUTIK: Your Honor, I'd like to have  
25 marked at this time as Company Exhibit 103 an order

1 from the New York State Public Service Commission in  
2 Case No. 14-E-0270 dated November 14, 2014.

3 EXAMINER PRICE: Be so marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MR. KUTIK: May I approach?

6 EXAMINER PRICE: You may.

7 Q. Mr. Campbell, I've handed you what has  
8 been marked for identification as Company Exhibit  
9 103. Do you recognize that?

10 A. This is an order directing negotiation of  
11 the RSSA.

12 Q. And this is an order you cite in your  
13 testimony, correct?

14 A. I believe so.

15 Q. Now, it turns out that a reliability  
16 support service agreement was negotiated and  
17 submitted for approval to the Federal Energy  
18 Regulatory Commission, correct?

19 A. That is correct, sir.

20 Q. And the Federal Energy Regulatory  
21 Commission ultimately approved it, correct, with some  
22 modifications?

23 A. With modifications.

24 Q. And in that reliability support service  
25 agreement as ultimately approved by the Federal

1 Energy Regulatory Commission, there's a fixed monthly  
2 charge of over \$17 million that will go to Exelon for  
3 the Ginna facility, correct?

4 A. I believe that was part of the original  
5 proposal, but that might be modified. The actual  
6 compensation might be a piece that's being modified.

7 Q. Well, isn't it true that what was  
8 modified was an additional compensation for market  
9 revenue?

10 A. There was an additional market revenue  
11 piece that was capped at cost.

12 Q. And so there's \$17 million that they're  
13 going to receive in addition to a part of the market  
14 value, correct?

15 A. I believe that's what the proposal  
16 sought, was in that range, yes.

17 Q. And that would come to Exelon regardless  
18 of the market price for energy or capacity, correct?

19 A. That is correct.

20 Q. And isn't it true that that  
21 \$17-million-a-month figure includes a 10.7 percent  
22 return on equity?

23 A. I don't know that. I don't.

24 MR. KUTIK: Your Honor, at this time I'd  
25 like to have marked as Company Exhibit 104 a letter



1 on the letterhead of the law firm McGuire Woods to  
2 Kimberly D. Bose, Secretary of the Federal Energy  
3 Regulatory Commission, dated February 13, 2015, and  
4 the subject matter line on the letter is "R. E. Ginna  
5 Nuclear Power Plant, LLC," with a document number  
6 that's blank.

7 EXAMINER PRICE: It will be so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MR. KUTIK: May I approach?

10 EXAMINER PRICE: You may approach.

11 Q. Mr. Campbell, do you recognize this as a  
12 filing that was made on behalf of the Exelon  
13 affiliate that owns Ginna with respect to the  
14 approval of the reliability support services  
15 agreement?

16 A. I do.

17 Q. And let me refer you to page 17. Do you  
18 see under No. 2 there's a reference to a Mr. Heintz's  
19 cost-of-service study?

20 A. Um-hmm.

21 Q. There's also a reference that he proposes  
22 a 10.7 percent ROE?

23 A. I do see that there.

24 Q. Now, Exelon said in this proceeding, did  
25 it not, that without the monthly payments, the Ginna

1 facility would have to be retired, correct?

2 A. Yes.

3 Q. Now, you've never participated in an RMR  
4 agreement or the RMR process, correct?

5 A. I have not participated directly in the  
6 RMR process in PJM.

7 Q. And you don't know if an RMR includes  
8 payments that include a rate of return or return on  
9 equity?

10 A. My understanding is that it's a  
11 negotiation, and I don't -- so the answer is no.

12 Q. You don't know?

13 A. I don't know.

14 Q. Would it be fair to say that under an  
15 RMR, PJM can end it any time if the underlying  
16 reliability concern is resolved?

17 A. The RMR, similar to New York, negotiated  
18 in New York, is designed to end when the underlying  
19 reliability need is resolved, yes.

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

21 A. I believe so, yes, yes.

22 Q. And would it be fair to say that you  
23 don't know if under an RMR the generation is  
24 required -- a generator is required to reimburse some  
25 of the revenues if the unit remains open after the

1 RMR agreement is terminated?

2 A. I'm unaware of how PJM would treat the  
3 units that were supposed to retire if they stay in  
4 existence beyond the RMR period.

5 Q. Now, in your testimony, you refer to the  
6 FERC affiliate transaction rules, correct?

7 A. I do.

8 Q. So you're familiar with the FERC  
9 affiliate transaction rules regarding power sales  
10 between affiliates?

11 A. I do have some familiarity, yes.

12 Q. You agree with me, would you not, that  
13 the regulations are designed to protect captive  
14 customers?

15 A. They are designed to protect captive  
16 customers.

17 Q. Would it be fair to say that that  
18 definition of captive customers excludes customers  
19 who have retail choice?

20 A. I believe my testimony at the deposition  
21 was that that is the core legal question that will  
22 have to be answered.

23 Q. That isn't my question, sir. Isn't it  
24 true you don't know if the definition of captive  
25 customers excludes customers who have retail choice?

1           A.    I mean, that is an ultimate legal  
2 question, so I don't know, you're right.

3           Q.    So is your testimony that's a question  
4 that's unresolved, correct?

5           A.    It needs -- it would need to be resolved,  
6 so yes, that is correct.

7           MR. KUTIK: Your Honor, may we approach?

8           EXAMINER PRICE: You may.

9           MR. KUTIK: Your Honor, I'd like to hand  
10 the witness an order from the Federal Energy  
11 Regulatory Commission in Docket No. RMO4-7-000; Order  
12 697 entitled "Market-Based Rates for Wholesale Sales  
13 of Electric Energy Capacity and Ancillary Services by  
14 Public Utilities dated June 21st, 2007.

15          Q.    Sir, could you turn to page 271. Well,  
16 first, have you ever read this order before?

17          A.    Not in its entirety. I don't remember  
18 reading a document this big relating to captive  
19 customers.

20          Q.    Okay. Fair enough. Turn to page 271, if  
21 you could.

22          A.    Okay.

23          Q.    And it says at paragraph 479, "The  
24 Commission clarifies in response to several comments  
25 that the definition of 'captive customers' does not

1 include those customers who have retail choice, i.e.,  
2 the ability to select a retail supplier based upon  
3 the rates, terms and conditions of service offered."

4 MR. PETRICOFF: Your Honor, at this time  
5 I'm going to object to questioning him on this  
6 document until he's been asked whether or not he has  
7 seen the document before, is familiar with this  
8 decision, because we're looking at words in the  
9 middle of a multi-100 page document, and before we  
10 can narrow down to the language, we have to have  
11 established --

12 EXAMINER PRICE: He did ask him if he had  
13 seen it, and he said he had read parts of it,  
14 couldn't remember reading anything this voluminous.  
15 "Voluminous" is my word.

16 MR. KUTIK: I think he said "big."

17 MR. PETRICOFF: In that case, I'll just  
18 move to object if he's not familiar with it on a  
19 language basis, then he can't be examined on the  
20 language.

21 MR. KUTIK: I haven't even asked him a  
22 question yet, your Honor.

23 MR. PETRICOFF: I'll hold my objection in  
24 reserve.

25 EXAMINER PRICE: Please proceed,

1 Mr. Kutik.

2 Q. (By Mr. Kutik) My question, sir, was  
3 were you aware that FERC had said that?

4 A. Those specific words?

5 Q. Or words to that effect.

6 A. Yes, my understanding is that FERC has,  
7 you know, historically defined captive customers as  
8 those not being able to avail themselves of retail  
9 choice.

10 Q. Okay. Now, you're aware that the  
11 companies and FES applied for a waiver of the  
12 affiliate transaction rules on the basis that the  
13 companies do not have captive customers, correct?

14 A. I am aware of that, yes.

15 Q. You're aware that FERC granted that  
16 waiver?

17 A. I am aware of that, yes.

18 Q. I want to ask you a question or two,  
19 maybe even just one, on the supposed competitive  
20 advantage that you say that FES would enjoy if the  
21 proposed transaction went through if rider RRS was  
22 approved.

23 Would it be correct to say that under the  
24 proposal when market prices are such that market  
25 revenues are in excess of FES's costs, FES's recovery

1 of only its costs will not be a competitive  
2 advantage?

3 A. Could you repeat the question.

4 MR. KUTIK: May it be read please, your  
5 Honor?

6 EXAMINER PRICE: Please.

7 (Record read.)

8 A. I think that as long as FES has the  
9 subsidy that eliminates risk, as long as they don't  
10 have the same risk as other market participants, then  
11 they do have a competitive advantage, as long as the  
12 subsidy is there.

13 Q. Are you through?

14 A. Yes.

15 Q. Let me refer you to your deposition,  
16 please.

17 A. Okay.

18 Q. And particularly at page 95. Are you  
19 there, sir?

20 A. I am there, yes.

21 Q. Did you not give the following answers to  
22 the following questions, starting at line 7:

23 Question: "Well, certainly when market  
24 prices are relatively low and some competitors are  
25 getting full cost recovery or sufficient cost

1 recovery to keep on going and some competitors are  
2 not, I understand potentially your argument about FES  
3 having competitive advantage. I don't agree with it  
4 but I understand it. My question to you is, when the  
5 opposite happens, when market revenues or market  
6 prices are sufficiently high to -- that would have  
7 recovered FES's costs and other competitors are  
8 receiving their costs, is FES still at competitive  
9 advantage during those times in the marketplace?"

10 Answer: "So if I understand your  
11 question correctly, market prices are sufficiently  
12 high such that FES would no longer need to get an --  
13 an additional subsidy, therefore --"

14 Question: "No. That all FES is getting  
15 is its costs. It's not getting the higher revenues  
16 for market prices. Does FES still have a competitive  
17 advantage then?"

18 Answer: "I don't think FES would be at a  
19 competitive advantage, no."

20 That was your testimony, wasn't it, sir?

21 A. That was. But I asked about whether  
22 there was a subsidy, and you said no, so --

23 Q. That I said no, that wasn't my question.  
24 But that was your testimony, sir, correct?

25 A. That is how I believe -- that is how I



1 answered what I believe to be the question, I guess.

2 Q. I read your testimony correctly, correct?

3 A. Yes.

4 Q. Now, you have some familiarity with Ohio  
5 statutes, correct?

6 A. Some, yes.

7 Q. Would it be fair to say that you don't  
8 know what the test for approving an ESP is?

9 A. I remember at the time of my deposition  
10 it was -- you know, I couldn't recite it at the time  
11 because it's a very oddly-phrased test.

12 Q. So you didn't know at the time of your  
13 deposition?

14 A. At the time of my deposition, I couldn't  
15 recite the actual words, but I knew that "the most"  
16 was in there.

17 Q. But the test, as you remember it, is not  
18 that service be provided at the lowest possible cost,  
19 correct?

20 A. That's right.

21 Q. And under the Ohio statute, companies  
22 could offer a product to stabilize retail electric  
23 rates, correct?

24 A. There are provisions that address the  
25 rate stability stabilization, I did acknowledge that.

1 I do acknowledge it, yes.

2 Q. And you also understand that a financial  
3 hedge can provide price stability, correct?

4 A. Is this a general question, financial  
5 hedges generally?

6 Q. Yes.

7 A. Yes.

8 Q. And it's a way to manage risk, correct?

9 A. Yes.

10 Q. Constellation offers a long-term hedge  
11 contract in your view to customers?

12 A. Yes. We offer three-year fixed-rate  
13 products as a standard product.

14 Q. Would it be also fair to say, sir, that  
15 you don't know whether other companies in Ohio have  
16 stability riders providing for out-of-market  
17 compensation for capacity?

18 A. I'm not specifically aware.

19 Q. And would it be correct to say that  
20 you're not aware of any big deviations from or  
21 downturns in the growth of shopping levels in the  
22 last few years in Ohio?

23 A. I think we've seen growth over the last  
24 few years, so I'm not aware of any downturns.

25 Q. Would it be correct to say that there is

1 no restriction against companies entering into PPAs  
2 with generators and selling that power into the  
3 market, that companies could do that?

4 A. I'm not -- I remember this dialogue we  
5 had in the deposition. I'm not aware of any law that  
6 prohibits that.

7 Q. You have reviewed from time to time on  
8 the Commission's, that is the Public Utility  
9 Commission, website what people refer to as the  
10 Apples to Apples charts?

11 A. Yes.

12 MR. KUTIK: May I approach, your Honor.

13 EXAMINER PRICE: You may.

14 MR. KUTIK: Your Honor, we would like to  
15 have marked as Company Exhibit 105 some information  
16 from the residential Apples to Apples comparison  
17 chart from EnergyChoice Ohio dated March 20, 2015.

18 EXAMINER PRICE: Be so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. KUTIK: We would also ask to have  
21 marked as Company Exhibit 106 similar information  
22 dated March 21st, 2014. I'm sorry. I think I have  
23 that reversed. 2015 should be 106 and 2014 should be  
24 105.

25 EXAMINER PRICE: They will be marked

1 accordingly.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. KUTIK: My apologies. May I  
4 approach, your Honor.

5 EXAMINER PRICE: You may.

6 Q. Mr. Campbell, let me hand you what has  
7 been marked for identification as Exhibits 105 and  
8 106 for the companies. Mr. Campbell, do you  
9 recognize those as printouts from the Apples to  
10 Apples charts?

11 A. Yes.

12 Q. And your companies list some of their  
13 offers on the Apples to Apples chart; do they not?

14 A. Yes.

15 Q. And if we look to page 2 of this  
16 document --

17 A. Which exhibit?

18 Q. I'm sorry, Exhibit 105. Thank you. We  
19 see on the second page a product being offered by  
20 Constellation NewEnergy, correct?

21 A. Yes.

22 Q. And it's a 12-month proposal?

23 A. Yes, 12 months, yes.

24 Q. And it's a fixed price?

25 A. It is.

1 Q. 6.89 cents per kilowatt-hour?

2 A. Yes .0689, yes.

3 Q. Six cents, though?

4 A. Yes.

5 Q. And let me refer you to Exhibit 106,  
6 approximately one month later -- excuse me -- one  
7 year later.

8 A. One year later.

9 Q. And the second page we see another offer  
10 from Constellation NewEnergy for another 12-month  
11 fixed contract to residential customers, correct?

12 A. Yes.

13 Q. And that price is 8.59 cents per  
14 kilowatt-hour, correct?

15 A. Yes.

16 Q. And would you agree with me that, subject  
17 to check, the difference between those two, that  
18 represents a 20 to 25 percent increase, one year over  
19 the next?

20 A. I'm a lawyer, not a mathematician, but  
21 that is an increase.

22 Q. Now, I want to talk to you a little bit  
23 about your favorite subject and mine, PJM billing  
24 line items.

25 A. Do we have to?

1 EXAMINER PRICE: I agree. Can we skip  
2 this?

3 MR. KUTIK: You've made my point, sir.

4 THE WITNESS: Mr. Bennett over there, I'm  
5 sure, is happy to talk to you guys.

6 Q. (By Mr. Kutik) Now, there are PJM  
7 billing line items that the companies are proposing  
8 to be newly included under their rider NMB, correct?

9 A. Yes.

10 Q. And certain costs like NITS are allocated  
11 to LSEs based upon something called NSPL, correct?

12 A. Yes.

13 Q. And each customer has an assigned or  
14 allocated NSPL, correct?

15 A. Yes.

16 Q. So that's essentially a cost that could  
17 be designated for each customer?

18 A. I think of it as a proportion or  
19 percentage, but yes.

20 Q. Now, one of the line items you object to  
21 is line item 1450, correct? Do you want to look at  
22 your testimony?

23 A. I've got to look at my testimony.

24 Q. Yes, page 27, line 20.

25 A. Okay. Yes.

1           Q.    And this is a reconciliation of line item  
2   1320, correct?

3           A.    Correct.

4           Q.    And you did not object to the inclusion  
5   of line item 1320 in rider NMB, correct?

6           A.    That is correct.

7           Q.    Would it be fair to say that you don't  
8   know the charges that are included in billing line  
9   item 1320?

10          A.    The specific charges, no.

11          Q.    Another group of line items involves  
12   balancing operating reserves, balancing operating  
13   reserves for load response and reactive services,  
14   correct?

15          A.    Correct.

16          Q.    Would it be fair to say, sir, that  
17   recently the PJM markets have seen an increase in the  
18   magnitude and volatility of make-whole payments?

19          A.    I don't know if I'm in a position to  
20   confirm or deny that so I'm going to say I don't  
21   know.

22          Q.    Would you agree that operating reserve  
23   costs are out of market, and, as such, are not  
24   included in the pricing signals that are visible and  
25   transparent to the entire market?

1           A.    I don't specifically know the answer to  
2   that.

3           Q.    Are these operating reserve costs  
4   sometimes referred to as uplift payments?

5           A.    I think that could fall into that  
6   category.

7           Q.    Would it be fair to say that when these  
8   uplift charges or payments are charged to the market,  
9   they are not predictable and cannot be hedged on a  
10   forward basis?

11          A.    So there's two questions within that  
12   question. I will take them in pieces. Are they  
13   predictable? No. Can they be hedged? I think the  
14   whole point of my testimony is, yes, they can be  
15   managed by properly scheduling your load.

16          Q.    But there's no market that you can go and  
17   hedge these on, correct?

18          A.    You manage the risk by scheduling load,  
19   not by purchasing, you know, hedge products. Yes, I  
20   would agree with that.

21          Q.    Now, would it be fair to say that you do  
22   not know if PJM has a stakeholder group or task force  
23   with respect to operating reserve charges or  
24   balancing operating reserves, balancing operating  
25   reserves for load response and reactive services?



1           A.    I'm sure they do, but I'm unaware  
2 personally of that.

3           Q.    And would it be fair to say that you're  
4 not aware of whether at times there are PJM  
5 stakeholder groups for which there are problem  
6 statements or issue charges made?

7           A.    Again, no personal awareness of the  
8 details of any stakeholder groups, so no. Yeah, I  
9 would agree with that.

10          Q.    Would it be fair to say that you don't  
11 know the specific charges or credits relating to  
12 operating reserves?

13          A.    I am not familiar with the details of  
14 operating reserves other than they can be managed by  
15 how you schedule your load.

16          Q.    You don't know if day-ahead charges are  
17 included, correct?

18          A.    Yeah, I don't know the answer to that.

19          Q.    You don't know if balancing charges are  
20 included, correct?

21          A.    Again, I don't know the specifics of --  
22 you know, the specific elements of each line item.

23          Q.    You don't know how operating reserve  
24 charges are calculated, correct?

25          A.    Well, I do know that part of the

1 calculation is based on deviation between how load is  
2 scheduled day-ahead and what actually shows up in  
3 realtime. That's the premise of my argument. So  
4 it's really not about the detail of the charges.  
5 It's about the fact that they can be managed by  
6 diligent scheduling.

7 Q. All right. Let me refer you to your  
8 deposition testimony, sir.

9 A. Okay.

10 Q. Page 99. Are you there?

11 A. Almost, yes.

12 Q. Starting at line 24, do you not give the  
13 following answer to the following question:

14 "You understand that operating reserve  
15 charges represent the difference between a  
16 generator's cost and LMP revenues?"

17 Answer: "I don't know for sure how those  
18 charges are calculated."

19 Did I read that correctly

20 A. You read that correctly.

21 Q. Now, would it be also true to say that  
22 you don't know how or whether operating reserves are  
23 dependent on fuel prices and operating conditions?

24 A. I don't.

25 Q. You don't know if operating reserve

1 charges are out-of-market revenues?

2 A. I wouldn't be comfortable, you know,  
3 testifying to that one way or another. I believe if  
4 they fall under the category of uplift, they probably  
5 are out of market to some degree.

6 Q. You agree that portions of operating  
7 reserves are not included in price signals and are  
8 not visible and transparent to the entire market?

9 A. I would agree with that.

10 Q. And you would agree with me that the PJM  
11 market does not determine the level of operating  
12 reserves?

13 MR. PETRICOFF: Could we get the question  
14 reread, your Honor.

15 EXAMINER PRICE: You may.

16 (Record read.)

17 A. I don't know the answer to that.

18 Q. Now, you do know, do you not, that  
19 operating reserves deal in part with compensation  
20 from out-of-merit dispatch, correct?

21 A. Yes, I could see that factoring in.

22 Q. And out-of-merit dispatch occurs mostly  
23 for reliability reasons, correct?

24 A. I would agree with that.

25 Q. And so generation that participants in

1 out-of-merit dispatch does not set the LMP, correct?

2 A. I don't know about that. I would  
3 disagree with that actually. I think dispatch --  
4 dispatch goes to dispatch which would go into, I  
5 believe, the LMP.

6 Q. Let me refer you to your deposition, sir.

7 A. Okay.

8 Q. Page 96, and just so you can see I'm  
9 consistent.

10 A. Okay. Then I could very well be  
11 inconsistent.

12 Q. You'll see why I'm being consistent.  
13 Line 16, do you not give the following answer to the  
14 following question:

15 Question: "And would it be fair to say  
16 that the generation provided via out-of-market --  
17 out-of-merit dispatch does not set the LMP?"

18 Answer: "That would make sense but I  
19 don't know for sure."

20 That's what you testified to, correct?

21 A. Right.

22 Q. Would it be fair to say also that such  
23 generation involved in out-of-merit dispatch does not  
24 receive LMP?

25 A. I don't know that for sure either. I

1 think if they're dispatched out of merit, separating  
2 it from uplift, I think they still get LMP, but,  
3 again, I don't know for sure.

4 Q. So your answer is you don't know?

5 A. We'll go with I don't know for sure.  
6 It's not germane to the argument I'm trying to make  
7 in my testimony about these charges.

8 Q. Well, let me refer you to your  
9 deposition.

10 A. Okay.

11 Q. Page 96.

12 A. All right.

13 Q. Starting at line 21. Do you not give the  
14 following answer to the following question:

15 Question: "Okay. Would it be fair to  
16 say that generation that is dispatched via  
17 out-of-merit dispatch is not -- may not be fully  
18 compensated from LMP revenues?"

19 Answer: "In other words, that  
20 out-of-merit dispatch would receive something  
21 different than LMP, yes."

22 That was your testimony, correct

23 A. What line are we at?

24 Q. Starting at page 96, line 21, page 97,  
25 line 3.

1           A.    I see.

2           Q.    Did I read that correctly?

3           A.    Yes.

4           Q.    So this generation gets to recover its  
5 costs regardless of what the LMP might be; fair to  
6 say?

7           A.    Certainly for generation that's on the  
8 uplift side, I would agree.  It's probably right on  
9 the out-of-merit side as well.

10          Q.    Would it be fair to say that it is  
11 difficult to predict when PJM will need to rely on  
12 out-of-merit dispatch?

13          A.    I think generally, yeah, I would agree  
14 with that statement.

15          Q.    Would you also agree that it's difficult  
16 to predict which companies will be asked to provide  
17 such dispatch?

18          A.    I think there's a lot of folks that would  
19 say there's certain units out there that know they're  
20 going to be dispatched out of merit, but generally I  
21 would agree with the unpredictability.

22          Q.    So it would be difficult to predict for  
23 those generators that are asked to provide  
24 out-of-market dispatch -- or out-of-merit dispatch  
25 what their costs will be at the time they're being

1 asked to provide that dispatch, correct?

2 A. I don't know for sure.

3 Q. Now, you mentioned the concept of uplift  
4 before. These are charges made to generators to make  
5 them whole because the market-based payment did not  
6 provide them with cost recovery, correct?

7 A. That would be consistent with my  
8 understanding of uplift. That would be consistent.

9 Q. And so I think we agreed earlier when  
10 uplift payments are made, they are not predictable  
11 and cannot be hedged on a market on a forward basis,  
12 correct?

13 A. I mean, again, I think the point of my  
14 testimony is that they can be managed by proper  
15 scheduling and forecasting and scheduling of load  
16 day-ahead. That's the way to mitigate the harm that  
17 these unforeseen charges can cause.

18 Q. Let me refer you to your deposition, sir,  
19 page 102. And did you not give the following answers  
20 to the following questions starting at line 15:

21 Question: "Would it be fair to say that  
22 when uplift payments are made or charged to the  
23 market, they are not predictable and cannot be hedged  
24 on a forward basis?"

25 Answer: "I think it would be fair to say

1       they are unpredictable --"

2                   And I said: "Okay."

3                   "-- and difficult to hedge."

4                   That was your testimony, correct?

5           A.     Um-hmm.

6           Q.     Thank you. Now, I want to talk to you  
7       about another objection that you have with respect to  
8       the PJM billing line items, and that's the planning  
9       period congestion uplift.

10                  EXAMINER PRICE: Mr. Kutik, could we go  
11       off the record for a moment?

12                  (Recess taken.)

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

15                  Thank you. Mr. Kutik.

16           Q.     (By Mr. Kutik) Mr. Campbell, one of your  
17       other objections with respect to Mr. Stein's  
18       testimony is about the inclusion of the line item for  
19       planning period congestion uplift, correct?

20           A.     Correct.

21           Q.     And you would agree with me these are  
22       payments made to cover shortfalls by the market in  
23       compensating FRR and ARR holders?

24           A.     That is correct.

25           Q.     And how much the shortfall will be is not



1       predictable, correct?

2               A.     That is correct.

3               Q.     And every FRR holder will experience  
4       shortfall regardless of how much FRR the party has,  
5       correct?

6               A.     Sorry.  Could you repeat the question?

7                       (Record read.)

8               EXAMINER PRICE:  Did you mean to say FTR?

9               MR. KUTIK:  FTR.

10              Q.     With that clarification, would you answer  
11     the question?

12              A.     Sure.

13              Q.     For both my questions.

14              A.     I think the question assumes there's  
15     always going to be a shortfall.

16              Q.     When there's a shortfall, there is a  
17     shortfall for every FTR holder, correct?

18              A.     When there's a shortfall, that's a risk  
19     someone takes by purchasing an FTR.  If there's a  
20     shortfall, they will be responsible for some part of  
21     that shortfall, yes.

22                     MR. KUTIK:  Your Honor, I'd like to have  
23     marked at this time as Company Exhibit 107 a document  
24     entitled "Customer Guide to PJM Billing."

25                     EXAMINER PRICE:  Be so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MR. KUTIK: May I approach?

3 EXAMINER PRICE: You may.

4 Q. Let me hand you what has been marked for  
5 identification as Company Exhibit 107. Mr. Campbell,  
6 do you recognize that?

7 A. I do recognize this document.

8 Q. And this is a document that, in fact, you  
9 cited in your testimony, correct?

10 A. Yes.

11 Q. This is a document that you relied upon  
12 in gaining your understanding, in part in gaining  
13 your understanding?

14 A. Or lack thereof.

15 Q. Is that correct?

16 A. Yes.

17 Q. Now, I want to move to a different topic,  
18 I'm sure thankfully for you and for me, about some of  
19 the other suggestions that you have.

20 With regard to your suggestions that we  
21 haven't talked about in terms of changing the  
22 companies' policies, procedures and contracts, you  
23 haven't spoken with other suppliers to determine if  
24 they agree with you, correct?

25 A. That's correct.

1           Q.    Now, I want to talk to you about scaling  
2           factors. The companies have a PLC, correct? The  
3           companies have a PLC, correct?

4           A.    Each customer has a PLC, but I guess that  
5           could be rolled up to a company level -- a  
6           load-serving entity level.

7           Q.    Each customer has one, too, correct?

8           A.    That is correct.

9           Q.    And would it be fair to say that scaling  
10          factors are used to make sure some of the customers  
11          PLC equals the company's PLC?

12          A.    That sounds right, yes.

13          Q.    And would it be fair to say that you  
14          don't want the companies to apply scaling factors  
15          before they submit the information to PJM about PLCs,  
16          correct?

17          A.    I think the focus of my testimony was on  
18          what was being posted publicly versus when was being  
19          submitted to PJM and there being consistency. But I  
20          think part of your proposal was that we would prefer  
21          that PJM perform the scaling as opposed to the  
22          companies, yes.

23          Q.    So the companies apply the scaling  
24          factor, then they submit, the companies, to PJM, the  
25          PLC?

1           A.     That is my understanding, yes.

2           Q.     And you don't know if suppliers can see  
3     the scaling factors that are used by the companies  
4     when the suppliers receive their bills from PJM,  
5     correct?

6           A.     I don't know the answer to that.

7           Q.     So the answer is yes, you don't know?

8           A.     The answer is yes, I don't know.

9           Q.     Now, you're also aware, though, that  
10    other FirstEnergy utilities in states beyond Ohio  
11    present their PLCs to PJM, i.e., with scaling factors  
12    like the companies here do, correct?

13          A.     There are other companies that do the  
14    same thing as the FirstEnergy companies, yes.

15          Q.     My question is you know that other  
16    FirstEnergy companies do that?

17          A.     Oh, outside of Ohio?

18          Q.     Yes.

19          A.     I believe that's correct, yes.

20          Q.     And would it be fair to say that the  
21    various FirstEnergy companies, both in Ohio and  
22    elsewhere, have been doing this since ATSI moved into  
23    PJM?

24          A.     I don't know how far back the practice  
25    goes. Again, the concern in my testimony is more

1 about the discrepancy between what's being submitted  
2 in the PJM and what's being posted on a website.

3 Q. So is the answer to my question you don't  
4 know?

5 A. I don't know how far back the practice  
6 goes.

7 Q. Now, would it be fair to say, though,  
8 that your companies have been aware of what the  
9 FirstEnergy companies have been doing for several  
10 years?

11 A. I would be assuming, but for sake of  
12 argument, yes.

13 Q. And the companies are allowed under PJM  
14 rules to do it the way they're doing it, correct?

15 A. I don't know the answer to that, but I  
16 will assume yes.

17 Q. And you're aware that as far as how  
18 information is submitted to PJM, other companies do  
19 it that way as well, correct?

20 A. I am aware that other companies engage in  
21 a similar practice as the FirstEnergy companies.

22 MR. KUTIK: Your Honor, at this time I'd  
23 like to have marked as Exhibit 108 an e-mail from  
24 Mr. Petricoff to my colleague, Mr. Harvey, dated  
25 August 17, 2015, with several attachments.

1 EXAMINER PRICE: Be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. KUTIK: May I approach?

4 EXAMINER PRICE: You may.

5 Q. Mr. Campbell, let me hand you what has  
6 been marked for identification as Company Exhibit  
7 108. Mr. Campbell, you recognize this as an e-mail  
8 from your counsel to my colleague that was copied to  
9 you?

10 A. Yes. This is from Mr. Petricoff.

11 Q. And this was in response to a discussion  
12 you had at your deposition, correct?

13 A. It is.

14 Q. Where you had seen a list of other  
15 companies and what they did with respect to how they  
16 used scaling factors, or whether they did or not,  
17 before they sent PLCs to PJM, correct?

18 A. Correct.

19 Q. And you provided a list, which is on the  
20 attachments here, correct?

21 A. Correct.

22 Q. And the companies that have a 1 by the  
23 scaling factors before they submit the PLCs to PJM,  
24 correct?

25 A. That is correct.

1           Q.    And that includes ATSI. We see that on  
2 the second page of this document at line No. 10,  
3 correct?

4           A.    Yes, correct.

5           Q.    And we also see a company that is titled  
6 COMED, correct?

7           A.    Correct.

8           Q.    That's Commonwealth Edison, correct?

9           A.    That is a -- yes.

10          Q.    And Commonwealth Edison --

11          A.    I would assume that's Commonwealth  
12 Edison.

13          Q.    And Commonwealth Edison is an affiliate  
14 of Exelon, correct?

15          A.    They are, correct.

16          Q.    Now, would it be fair to say that you do  
17 not know whether there is a PJM stakeholder process  
18 on the issue of whether and when to apply scaling  
19 factors to PLCs?

20          A.    I'm not aware of such a process.

21          Q.    Are you aware of a entity within PJM or a  
22 group within PJM called the Market Settlements  
23 Subcommittee?

24          A.    I'm familiar with that committee -- or  
25 I've heard of that committee. I do not have direct

1 familiarity with it.

2 Q. Would it be fair to say you don't know  
3 whether the Market Settlement Subcommittee is  
4 considering the issues of whether or when to use  
5 scaling factors on PLCs?

6 A. I don't know whether they're engaged on  
7 that issue.

8 Q. I want to talk to you about your  
9 suggestions for the master supply agreement. One  
10 suggestion is to include a list of specific price  
11 node identifiers in the definition of the FE Ohio  
12 aggregate, correct?

13 A. Yes, to update the locations to be  
14 consistent with updates that PJM has made, yes.

15 Q. And you don't know what would happen if  
16 the what we'll call P-node IDs within the FE  
17 aggregate changed after the initiation of the  
18 contract, correct?

19 A. I don't know how that would be handled  
20 from a contract perspective, no.

21 Q. Would it be fair to say that you don't  
22 know if load is scheduled by the companies on a  
23 P-node basis?

24 A. I don't know that.

25 Q. And you don't know even if a list



1 provided by the companies would be accurate for the  
2 entire term of a contract or an agreement?

3 A. Again, I don't know how frequently those  
4 are changed.

5 Q. So the answer is you don't know?

6 A. The answer is I don't know.

7 Q. Another suggestion that you have relates  
8 to a change-in-law provision relating to PIPP load  
9 being removed from the SSO load, correct?

10 A. Correct.

11 Q. And you're not aware of any development  
12 that PIPP load could be removed without a change in  
13 applicable law, order, rule, or regulation, correct?

14 THE WITNESS: I'm sorry. Could you  
15 repeat the question.?

16 (Record read.)

17 A. I believe at the time of my deposition, I  
18 stated that I was unaware of that.

19 Q. And isn't it also true you're not aware  
20 if there is an agency or state government that now  
21 has authority to remove PIPP from SSO load?

22 A. At the time of my deposition, I was  
23 unaware of that, but since then, my counsel has  
24 advised that there may be some authority within a  
25 regulatory agency that they could remove PIPP without

1 legislative action.

2 Q. Now, another suggestion you have involves  
3 the deletion of what you call the notional quantity  
4 language, correct?

5 A. Yes.

6 Q. And you've reviewed testimony given by a  
7 Constellation witness in previous ESP cases, I think  
8 as we mentioned earlier, correct?

9 A. Yes.

10 Q. And you're aware, are you not, that  
11 Mr. Fein submitted testimony seeking removal of  
12 similar language in Case No. 09-906, correct?

13 A. I actually don't recall that as I sit  
14 here today, but it wouldn't surprise me if he did.

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

16 EXAMINER PRICE: You may.

17 Q. Mr. Campbell, I'd like to hand you a  
18 document which is entitled Constellation Exhibit 1  
19 from a previous FirstEnergy Ohio Utilities Company  
20 ESP case, Case No. 09-906-EL-SSO. The document says  
21 "Direct Testimony of David I. Fein, F-E-I-N.

22 MR. KUTIK: I don't intend to mark this  
23 as an exhibit, your Honor.

24 EXAMINER PRICE: Thank you.

25 Q. If you could refer to page 17, Mr. Fein

1 is making a proposal about the notional quantity  
2 language, is that correct, on a line 13?

3 A. Yes. He's referring to the notional  
4 quantity language asking it be made optional.

5 Q. And you're aware Mr. Fein also provided  
6 testimony in the companies' ESP case, case No.  
7 1230-EL-SSO?

8 A. I am aware that he had provided  
9 testimony, yes.

10 Q. And are you aware that in that case he  
11 also made a proposal with respect to modifying the  
12 notional quantity language in the MSA?

13 A. Direct knowledge, no, but I'm assuming  
14 that -- I believe, yes.

15 Q. And it would be fair to say that in  
16 neither case No. 09-906 or 12-1230 the Commission  
17 modified the notional quantity language as suggested  
18 by Mr. Fein?

19 EXAMINER PRICE: Can you restate that  
20 question and not ask about 09-906, or at least -- ask  
21 the 12-1230 first.

22 Q. Isn't it true, sir, that the Commission  
23 did not -- or the ultimate ESP was not changed  
24 pursuant to Mr. Fein's suggestion?

25 EXAMINER PRICE: You can answer.

1 Q. Correct?

2 A. That appears to be the case, yes.

3 Q. And isn't it also true that the  
4 Commission did not change or the ESP was not modified  
5 pursuant to Mr. Fein's suggestion in Case No. 09-906?

6 EXAMINER PRICE: Mr. Kutik, the  
7 Commission never issued an order in 09-906. That was  
8 an MRO, and the company filed a subsequent ESP in  
9 10-388 rendering the MRO moot. So I don't want the  
10 record to --

11 MR. KUTIK: Fair enough, your Honor.

12 Q. Do you know whether in the ESP that came  
13 out of the case, the first ESP that the companies  
14 had, whether that adopted the suggestion that  
15 Mr. Fein had made earlier?

16 A. I'm going to assume not, because we're  
17 still requesting that change today.

18 Q. Fair enough. Now, would it be also true  
19 to say that Mr. Fein also provided similar testimony  
20 in Dayton Power & Light's case 12-426?

21 A. I don't recollect that specifically, but  
22 I would think that probably is the case, yes.

23 Q. And are you aware in that case he  
24 testified that he was not aware of any  
25 inconsistencies in which the language rendered the

1 MSA a derivative?

2 A. I'm not aware of that testimony.

3 Q. Now, well, let me back up. When you said  
4 that you reviewed the testimony of Mr. Fein  
5 previously, did you review the testimony of Mr. Fein  
6 in the Dayton Power & Light case?

7 A. I don't recall reviewing past testimony  
8 in the Dayton Power & Light, no.

9 Q. Did you ever review any depositions that  
10 Mr. Fein testified in in any ESP case?

11 A. I believe I have.

12 Q. Did you review his deposition testimony  
13 in the Dayton Power & Light case?

14 A. I don't think so.

15 Q. Now, you believe that the language that  
16 you object to makes the MSA a derivative, correct?

17 A. That is correct, we would prefer  
18 optionality.

19 Q. And the language we're talking about is  
20 in the settlement amount definition, correct?

21 A. That is correct.

22 Q. And the settlement amount definition  
23 deals with amounts of losses, gains, or costs for a  
24 nondefaulting party by a defaulting party's early  
25 termination, correct?

1 MR. PETRICOFF: Your Honor, could we have  
2 that question read back?

3 EXAMINER PRICE: You may.

4 (Record read.)

5 A. Yes, I would agree with that, the issues  
6 around whether that notional quantity is determinable  
7 or not.

8 Q. You answered my next question, which is a  
9 derivative -- one of the hallmarks of a derivative is  
10 that there be an amount that's determinable, correct?

11 A. That is correct.

12 Q. So to be a derivative, the instrument  
13 must have a notional amount, correct?

14 A. A determinable notional quantity, yes.

15 Q. A notional amount is a number of units  
16 specified in the contract, correct?

17 A. I wouldn't disagree with that.

18 Q. And would you agree that the MSA is, in a  
19 manner of speaking, a requirements contract?

20 A. They're not block products, so I would  
21 say -- I would fit them more in the category of a  
22 requirements product, yes.

23 Q. Would you agree that if a requirement  
24 contract contains explicit provisions that support  
25 the calculation of a determinable amount reflecting

1 the buyer's needs, then the contract has a notional  
2 amount?

3 A. That sounds right, yeah.

4 Q. Would you also agree that an instrument  
5 may not be treated as a derivative if it qualifies  
6 for the normal purchases, normal sales exception?

7 A. I think that is right.

8 Q. And to qualify for the normal purchases,  
9 normal sales exception, quantities expected to be --  
10 the quantities that are delivered are expected to be  
11 delivered and sold, correct?

12 A. That's right. It falls under the accrual  
13 accounting, so normal purchase, normal sale.

14 Q. And the purchase should be something  
15 other than for a financial instrument or a derivative  
16 instrument, correct?

17 A. That, I don't know the answer to.

18 Q. Would it be correct to say that to  
19 qualify for the normal purchases, normal sales  
20 exception, the quantity delivered must be used or  
21 sold over a reasonable period of time?

22 A. That's right.

23 Q. Now, the rules that relate to a  
24 derivative are in your version SAFS 133, correct?

25 A. Yes, FAS 133, yes.

1 Q. Are you familiar with FASB 815?

2 A. No.

3 Q. So you don't know whether that deals with  
4 derivatives and hedging?

5 A. No.

6 Q. Now, would it be fair to say that  
7 regardless of whether the language that we've been  
8 talking about in the MSA may set out a notional  
9 quantity, you're not testifying that such language  
10 has discouraged Exelon from participating in the  
11 companies' SSO auctions, correct?

12 A. I think that we have been active  
13 participants in the SSO auctions despite language  
14 that we don't prefer, yes.

15 Q. And you're aware, are you not, that the  
16 results of the SSO auctions are published on the  
17 PUCO's website?

18 A. Yes.

19 Q. The competitive bidding manager sends in  
20 a letter that sets out the auction results, correct?

21 A. Correct.

22 Q. And that includes the entities that were  
23 winning bidders and the amount of tranches that they  
24 won, correct?

25 A. I believe that's right.



1 MR. KUTIK: May I have a minute, your  
2 Honor?

3 EXAMINER PRICE: You may.

4 MR. KUTIK: Your Honor, we would like to  
5 have marked, hopefully without violating any  
6 convention -- well, let me go off the record.

7 (Discussion off the record.)

8 MR. KUTIK: Your Honor, I'd like to have  
9 marked at this time the following documents with the  
10 following designations: As Exhibit 109A, Companies'  
11 109A, multipage document that starts with a letter  
12 from Bradley A. Miller, vice president of CRA  
13 International, to James W. Burk, FirstEnergy Corp.  
14 dated February 18, 2015.

15 As Exhibit 109B we'd like to have marked  
16 another letter from Mr. Miller to Mr. Burk dated  
17 November 5, 2014.

18 As Exhibit 109C, we'd like to have marked  
19 another letter from Mr. Miller to Mr. Burk dated  
20 February 9, 2014, and I should say these are  
21 documents which begin with the letters.

22 The next document is a series of pages  
23 that begins with another letter from Mr. Miller to  
24 Mr. Burk dated November 13, 2013. That was 109D.

25 109E, as in Edward, we'd like to have

1 marked, another series of documents beginning with a  
2 letter from Mr. Miller to Mr. Burk dated February 13,  
3 2013.

4 And finally, as Exhibit 109F we'd like to  
5 have marked another series of documents beginning  
6 with another letter from Mr. Miller to Mr. Burk dated  
7 November 14, 2012.

8 EXAMINER PRICE: All the documents will  
9 be marked accordingly.

10 (EXHIBITS MARKED FOR IDENTIFICATION.)

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

12 EXAMINER PRICE: You may.

13 Q. Mr. Campbell, let me hand you what has  
14 been marked as Companies' Exhibits 109A through E.  
15 Mr. Campbell, do you recognize that the documents  
16 that are marked as Exhibits 109A through E are the  
17 materials that are published on the PUCO website  
18 regarding the results of the auctions for the SSO  
19 load, or at least some of them?

20 A. These look similar. Yeah, these look  
21 familiar, yes.

22 Q. So if we look at Exhibit 109A, for  
23 example, it begins with a letter, as I indicated,  
24 from Mr. Miller to Mr. Burk having the date  
25 February 18, 2015 that attaches a letter, another

1 letter, from Mr. Miller to Mr. Burk dated January 27,  
2 2015, and then there are tables that follow that or  
3 are in that letter, correct?

4 A. Yes.

5 Q. And on the page that's numbered 4, we see  
6 winning bidders and tranches won, correct?

7 A. Correct.

8 Q. And we see that Exelon had 5 tranches  
9 that it won, correct?

10 A. Correct.

11 Q. And it was the most of any winner,  
12 correct?

13 A. That is correct.

14 Q. Let's look at Exhibit 109B. This is a  
15 similar chart, also shows Exelon winning five  
16 tranches tied with the most of any winning bidder,  
17 correct?

18 A. Tied with AEP, yes.

19 Q. Let's go to 109C, a similar chart. There  
20 we see Exelon winning three tranches in the auction  
21 for the single-year product, and then nine tranches  
22 for the auction for the two-year product, and of both  
23 auctions together, Exelon had more tranches than  
24 anyone else, correct?

25 A. Correct.

1           Q.    Let's go to Exhibit 109D, and a similar  
2           chart we see Exelon winning no tranches for the  
3           single-year product and one tranche for this two-year  
4           product, correct?

5           A.    Yes.

6           Q.    Let's go to 109E, and that's a letter  
7           dated February 13, and we go to 2013 and we go to the  
8           similar chart Exelon has won one tranche in that  
9           auction, correct?

10          A.    I'm sorry. Which exhibit and which date?  
11          I might be --

12          Q.    I may be off. The February 13, 2013  
13          letter.

14          A.    Yes.

15          Q.    And we go to a similar chart, which is  
16          actually a January 22, 2013.

17          A.    I was looking at the January date. Yes.

18          Q.    And we see that Exelon was the winning  
19          bidder for one tranche, correct?

20          A.    Yes.

21          Q.    And the last document of the series shows  
22          that if you look at the similar chart, Exelon again  
23          won five and was tied for first with two other  
24          bidders, correct?

25          A.    Correct.

1 EXAMINER PRICE: Let's go off the record.

2 (Discussion off the record.)

3 Q. Your Honor, I believe I neglected to mark  
4 as Exhibit 109F the last of the documents that we had  
5 looked at just now, which is a series of documents  
6 that begins with a letter from Mr. Miller to Mr. Burk  
7 dated November 14, 2012. I apologize.

8 EXAMINER PRICE: That will be so marked.

9 MR. KUTIK: Your Honor, may I have a  
10 moment, please?

11 EXAMINER PRICE: You may.

12 MR. KUTIK: That's all the questions I  
13 have. Thank you.

14 EXAMINER PRICE: Thank you.

15 Mr. McNamee?

16 MR. MCNAMEE: No questions. Thank you.

17 EXAMINER PRICE: Ms. Chiles?

18 EXAMINER CHILES: No questions.

19 EXAMINER PRICE: Ms. Addison, anything on  
20 notational conformity.

21 EXAMINER ADDISON: Not at this time.

22 EXAMINER PRICE: She is our accounting  
23 star. I just have one question not to do with  
24 accounting.

25 THE WITNESS: Good.

1 EXAMINER PRICE: Or a series of  
2 questions. Can you turn to your testimony, your  
3 original direct testimony, at page 12, line 6. Are  
4 you there?

5 THE WITNESS: Yes.

6 EXAMINER PRICE: And you testify that  
7 "Rider RRS will prohibit customers from being able to  
8 choose the lowest cost source of generation service  
9 and could mean higher costs for electricity customers  
10 and businesses that provide jobs in Ohio." Is that  
11 correct?

12 THE WITNESS: That is what is written  
13 there, yes.

14 EXAMINER PRICE: That is such a lawyerly  
15 answer. I've been noting this --

16 THE WITNESS: I've been doing this --

17 EXAMINER PRICE: -- entire testimony.

18 Okay. That is your testimony?

19 THE WITNESS: That is my testimony.

20 EXAMINER PRICE: And so I assume that you  
21 believe it's important for customers to be able to  
22 choose the lowest cost source of generation service?

23 THE WITNESS: I believe that's one of the  
24 benefits of choice, yes.

25 EXAMINER PRICE: So it's important?

1 THE WITNESS: It is important, yes.

2 EXAMINER PRICE: And you're familiar with  
3 our Apples chart?

4 THE WITNESS: Yes.

5 EXAMINER PRICE: Does Exelon put its  
6 lowest and best offers on the Apples chart?

7 THE WITNESS: I can't answer for  
8 certainty. I can't answer for certainty, but I would  
9 think -- I would hope so, but I can't answer with  
10 certainty.

11 EXAMINER PRICE: Are you aware whether  
12 other CRES providers put their lowest and best offers  
13 on the Apples chart?

14 THE WITNESS: I'm unaware.

15 EXAMINER PRICE: Is it an obstacle to  
16 customers choosing the lowest cost source of  
17 generation if CRES providers do not put their lowest  
18 and best offers on the Apples chart?

19 THE WITNESS: Can you repeat the  
20 question?

21 EXAMINER PRICE: I can't repeat it.

22 May I have the question back, please?

23 (Record read.)

24 THE WITNESS: I think the Apples to  
25 Apples is a great source of information for

1 customers. We've supported it and applauded the  
2 Commission for implementing it. And if providers  
3 aren't putting their best offers up there, yeah, I  
4 could see that being an obstacle for customers being  
5 able to identify what the best offer is.

6 EXAMINER PRICE: Thank you.

7 Redirect.

8 MR. PETRICOFF: Your Honor, may we have a  
9 few minutes first?

10 EXAMINER PRICE: Yes. Let's go off the  
11 record.

12 (Recess taken.)

13 EXAMINER PRICE: Mr. Petricoff.

14 MR. PETRICOFF: Thank you, your Honor.

15 - - -

16 REDIRECT EXAMINATION

17 By Mr. Petricoff:

18 Q. Mr. Campbell, earlier today Mr. Kutik  
19 asked you about a variety of subsidies that some  
20 generators get in PJM; do you recall that discussion?

21 A. I do.

22 Q. Are you aware of any generator getting a  
23 subsidy in PJM that is similar that's what's being  
24 proposed for rider RRS?

25 A. I'm not.



1           Q.    And then Mr. Kutik also asked you a  
2           series of questions about the Exelon proposal in  
3           Illinois. Do you recall that discussion?

4           A.    I do.

5           Q.    What are the distinctions or differences  
6           between the Exelon proposal in Illinois and rider  
7           RRS?

8           A.    There are a number of distinctions, and I  
9           address it in my testimony. Because we actually  
10          propose as an alternative to address Ginna and the  
11          nuclear unit itself that one of the alternatives that  
12          we could support is something along the lines of a  
13          low-carbon portfolio standard that would be an  
14          RPS-like structure that would provide the additional  
15          compensation to nuclear as a clean zero-carbon  
16          resource that it is currently not -- the nuclear is  
17          currently not receiving in the market.

18                The structure in Illinois was an RPS-like  
19          structure. It is designed to treat all zero-carbon  
20          resources fairly and evenly. It's a market-based  
21          structure open to all zero-carbon resources, and it  
22          would be designed to, again, provide additional  
23          revenues and compensations specifically -- not for  
24          reliability, not for energy, but for the zero-carbon  
25          clean energy value that is inherent in nuclear

1 energy.

2 EXAMINER PRICE: When you say it's open  
3 to all noncarbon-based sources, do you mean all  
4 geographically, or do you mean all as a type of  
5 source?

6 THE WITNESS: Yes. It would be a  
7 state-level plan, but it would be -- I think there is  
8 some -- I think it allows even bordering states to  
9 participate, I believe. And when I say all  
10 zero-carbon resources, so all the resources that  
11 currently participate in RPS would be able  
12 participate in the low-carbon portfolio.

13 EXAMINER PRICE: Geographically it  
14 applies to Illinois and the contiguous states?

15 THE WITNESS: Contiguous states, that's  
16 correct.

17 EXAMINER PRICE: Are there any nuclear  
18 power plants in contiguous states to Illinois?

19 THE WITNESS: I'm sure there are. One of  
20 the --

21 EXAMINER PRICE: Are you guessing or are  
22 you --

23 THE WITNESS: No, no, there are. But --  
24 there are, yes. There are.

25 EXAMINER PRICE: What are they?

1           THE WITNESS: Now you're calling me out.  
2       I know there's one in Michigan, and that's about it  
3       as far as my personal knowledge.

4           Q.       (By Mr. Petricoff) Finally, you were  
5       asked by Mr. Kutik about the competitive advantage  
6       that FES would have if the RRS was in place in times  
7       when the market would be going up -- or actually, let  
8       me take that back.

9                     Let me present you with a different  
10      question as well. Could you go through what the  
11      process is that Exelon went through for the Ginna  
12      plant and distinguish that from the rider RRS?

13          A.      Sure. And this is in my testimony as  
14      well. The process in Ginna really mirrors and  
15      reflects the RMR, reliability must run, process that  
16      occurs here in PJM.

17                    In Ginna, we sought an application  
18      claiming financial distress. The unit was going to  
19      close. It was clear financial need, financial  
20      distress. There was imminent closure of the unit.  
21      An independent reliability study was performed to  
22      determine that there was, indeed, a reliability need.

23                    Prior to any RSSA being granted, there  
24      was a competitive bidding process that was conducted  
25      to allow other participants to come in and show that

1 they have a lower-cost solution to fix the  
2 reliability need, and only after all those things  
3 were done, which is very similar to what happens in  
4 the PJM in the RMR process, did the parties move  
5 forward with the RSSA agreement.

6 So, again, three pillars: Our  
7 independent reliability study, financial need,  
8 financial distress of the unit, and, finally, the  
9 open and competitive bidding process to identify a  
10 lower-cost solution. All those things we recommend  
11 in our testimony should take place here in Ohio with  
12 regard to any units before they're given the subsidy.

13 Q. And, finally, and I've now located the  
14 page, on your deposition on page 95 and 96, Mr. Kutik  
15 read you a portion of that transcript starting on  
16 line 7 on 95 and ending on line 4 page 96. What is  
17 your understanding of the question that you were  
18 being asked in that series of questions in your  
19 deposition?

20 A. Right. So, you know, there's a  
21 significant amount of back and forth between he and  
22 I, and I begin to answer his question by saying, "So  
23 if I understand your question correctly, market  
24 prices" -- I'm reading from page 95, line 19.

25 "So if I understand your question

1 correctly, markets prices are sufficiently high such  
2 that FES would no longer need... an additional  
3 subsidy; therefore --" And then it's cut off.

4 "No. That all FES is getting is costs.  
5 It's not getting the higher revenues for market  
6 prices. Does FES still have a competitive advantage  
7 then?"

8 During this whole dialogue, I was trying  
9 to understand the question to mean that there was no  
10 subsidy, that there was no -- essentially no rider  
11 RRS subsidy occurring, and I took his "no" here to  
12 mean there's no subsidy there, and if there is no  
13 subsidy, would there be a competitive advantage? I  
14 ultimately agreed with that.

15 As I said earlier today, if there is no  
16 risk on behalf of one market participant competing  
17 with other market participants that do have risks,  
18 they are at a competitive disadvantage.

19 Q. If FES is getting its costs in the higher  
20 revenue via the marketplace, it still has a subsidy  
21 under the rider RRS?

22 MR. KUTIK: Objection.

23 EXAMINER PRICE: Grounds?

24 MR. KUTIK: Leading.

25 EXAMINER PRICE: Sustained.

1 MR. PETRICOFF: I have no further  
2 questions, your Honor. Thank you.

3 EXAMINER PRICE: Thank you.

4 Mr. Mendoza?

5 MR. MENDOZA: No questions, your Honor.

6 EXAMINER PRICE: Ms. Ghiloni?

7 MS. GHILONI: No questions, your Honor.

8 EXAMINER PRICE: Mr. Boehm?

9 MR. K. BOEHM: No questions, your Honor.

10 EXAMINER PRICE: Mr. Moore?

11 MR. MOORE: No questions. Thank you,  
12 your Honor.

13 EXAMINER PRICE: Mr. Kutik?

14 MR. KUTIK: May I have a moment?

15 EXAMINER PRICE: You may.

16 MR. KUTIK: May I proceed, your Honor?

17 EXAMINER PRICE: You may.

18 - - -

19 RECROSS-EXAMINATION

20 By Mr. Kutik:

21 Q. Mr. Campbell, with respect to your  
22 deposition and the colloquy you just read, it's not  
23 your testimony that you did not hear the words quote  
24 "that all FES is getting is its costs. It's not  
25 getting the higher revenues for market prices"? You

1 heard that, didn't you?

2 A. I did. I mean, it's in the record, yes.

3 Q. Thank you. Now, with respect to the  
4 Illinois legislation proposal, I think you mentioned  
5 that you thought that there was a nuclear plant in  
6 Michigan, correct?

7 A. I believe there is one, yes.

8 Q. Is that the Fermi plant?

9 A. That sounds right.

10 Q. And that's a regulated plant, is it not?

11 A. I believe it is, yes.

12 MR. KUTIK: Your Honor, at this time we'd  
13 like to have marked as Exhibit 110 a document  
14 entitled "Rochester Gas and Electric Corporation  
15 Solicitation Results and Other Alternatives.

16 EXAMINER PRICE: Will be so marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MR. KUTIK: May I approach?

19 EXAMINER PRICE: You may.

20 Q. Mr. Campbell, let me hand you what has  
21 been marked as Exhibit 110.

22 Now, you testified, did you not, sir,  
23 that there was an RFP-like process, correct?

24 A. That is correct.

25 Q. And isn't it true that you don't know if

1 the bids were actually submitted and received,  
2 correct?

3 A. At the time of my deposition, I did not  
4 know the answer to that.

5 Q. And you don't know, would it be fair to  
6 say, if any bid to -- the bids received were  
7 basically inadequate to serve the load during the  
8 initial portion of the proposed RSSA, correct?

9 A. I would assume since they moved forward  
10 with the contract with Ginna, that the bids were  
11 insufficient to meet the need for the time-being.

12 Q. And you recognize this as a report from  
13 Rochester Gas and Electric Corporation barring the  
14 solicitation results, do you not?

15 A. That is what it appears to be, yes.

16 Q. And you've seen this before, of course?

17 A. I have not seen this before.

18 Q. Would it be fair to say that in terms of  
19 doing a lowest cost alternative analysis, one would  
20 look at the potential transmission costs that would  
21 be required as a result of the potential retirement  
22 of the plant in question?

23 A. I would think they would look at the most  
24 reasonable, including lowest-cost, alternative -- if  
25 there was a more reasonable lower-cost alternative to



1 satisfy the reliability gap that was identified by  
2 the independent study.

3 Q. And that would include looking at the  
4 costs of potential transmission additions that might  
5 be required as a result of retirement of the plant,  
6 correct?

7 A. I would think the transmission upgrades  
8 and changes would be one of the alternative  
9 solutions, yes.

10 MR. KUTIK: Could I have a minute, your  
11 Honor?

12 EXAMINER PRICE: You may.

13 MR. KUTIK: That's all the questions I  
14 have. Thank you, your Honor. Thank you, sir.

15 EXAMINER PRICE: Mr. McNamee?

16 MR. MCNAMEE: No questions. Thank you.

17 EXAMINER PRICE: I want to follow up our  
18 discussion about the Illinois proposal. Are you  
19 familiar with Ohio's alternative energy portfolio  
20 standard?

21 THE WITNESS: Somewhat. I know it's been  
22 frozen.

23 EXAMINER PRICE: Yes, it is currently,  
24 the currently frozen portfolio standard. You're  
25 aware that renewable energy can qualify to meet the

1 standard if it is from a state that borders Ohio or  
2 the energy from that renewable energy resource can be  
3 delivered into Ohio?

4 THE WITNESS: That sounds right. That  
5 sounds consistent with my understanding, yes.

6 EXAMINER PRICE: And you've indicated  
7 that a power from a renewable resource from a  
8 bordering state can count towards the proposed  
9 Illinois zero-carbon standard.

10 THE WITNESS: It can, but there's an  
11 additional limitation on for resources that are  
12 already obtaining full-cost recovery. So, in other  
13 words, if you're already obtaining your  
14 full-cost-recovery value, then you do not -- would  
15 not qualify under the proposal in Illinois.

16 EXAMINER PRICE: Okay. So my question --  
17 that's an interesting point. That's not where I'm  
18 going.

19 THE WITNESS: I wanted to clarify that  
20 because I didn't clarify that earlier.

21 EXAMINER PRICE: So my question is would  
22 power from a nuclear or other renewable resource  
23 that's not bordering Illinois, is not located in  
24 Illinois, but the power is able to be shown to be  
25 deliverable into Illinois, qualify for the standard

1 which would be analogous to the Ohio situation?

2 THE WITNESS: So it's not a bordering  
3 state?

4 EXAMINER PRICE: Is there an exception  
5 that says bordering state or power can be delivered  
6 into Illinois, can be shown to be --

7 THE WITNESS: I'm not familiar with such  
8 an exception in the proposal currently. And by the  
9 way, this is still a proposal that has not gone  
10 anywhere in the legislature.

11 EXAMINER PRICE: Thank you. You're  
12 excused.

13 Mr. Petricoff?

14 MR. PETRICOFF: Your Honor, at this time  
15 we would move into admission into the record, subject  
16 to the motions to strike that were granted, Exelon  
17 Exhibits 1, 2 and 3.

18 EXAMINER PRICE: Any objection?

19 MR. KUTIK: Your Honor, we would just  
20 renew our motions to strike.

21 EXAMINER PRICE: The exhibits will be  
22 submitted subject to the motions to strike which were  
23 granted.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 MR. KUTIK: Your Honor, at this time the

1 companies would move for the admission of the  
2 following exhibits: Exhibit 105, 106, 107, 108 and  
3 109A through F.

4 EXAMINER PRICE: Any objections to the  
5 admissions of Companies Exhibits 105, 106, 107, 108,  
6 and 109A through F?

7 Seeing none, they will be admitted.

8 MR. PETRICOFF: One moment, your Honor.  
9 Just to make sure, so FirstEnergy is not tendering  
10 into the record either 104 or 110?

11 MR. KUTIK: Well, I'll back up. We are  
12 offering -- we are not offering 110. We are  
13 offering, I'm sorry, 103.

14 MR. PETRICOFF: 103.

15 EXAMINER PRICE: Let's just -- okay. At  
16 this time we're going to admit 105, 106, 107, 108,  
17 and 109A through F.

18 MR. PETRICOFF: No objections.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 EXAMINER PRICE: I don't think you  
21 originally moved, or at least I didn't hear.

22 MR. KUTIK: Yes.

23 EXAMINER PRICE: Now, we'll take up  
24 whether Company Exhibit 103 should be admitted.

25 MR. KUTIK: That's correct, your Honor.

1 EXAMINER PRICE: Any opposition?

2 MR. KUTIK: It's the order that he cited  
3 in his testimony.

4 MR. PETRICOFF: Your Honor, one moment,  
5 please.

6 EXAMINER PRICE: Let's go off the record.  
7 (Discussion off the record.)

8 EXAMINER PRICE: Mr. Petricoff?

9 MR. PETRICOFF: Yes, your Honor. We have  
10 no objections to 103.

11 EXAMINER PRICE: Company Exhibit 103 will  
12 be admitted.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 EXAMINER PRICE: Mr. McNamee, call your  
15 next witness.

16 MR. MCNAMEE: At this time staff would  
17 call Thomas Pearce.

18 (Witness sworn.)

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

21 THE WITNESS: My name is Thomas Pearce.  
22 I'm on the staff of the Public Utilities Commission.  
23 Business address 180 East Broad Street, Columbus,  
24 Ohio, 43215.

25 EXAMINER PRICE: Mr. McNamee, you may

1 proceed.

2 MR. McNAMEE: Thank you.

3 - - -

4 THOMAS PEARCE

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

7 DIRECT EXAMINATION

8 By Mr. McNamee:

9 Q. Mr. Pearce, by whom are you employed and  
10 in what capacity?

11 A. I'm employed by the Public Utilities  
12 Commission of Ohio as a senior utilities specialist.

13 MR. McNAMEE: Thank you.

14 At this time, your Honor, I'd ask to have  
15 marked for identification as Staff Exhibit 1 a  
16 multi-page document filed in this case on  
17 September 18, 2015 denominated the prefiled testimony  
18 of Thomas Pearce.

19 EXAMINER PRICE: It will be so marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. Mr. Pearce, do you have before you what  
22 has been marked for identification as Staff Exhibit  
23 1?

24 A. I do.

25 Q. What is it?

1           A.    It is prefiled testimony that I prepared  
2    in this proceeding.

3           Q.    Do you have any additions or corrections  
4    to make to that document today?

5           A.    No, sir, I do not.

6           Q.    Are the contents of that document true to  
7    the best of your knowledge and belief?

8           A.    Yes, sir.

9           Q.    Do you adopt the contents of what has  
10   been marked for identification of Staff Exhibit 1 as  
11   your direct testimony in this case?

12          A.    Yes.

13          Q.    If I were to ask you the questions that  
14   are contained within that document again here this  
15   morning -- this afternoon, would your answers be the  
16   same as presented therein?

17          A.    Yes.

18               MR. McNAMEE:  With that, your Honor, the  
19   witness is available for cross.

20               EXAMINER PRICE:  Mr. Mendoza?

21               MR. MENDOZA:  No questions, your Honor.

22               EXAMINER PRICE:  Ms. Ghiloni?

23               MS. GHILONI:  No questions.

24               EXAMINER PRICE:  Mr. Petricoff?

25               MR. PETRICOFF:  No questions.

1 EXAMINER PRICE: Mr. Boehm.

2 MR. K. BOEHM: No questions, your Honor.

3 EXAMINER PRICE: Consumers' Counsel?

4 MR. SAUER: Just a couple, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Sauer:

8 Q. Good morning, Mr. Pearce.

9 A. Good morning -- or good afternoon.

10 Q. You're right.

11 You're testifying to rider GDR, correct?

12 A. A portion of that, yes, sir.

13 Q. Okay. And your testimony addresses the  
14 cybersecurity costs associated with what potentially  
15 might be costs run through an approved rider GDR?

16 A. Yes, sir.

17 Q. If there was a governmental directive or  
18 a legislative action that would reduce costs for the  
19 company, would you be opposed to the GDR rider being  
20 used to pass those cost reductions through to  
21 consumers?

22 A. No. I believe it's inequity that  
23 costs -- the direction they're incurred. So that the  
24 costs would flow in which they are incurred. If  
25 there is a credit, then I would assume that also



1 would flow through such a rider.

2 MR. SAUER: No further questions, your  
3 Honor.

4 EXAMINER PRICE: Thank you.

5 Mr. Alexander?

6 MR. ALEXANDER: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Alexander:

10 Q. Mr. Pearce, my name is Trevor Alexander.  
11 I'm one of the lawyers for the companies. Just a few  
12 questions for you today.

13 A. Sure.

14 Q. Your testimony is limited to addressing  
15 the physical and cybersecurity potential costs that  
16 could flow through rider GDR, correct?

17 A. Yes, sir.

18 Q. And the companies have provided other  
19 examples of types of costs that could flow through  
20 rider GDR, such as manufactured gas plant costs,  
21 correct?

22 A. There are other items that the company  
23 identified associated with that, yes, sir.

24 Q. And your testimony only addresses the  
25 physical and cybersecurity potential costs?

1           A.     That is correct.

2           Q.     And turning to page 6, line 2, of your  
3 testimony where you address the ability to quantify  
4 and justify expenditures, let me know when you're  
5 there.

6           A.     Perhaps my formatting is different than  
7 yours, but what is the question number you're  
8 referencing in the answer?

9           Q.     It's question 9. It appears on page 6,  
10 line 2.

11          A.     Thank you.

12          Q.     Are you there?

13          A.     I am.

14          Q.     The companies are now proposing a  
15 specific dollar amount to include in rider GDR as  
16 part of this ESP, correct?

17          A.     That's my understanding.

18          Q.     And so the companies' proposal is simply  
19 a placeholder pending future Commission action?

20          A.     That's as I understood it.

21          Q.     And having a rider with a zero charge is  
22 not harmful to customers, correct?

23          A.     I'm not prepared to agree to that, no,  
24 sir.

25          Q.     Having a rider with a zero charge would

1 have no financial impact on customers, correct?

2 A. If it's a zero charge, then, yes, you're  
3 correct in that.

4 Q. And the companies' proposal in this  
5 proceeding is for a three-year ESP commencing in June  
6 of 2016 through May of 2019, correct?

7 A. That's my understanding.

8 Q. And the companies' ESP IV will not  
9 conclude for approximately three and-a-half years  
10 from now, correct?

11 A. Again, my understanding.

12 Q. And so you don't know whether there are  
13 any new state or federal directives regarding cyber  
14 or physical security which could be imposed in the  
15 next three-and-a-half years, correct?

16 A. I don't believe anyone knows that, yes,  
17 sir.

18 Q. And you would agree that if such  
19 requirements were imposed, the companies may not  
20 simply file to establish a rider to collect those  
21 costs during the term of the ESP, correct?

22 A. I'll let the attorneys decide whether or  
23 not that could be done.

24 Q. Okay. So you don't have an opinion as to  
25 whether such a rider must be established now as part

1 of this ESP proceeding?

2 A. I think that's a deeper question than I  
3 am qualified to answer.

4 Q. If you could turn to page 5, line 18, of  
5 your testimony where you reference the future time  
6 when companies can measure the costs?

7 A. Again, my formatting is different, so  
8 you're referencing which question, sir?

9 Q. Question 9 --

10 MR. ALEXANDER: Your Honor, may I  
11 approach the witness to review the document the  
12 witness has in front of him?

13 EXAMINER PRICE: Let's go off the record,  
14 please.

15 (Discussion off the record.)

16 EXAMINER PRICE: Mr. McNamee.

17 MR. MCNAMEE: Thank you, your Honor. It  
18 appears that there's some reproduction difficulty, I  
19 guess, between the versions of Mr. Pearce's testimony  
20 here. I have, while we were off the record, given  
21 Mr. Pearce a copy of the testimony that I've been  
22 referring to and presented that to him.

23 And with that, Mr. Pearce, do you have in  
24 front of you now what has been identified as Staff  
25 Exhibit 1?

1 THE WITNESS: Yes, sir.

2 MR. McNAMEE: And do you recognize that  
3 document?

4 THE WITNESS: I do.

5 MR. McNAMEE: We went through a series of  
6 questions initially --

7 MR. ALEXANDER: Yes, sir.

8 MR. McNAMEE: -- about the accuracy of  
9 that document. If I asked you all those questions  
10 again, would your answers be the same?

11 THE WITNESS: Same answers.

12 MR. McNAMEE: With regard to this  
13 document?

14 THE WITNESS: Yes, sir.

15 MR. McNAMEE: Thank you.

16 EXAMINER PRICE: Thank you.

17 Mr. Alexander, you may proceed.

18 Q. (By Mr. Alexander) Mr. Pearce, you and I  
19 have several questions and answers as we progressed.  
20 Would your answers to any of those questions and  
21 answers change based on the substitution of this  
22 document?

23 A. No, sir.

24 Q. Now, please turn to page 5, line 18,  
25 where you reference a future time when the companies

1 may experience measurable costs, and let me know when  
2 you're there.

3 A. I'm there.

4 Q. You would agree it would be appropriate  
5 for the companies to recover these costs through a  
6 rider, you just think the proposed rider GDR is  
7 premature at this time, correct?

8 A. I believe the rider is premature and I --  
9 what was the first part of your question again?

10 Q. You believe it would be appropriate for  
11 the companies to recover these costs through a rider;  
12 you just believe that the proposal is premature at  
13 this point?

14 A. I would agree that it may be appropriate  
15 for the company to recover costs, yes.

16 Q. In a rider?

17 A. It may be.

18 Q. And you would agree it would be  
19 appropriate for the company to recover prudently  
20 incurred costs associated with physical and  
21 cybersecurity, correct?

22 A. Yes, sir.

23 Q. Now, I'd like you to focus your attention  
24 at page 5, line 2, where you reference current NERC  
25 standards' application to distribution utilities?

1 A. Um-hmm.

2 Q. Now, this portion of your testimony is  
3 based on current NERC standards, correct?

4 A. Yes.

5 Q. At page 5, line 6, you say no new  
6 physical security standards have been passed and  
7 signed into law; do you see that?

8 A. Yes, sir.

9 Q. Are you aware of the Grid Reliability and  
10 Infrastructure Defense Act which passed the United  
11 States House in 2010 but not the Senate?

12 A. There has been that and other legislation  
13 that has passed, various forms, under the House or  
14 Senate or various committees, yes, sir.

15 Q. And that act would have redefined  
16 critical infrastructure to give FERC authority to set  
17 standards outside the bulk power system, correct?

18 A. That is, I believe, a thrust of that  
19 legislation that was not signed into law.

20 Q. And that bill would have potentially had  
21 an impact on the distribution system, correct?

22 A. It could have, depending on what form it  
23 was passed down and signed into law.

24 Q. And you mentioned other laws that have  
25 been proposed. Would another one of those laws have

1       been the Grid Cybersecurity Act of 2011, which passed  
2       out of committee in the U.S. Senate but died after  
3       that?

4             A.     Could be another one, and a few hundred  
5       others.

6             Q.     And so if a bill substantially similar to  
7       any of those few hundred bills you just referenced  
8       were to pass in the future, it is possible that would  
9       impose quantifiable costs on the distribution  
10      utilities, correct?

11            A.     I think we can sit here and speculate as  
12      to what potential legislation that passes at some  
13      future time may contain. Certainly that can be an  
14      option.

15            Q.     And at page 5, line 8, you say there have  
16      not been any dockets or proceedings initiated at the  
17      PUCO for cybersecurity or physical security  
18      requirements. Do you see that?

19            A.     Or standards, yes, sir.

20            Q.     Now, the Commission has recently  
21      acknowledged the importance of infrastructure  
22      protection, I think most recently, in AEP Ohio's most  
23      recent ESP order?

24            A.     Um-hmm. Yes, sir.

25            Q.     And the Commission has established an



1 Ohio Critical Infrastructure Collaborative to address  
2 distribution infrastructure concerns, correct?

3 A. Yes, sir.

4 Q. And you would agree that it's too early  
5 to ascertain what directives may come from the  
6 Commission's infrastructure concerns?

7 A. That is correct.

8 Q. And the Commission has also historically  
9 considered cybersecurity issues over the last several  
10 years?

11 A. In a formal proceeding?

12 Q. Yes.

13 A. To the extent they've been in formal  
14 proceedings, to my knowledge, that has been within  
15 the context of SmartGRID dockets.

16 MR. ALEXANDER: Your Honor, may I  
17 approach.

18 EXAMINER PRICE: You may.

19 MR. ALEXANDER: I'd like to have marked  
20 for identification as Company Exhibit 111 the Finding  
21 and Order from Case No. 11-277-GE-UNC and case No.  
22 11-5474-AU-UNC.

23 EXAMINER PRICE: Will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Mr. Pearce, have you seen this document

1 before?

2 A. I've not reviewed it previously, no, sir.

3 Q. Okay. When you reference the SmartGRID  
4 proceeding, is this the SmartGRID proceeding that you  
5 were referring to?

6 A. This is one of some I believe that were  
7 related to that, yes, sir.

8 Q. Okay. If you could turn to page 21 in  
9 the first full paragraph of this document, the  
10 Commission says in its Finding and Order, "We further  
11 direct Staff to form a separate proposal regarding  
12 our initial review of cyber security issues." Do you  
13 see that?

14 A. No, sir, I don't see where you are.

15 Q. Okay. It's the first full paragraph on  
16 the page, approximately three-quarters of the way  
17 through that paragraph.

18 A. Okay.

19 Q. So do you see that reference?

20 A. Yes, sir.

21 Q. Okay. And is that the staff review that  
22 you're referring to in your answer?

23 A. I'm sorry. I don't understand the  
24 question. Could you rephrase it?

25 Q. Sure. I believe your previously,

1 answer you had -- I had asked you whether the  
2 Commission had over the last several years been  
3 following cybersecurity issues. Do you recall that?

4 A. Yes, sir.

5 Q. And you had mentioned, I believe, that  
6 the Commission may have done that in connection with  
7 some SmartGRID proceedings?

8 A. Yes, sir.

9 Q. And so my question is, is this proposal  
10 or instruction to staff to create a proposal  
11 regarding cybersecurity issues, is that what you were  
12 referring to in your response?

13 A. In my testimony?

14 Q. No, just now in our conversation.

15 A. No, I wasn't specifically referring to  
16 that.

17 Q. Okay. Are you aware of whether staff  
18 has, in fact, reviewed cybersecurity issues in  
19 connection with SmartGRID proceedings in the past?

20 A. There has been some examination of that,  
21 yes, sir.

22 Q. And turning to a different topic that you  
23 I believe mentioned earlier, you're aware companies  
24 have proposed nonsecurity issues which could be  
25 included in rider GDR, correct?

1           A.    That's my understanding, yes, sir.

2           Q.    And one of those issues was the costs of  
3 government directives regarding supplier logos and a  
4 supplier web portal; are you aware of that?

5           A.    No, I'm not. That was not a portion of  
6 the application that I was asked to review.

7           Q.    And you're not providing any opinion in  
8 this case regarding nonsecurity costs?

9           A.    No, sir.

10          Q.    And your direct testimony, page 3, line  
11 4, where you mention your involvement in a NARUC  
12 Subcommittee on Critical Infrastructure -- let me  
13 know when you're there.

14          A.    I'm there.

15          Q.    Do you regularly participate in NARUC  
16 Staff Subcommittee meetings on Critical  
17 Infrastructure?

18          A.    Yes, sir, I do.

19          Q.    And that NARUC subcommittee has issued  
20 resolutions asking state commissions to address  
21 attention to cyber and physical security to the  
22 electric distribution system, correct?

23          A.    Not to my knowledge. The committee has  
24 issued various resolutions. The staff subcommittee  
25 has not.

1 Q. Thank you for that clarification.

2 MR. ALEXANDER: Your Honor, may I  
3 approach the witness?

4 EXAMINER PRICE: You may.

5 MR. ALEXANDER: I'd like to have marked  
6 as Companies' Exhibit 112 a NARUC Resolution  
7 Regarding Cybersecurity Awareness and Initiatives and  
8 as Company Exhibit 113 a NARUC Resolution on Physical  
9 Security.

10 EXAMINER PRICE: Those will be so marked,  
11 and you may approach.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Mr. Pearce, starting with companies'  
14 Exhibit 112, which is the cybersecurity resolution,  
15 this resolution was adopted -- I guess, first of all,  
16 have you ever seen this document before?

17 A. It appears to be a resolution that was  
18 passed by the Committee on Critical Infrastructure in  
19 2013.

20 Q. And you're familiar with this document,  
21 correct.

22 A. Yes.

23 Q. And at the bottom of page 2 of this  
24 exhibit, the resolution calls on member commissions  
25 to enhance and strengthen cybersecurity of critical

1 security systems, correct?

2 A. I'm not there yet. Which paragraph are  
3 you on?

4 EXAMINER PRICE: It's the last of the  
5 "Resolved" paragraphs.

6 MR. ALEXANDER: Thank you. Last of the  
7 "Resolved" paragraph. Are you there?

8 A. Yes.

9 Q. So the cybersecurity resolution called on  
10 member commissions to enhance and strengthen the  
11 cybersecurity of critical utility systems, correct?

12 A. It calls on member commissions to  
13 continue to work in partnership with other relevant  
14 federal, regional, and state agencies and industry  
15 organizations to enhance and strengthen the  
16 cybersecurity posture of the nation's critical  
17 utility systems.

18 Q. And turning your attention to Exhibit  
19 113, have you seen this document before?

20 A. Are you speaking of the Resolution of  
21 Physical Security?

22 Q. I am, yes.

23 A. Yes, sir.

24 Q. If you could direct your attention to  
25 page 2 of this exhibit, the next-to-last Resolved

1 paragraph.

2 A. All right.

3 Q. Did this resolution call on state  
4 commissions to devote significant attention to  
5 cybersecurity and other potential hazards to the  
6 electric delivery system either in a collaborative or  
7 otherwise so that regulated utilities in the state  
8 can comply with such a standard?

9 A. Yes.

10 Q. And you agree that if the Ohio Commission  
11 were to adopt policies which impose any costs  
12 associated with these NERC recommendations, it could  
13 impose costs on the companies?

14 A. That certainly could be an outcome, yes,  
15 sir.

16 Q. And you would agree that the Commission  
17 could adopt new security standards if it sees fit  
18 over the next three-and-a-half years?

19 A. The Commission certainly is entitled to  
20 do whatever the Commission chooses to do.

21 Q. And I certainly understand your position  
22 regarding rider GDR, but as far as moving forward,  
23 you would agree that prudently-incurred physical and  
24 cybersecurity costs relating to SmartGRID should be  
25 recovered once those costs are known, correct?

1           A.    My understanding from the company was  
2           that those costs would not necessarily be recovered  
3           through this docket -- through this rider.  Sorry.

4           Q.    Through the SmartGRID rider you mean?

5           A.    No, through the GDR rider.

6           Q.    You would agree that cybersecurity costs  
7           could be recovered currently through rider AMI,  
8           correct?

9           A.    I believe that's correct, assuming  
10          they're prudently incurred, yes, sir.

11          MR. ALEXANDER:  Thank you very much,  
12          Mr. Pearce.

13          THE WITNESS:  Thank you.

14          EXAMINER PRICE:  Mr. McNamee, redirect?

15          MR. MCNAMEE:  No, your Honor.

16          EXAMINER PRICE:  Thank you, Mr. Pearce.  
17          You're excused.

18          MR. MCNAMEE:  At this time, staff would  
19          move for the admission of Staff Exhibit 1?

20          EXAMINER PRICE:  Any objections to the  
21          admission of Staff Exhibit 1.

22          MR. ALEXANDER:  No, your Honor.

23          EXAMINER PRICE:  Be admitted.

24          (EXHIBIT ADMITTED INTO EVIDENCE.)

25          MR. ALEXANDER:  Your Honor, at this time



1 the companies would move the admission of Company  
2 Exhibits 112 and 113.

3 EXAMINER PRICE: Any objections?

4 MR. MCNAMEE: No objection.

5 EXAMINER PRICE: They will be admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 EXAMINER PRICE: At this time we will  
8 take a break for lunch and we will return at 1:45.

9 Thank you.

10 Let's go off the record.

11 (At 12:42 p.m. a lunch recess was taken  
12 until 1:45 p.m.)

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5313

Thursday Afternoon Session,  
October 8, 2015.

- - -

EXAMINER CHILES: Mr. Petricoff, are you  
ready?

MR. PETRICOFF: I'm ready, your Honor.

At this time we would like to call to the  
stand Mr. Stephen Bennett.

(Witness sworn.)

MR. PETRICOFF: Your Honor, at this time  
we'd like to get four documents marked. The first  
one will be the Direct Testimony of Mr. Bennett,  
Stephen E Bennett and that would be, I think, RESA  
Exhibit 2.

EXAMINER CHILES: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. PETRICOFF: And then we have the  
Supplemental Testimony of Stephen Bennett that was  
filed on March 2nd, and that will be RESA Exhibit 3.

EXAMINER CHILES: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. PETRICOFF: And then we have the  
Second Supplemental Testimony of Mr. Bennett for RESA  
and that will be RESA Exhibit 4.

EXAMINER CHILES: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MR. PETRICOFF: And then finally we have  
3 what is marked as the Third Supplemental Direct  
4 Testimony of Stephen E Bennett filed on August 10th  
5 and that will be RESA Exhibit No. 5.

6 EXAMINER CHILES: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. PETRICOFF: Give me a moment, your  
9 Honor. I'll give these to the court reporter.

10 - - -

11 STEPHEN E. BENNETT

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

14 DIRECT EXAMINATION

15 By Mr. Petricoff:

16 Q. Mr. Bennett, do you have what has just  
17 been marked as RESA Exhibit 2, RESA Exhibit 3, RESA  
18 Exhibit 4, and RESA Exhibit 5 with you at the stand?

19 A. I do.

20 Q. And did you bring anything else up to the  
21 stand with you?

22 A. A blank piece of -- a blank pad.

23 Q. Do you have your deposition?

24 A. And my deposition, yes.

25 Q. Were the four sets of testimonies that we

1 just had marked for the record, were they prepared by  
2 you or under your direction?

3 A. Yes.

4 Q. Are there any changes, updates, or  
5 amendments that need to be made to those?

6 A. Yes. During the course of the  
7 proceeding, my employer has gone through a spinoff,  
8 so where in the first testimony I marked as working  
9 for PPL EnergyPlus, that is now Talen Energy at 835  
10 Hamilton Street in Allentown, the same building as  
11 before, just different mailing address. But my  
12 roles, responsibilities, everything has remained  
13 basically the same after the spinoff.

14 Q. Are there any changes to your direct  
15 testimony that you would like to make at this time or  
16 any updates?

17 A. Yes. On page 9 in my direct testimony,  
18 lines 1 through 4, my understanding is that the  
19 companies have withdrawn their request on insurance  
20 products, insurance and insurance products. So we'll  
21 remove those, if I could remove those from the  
22 testimony.

23 Q. And also, you were asking that we remove  
24 the footnote that goes with the section you've just  
25 described?

1 A. Correct.

2 Q. Are there any other changes that you'd  
3 like to make or updates to the testimony?

4 A. No.

5 Q. If I ask you today all the questions that  
6 are in the four sets of testimony, would your answers  
7 be the same?

8 A. Yes.

9 MR. PETRICOFF: Your Honor, the witness  
10 is available for cross-examination.

11 EXAMINER CHILES: Thank you.

12 Mr. Mendoza?

13 MR. MENDOZA: No questions, your Honor.

14 EXAMINER CHILES: Ms. Ghiloni?

15 MS. GHILONI: No questions, your Honor.

16 EXAMINER CHILES: Mr. Randazzo?

17 MR. RANDAZZO: Yes. Does the company  
18 wish to go first? Do you have a preference?

19 EXAMINER CHILES: No, you can go ahead.

20 MR. RANDAZZO: Thank you.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Randazzo:

24 Q. Mr. Bennett, would it be fair to say that  
25 Talen Energy Corporation is primarily engaged in the

1 merchant generation business?

2 A. Yes.

3 Q. And if you know, has Talen expressed an  
4 interest in buying the generating plants formerly  
5 owned by AEP Ohio?

6 A. I think there's been speculation in the  
7 press. I don't think Talen has made any official  
8 comments on that.

9 Q. Okay. Now, I want to focus on your  
10 testimony on your views regarding the stipulation  
11 provision dealing with the application of the  
12 nonmarket-based transmission service schedule.

13 A. And so that I'm clear, we're talking  
14 about my direct testimony?

15 Q. Yes. And more specifically the third  
16 supplemental direct testimony dated August 10, 2015.  
17 Do you have that?

18 A. Yes.

19 Q. Okay. Now, as part of your preparation  
20 in this case, did you have occasion to review what I  
21 call the supplier tariff that deals with the  
22 relationship between the electric distribution  
23 utilities and competitive retail electric service  
24 providers?

25 A. I'm familiar with the document, but I

1 don't believe it was one that I used to prepare this  
2 testimony.

3 Q. Okay. Do you know whether or not that  
4 document identifies who the transmission provider is  
5 going to be in the case of a competitive retail  
6 electric service provider?

7 A. Not explicitly.

8 Q. Do you know what that document says with  
9 regard to whether or not requirements of the Federal  
10 Energy Regulatory Commission control if there's any  
11 conflict between that tariff and some other provision  
12 approved by this Commission?

13 A. No, not explicitly.

14 Q. First of all, I represent the Industrial  
15 Energy Users of Ohio. I'm the general counsel of  
16 that organization and have been since 1992, largely  
17 because they couldn't find anybody else, so I'm  
18 saying that humbly.

19 MR. PETRICOFF: We'll stipulate.

20 MR. RANDAZZO: Thank you. And you do  
21 have firsthand knowledge?

22 MR. PETRICOFF: That's correct. I was  
23 certainly here in 1993 or before.

24 MR. RANDAZZO: Well before.

25 MR. PETRICOFF: Well before.

1           Q.     (By Mr. Randazzo) So are you aware of  
2     whether that organization is a competitive retail  
3     electric service --

4           A.     Which organization?

5           Q.     The Industrial Energy Users of Ohio.

6           A.     I wouldn't think they would be, but I  
7     don't know for sure.

8           Q.     Are you aware of the process in Ohio by  
9     which competitive retail electric service provider  
10    status is acquired?

11          A.     It's a licensure process with the  
12    Commission.

13          Q.     Are you asking or are you telling?

14          A.     I'm telling.

15          Q.     Well, you said is it?

16          A.     I don't believe I did.

17          Q.     Okay. So if an entity is a competitive  
18    retail electric service provider, that would be a  
19    matter of public record, right?

20          A.     Yes.

21          Q.     Are you aware of whether or not the  
22    Industrial Energy Users of Ohio is a curtailment  
23    service provider?

24          A.     I'm not aware.

25          Q.     Are you aware of what curtailment service



1 provider means in the context of PJM?

2 A. Yes.

3 Q. Can you tell me what that is?

4 A. It's an entity that provides demand  
5 response and other related energy services.

6 Q. And that entity would need to be approved  
7 by PJM in order to have that status, correct?

8 A. I believe that to be true.

9 Q. Are you aware of whether or not the  
10 Industrial Energy Users of Ohio is a member of PJM?

11 A. No.

12 Q. That, too, would be a matter of public  
13 record?

14 A. Correct.

15 Q. As would the status if an entity had a  
16 status of curtailment service provider, that would  
17 also be a matter of public record, correct?

18 A. Yes.

19 Q. Now, are you familiar with the PJM open  
20 access transmission tariff? Let me back up. Let me  
21 withdraw the question.

22 Have you read the PJM open access  
23 transmission tariff?

24 A. Portions.

25 Q. Have you read the portion dealing with

1 network integration transmission service?

2 A. Yes, at points in the past, correct.

3 Q. The entirety of it?

4 A. I can't say with surety that I've read  
5 the entirety of it. Probably more of a focus on how  
6 it's calculated and billed.

7 Q. Okay. Would you agree that for purposes  
8 of the network integration transmission service in  
9 the PJM open access transmission tariff, that it is  
10 billed based upon a demand charge?

11 A. It's billed largely based on your network  
12 service peak load contribution.

13 Q. And what is the network service peak load  
14 contribution?

15 A. It's your peak network load during  
16 coincident peak event in PJM.

17 Q. And the coincident peak -- what's a  
18 coincident peak?

19 A. In general terms, it's one of the most  
20 energy-intensive days in the PJM operating year.

21 Q. Okay. Now, the coincident peak that you  
22 referred to, is it the coincident peak that's used  
23 for generation or capacity purposes?

24 A. No, that's the PLC.

25 Q. Okay. So the coincident peak that we're

1 talking about in the context of transmission would be  
2 the coincident peak of the zone associated with the  
3 transmission provider, correct?

4 A. I believe that to be true.

5 Q. And in this case, we're talking about, in  
6 the FirstEnergy case, the zone for retail customers  
7 would be what's commonly referred to as the ATSI  
8 zone; is that correct?

9 A. That's correct.

10 Q. And with regard to the rider NMB, is it  
11 your understanding that that includes network  
12 integration transmission service?

13 A. Yes.

14 Q. And how is that billed to retail  
15 customers?

16 A. I'm sorry. I don't understand the  
17 question. How is it billed to retail customers?

18 Q. Yes, what is the billing statistic used  
19 to calculate the bill under rider NMB?

20 A. In the ATSI zone in the FirstEnergy case?

21 Q. No, in the rider, rider NMB. You  
22 understand rider NMB is a rider for the electric  
23 distribution utilities of the FirstEnergy companies,  
24 correct?

25 A. Yes.

1           Q.     So now I'm asking you, we've switched  
2     from the PJM open access transmission tariff to rider  
3     NMB, and my question is, are you aware of how network  
4     integrated -- NITS, for short, is billed under rider  
5     NMB?

6           A.     My recollection is that there is zonal  
7     coefficient that you subtract adjustments from. You  
8     divide that by billing units and multiply it by a  
9     coefficient of a tax rate.

10          Q.     Well, maybe we can simplify this. Do you  
11     know what a billing determinant is?

12          A.     In this particular case?

13          Q.     Yes.

14          A.     No, I don't. They don't define it in  
15     the -- if I remember correctly, they don't define it.  
16     It's just called a BU.

17          Q.     Okay. So you're not aware of how the  
18     bills under rider NMB are calculated for purposes of  
19     charging customers; is that correct?

20          A.     My understanding was it was based on  
21     class averages, but beyond that, that's the limit of  
22     my understanding.

23          Q.     And you don't know whether or not there's  
24     any distinction in the way the rider is billed as  
25     between residential and business customers?

1           A.    Again, other than the fact that they  
2           would be segmented into different -- they would have  
3           different class averages, no.

4           Q.    And you wouldn't be aware of any  
5           differences in the way that rider NMB is billed for  
6           different rate schedules?  Would that also be  
7           correct?

8           A.    My recollection is that larger customers  
9           are billed on a demand basis, a kilovar basis,  
10          whereas the smaller customers are based on a more  
11          volumetric basis.

12          Q.    Okay.  And what is the demand statistics,  
13          as you understand it, that's used for purposes of  
14          billing customers that are billed on a demand basis  
15          under rider NMB?

16          A.    Did you ask billing statistic?

17          Q.    Yes.

18          A.    I guess I don't know.

19          Q.    Do you know whether it's the zonal  
20          coincident peak that we talked about earlier with  
21          regard to the PJM open access transmission tariff?

22          A.    That would make sense.

23          Q.    And if it were billed based upon the  
24          zonal -- well, let's back up.  I agree it would make  
25          sense.  But do you know whether or not that's what

1 the case is?

2 A. I don't.

3 Q. All right. But if it was billed in the  
4 fashion that you said makes sense, there would be no  
5 difference between the bill a customer would pay  
6 under rider NMB and the PJM open access transmission  
7 tariff with regard to network integration  
8 transmission service; is that correct?

9 A. I think so, but I'm not certain.

10 Q. Now, let's go back to the ATSI zone  
11 coincident peak demand statistic that we talked about  
12 for purposes of the open access transmission tariff  
13 that PJM has. Do you recall that discussion?

14 A. Yes.

15 Q. Now, would you agree that by pricing  
16 service based upon the zonal coincident peak,  
17 customers would be signaled to reduce their demand  
18 coincident with that peak in order to reduce any  
19 stress on the transmission system?

20 A. Yes.

21 Q. Do you believe that that information  
22 might be useful to customers for purposes of reducing  
23 their total delivered price of electricity?

24 A. Yes.

25 Q. Do you believe that revealing that

1 information, in other words, the coincident peak of  
2 the zone, might be useful to customers in enlisting  
3 them to help address reliability objectives?

4 A. Sounds reasonable.

5 Q. Now, in your testimony, page 4 -- and  
6 we're talking about the third supplemental. We have  
7 so many supplementals we have to put numbers on them.  
8 The third supplemental testimony page 4, line 25, you  
9 say, "The charges in Rider NMB cannot be accurately  
10 predicted or hedged." Do you see that?

11 A. I do.

12 Q. So with regard to the PJM open access  
13 transmission tariff, is it your understanding that  
14 the Federal Energy Regulatory Commission determines  
15 pricing for network integrated transmission service  
16 or NITS?

17 A. I guess my understanding would be that  
18 FERC approves PJM's -- PJM would set the pricing and  
19 FERC would approve that.

20 Q. And for the ATSI zone, the price would be  
21 based upon the rates and charges for ATSI as approved  
22 by FERC; is that correct?

23 A. Yes.

24 Q. And that's the ATSI zone price for  
25 transmission service as approved by FERC is based

1 upon what I will call traditional ratemaking, in  
2 other words, rate-based rate-of-return regulation; is  
3 that correct, if you know?

4 A. I never really thought about it that way.  
5 So, no, I don't really know.

6 Q. Now, has Talen ever intervened or  
7 participated in a FERC transmission rate case?

8 MR. PETRICOFF: I'm going to object. The  
9 witness is here on behalf of RESA. He certainly can  
10 be asked about his experience and his experience with  
11 Talen, but Talen is not -- the witness is not here  
12 for Talen.

13 EXAMINER PRICE: Mr. Randazzo, do you  
14 have a response?

15 MR. RANDAZZO: I'm interested in  
16 developing the witness' knowledge, and he works for  
17 Talen, so it's a predicate for another question.

18 EXAMINER CHILES: I'll give Mr. Randazzo  
19 some leeway.

20 MR. RANDAZZO: Thank you.

21 A. Can you repeat the question?

22 Q. Let's back up, since Mr. Petricoff has a  
23 preference and his senior status here begs for some  
24 indulgence.

25 MR. RANDAZZO: Off the record.



1 (Discussion off the record.)

2 Q. (By Mr. Randazzo) Are you aware of  
3 whether or not RESA has participated in any FERC  
4 transmission rate cases?

5 A. I can't say for sure whether they have or  
6 they have not.

7 Q. How about Talen?

8 A. Talen Energy was created on June 1st,  
9 2015, so I think the answer is no.

10 Q. Now, are you aware that you can intervene  
11 in FERC transmission rate cases --

12 A. Yes.

13 Q. -- as a stakeholder? And are you aware  
14 of whether or not the Industrial Energy Users of Ohio  
15 is an intervenor in the pending ATSI-FERC  
16 transmission rate case?

17 A. I have no knowledge of that.

18 Q. Would it be your understanding that by  
19 intervening in FERC transmission rate cases, one  
20 might be able to affect the rates, terms, and  
21 conditions for transmission services as approved by  
22 the Federal Energy Regulatory Commission?

23 A. That sounds reasonable.

24 Q. And if a supplier, retail electric  
25 supplier, was really interested in producing the best

1 outcomes for customers, might it consider intervening  
2 in FERC transmission rate cases for purposes of  
3 helping retail customers get the best delivered price  
4 for electricity?

5 A. The implication there is that -- I think  
6 that a CRES provider can be interested in a  
7 customer's well-being without intervening in a  
8 transmission rate case. But, absolutely, anybody  
9 that's there intervening in support of appropriate  
10 ratemaking would be helping the market and the  
11 customer.

12 Q. Now, are you aware of any other  
13 stakeholder that's participating in this proceeding  
14 besides a FirstEnergy affiliate that's participating  
15 in the pending ATSI-FERC transmission rate cases?

16 A. I'm not.

17 MR. KUTIK: That's all I have. Thank you  
18 very much.

19 Thank you, sir.

20 EXAMINER CHILES: Thank you.

21 Mr. Kurtz?

22 MR. KURTZ: Oh, no, Mr. Boehm is up.

23 MR. K. BOEHM: No questions, your Honor.

24 EXAMINER CHILES: OCC, Mr. Sauer?

25 MR. SAUER: No questions, your Honor.

1 EXAMINER CHILES: Ms. Dunn?

2 MS. DUNN: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Ms. Dunn:

6 Q. Good afternoon, Mr. Bennett.

7 A. Good afternoon.

8 Q. For the FirstEnergy ESP, RESA has a  
9 special project group where members voluntarily  
10 decide to participate, and they fund the efforts for  
11 RESA to participate in the case, correct?

12 A. Correct.

13 Q. If you could turn to your third  
14 supplemental testimony, and I'll direct your  
15 attention to the discovery attachments SEB 1 to 10.  
16 Other than the discovery responses attached to your  
17 third supplemental direct testimony as attachments  
18 SEB 1 to 10, you did not review any other discovery  
19 responses from the companies in this case, correct?

20 A. Correct.

21 Q. And you did not sign a confidentiality  
22 agreement, so you did not review any confidential or  
23 competitively sensitive confidential discovery  
24 responses, correct?

25 A. Correct.

1           Q.    To your recollection, you have had  
2           conversations regarding this case with other  
3           intervenors, correct?

4           A.    Yes.

5           Q.    And that would be PJM Power Providers,  
6           correct?

7           A.    Yes.

8           Q.    When you were with Exelon, you were not  
9           involved in applying the day-to-day application of  
10          the PJM settlement rules, correct?

11          A.    Correct.

12          Q.    And you have not ever worked on the  
13          pricing of CRES products, correct?

14          A.    That's also correct.

15          Q.    Now, the companies project rider RRS to  
16          be a net credit to customers of more than \$2 billion  
17          over the 15-year term of the proposed transaction,  
18          correct?

19          A.    Yes.

20          Q.    RESA has not done any projections of what  
21          rider RRS will either cost or benefit customers over  
22          the 15-year period, correct?

23          A.    Correct.

24          Q.    And you personally have not done any  
25          projections of what rider RRS will either cost or

1 benefit customers over the 15-year term period,  
2 correct?

3 A. Correct.

4 Q. And you would agree that rider RRS does  
5 not recover costs related to distribution service,  
6 correct?

7 A. Correct.

8 Q. And you would not classify a purchase of  
9 receivables program as a distribution service either,  
10 correct?

11 A. I'd say no.

12 Q. That's incorrect?

13 A. You are correct.

14 Q. Thank you.

15 A. Sorry.

16 Q. And to the extent rider RRS is a charge  
17 under rider RRS, the customers are not being charged  
18 for the actual generation they use, correct?

19 A. Would you mind repeating that?

20 Q. Sure. To the extent that rider RRS is a  
21 charge to a customer, the customers are not being  
22 charged for the actual generation they use, correct?

23 A. Correct.

24 Q. And Mr. Ruberto's testimony identified  
25 projections of both charges and credits under rider

1 RRS, correct?

2 A. Yes.

3 Q. And if a credit is not a cost, then a  
4 credit can also not be a redundant cost, correct?

5 A. Correct.

6 Q. Currently, to your knowledge, a CRES  
7 provider cannot provide rate certainty or stability  
8 for a 15-year period through its products, correct?

9 A. I don't think it's impossible for them to  
10 do it. Nobody is.

11 Q. And in a restructured state, like Ohio,  
12 for the most part, competitive retail electric  
13 suppliers can enter and leave the market as they  
14 wish, correct?

15 A. Yes.

16 Q. And one of the reasons that a standard  
17 service offer exists could be in the event that there  
18 are no competitive retail electric suppliers offering  
19 products in a certain territory, correct?

20 A. Yes, a standard service offer should be a  
21 backstop offer.

22 Q. The companies in providing standard  
23 service in Ohio do not receive a profit, correct?

24 A. Correct.

25 Q. If customers are projected to receive a

1 credit during the term of the proposed transaction,  
2 FES is then giving up profit to the customer,  
3 correct?

4 MR. PETRICOFF: Could I have that  
5 question read back?

6 EXAMINER CHILES: You may.

7 (Record read.)

8 MR. PETRICOFF: Actually, I'm going to  
9 object. There's been no predicate that's been laid  
10 as to what kind of profits or losses FES has so I'm  
11 not sure that the question can be answered in the  
12 current state of the record.

13 EXAMINER CHILES: Ms. Dunn, do you have a  
14 response?

15 MS. DUNN: I discussed the \$2 billion  
16 benefit to the customers over the term of the  
17 proposed transaction, as has been demonstrated by  
18 record, so I think it's a fair question under that  
19 predicate.

20 MR. PETRICOFF: If I could, I'd like to  
21 draw the distinction that that is a credit that's  
22 going to customers. The question on the table that  
23 I'm objecting to has to do with the profitability of  
24 FES. We have nothing on here that demonstrates how  
25 FES either makes money or loses money.

1 EXAMINER CHILES: With that  
2 clarification, do you want to respond?

3 MS. DUNN: I think my question, your  
4 Honor, is clear. It's a hypothetical that if  
5 customers are projected to receive a credit, then  
6 during the term of the proposed transaction FES is  
7 then giving up profit to the customer. And there's  
8 been evidence shown from Don Moul, for example,  
9 regarding the operating expenses of the -- projected  
10 operating expenses. There's been a projection shown  
11 in the case. I think it's a fair question under  
12 what's already been produced by the companies.

13 EXAMINER CHILES: I'll allow the  
14 question. He can answer it if he understands.

15 A. I think I would characterize it as  
16 they're exchanging profit for risk elimination.

17 Q. Mr. Bennett, do you have your deposition  
18 in front of you?

19 A. I do.

20 MS. DUNN: Your Honor, may we approach?

21 EXAMINER CHILES: You may.

22 Q. Mr. Bennett, could you please turn to  
23 page 70 of your deposition.

24 A. Yes.

25 Q. Starting on line 3: Question: "If



1 customers are projected to receive a credit during  
2 the term of the PPA, doesn't that mean that FES then  
3 is giving up profit to the customer?"

4 Answer: "Yes. I think that's how that  
5 would work."

6 Did I read that correctly?

7 A. Yes.

8 Q. Thank you. And sitting here today, you  
9 can't say for sure whether the plants in the proposed  
10 transaction are not profitable at all, correct?

11 A. Correct.

12 Q. You do not have any facts to refute the  
13 companies' projection that rider RRS will produce a  
14 net benefit to customers of \$2 billion, correct?

15 A. Correct.

16 Q. You don't recall whether you have seen  
17 the term sheet for the proposed transaction that was  
18 produced in this case in discovery, correct?

19 A. At the time of my deposition, I had not.  
20 Since then, counsel has provided me with a copy of  
21 the term sheet.

22 Q. Are you aware that that term sheet was  
23 provided -- or was produced in discovery?

24 A. I don't know that I know where -- I don't  
25 know how it was produced.

1           Q.    So going back to my question about the  
2           discovery responses that you reviewed that are  
3           attached to the third supplemental, other than the  
4           term sheet you just discussed, which I agree you just  
5           said you don't know if it was in discovery, and these  
6           documents, do you recall reviewing any other  
7           discovery responses?

8           A.    No.

9           Q.    And I believe you said at the time I took  
10          your deposition and at the time you drafted your  
11          testimony, you had not seen a copy of the term sheet,  
12          correct?

13          A.    That's correct.

14          Q.    You would agree that by entering into the  
15          PPA, FES is also taking on a risk, correct?

16          A.    No, I don't think --

17               MR. PETRICOFF:  I'm sorry.  Your Honor,  
18          could I have the question read back?

19               EXAMINER CHILES:  You may.

20               (Record read.)

21               MR. PETRICOFF:  Thank you.  That's fine.  
22          I have no objection to the question.

23          A.    No, I wouldn't characterize it that way.

24          Q.    Mr. Bennett, could you please turn to  
25          your deposition, page 75, line 12.

1                   Question: "Wouldn't you agree that by  
2                   entering into the PPA, FES is also taking on a risk  
3                   as well?"

4                   Answer: "Yes."

5                   Did I read that correctly?

6                   A.    Yes.

7                   Q.    Now, customers on standard service are  
8                   exposed to changes in market prices, correct?

9                   A.    I'm sorry. Would you mind repeating the  
10                  question?

11                  Q.    Sure. Customers on standard service  
12                  offer are exposed to changes in market prices,  
13                  correct?

14                  A.    I believe so.

15                  Q.    And customers who shop with CRES could  
16                  also be exposed to change in the market prices,  
17                  correct?

18                  A.    Depends on the contract.

19                  Q.    But it's possible, correct?

20                  A.    It's possible.

21                  Q.    And turning to page 8 of your first  
22                  testimony, which you marked as RESA 2 -- are you  
23                  there?

24                  A.    Yes.

25                  Q.    In their application and testimony, the

1 companies have not explicitly said that they intended  
2 to exclude suppliers from billing noncommodity goods  
3 and services and making the tariff revision you  
4 indicate, correct?

5 A. I'm sorry. Were you referring to  
6 something specific in my testimony?

7 Q. Page 8 you're discussing a revision that  
8 the companies are proposing to their supplier tariff,  
9 correct?

10 A. I'm sorry. I missed the page. That's my  
11 fault.

12 Q. Page 8.

13 A. Yes, now I'm there. Sorry.

14 Q. And you're discussing a proposed revision  
15 to the supplier tariff, correct?

16 A. Oh, yes.

17 Q. Okay. And in their application and  
18 testimony, the companies have not explicitly said  
19 that they intended to exclude suppliers from billing  
20 noncommodity goods and services in making the tariff  
21 revision that you discuss on page 8, correct?

22 A. Correct.

23 Q. The supplier tariff that you mention on  
24 page 8 only applies to CRES providers, correct?

25 A. I believe that's true.

1           Q.    If an entity that provides noncommodity  
2 products and services is not a CRES supplier, it  
3 would not be subject to the supplier tariff, correct?

4           A.    I believe that to also be true.

5           Q.    And your testimony isn't that CRES  
6 providers can't provide noncommodity products and  
7 services at all, correct?

8           A.    Correct.

9           Q.    They can provide noncommodity products  
10 and services and bill them on their own, correct?

11          A.    Yes.

12          Q.    You are not aware of any utility anywhere  
13 that currently allows CRES providers to use  
14 consolidated billing for noncommodity goods and  
15 services, correct?

16          A.    Correct.

17          Q.    And back to page 8 of your testimony,  
18 your direct, line 15, you identify a company named  
19 Home Serve, correct?

20          A.    Yes.

21          Q.    You don't know the nature of the  
22 company's relationship with Home Serve, correct?

23          A.    That's correct.

24          Q.    You don't know how Home Serve was  
25 selected by the companies, correct?

1           A.    Correct.

2           Q.    You don't know if it was via a  
3 competitive bid process, correct?

4           A.    Correct.

5           Q.    On page 8 also, line 18, you refer to  
6 tree removal service, outdoor lighting, and electric  
7 technician service. You don't know who provides  
8 those services for the companies, correct?

9           A.    Correct.

10          Q.    You don't know if the companies' tariffs  
11 say anything about offering noncommodity goods and  
12 services, correct?

13          A.    Correct.

14          Q.    You don't know how the companies'  
15 allocate costs and revenues associated with the  
16 noncommodity goods and services you identify on page  
17 8, correct?

18          A.    Yes, correct.

19          Q.    You don't know if utility billing systems  
20 are designed to provide the level of customization or  
21 flexibility to permit consolidated billing of  
22 noncommodity products and services, correct?

23          A.    Correct.

24          Q.    Turning to page 10, question 19 -- are  
25 you there?

1           A.    Yes.

2           Q.    And you discuss a revision to the  
3 companies' tariff regarding interval metering data,  
4 correct?

5           A.    Yes.

6           Q.    You don't know for a fact whether the  
7 companies currently provide interval metering data to  
8 CRES providers, correct?

9           A.    That's correct.

10          Q.    Now, assuming the companies do provide  
11 interval metering data to CRES providers, you do not  
12 know functionally how that data is communicated,  
13 correct?

14          A.    Correct.

15          Q.    You do not know if the companies have  
16 deployed advanced metering infrastructure or AMI,  
17 correct?

18          A.    Outside of a pilot program, yeah, I don't  
19 know the penetration level of your SmartGRID or AMI.

20          Q.    Turning to page 106 of your deposition,  
21 starting on line 3, question:

22                "Do you know if they have deployed AMI at  
23 all?"

24                Answer: "I don't know for sure."

25                Did I read that correctly

1 A. Yes.

2 Q. Subsequent to your deposition, did you  
3 learn that the companies had a pilot program for AMI?

4 A. Yes.

5 Q. And was that pilot program limited to the  
6 Cleveland Electric Illuminating Company area?

7 A. I think that's correct.

8 Q. And that pilot program is completed,  
9 correct -- let me go back. The deployment of the AMI  
10 and the Cleveland Electric Illuminating Company has  
11 been completed for the pilot, correct?

12 A. That's my understanding.

13 Q. And the companies do not have any filings  
14 with the Commission to further deploy AMI, correct,  
15 that you're aware of?

16 A. That I'm aware of.

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

18 EXAMINER CHILES: You may.

19 MS. DUNN: Your Honor, I've handed  
20 Mr. Bennett what has been previously marked as part  
21 of the companies' application in this case and  
22 attachments, and that is -- it's actually Attachment  
23 5 to Company Exhibit 1. It's a portion of the  
24 supplier tariff.

25 And, Howard, I only copied the Ohio



1 Edison Company version due to the voluminous matter.

2 Is that okay?

3 MR. PETRICOFF: They're all identical.

4 That's fine.

5 Q. (By Ms. Dunn) Mr. Bennett, I've handed  
6 you what has been previously marked as Company  
7 Exhibit 1, which is Ohio Edison's supplier tariff.  
8 Have you seen this document before?

9 A. I have.

10 Q. Turning to page 21 of 52, subsection G,  
11 is the portion you're discussing in your question 19,  
12 correct?

13 A. Correct.

14 Q. And you agree that even with the  
15 revision, the tariff still provides that summary  
16 information will be provided to a certified supplier  
17 on a monthly basis for that certified supplier's  
18 customers equipped with interval metering equipment,  
19 correct?

20 A. Yeah. With the modification only summary  
21 data will be available, not the actual interval meter  
22 data.

23 Q. Doesn't it say that -- does the tariff  
24 also say that interval meters are read on a monthly  
25 schedule?

1           A.    Yes.

2           Q.    If you could go ahead and look at your  
3 testimony again, question 20. In question 20 you're  
4 referring to the modification of the supplier tariff  
5 related to unaccounted for energy, correct?

6           A.    Correct.

7           Q.    The tariff currently does a load ratio  
8 share proportionally between the company and a CRES  
9 provider for unaccounted for energy, correct?

10          A.    Correct.

11          Q.    And looking at the revision to the --  
12 let's turn to page 30 of 52. The revision to the  
13 tariff refers to a Supplier Energy Obligation Manual  
14 available on the companies' website, correct?

15          A.    It does.

16          Q.    And the manual currently still requires a  
17 load ratio share proportionally between the company  
18 and a CRES supplier, correct?

19          A.    Generally we prefer that sort of  
20 information to remain in the tariff because it's  
21 jurisdictional to the Commission. You are correct,  
22 that it's been moved, this section has been moved to  
23 the supplier manual.

24                MS. DUNN: Your Honor, I move to strike  
25 everything prior to "you are correct."

1 EXAMINER CHILES: Mr. Petricoff.

2 MR. PETRICOFF: Your Honor, he's making a  
3 terribly important distinction here, that it's true  
4 they're moving to the manual, but that's not equal,  
5 and I think that's well within the scope of the  
6 question and very important for the Commission to  
7 note.

8 EXAMINER CHILES: As has been our  
9 practice, we are going to deny the motion to strike  
10 as to this answer.

11 But I will direct the witness to please  
12 listen carefully to the question, answer only the  
13 question, and if you feel more context is necessary,  
14 you can talk to your counsel about that and he can  
15 address it on redirect.

16 THE WITNESS: Yes, your Honor.

17 Q. (By Ms. Dunn) You would agree that with  
18 the reference to the manual, as it stands today, the  
19 change is not removing any responsibility from the  
20 distribution utility and placing unaccounted for  
21 energy risk solely on CRES providers, correct?

22 A. Correct.

23 Q. Turning to page 11 of your testimony  
24 where you discuss balancing operating reserve  
25 charges, the charges included in balancing operating

1 reserve can be volatile, correct?

2 A. Correct.

3 Q. Generally CRES providers cannot hedge  
4 against the volatility for at least some of the  
5 balancing operating reserve charges, correct?

6 A. Correct.

7 Q. Page 12 to 18 of your testimony proposes  
8 a purchase of receivables or POR program, correct?

9 A. I'm sorry. Can you repeat the reference?

10 Q. Sure. Page 12 to 18 of your testimony,  
11 you propose a purchase of receivables or POR program,  
12 correct?

13 A. Yes.

14 Q. You have not proposed a specific POR  
15 program, correct?

16 A. Correct.

17 Q. And you have not proposed a specific  
18 discount rate or a discount rate at all as part of  
19 the POR program, correct?

20 A. Correct.

21 Q. And RESA has not done any studies to show  
22 that POR increases shopping, correct?

23 A. Correct.

24 Q. Duke has a POR program, correct?

25 A. Yes.

1           Q.    You don't know if the percentage of  
2 shopping customers in Duke has increased, correct?

3           A.    Correct.

4           Q.    And, generally, you really won't know if  
5 a POR program benefits competition in a certain  
6 territory until after the POR program is already  
7 implemented, correct?

8           A.    I think we've seen anecdotally across  
9 multiple jurisdictions that POR programs are  
10 beneficial to market. Customer benefits accrue as  
11 well as additional suppliers and supplier offers.  
12 But in order to have empirical evidence, you would  
13 have to have the program in place, first.

14           MS. DUNN: Your Honor, I move to strike  
15 the entire response. I asked a "yes" or "no"  
16 question.

17           EXAMINER CHILES: May I have that  
18 question and answer read back, please.

19                   (Record read.)

20           EXAMINER CHILES: Mr. Petricoff.

21           MR. PETRICOFF: Your Honor, first of all,  
22 it wasn't a "yes" and "no" question, and he answered  
23 the question and he gave a rather thorough one  
24 explaining that you would have some information that  
25 would not be empirical and some that would be

1 empirical and when you would expect to see it.

2 EXAMINER CHILES: I agree. The motion is  
3 denied.

4 Q. (By Ms. Dunn) Mr. Bennett, could you  
5 please turn to page 117 of your deposition, line 3:

6 Question: "And isn't it true you really  
7 won't know if a POR benefits competition in a certain  
8 territory until after the POR is actually  
9 implemented?"

10 Answer: "I mean, I think that sounds  
11 right. You don't know -- you don't know if something  
12 works unless you try it, right? So, yes, I suppose  
13 that's right to some extent."

14 Did I read that correctly?

15 A. You did.

16 Q. You don't know if any CRES suppliers have  
17 said that they won't enter the companies' territories  
18 because the companies do not have POR, correct?

19 A. That's correct.

20 Q. There are many reasons a CRES provider --  
21 strike that. And turning to page 16 of your  
22 testimony, still on your direct, your first one.

23 A. I'm sorry. The page number again,  
24 please?

25 Q. Actually, it would be page 15 to 16, the

1 chart at the bottom.

2 A. Okay.

3 Q. The offer numbers that you list on page  
4 15 to 16 could be for many reasons, one of which may  
5 or may not be POR, correct?

6 A. Correct.

7 Q. You do not have any facts to suggest that  
8 the absence of POR is inhibiting competition in the  
9 companies' territories, correct?

10 A. I don't have any empirical evidence.

11 Q. Mr. Bennett, could you turn to your  
12 deposition, please, page 119.

13 Question: "Do you have any facts to  
14 support that the absence of POR" -- I'm sorry, line  
15 7.

16 A. Okay.

17 Q. Page 119, line 7: "Do you have any facts  
18 to support that the absence of POR is inhibiting  
19 competition in the companies' territories?"

20 Answer: "Not right now."

21 Did I read that correctly?

22 A. Yes.

23 Q. And the companies are not under any legal  
24 obligation to implement a POR program, correct?

25 A. Correct.

1           Q.    Turning back to your testimony on page  
2    16, lines 13 to 15, and specifically on line 14, you  
3    discuss a payment priority shift, correct?

4           A.    Yes.

5           Q.    This is based on your understanding that  
6    because the customer can enter into special  
7    arrangements to avoid disconnection, there's a  
8    deviation from the partial payment priority, correct?

9           A.    Correct.

10          Q.    And then also on line 17 to 18, you  
11   state, "To avoid disconnection, any payment by a  
12   customer in arrears would need to first satisfy  
13   utility past due amounts before being applied to CRES  
14   arrearages," correct?

15          A.    Correct.

16          Q.    And that's based upon the same  
17   understanding we just discussed, correct?

18          A.    Yes.

19          Q.    Although a CRES provider cannot  
20   disconnect a customer, a CRES provider can certainly  
21   drop a customer for nonpayment, correct?

22          A.    Yes.

23          Q.    A CRES provider can also choose not to  
24   provide CRES service to a customer that's a credit  
25   risk, correct?



1           A.    Yes.

2           Q.    And on page 17, question 33, you discuss  
3 the retail market investigation and the Commission's  
4 requirement that the EDU provide certain payment  
5 information to CRES providers, correct?

6           A.    Yes.

7           Q.    Currently the companies are providing  
8 CRES providers with information relating to a  
9 customer's payment, correct?

10          A.    Yes.

11          Q.    And CRES providers can also account for  
12 the risk of nonpayment when it develops its pricing,  
13 correct?

14          A.    I'm sorry. Can you repeat the question?

15          Q.    Sure. CRES providers can also account  
16 for the risk of nonpayment when it develops its  
17 pricing, correct?

18          A.    Correct.

19          Q.    Page 19 of your testimony discusses the  
20 companies' proposed supplier web portal. That is an  
21 item RESA requested in the ESP, the Company's ESP III  
22 case, correct?

23          A.    Yes.

24          Q.    And RESA does not oppose the companies  
25 having a rider like rider GDR to recover the cost of

1 the supplier web portal, correct?

2 A. Correct.

3 MS. DUNN: Your Honor, may we approach?

4 EXAMINER CHILES: You may.

5 MS. DUNN: Your Honor, I'm handing  
6 Mr. Bennett what has previously been marked as  
7 Company Exhibit 15. It's Mary Beth Smialek's  
8 testimony. I didn't bring enough copies for everyone  
9 because it was already admitted.

10 But, Howard, did you want to look at it?

11 MR. PETRICOFF: Yeah, if you don't mind.  
12 I did not bring it with me.

13 Q. Turning to page 4 to 5, Mr. Bennett, of  
14 Mary Beth Smialek's testimony -- and you've seen this  
15 document before, correct?

16 A. Correct.

17 Q. And you do not see -- I'm specifically  
18 looking at the bullet point list on page 4 to 5. You  
19 do not see any information in this list missing that  
20 RESA would propose to be included in the supplier web  
21 portal at this time, correct?

22 A. Correct.

23 Q. And as the web portal is described in  
24 Ms. Smialek's testimony, RESA is not proposing  
25 anything different, correct?

1           A.     That's correct.

2           Q.     Turning to your supplemental testimony,  
3     marked as RESA 3, it's fair to say that the  
4     stipulation made one change to the existing Rider GCR  
5     which was to increase the nonbypassable threshold  
6     from 5 to 10 percent, correct?

7           A.     Correct.

8           Q.     And you would agree that the companies  
9     have an obligation under Ohio law to provide standard  
10    service offer, correct?

11          A.     Yes.

12          Q.     And, to your knowledge, the nonbypassable  
13    trigger in Rider GCR has never occurred, correct?

14          A.     Correct.

15          Q.     And the increase of the trigger  
16    percentage we just discussed decreases the likelihood  
17    that nonbypassability would be triggered, correct?

18          A.     That's right.

19          Q.     And turning to page 4 of your testimony,  
20    line 31, you state, "The current program is not based  
21    on true market rates." When you say that the current  
22    program is not based on true market rates, you are  
23    not suggesting that the auction price is not a market  
24    price, correct?

25          A.     Correct.

1           Q.    On page 5 of your testimony, lines 26 to  
2   29, you cite an order from the retail market  
3   investigation, correct?

4           A.    Yes.

5           Q.    You would agree that if an EDU does  
6   not have an AMI SmartGRID program, that they are not  
7   required by this order to provide a  
8   time-differentiated rate pilot program, correct?

9           A.    Yes, sir.

10          Q.    On page 7 of your testimony, still the  
11   same, there's a bullet point at the top, and you are  
12   requesting that the Commission require the  
13   FirstEnergy EDUs to provide an action agenda for  
14   providing customer usage and billing information to  
15   CRES providers, but you are not requesting a specific  
16   mechanism to do that, correct?

17          A.    Correct.

18          Q.    Turning to your second supplemental  
19   testimony, RESA 4, on page 6 of your second  
20   supplemental testimony --

21          A.    I'm sorry. The page number again?

22          Q.    Sure. Page 6.

23          A.    Yes.

24          Q.    You quote Ms. Mikkelsen's second  
25   supplemental direct testimony on page 6, correct?

1 A. Yes.

2 Q. In the testimony quoted here,  
3 Ms. Mikkelsen doesn't say that any invalidated rider  
4 RRS would remain in effect, correct?

5 A. I'm sorry. Can you repeat the question?

6 Q. Sure. In the testimony that you quoted  
7 here, Ms. Mikkelsen doesn't say that any invalidated  
8 rider RRS would remain in effect, correct?

9 A. Correct.

10 Q. And turning to page 2 of the same  
11 testimony, and I'm looking at the bullets, for the  
12 first four bullets, financial need and necessity of  
13 the generating facility, description how the  
14 generating plant is compliant, and impact that a  
15 closure of the generating plant would have on  
16 electric prices, so I'm referring to those four  
17 bullets, RESA does not have an opinion as it relates  
18 to these first four factors listed here, correct?

19 A. Correct.

20 Q. And if you could turn to your third  
21 supplemental testimony, please, in your third  
22 supplemental testimony, you discuss the proposed  
23 rider NMB pilot, correct?

24 A. Yes.

25 Q. A CRES supplier can choose to offer a

1 product where they provide the same charges as rider  
2 NMB to a pilot participant, correct?

3 A. Yes.

4 Q. The rider NMB pilot in the supplemental  
5 stipulation does not require CRES providers to  
6 provide this product, correct?

7 A. No.

8 Q. That's incorrect?

9 A. It does not require -- you are correct,  
10 it does not require us to do it.

11 Q. Okay. Thank you. And the manner in  
12 which PJM allocates the costs that are assigned under  
13 rider NMB would be the same under the rider NMB  
14 pilot -- let me back up.

15 The manner in which PJM allocates the  
16 costs that are assigned would be the same under the  
17 rider NMB pilot or the same -- let me back up one  
18 more time.

19 The manner in which PJM allocates the  
20 costs that are assigned would be the same under the  
21 rider NMB pilot or the same if the CRES provider  
22 provided those services, correct?

23 A. I'm not sure that it's clear in the  
24 description of the rider NMB pilot exactly how the  
25 costs would be applied.

1           Q.    I guess my question is, though, the way  
2 PJM allocates the costs wouldn't change, whether  
3 under the pilot or whether a CRES provider.

4           A.    That's correct.

5           Q.    And turning to attachment SEB 2, you did  
6 not review any of the confidential information that  
7 the companies provided in response to PUCO DR-33,  
8 correct?

9           A.    That's correct.

10          Q.    And on page 9 of your third supplemental  
11 testimony, you discuss the high load factor  
12 experimental time of use, correct?

13          A.    Yes.

14          Q.    And it is not your testimony that a  
15 time-of-use rate must always be based on actual  
16 hourly usage and prices, correct?

17          A.    Just optimal, if it is.

18               MS. DUNN: Your Honor, may we approach?

19               EXAMINER CHILES: You may.

20               MS. DUNN: Your Honor, I'm handing  
21 Mr. Bennett what has been previously marked as  
22 Company 4, which is the Second Supplemental  
23 Stipulation and Recommendation and Attachment 1.

24               Howard, do you need a copy?

25               MR. PETRICOFF: Yes, I do need a copy of

1       that.

2               Q.     Mr. Bennett, turning to page 2 of the  
3       second supplemental stipulation, page 2 references  
4       Attachment 1, correct, in the middle of the top  
5       paragraph beginning with an illustration?

6               A.     Contained on Attachment 1.

7               Q.     Yes.   So we agree the second supplemental  
8       stipulation refers to an Attachment 1, correct?

9               A.     Correct.

10              Q.     And you did not review this attachment in  
11       preparation of your third supplemental testimony,  
12       correct?

13              A.     Correct.

14              Q.     And CRES providers can provide a  
15       time-of-use rate that would compete with the  
16       experimental HLF rate, correct?

17              A.     It would be difficult without the  
18       interval meter data.

19              Q.     Could you turn to your deposition,  
20       please.

21                    MS. DUNN:   Well, actually, your Honor, I  
22       move to strike that answer, it was a "yes" or "no"  
23       question.

24                    EXAMINER CHILES:   Could I have the  
25       question and answer read back, please.



1 (Record read.)

2 EXAMINER CHILES: Mr. Petricoff.

3 MR. PETRICOFF: Your Honor, I think he is  
4 answering the question a bit more complete. He's  
5 just providing the detail of when you could.

6 EXAMINER CHILES: I'm going to deny the  
7 motion to strike, but direct the witness to answer  
8 the question "yes," "no" or explain why you cannot.

9 THE WITNESS: Yes, your Honor.

10 Q. (By Ms. Dunn) Mr. Bennett, could you  
11 please turn to page 193.

12 Oh, I'm sorry. Was that -- I apologize.

13 EXAMINER CHILES: Would you like to  
14 restate the question, or we can have the court  
15 reporter reread it?

16 MS. DUNN: Can we go off the record?

17 (Discussion off the record.)

18 EXAMINER CHILES: Let's go back on the  
19 record and have the question reread.

20 (Record read.)

21 A. Yes.

22 MS. DUNN: Thank you, Mr. Bennett. I  
23 have no further questions, your Honor.

24 EXAMINER CHILES: Thank you, Ms. Dunn.

25 Mr. McNamee?

1 MR. MCNAMEE: No questions. Thank you,  
2 your Honor.

3 EXAMINER CHILES: Mr. Petricoff,  
4 redirect?

5 MR. PETRICOFF: Could we have a minute or  
6 two?

7 EXAMINER CHILES: Yes, you may.

8 (Recess taken.)

9 EXAMINER CHILES: Mr. Petricoff,  
10 redirect.

11 MR. PETRICOFF: Thank you, your Honor. I  
12 do have a few redirects.

13 - - -

14 REDIRECT EXAMINATION

15 By Mr. Petricoff:

16 Q. Mr. Bennett, in answering questions from  
17 the company, you indicated that you do not believe  
18 that FES was taking a risk under the proposed  
19 purchase power adjustment in regards to the rider RRS  
20 program. Why do you believe that?

21 A. The way the rider RRS and the PPA are set  
22 up, they're guaranteed not only their costs but a  
23 return on equity of 11.15 percent. It goes against  
24 the fundamental market tenet. They're taking the  
25 risk from their shareholders, and they're putting it

1 on the ratepayers of Ohio. So it's not the  
2 shareholders. It's not the companies that have any  
3 risk anymore. It's almost entirely -- it's entirely  
4 on the ratepayers.

5 Q. And then you were asked about AMI  
6 systems, and for purposes of the record, what does  
7 AMI stand for?

8 A. Advanced metering infrastructure.

9 Q. You indicated after your deposition, you  
10 had researched about their pilot. Why is AMI so  
11 important?

12 A. Actually, getting interval data, knowing  
13 what customers -- how customers use data at an  
14 incremental level, whether it's hourly or 15-minute  
15 is the linchpin of part of the market evolution. As  
16 CRES providers, the more interval data we get across  
17 the spectrum of customers, the more we'll be able to  
18 customize our product offerings and create products  
19 that help with everything from demand response, time  
20 of use, which is really almost impossible for a CRES  
21 provider to provide without incremental data, without  
22 interval data, and also things that even Mr. Randazzo  
23 indicated. The more actual usage data and shapes we  
24 get, we can help the members of IEU and others come  
25 up with products that help to reduce risk demand.

1           Q.    Now, you were provided a copy of  
2           FirstEnergy Witness Smialek's list of items for the  
3           web portal that RESA had requested, and you indicated  
4           that there were no missing items on that list.  That  
5           being the case, why would we need a collaborative?

6           A.    Well, and first I would note that it  
7           actually does include the NSPL, which goes back to  
8           the discussion on the NMB, so that would provide for  
9           peak load utilization.

10                But what we've seen in other  
11           jurisdictions is that just listing things, it's a  
12           step, but you need to make sure that the actual  
13           implementation of a web portal or an EDI interface is  
14           structured in a way that's really workable and  
15           functionable -- workable and functioning is what I'm  
16           saying.

17                So what we found is the devil is in the  
18           details.  We just want to get together and have a  
19           discussion to make sure that we're all on the same  
20           page, and the web portal that comes out at the end is  
21           the worth investment in time and money that we're  
22           making, and it really does help the market, helps  
23           suppliers and helps customers

24           Q.    In that last answer, you had the acronym  
25           EDI.  What does that stand for?

1           A.    Electronic data interchange.

2           MR. PETRICOFF:  No further questions.

3   Thank you, your Honor.

4           EXAMINER CHILES:  Recross, Mr. Mendoza?

5           MR. MENDOZA:  No questions, Your Honor.

6           EXAMINER PRICE:  Ms. Ghiloni?

7           MS. GHILONI:  No questions, your Honor.

8           EXAMINER PRICE:  Mr. Randazzo.

9           MR. RANDAZZO:  Just a couple.

10                               - - -

11                           RECROSS-EXAMINATION

12   By Mr. Randazzo:

13           Q.    Sir, are you aware of whether or not --  
14   your counsel asked you about information that you  
15   would like to have, and you responded to the question  
16   in a way that you referred to intervals.  Do you  
17   recall that?

18           A.    Yes.

19           Q.    Okay.  What's interval data?

20           A.    Interval data shows customer usage in a  
21   nonsummary format, so showing it at, again, hour,  
22   down to even a minute, a five or 15-minute.

23           Q.    Now, are you aware whether or not the  
24   supplier tariff that we talked about earlier deals  
25   with competitive retail electric service provider

1 access to interval data?

2 A. You're talking about the FirstEnergy  
3 supplier tariff?

4 Q. Yes.

5 A. Are you talking about as proposed in this  
6 case?

7 Q. Current and proposed.

8 A. My understanding of the proposed tariff  
9 is that they remove the section that allows CRES  
10 providers access to the interval data and only allows  
11 for summary data.

12 Q. And that's the basis for your testimony  
13 here?

14 A. Yes.

15 Q. Do you know whether or not interval data  
16 is defined -- interval meters is a defined term in  
17 the supplier tariff that we discussed earlier?

18 A. I don't know if it's a defined term. I  
19 mean, it's referenced directly in the supplier tariff  
20 itself.

21 Q. Do you know whether or not the supplier  
22 tariff deals with access to the noncoincident peak  
23 loads that we talked about earlier for purposes of  
24 establishing the customer's contribution to the  
25 transmission zone's coincident peak?

1           A.    I don't know that.  I just know that  
2           they're proposing to list it on their web portal  
3           information.

4           Q.    So for purposes of your testimony in  
5           talking about the information that you've described  
6           as being needed by competitive retail electric  
7           suppliers, you haven't reviewed the supplier tariff  
8           to determine what information is presently available  
9           to competitive retail electric service providers; is  
10          that a correct statement?

11          A.    I'm sorry.  Can you repeat the question  
12          or have it reread?

13          Q.    I'll restate it.  So for purposes of your  
14          testimony here on redirect and the information which  
15          you described as being needed by competitive retail  
16          electric service providers, am I correct that you  
17          have not reviewed the supplier tariff to identify the  
18          extent to which that information is presently  
19          available to competitive retail electric service  
20          providers by the terms of the existing, as well as  
21          the proposed supplier tariff; is that a fair  
22          statement?

23          A.    I think that maybe is a little bit too  
24          comprehensive.  We reviewed the projected changes to  
25          the supplier tariff to make sure we understood the

1 impacts of that in Witness Smialek. In Witness  
2 Smialek, we reviewed the information that they want  
3 to provide in the web portal, and that's the basis of  
4 the testimony. We talk about what is available in  
5 the web portal and what's important as a CRES  
6 provider, and we talk about our concerns with the  
7 changes that we're making to the supplier tariff.

8 Q. Well, rather than going through the  
9 supplier tariff page by page, it's fair to say you  
10 have not reviewed the supplier tariff, either current  
11 or proposed, for purposes of identifying whether or  
12 not the network peak load, network services peak  
13 load, information is presently available to  
14 competitive retail electric service providers; is  
15 that a fair statement?

16 A. Yes.

17 Q. And do you know whether or not shopping  
18 customers in the case of the Ohio Edison, Toledo  
19 Edison, and Cleveland Electric Illuminating  
20 distribution utilities have interval meter data  
21 presently installed?

22 A. At least in the CEI pilot area they do.

23 Q. Okay. Beyond the CEI pilot area, are you  
24 aware of the extent to which interval meters are  
25 currently installed?



1           A.    No.  I say in my deposition I'm not aware  
2   of the penetration level of interval meters.

3           Q.    Are you aware of whether competitive  
4   retail electric service providers as authorized by  
5   the customer have the opportunity to download  
6   interval meter data for specific customers?

7           MR. PETRICOFF:  Your Honor, I'm going to  
8   object.  That's outside the realm of the redirect.

9           EXAMINER CHILES:  Mr. Randazzo, do you  
10   have a response?

11          MR. RANDAZZO:  Your Honor, the redirect  
12   examination touched on the proposal of this witness  
13   dealing with access to certain interval meter data,  
14   and I'm exploring the extent to which this witness is  
15   aware of whether that access is presently available.

16          MR. PETRICOFF:  The question on redirect  
17   was about AMI.  This is about interval data which is  
18   different.  It's not in the AMI system.  He's  
19   answered the question as to the AMI system.

20          EXAMINER CHILES:  We're going to allow  
21   the question.

22          A.    Well, my understanding is the current  
23   customer supplier tariff allows you to do that, and  
24   the proposed one seeks to take away that opportunity.

25          Q.    Okay.  And that was an answer you gave

1 previously, and I appreciate you repeating your  
2 understanding. That's the basis for your testimony;  
3 is that correct?

4 A. Yes.

5 MR. RANDAZZO: Okay. Thank you very  
6 much. I have nothing further.

7 EXAMINER CHILES: Thank you.

8 Mr. Boehm?

9 MR. K. BOEHM: No questions, your Honor.

10 EXAMINER PRICE: Mr. Sauer?

11 MR. SAUER: No questions, your Honor.

12 EXAMINER CHILES: Ms. Dunn?

13 MS. DUNN: Thank you, your Honor.

14 - - -

15 REDIRECT EXAMINATION

16 By Ms. Dunn:

17 Q. Mr. Bennett, in preparing all four  
18 versions of your testimony, you did not review the  
19 term sheet for the proposed transaction, correct?

20 A. That's right.

21 Q. So you wouldn't know what Section 13 of  
22 the term sheet says, for example, correct?

23 A. No.

24 Q. And you wouldn't know what the  
25 definitions in the term sheet say, correct?

1 A. That's correct.

2 Q. And have you reviewed Steve Staub's  
3 testimony in this case?

4 A. I don't believe so.

5 Q. Have you reviewed Mr. Lisowski's  
6 testimony in this case?

7 A. I don't believe so.

8 Q. Have you reviewed any forecasts of the  
9 cost and revenues of the plants from the proposed  
10 transaction?

11 A. I'm sorry. Can you repeat the question?

12 Q. Sure. Have you reviewed any forecasts of  
13 costs and revenues for the plants that are proposed  
14 in the proposed transaction?

15 A. So you're not talking about the projected  
16 credits, customer credits; you're talking about  
17 actual plant-level costs and revenues?

18 Q. Yes.

19 A. I have not.

20 Q. When you say projected credits, that's  
21 Mr. Ruberto's testimony, correct?

22 A. Yes.

23 Q. And is the CEI pilot program, the  
24 customers in the CEI program, the customers that have  
25 advance metering infrastructure, are those

1 residential or commercial or both?

2 A. Actually, I don't know.

3 MS. DUNN: And I think that's all the  
4 questions I have.

5 Thank you, Mr. Bennett.

6 EXAMINER CHILES: Thank you, Ms. Dunn.

7 Mr. McNamee?

8 MR. MCNAMEE: No questions. Thank you.

9 EXAMINER CHILES: Thank you, Mr. Bennett.  
10 You are excused.

11 Mr. Petricoff.

12 MR. PETRICOFF: Yes, your Honor. At this  
13 time we would like to move for admission into the  
14 record RESA Exhibits 2, 3, 4 and 5.

15 EXAMINER CHILES: Are there any  
16 objections to the admission of RESA Exhibits 2, 3, 4  
17 and 5?

18 MS. DUNN: No objections, your Honor.

19 EXAMINER CHILES: Hearing none, RESA  
20 Exhibits 2, 3, 4 and 5 will be admitted.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 EXAMINER CHILES: Let's go off the  
23 record.

24 (Discussion off the record.)

25 EXAMINER PRICE: Let's go back on the

1 record.

2 Consumers' Counsel, you may call your  
3 next witness.

4 MR. SAUER: OCC calls Dr. Kenneth Rose to  
5 the stand and would like his direct testimony marked  
6 as OCC 25 and his supplemental testimony marked as  
7 OCC Exhibit 26.

8 EXAMINER PRICE: The exhibits will be  
9 marked accordingly.

10 (EXHIBITS MARKED FOR IDENTIFICATION)

11 (Witness sworn.)

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

14 THE WITNESS: My name is Kenneth Rose,  
15 and I reside in Chicago, Illinois, and if it's okay  
16 with your Honor, I'd prefer not to state my address  
17 since I work at home, but I reside in Chicago at this  
18 time.

19 EXAMINER PRICE: That's understandable.

20 Mr. Sauer, you said 25 and 26; is that  
21 right?

22 MR. SAUER: Twenty-five and 26.

23 EXAMINER PRICE: Please proceed,  
24 Mr. Sauer.

25 MR. SAUER: Thank you, your Honor.

1                                   - - -

2                                   KENNETH ROSE, PH.D.

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

5                                   DIRECT EXAMINATION

6       By Mr. Sauer:

7                   Q.     Good afternoon, Dr. Rose.  Are you the  
8       same Dr. Rose whose direct testimony was filed in  
9       this case and has been marked as OCC Exhibit 25?

10           A.     I am.

11           Q.     And you're the same Dr. Rose whose  
12       supplemental testimony was marked today as OCC  
13       Exhibit No. 26?

14           A.     I am.

15           Q.     And on whose behalf do you appear today?

16           A.     OCC, Office of Consumers' Counsel.

17           Q.     And do you have your prepared direct and  
18       supplemental testimony with you on the stand?

19           A.     I do.

20           Q.     And did you prepare the direct testimony  
21       or have it prepared at your direction?

22           A.     I did.

23           Q.     And did you prepare the supplemental  
24       testimony or have it prepared at your direction?

25           A.     I did.

1           Q.    Do you have any changes or corrections to  
2           your direct testimony today?

3           A.    There were several corrections to the  
4           direct testimony that were provided at the  
5           deposition, and I can repeat them.

6           Q.    Please do.

7           A.    On page 7, the witness for the companies  
8           was the name was -- page 7, the footnote number 3,  
9           Ruberto was spelled incorrectly. It should be R-U-B,  
10          not R-O. That was one correction.

11          Second, on page 8, line 12, there's a  
12          quote there at the end of that paragraph. On line 12  
13          there should be a paren between the T in the square  
14          brackets that was inadvertently left off.

15          And on page 10, the footnote was missing,  
16          and it should read "Direct testimony of Ruberto."  
17          That's it.

18          Q.    Do you have any changes or corrections to  
19          your supplemental testimony?

20          A.    No, I do not.

21          Q.    And if I asked you today the same  
22          questions found in your direct testimony in OCC  
23          Exhibit 25 and your supplemental testimony that was  
24          marked as OCC Exhibit 26, would your answers to those  
25          questions be the same today?

1           A.     They would.

2                   MR. SAUER:   The OCC moves for the  
3 admission of OCC Exhibits No. 25 and 26 and tenders  
4 the witness for cross-examination.

5                   EXAMINER PRICE:   Mr. Mendoza?

6                   MR. MENDOZA:   No questions, your Honor.

7                   EXAMINER PRICE:   Ms. Ghiloni?

8                   MS. GHILONI:   No questions, your Honor.

9                   EXAMINER PRICE:   Mr. Boehm?

10                  MR. K. BOEHM:   No questions, your Honor.

11                  EXAMINER PRICE:   Mr. Randazzo.

12                  MR. RANDAZZO:   No questions.   Thank you.

13                  EXAMINER PRICE:   Mr. Alexander.

14                  MR. ALEXANDER:   Thank you, your Honor.

15                                 - - -

16                                 CROSS-EXAMINATION

17         By Mr. Alexander:

18                 Q.     Good afternoon, Dr. Rose.

19                 A.     Good afternoon.

20                 Q.     Dr. Rose, you have not worked for the  
21 Legislative Service Commission since the year 2000,  
22 correct?

23                 A.     That's correct.

24                 Q.     And you had no involvement in drafting  
25 Senate Bill 221, correct?



1 A. That's correct.

2 Q. And you believe that any above-market  
3 payment of generation costs would constitute a  
4 subsidy, correct?

5 A. That's correct.

6 Q. And as you state in your direct testimony  
7 at page 9, line 16, and elsewhere, you believe that  
8 rider RRS would constitute a subsidy, correct?

9 A. That's correct.

10 Q. So I'd like you to consider a  
11 hypothetical. Suppose that in the year 2020  
12 customers would receive a credit through rider RRS of  
13 \$100 million. Do you understand that hypothetical?

14 A. Credit is money given to the customers.

15 Q. Of \$100 million. Do you understand the  
16 hypothetical?

17 A. And that is over what period of time?

18 Q. In that calendar year.

19 A. For one year. Um-hmm, okay.

20 Q. So do you understand the assumption I've  
21 asked you to assume?

22 A. So far.

23 Q. So if customers were to receive a credit  
24 of \$100 million in the year 2020, you would agree  
25 that customers are not subsidizing FirstEnergy

1 Solutions in that calendar year, correct?

2 A. You mean FirstEnergy Solutions as the  
3 owners of the generation?

4 Q. Correct.

5 A. The payment -- they're not -- I'm sorry.  
6 They're not subsidizing FES; is that what you said?

7 Q. Yes. Would you like me to repeat the  
8 question?

9 A. Yes, please. You asked the opposite of  
10 what I was expecting.

11 Q. So if customers were receiving credit in  
12 the year 2020 or \$100 billion, you would agree that  
13 customers would not be subsidizing FirstEnergy  
14 Solutions in that year, correct?

15 A. That's correct.

16 Q. And you would also agree that customers  
17 would not be paying for FirstEnergy Solutions' cost  
18 of generation in any year in which proposed rider RRS  
19 would be a credit, correct?

20 A. The companies now -- please repeat it  
21 again.

22 Q. Sure. You would agree that customers  
23 would not be paying FirstEnergy Solutions' cost of  
24 generation in any year in which rider RRS is a  
25 credit, correct?

1           A.    And by credit you mean, again, it's a  
2   credit back to the customers, yes, that's correct.

3           Q.    And you believe that if the Commission  
4   would find a net cost in the 15-year term for rider  
5   RRS, then rider RRS would constitute a subsidy to  
6   FirstEnergy Solutions?

7           A.    That's correct.

8           Q.    And, conversely, you believe that if  
9   rider RRS was a credit over the 15-year term, that it  
10   would not be a subsidy to FirstEnergy Solutions?

11          A.    Not a subsidy, no.

12          Q.    And please turn to your direct testimony,  
13   page 9, the paragraph starting at line 12 where  
14   you're start to address Ohio law.

15          A.    Okay.

16          Q.    You are not a lawyer, correct?

17          A.    That's correct.

18          Q.    And you're offering your opinion in this  
19   proceeding in your capacity as a regulatory  
20   economist?

21          A.    That's correct.

22          Q.    You've never served as a state  
23   legislator, correct?

24          A.    That's correct.

25          Q.    And you don't know what legislative

1 history is, correct?

2 A. I have a layman's understanding, I  
3 believe, but it may not pass muster in a law class.

4 Q. You, in fact -- your layman's  
5 understanding is that legislative history refers to  
6 Ohio's history of electric regulation, correct?

7 A. Well, I answered that in the context of  
8 what we were talking about at the time. And I should  
9 say that after you asked me that question, I went to  
10 a law book and looked it up, so I feel a little  
11 smarter about that than I did at the time.

12 But I understand the general concept, and  
13 I was talking in the context of what we were -- you  
14 know, of SB3 and was trying to reach for something  
15 that maybe the Legislative Service Commission had  
16 done that might constitute a legislative history.

17 Q. There is no legislative history for  
18 Senate Bill 3, correct?

19 A. No -- there was -- this is what I was  
20 thinking about. There was a document that was  
21 written before SB3 that talked about the committee  
22 hearings and some of the senses of the  
23 representatives that were working on the legislation.  
24 It was an informal document. It may not have as  
25 formal legislative history, but I believe that was to

1 Help the legislators bring them up to date on what  
2 was being discussed at that point.

3 Q. And you're referring to the bill  
4 analysis?

5 A. It was a bill analysis. I think that was  
6 in '98. I'm sorry. Yes, '98, the year before SB3  
7 was passed, but I could be wrong. At one time I had  
8 that document. I don't have it any longer.

9 Q. But a bill analysis is separate and  
10 distinct from a legislative history, correct?

11 A. That's right. And that's what I was  
12 thinking of, and I did have that in my possession at  
13 one time.

14 Q. And it's your testimony that the  
15 Commission is prohibited from awarding a subsidy by  
16 Revised Code Section. 4928.38, correct?

17 A. 38 and 39, the transmission cost  
18 provisions, yes.

19 Q. And you address that belief at pages 18  
20 and 19 of your direct testimony?

21 A. That's one place, yes.

22 Q. And you're also familiar with the ESP  
23 statute, Revised Code Section 4928.143, correct?

24 A. That's correct.

25 Q. And Revised Code Section 143 was part of

1 Senate Bill 221, correct?

2 A. That's correct.

3 Q. And Senate Bill 221 was passed after  
4 Senate Bill 3, correct?

5 A. 2008.

6 Q. So is that a yes, with that  
7 clarification?

8 A. Yes.

9 Q. And you would agree that Revised Code  
10 Section 143(B)(2)(d) authorizes the Commission to  
11 award a stability charge to stabilize customer rates,  
12 correct?

13 A. That's correct.

14 Q. And Senate Bill 221 is the bill which  
15 created the ESP statute, 143, correct?

16 A. That's correct.

17 Q. And the companies' application in this  
18 case was made pursuant to Section 143, correct?

19 A. I believe so.

20 Q. And your testimony doesn't reference  
21 Senate Bill 221 because you didn't personally work on  
22 that bill, correct?

23 A. I believe I mention it in some places,  
24 but it is not the center of my testimony.

25 Q. Now, you did voluntarily testify before

1 the Ohio Legislature regarding Senate Bill 221,  
2 correct?

3 A. I did.

4 Q. And the conversations regarding Senate  
5 Bill 221 were prompted by a spike in natural gas and  
6 wholesale electric prices, correct?

7 A. That's right, and higher prices in other  
8 states.

9 Q. So the spike in natural gas and electric  
10 prices was not just limited to Ohio, it was also in  
11 other states?

12 A. That's right.

13 Q. And there were higher both wholesale and  
14 retail prices?

15 A. That's correct.

16 Q. For example, in the late 1990s, the PJM  
17 LMP prices were roughly \$30 a megawatt-hour?

18 A. That's about right.

19 Q. Those prices had risen to roughly \$60 a  
20 megawatt-hour by roughly 2006, correct?

21 A. I believe the average price was something  
22 like those.

23 Q. And you testified before the Ohio House  
24 of Representatives regarding Senate Bill 221 on  
25 February 5th, 2008?

1           A.    I don't remember the exact date, but  
2           that's probably right.  I also -- I'm not certain if  
3           we had a number at that time.  It may not have been  
4           Senate Bill 221.  It was proposed legislation.  It  
5           may not have had a name at that time.  I believe that  
6           was several months before the law passed.

7           Q.    You don't know whether Senate Bill 221  
8           authorizes an EDU to include in an ESP a cost-based,  
9           nonbypassable charge to pay for a new generation  
10          plant, correct?

11          A.    There is -- I don't believe that they  
12          have -- that there's a provision for allowing for  
13          existing generation.  I believe there is a provision  
14          for new generation, which I believe -- they do have a  
15          provision for new generation, which is the question.

16          Q.    So the answer is yes, you do know, and  
17          yes, it is authorized?

18          A.    Yes.  I don't know if it's been used, but  
19          I know there's a provision in there.

20          Q.    And that's something you learned since  
21          your deposition?

22          A.    Yes.

23          Q.    And you also don't know if Senate Bill  
24          221 authorizes a distribution utility to include a  
25          nonbypassable charge to recover deferrals of standard



1 service offer price increases, correct?

2 A. I think they do have a provision like  
3 that.

4 Q. And, again, that's something you learned  
5 since your deposition?

6 A. Yes.

7 Q. And you are aware that Senate Bill --  
8 strike that.

9 You are aware that Section 143 authorizes  
10 a distribution utility to include a nonbypassable  
11 stability charge, correct?

12 MR. SAUER: Objection. Asked and  
13 answered.

14 EXAMINER PRICE: Overruled.

15 A. I believe I said -- I agreed to that  
16 already, yes.

17 Q. And you are also aware that Revised Code  
18 Section 143 authorizes a distribution utility to  
19 include economic and job retention programs, correct?

20 A. Yes.

21 Q. Please turn to page 4, line 13, of your  
22 direct testimony where you reference the level of  
23 regulatory oversight.

24 A. Okay.

25 Q. And at line 14, still on page 4, you say

1 that you believe there would be no prudence review of  
2 legacy costs. Do you see that?

3 A. That's right.

4 Q. Now, you don't know whether the  
5 companies' proposal would limit the Commission's  
6 review of legacy costs in this proceeding, correct?

7 A. I only know what is quoted here and what  
8 was in that testimony.

9 Q. So the entirety of your knowledge  
10 regarding the companies' proposal is the quote  
11 running from line 19 on page 4 through line 16 on  
12 page 5 of your direct testimony?

13 A. I read that testimony from Mikkelsen, but  
14 that was the relevant section that I quoted.

15 Q. Okay. You qualified your answer. Is the  
16 entirety of your knowledge regarding the level of  
17 review for the companies' proposal contained in the  
18 quote from page 4, line 19 through page 5, line 16?

19 A. Yes.

20 Q. And you don't know whether the companies  
21 have provided the legacy costs incurred to date in  
22 discovery in this proceeding?

23 A. No, I don't know that.

24 Q. And at line 16, still on page 4, you  
25 address the going-forward costs. Do you see that?

1           A.     That's right.

2           Q.     And your testimony at page 5, line 5,  
3 acknowledges that the companies have proposed a staff  
4 audit process for going-forward costs, correct?

5           A.     That's correct.

6           Q.     And your objection to that proposed  
7 process is the lack of an inability for intervention  
8 in those proceedings?

9           A.     That's correct, intervention and a public  
10 process, open-docket proceeding.

11          Q.     Staff's ability to conduct a prudence  
12 review of those going-forward costs is unlimited,  
13 correct?

14          A.     I don't know. It's limited to the  
15 information of what they can gather, but it's only  
16 staff.

17                 EXAMINER PRICE: Can you identify an  
18 instance in the last ten years where the staff  
19 conducted a prudence review that was not done through  
20 a public process including the opportunity for  
21 parties to intervene?

22                 THE WITNESS: That's kind of my point  
23 here, that they're proposing --

24                 EXAMINER PRICE: You need to answer my  
25 question first, and then we'll go on from there.

1 THE WITNESS: I can't think of any  
2 examples, no.

3 EXAMINER PRICE: Thank you.

4 Q. (By Mr. Alexander) And you're not aware  
5 of anything the companies have proposed regarding  
6 whether intervenors could participate in those future  
7 prudence reviews, correct?

8 A. Not that I see, no, correct.

9 Q. And you're not aware of any limitation on  
10 staff's ability to conduct a prudence review of  
11 going-forward costs, correct?

12 A. Just within this context, that's all.  
13 I'm not aware of any limitations within the context  
14 of their review.

15 Q. And at page 15, line 14 of your direct  
16 testimony, you discuss checks and balances. Do you  
17 see that?

18 A. I'm sorry. Which line?

19 Q. Line 14.

20 A. Yes.

21 Q. By checks and balances there, you're,  
22 again, referring to the ability of intervenors to  
23 participate in those future proceedings?

24 A. Right.

25 Q. And at page 13 of your direct testimony,

1       you reference the end of the market development  
2       period. Let me know when you're there.

3             A.    Yes. Which line?

4             Q.    No specific line. Now, you're aware that  
5       the Commission has recently rejected your  
6       interpretation of Revised Code Section 4928.38,  
7       correct?

8             A.    You are referring to the AEP recent  
9       decision, Opinion and Order?

10            Q.    I'm referring to several different. But  
11       you're aware there has been recent authority, and  
12       we'll go through each of the authorities here?

13            A.    Yes.

14            Q.    For example, you're aware of AEP Ohio's  
15       ESP III case, Case No. 11-346, correct?

16            A.    Yes.

17            Q.    And you are aware that AEP Ohio received  
18       a stability charge in that proceeding, correct?

19            A.    Yes.

20            Q.    And you are also aware of the Duke ESP  
21       proceeding, Case No. 11-3549, correct?

22            A.    Yes.

23            Q.    And Duke received a stability charge in  
24       that proceeding, correct?

25            A.    Yes.

1 Q. And both Duke and AEP Ohio received a  
2 stability charge even after their generation units  
3 had been divested into a separate entity, correct?

4 A. I believe so, yes.

5 Q. And you are also familiar with DP&L's  
6 most recent proposal, Case No. 12-426, correct?

7 A. I'm sorry. When was that from?

8 Q. 2012. It was Case No. 12-426.

9 A. Yes. I don't know the number, but that  
10 sounds right. I know the year.

11 Q. And, in fact, you testified in that DP&L  
12 proceeding, correct?

13 A. I did.

14 Q. And in that proceeding, the Commission  
15 granted Dayton Power & Light a stability charge,  
16 correct?

17 A. I believe they did.

18 Q. And in your testimony in that Dayton  
19 Power & Light case, you opined that the proposed  
20 Dayton Power & Light stability charge was prohibited  
21 by Revised Code Section 4928.38, correct?

22 A. And 39, yes.

23 Q. And 39. Thank you. And isn't it true  
24 that your analysis does not take these three recent  
25 decisions into account when providing your

1 interpretation of Senate Bill 3?

2 A. My interpretation is as an economist, not  
3 the legal interpretation of the precedence.

4 Q. So is your answer, yes, you did not take  
5 those into account and your explanation was the  
6 reason why?

7 A. Yes.

8 Q. And you also believe that the  
9 Commission's decisions in the Duke, Dayton Power &  
10 Light and AEP cases we just discussed violated  
11 Revised Code Section 4928.02(H), correct?

12 A. 02(H), that's the subsidy one. Remind me  
13 of the title. I believe so, yes.

14 Q. And at pages 17 and 18 of your direct  
15 testimony, you reference a transition period from the  
16 2000s. Do you see that?

17 A. Yes.

18 Q. Now, those transition costs are the  
19 difference between the market value and the book  
20 value of generation assets at that time, correct?

21 A. The transition costs, and there was also  
22 a regulatory access at that time that the Commission  
23 found could be recovered as well under the statute.

24 Q. Sure. And I want to just focus now on  
25 the transition cost. But the definition of the

1 transition cost was the difference between the market  
2 value and the book value, correct?

3 A. Right. That's a simple way to look at  
4 stranded costs calculation.

5 Q. I understand. There was a lot of  
6 litigation at that time. I certainly understand  
7 that. But you would agree that none of the stranded  
8 costs that you reference in your testimony today are  
9 still on the companies' books, correct?

10 A. Some of the assets may be, but not the  
11 costs. That has been over now for several years.

12 Q. Now, after the transition period ended,  
13 there was no provision of Ohio law which prohibited  
14 plant owners from entering into a PPA for the output  
15 of their plants, correct?

16 MR. SAUER: Could I have that question  
17 reread, please.

18 EXAMINER PRICE: You may.

19 (Record read.)

20 A. I believe that's true, yes.

21 Q. And there was similarly nothing which  
22 prohibited generation owners from entering into  
23 contracts with elements based on cost, correct?

24 A. Based on their own -- based on the market  
25 price. You're using the word "cost." Do you mean it



1 as their own costs or what the market price would be?

2 Q. Sure. I'll repeat my question.

3 There is nothing in Ohio law which  
4 prohibits generation owners from entering into  
5 contracts which have cost-based elements, correct?

6 A. I would presume they could do that if  
7 they're so inclined.

8 Q. Now, I'd like to discuss the PJM market.  
9 You're aware that regulated generation also  
10 participates in the PJM wholesale market, correct?

11 A. That's correct. Mostly it's restructured  
12 states now, but there are a few.

13 Q. And from the PJM perspective in the  
14 capacity market, there's no difference in the ACR  
15 values for regulated and unregulated generation,  
16 correct?

17 A. I believe that's true.

18 Q. And there's no difference in the PJM bid  
19 rules between regulated and unregulated generation,  
20 correct?

21 A. For the energy market now?

22 Q. We're still in capacity.

23 A. Capacity. I don't think there's any  
24 difference.

25 Q. And now let's turn to the energy market.

1 From the PJM perspective, there's no difference  
2 between the regulated and unregulated generation's  
3 participation in the energy market, correct?

4 A. That's correct.

5 Q. And you would agree that rider RRS will  
6 not directly affect the PJM wholesale market,  
7 correct?

8 A. Well, as we discussed, it can have an  
9 impact on the market, and that's the main concern I  
10 have, is the impact it may have on the market.

11 MR. ALEXANDER: Can I have that question  
12 read back?

13 EXAMINER PRICE: You may.

14 (Record read.)

15 Q. Dr. Rose, my question was rider RRS will  
16 not directly affect the PJM wholesale market,  
17 correct?

18 MR. SAUER: Objection. Asked and  
19 answered.

20 EXAMINER PRICE: Overruled.

21 A. If I could ask you just to clarify the  
22 rider RRS is the amount -- will not be, you say, a  
23 part of the bidding that any supplier will be making  
24 into the energy market, is that what you mean? Is  
25 that a fair restatement?

1 Q. Well, I'm actually using your words here.  
2 Do you recall being deposed in this case?

3 A. Yes.

4 Q. And do you recall -- you were actually  
5 deposed twice, correct?

6 A. Yes.

7 Q. And the first time you were deposed was  
8 on January 22nd, 2015?

9 A. Yes, I believe so.

10 Q. And do you recall swearing an oath during  
11 that deposition to tell the truth?

12 A. Yes.

13 Q. And do you recall a court reporter being  
14 present and writing down all your questions and  
15 answers?

16 A. Yes.

17 MR. ALEXANDER: Your Honor, may I  
18 approach?

19 EXAMINER PRICE: You may.

20 Q. Please turn to page 148, line 12. Let me  
21 know when you're there.

22 A. Yes.

23 Q. And did I ask you the question:

24 "So you don't believe that Rider RRS  
25 would affect the wholesale market?"

1           Answer: "Not directly. It may have an  
2 indirect effect again by providing subsidies to one  
3 supplier that other suppliers don't get. You asked  
4 me specifically if it was wholesale or retail and I  
5 said retail."

6           Did I read your answer correctly

7           A. I believe what I just said is consistent  
8 with that.

9           Q. We'll let the record speak for itself.

10          A. Okay.

11          Q. Now, let's turn to your supplemental  
12 testimony. Now, Dr. Rose, you filed your  
13 supplemental testimony in response to the  
14 Commission's decision in the AEP Ohio ESP IV  
15 proceeding, correct?

16          A. That's correct.

17          Q. And you disagreed with each of the four  
18 factors that the Commission established in that case,  
19 correct?

20          A. That's correct.

21          Q. Now, I'd like to focus on the first  
22 factor which was identified by the Commission,  
23 financial need. You are not recommending that the  
24 Commission adopt any specific definition of financial  
25 need in this proceeding, correct?

1           A.     That's correct.

2           Q.     And turning to your testimony at page 5,  
3 line 1, where you say considering financial need is  
4 contrary to the direction Ohio has been moving since  
5 1999; do you see that?

6           A.     Correct.

7           Q.     As we discussed earlier, you're familiar  
8 with the stability charge that had been granted over  
9 the last few years to AEP Ohio, Dayton Power & Light,  
10 and Duke, correct?

11          A.     Correct.

12          Q.     And you don't believe that those  
13 stability charges were consistent with the movement  
14 towards the competitive market either, correct?

15          A.     That's correct.

16          Q.     And you haven't quantified the amount by  
17 which the retail market would be affected by a  
18 proposed rider RRS, correct?

19          A.     Correct.

20          Q.     Now, focusing your attention to the PJM  
21 market, you are aware that renewable resources  
22 currently participate in the PJM market, correct?

23          A.     Yes.

24          Q.     And you are aware that renewable  
25 resources receive out-of-market revenues from things

1     like tax incentives and state renewable programs,  
2     correct?

3             A.     That's correct.

4             Q.     And you believe that renewable resource  
5     participation in PJM distorts the PJM market,  
6     correct?

7             A.     Correct.

8             Q.     Now, I'd like to turn to your discussion  
9     at page 6, line 6, the factors the Commission could  
10    consider. Let me know when you're there.

11            A.     Yes, sir.

12            Q.     You would agree that the Commission is  
13    statutorily authorized to consider reliability when  
14    evaluating the companies' proposal, correct?

15            A.     Correct.

16            Q.     Now, turn your attention to page 7, line  
17    10 of your testimony where you discuss "this issue."  
18    Now, when you say "this issue," you're referring  
19    solely to the Clean Power Plan, correct?

20            A.     Yes. And that's what I meant by  
21    statewide level, that's correct.

22            Q.     Now, turning your attention to page 8,  
23    line 8, you reference "economic development."

24            A.     Right.

25            Q.     You agree that maintaining reliability is

1 a positive thing for economic development, correct?

2 A. Yes, and also a low price.

3 Q. And you would agree that if the  
4 Commission believes that prices would be lower over  
5 the long-term by approving proposed rider RRS, that  
6 those lower prices would have a positive impact on  
7 economic development, correct?

8 A. If they were correct.

9 Q. Is that a yes?

10 A. Yes, given your assumption.

11 Q. Was your answer complete?

12 A. Yes.

13 Q. And when you say at page 8, line 14,  
14 where you reference "increase prices within the  
15 state"; do you see that?

16 A. Yes.

17 Q. Now, there you're referencing OCC Witness  
18 Wilson's analysis, correct?

19 A. On page 8?

20 Q. Yes, line 14, supplemental testimony.

21 A. I don't recall that -- I recall citing  
22 Mr. Wilson's testimony, but it's not in this section,  
23 so that's what's making me hesitate.

24 Q. Well, let me ask this a different way.  
25 You have not independently conducted an analysis to

1 determine whether proposed rider RRS would increase  
2 prices in the state of Ohio, correct?

3 A. Yes. And I did cite that somewhere, but  
4 offhand, I don't remember.

5 Q. And staying on page 8, line 18, where you  
6 say that the Commission cannot unilaterally install a  
7 new regulatory regime, do you see that?

8 A. Right.

9 Q. And as we discussed earlier today, you  
10 are familiar with the stability charges which were  
11 granted to AEP Ohio, Duke, and Dayton Power & Light,  
12 correct?

13 A. Right.

14 Q. And you believe that each of those  
15 stability charges was not authorized by Ohio law,  
16 correct?

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

19 EXAMINER PRICE: Can I have the last  
20 question back, please.

21 MR. ALEXANDER: Your Honor, if I could  
22 address the objection.

23 EXAMINER PRICE: I'd like to hear the  
24 question.

25 (Record read.)



1 MR. ALEXANDER: Your Honor, the earlier  
2 questions related to Section 143, Section 4928.38  
3 and Section .02(H). This question relates to the  
4 supplemental testimony about the scope of the  
5 Commission's ability to unilaterally create a new  
6 regulatory regime in a Commission decision as opposed  
7 to versus a statute.

8 EXAMINER PRICE: I'll allow it.

9 A. Well, if I may, in my deposition, the  
10 supplemental testimony, I think I agreed that the  
11 word or the phrase "new regulatory regime" was not a  
12 good one, because I didn't mean a new novel. What I  
13 meant was changing something from what it -- you  
14 know, what was on the books at the time. So perhaps  
15 a better word would be different.

16 EXAMINER PRICE: Dr. Rose, when answering  
17 counsel's questions, I want you to bear in mind that  
18 we've not read your deposition. Only the sections  
19 that he reads out loud are the ones that we are  
20 reading. So if you reference back to something you  
21 said in your deposition, that's not going to give us  
22 any context or actually necessarily answer the  
23 questions from the Bench's perspective.

24 THE WITNESS: Sorry, your Honor.

25 EXAMINER PRICE: Why don't you take

1 another shot at that answer.

2 A. With that helpful hint, in our  
3 deposition, I think you'll agree -- I'm going to ask  
4 you the question -- we went around on this question  
5 quite a bit, and at the end of the discussion, if we  
6 could cut to the end, I basically agreed that was not  
7 probably a great choice of words. What I meant was a  
8 different regulatory regime than what they were  
9 authorized to do under current statute.

10 Q. Would you like to amend your testimony  
11 now to replace the word "new" with the word  
12 "different"?

13 A. Yes, if I can.

14 Q. Okay. And you believe that the  
15 Commission when it approved those charges in the AEP,  
16 Duke, and Dayton Power & Light cases was instituting  
17 a different regulatory regime, correct?

18 A. That's correct.

19 Q. And you believe that when the Commission  
20 approved those stability charges, it was inserting  
21 the mechanism which was contrary to current law,  
22 correct?

23 A. That's correct.

24 Q. And turning to the bottom of page 9,  
25 continuing to page 10, where you address Section

1 4928.38, do you see that?

2 A. That's question 14?

3 Q. Correct.

4 A. Yes.

5 Q. And here you're incorporating the  
6 discussion of this statute from your direct  
7 testimony?

8 A. Yes.

9 Q. And as we discussed earlier in your  
10 direct testimony, you opine that approving proposed  
11 rider RRS would violate the statute, correct?

12 A. That's correct. Now, this -- just to  
13 clarify, this quote is actually from the Commission  
14 order, not from the statute, or maybe I misheard you.

15 Q. No, at this point I'm establishing  
16 foundation. So here you're referencing your original  
17 opinion regarding 4928.38, correct?

18 A. And its relevance in this case, yes.

19 Q. Okay. And the Commission expressly  
20 rejected your position in the AEP order, correct?

21 A. Yes.

22 Q. And you disagree with the Commission's  
23 interpretation of the statute as shown through the  
24 AEP order?

25 A. That's correct.

1 MR. ALEXANDER: Thank you, Dr. Rose.

2 EXAMINER PRICE: Mr. McNamee.

3 MR. MCNAMEE: No questions. Thank you.

4 EXAMINER PRICE: Redirect.

5 MR. SAUER: May we have a couple minutes,  
6 your Honor?

7 EXAMINER PRICE: You may. Let's go off  
8 the record.

9 (Discussion off the record.)

10 EXAMINER PRICE: Mr. Sauer?

11 MR. SAUER: Thank you, your Honor. We  
12 have no redirect.

13 EXAMINER PRICE: Thank you.

14 Ms. Chiles?

15 EXAMINER CHILES: No.

16 EXAMINER PRICE: Ms. Addison.

17 EXAMINER ADDISON: No.

18 EXAMINER PRICE: I just have one or two  
19 questions.

20 Dr. Rose, you agreed with Mr. Alexander  
21 that the alternative energy portfolio standard the  
22 states have, including Ohio, are subsidies and  
23 distort the market; is that correct?

24 THE WITNESS: That's correct. And, again  
25 this is another thing we went around on on the

1 deposition, so I'll add a little bit, if that's okay,  
2 that the purpose of it was basically to encourage the  
3 development of these renewables. So clearly it's  
4 going to distort it in the sense that you're trying  
5 to encourage it and you want more development than  
6 you would get if it were just left to the market.

7 EXAMINER PRICE: Does that mean subsidies  
8 are sometimes good?

9 THE WITNESS: That's right. They could  
10 be good in some cases. What I said previously was,  
11 you know, with public policy in mind, then it may  
12 justify that. So Congress, you know, the U.S.  
13 Congress allowing renewable tax credits, for example,  
14 is clearly trying to encourage more solar, but it has  
15 the effect of more than you would have. So if you  
16 subsidize some generating, you get more of it.  
17 That's kind of a general rule in economics.

18 EXAMINER PRICE: Energy efficiency also  
19 participates in the PJM market; is that correct?

20 THE WITNESS: That's correct.

21 EXAMINER PRICE: Do you view the energy  
22 efficiency programs that the state of Ohio has and  
23 other states have as subsidies?

24 THE WITNESS: In the PJM market, the hope  
25 is that they are bidding in at their cost or what the

1 value of the power that they're displacing, so it's  
2 not a direct subsidy in that way. Programs that  
3 encourage those, say, lightbulb programs, that may  
4 have more of an impact because you're encouraging  
5 people to use less electricity.

6 EXAMINER PRICE: So company or  
7 ratepayer-funded programs are a subsidy?

8 THE WITNESS: They are a subsidy.

9 EXAMINER PRICE: And they distort the  
10 market?

11 THE WITNESS: Right. To economists, the  
12 word "subsidy" is a neutral term. It's not  
13 necessarily a bad one.

14 EXAMINER PRICE: That's fair.

15 You reference on page 20 of your direct  
16 testimony the public policy provisions enumerated in  
17 4928.02; is that correct?

18 THE WITNESS: That's right.

19 EXAMINER PRICE: Do you have a copy of  
20 Senate Bill 221 with you?

21 THE WITNESS: No, I don't.

22 EXAMINER PRICE: Can you explain to the  
23 Bench what provisions in 4828.02 were amended by  
24 Senate Bill 221?

25 THE WITNESS: I don't recall that.

1 EXAMINER PRICE: Do you know if any  
2 provisions in 4928.02 were amended by Senate Bill  
3 221?

4 THE WITNESS: There were some that were  
5 added, is my recollection.

6 EXAMINER PRICE: You don't recall any  
7 being amended?

8 THE WITNESS: They may have been. I  
9 don't recall that.

10 EXAMINER PRICE: Okay. Fair enough.  
11 That's all I have. Thank you. You're  
12 excused.

13 THE WITNESS: Thank you.

14 EXAMINER PRICE: Mr. Sauer?

15 MR. SAUER: Thank you. Your Honor, OCC  
16 moves for the admission of OCC Exhibits No. 25 and  
17 26.

18 MR. ALEXANDER: No objection.

19 EXAMINER PRICE: Exhibits will be  
20 admitted.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 EXAMINER PRICE: Let's go off the record.

23 (Discussion off the record.)

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

1 Ms. Bojko, you may call your next  
2 witness.

3 MS. BOJKO: Thank you, your Honors.

4 On behalf of the Ohio Manufacturers'  
5 Association Energy Group, OMAEG calls Dr. Edward Hill  
6 to the stand.

7 (Witness sworn.)

8 EXAMINER PRICE: Please be seated and  
9 state your name and business address for the record?

10 THE WITNESS: Edward Hill. My business  
11 address is the John Glenn College of Public Affairs,  
12 Ohio State -- The Ohio State University. I'm still  
13 getting used to "The" part, 1810 College Road,  
14 Columbus, Ohio.

15 EXAMINER PRICE: Please proceed,  
16 Ms. Bojko.

17 MS. BOJKO: Thank you.

18 - - -

19 EDWARD W. HILL, Ph.D.  
20 being first duly sworn, as prescribed by law, was  
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 By Ms. Bojko:

24 Q. Dr. Hill, are you the same Edward Hill  
25 that filed multiple pieces of testimony in this



1 proceeding?

2 A. I am.

3 MS. BOJKO: Your Honors, at this time I  
4 would like to mark the direct testimony of Dr. Hill  
5 as OMAEG Exhibit 17.

6 I would like to mark the supplemental  
7 testimony of Dr. Hill as OMAEG Exhibit 18.

8 And I would like to mark the second  
9 supplemental testimony of the Dr. Hill as OMAEG  
10 Exhibit 19.

11 EXAMINER PRICE: The exhibits will be  
12 marked accordingly.

13 (EXHIBITS MARKED FOR IDENTIFICATION.)

14 Q. Dr. Hill, do you have in front of you  
15 what has been marked as OMAEG Exhibits 17, 18 and 19?

16 A. I do.

17 Q. And are these all testimony prepared by  
18 you or under your direction?

19 A. They are.

20 Q. Since filing your multiple pieces of  
21 testimony, it's my understanding -- do you have any  
22 changes in your business status?

23 A. I do. When I filed the testimony first,  
24 I was the dean of the Maxine Goodman Levin College of  
25 Urban Affairs of Cleveland State University. I

1 retired from that position the last day of June 2015,  
2 and then I was retired for two months. On  
3 September 1 I became an employee of The Ohio State  
4 University.

5 Q. And, sir, since filing your testimony in  
6 this case, do you have changes to your testimony?

7 A. I made a series of corrections, so the  
8 answer is yes.

9 MS. BOJKO: Your Honor, at this time, we  
10 prepared a written -- for ease of the Bench, we  
11 prepared a written errata sheet for all three pieces  
12 of Dr. Hill's testimony that's been handed out to the  
13 parties. At this time I'd like to mark that as OMAEG  
14 Exhibit 20.

15 EXAMINER PRICE: Be so marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. Dr. Hill, do you have what's in front of  
18 you as OMAEG Exhibit 20, the errata sheet?

19 A. No, I do not.

20 EXAMINER PRICE: Here.

21 Q. Are these the changes that you just  
22 referenced that you made and put together on an  
23 errata sheet?

24 A. Yes, they are.

25 Q. With the changes that you've provided in

1 your errata sheet, if I were to ask you the questions  
2 today that are contained in all three pieces of your  
3 testimony, would your answers be to those questions  
4 the same?

5 A. Can you repeat, please?

6 Q. With the changes provided in the errata  
7 sheet, if I were to ask you the same questions  
8 contained in all three pieces of your testimony  
9 today, would your answers be the same?

10 A. They would.

11 Q. Dr. Hill, do you recognize that there are  
12 certain documents that have either been final rules  
13 provided or final reports issued that would cause the  
14 need for your testimony as provided to the Commission  
15 to be updated in some fashion?

16 A. Yes.

17 Q. You have not made those updates today,  
18 have you?

19 A. I have not.

20 Q. And could you explain to us the two  
21 documents that you're referring to that you would  
22 need to incorporate into testimony if it were to be  
23 given today?

24 A. Well, on October 1st of this year, the  
25 USEPA released a new set of standards around carbon,

1 and that would change some of my testimony that I  
2 provided back in December. Particularly, there's a  
3 map in there, and I think that would be the one that  
4 would cause the -- that could cause changes.

5 Q. And do you believe that that changes any  
6 of the underlying analysis or conclusions that you've  
7 drawn in your testimony?

8 A. No.

9 Q. And have you brought with you today  
10 copies of what has been provided by the deputy legal  
11 counsel at the Ohio Senate as self-authenticating  
12 with regard to one of your attachments?

13 A. I have.

14 Q. And that is the testimony of Layla  
15 Vespoli by the FirstEnergy Company in Attachment A to  
16 your testimony?

17 A. It is.

18 MS. BOJKO: At this time, your Honor, I  
19 would like to move OMAEG Exhibit 17, 18, 19 and 20  
20 subject to cross-examination, and I tender the  
21 witness for cross.

22 EXAMINER PRICE: We will defer ruling on  
23 the motion for admission until the conclusion of  
24 cross-examination.

25 And let's go off the record.

1 (Discussion off the record.)

2 EXAMINER PRICE: Ms. Bojko.

3 MS. BOJKO: Yes, your Honor. At this  
4 time I'd like to mark an additional document. There  
5 were confidential attachments filed with the  
6 Commission that correspond with the second  
7 supplemental testimony. I would like to mark those  
8 OMAEG 21 Confidential.

9 The testimony itself was not  
10 confidential, just the underlying data that was  
11 provided in response to footnotes to the testimony.

12 EXAMINER PRICE: It will be so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 EXAMINER PRICE: Are you going to have  
15 the witness identify it?

16 Q. (By Ms. Bojko) Dr. Hill, do you have in  
17 front of you what has been marked as OMAEG Exhibit  
18 21C, which are confidential attachments to your  
19 second supplemental testimony?

20 A. I do.

21 MS. BOJKO: Thanks.

22 EXAMINER PRICE: Move for admission?

23 MS. BOJKO: And I move for admission of  
24 OMAEG Exhibit 21C subject to cross-examination.

25 EXAMINER PRICE: We'll defer ruling on

1       that one also.

2               Ms. Dunn.

3               MS. DUNN: Your Honor, I would request to  
4 inspect the document that he brought with him today  
5 that's --

6               EXAMINER PRICE: You may.

7               MS. DUNN: Thank you. May I approach  
8 him?

9               EXAMINER PRICE: You may.

10              MS. BOJKO: And the document has an  
11 attached affidavit to it or a chain of custody from  
12 the Ohio Senate.

13              MS. DUNN: Do you have a copy of this for  
14 me.

15              MS. BOJKO: Oh, yes, we brought copies  
16 for everybody.

17              EXAMINER PRICE: Ms. Dunn, do you have a  
18 motion to strike or two?

19              MS. DUNN: Yes, your Honor.

20              EXAMINER PRICE: Can you tell me how  
21 many?

22              MS. DUNN: More than ten.

23              EXAMINER PRICE: Okay. Start with the  
24 first one.

25              MS. DUNN: Okay, your Honor. I'm going

1 to try to go as slow as I can and also take these  
2 broad and whittle my way down to narrow because some  
3 might obviate the need for others.

4 EXAMINER PRICE: Okay.

5 MS. DUNN: First, I would like to point  
6 to -- start with the supplemental testimony which was  
7 introduced as Exhibit 18. The first category of  
8 motions to strike I have are on the basis that the  
9 testimony filed was outside the scope of the attorney  
10 examiner's procedural entries.

11 It's important that the attorney  
12 examiner's orders in this case are adhered to,  
13 especially when there's dozens of intervenors and  
14 several sets of testimony. As the Bench recognized  
15 yesterday, adherence to the attorney examiner's  
16 entries is important. Parties shouldn't file  
17 testimony out of time on whatever topics they feel  
18 like when it was not permitted.

19 OMA had plenty of opportunities to make  
20 appropriate arguments at the time, four  
21 opportunities, and should have done them in  
22 accordance with the attorney examiner's orders.

23 Dr. Hill filed testimony on December 22nd  
24 in accordance with the original attorney examiner  
25 entry. I'm not moving to strike that testimony at

1       this time on this ground.

2               On February 4th, the attorney examiner  
3       permitted testimony limited to the original  
4       stipulation. That testimony was due on March 2nd,  
5       2015. OMA availed themselves of that opportunity and  
6       Mr. Seryak filed testimony in accordance with the  
7       entry and limited it to the stipulation.

8               On March 23rd, the attorney examiner  
9       permitted testimony to be filed on May the 11th.  
10      That entry was limited to the AEP Ohio factors, and  
11      those were cited in the attorney examiner's entry.

12              On May 11th, Dr. Hill filed his  
13      supplemental testimony. I'm moving to strike several  
14      portions of that testimony on the basis that the  
15      testimony is outside the scope of the attorney  
16      examiners's March 23rd order which limited the  
17      testimony to the AEP Ohio factors.

18              I'm going to go ahead and start on page  
19      4, lines 11 to 19, then page 5, line 1 to 2. This  
20      paragraph in question deals completely with the  
21      stipulation. This testimony should have been filed  
22      on March 2nd, 2015. It does not discuss the AEP Ohio  
23      factors. For that reason, I'm moving to strike this  
24      section.

25              Your Honor, would you like me to keep



1 going or stop?

2 EXAMINER PRICE: How many sections do you  
3 have like this on this topic?

4 MS. DUNN: Six in this.

5 EXAMINER PRICE: Let's identify them all.

6 MS. DUNN: On page 6, the entire page --  
7 excuse me. Page 6, the entire page to page 7 up  
8 through line 19. Although the question asks, "Does  
9 the Economic Stability Program satisfy the AEP Ohio  
10 factors set forth by the Commission?" And Dr. Hill  
11 answers, "No," the remainder of the section doesn't  
12 discuss one factor identified in the AEP Ohio order.  
13 The entire paragraph criticizes the PPA, and this  
14 could have been included in Dr. Hill's initial  
15 testimony. It's not relevant to the AEP Ohio  
16 factors.

17 MS. BOJKO: Excuse me. Did you just  
18 reference the deposition? I didn't hear --

19 MS. DUNN: No, I didn't say that.

20 MS. BOJKO: Sorry. Thank you.

21 MS. DUNN: Turning to page 13, line 16,  
22 starting with "In fact" through page 14, line 1 to 6,  
23 although the question says, "Have the Companies  
24 advanced an alternative plan to allocate Rider RRS's  
25 financial risk between the Companies and its

1 ratepayers," everything after the first sentence  
2 discusses the stipulation.

3 Dr. Hill attempts to bootstrap this into  
4 the stipulation by calling the stipulation an  
5 alternative plan; however, that would have been  
6 impossible because the stipulation was filed on  
7 December 22nd. The AEP Ohio factors came out on  
8 February 25th. The stipulation is clearly not the  
9 alternative plan contemplated by one of the AEP Ohio  
10 factors.

11 Next, turning to page 14, line 7 to 18,  
12 this question on its face clearly discusses the  
13 stipulation. It should have been filed on March 2nd  
14 in accordance with the attorney examiner's entry.

15 Turning to page 15, the entire page  
16 clearly on its faces discusses the stipulation. This  
17 also should have been filed on March 2nd in  
18 accordance with the attorney examiner's entry.

19 Finally, page 16 through page 21 --

20 MS. BOJKO: I didn't get the beginning.

21 MS. DUNN: Page 16 through page 21.

22 MR. RANDAZZO: Starting on line 21.

23 MS. DUNN: Thank you, Sam. Up to line 6  
24 should also be stricken. This does not discuss any  
25 AEP Ohio factor. It simply is a regurgitation of his

1 disagreement with the PPA, rider RRS, competitive  
2 advantages, and the stipulation. All of this  
3 testimony should have been filed either in his  
4 testimony on December 22nd or on March 2nd in  
5 accordance with the attorney examiner's entry. On  
6 that basis I move to strike those portions of the  
7 supplemental testimony.

8 I do have similar arguments for the  
9 second supplemental, but I can stop with this one if  
10 you'd like.

11 EXAMINER PRICE: This is a good stopping  
12 point.

13 Ms. Bojko.

14 MS. BOJKO: Thank you, your Honor. I  
15 believe that all the question and answers in  
16 Dr. Hill's testimony referenced by Ms. Dunn do, in  
17 fact, relate to a factor and/or an additional issue  
18 referenced in the Commission's AEP ESP order.

19 I'll go through each question as Ms. Dunn  
20 did, but, first, I'd like to explain in general that  
21 the AEP factors set forth on page 25 of the  
22 Commission's order referenced by the May 1st, 2015  
23 examiner entry specifically says that the Commission  
24 is not limiting its review to those factors and that  
25 these are issues that should be addressed at a

1 minimum.

2 It also states that the Commission may  
3 consider and balance the factors but will not be  
4 bound by those factors. Further, the Commission  
5 states that additional items would need to be  
6 addressed in any filing.

7 If you look closely at those factors, the  
8 factors are specific to AEP Ohio. So it could not be  
9 meant that those factors are only applicable to AEP  
10 Ohio. Dr. Hill describes where the companies'  
11 application, including the stipulations, fall short  
12 of satisfying these factors.

13 While Dr. Hill addresses all of the  
14 factors, including the stipulations, as a potential  
15 alternative plan, he focuses much of his testimony on  
16 factors 2 and 4. He describes why the plants are not  
17 necessary for reliability or supply diversity.

18 Dr. Hill also explains that in order to  
19 properly review the Commission's factor 4, you cannot  
20 look at the economic impact of the plants in  
21 isolation. For a proper analysis, you must review  
22 the inverse and consider how the economic development  
23 in the region will be affected if the plants do  
24 continue to operate through an increase in cost to  
25 manufacturers through the implementation of the total

1       proposal, the PPA and stipulations.

2               Dr. Hill is also providing testimony on  
3       the public policy associated with the proposals and  
4       how that will affect the economic development within  
5       the state. Your Honor, just as you ruled that  
6       Ms. Mikkelsen's testimony was cumulative in nature  
7       with regard to the settlement criteria on  
8       September 1st, 2015, Volume II of the transcript of  
9       this hearing at page 334

10              EXAMINER PRICE: If you're going to cite  
11       me, you'll probably want to do better than that.  
12       That was simply saying she didn't need to repeat the  
13       three-part test.

14              MS. BOJKO: Your Honor, she didn't even  
15       include the three-part test in any of her subsequent  
16       filings.

17              EXAMINER PRICE: She included it. Come  
18       on.

19              MS. BOJKO: She's looking at it as  
20       cumulative and as a whole. Ms. Dunn had the  
21       opportunity to address these issues. Dr. Hill  
22       actually explained to Ms. Dunn how these factors were  
23       addressed through his testimony. He is addressing  
24       the cumulative effect of the proposal.

25              Now, remember, the proposal includes all

1 of the stipulations, all of the application, and he  
2 is trying to assist the Commission in his  
3 determination of what the impact of the companies'  
4 total proposal will have on electric prices and the  
5 resulting effect on economic development within the  
6 state.

7 We look to the specific provisions that  
8 were moved to be stricken. I will tell you exactly  
9 which factors that they apply to

10 EXAMINER PRICE: I'm going to ask the  
11 witness. He'll tell the truth.

12 MS. BOJKO: Okay.

13 EXAMINER PRICE: You can resolve this for  
14 us, Dr. Hill.

15 THE WITNESS: Sure.

16 EXAMINER PRICE: If you could turn to  
17 page 4, which AEP factor did you have in mind when  
18 you answered your question on line 11?

19 THE WITNESS: The question is with regard  
20 to the recovery of costs associated with the PPA, are  
21 there other differences between AEP Ohio ESP  
22 proceedings and the companies' ESP proceedings, on  
23 and on. To me that's factor 4, the impact of the  
24 closure on economic development within the state.

25 EXAMINER PRICE: Why does the stipulation

1 have an impact on the closure of -- economic  
2 development resulting from the closure on the state?

3 THE WITNESS: The provision of energy and  
4 the cost of the energy that's provided to customers  
5 within the state of Ohio is an important factor of  
6 the cost of production. If the PPA will have a  
7 negative impact on the cost of electricity to  
8 companies within the state itself or affects the  
9 level of productivity of the workforce within the  
10 state, now we have a negative impact on the economy  
11 of the state as a whole.

12 EXAMINER PRICE: Is there anything with  
13 respect to the question on line 11, is there anything  
14 in your question and answer, that you could not have  
15 provided to the Commission before the attorney  
16 examiner's entry in question?

17 MS. BOJKO: Your Honor, I don't  
18 understand your question. Could you provide it  
19 again?

20 EXAMINER PRICE: The information, the  
21 testimony on line 11, page 4, line 11 and ending on  
22 page 5, line 2, is there anything in there he could  
23 not have provided before this opportunity.

24 MS. BOJKO: The Commission's --

25 EXAMINER PRICE: I asked him.

1 MS. BOJKO: No, no.

2 MS. DUNN: Your Honor, I believe you did  
3 ask him.

4 MS. BOJKO: But there's a time break.

5 MS. DUNN: She's answering for him.

6 MS. BOJKO: Well, he might not know the  
7 significance of when the Commission's order --

8 MS. DUNN: Your Honor --

9 EXAMINER PRICE: Well, that's the point,  
10 Ms. Bojko.

11 MS. BOJKO: No, but that's not a fair  
12 question.

13 EXAMINER PRICE: Okay. I'll try to state  
14 it more fairly.

15 Dr. Hill, the stipulation was filed, the  
16 first stipulation was filed in this case, correct?

17 THE WITNESS: Correct.

18 EXAMINER PRICE: And parties were  
19 provided a chance to respond to that stipulation,  
20 right?

21 THE WITNESS: Correct.

22 EXAMINER PRICE: Then the Commission  
23 issued the AEP order, and the Bench generously  
24 provided parties a chance to respond to the AEP  
25 factors, correct?



1 THE WITNESS: Correct.

2 EXAMINER PRICE: Is there anything in the  
3 question that we're talking about, page 4, line 11,  
4 that you could not have filed in response to the  
5 stipulation rather than in response to the AEP order?

6 THE WITNESS: I'm a little fuzzy on  
7 timing, so I may need a little help here. But there  
8 was the -- the ELR renewal came out. You had rider  
9 NMB appeared, and I don't believe those were part of  
10 the December 22nd filing.

11 EXAMINER PRICE: That's correct, they  
12 were not part of the December 22nd filing.

13 THE WITNESS: And curtailable load was  
14 also not part of the filing. All of that changes the  
15 way --

16 EXAMINER PRICE: No, no. So this was  
17 filed before the ELR and --

18 THE WITNESS: That's why I need help on  
19 the time. So I thought that ELR and others were part  
20 of the -- let me get the right stipulation of the  
21 filing -- can I pull out the documents for a second?

22 EXAMINER PRICE: Sure.

23 THE WITNESS: Thank you. Those are part  
24 of the filing on May 26th, correct?

25 EXAMINER PRICE: Right. And your

1 testimony was filed on May 11, so you've got to  
2 freeze your mind in time on May 11th.

3 THE WITNESS: I'm working on that.

4 EXAMINER PRICE: It's certainly a  
5 difficult record.

6 THE WITNESS: So this filing was due in  
7 response to the AEP factors, and the AEP factors  
8 before them was the financial need of the generating  
9 plant itself. The second was the necessity of the  
10 facility for reliability. The third were  
11 environmental concerns, and the fourth was the impact  
12 of the closure with the economy -- let me get exactly  
13 how it's written down here.

14 The fourth is the impact that a closure  
15 of a generating plant would have on the electric  
16 prices and resulting effect on economic development  
17 within the state.

18 EXAMINER PRICE: Correct.

19 THE WITNESS: There was also an  
20 implication, which I have as five, as other related  
21 factors, but they're really four. So the testimony  
22 that you have in question, I believe, deals directly  
23 with the impact of the closure of the generating  
24 plant would have on electric prices and the resulting  
25 effect on the economy within the state.

1 EXAMINER PRICE: How?

2 THE WITNESS: And the section that you  
3 have in question talks about -- well, in my mind, was  
4 the way in which the carefully correct -- the group  
5 of beneficiaries from the stipulation will have an  
6 impact on the economy of the state, but, more  
7 importantly, it isn't the impact of those that were  
8 included, it's those that were excluded.

9 EXAMINER PRICE: And who were the  
10 beneficiaries to the stipulation you're referring to?

11 THE WITNESS: There were the signatories  
12 to the party who agreed not to oppose or to support,  
13 and they received a series of benefits, either  
14 payments or reductions in operating costs that were  
15 going to the cost of which are going to be paid by  
16 other firms and entities within the state. It's my  
17 contention that that --

18 EXAMINER PRICE: I'm asking you, who were  
19 those beneficiaries you're referring to?

20 THE WITNESS: The beneficiaries are those  
21 that I refer to as the redistributive coalition which  
22 are the signatories to the agreement.

23 EXAMINER PRICE: I'm asking who the  
24 signatories were.

25 MS. BOJKO: He wants names.

1 THE WITNESS: Oh, you want names.

2 EXAMINER PRICE: It was low-income  
3 customers; is that right?

4 THE WITNESS: There's a whole list. So  
5 there was the Ohio Energy Group, City of Akron,  
6 Council for Small Enterprises, the four advocates  
7 for -- around low-income housing issues in Cleveland.  
8 Cleveland has a network consumer protection agency.  
9 Council for Economic Opportunities of Greater  
10 Cleveland, the Citizens Coalition, which is that same  
11 group repackaged, Nucor Steel Marion, Material  
12 Science Corporation, Association of Independent  
13 Colleges and Universities of Ohio, and IBEW Local 245  
14 out of Toledo.

15 EXAMINER PRICE: Counsel, can somebody  
16 remind the Bench, I'm not positive, were Nucor and  
17 OEG signatories to the December stipulation?

18 MS. BOJKO: Yes, your Honor. I was going  
19 to try to clarify that. There was an ELR provision  
20 in the first stipulation in December and, then there  
21 was a revised ELR provision in the second  
22 stipulation. I was going to say that when you asked  
23 the first question.

24 EXAMINER PRICE: And then on page 6,  
25 question 1, am I going to get the same answer to my

1 question? Because we said the words "economic  
2 development," it all ties into economic development?

3 THE WITNESS: Well, this one really deals  
4 with the necessity of the facility itself in  
5 reliability.

6 EXAMINER PRICE: Okay. And on page 13,  
7 the alternative plan? Do you believe the stipulation  
8 was an alternative plan to allocate risk?

9 THE WITNESS: I do.

10 EXAMINER PRICE: And 14, page 14,  
11 question 7, same answer?

12 THE WITNESS: Correct. Allocation risk  
13 and also allocate the costs.

14 EXAMINER PRICE: And then also the major  
15 one that's the big five pages, is that correct, page  
16 16 through 21?

17 THE WITNESS: Correct.

18 MS. BOJKO: Your Honor --

19 THE WITNESS: There's actually a variety  
20 of factors in that section. So --

21 EXAMINER PRICE: That's okay.

22 THE WITNESS: So at the beginning --

23 EXAMINER PRICE: I don't need further  
24 explanation on that.

25 THE WITNESS: Okay.

1 MS. DUNN: Your Honor, if I may just  
2 respond briefly to Ms. Bojko's --

3 EXAMINER PRICE: Just a second.

4 MS. DUNN: Thank you.

5 EXAMINER PRICE: Go ahead.

6 MS. DUNN: Just a few quick points. I  
7 believe when he was answering your questions, he  
8 actually said contrary to argument that there really  
9 was only four AEP factors.

10 He also indicated that -- well, as you  
11 questioned him, was any of this information available  
12 to him prior to the March 2nd date, the answer to  
13 that is yes, the stipulation information. And all  
14 the information on all of these pages, as much as  
15 they'd like to tie it to the AEP Ohio order, was  
16 available to them, could have been filed and actually  
17 OMA did file something relating to the stipulation.  
18 No other party in this case has had difficulty  
19 following the attorney examiner's orders. So for  
20 those reasons, we do move to strike those sections.

21 MS. BOJKO: May I respond, your Honor?

22 EXAMINER PRICE: No. I think you have to  
23 broadly construe the examiner's entry to allow this  
24 in, and we will not strike the testimony, and the  
25 Commission can decide and gauge the witness'

1 credibility as to whether or not as to the  
2 appropriateness of his answers and take that into an  
3 overall consideration of the witness' credibility,  
4 but I think the Commission is entitled to at least  
5 see the testimony, and so we'll deny the motion to  
6 strike on this basis.

7 MS. BOJKO: Thank you, your Honor.

8 EXAMINER PRICE: Next one.

9 MS. DUNN: Turning to the second  
10 supplemental testimony, which lucky for us does not  
11 deal with the AEP Ohio factors. As the attorney  
12 examiners know, they permitted -- on July 2, 2015,  
13 they permitted parties to file testimony by  
14 August 10th, limited to the supplemental stipulation  
15 and second supplemental stipulation. Dr. Hill filed  
16 testimony on August 10th.

17 Just a reminder, the supplemental  
18 stipulation was very limited. It included a slight  
19 modification to rider ELR, and introduced the rider  
20 NMB pilot, and at that time there were no new  
21 signatory parties. At that time, there was a  
22 non-opposing party, which was IEU. The second  
23 supplemental stipulation was limited to the high-load  
24 factor rider and involved one signatory party. At  
25 that time it was Kroger.

1           At this point, I move to strike page 7,  
2     lines 12 to 16, through page 8, lines 1 to 2. If you  
3     notice in the footnotes, specifically footnote 14 and  
4     15, he is clearly citing to the stipulations. The  
5     15.31 he mentions is from the stipulation. This  
6     information could have been filed on March 2nd and  
7     apparently on May 11th, and so for those reasons,  
8     that should be stricken as well.

9           EXAMINER PRICE: Okay.

10          MS. DUNN: Turning to page 13, line 12  
11     through page 17, line 4, this is -- again, don't let  
12     the question fool you, "Are the supplemental  
13     stipulations in the public interest?" He spends all  
14     these pages discussing, I think, things related to  
15     rider RRS and the PPA.

16          Given the limited items that were placed  
17     into the supplemental stipulation and second  
18     supplemental stipulation, given his previous  
19     opportunities to discuss this, it should be stricken  
20     as well.

21          Turning to page --

22          MS. BOJKO: Excuse me. Before you move  
23     on, could you say the starting point?

24          MS. DUNN: Sure. Page 13, line 12  
25     through page 17, line 4. Also, page 22, lines 14 to



1 18. Clearly this pertains to the stipulation that  
2 could have been filed in previous entries or on the  
3 deadlines proposed by the previous entries.

4 EXAMINER PRICE: Where was the end of  
5 that one?

6 MS. DUNN: Page 22, lines 14 to 18.

7 MR. RANDAZZO: Ending with the question  
8 mark on 18?

9 MS. DUNN: Sorry. I lost myself. Hold  
10 on. Yeah. I'm sorry. There were three question  
11 marks. Yeah, it's ending with the question mark.  
12 Thank you. Page 28, line 14 through page 29, line  
13 29, or I may have misread that. Excuse me, page 19.

14 MR. RANDAZZO: You mean line 19 on page  
15 29.

16 MS. DUNN: Yes. Thank you. That also  
17 clearly discusses the original stipulation. It  
18 mentions energy efficiency programs, and I'm also  
19 moving to strike Attachment A. Attachment A is  
20 listed as "page 1 of," so I'm moving to strike page  
21 10 to 11, 14 to 15.

22 EXAMINER PRICE: Slow down.

23 MS. DUNN: Sorry.

24 MS. BOJKO: I'm sorry. Attachment A,  
25 page 10.

1 MS. DUNN: Page 10 to 11.

2 MS. BOJKO: Discovery responses?

3 MS. DUNN: Yes. May I continue, your  
4 Honor?

5 EXAMINER PRICE: No.

6 MS. DUNN: Okay.

7 EXAMINER PRICE: I have Attachment A, but  
8 I have 1 of 93.

9 MS. DUNN: Yeah, and if you look, there's  
10 page 10 of 93. I'm sorry. I should have made that  
11 clear. Page 10 of 93 to 11 of 93.

12 EXAMINER PRICE: Okay.

13 MS. DUNN: Page 14 of 93 to 15 of 93,  
14 page 64 of 93, all the way through page 80 of 93.

15 MS. BOJKO: 64?

16 MS. DUNN: 64 through 80.

17 I wasn't quite sure where he left the  
18 confidential attachment, but all of confidential  
19 attachment B.

20 THE WITNESS: Which is now called C.

21 MS. DUNN: Okay. Thank you. And the  
22 reason I'm striking all those attachments is on the  
23 face, the discovery responses clearly deal with the  
24 stipulation.

25 EXAMINER PRICE: We can save ourselves a

1 lot of time here if I ask the witness anything, he's  
2 going to respond that all of this is cumulative and  
3 that all his numbers are cumulative and that's why  
4 the Commission should torpedo, reject, the cumulative  
5 stipulations.

6 THE WITNESS: And the changes weren't  
7 trivial. Sorry.

8 EXAMINER PRICE: Don't get into that.

9 Therefore, we are going to deny the  
10 motion to strike. The Commission should have the  
11 opportunity to review the physical testimony,

12 Ms. Dunn, do you have more?

13 MS. DUNN: Yes, your Honor. These are  
14 more specific.

15 EXAMINER PRICE: More traditional?

16 MS. DUNN: More traditional.

17 Your Honor, for this, may I approach?

18 EXAMINER PRICE: You may.

19 MS. DUNN: Ms. Bojko, do you have copies  
20 of his deposition?

21 MS. BOJKO: Before she approaches, your  
22 Honor, could we ask what she's using the deposition  
23 for? Because I have an objection.

24 MS. DUNN: As Mr. Kutik has done a number  
25 of times, it's not improper to review the deposition

1 in asserting certain motions to strike.

2 MS. BOJKO: It absolutely is.

3 EXAMINER PRICE: Why don't you just ask  
4 the witness your questions, and if he gives an answer  
5 that deviates in the slightest from the deposition,  
6 you can go ahead and read the deposition at that  
7 point.

8 MS. DUNN: So would you like me to hold  
9 off on these motions to strike to my cross or ask him  
10 now?

11 EXAMINER PRICE: Ask him now.

12 MS. DUNN: Okay. Thank you.

13 MS. BOJKO: I'm sorry. We're going to go  
14 through voir dire of sorts, is that what we're doing,  
15 for motions to strike?

16 EXAMINER PRICE: Yes. Do you have a  
17 problem with that?

18 MS. BOJKO: No. I think it's improper to  
19 use depositions for motions to strike unless they're  
20 filed appropriately with the Commission.

21 EXAMINER PRICE: She's not using the  
22 deposition right now. She's going to ask him  
23 questions.

24 MS. DUNN: And, your Honor, it is common  
25 to use for motions in limine deposition transcripts,

1 but I will ask the questions. Thank you.

2 EXAMINER PRICE: Let's go off the record  
3 for one second.

4 (Pause in proceedings.)

5 EXAMINER PRICE: Back on the record. Go  
6 ahead.

7 VOIR DIRE EXAMINATION

8 By Ms. Dunn:

9 Q. Good afternoon, Dr. Hill.

10 A. Good afternoon, Attorney Dunn.

11 EXAMINER PRICE: Let me be clear. I  
12 would like to do this just one motion to strike at a  
13 time, if that's okay.

14 MS. DUNN: That's fine.

15 Q. Dr. Hill, you're not terribly expert on  
16 environmental regulations, are you?

17 A. I am not.

18 MS. DUNN: Your Honor, I'm going to go  
19 ahead and move to strike pages 6 to 8.

20 EXAMINER PRICE: Which one?

21 MS. DUNN: I'm sorry. Of the direct  
22 testimony. All of pages 6, 7 and 8 and the figure  
23 EWH 2 on page 9, but not lines 1 through 5. And I'm  
24 also moving to strike page 16 to 17, both of those  
25 pages, and also the supplemental testimony, page 17,

1 lines 5 and 6.

2 EXAMINER PRICE: You're anticipating  
3 losing your first motion to strike because you've got  
4 another grounds. Go ahead.

5 MS. BOJKO: I didn't hear the last one.  
6 I'm sorry.

7 MS. DUNN: Sure. Supplemental testimony  
8 page 17, lines 5 to 6. Yeah, lines 5 to 6.

9 Your Honor, the reason I'm moving to  
10 strike this is, as you know, under Ohio Rule 4901-29,  
11 expert testimony must be prefiled. Dr. Hill prefiled  
12 his expert testimony by virtue of that on these  
13 pages.

14 He's holding himself out as an expert on  
15 environmental issues. He's an economist and not  
16 environmental expert as he admitted. Simply being  
17 able to read what's on the EPA website does not make  
18 you an environmental expert. We have plenty of those  
19 in this case. For those reasons, I move to strike  
20 this testimony.

21 EXAMINER PRICE: Ms. Bojko.

22 MS. BOJKO: Sure, your Honor.  
23 Unfortunately, that is not the standard of the  
24 Commission. And we've heard a lot of people opine on  
25 regulatory theory over the course of 29 days, I think

1 we're at, and it's not purely whether he believes  
2 that he is an expert.

3 There are many factors in the rules that  
4 talk about expert testimony, and one of those is  
5 education. We have no foundation that he doesn't  
6 have any education. Another one of the factors is  
7 whether he's reviewed materials, whether he's studied  
8 it, whether he's had courses on it.

9 Here Ms. Dunn has not met that standard.  
10 Dr. Hill, you will see, if -- I thought we were going  
11 to go through these more specifically, but if we'll  
12 talk about page 8 of the direct footnote 5, Dr. Hill  
13 was actually on the research team. This was a  
14 research project funded by the U.S. Department of  
15 Housing and Urban Development at Cleveland State. He  
16 had a seat on the board. He was appointed to the  
17 board. He did allow his designee to participate  
18 under his direction. He has knowledge of these  
19 issues. He has personal knowledge of the report. He  
20 can attest to the report.

21 EXAMINER PRICE: Ms. Bojko, you can stop  
22 now. He has a Ph.D. in regional planning, and he has  
23 a master's in regional planning. I think he has  
24 sufficient expertise for the limited testimony that  
25 he's giving on these topics. If every witness'

1 testimony got tossed because they admitted casually  
2 "I'm not an expert," I'd have a lot less to read.

3 MS. BOJKO: Thank you, your Honor.

4 MS. DUNN: Thank you, your Honor.

5 Moving on to page -- these are more  
6 specific -- page 5 of the direct testimony, lines 2  
7 to 4 and footnote 2, and also Attachment EWH 1.  
8 Turning to EWH 1, the document is clearly hearsay.  
9 It's also an advocacy piece that this Bench has  
10 previously and routinely held as not admissible.  
11 Dr. Hill does not personally know the authors. We  
12 can't cross-examine the authors.

13 And I'd also like to point your  
14 attention, if you will, to page 52 of the document,  
15 "Important Information. This report is for  
16 information and educational purposes only. It is  
17 intended solely as a discussion piece focused on the  
18 topic of the U.S. energy sector ..."

19 Moving on to the second paragraph, "While  
20 the information contained in this report is from  
21 sources believed reliable, we do not represent that  
22 it is accurate or complete and it should not be  
23 relied upon as such."

24 Moving on, "Certain information presented  
25 may have been provided by third parties. The



1 Institute for Energy Economics and Financial Analysis  
2 believes that such third-party information is  
3 reliable, but does not guarantee its accuracy,  
4 timeliness or completeness, and it is subject to  
5 change without notice."

6 So it's hearsay and I think hearsay on  
7 hearsay. So for those reasons, I move to strike the  
8 document and the reference that I cited.

9 EXAMINER PRICE: Ms. Bojko.

10 MS. BOJKO: Thank you, your Honor.  
11 Dr. Hill's statement regarding FirstEnergy's proposal  
12 and strategy is his expert opinion on this matter.  
13 He's offering the report to show that others in the  
14 industry agree with him and hold similar opinions and  
15 have drawn similar conclusions. Therefore, the  
16 report is not hearsay as it is not offered to prove  
17 the truth of the matter asserted therein.

18 He is demonstrating that the energy  
19 industry is interested in and concerned about  
20 FirstEnergy's program, not necessarily the author's  
21 conclusion that the program seeks a massive subsidy  
22 from state ratepayers to fund aging and inefficient  
23 electric generating units.

24 I would just note that Ms. Dunn  
25 conveniently did not read all of the important

1 information. She selectively read things that  
2 benefit her position. She didn't --

3 EXAMINER PRICE: Shocking.

4 MS. BOJKO: I'm sorry?

5 EXAMINER PRICE: You don't need to  
6 continue. Your only justification is that the energy  
7 industry is interested in the outcome of this case is  
8 not relevant at all. So if your justification is not  
9 relevant, the document is out.

10 MS. BOJKO: The testimony --

11 EXAMINER PRICE: We will leave -- don't  
12 cut me off.

13 MS. BOJKO: I'm sorry. I thought you  
14 were done.

15 EXAMINER PRICE: We will leave the  
16 testimony in place. The footnote and the companies'  
17 document are out.

18 MS. BOJKO: Thank you, your Honor.

19 MS. DUNN: Thank you, your Honor.

20 Moving on to page 5 -- I'm going to start  
21 with one area; and depending on what you rule on  
22 that, it will flow into the other area.

23 So footnote 3 and the attachment and all  
24 the references throughout the document, which I'll  
25 itemize once we're done with this discussion, if

1 that's okay, is hearsay. It's an OMA report that was  
2 done by Cleveland State. Dr. Hill is not an author.  
3 It's not listed in his CV. We can't cross-examine  
4 the authors. It's not in the acknowledgments. It  
5 wasn't prepared for this case.

6 Because I can't cross-examine the  
7 authors, I have no idea how I can test the items put  
8 in here. I would like at this point, with the  
9 practice, show you some excerpts from his deposition  
10 that examines why I can't cross-examine this witness  
11 on this document.

12 EXAMINER PRICE: Just ask him live.

13 MS. BOJKO: Your Honor, before we go  
14 through that exercise, may I respond to the motion?

15 EXAMINER PRICE: No. I don't think she's  
16 done yet.

17 By Ms. Dunn:

18 Q. Dr. Hill, you are not one of the authors  
19 of the DWH 2 attached to your direct testimony,  
20 correct?

21 A. That is correct.

22 Q. And turning to page -- little i is the  
23 best way I can describe it, which would be the first  
24 page of the executive summary, "Economic regulation  
25 of the electric utility business has changed very

1 little over the last decade with regional and  
2 national policymakers debate the volatility of energy  
3 markets."

4 You didn't write the report, so you can't  
5 comment on a fine dissection of the sentences and  
6 pieces in this document, can you?

7 MS. BOJKO: Objection, your Honor.

8 EXAMINER PRICE: Grounds?

9 MS. BOJKO: Well, if I may be heard on  
10 this issue, as dean of the Levin College of Urban  
11 Affairs at Cleveland State, Dr. Hill was part of the  
12 development of the report. He had input into the  
13 report. He oversaw the research and writing of the  
14 report. He was part of the economic -- econometrics  
15 of the report. So he was part of the report. This  
16 is a business record of the college. He can attest  
17 to the authenticity of the report and his knowledge  
18 of the report.

19 MS. DUNN: Your Honor, I asked --

20 EXAMINER PRICE: Wait. Stop. She has a  
21 pending objection.

22 MS. DUNN: I'm sorry.

23 EXAMINER PRICE: Number one, please don't  
24 coach your witness with your objections. Number two,  
25 I hadn't said you couldn't ask him questions

1 responsive to what she was saying. So you could have  
2 asked him all those questions instead of telling him  
3 what to say. Number three, it's not a business  
4 record, by any stretch of the imagination.

5 So, Dr. Hill, I'll ask the questions.

6 THE WITNESS: Thank you.

7 EXAMINER PRICE: What is Urban  
8 Publications?

9 THE WITNESS: This is a working paper  
10 series within the College of Urban Affairs. These  
11 are public records of our research that we post on  
12 the website, and the Urban Research Centers is a  
13 fairly large and robust research organization within  
14 the college.

15 EXAMINER PRICE: Are these peer-reviewed  
16 journals?

17 THE WITNESS: These are not peer-reviewed  
18 journals. These are working papers.

19 EXAMINER PRICE: Okay. Thank you.

20 They're not peer-reviewed, they're not  
21 going to come in under learned treatise exception to  
22 hearsay. It is out.

23 MS. BOJKO: May I ask for clarification?

24 EXAMINER PRICE: Sure.

25 MS. BOJKO: How is it hearsay if he was

1 involved in it? Just because he was not an author?  
2 He was involved in the drafting. He can be  
3 cross-examined on it.

4 EXAMINER PRICE: You're not going to get  
5 every paper written by the Levin College of Urban  
6 Affairs because he was dean. He was not -- I made my  
7 ruling. He was not an author of the paper. The  
8 papers were not peer-reviewed. That's sufficient for  
9 me. Thank you.

10 MS. DUNN: May I proceed?

11 EXAMINER PRICE: You may.

12 MS. DUNN: Thank you.

13 In light of your ruling, your Honor, I  
14 would move to strike lines 11 to 12 from page 5,  
15 including footnote 3.

16 EXAMINER PRICE: No, I think he can  
17 testify that they did research. I just don't think  
18 he can rely on the document. So the footnote is out  
19 and the document is out, but he can testify that  
20 research was done.

21 MS. DUNN: Well, your Honor, if I may.  
22 In response, it does say he had the highest level of  
23 manufacturing activity, which is a statistic which  
24 came from this document.

25 EXAMINER PRICE: Do we know the statistic

1 came from this document and only this document?

2 Let's ask the witness.

3 MS. DUNN: I'm citing --

4 EXAMINER PRICE: I know you're citing  
5 him.

6 Is your sole basis for knowledge of that  
7 statement or that statistic that document?

8 THE WITNESS: Your Honor, that's actually  
9 a complicated question. In the report itself, the  
10 data are what the data are. The data also  
11 corresponds to a large number of other pieces of work  
12 that I also did. So if you look at the pieces and  
13 parts of the report that I used, they use data that  
14 were purchased from in plan -- in economy.com. And  
15 the data themselves stand as -- and the data source  
16 is a very well-accepted source of regional economic  
17 data. In fact, it's the best source available.

18 The in-plan data are used in a very  
19 cautious and careful way in ways that are consistent  
20 within the model. My interaction with this report,  
21 if I could just tell you -- you can rule -- I'm just  
22 telling you how I interacted with this report.

23 EXAMINER PRICE: Let's quit while you're  
24 ahead.

25 THE WITNESS: Good enough.

1 EXAMINER PRICE: We're going to leave the  
2 testimony in, but the report is out, because time  
3 marches on.

4 Next one.

5 MS. DUNN: Thank you, your Honor.

6 In light of your ruling, I move to strike  
7 page 10, lines 8 to 18. This discusses the research  
8 that was just stricken. It talks about what the team  
9 did, the team demonstrated, and also I would note  
10 that the -- those are the reasons, your Honor.

11 EXAMINER PRICE: What was the exact  
12 reference there?

13 MS. DUNN: Page 10, lines 8 to 18. And  
14 the reason I'm striking the last sentence is because  
15 if you strike 8 to 16, it leaves the sentence that  
16 doesn't seem to make sense because it's comparing the  
17 results with something else.

18 MS. BOJKO: Your Honor, may I be heard?

19 EXAMINER PRICE: You may.

20 MS. BOJKO: Ms. Dunn asked him if he was  
21 an author. He admitted that he was not an author,  
22 but he was part of the team, so he knows how this was  
23 developed, and he has used the data before in this  
24 context, as well as in other contexts.

25 He oversaw the research and writing of



1 it. He knows exactly what the research did and what  
2 the team did because he was part of the team. He was  
3 not an author, but he was part of the team.

4 EXAMINER PRICE: Explain to me the  
5 difference between being an author and being part of  
6 the team.

7 THE WITNESS: An author actually in my  
8 book puts pen to paper and does the day-to-day work  
9 on the project as a whole. On this particular  
10 project, I helped structure the methodology. I  
11 reviewed their methods used. I helped them specify  
12 the econometric models, and I helped them interpret  
13 the results.

14 It's a role that I do with much of the  
15 work that comes out from the Center for Economic  
16 Development, which is particularly -- which is in the  
17 Urban Research Centers because I'm the best known  
18 economic development academic at that point at the  
19 university.

20 So due to my advanced age and status, I  
21 really don't need the marginal benefit of another  
22 cite on -- my vitae is rather low. And as part of  
23 succession planning within the college, I was making  
24 a point of encouraging the next generation to step up  
25 and really claim as much credit for the work as they

1 possibly can. Lendel and Thomas did the writing.  
2 They ran the models. Sunjoo Park did the graphics  
3 and was research assistant. She's a Ph.D student.  
4 They deserve the credit and the honor.

5 And to show the independence of the  
6 authors in this, there's one finding that they make  
7 that I disagree with quite strongly, but they wrote  
8 the paper. I didn't. But the methods, the data, the  
9 analytics, I was involved as an adviser throughout.

10 EXAMINER PRICE: I think your modesty has  
11 come back to haunt you in this instance, because  
12 we're going to grant the motion to strike.

13 Ms. Dunn, how many more motions to strike  
14 do you have?

15 MS. DUNN: This isn't all pages. These  
16 are notes, I swear.

17 MS. BOJKO: Your Honor, just for clarity,  
18 you struck the sentence on 8 on page 10 through 18?

19 EXAMINER PRICE: Yes.

20 MS. DUNN: Your Honor, I have about ten.

21 EXAMINER PRICE: It's fine. It is what  
22 it is. He's coming back anyway. We have had a 5:30  
23 hard stop in this proceeding, and we are close to  
24 5:30, and we are not close to finishing the motions  
25 to strike. So we will adjourn for the evening, and I

1 believe the witness will come back on Wednesday; is  
2 that correct. And we will take up the remainder of  
3 the motions to strike, and we'll go from there.

4 MR. LANG: Your Honor, 9:00 start on  
5 Wednesday?

6 EXAMINER PRICE: We better start at 9:00,  
7 we're lucky we're not starting at 8:30.

8 MS. BOJKO: Can we go off the record?

9 EXAMINER PRICE: At this time we'll  
10 adjourn, and we will reconvene at 9:00 on Wednesday.  
11 Off the record.

12 (Discussion off record.)

13 EXAMINER PRICE: Let's go back on the  
14 record. Having a discussion off the record on  
15 scheduling, we will revisit our reconvened time. We  
16 will reconvene Tuesday at 1:00. Now we are off the  
17 record.

18 (The hearing adjourned at 1:00 p.m.)

19 - - -  
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CERTIFICATE

I do hereby certify that the foregoing is  
a true and correct transcript of the proceedings  
taken by me in this matter on Thursday, October 8,  
2015, and carefully compared with my original  
stenographic notes.

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Carol A. Kirk, RPR, RMR.

(CAK-79487)

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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 10/08/15 - Volume XXVI electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.