

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 10:00 a.m. on  
Monday, October 19, 2015.

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## WITNESS

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## EXHIBITS

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## SIERRA CLUB EXHIBITS

## IDENTIFIED ADMITTED

69 - Direct Testimony of Tyler Comings - Public Version	6343	6511
70C - Direct Testimony of Tyler Comings (Confidential)	6343	6511
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75 - Errata Sheet to Supplemental Testimony of Tyler Comings	6343	6511
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	SIERRA CLUB EXHIBITS	IDENTIFIED	ADMITTED
1			
2	77 - Second Supplemental Testimony		
3	of Tyler Comings		
4	Public Version	6343	6511
5	78C - Second Supplemental Testimony		
6	of Tyler Comings (Confidential)	6343	6511
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Monday Morning Session,

October 19, 2015.

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EXAMINER ADDISON: Let's go ahead and go on the record.

The Public Utilities Commission of Ohio has set for hearing at this time and place Case No. 14-1297-EL-SSO, being in the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide a Standard Service Offer pursuant to RC 4928.143 in the form of an Electric Security Plan.

My name is Meghan Addison and with me is Mandy Chiles, and we are the Attorney Examiners assigned by the Commission to hear this case.

We will dispense taking appearances this morning.

Mr. Kutik, you had something to address before we began with Mr. Comings?

MR. KUTIK: Yes, your Honors. In reviewing the exhibits as filed and as docketed, we realized or we saw that Company Exhibit 4, which is the second supplemental stipulation, did not include the appendix which was originally filed with that

1 document, so it is our intent to supply that appendix  
2 to the court reporters so that they can file the full  
3 exhibit as appropriately filed.

4 EXAMINER ADDISON: Thank you, Mr. Kutik.  
5 And with that, I believe we are ready to  
6 proceed.

7 Sierra Club, will you please call your  
8 next witness.

9 MR. FISK: Thank you, your Honor. Sierra  
10 Club calls Tyler Comings to the stand.

11 (Witness sworn.)

12 EXAMINER ADDISON: Thank you. You may be  
13 seated.

14 THE WITNESS: Thank you, your Honor.

15 EXAMINER ADDISON: Please proceed,  
16 Mr. Fisk.

17 MR. FISK: Thank you.

18 - - -

19 TYLER F. COMINGS

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

22 DIRECT EXAMINATION

23 By Mr. Fisk:

24 Q. Good morning, Mr. Comings.

25 A. Good morning.

1 Q. You have to hit it again.

2 A. Good morning.

3 Q. Still not.

4 A. Good morning. There it is.

5 Q. Could you please state your name for the  
6 record.

7 A. Tyler Comings.

8 Q. And could you please state your business  
9 address.

10 A. 485 Massachusetts Avenue, Suite 2,  
11 Cambridge, Massachusetts, 02139.

12 Q. Okay.

13 MR. FISK: And, your Honors, we have  
14 provided to the court reporters and also to your  
15 Honors copies of Mr. Comings' various testimonies in  
16 this proceeding, and we would ask that -- and I will  
17 go through the list of them: Mr. Comings' direct  
18 testimony public version be marked as Sierra Club 69,  
19 Mr. Comings' direct testimony confidential version be  
20 marked as Exhibit 70C; the March 20, 2015 -- I'm  
21 sorry, both the public version and the confidential  
22 version includes exhibits to those that we asked to  
23 be included in those exhibits; the March 20, 2015,  
24 errata to Mr. Comings' direct testimony, the public  
25 version we ask to be marked as Sierra Club Exhibit

1 71; and the confidential version of that errata, we  
2 ask to be marked as Sierra Club Exhibit 72C. And  
3 then Mr. Comings' supplemental testimony, including  
4 exhibits public version be marked as Sierra Club  
5 Exhibit 73; Mr. Comings' supplemental testimony  
6 including exhibits confidential version be marked as  
7 Exhibit 74C; the May 14, 2015, public errata to  
8 Mr. Comings' supplemental testimony be marked as  
9 Exhibit 75; the confidential version of that errata  
10 be marked as Exhibit 76C; and then Mr. Comings'  
11 second supplemental testimony public version be  
12 marked as Sierra Club Exhibit 77; and Mr. Comings'  
13 second supplemental testimony confidential version be  
14 marked as Sierra Club Exhibit 78C.

15 EXAMINER ADDISON: They will be so  
16 marked.

17 (EXHIBITS MARKED FOR IDENTIFICATION.)

18 MR. FISK: Thank you, your Honors.

19 THE WITNESS: Can I note something?  
20 There are other documents up here that I did not  
21 bring up on the stand. I don't know what -- I don't  
22 know what they are for or if they are for me.

23 MR. FISK: They are not ours.

24 EXAMINER ADDISION: They are most likely  
25 left from last week. That's fine.

1 THE WITNESS: I'm sorry. I just wanted  
2 to flag that.

3 Q. (By Mr. Fisk) Mr. Comings, do you have  
4 your testimony with you today?

5 A. I do.

6 Q. And what has been marked Sierra Club  
7 Exhibit 69, is that the direct version of your  
8 testimony?

9 A. Yes.

10 Q. And is Exhibit -- what is Exhibit Sierra  
11 Club 70C?

12 Is that the confidential version of your  
13 direct testimony?

14 A. Yes. I will take your word for it.

15 Q. Well, you should confirm that's what you  
16 have up there.

17 A. I do have it up here, yes.

18 Q. If you want to number them, just so -- in  
19 case the numbers come up.

20 A. Okay. I don't have a pen. And is Sierra  
21 Club Exhibit 71 the 2015 public version? Could you  
22 say the exhibit number again?

23 Q. 71.

24 A. Yes.

25 Q. And is Exhibit 72C the confidential

1 version of that errata?

2 A. Yes.

3 Q. Okay. And is Sierra Club Exhibit 73 the  
4 public version of your testimony?

5 A. Yes.

6 Q. Okay. And is Exhibit 74C the  
7 confidential version of your supplemental testimony?

8 A. Yes.

9 Q. And is Sierra Club Exhibit 75, is that  
10 the public version of the May 14, 2015, errata to  
11 your supplemental testimony?

12 A. Yes. That's 75?

13 Q. Yes.

14 A. Yes.

15 Q. And is Sierra Club Exhibit 76C the  
16 confidential version of that May 14, 2015, errata?

17 A. Yes.

18 Q. Okay. And is Sierra Club Exhibit 77 the  
19 public version of your second supplemental testimony?

20 A. Yes.

21 Q. Okay. And is Sierra Club Exhibit 76C the  
22 confidential version of your second supplemental  
23 testimony?

24 A. Yes.

25 Q. Okay. And you have a couple corrections



1 to your direct testimony; is that correct?

2 A. That's correct.

3 Q. Okay. If you could turn to page 38 of  
4 your direct testimony.

5 A. Public version?

6 Q. Yes.

7 A. Yes.

8 Q. And you have a correction to lines 5  
9 through 7; is that correct?

10 A. That's right.

11 Q. Okay. If you could tell us what that  
12 correction is.

13 A. Yes. The phrase "fourth highest daily  
14 maximum one-hour average concentration" should be  
15 replaced with "99 percentile of one-hour daily  
16 maximum emissions."

17 Q. Okay. So the sentence should read, "An  
18 area is in compliance with or attaining the standard  
19 if the three-year average of the 99 percentile of  
20 one-hour daily maximum emissions for each year is  
21 less than or equal to 75 parts per million"; is that  
22 correct?

23 A. That's correct.

24 Q. And you have another correction on page  
25 42 of your direct; is that correct?

1           A.    That's right.

2           Q.    And that's on lines 4 through 7; is that  
3           right?

4           A.    Yes.

5           Q.    Okay.  And what are the -- what are your  
6           corrections there?

7           A.    "Total capital costs" should be "total  
8           amortized capital costs" and then insert the phrase  
9           "incurring during the term of the transaction."

10          Q.    And that's on line 5?

11          A.    Yes.  And the next sentence, again,  
12          "total costs" should be "total amortized capital  
13          costs incurred during the term of the transaction of  
14          any upgrades."

15          Q.    Okay.  Okay.  So that -- that paragraph  
16          with those corrections should be under the proposed  
17          rider RRS, FirstEnergy customers would be -- would be  
18          required to pay the companies 4.85 percent of the  
19          total amortized capital costs incurred during the  
20          term of the transaction to install the SCR on Clifty  
21          Creek Unit 6, customers would be on the hook for the  
22          total amortized capital costs during the term of the  
23          transaction of any upgrades required on the W.H.  
24          Sammis units."

25          A.    That's right.

1 Q. Okay.

2 MR. FISK: Your Honor, we have a couple  
3 small corrections to confidential numbers. Do you  
4 want us to do those when we go into the confidential  
5 session?

6 EXAMINER ADDISON: Let's go ahead and  
7 wait and do those when we go into confidential  
8 session.

9 MR. FISK: Okay, okay.

10 MR. KUTIK: Your Honor, I guess what I  
11 would ask is that if any of the cross-examination  
12 questions touch on corrections during the public  
13 session, that we be advised of that.

14 MR. FISK: That's fine, yes.

15 EXAMINER ADDISON: Thank you, Mr. Fisk.

16 Q. (By Mr. Fisk) Okay. A couple additional  
17 corrections on the supplemental that are public. If  
18 you could turn to page 3, Mr. Comings, of your  
19 supplemental testimony.

20 A. Yes.

21 Q. Lines 7 through 8, you have a correction;  
22 is that right?

23 A. Yes. The "is" should be "in."

24 Q. Okay. And that's between "profitability  
25 and evaluating"?

1           A.    Yes.

2           Q.    Okay.  And on -- if you could turn to  
3 page 18, you have a correction there also?

4           A.    Yes, I do.  This is --

5           Q.    Which lines first?

6           A.    Sorry.  Lines 16 through 18.  This was a  
7 correction due to Mr. Evans -- Mr. Evans had  
8 originally testified that he was using 2013 through  
9 2015, and my understanding is he corrected that on  
10 the stand or in an errata, I don't remember which,  
11 but he corrected that to say 2012 through 2014.  So I  
12 am correcting so that I'm consistent with what  
13 Mr. Evans said.

14          Q.    And so what is the correction?

15          A.    The correction is the "2013 to 2015"  
16 should be "2012 to 2014," and then the next phrase  
17 "even though 2015 is not even halfway over" should be  
18 stricken because it is no longer applicable.

19          Q.    Okay.  So that sentence on line 16 on  
20 page 18 of your supplemental testimony should read  
21 "Mr. Evans cites 2012 to 2014 levels as evidence that  
22 ozone levels have decreased"?

23          A.    Yes.

24          Q.    Okay.  And then final public correction,  
25 I believe, on page 20 of your supplemental, lines 5

1 through 7; is that right?

2 A. Yes.

3 Q. Okay. And what's your correction there?

4 A. The word -- the word -- I apologize. The  
5 word "determined" should be changed to "simulate."

6 MR. KUTIK: I'm sorry, what line, please?

7 THE WITNESS: Line 6.

8 MR. KUTIK: And the correction is?

9 THE WITNESS: Change the word "determine"  
10 to "simulate."

11 Q. (By Mr. Fisk) Okay. And is that all of  
12 your public corrections?

13 A. Yes.

14 Q. Okay. And so leaving aside the  
15 confidential corrections that we will discuss in the  
16 confidential session, if I were to ask you today all  
17 the questions in your direct supplemental and second  
18 supplemental testimony, would your answers be the  
19 same?

20 A. Yes, they would.

21 MR. FISK: Okay. Your Honor, Sierra Club  
22 moves for the admission of Sierra Club Exhibits 69,  
23 70C, 71, 72C, 73, 74C, 75, 76C, 77, and 78C, and  
24 tenders Mr. Comings for cross-examination.

25 EXAMINER ADDISON: Thank you, Mr. Fisk.

1 We will defer ruling on that motion until  
2 cross-examination has completed.

3 MR. KUTIK: Your Honor, we have several  
4 motions to strike so that we ask the Bench to  
5 consider at this time.

6 EXAMINER ADDISON: Please proceed,  
7 Mr. Kutik.

8 MR. KUTIK: Your Honor, we have over two  
9 dozen motions to strike, but some of them involve the  
10 same issues. So I think for ease of our discussion  
11 today, if I may, what I would like to do is kind of  
12 discuss them group by issues as opposed to marching  
13 through the documents themselves with page turning,  
14 if that's acceptable to the Bench.

15 EXAMINER ADDISON: Let's go ahead and  
16 work that way. If we have issues with it later down  
17 the road, we can certainly address it at the time.

18 MR. KUTIK: Certainly. Thank you, your  
19 Honor. Your Honor, in both the direct and  
20 supplemental testimonies, there are numerous  
21 references to depositions. And those references,  
22 your Honor, are improper. Although the Commission's  
23 rules do allow depositions to be used as they would  
24 be in a civil matter and although the civil rules do  
25 apply -- do allow depositions of a party to be used

1 for any purpose, the Commission has established a  
2 practice of not allowing depositions to come in as  
3 substantive evidence, certainly without the consent  
4 of the party against whom the deposition is being  
5 used.

6 And I would cite, your Honor, the  
7 practice that Attorney Examiner Price used in the All  
8 Electric case where the companies were precluded from  
9 putting in the evidence or the deposition of a party  
10 and we were -- we were told to either bring the  
11 witness down or to work out with the other party an  
12 agreement as to what parts of the depo should come  
13 in.

14 Since we were not asked and we do object  
15 to the use of the depositions, we then ask for the  
16 references in -- of the deposition and the citations  
17 to the deposition and the exhibits which include  
18 depositions all to be stricken, and I now will list  
19 them going through the documents, if I may.

20 EXAMINER ADDISON: You may.

21 MR. KUTIK: Your Honor, the first  
22 reference is to --

23 MR. FISK: Before we start, what is the  
24 citation for the Price --

25 MR. KUTIK: The All Electric case. We

1 can get you the Case No. but Attorney Examiner Price  
2 will understand the reference.

3 MR. FISK: Well, if we can get it now.

4 MR. KUTIK: I don't have the case off the  
5 top of my head.

6 EXAMINER CHILES: Is it 10-176?

7 MS. TURKENTON: It is.

8 EXAMINER CHILES: 10-176.

9 MR. FISK: Do we have the hearing  
10 transcript that you are referring to?

11 MR. KUTIK: No, I don't have it.

12 May I proceed, your Honor?

13 EXAMINER ADDISON: You may.

14 MR. KUTIK: The first reference, your  
15 Honor, is on -- is page 11, footnote 16.

16 EXAMINER ADDISON: Are you on the direct  
17 testimony?

18 MR. KUTIK: Yes, I am, your Honor.

19 EXAMINER ADDISON: Thank you.

20 MR. KUTIK: It's a reference to  
21 Mr. Lisowski's deposition. We would also move to  
22 strike not only the footnote, but the accompanying  
23 text which appears on line 13 through 14, the  
24 sentence that begins "I learned through  
25 Mr. Lisowski's deposition."



1           We would also ask that the exhibit which  
2           is referenced in the footnote, Exhibit TFC-5, be  
3           stricken.

4           Our next motion, your Honor, or relating  
5           to this is on page 12, note 18, another reference to  
6           Mr. Lisowski's deposition and specifically also a  
7           reference to Exhibit TFC-8, which is portions of the  
8           confidential transcript, so we would move that that  
9           exhibit be stricken.

10          We would further move that the  
11          accompanying text to that footnote starting on line 1  
12          with the word "and" to the rest of that sentence be  
13          stricken.

14          Similarly, your Honor, we would move on  
15          that page to strike footnote 19, again, references to  
16          Mr. Lisowski's deposition and the accompanying text  
17          which appears on line 4, the sentence that begins  
18          "Mr. Lisowski testified" ending with the sentence or  
19          the rest of that sentence that ends on line 6 with  
20          the reference to the footnote.

21          The next motion along this line, your  
22          Honor, is on page 15, line -- or note 26, and we  
23          would also move to strike the accompanying text which  
24          is the sentence that begins on line 21 "As such" and  
25          ends with the reference to the footnote on line 24.

1           The next motion, your Honor, deals with  
2     page 20, note 35 and the accompanying text which is  
3     the sentence that begins on line 4 and ends on line 5  
4     with the reference to footnote 35.

5           The next motion, your Honor, relates to  
6     page 25, note 47. This, again, is a reference to  
7     Mr. Lisowski's deposition. We would move to strike  
8     the sentence that begins on line 10 and ends on line  
9     14 with the reference to footnote 47.

10          The next motion, your Honor, on this line  
11     relates to page 36 --

12           MR. FISK: I'm sorry, which page?

13           MR. KUTIK: 36, note 61, and there is a  
14     reference in part to Mr. Lisowski's depositions. We  
15     would also move for -- we would also move to strike  
16     note 62 and the accompanying text which begins at the  
17     end of line 5 on page 36 and ends with line 7 with  
18     the reference to footnote 62.

19           EXAMINER ADDISON: Mr. Kutik, just to  
20     clarify, were you striking -- you were not striking  
21     the text accompanied by note 61, correct?

22           MR. KUTIK: We were not.

23           EXAMINER ADDISON: Okay. Thank you.

24           MR. KUTIK: Thank you, your Honor.

25           On line -- the next motion is directed to

1 footnote 64 and the accompanying text which begins  
2 with the word "and" on line 7 and continuing to the  
3 reference to the footnote on line 9 -- excuse me,  
4 your Honor. I misspoke. It begins on line 8 with  
5 the words "The companies apparently."

6 The next motion, your Honor, relates to  
7 page 45, footnotes 89 and 90, and we would move to  
8 strike the accompanying text which is essentially  
9 lines 1 through 5.

10 Our next motion, your Honor, relates to  
11 footnote 93 and the reference to Mr. Lisowski's  
12 deposition, as well as the accompanying text which  
13 would be the sentence that begins on line 14 with the  
14 word "However" going on to line 16 with the reference  
15 to the footnote.

16 We would also move to strike on page 46,  
17 footnote 94, and the accompanying text which begins  
18 with the word on line 4, "Mr. Lisowski" and ends with  
19 the sentence on line 6 that ends with the reference  
20 to the footnote.

21 Then we have two similar motions, your  
22 Honor, with respect to the supplemental testimony.  
23 Line 34 --

24 MR. FISK: What page?

25 MR. KUTIK: Page what?

1 MR. FISK: Oh, page 34.

2 MR. KUTIK: Page 34 of the supplemental  
3 testimony, the footnote 84.

4 MR. FISK: Footnote 84?

5 MR. KUTIK: I'm sorry, 86. And the  
6 accompanying text, which is line 18, the sentence  
7 that begins "Ms. Murley" to the end of the sentence  
8 on line 20 ending with the reference to the footnote.

9 And the last on this line, your Honor,  
10 is on page 35, footnote 87, and the accompanying text  
11 which is -- starts on line 16 with "Unfortunately"  
12 and ends on line 17 with the end of the sentence and  
13 the reference to the footnote.

14 EXAMINER ADDISON: Thank you, Mr. Kutik.

15 Mr. Fisk, did you wish to respond to all  
16 of the motions to strike at the same time or would  
17 you prefer to do it by subject area?

18 MR. FISK: Let me start with all the  
19 motions, and then if we need to look page by page.  
20 Oh, oh, no, I would like to address this issue now,  
21 and then we can address whatever the next wave of  
22 motions to strike is.

23 EXAMINER ADDISON: Please, proceed.

24 MR. FISK: Thank you, your Honors.

25 Obviously we would oppose all of the

1 motions to strike as Mr. Kutik stated, civil rules  
2 allow depositions of a party to be used. And Ohio  
3 Administrative Code 4901-1-21, subsection N, provides  
4 depositions may be used in Commission hearings to the  
5 same extent permitted in civil actions in courts of  
6 record.

7 So we believe that that rule clearly  
8 provides it is appropriate for a witness to cite to  
9 deposition testimony. We would note that the  
10 reference to Attorney Examiner Prices's prior ruling,  
11 we don't have a transcript of that, we don't know  
12 what Mr. Price actually said in that proceeding and  
13 what the facts were of that proceeding, but we think  
14 here it is clear that it is appropriate to cite to  
15 deposition testimony. And so, therefore, none of the  
16 footnotes that Mr. Kutik has identified should be  
17 stricken.

18 With regards to the specific lines of  
19 accompanying text, most of those pieces of text,  
20 there's independent bases for -- for the statements  
21 made by Mr. Comings, even independent of the  
22 deposition transcripts. So we would -- we would  
23 oppose any effort to strike the text.

24 And, you know, this is also, I guess, a  
25 matter of making a complete record, and the fact of

1 the matter is a lot of the understanding of what did  
2 and did not occur in the companies' review of this  
3 proposal was elicited through deposition testimony.

4 And Mr. Comings, as our witness, you  
5 know, reviewed that to get an understanding of what  
6 the companies did, and it's appropriate for him to  
7 cite to his understanding as he provides testimony  
8 regarding his opinions on this proceeding and on  
9 whether the companies' analyses were reasonable and  
10 sufficient.

11 So for all those reasons, we would oppose  
12 the motions to strike. I'm happy to go through each  
13 one individually if the Attorney Examiners would  
14 like, but if you would like to give a general ruling,  
15 that's fine also.

16 MR. KUTIK: May I be heard, your Honor?

17 EXAMINER ADDISON: You may, Mr. Kutik.

18 MR. KUTIK: Your Honor, the procedure  
19 before the Commission is what it is, so I won't  
20 belabor that issue. And certainly there isn't really  
21 any prejudice to the Sierra Club to the extent that  
22 they had full opportunity to examine Mr. Lisowski,  
23 had full opportunity to examine Mr. -- Ms. Murley  
24 here, and took full and fair advantage of that  
25 opportunity.

1           Further, with respect to the argument  
2       that these facts are independently verified, I could  
3       just give two examples. Flipping to one set of  
4       pages, page 45, for example, the witness says on line  
5       14, "However, based on what I learned from  
6       Mr. Lisowski," page 46, "Mr. Lisowski testified."  
7       These are clearly specific references to the  
8       deposition, therefore, improper.

9           EXAMINER ADDISON: Mr. Fisk, last word?

10          MR. FISK: So, you know, I think, yes, we  
11       did get an opportunity to cross-examine those  
12       witnesses, but this is not a situation where we are  
13       using deposition testimony in lieu of testimony by  
14       company witnesses. This is a matter of as you build  
15       your case and your expert reviews the proceeding and  
16       the discovery that's occurred in the proceeding, he  
17       has formed his opinions based on that discovery.

18          And the Ohio rule applicable here makes  
19       it clear that deposition transcripts are an  
20       appropriate and reasonable part of how an expert  
21       comes up with his opinion. And so having -- having  
22       those citations to the deposition transcripts and the  
23       explanations of what Mr. Comings learned from those  
24       deposition transcripts in his testimony is an  
25       important part of his presentation in this

1 proceeding, and we would be prejudiced if it was all  
2 struck.

3 MS. FLEISHER: And, your Honor, if I may  
4 be heard just in terms of the precedence Mr. Kutik  
5 cites and precedent that may set for future cases, I  
6 believe the case he cited, that was specifically an  
7 instance where a party was trying to bring in a  
8 deposition in lieu of having a witness testify, and  
9 certainly they then lose the opportunity to  
10 cross-examine an opposing party's witness.

11 That is a different situation from here  
12 where the deposition transcripts relied on by  
13 Mr. Comings are the companies' own witnesses, and  
14 certainly they will have the opportunity to  
15 cross-examine Mr. Comings and determine whether he  
16 has misunderstood or misstating the substance of that  
17 testimony.

18 And so in terms of, as Mr. Fisk said,  
19 creating a procedure that is as not unwieldy as  
20 possible to allow for discovery of the companies' own  
21 witnesses to be used at the hearing, it seems this  
22 would be an instance where it would be inappropriate  
23 just as a procedural sense. We have those  
24 depositions, those were what Mr. Comings had when he  
25 was preparing his testimony, and so to go back and



1 carve them out now when the companies will have a  
2 full opportunity to cross-examine him seems  
3 unnecessary and inappropriate.

4 MR. KUTIK: Your Honor, may I respond to  
5 that?

6 EXAMINER ADDISON: You may.

7 MR. KUTIK: Ms. Fleisher has the facts  
8 wrong in that case. We were precluded from offering  
9 the deposition of an opposing party just like Sierra  
10 Club is seeking to offer parts of a deposition  
11 against us. It's the same ruling that applies.

12 And with respect to opportunities to  
13 build a case, they had their opportunity to build  
14 their case to establish whatever facts Mr. Comings  
15 may now be relying upon in cross-examination.

16 EXAMINER ADDISON: Thank you, Mr. Kutik.  
17 Luckily we can ask the individual who made such  
18 ruling for his understanding at the time. Mr. Kutik,  
19 if you would like to proceed with your motions to  
20 strike.

21 MR. KUTIK: I do, your Honor. The next  
22 series, your Honor, starts on page 32 of the direct  
23 testimony. And we would move to strike the figure 8,  
24 not the number but the figure, the graph in 8 which  
25 basically would be excluding lines 2 through 5, and

1 we would also move to strike footnote 54 beginning  
2 with the reference after the "EPA site" where it  
3 says -- after the reference to the "EPA site" where  
4 it starts talking about "Duke."

5 And, your Honor, the reason we move is  
6 that the references to "Duke" and the references to  
7 "AEP" are hearsay. And specifically, your Honor, I  
8 would like to offer or show the Bench colloquy from  
9 our deposition with Mr. Comings, if I may.

10 EXAMINER ADDISON: You may.

11 MR. KUTIK: May I approach?

12 EXAMINER ADDISON: You may.

13 MR. KUTIK: Your Honor, we discussed this  
14 issue with Mr. Comings starting on page 192 of his  
15 deposition.

16 EXAMINER ADDISON: Mr. Kutik, before you  
17 proceed, you said you were not striking the entire  
18 footnote 54, just starting with Duke's CO-2 prices;  
19 is that correct?

20 MR. KUTIK: Yes, yes.

21 EXAMINER ADDISON: But you are striking  
22 lines 2 to 5 including figure 8?

23 MR. KUTIK: Yes.

24 EXAMINER ADDISON: Thank you.

25 MR. KUTIK: Your Honor, in his

1 deposition, we talked to Mr. Comings, and I direct  
2 you to page 191 and the colloquy went as follows,  
3 starting at line 24: "Let me refer you to page 32,  
4 Figure 8.

5 "Answer: Thank you.

6 "Question: And at the top in the  
7 legend, I guess, we call it, top right, AEP  
8 (SWEPCO/PSCO).

9 "Answer: That is Public Service.

10 "Question: Public Service Company of  
11 Oklahoma; correct?

12 "Answer: That is correct.

13 "So that study reflected Texas,  
14 Louisiana, Arkansas and -- parts of Arkansas and  
15 parts of Oklahoma; correct?

16 "Answer: Correct.

17 "Question: Can you tell me who created  
18 the AEP prices?

19 "Answer: I can't say who it was. It was  
20 in the AEP IRP.

21 "Question: So is it fair to say to  
22 define that data, I would have to go and look at the  
23 AEP IRP?

24 In other words, would that data be  
25 publicly available?

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1           "Answer: I believe it is, I am trying to  
2 recall if I got it from the IRP document or from a --  
3 it must have been the IRP document.

4           "Question: Okay. Can you tell me what  
5 assumptions were included in the AEP data?

6           "Answer: I can't -- I can't recall.

7           "Question: Would that be in the IRP?

8           "Answer: Most likely, yes.

9           "Question: Do you know whether -- do you  
10 know what the date of the forecast is?

11           "Answer: This says 2012 IRP base, so I  
12 assume 2012.

13           "Question: All right. But you don't  
14 know?

15           "Answer: I don't know. I don't know  
16 when the forecast was created.

17           "Question: Do you know whether this  
18 represents AEP's most recent forecast for carbon  
19 prices?

20           "Answer: I can't say. I don't know.

21           "Question: Okay. Now, let me talk to  
22 you about the Duke, Indiana/Carolinas, would it be  
23 fair to say that that covers the areas that are  
24 indicated Indiana and Carolinas?

25           "Answer: Yes.

1 "Question: Who created that data?

2 "Answer: It is in the Duke Energy IRP.

3 "Question: Who created it?

4 "Answer: I can't say.

5 "Question: All right. You don't know;  
6 correct?

7 "Answer: It was provided by Duke. I  
8 don't know who produced the forecast.

9 "Question: That's exactly my point, you  
10 don't know who produced the forecast; correct?

11 "Answer: I do not.

12 "Question: And fair to say you don't  
13 know what assumptions were used?

14 "Answer: No, I don't recall.

15 "Question: Okay. And would it be fair  
16 to say that you don't know the date of the forecast?

17 "Answer: Yes.

18 "Question: Fair to say that you don't  
19 know whether this still represents Duke's most recent  
20 forecast of carbon prices?

21 "Answer: I have not seen any more recent  
22 depiction of their forecast that is available.

23 "Question: So the answer is you don't  
24 know?

25 "Answer: I don't know."

1           This is data, your Honor, we don't have  
2           the ability to test. We don't have the ability to  
3           cross-examine, and the witness certainly didn't have  
4           the ability to provide that information in his  
5           deposition. So for those reasons, your Honor, we  
6           would move to strike the figure and the reference in  
7           the footnote.

8           Your Honor, along those same lines, these  
9           are related, so let me put them all out there for you  
10          to see.

11          MR. FISK: Okay.

12          MR. KUTIK: The next reference, your  
13          Honor, is to page 46, the sentence that begins on  
14          line 18, "I also provided Duke's carbon" and ends on  
15          line 19 with the word "Ohio."

16          Similarly, we would move to strike the  
17          reference on line 2 of the same page starting with  
18          the word "and" to the end of that sentence that  
19          concludes on line 23.

20          On page 48, your Honor, we would move to  
21          strike the reference on page 48, line 47 after the  
22          word "model."

23          MR. FISK: I'm sorry, what line?

24          MR. KUTIK: 7.

25          MR. FISK: 7.

1 MR. KUTIK: On page 48, after the word  
2 "model" to the rest of that sentence which concludes  
3 with the word "period" on line 8, because that refers  
4 to the table, tables 7 and 8, and particularly the  
5 right-most column which refers to the data we have  
6 just been talking about. So that is all on that  
7 line, your Honor.

8 EXAMINER ADDISON: Mr. Fisk, would you  
9 like to respond?

10 MR. FISK: Yes, your Honor. We believe  
11 figure 8 and the information contained therein should  
12 not be stricken. With regards to the Duke forecast,  
13 Mr. Comings provides a link to where he found the  
14 forecast in footnote 54. The companies were free to  
15 reference that link, explore what was in that  
16 document, and to determine for themselves whether  
17 they think that the CO-2 price that Mr. Comings  
18 identified from Duke is somehow different or not  
19 applicable here.

20 With regards to whether there is a more  
21 recent forecast, again, they were free to try to make  
22 that case if they wanted to during Mr. Comings'  
23 deposition or they can try to do so here today in  
24 cross-examination.

25 While Mr. Comings may not know all of the

1 details of how the forecasts were created, he found  
2 them, he reviewed them, he has personal knowledge of  
3 what the forecasts are from Duke, and so they are  
4 properly authenticated. They are not being offered  
5 to prove the truth or accuracy of his specific  
6 forecast.

7           They are being used to illustrate that  
8 other companies, including two companies that have a  
9 share of OVEC, have a different CO-2 forecast than  
10 FirstEnergy does. That's perfectly appropriate for  
11 testimony for Mr. Comings to offer based on what he  
12 has found in publicly available documents from Duke  
13 Energy.

14           I would also note that figure 8 includes  
15 not just data from Duke and AEP, but also the EPA  
16 prices from the draft Clean Power Plan. Those prices  
17 which were prepared by ICF are included in figure 8.  
18 Mr. Kutik hasn't identified any reason that -- to  
19 strike those. So at a minimum, figure 8 should not  
20 be struck in total. And similarly, the text that  
21 Mr. Kutik refers to on page 46, lines 22 to 23, also  
22 references the EPA 111(D) carbon price that he had  
23 not offered any reason to strike here.

24           As for the testimony on page 48, line 7,  
25 we believe the reliance as I noted on the Duke CO-2



1 price is an illustrative example, is perfectly  
2 appropriate, and Mr. Comings' testimony regarding how  
3 the economics of this proposal would change using  
4 that price is something that he has -- Mr. Comings  
5 carried out that analysis and is perfectly  
6 appropriate for him to include it here in his  
7 testimony.

8 EXAMINER ADDISON: Thank you.

9 Mr. Kutik?

10 MR. KUTIK: Your Honor, providing a link  
11 to a document doesn't cure a hearsay problem. It's  
12 hearsay. The claim that it's not offered for the  
13 truth is wrong because this witness specifically made  
14 calculations and shows calculations and talks about  
15 the calculations he did based upon one of those  
16 specific pieces of hearsay.

17 We are prejudiced by the inability to  
18 probe not only these other companies about what their  
19 assumptions are and to demonstrate that these  
20 assumptions are unreasonable to use or these prices  
21 are unreasonable to use, but we also can't talk to  
22 the witness about them because he doesn't know about  
23 them either. So that just highlights the prejudice  
24 of using this information and the error of admitting  
25 it.

1 EXAMINER ADDISON: Mr. Fisk, last word?

2 MR. FISK: Sure. I mean, experts  
3 regularly rely on publicly available information  
4 which is what we have here, to, for example, evaluate  
5 are there other companies that have different CO-2  
6 price forecasts than what FirstEnergy used here.  
7 That's all Mr. Comings has done here, has said here  
8 is another carbon price another utility has used.  
9 Using that carbon price, I then run some calculations  
10 and determine what the impact of that would be at a  
11 minimum.

12 Therefore, Mr. Comings' calculation set  
13 forth on page 48 should not be stricken because  
14 that's his own work, that's his own calculation. The  
15 companies are free to cross-examine him on that  
16 today. They are free to ask him about that  
17 calculation in his deposition, and they could easily  
18 determine the accuracy of Mr. Comings' claim as to  
19 what CO-2 price Duke used in its IRP by going to the  
20 link that was provided.

21 MR. KUTIK: Your Honor, I just need to  
22 add that under Ohio's Rules of Evidence, material  
23 that an expert seeks to admit is not just material  
24 that expert might reasonably rely upon including  
25 "publicly available materials," whatever that might

1 be. Those materials under Ohio rules must be  
2 independently admissible. These are not.

3 EXAMINER ADDISON: Thank you, both.

4 Mr. Kutik, would you like to proceed?

5 MR. KUTIK: Yes, your Honor. Our next  
6 motion relates to page 33 and beginning on line 7  
7 going to page 34, line 2, including figure 9. This  
8 is similar in some ways, your Honor, to the  
9 discussion we just had. This refers to what happened  
10 in another company's case and, in fact, cites to  
11 another witness, a colleague of Mr. Comings. That's  
12 clearly hearsay. It has no business being in this  
13 case.

14 EXAMINER ADDISON: Mr. Fisk?

15 MR. FISK: So this -- this testimony that  
16 Mr. Kutik is referring to is from Duke  
17 Energy's rider -- PPA proceeding. We don't believe  
18 it is hearsay because, again, the projection is not  
19 being offered to prove the truth or accuracy of their  
20 projections.

21 They are being offered to show that  
22 another utility with an ownership interest in two of  
23 the exact same plants that are at issue in this  
24 proceeding has a different view of those plant's  
25 future costs and revenues.

1           We also believe the Bench can take  
2       administrative notice of testimony from another  
3       Commission proceeding as they have already done so in  
4       this proceeding on a number of different occasions,  
5       including hearing transcript Volume 1 at page 174  
6       taking notice of Mr. Ridmann's testimony in Case No.  
7       10-388-EL-SSO; also Volume 11 at page 2395 where they  
8       took administrative notice of Sharon Noewer's  
9       testimony in 12-426-EL-SSO.

10           So the Duke projections discussed here  
11       are capable of accurate and ready determination by  
12       resort to sources whose accuracy who cannot be  
13       reasonably questioned, in other words, by referencing  
14       to the PUCO docket and the testimony included  
15       therein.

16           MR. KUTIK: Your Honor, these certainly  
17       are being offered for the truth. They are being  
18       offered that these were the projections. And  
19       that's -- that's the truth, that's the fact they are  
20       being admitted for.

21           And with respect to the fact they were  
22       in another case, that's also of no moment given the  
23       fact that we had no ability to cross-examine, you  
24       know, this witness and the materials that are being  
25       put into evidence here. That's the reason why you

1 don't allow that material in.

2 With respect to the administrative notice  
3 provisions, certainly with respect to Mr. Ridmann --  
4 and I can't speak to Ms. Noewer's, that wasn't on our  
5 motion -- but with respect to Mr. Ridmann's  
6 testimony, Sierra Club had a perfect opportunity to  
7 cross-examine him. They were a party to that case,  
8 and we didn't have an opportunity to cross-examine  
9 Ms. Jackson in the Duke case. That's the difference.

10 EXAMINER ADDISON: Mr. Fisk?

11 MR. FISK: As Mr. Kutik just said, the --  
12 what these numbers are being offered for is to show  
13 that these are the projections that Duke had in -- in  
14 this other proceeding involving the exact same  
15 plants, and that information is readily verifiable by  
16 consulting the testimony in that proceeding, and  
17 that's why it is fully appropriate to allow those  
18 numbers to be used in this proceeding.

19 EXAMINER ADDISON: Thank you.

20 Please proceed, Mr. Kutik.

21 MR. KUTIK: Your Honor, our next series  
22 of motions deals with the use of material from OVEC,  
23 particularly we will start on page 36. And we would  
24 move to strike the sentence that begins on line 9  
25 with the worked "OVEC" and ends with the reference --

1 or ends the end of the sentence on line 11 with the  
2 reference to footnote 65.

3 We would also move to strike footnote 65  
4 and the exhibit that's referenced in that footnote,  
5 Exhibit TFC-23. This document, your Honor, is an  
6 OVEC document. OVEC is not a party to this case, and  
7 the companies' affiliates' minor interest in OVEC  
8 doesn't make this or any statement by OVEC an  
9 admission of the companies and, therefore, is  
10 hearsay.

11 Along similar lines, your Honor, we would  
12 move to strike on page 41, footnote 78, and the  
13 accompanying text that begins on line 20 with the  
14 word "specifically" and ends with the end of the  
15 sentence on line 23 and the reference to the  
16 footnote.

17 Along the same lines, your Honor, we  
18 would move to strike on page 43, footnote --

19 MR. FISK: I sorry, which page?

20 MR. KUTIK: 43.

21 MR. FISK: Okay.

22 MR. KUTIK: Footnote 81, and the  
23 accompanying text which begins on line 5 with the  
24 word "this" and ends with the reference to the  
25 footnote on line 6.

1           We would also move to strike footnote 82  
2       on the same page and the question and answer that  
3       begins on line 11 and ends on line 16. That's all  
4       for that line, your Honor.

5           EXAMINER ADDISON: Mr. Fisk?

6           MR. FISK: If I could have one second.

7           EXAMINER ADDISON: Of course.

8           MR. FISK: Thank you, your Honor. So I  
9       would like to start with the statements on page 41  
10      and 43 which deal with the annual report from OVEC  
11      and citations to that annual report in Mr. Comings'  
12      testimony. I would note that the Bench has already  
13      taken administrative notice of that annual report,  
14      which was attached to Mr. Haugen's testimony, that  
15      was in transcript Volume XXV at page 4887.

16           For similar -- after taking  
17      administrative notice of that annual report, Attorney  
18      Examiner Price then denied a motion to strike  
19      testimony related to that annual report. We believe  
20      that the same results should occur here.

21           We would also note that there is  
22      independent basis for the testimony regarding  
23      selective catalytic reduction on Clifty Creek Unit 6  
24      that Mr. Kutik has moved to strike. For example, I  
25      would note that on page 43, Mr. Kutik moved to strike

1 line 5 starting the sentence that says, "This would  
2 almost certainly require the insulation of an SCR at  
3 Clifty Creek Unit 6."

4 While certainly Mr. Comings cites to the  
5 OVEC annual report in the footnote, the discussion  
6 there also clearly is relying on Mr. Comings'  
7 evaluation of the fact that there are large NOx  
8 sources in Ohio and Indiana that may be required to  
9 install additional controls under the Cross-State Air  
10 Pollution Rule.

11 That's his independent basis for his  
12 belief that the SCR may be required on Clifty Creek  
13 Unit No. 6 and he was simply citing to the OVEC  
14 annual report for another basis for that opinion, but  
15 it's clear that there is an independent basis there.  
16 So with regards to the references to the OVEC annual  
17 report, we believe those should remain through --  
18 through administrative notice and the accompanying  
19 testimony should remain.

20 As for page 36, lines 9 through 11, the  
21 OVEC plants are plainly at issue in this proceeding.  
22 The parties obtained information regarding the  
23 environmental impacts. We first attempted to get  
24 that information through discovery from the  
25 companies. The companies did not have it or at least



1 did not produce it to us, so we had to then go to  
2 OVEC to get that information.

3 I believe it is the same information that  
4 was produced in the Duke proceeding. And it's  
5 plainly relevant to what sort of costs customers may  
6 incur under this proposal if the OVEC plants were  
7 included and, therefore, we believe should remain not  
8 be stricken.

9 EXAMINER ADDISON: Mr. Kutik, response?

10 MR. KUTIK: Yes, your Honor. Again,  
11 these documents are clearly hearsay and, therefore,  
12 they should not be admitted. As to the claim that  
13 there is independent verification for that, for the  
14 statements, all we have is Mr. Fisk's say-so. There  
15 isn't any indication that there is any other  
16 independent basis why would there be a site  
17 necessary.

18 May I move to the next one?

19 EXAMINER ADDISON: One moment.

20 Mr. Fisk, did you want to respond?

21 MR. FISK: Sure. I mean, the independent  
22 basis is not my say-so. It's based on the actual  
23 text of Mr. Comings' testimony and, again, I would  
24 refer to page 43. If you read from starting at line  
25 1 with the question regarding CSAPR, and then there

1 is an explanation of what CSAPR will require, and  
2 then a statement, "This would almost certainly  
3 require the installation of an SCR in Clifty Creek  
4 Unit 6."

5 That is a clear connection to the  
6 independent basis Mr. Comings had for his claims, and  
7 he's simply citing to another source that happens  
8 to -- from OVEC that happens to also suggest an SCR  
9 may be needed. That's perfectly appropriate to  
10 include such a citation.

11 EXAMINER ADDISON: Thank you.

12 You may proceed, Mr. Kutik.

13 MR. KUTIK: Pardon?

14 EXAMINER ADDISON: You may proceed.

15 MR. KUTIK: Okay. Our next motion is,  
16 your Honor, related to the supplemental testimony.  
17 And our first reference, your Honor, or motion, is on  
18 page 4, the question and answer that begins on line  
19 23 and ends on page 5, line 2. This is testimony --  
20 your Honor, as you might recall, his testimony I  
21 believe that was supposed to be relating to the AEP  
22 Ohio factors. This particular question and answer  
23 doesn't relate to that and somehow complains that the  
24 companies didn't update information which the --  
25 which the Bench has ruled we had no duty to do so.

1 This is clearly irrelevant and we move to strike.

2 EXAMINER ADDISON: Mr. Fisk?

3 MR. FISK: So this testimony is plainly  
4 relevant to the proceeding. The AEP order certainly  
5 focused on the economics of the AEP proposal as to  
6 whether there was a financial need for the plants at  
7 issue and as to whether the economics of a similar  
8 PPA proposal would be in the best interests of  
9 customers.

10 Mr. Comings' testimony here focuses on  
11 the fact that FirstEnergy and the companies never  
12 updated their estimates in this proceeding. And so  
13 we are relying on outdated data. And Mr. Comings is  
14 simply noting that the supplemental testimony didn't  
15 include any updates and that when Sierra Club asked  
16 in discovery for any such updates, there was no  
17 substantive response provided. We think that's  
18 directly relevant as to whether the AEP Ohio orders  
19 standards are met here and, therefore, should not be  
20 stricken.

21 MR. KUTIK: And, your Honor, we had a  
22 discovery hearing on this very issue where Sierra  
23 Club claiming that companies were required to provide  
24 "updates" and the Bench denied those motions finding  
25 that the purpose of discovery following the Attorney

1 Examiner's entry asking for testimony on the AEP Ohio  
2 factors was not an invitation for a new round of  
3 discovery on every issue that Sierra Club could  
4 possibly think of to ask questions about. It was  
5 only with respect to those specific factors.

6 And so the whole idea that there was some  
7 duty for us to update or it was somehow required or  
8 there could be some negative inference from updating  
9 is wrong and it's irrelevant.

10 EXAMINER ADDISON: Mr. Fisk?

11 MR. FISK: If Mr. Kutik wants to argue in  
12 his brief that there is no need to update, that's  
13 perfectly fine, but it doesn't form the basis for  
14 striking the testimony.

15 EXAMINER ADDISON: Thank you.

16 Mr. Kutik?

17 MR. KUTIK: Our last two motions, your  
18 Honor, deal with newspaper articles and references to  
19 newspaper articles, in fact, quotes from newspaper  
20 articles. And so the first one is on page 23 of the  
21 supplemental testimony, and particularly the  
22 reference at line -- beginning at line 22 with the  
23 sentence, "As I will discuss later" ending with the  
24 reference to the footnote on page 23. And we would  
25 strike -- move to strike the footnote and the exhibit

1       that's referenced there TFC-38.

2               Similarly, your Honor, on page 31 of the  
3       supplemental testimony --

4               MR. FISK: I'm sorry, Mr. Kutik, which  
5       lines on page 23 are you moving to strike?

6               MR. KUTIK: 22 and 23.

7               MR. FISK: Just 22 and 23, okay.

8               MR. KUTIK: The sentence that begins "As  
9       I will discuss later" and ends with the footnote 59.

10              MR. FISK: Okay.

11              MR. KUTIK: The next motion, your Honor,  
12       and our last motion deals with page 31 and the  
13       lines -- the sentence that begins on line 17 and ends  
14       on line 20 with reference to the footnote 79, we  
15       would ask that footnote 79 be stricken. Again, these  
16       are references and quotes from a newspaper article,  
17       multiple -- both involve multiple layers of hearsay,  
18       and for those reasons, they are inappropriate and  
19       should be stricken.

20              EXAMINER ADDISON: Mr. Fisk?

21              MR. FISK: My understanding on both -- so  
22       both of these portions that Mr. Kutik is moving to  
23       strike are with regards to new generation being built  
24       in Ohio. My understanding is that Mr. Comings had  
25       independent bases and knowledge for knowing that

1       there was new generation being built. He simply  
2       cited to newspaper articles to provide a one bid of  
3       public support.

4               So we would ask that the text remain in  
5       terms of noting that there are new generation being  
6       built, and I believe Mr. Comings would be happy to  
7       provide his independent basis if your Honors are  
8       interested in asking him about that.

9               EXAMINER ADDISON: Thank you.

10              Mr. Kutik?

11              MR. KUTIK: Your Honor, both of these  
12       passages are quotations. He clearly is relying on  
13       these quotations in his testimony. You can't quote  
14       multiple levels of hearsay and be appropriately  
15       admissible.

16              EXAMINER ADDISON: Mr. Fisk?

17              MR. FISK: Nothing else to add from what  
18       I said before.

19              EXAMINER ADDISON: Okay. And that  
20       concludes all the motions to strike, correct,  
21       Mr. Kutik?

22              MR. KUTIK: Mercifully, yes, your Honor.

23              EXAMINER ADDISON: At this time, we will  
24       take a brief recess to discuss all the motions to  
25       strike. Let's come back at 11:35.

1           Let's go off the record.

2           (Recess taken.)

3           EXAMINER ADDISON: Let's go ahead and go  
4 back on the record.

5           Thank you all for your patience. I  
6 apologize for the delay. Before we took a recess,  
7 there were several pending motions to strike for the  
8 Bench to consider. I believe, as Mr. Kutik did  
9 during earlier this morning, I will go through each  
10 topic area and address in a more general sense the  
11 ruling of the Bench and then go into each individual  
12 page reference.

13           And by all means, if I do miss one, feel  
14 free to jump in and just grab my attention, as I know  
15 there were quite a few, so, thank you, all.

16           All right. We will first address the use  
17 of depositions as a portion of testimony. And the  
18 Bench for the most part will be striking  
19 references -- direct references to depositions,  
20 including the actual deposition of Mr. Lisowski  
21 presented in Mr. Comings' testimony.

22           In reliance of our ruling, we looked to  
23 the finding and order issued on December 6, 2006, in  
24 Case No. 06-685-AU-ORD, in finding 41 particularly  
25 where the Commission stated, "On more than one

1 occasion an attorney for a party has prefiled one or  
2 more depositions and attempted to move the  
3 depositions into evidence during the hearing without  
4 any showing as to why the person or persons deposed  
5 were not available, on each occasion, the motion was  
6 denied. In other cases, depositions which were not  
7 prefiled were permitted over objection to be used to  
8 impeach the testimony of a witness.

9 "The Commission's legal staff believes  
10 that its rulings are consistent with the Commission's  
11 rules but is willing to entertain any suggestions to  
12 clarify the language of the rule."

13 It goes on to say, "None of the persons  
14 filing comments disagreed with the staff's position.  
15 In fact, Verizon stated that these principles are so  
16 elementary, that no amendment to the rule is  
17 required."

18 Based on that finding and order, we  
19 believe that consistent with Commission practice,  
20 depositions will only be allowed or permitted when  
21 the deponent was not -- not available for  
22 cross-examination, which is not the case before us  
23 today.

24 And with that, we will go into each  
25 individual citation in Mr. Comings' testimony



1 starting on page 11, line 13 through 14, including  
2 footnote 16, we will be granting the motion to strike  
3 as to that reference including Exhibit TFC-5.

4 Moving on to page 12, we will be granting  
5 the motion to strike as to line 1 through line 2  
6 starting with "And Mr. Lisowski," including footnote  
7 No. 18.

8 MR. KUTIK: Does that also include the  
9 Exhibit TFC-8?

10 EXAMINER ADDISON: Yes, it does.

11 Thank you, Mr. Kutik.

12 Moving on to page 12, line 4, starting  
13 with "Mr. Lisowski testified" and ending on line 6  
14 with footnote 19, that will also be granted,  
15 including footnote 19.

16 As to page 15, lines 21 through 24, we  
17 believe that this information is of such a nature  
18 that Mr. Comings may have an independent basis for  
19 the statement made, so we would instruct you,  
20 Mr. Kutik, to inquire as to his independent basis  
21 during cross-examination, but we will, however,  
22 strike the footnote 26 in its entirety.

23 On page 20, lines 4 through 5, including  
24 footnote 35, we will be granting in part and denying  
25 in part. The statement, again, is one that you may

1 inquire as to his independent knowledge, Mr. Kutik,  
2 during cross-examination, but we will grant the  
3 motion to strike as to footnote 35.

4 On page 25, lines 10 through 14, ending  
5 with footnote 47, we will be granting the motion to  
6 strike as to the statement and the footnote.

7 As to page 32, we will be granting the  
8 motion to strike from lines 2 to 5, as well as the  
9 entirety of footnote 54. We realize the pending  
10 motion to strike only pertained to that of the Duke  
11 Energy Ohio reference -- or Duke Energy Indiana  
12 reference, I apologize. However, with strike -- with  
13 striking Figure 8 as well, the remainder of the  
14 footnote doesn't make sense to just be left on the  
15 page.

16 MR. FISK: Your Honor, just that's a  
17 shift in topics.

18 EXAMINER ADDISON: I apologize.

19 MR. FISK: I wasn't sure if there was  
20 more of a ruling on those issues.

21 EXAMINER ADDISON: Of course. Thank you,  
22 Mr. Fisk. I apologize for that. I will keep going  
23 with the deposition-related references, and then we  
24 will come back to this page.

25 MR. FISK: Thank you, your Honor.

1 MR. KUTIK: I believe the next deposition  
2 reference, your Honor, is page 36, note 61.

3 EXAMINER ADDISON: Thank you, Mr. Kutik.

4 In reference to this pending motion to  
5 strike, we will be granting the motion from lines 5  
6 to lines 9 including the footnotes contained therein.  
7 This, again, is another example of when we granted  
8 the pending motion to strike, we felt that the  
9 remaining phrase didn't make much sense to be left in  
10 the testimony.

11 MR. FISK: And, your Honor, just to  
12 clarify, for line 5, is it starting with the word  
13 "In"?

14 EXAMINER ADDISON: That's correct. Thank  
15 you, Mr. Fisk.

16 MR. FISK: And through line 9, "potential  
17 costs"?

18 EXAMINER ADDISON: Yes, through line 9,  
19 "potential costs," including footnote 64.

20 MR. FISK: Okay.

21 EXAMINER ADDISON: Additionally, on page  
22 36, we will be granting the motion to strike as to  
23 footnote 61 with the reference to the deposition of  
24 Mr. Lisowski including Exhibit TFC-8 if we have not  
25 already done so in the prior rulings.

1 MR. FISK: Your Honor, just to clarify,  
2 are we leaving the response -- the discovery  
3 response? You are not striking that, correct?

4 EXAMINER ADDISON: That is correct.

5 MR. FISK: And on footnote 63, did you --  
6 did you strike that? Because that's a discovery  
7 response.

8 EXAMINER ADDISON: We did strike that  
9 after striking the pending motion -- or after  
10 granting the pending motion to strike. We felt that  
11 that phrase didn't make much sense to be left in the  
12 sentence, so we ended up striking the entire  
13 sentence.

14 MR. FISK: Okay.

15 EXAMINER ADDISON: As to page 45, lines 1  
16 through 5, includes footnote 89 and 90, we will be  
17 granting the motion to strike in its entirety.

18 Further down that page starting on line  
19 14 through line 16, starting with the word "however"  
20 and ending with "added in," including footnote 93, we  
21 will also be striking that sentence.

22 On page 46, line 4 through line 6,  
23 including footnote 94, we will be granting the motion  
24 to strike; and line 4 starting with "Mr. Lisowski"  
25 and ending on line 6 with "years" and the footnote

1 reference.

2 EXAMINER ADDISON: Okay. I believe those  
3 are all the deposition-related references in the  
4 direct testimony.

5 Moving on to the supplemental testimony,  
6 Mr. Kutik, do we have any deposition-related  
7 references?

8 MR. KUTIK: Yes, I do, your Honor. On  
9 page 34, note 86 and the accompanying text at lines  
10 18 through 20 and on page 35 is also a reference to  
11 deposition and note 87. And we had moved to strike  
12 the accompanying text in lines 16 and 17.

13 EXAMINER ADDISON: Thank you, Mr. Kutik.  
14 At this time, we will be denying the  
15 motion to strike as to lines 18 through 20.

16 MR. KUTIK: On page 34?

17 EXAMINER ADDISON: Yes, on page 34,  
18 Mr. Kutik; however, we will be granting the motion to  
19 strike as to footnote 84 and 86 -- I'm sorry, 86, I  
20 apologize for that.

21 MR. KUTIK: And that would also include  
22 TFC-42?

23 EXAMINER ADDISON: Yes, it would,  
24 Mr. Kutik.

25 Along the same lines on page 35, we will

1 be denying the motion to strike as to the statement  
2 made on lines 16 through 17, but we will grant the  
3 motion to strike pertaining to footnote 87.

4 Okay. Moving -- moving on to motions to  
5 strike pertaining to particular data within  
6 Mr. Comings' testimony, starting on page 32, as I  
7 indicated before, we will be granting the motion to  
8 strike from lines 2 through 5, in addition to the  
9 entirety of footnote 54. And that includes Exhibit  
10 No. TFC-17.

11 On page 33, we will be denying the motion  
12 to strike as it pertains to lines 7 through line 18  
13 on page 33 all the way over to page 34, line 2. And  
14 that also indicates that we will be denying the  
15 motion to strike for footnote 55 and 56.

16 On page 46 of the direct testimony, we  
17 will be granting the motion to strike as to lines 18  
18 through 19 starting with "I also provided" and ending  
19 with "of Ohio."

20 We will also be granting the motion to  
21 strike on lines -- page -- lines 22 through 23 on  
22 that same page, page 46, starting with the word "and"  
23 and ending with footnote 95 -- I'm sorry, ending with  
24 figure 8 in the parentheses right there.

25 As for page 48, lines 7 through 8, the

1 phrase, "a loss of \$200 million over the 15-year  
2 period," we will be denying the motion to strike. As  
3 indicated by Mr. Fisk, this seems to be at least in  
4 part a projection compiled by Mr. Comings.

5 Mr. Kutik, you are certainly entitled to  
6 inquire as to the basis of that projection during  
7 cross-examination.

8 As to Table 7 and Table 8, we will be  
9 denying the motion to strike in part and granting in  
10 part. We will be striking the furthest most column  
11 to the right titled "Duke CO-2" --

12 MR. KUTIK: That was the extent of my  
13 motion to strike on the tables on that column.

14 EXAMINER ADDISON: I apologize,  
15 Mr. Kutik. Thank you for that clarification.

16 MR. FISK: So we are clear, there was not  
17 a motion strike on the tables?

18 MR. KUTIK: There was. It was only with  
19 respect to the right column, right most column.

20 MR. FISK: Okay. I did not recall that  
21 being made on the record, the motion on those tables.  
22 I only recalled the line 7 on that page.

23 MR. KUTIK: I clearly made it.

24 EXAMINER ADDISON: The motion was made.  
25 I do have a reference to it.

1 MR. FISK: Okay, okay. And so both of  
2 those, the right columns are being struck?

3 EXAMINER ADDISON: Just the right columns  
4 entitled, "Duke CO-2."

5 Okay. Now, moving on to information  
6 pertaining to the OVEC plants, page 36, lines 9  
7 through 11, starting with OVEC and ending with plants  
8 in reference to footnote 65, we will be granting the  
9 motion to strike, including footnote 65 in Exhibit  
10 TFC-23.

11 On page 41, lines 20 through 23, starting  
12 with the word "Specifically" to footnote 78, we will  
13 be denying the motion to strike.

14 Page 43, line 5 through line 6, including  
15 footnote 81, we will be denying that motion to  
16 strike.

17 Also on page 43, lines 11 through 16, we  
18 will be denying that motion to strike.

19 I believe that's all of the pending  
20 motions to strike for the direct testimony; is that  
21 correct, Mr. Kutik?

22 MR. KUTIK: Your Honor, did you rule on  
23 page 36, note 62, and accompanying text 5 through 7;  
24 is that out?

25 EXAMINER ADDISON: Yes, that is correct.



1 MR. KUTIK: And you also granted page 36,  
2 lines 8, 9 and footnote 64?

3 EXAMINER ADDISON: Which portion of that  
4 line were you -- because there were two separate  
5 motions to strike for that particular line. You said  
6 footnote 64?

7 MR. KUTIK: Yes, your Honor.

8 EXAMINER ADDISON: The phrase immediately  
9 preceding the reference to footnote 64 has been  
10 struck, including the footnote.

11 MR. KUTIK: So the phrase basically going  
12 from footnote 63 to 64 in the text?

13 EXAMINER ADDISON: The entirety of line 5  
14 starting with the word "in."

15 MR. KUTIK: Yes, now I recall. Thank you  
16 very much.

17 EXAMINER ADDISON: My pleasure.

18 MR. KUTIK: Yes, your Honor, I believe  
19 you have addressed all of the motions relating to the  
20 direct testimony.

21 EXAMINER ADDISON: Thank you. Turning to  
22 the supplemental testimony, page 4, lines 23 to page  
23 5, line 2, we will be granting that motion to strike.

24 And moving on to the motions to strike  
25 pertaining to newspaper articles, page 23, as has

1       been consistent with our practice during this  
2       hearing, we will be striking lines 22 through 23,  
3       starting with "As I will" and ending in "Ohio" with  
4       reference to footnote 59. The motion to strike also  
5       includes footnote 59.

6               MR. KUTIK: Does it also include the  
7       Exhibit TFC-38?

8               EXAMINER ADDISON: Yes, Mr. Kutik, as  
9       well as the exhibit.

10              And I believe the last motion to strike  
11       is on page 31 of the supplemental testimony, lines 17  
12       through 20, including footnote 79. And we will be  
13       granting that motion to strike as well.

14              MR. KUTIK: May we go off the record?

15              EXAMINER ADDISON: We can, yes.

16              (Discussion off the record.)

17              EXAMINER ADDISON: Let's go back on the  
18       record. At this time, we will take a lunch break and  
19       we will come back around 1:30. Thank you.

20              (Thereupon, at 12:27 p.m., a lunch recess  
21       was taken until 1:30 p.m.)

22                               - - -

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Monday Afternoon Session,  
October 19, 2015.

- - -

EXAMINER ADDISON: Let's go ahead and go  
back on the record.

We will continue with the  
cross-examination of Mr. Comings.

Mr. Dougherty, do you have any questions?

MR. DOUGHERTY: No questions, your Honor.

EXAMINER ADDISON: Thank you.

Ms. Fleisher?

MS. FLEISHER: No questions.

EXAMINER ADDISON: Thank you.

Mr. Sauer?

MR. SAUER: No questions, your Honor.

Thank you.

EXAMINER ADDISON: Ms. Cohn?

MS. COHN: No questions, your Honor.

EXAMINER ADDISON: Mr. Kutik?

MR. KUTIK: Thank you, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Kutik:

Q. Good afternoon.

A. Good afternoon.

1           Q.    In obtaining your degree, it would be  
2           correct to say that you took no courses in the  
3           electric industry, correct?

4           A.    That's correct.

5           Q.    You took no courses in environmental law  
6           or regulation, correct?

7           A.    That's correct.

8           Q.    Took no courses in contract law?

9           A.    That's correct.

10          Q.    You took no courses that have the goal of  
11          forecasting?

12          A.    That's correct.

13          Q.    And all of your training that you  
14          received in those areas was on-the-job training,  
15          correct?

16          A.    Correct.

17          Q.    You've never been employed by a utility,  
18          correct?

19          A.    Yes, that's correct.

20          Q.    And all you know about the PJM market has  
21          been through on-the job-training at Synapse, correct?

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

23          Q.    And you joined Synapse four years ago,  
24          correct?

25          A.    A little over four years ago, yes.

1 Q. And prior to your work at Synapse, you  
2 had done no work involving the PJM market, correct?

3 A. Not that I can recall, no.

4 Q. Or the Ohio energy market, correct?

5 A. Correct.

6 Q. You had done no cost analysis of  
7 coal-fired generation plants, correct?

8 A. Correct.

9 Q. And you had done no analysis of energy  
10 prices other than relating to certain types of  
11 so-called clean power, correct?

12 MR. FISK: Your Honor, can I just  
13 clarify, are you saying before he joined Synapse?

14 MR. KUTIK: Yes.

15 EXAMINER ADDISON: Thank you.

16 A. Could you restate or repeat that back?

17 Q. Sure. Yes. Before you joined Synapse,  
18 you had not done an analysis of energy prices other  
19 than relating to so-called clean power, correct?

20 A. Yes, I believe that's correct.

21 Q. And you had done -- before you came to  
22 Synapse any -- you had not done any analysis of  
23 capacity prices outside of, again, some so-called  
24 clean power projects and facilities, correct?

25 A. Yes, I believe that's true.

1 Q. Now, while you have been at Synapse, you  
2 have never worked on behalf of a utility, correct?

3 A. Correct.

4 Q. And you've never had responsibility for  
5 forecasting energy prices in PJM, correct?

6 A. Other than for cases I have worked on.

7 Q. Well --

8 A. Not direct responsibility for utilities  
9 if that's what you mean.

10 Q. No. My question is you never had  
11 responsibility for forecasting energy prices in PJM,  
12 correct?

13 MR. FISK: Objection, asked and answered.

14 EXAMINER ADDISION: I'll allow the  
15 question.

16 A. In the Kentucky case, I did forecast  
17 energy prices, and also in a project for Illinois  
18 regarding Illinois coal plants at Synapse, I  
19 forecasted energy prices there, I believe, as well.

20 Q. Do you have your deposition, sir?

21 A. I don't.

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

23 EXAMINER ADDISON: You may.

24 Q. Mr. Comings, let me hand you a copy of  
25 your deposition transcript from June of this year.

1 You remember being deposed this year -- in June of  
2 this year, correct?

3 A. Yes, I do.

4 Q. And I asked you questions at that  
5 deposition, correct?

6 A. Yes.

7 Q. And you swore to tell the truth and you  
8 were truthful in that deposition, correct?

9 A. Yes.

10 Q. Let me refer you to page 38 of your  
11 deposition. Are you there?

12 A. Page 38, yes, I'm there.

13 Q. Okay. And did you not answer the  
14 following question the following way starting at line  
15 4, "Question: Have you ever had responsibility to  
16 forecast energy prices in PJM?

17 "Answer: Have responsibility? No, I  
18 have not." That was what you said in your  
19 deposition, correct?

20 A. Correct. I believe I clarified later  
21 down at the same page that I had had it --

22 Q. Is that what you said in your deposition,  
23 sir?

24 MR. FISK: Please, your Honor, could he  
25 let the witness answer the question?

1 EXAMINER ADDISON: Let him answer the  
2 question, and then we can address any motions to  
3 strike after that.

4 Q. Did I read your deposition correctly,  
5 sir?

6 MR. FISK: Your Honor, I believe  
7 Mr. Comings was still answering his original  
8 question.

9 EXAMINER ADDISON: Mr. Comings, had you  
10 finished your prior answer?

11 THE WITNESS: I was saying that later on  
12 on this page, I recalled that in the Kentucky case I  
13 forecasted energy prices in PJM.

14 Q. Did I read --

15 MR. KUTIK: Move to strike, your Honor.

16 EXAMINER ADDISON: As it's been our  
17 practice, I will deny the motion to strike. But,  
18 Mr. Comings, please listen to counsel's question and  
19 answer only counsel's question. Mr. Fisk can raise  
20 any additional information on redirect that you feel  
21 should be in the record at that time.

22 THE WITNESS: Thank you, your Honor.

23 Q. Did I read your deposition correctly,  
24 sir?

25 A. Yes, you did, sir.



1           Q.    Thank you.  Isn't it also true you have  
2   never had responsibility for forecasting capacity  
3   prices in PJM?

4           A.    Again, I guess I was interpreting  
5   responsibility as -- as a direct responsibility, and  
6   I believe I had forecasted capacity -- I know that I  
7   have forecasted capacity prices in PJM, again, for  
8   projects at Synapse.

9           Q.    Let me refer you to your deposition, sir,  
10  page 38.  Did you not testify as follows starting at  
11  line 7, "Question:  Have you ever had responsibility  
12  for forecasting energy prices in PJM?

13                "Answer:  Not as responsibility, only as  
14  part of a case.

15                "Question:  All right.

16                "Answer:  Or part of an analysis."

17                Did I read your deposition correctly?

18           A.    Yes.

19           MR. FISK:  I would object, improper  
20  impeachment.  That was fully consistent with what  
21  Mr. Comings testified.

22           EXAMINER ADDISON:  We will let the  
23  transcript speak for itself.

24                Please proceed, Mr. Kutik.

25           Q.    (By Mr. Kutik) And isn't it also true you

1 have never had responsibility for forecasting CO-2  
2 projects in PJM?

3 A. Yes, I believe so.

4 Q. What I said was correct?

5 A. I believe so, yes.

6 Q. Now, would it also be fair to say that  
7 between you and Mr. Rose of ICF, he has done many,  
8 many more of these types of forecasts?

9 A. Yes, I think that's fair.

10 Q. And would it also be the case that you've  
11 never studied the missing money problem?

12 A. Not -- no, not directly. I have studied  
13 the aspects that Dr. Makovich identified as part of  
14 the missing money problem, but I have not directly  
15 studied the missing money problem.

16 Q. As an economist, would it be fair to say  
17 you don't have expertise to run a reliability  
18 analysis for something like the retirements of Sammis  
19 or Davis-Besse?

20 A. Not a detailed reliability analysis, no.

21 Q. Now, prior to this case, would it be fair  
22 to say you had testified subject to cross-examination  
23 three times, correct?

24 A. Yes, I believe that's true.

25 Q. And one of those cases was before the

1 Kentucky Public Service Commission, as I think you  
2 just mentioned, correct?

3 A. Yes.

4 Q. And that case involved an application by  
5 Eastern Kentucky Power cooperatives for a certificate  
6 of public necessity for a capital project and  
7 modification of an environmental compliance plan,  
8 correct?

9 A. Yes. I would just correct you that it's  
10 East Kentucky Cooperative.

11 Q. Thank you. And you testified against the  
12 company's proposal, correct?

13 A. Correct.

14 Q. You testified on behalf of the Sierra  
15 Club, correct?

16 A. That's right.

17 Q. And the Commission --

18 A. I'm sorry, and Sonia McElroy.

19 Q. And the Commission approved the  
20 companies' plan, correct?

21 A. Yes, they did.

22 Q. Now, the only time before -- and this was  
23 the only time before this case when you had occasion  
24 to forecast energy prices in PJM, correct?

25 A. I am trying to remember when the

1 Illinois -- There is a report I worked on regarding  
2 Illinois coal plants I mentioned before I may have  
3 done that may have been before that testimony.

4 Q. So there would be the two, Illinois and  
5 Kentucky, correct?

6 A. That I can recall, yeah.

7 Q. Okay. And that was the only time before  
8 this case when you also forecasted capacity prices,  
9 correct?

10 A. Are you -- you are referring to the  
11 Kentucky case?

12 Q. Yes.

13 A. Again, the Illinois report had a capacity  
14 price forecast in it.

15 Q. So there --

16 A. I don't remember if that's before or  
17 after.

18 Q. So at most there would be those two,  
19 correct?

20 A. I am trying to recall. I recall working  
21 on a forecast with someone else, but they testified  
22 to that forecast.

23 Q. So you didn't have principal  
24 responsibility for that other forecast, did you?

25 A. No, not principal responsibility.

1           Q.    So, again, we have just two that you can  
2 recall, correct?

3           A.    Where I had principal responsibility,  
4 yes, I think that's true.

5           Q.    Okay. Now, the model that you used in  
6 Kentucky, that was an Excel model, correct?

7           A.    Yes, to come up with the energy price  
8 forecast, yes.

9           Q.    And that was -- the Kentucky case, you  
10 also had the opportunity to review PPAs, correct?

11          A.    Yes.

12          Q.    And you also had the opportunity to  
13 review the profitability of the power plant, correct?

14          A.    Yes.

15          Q.    Now, another case that you testified to  
16 under cross-examination was before the Oklahoma  
17 Corporation Commission, correct?

18          A.    Yes.

19          Q.    That was a case involving an application  
20 by Oklahoma Gas & Electric regarding a plant  
21 modernization and environmental compliance program,  
22 correct?

23          A.    Yes, that's correct.

24          Q.    You testified against OG&E, correct?

25          A.    I did not agree that they were going

1 after the least cost plan, yes.

2 Q. So you testified against them, correct?

3 A. For the most part, yes.

4 Q. And you also testified on behalf of the  
5 Sierra Club, correct?

6 A. Yes.

7 Q. And that was the only time prior to this  
8 case where you did any forecasts of dispatched  
9 generation, correct?

10 A. I am trying to recall here. I can't  
11 think of any others where I had principal  
12 responsibility. I am trying to recollect. I have  
13 been working a lot of cases, so I am trying to  
14 recollect, I'm sorry.

15 MR. FISK: Your Honor, could I have that  
16 question and answer read back?

17 EXAMINER ADDISON: You may.

18 (Record read.)

19 MR. FISK: Thank you.

20 Q. And in the Kentucky case, you actually  
21 had a colleague run the model, correct?

22 A. No, that's not correct.

23 Q. Okay. Let me refer you to your  
24 deposition. I'm sorry, I was talking about the  
25 Oklahoma case.

1           A.    Oh, yes.

2           Q.    Thank you.  Now, and that was a second  
3 case in which you were -- you reviewed PPAs, correct?

4           A.    Yes.

5           Q.    And that was the second case where you  
6 had reviewed the profitability -- profitability of a  
7 power plant, correct?

8           A.    Second case where I testified to where I  
9 reviewed that, yes, where I was principally  
10 responsible.

11          Q.    Now, you had a budget in this case,  
12 correct?  I am talking about this case here that you  
13 are here on today.

14          A.    Yes.

15          Q.    And there is nothing that you weren't  
16 allowed to do because of your budget, correct?

17          A.    We typically will stipulate that if we  
18 want to do dispatch modeling, say, that might involve  
19 another case, it involves a license and extra labor.  
20 So in our proposals, we typically put in a sentence  
21 that if such things arise like dispatch modeling is  
22 needed, then that would be extra.

23          Q.    Let me refer you to page 101 of your  
24 deposition, sir.  Are you there?

25          A.    Yes.

1           Q.    And did you not answer the following  
2           question the following way starting at line 20,  
3           "Question: Well, with respect to the work that you  
4           wanted to do, was there anything that you were not  
5           allowed to do due to cost on the budget?

6                     "Answer: Not that I can recall at this  
7           time, no."

8                     Did I read that correctly?

9           A.    Yes.

10          Q.    Now, for your work in this case, would it  
11          be correct to say you did not review any Ohio  
12          statutes?

13          A.    I've reviewed some Ohio statutes.

14          Q.    All right. Let me refer you to your  
15          deposition, sir, page 88. Are you there?

16          A.    Yes.

17          Q.    And did you not answer the following  
18          question the following way starting at line 11,  
19          "Question: In preparation for your testimony, did  
20          you review any statutes in Ohio?

21                     "Answer: No, I did not."

22                     Did I read that correctly?

23          A.    Yes. And I should say I reviewed them  
24          since then.

25          Q.    All right. So isn't it true for



1 preparation of your testimony, you didn't review any  
2 Ohio statutes, correct?

3 A. My written testimony, that's correct.

4 Q. And for your written testimony you did  
5 not review any Supreme Court -- Ohio Supreme Court  
6 decisions, correct?

7 A. Yes, I believe that's correct.

8 Q. And for your written testimony, you did  
9 not study the FES fleet of generation plants?

10 A. I studied the fleet -- the section of the  
11 fleet that's at issue here.

12 Q. I didn't ask the section of the fleet.  
13 You didn't study the fleet as a whole.

14 A. As a whole, no.

15 Q. So you don't know how many generation  
16 plants FES owns, correct?

17 A. I don't know the number off the top of my  
18 head, no.

19 Q. Or the number of megawatts of generation  
20 that FES owns, correct?

21 A. The last figure I saw in the -- it was a  
22 fact book, and I can't remember the date on it, I  
23 think it was 14 gigawatts.

24 Q. Okay. Let me refer you to your  
25 deposition, sir, page 104. Did you not answer the

1 following question the following way starting at line  
2 10, "Question: Do you know the total number of  
3 megawatts of generation owned by FES?

4 "Answer: No, I don't."

5 Did I read that correctly?

6 A. Yes. And, again, the number I just  
7 quoted to you was after this that I looked up that  
8 number.

9 Q. So, again, when you wrote your testimony,  
10 you didn't know how many megawatts of generation FES  
11 owned, correct?

12 A. When I wrote my testimony, no.

13 Q. And when I took your deposition, you  
14 didn't know that either.

15 A. Correct.

16 Q. And you understood at your deposition I  
17 would be asking you questions about the issues in  
18 your testimony, did you not?

19 A. Yes.

20 Q. Isn't it also true that when you wrote  
21 your testimony, you didn't know what the test for  
22 approval of an ESP is or was?

23 A. Yes, I believe that's true.

24 Q. And you didn't know whether the standard  
25 for the approval of an ESP is to provide service on a

1 least-cost basis.

2 A. At the time of the deposition?

3 Q. Yes.

4 A. Yes.

5 Q. And at the time you wrote your testimony.

6 A. Yes.

7 Q. And also at the time you wrote your  
8 testimony, you didn't know if a sensitivity analysis  
9 is required for approval of a cost recovery rider or  
10 any other type of rider under an ESP, correct?

11 A. Correct.

12 Q. And when you wrote your testimony, you  
13 didn't do an analysis of the reliability of ATSI if  
14 Davis-Besse and Sammis retired, correct?

15 A. I commented on it. I didn't conduct a  
16 detailed reliability analysis.

17 Q. So the answer to my question is "yes"?

18 A. Could you say it again, please?

19 Q. Yes. You didn't do an analysis of ATSI  
20 if Davis-Besse and Sammis retired?

21 MR. FISK: I would object as asked and  
22 answered.

23 EXAMINER ADDISON: Overruled.

24 A. I discussed the reliability issue in my  
25 testimony, so to the extent that's an analysis. I

1 didn't conduct transmission analysis, if that's what  
2 you mean.

3 Q. Well, let me just refer you to your  
4 deposition, sir, page 126. Are you there?

5 A. Yes.

6 Q. And did you not answer the following  
7 question the following way starting at line 19,  
8 "Question: In this case, have you done any analysis  
9 of the reliability of ATSI, A-T-S-I, system if  
10 Davis-Besse or Sammis was retired?

11 "Answer: No, I have not."

12 Have I read that correctly?

13 A. Yes.

14 Q. And would it also be fair to say you did  
15 not do a forecast of the companies' cost to comply  
16 with environmental regulations over the 15-year  
17 period of the proposed PPA?

18 A. Not -- not the full suite of  
19 environmental regulations.

20 Q. You also didn't do a forecast of natural  
21 gas prices, correct?

22 A. That's right.

23 Q. Or capacity prices, correct?

24 A. In this case?

25 Q. Yes.

1           A.    I did provide a forecast of capacity  
2    prices.

3           Q.    Okay.  Would it be fair to say you didn't  
4    do a forecast of energy prices?

5           A.    I provide -- I provided sensitivities for  
6    high and low energy prices and --

7           Q.    Go ahead.

8           A.    -- and energy prices that included CO-2.  
9    So I did provide several forecasts that pivoted off  
10   of the companies' forecast.

11          Q.    You didn't forecast energy prices,  
12   correct?

13               MR. FISK:  Objection.  Asked and  
14   answered.

15               EXAMINER ADDISON:  Overruled.

16          A.    If you count adjusting the companies'  
17   forecasts for different variables, then, yes.  If you  
18   don't count that, then no.

19          Q.    Okay.  Well, all you did was basically do  
20   a band of energy prices plus or minus 10 percent of  
21   Mr. Rose's forecasts, correct?

22          A.    And also did forecasts -- adjusted the  
23   forecast for different CO-2 prices.

24          Q.    Now, it's your understanding -- I want to  
25   talk about your understanding of the companies'

1 proposal. First, just some terminology. It's true,  
2 is it not, that you believe that retail choice means  
3 that a customer can choose its distribution company,  
4 correct?

5 A. I said that in my deposition, and I  
6 misspoke. I have subsequently discussed that with  
7 others and looked up that information, agreed with  
8 the definition you put forward in the deposition.

9 Q. So you were wrong about what you thought  
10 retail choice was just a few months ago, correct?

11 A. In the deposition, yes.

12 Q. Okay. Is it also true that you believe  
13 that the companies are seeking approval of a PPA  
14 between FES and the companies?

15 A. They are seeking approval of a rider.

16 Q. That's not my question, sir.

17 A. No, it's not my understanding.

18 Q. Let me refer you to your deposition, sir,  
19 page 107. Are you there?

20 A. Yes, sir.

21 Q. Did you not answer the following  
22 questions the following way starting at line 1, "Is  
23 it your understanding that the companies are seeking  
24 Commission approval of the proposed transaction  
25 between FES and the companies?"

1                   "Answer: Yes. They are asking for a  
2 rider that would include this transaction that would  
3 be passed through to ratepayers, that's may  
4 understanding.

5                   "Question: So the answer is yes?

6                   "Answer: Yes."

7                   That was your deposition testimony,  
8 correct?

9                   MR. FISK: I would object as improper  
10 impeachment. It's not inconsistent with what  
11 Mr. Comings testified.

12                  EXAMINER ADDISON: Mr. Kutik, do you have  
13 a response?

14                  MR. KUTIK: Yes, your Honor, it was an  
15 unadulterated yes, and it's inconsistent with his  
16 testimony.

17                  EXAMINER ADDISON: Overruled.

18                  A. What was the original question?

19                  Q. Mr. Comings -- well, I think you answered  
20 the question that I read it correctly, correct?

21                  A. You did read it correctly.

22                  Q. Now, you also understand that the output  
23 of Davis-Besse and OVEC would not be used to supply  
24 nonshopping load, correct?

25                  A. Nonshopping load, yes.

1           Q.    Or to supply shopping load directly by  
2   the companies.

3           A.    Yes.

4           Q.    And the companies will be responsible for  
5   offering and dispatching the generation, correct?

6           A.    That's right.

7           Q.    Now, you've reviewed the term sheet,  
8   correct?

9           A.    Yes.

10          Q.    That's an exhibit to your testimony,  
11   correct?

12          A.    Yes.

13          Q.    And would it be fair to say you don't  
14   know if the term sheet provides conditions where the  
15   companies could refuse to pay certain costs?

16          A.    No, that's not true.

17          Q.    All right. Let me refer you to  
18   deposition page 110. Starting at line 2 did you not  
19   answer the following questions the following way,  
20   "Question: Is it your understanding that there are  
21   certain conditions in the term sheet where the  
22   companies could refuse to pay certain costs incurred  
23   by FES prior to 2031?

24                "Answer: Could refuse? Is that what you  
25   said?



1                   "Question: Yes, yes.

2                   "Answer: I don't recall exactly what it  
3 says in the term sheet."

4                   That was your deposition testimony,  
5 correct?

6                   A. Yes.

7                   Q. Now, you would agree with me, would you  
8 not, that FES under the term sheet would be required  
9 to do work in accord with good utility practice?

10                  A. Yes, that is dictated in the term sheet.

11                  Q. Okay. And would it be fair to say you  
12 don't know if under the companies' proposal the  
13 companies would face a risk of nonrecovery?

14                  A. There is -- I believe there is -- that  
15 is -- no, that's not true.

16                  Q. Okay. So you understand now that the  
17 companies can do that, correct?

18                  A. In certain circumstances.

19                  Q. All right. You didn't recall that in  
20 your deposition, correct?

21                  A. I believe that's true.

22                  Q. Okay. And isn't it also true that you  
23 don't know if there is anything in the term sheet  
24 that says that FES can unilaterally withdraw from the  
25 PPA?

1           A.    Could you state that again?

2                   MR. KUTIK:  Sure.  May I have it read,  
3   please, your Honor?

4                   EXAMINER ADDISON:  You may.

5                   (Record read.)

6           A.    That's not true.

7           Q.    All right.  Well, other than the force  
8   majeure provisions, are you aware of any other  
9   provision -- isn't it true you are not aware of any  
10   other provision in the term sheet which allows for  
11   the early termination of the agreement or the  
12   proposed agreement by FES?

13          A.    There is an additional condition, so no.

14          Q.    All right.  Well, let me refer you to  
15   your deposition, sir, page 14.  And isn't it true you  
16   answered the following question the following way,  
17   "Question:  And other than the force majeure  
18   provisions, are you aware of any other provision that  
19   provides for the early termination of the agreement  
20   or proposed agreement by FES?

21                   "Answer:  I don't know of anything  
22   explicitly in the term sheet that says FES can back  
23   out of the contract."

24                   That's what you testified to, correct?

25          A.    Correct.

1           Q.    Now, isn't it also true that nothing in  
2   the term sheet allows FES to back out of the plants  
3   if the plant -- back out if the plants are  
4   profitable?

5           A.    No.   FES -- there is another condition  
6   where FES can back out.

7           Q.    Let me refer you to your deposition, sir,  
8   page 117.  Did you not answer the following question  
9   the following way at line 6, "Question:  Is there  
10  anything in the term sheet that allows FES to back  
11  out if the plants are profitable?

12                "Answer:  Not explicitly in the term  
13  sheet that I've seen, no."

14                That was your deposition testimony,  
15  correct?

16           A.    That's true.  In subsequent review, I  
17  found there is an additional condition.

18           MR. KUTIK:  I move to strike everything  
19  after "That's true."

20           MR. FISK:  Your Honor, he is simply  
21  providing clarification that he now understands there  
22  is a provision in the term sheet.

23           MR. KUTIK:  Clarification is for  
24  redirect, your Honor.

25           EXAMINER ADDISON:  I agree.  You can

1 bring it up in redirect. Motion granted.

2 Q. (By Mr. Kutik) Now, you recognize that  
3 it's not unheard of for a PPA to have a price  
4 provision that includes the seller's costs.

5 A. I don't think it's completely unheard of,  
6 no.

7 Q. Okay. So what I said was correct.

8 A. Yes.

9 Q. (By Mr. Kutik) Now, under the proposed  
10 transaction, would it be fair to say that for any  
11 capital expenditures, FES would be required to pay  
12 for those up front?

13 A. I don't think that's true if they were  
14 to -- do you mean pay everything up front? Then I  
15 don't think that's true.

16 Q. Okay.

17 A. If you are talking about financing, then  
18 possibly true.

19 Q. Including financing.

20 A. Yes, I believe FES would pay for the  
21 capital expenditures and then recover the costs  
22 amortized over the term of the proposal.

23 Q. Sure. And if there were costs that would  
24 incur or depreciation left unrecovered after the  
25 15-year period of the proposed PPA, FES would be

1 responsible for those as well, correct?

2 A. Assuming there's no other transaction  
3 like this or it doesn't get extended, yes.

4 Q. And -- well, there is no other  
5 transaction before the Commission right now or in  
6 discussion that you are aware of, correct?

7 A. Correct. I am talking about in 2031 and  
8 beyond.

9 Q. Well, the answer to my question is "yes."

10 MR. FISK: Asked and answered, okay.

11 MR. KUTIK: Now he is arguing with me,  
12 your Honor.

13 MR. FISK: He is providing clarification  
14 for the answer.

15 EXAMINER ADDISON: I am going to deny the  
16 motion to strike.

17 MR. KUTIK: Well, I think there was no  
18 motion to strike, your Honor.

19 EXAMINER ADDISON: I'm sorry, I  
20 apologize. Objection sustained.

21 MR. FISK: Thank you, your Honor.

22 Q. Now, FES under the proposal is required  
23 to use straight line depreciation unless the  
24 companies agree, correct?

25 A. I believe that's true.

1           Q.    And to the extent that under the proposed  
2 transaction if FES failed to deliver power, the  
3 companies would have the right to the market  
4 equivalent of the power and to recover that from FES,  
5 correct?

6           A.    I believe that's correct in some  
7 circumstances.

8           Q.    Okay. Now, under the -- you understand  
9 that the companies would also have the right to audit  
10 costs and to review capital expenditures, correct?

11          A.    Yes.

12          Q.    And the costs that the companies pay  
13 could be reviewed by the Commission, correct?

14          A.    Assuming that the Commission calls a  
15 hearing.

16          Q.    Well --

17          A.    The staff, I should say. I'm sorry.  
18 Back up. The staff can review the costs and then  
19 submit a report, and then the Commission decides  
20 whether to hold a hearing, is my understanding.

21          Q.    So the answer to my question is "yes"?

22          A.    Yes.

23          Q.    And the bidding activities of the  
24 companies could also be reviewed by the staff and the  
25 Commission, correct?

1           A.    I believe that's true.

2           Q.    And you are aware that bidding activity  
3 would also be reviewed by FERC and the independent  
4 market monitor, correct?

5           A.    That's generally true for any entity  
6 bidding into PJM.

7           Q.    Because you are familiar with the fact  
8 that there are rules against market manipulation,  
9 correct?

10          A.    Yes.

11          Q.    And when bidding and trades are reviewed  
12 and if necessary investigated, there is a question  
13 regarding market manipulation, correct?

14          A.    Yes.

15          Q.    And when bidding activity is questioned,  
16 the party that's being investigated must provide an  
17 economic justification for their behavior, correct?

18          A.    I think that's generally true.

19          Q.    Now, you have not submitted testimony in  
20 a base rate case, correct?

21          A.    Correct.

22          Q.    And you don't know exactly what the  
23 phrase "formula method of ratemaking" means, correct?

24          A.    I've heard the term, but I couldn't give  
25 you more detail than that.

1           Q.    And you don't know what expenses would be  
2 reviewed under a just and reasonable standard,  
3 correct?

4           A.    Again, I am familiar with the phrase  
5 "just and reasonable rates," but I don't know exactly  
6 what costs that would be.

7           Q.    So the answer to my question is "yes"?

8           A.    Yes.

9           Q.    And you don't know what "single issue  
10 ratemaking" means.

11          A.    Again, I have heard the term. Yeah, I  
12 don't have any more detail than that. I don't want  
13 to speculate.

14          Q.    So, again, the answer to my question is  
15 "yes"?

16          A.    Yes.

17          Q.    Now, you haven't participated in cost  
18 recovery rider proceedings before, correct?

19          A.    I certainly haven't testified. I am  
20 trying to think if I performed any analysis in one of  
21 these cases.

22          Q.    My question was participated.

23          A.    Participated as in filed testimony?

24          Q.    Participated as in participated.

25          MR. FISK: Your Honor, I would object.



1 Participated is vague as the witness is asking for  
2 clarification as to what he means by participated.

3 EXAMINER ADDISON: He can answer and give  
4 the appropriate context that he sees fit.

5 MR. FISK: Thank you, your Honor.

6 A. I have contributed to other witnesses in  
7 these proceedings, but not submitted my own testimony  
8 in another rider proceeding.

9 Q. Let me refer you to page 63 of your  
10 deposition, sir. And did you not answer the  
11 following question the following way starting on line  
12 21, "Question: Have you ever participated in any  
13 cost tracker rider audit proceeding?

14 "Answer: Not that I recall, no."

15 Did I read that correctly?

16 A. Yes. I apologize. Did you ask me about  
17 "audit proceeding" previously?

18 Q. Yes.

19 A. Yes, I'm sorry. I took that -- for some  
20 reason, I did not hear the word "audit," so no, I  
21 have not.

22 Q. All right.

23 A. I apologize for the confusion.

24 Q. No. Perhaps my question was unclear.  
25 Now, it's also true that you have not reviewed such

1 proceedings, correct?

2 A. An audit proceeding, no.

3 Q. And you have not participated -- you have  
4 not reviewed any orders of the Public Utilities  
5 Commission of Ohio in such proceedings, correct?

6 A. Correct.

7 Q. And you are not aware of the standard for  
8 cost recovery rider audits, correct?

9 MR. FISK: I would just object to the  
10 extent it calls for a legal conclusion.

11 MR. KUTIK: Excuse me, there is an  
12 objection pending, sir.

13 EXAMINER ADDISON: You are not an  
14 attorney, correct, Mr. Comings?

15 THE WITNESS: No.

16 EXAMINER ADDISON: With that noted on the  
17 record, he can answer to the extent he has an  
18 opinion.

19 MR. FISK: Thank you.

20 THE WITNESS: Could you repeat it back,  
21 please?

22 MR. KUTIK: May I have it read, please?

23 EXAMINER ADDISON: Yes, please.

24 (Record read.)

25 A. I understand from this proceeding that

1       there is a presumption of prudence, but that's --  
2       that's all I can recall right now.

3               Q.     Okay. Well, at the time of your  
4       deposition, you didn't know, correct?

5               A.     I can't recall what I said in the  
6       deposition.

7               Q.     All right. Let's review your deposition.

8               A.     Sure.

9               Q.     Let me refer you to page 64. Are you  
10      there?

11              A.     Yes.

12              Q.     Page -- at line 11, did you not answer  
13      the following question the following way, "Question:  
14      Are you aware of the standard -- of what standard  
15      applies to a Commission review in a cost tracker  
16      rider audit proceeding in Ohio?

17                     "Answer: No, I'm not aware."

18                     Did I read that correctly?

19              A.     Yes, you did.

20              Q.     And would it also be fair to say that in  
21      writing your testimony and at your deposition, you  
22      didn't know if a cost tracker rider audit proceeding  
23      in Ohio there was a presumption of prudence?

24              A.     At my deposition?

25              Q.     Yes.

1           A.    I don't recall if I recalled that at my  
2 deposition.

3           Q.    Let me refer you to your deposition,  
4 line -- or page 111.

5           MR. FISK:  I'm sorry, which page?

6           MR. KUTIK:  I'm sorry, 112.

7           Q.    Are you there?

8           A.    Yes.

9           Q.    And did you not answer the following  
10 question the following way on line 19, "Question:  
11 Okay.  Do you know whether under cost trackers in  
12 Ohio and audits thereof there is a presumption of  
13 prudence?

14                  "Answer:  I don't know.  My --"

15                  Did I read that correctly?

16           A.    Yes.

17           Q.    Now, you understand, I think it was  
18 mentioned earlier, that the companies would be  
19 offering the output of Davis-Besse and Sammis and its  
20 OVEC entitlement into the PJM markets, correct?

21           A.    Yes.

22           Q.    And you have never participated in  
23 offering capacity into the base residual auction,  
24 correct?

25           A.    Correct.

1           Q.   And you haven't been consulted or you  
2 haven't consulted any entity for the purpose of such  
3 a bid or offer, correct?

4           A.   Correct.

5           Q.   And you don't know if there are any  
6 limits on the price that capacity can be bid in PJM?

7           A.   No, that's not correct.

8           Q.   All right. Let me refer you to your  
9 deposition, page 82. Let me refer you to line 13.  
10 Did you not give the following answer to the  
11 following question, "Question: Okay. With respect  
12 to capacity, are there any limits on the price that  
13 could be bid in PJM?

14                   "Answer: I'm not sure if there are  
15 limits."

16                   That was your testimony, correct?

17           A.   Yes, and subsequently I looked at what  
18 those limits were.

19           MR. KUTIK: Move to strike everything  
20 after "Yes," your Honor.

21           EXAMINER ADDISON: Mr. Fisk?

22           MR. FISK: Your Honor, he is simply  
23 providing clarification of his knowledge today which  
24 is what his original question was.

25           EXAMINER ADDISON: Motion to strike will

1 be granted for everything after "Yes."

2 Q. (By Mr. Kutik) And isn't it also true,  
3 Mr. Comings, you don't know if there is a limit of  
4 the size of the bid for capacity?

5 A. Well, there's presumably a limit on how  
6 much capacity you have. You can't bid more than you  
7 have. If you are an FRR, fixed resource requirement,  
8 entity, then there's a limit on the surplus you can  
9 bid into the market.

10 Q. Let me refer you to your deposition, sir,  
11 page 82.

12 A. Yes.

13 Q. At line 19, did you not give the  
14 following answer to the following question,  
15 "Question: Are there any limits on the size of a bid  
16 for capacity?

17 "Answer: I don't know."

18 Did I read that correctly?

19 A. Yes.

20 Q. Now, you also don't know if there are any  
21 rules bidding capacity at lower than the supplier's  
22 cost, correct?

23 A. No, that's not correct.

24 Q. Let me refer you to your deposition, page  
25 82, bottom of the page, line 5, did you not answer

1 the following question the following way, "Question:  
2 Is it against the rules of PJM to bid capacity below  
3 cost?

4 "Answer: I don't know."

5 Did I read that correctly?

6 A. Yes.

7 Q. And would it be fair to say you have  
8 never been responsible for offering energy into the  
9 PJM market?

10 A. Yes.

11 Q. And nor have you consulted a client for  
12 that purpose?

13 A. Correct.

14 Q. And you don't know if a generator is  
15 required to offer all of its energy into the PJM  
16 market, correct?

17 A. All of its -- all of its energy, I don't  
18 know.

19 Q. Okay. And you also don't know if all  
20 offers for energy must be cost based.

21 A. That's not correct.

22 Q. Okay. Let me refer you to your  
23 deposition, page 76. And did you not give the  
24 following answers to the following questions.  
25 Starting at line 1, "Question: All right. Are all

1 offers for energy in the PJM market required to be  
2 cost based?

3 "Answer: If a unit is required to run by  
4 PJM for other -- I believe there are other reasons  
5 that PJM could call upon a unit.

6 "Question: Okay. So your answer not all  
7 units are -- not all energy is required to be offered  
8 on a cost basis?

9 "Answer: I don't know for sure. You had  
10 asked me if there were other reasons, and I --

11 "Question: No. I said are all units --  
12 are all energy offers required to be cost based? Is  
13 your answer I don't know?

14 "Answer: I believe the bulk of them are  
15 cost based, but I don't know for certain that all of  
16 them are.

17 "Question: Okay. So, again, the answer  
18 to my question is you don't know?

19 "Answer: No, I don't know for certain."

20 Did I read that correctly?

21 A. You read it correctly.

22 Q. Now, you are also aware of something  
23 called a minimum offer price rule, correct, or MOPR?

24 A. Yes.

25 Q. And you don't know if MOPR applies to



1 energy or capacity, correct?

2 A. I believe it only applies to capacity.

3 Q. Okay. Well, let me refer you to your  
4 deposition page 78. Question -- this is now on line  
5 4 -- "And does minimum offer price rule apply to  
6 energy?

7 "Answer: I don't know.

8 "Question: Do you know when the MOPR  
9 applies?

10 "Answer: No. I can't say for certain,  
11 no."

12 Did I read that correctly?

13 A. Yes.

14 Q. And on a slightly different subject,  
15 isn't it true that you don't know what Jay Ruberto  
16 does?

17 A. In this case I know that he was the head  
18 of the EDU evaluation team.

19 Q. But other than that, do you know what he  
20 does in his day job?

21 A. His day job?

22 Q. His regular responsibilities.

23 A. I believe he handles regulated affairs in  
24 other states.

25 Q. Well, isn't it true you don't know what

1 Mr. Ruberto does?

2 MR. FISK: Asked and answered.

3 EXAMINER ADDISON: Sustained.

4 Q. Well, let me refer you to your deposition  
5 then, sir. Page 88, "Question -- line 1 -- "Let me  
6 put it a different way. I don't mean to make this a  
7 memory test for you, but what is your understanding  
8 of what Mr. Ruberto does?

9 "Answer: I can't recall off the top of  
10 my head what Mr. Ruberto does."

11 Did I read that correctly?

12 A. Yes, you did.

13 MR. FISK: Objection, your Honor, that's  
14 improper impeachment.

15 EXAMINER ADDISON: Overruled.

16 MR. FISK: There is nothing inconsistent.

17 Q. Is it true to say you don't know if his  
18 job had anything to do with dispatching generation or  
19 bidding generation into the market?

20 A. I believe when this transaction was  
21 approved, that would be his -- if this transaction is  
22 approved, that that would be his job.

23 Q. Let me refer you again to your  
24 deposition, sir, page 88. Starting at line 7, "Does  
25 his," of course referring to Mr. Ruberto in the

1 question and answer above, "Does his job have  
2 anything to do with dispatching generation or bidding  
3 generation into the PJM market?

4 "Answer: I don't know. I don't recall."

5 Did I read that correctly?

6 A. Just that I can't recall is the only  
7 difference.

8 Q. Thank you for that correction. Now, I  
9 want to refer you to Figure 5 in your supplemental  
10 testimony on page 27.

11 A. Yes, I'm there.

12 Q. And here you are comparing something  
13 called Ohio retail versus wholesale ATSI LMP prices,  
14 correct?

15 A. Yes.

16 Q. And the Ohio retail, that includes  
17 generation transmission and distribution, correct?  
18 That's a bundled rate, in other words?

19 A. Yes.

20 Q. And would it be fair to say you selected  
21 the time period for this graph?

22 A. I selected the time period, yes.

23 Q. And you also selected the scale of the  
24 graph?

25 A. Yes.

1           Q.    And would it be fair to say that the Ohio  
2    retail numbers come from the Energy Information  
3    Administration website?

4           A.    Yes.

5           Q.    And on that Energy Information website,  
6    you can get graph information on Ohio retail prices?

7           A.    I'm not sure if it has its own graphs,  
8    but you can get the data to make your graph from that  
9    website.

10          Q.    And you have never used that website, for  
11    example, to graph average retail prices?

12          A.    I've used data from that website. I  
13    can't recall if I took -- you know, took a graph from  
14    that website --

15          Q.    Okay.

16          A.    -- for that purpose.

17          Q.    Are you aware that that website allows  
18    you to graph change in prices as a percentage of the  
19    initial part of the period being studied?

20          A.    Yeah, I don't recall.

21          Q.    Now, would it be fair to say that for  
22    nonshopping customers, the retail generation price,  
23    this is now for the companies, does not change with  
24    LMPs? In other words, it doesn't change on a daily  
25    basis?

1           A.    On a daily basis, no.  It's settled --  
2   Well, bills, I am assuming, granted monthly, and the  
3   auctions are staggered, so the energy is purchased  
4   at -- between what I have seen six-months or  
5   three-years intervals.

6           Q.    Okay.  So you understand that the  
7   companies purchase generation for nonshopping  
8   customers, correct?

9           A.    Companies do, yes.

10          Q.    And -- I'm sorry.

11          A.    Yes, that's my understanding.

12          Q.    And it's purchased through a competitive  
13   bidding process, correct?

14          A.    Yes.

15          Q.    And the winning bidders sign a master  
16   supply agreement, correct?

17          A.    I'm not sure about that part.

18          Q.    Okay.  And so you -- would it be fair to  
19   say you're not sure whether the master supply  
20   agreement contains a fixed price?

21          A.    Yeah, I don't know.

22          Q.    Would it be fair to say you have not made  
23   a comparison of the changes in generation price for  
24   nonshopping customers?

25          A.    In generation price only, no.  Yes, that

1 is fair to say.

2 Q. Okay. Now, I want to talk to you a  
3 little bit about the forecasts produced by the  
4 companies. Would it be fair to say that you're  
5 familiar with dispatch models such as PROSYM, PROMOD,  
6 and G MAPS?

7 A. GE MAPS?

8 Q. GE MAPS.

9 A. I know of GE MAPS and pro-mod. I've run  
10 PROSYM in the past.

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

13 A. Generally familiar, yes.

14 Q. And you did not use any of those for your  
15 work in this case, correct?

16 A. That's right.

17 Q. And you did not compare the FES model to  
18 any of those for purposes of your testimony as you  
19 wrote it, correct?

20 A. Correct.

21 Q. Now, you refer to alleged inconsistencies  
22 or contradictions involving model runs presented by  
23 the companies and by FES, and is that -- is what you  
24 mean by that is that the companies and FES use  
25 different inputs, correct?

1           A.    Yes.

2           Q.    And they use the same model, correct, as  
3 far as you know?

4           A.    As far as I know.

5           Q.    And the model used by FES for its  
6 projections is used for projections, not for actual  
7 dispatch, correct?

8           A.    I believe it was referred to as a  
9 dispatch model.

10          Q.    But -- I'm sorry, go ahead.

11          A.    I believe FES did use -- FES and the  
12 companies did use the model, and the model came up  
13 with dispatch for the plants. That was an output of  
14 the model, how much the plants operated.

15          Q.    But it wasn't a model that is used to do  
16 the actual dispatching, correct?

17          A.    Oh, to do the actual dispatching of the  
18 plants in real life?

19          Q.    Yes.

20          A.    That's correct. I believe that's the  
21 case.

22          Q.    Okay. Now, would you agree with me that  
23 both Sammis and Davis-Besse are what's known as  
24 baseload units?

25          A.    Yes. That's sometimes what coal and

1 nuclear units are referred to as.

2 Q. And one definition of a baseload unit is  
3 a plant that's normally operated to take all or part  
4 of the minimum load of a system and which  
5 consequently produces electricity at an essentially  
6 constant rate or runs continuously?

7 A. That is a definition. And I think  
8 that's -- for Sammis, that's not always the case.

9 Q. But that is the definition, correct?

10 A. That is a definition of baseload, yes.

11 Q. Now, the testimony that you present here  
12 regarding the companies' analysis is similar to the  
13 testimony that you produced in Kentucky and Oklahoma,  
14 correct?

15 A. I address some of the same issues --

16 Q. All right.

17 A. -- that are at issue here.

18 Q. So in the Kentucky case, you claimed that  
19 the companies' energy and capacity forecasts were too  
20 high, correct?

21 A. Yes.

22 Q. And you claimed that the company did not  
23 appropriately account for compliance with future  
24 environmental regulations, correct?

25 A. Yes, that's true.



1           Q.    And you criticized the companies for  
2           failing to account for the possible costs involved  
3           with complying with ozone standards, correct?

4           A.    In Kentucky?

5           Q.    Yes.

6           A.    Yes.

7           Q.    And in Kentucky, you criticized the  
8           company for failing to take into account adequately  
9           the future compliance with regulations relating to  
10          coal combustion residuals, correct?

11          A.    Yes.

12          Q.    You also were critical of the company for  
13          failing to account for the risk of future compliance  
14          with Clean Water Act regulations relating to cool  
15          water -- cooling water intake, correct?

16          A.    Yes.

17          Q.    In the Kentucky case, you were critical  
18          of the company for failing to account for the risk of  
19          future compliance with effluent limitation  
20          guidelines, correct?

21          A.    I believe so, yes.

22          Q.    And you criticize the company on the  
23          grounds that it failed to provide you sufficient  
24          information about historical costs and projected  
25          costs, correct?

1           A.    I recall that well, yes.

2           Q.    And as I think we mentioned earlier, the  
3   Kentucky Commission approved the company's  
4   application for its environmental compliance plan,  
5   correct?

6           A.    Yes, they did.

7           Q.    Now, I want to talk to you about the case  
8   in which you testified in Oklahoma.  It was your  
9   position in that case that the company in that case  
10  did not adequately -- or the company ignored future  
11  environmental compliance costs, correct?

12          A.    Yes.

13          Q.    And you criticized the company for  
14  failing to take into account the cost of compliance  
15  of the proposed cooling intake water rule, correct?

16          A.    I can't recall if I addressed the cooling  
17  intake rule in that case or not.

18               MR. KUTIK:  Your Honor, I would ask that  
19  we have marked at this time as Company Exhibit 133 a  
20  document which bears a caption before the Oklahoma  
21  Corporation Commission in the Matter of the  
22  Application of the Oklahoma Gas & Electric Company  
23  for Commission Authorization of a Plan to Comply with  
24  the Federal Clean Air Act and Cost Recovery and for  
25  Approval of the Mustang Modernization and Cost

1 Recovery, Cause No. PUD 201400229, the direct  
2 testimony of Tyler Comings, public version, on behalf  
3 of Sierra Club dated December 16, 2014.

4 EXAMINER ADDISON: It will be so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

7 EXAMINER ADDISON: You may.

8 Q. (By Mr. Kutik) Mr. Comings, I would like  
9 to hand you what has been marked for identification  
10 as Company Exhibit 133.

11 A. Thank you.

12 Q. Mr. Comings, do you recognize this?

13 A. I certainly do.

14 Q. That's your testimony in the Oklahoma  
15 case we talked about?

16 A. Yes.

17 Q. Let me refer you to page 24 of that  
18 document.

19 A. Okay.

20 Q. And do you see some discussion there  
21 about the cooling water intake rule?

22 A. I do.

23 Q. Does that refresh your recollection that  
24 you criticized the company for failing to take into  
25 account the cost of compliance with the proposed

1       cooling intake water rule?

2               A.     Yes, it does.

3               Q.     You also criticized the company in that  
4       case for failing to take into account the cost of  
5       compliance with the proposed coal combustion  
6       residuals rule, correct?

7               A.     I believe that's true, yes.

8               Q.     You also criticized the company for  
9       failing to take into account the cost of compliance  
10      with ozone air quality standards.

11              A.     Yes.

12              Q.     You also criticized the company for  
13      failing to take into account the cost of compliance  
14      with effluent limitation guidelines, correct? Do you  
15      want to look at page 35 of your testimony in that  
16      case.

17              A.     Thank you. Yes.

18              Q.     Now, with regard to your comments in the  
19      environmental area in those cases and in this case,  
20      would it be fair to say you have never been to a  
21      generating plant?

22              A.     Yeah, that's fair to say.

23              Q.     And you have never had any operating  
24      responsibility for a generating plant?

25              A.     That's correct.

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1           Q.    You have never had any responsibility for  
2    implementation or design of an environment compliance  
3    program for a generating plant?

4           A.    That's correct.

5           Q.    You have never had any responsibility for  
6    designing equipment necessary for an environmental  
7    compliance program for a generation plant?

8           A.    Yes, that's correct.

9           Q.    You have never had any responsibility for  
10   designing a system to handle coal combustion  
11   residuals?

12          A.    Yes, that's correct.

13          Q.    You have never had any responsibility for  
14   designing a cooling intake system?

15          A.    Yes, that's correct.

16          Q.    Or an effluent handling system?

17          A.    Correct.

18          Q.    Would it be fair to say you have never  
19   even read all of the Clean Air Act?

20          A.    Yes.

21          Q.    You don't know what the titles of the  
22   Clean Air Act are?

23          A.    No.  I am aware of certain subsections  
24   but not the titles.

25          Q.    Okay.  And the only part of the Clean Air

1 Act that you believe applies to coal-fired generation  
2 plants are the sections that deal with the National  
3 Ambient Air Quality Standards in Section 111(D), as  
4 in David, correct?

5 MR. FISK: I would object to the extent  
6 it calls for a legal conclusion.

7 EXAMINER ADDISON: We've already noted  
8 Mr. Comings is not an attorney, so he can answer the  
9 question if he knows.

10 A. No. I can't think of any others right  
11 now.

12 MR. FISK: Can I have the question and  
13 answer read back?

14 EXAMINER ADDISON: You may.

15 (Record read.)

16 Q. (By Mr. Kutik) Now, sir, are you aware of  
17 a rule called MATS or known as MATS?

18 A. Yes.

19 Q. That's an air quality rule, correct?

20 A. Yes. It has to do with mercury, yes.

21 Q. That comes from the Clean Air Act,  
22 correct?

23 A. I believe so. Thank you for refreshing  
24 my memory.

25 Q. That applies to coal-fired generation

1 plants, correct?

2 A. Yes.

3 Q. How about acid rain, are there provisions  
4 in acid rain for the Clean Air -- in the Clean Air  
5 Act?

6 A. I know there is an acid rain market --  
7 acid rain market, and I am not sure if it's under the  
8 Clean Air Act or not.

9 Q. So the answer to my question about  
10 whether acid rain is under the -- there are  
11 provisions for -- relating to acid rain under the  
12 Clean Air Act is "I don't know"?

13 A. Yeah, I can't say for sure.

14 Q. All right. Are you aware of any  
15 requirements under the Clean Air Act for plant  
16 operating permits?

17 A. Such as a New Source -- New Source  
18 Review? That's one that pops to my mind.

19 Q. So there are such provisions as well,  
20 correct?

21 A. Yeah. I didn't know if that was in the  
22 Clean Air Act or not.

23 Q. All right. Now, it would also be true to  
24 say you haven't read all of the Clean Water Act,  
25 correct?

1           A.    Yes.

2           Q.    And the only part of the Clean Water Act  
3           that you believe applies to coal-fired generation  
4           plants is Section 316(b) with respect to effluent  
5           limitation guidelines?

6           A.    316(b) has to do with cooling water, not  
7           effluent.

8           Q.    So that's the only section you're aware  
9           of, correct?

10          A.    There are two sections, 316(b), effluent  
11          limitation guidelines are the two sections.

12          Q.    Have you ever heard of anything called  
13          the National Pollution Discharge Elimination System?

14          A.    NPDES permits, yes.

15          Q.    Those are permits for water pollution  
16          limits, correct, that are established by point  
17          sources?

18          A.    That sounds right to me, but I can't say  
19          for sure.

20          Q.    Is it your testimony you don't know  
21          whether the National Pollution Discharge Elimination  
22          System includes or relates to provisions of the Clean  
23          Water Act?

24          A.    It would make logical sense for it to be  
25          the Clean Water Act. I can't say for sure if it's in



1       there or not.

2               Q.     You don't know.

3               A.     I don't know for sure.

4               Q.     Now, you believe that it's possible to  
5       develop cost estimates for environmental regulation  
6       that haven't even been proposed, correct?

7               A.     That have not even been proposed?

8               Q.     Yep.

9               A.     Yes, it's possible.

10              Q.     Okay. But you didn't do any analysis of  
11       the potential costs of Sammis or the OVEC plants to  
12       comply with sulfur dioxide air quality standards,  
13       correct?

14              A.     Correct.

15              Q.     You did not do any analysis of the  
16       potential costs of Sammis or the OVEC plants to  
17       comply with the Cross-State Pollution Air Rules,  
18       correct?

19              A.     Cross-State Air Pollution Rule, no, I did  
20       not.

21              Q.     And did you not do any potential -- any  
22       analysis of potential costs to comply with ELG or the  
23       ELGs?

24              A.     No, I did not.

25              Q.     And you did not do analysis of the

1 potential costs of Sammis or OVEC plants to comply  
2 with ozone air quality standards except for the  
3 possible cost to install SCRs, correct?

4 A. That's right.

5 Q. Now, with regard to ozone, would it be  
6 fair to say you don't know what the chemical formula  
7 of ozone is?

8 A. It's O<sub>3</sub>.

9 Q. Isn't it true you didn't know what -- you  
10 didn't know that in your deposition?

11 A. I did not. I did not know for sure in my  
12 deposition. I remember that.

13 Q. And you don't know what nitrous oxide is?

14 A. I have heard of it. I don't know the  
15 chemical compound.

16 Q. And you don't know whether nitrous oxide  
17 is omitted from power plants?

18 A. No, I don't know.

19 Q. Do you know what -- is it also true that  
20 you don't know what nitrous oxide is?

21 A. I've heard of it. I know what nitrous  
22 oxide is. It's sometimes referred to as laughing  
23 gas.

24 Q. Would it be fair to say you don't know  
25 what the chemical formula of nitrous oxide is?

1 MR. FISK: Your Honor, I would object at  
2 this point to the relevance of the chemical formula  
3 for nitrous oxide. Isn't relevant to this  
4 proceeding.

5 Q. Your Honor, he purports to be an  
6 environmental regulation and rule compliance expert.  
7 And ozone is a big part of what he testifies to, and  
8 we should be able to testify -- or refer back to his  
9 understanding in this area and something as basic as  
10 what ozone is and what various forms of NOx and RECs  
11 will be certainly is relevant to this witness's  
12 credibility and qualifications.

13 EXAMINER ADDISON: I will allow this  
14 question, but let's not stay in this area very long.

15 MR. KUTIK: May I have the question read,  
16 please, your Honor?

17 EXAMINER ADDISON: You may.

18 (Record read.)

19 A. Yes, I don't know for sure.

20 Q. And would it be fair to say you don't  
21 know whether nitrous oxide is emitted from power  
22 plants?

23 A. I am not sure.

24 Q. Do you know what -- do you know whether  
25 NO3 is emitted -- isn't it true that you don't know

1 whether NO3 is emitted from power plants?

2 A. I don't know.

3 Q. Now, would it also be fair to say you are  
4 only vaguely familiar with the process by which  
5 air -- which emission standards are set?

6 A. I have a basic familiarity with the  
7 one-hour SO-2 and the ozone standard.

8 Q. Let me refer you to your deposition at  
9 page 131. Are you there?

10 A. 131?

11 Q. Yes.

12 A. Yes.

13 Q. And did I not ask you the following  
14 question and did you not answer the following way  
15 starting on line 11, "Question: Now are you familiar  
16 with the process by which emission standards -- by  
17 which new emission standards are set?

18 "Answer: Vaguely."

19 Did I read that correctly?

20 A. Yes.

21 Q. Now, would it be fair also to say that  
22 you believe that the technical basis for more  
23 stringent emission standards is air dispersion  
24 modeling?

25 A. Air dispersion modeling can be used to

1 identify sources and reach conclusions about where  
2 the emissions are going in an area.

3 Q. Well, isn't it true you believe that the  
4 technical basis for determining -- for determining  
5 more stringent emission limits would include modeling  
6 and done by the states, and that modeling would be  
7 air dispersion modeling?

8 A. Sorry, can I have it read back, please?

9 EXAMINER ADDISON: Yes, please. Thank  
10 you.

11 (Record read.)

12 A. Oh, no. That's not true. If you are  
13 talking about how the standards themselves are set,  
14 it's based on scientific research on public health,  
15 effects on public health.

16 Q. Let me refer to your deposition, sir,  
17 page 131. Are you there?

18 A. Yes.

19 Q. And did you not answer the following  
20 questions the following way, "Question: Okay. What  
21 would be the technical basis for -- for determination  
22 to set a more stringent emission limit for Sammis?

23 "Answer: They would have to be, my  
24 understanding is, monitoring or monitoring data or  
25 modeling by the state or at the state's behest.

1                   "Question: What type of modeling would  
2 have to be done?

3                   "Answer: Air dispersion modeling."

4                   Do you see that? Did I read that  
5 correctly?

6                   MR. FISK: Your Honor, I would object.  
7 That is improper impeachment. There was nothing in  
8 the questions Mr. Kutik asked --

9                   MR. KUTIK: I specifically asked him this  
10 before, your Honor, whether the technical basis for  
11 setting more stringent emission limits would be  
12 monitoring data or modeling done by the state, and  
13 that modeling would be air dispersion modeling which  
14 is specifically the language that he used in his  
15 answers in his deposition.

16                  EXAMINER ADDISON: Objection overruled.

17                  MR. FISK: Your Honor, I believe he asked  
18 about standards, not limits, and those are two  
19 different things.

20                  Q. (By Mr. Kutik) Now, would it be fair to  
21 say, sir?

22                  EXAMINER ADDISON: One moment, Mr. Kutik.  
23 We'll let the transcript speak for itself. If you  
24 think there is enough of a distinction to bring it up  
25 during redirect, you can do so at that time.

1 MR. FISK: Thank you, your Honor.

2 Q. (By Mr. Kutik) Would it be fair to say,  
3 sir, you believe air dispersion modeling should be  
4 used for ozone?

5 MR. FISK: Your Honor, I would object  
6 that that's vague for ozone. For what with regards  
7 to ozone?

8 EXAMINER ADDISON: Mr. Kutik?

9 MR. KUTIK: Your Honor, if the witness  
10 has a problem, the witness can say so.

11 EXAMINER ADDISON: Do you understand the  
12 question as it's been posed?

13 THE WITNESS: No. I was going to ask for  
14 clarification, and my lawyer cut me off.

15 Q. (By Mr. Kutik) Well, would you believe  
16 that -- you are familiar with dispersion modeling;  
17 are you not?

18 A. At a basic level, yes.

19 Q. And isn't it true that among the  
20 particular participate -- particular pollutants that  
21 dispersion modeling would be used for for compliance  
22 purposes is ozone?

23 A. I believe some sort of modeling would be  
24 used to identify sources for ozone could be used and  
25 we also could use monitoring data.

1           Q.    But air dispersion modeling could be used  
2   for ozone compliance?

3           MR. FISK:  Again, I object.  What --  
4   compliance with what?

5           MR. KUTIK:  This is coaching.  This is  
6   coaching.

7           MR. FISK:  Simply ozone compliance.

8           EXAMINER ADDISON:  I am going to overrule  
9   the objection.  I think with the additional  
10   questioning, the witness has enough clarification to  
11   answer the question.

12           THE WITNESS:  Could you read it back,  
13   please?

14           EXAMINER ADDISON:  Yes, please.

15           (Record read.)

16           A.    Could you restate that question then?  I  
17   don't understand.

18           Q.    Isn't it true that air dispersion  
19   modeling can be used for compliance purposes for  
20   ozone?

21           A.    I believe it -- I believe some sort of  
22   modeling of the emissions can be -- for the state can  
23   be used in there to identify sources and to show that  
24   they are in compliance.

25           Q.    Did that include -- and that includes air



1 dispersion modeling, correct?

2 A. I know air dispersion modeling is -- can  
3 be used for SO-2. I am trying to remember if it's  
4 the same name. Some sort of modeling can be used for  
5 ozone. I don't know if you would call it air  
6 dispersion modeling or not.

7 Q. Okay. Let me refer you to your  
8 deposition, sir, page 131 -- excuse me, 132.

9 A. Sure.

10 Q. Are you there?

11 A. Yes.

12 Q. And did you not answer the following  
13 question the following way starting at line 23,  
14 "Question: Okay. And what particular pollutant  
15 would dispersion modeling be used for compliance  
16 purposes?

17 "Answer: I believe it can be used for  
18 the one-hour SO-2 standard if there is either air  
19 dispersion modeling again or monitoring data, for  
20 instance.

21 "Question: Anything else?

22 "Answer: I believe it can also be used  
23 for ozone compliance."

24 Did I read that correctly?

25 A. Yes.

1           Q.    Now, it would be fair to say that you  
2 haven't done air dispersion modeling, correct?

3           A.    Correct.

4           Q.    And it would also be fair to say that you  
5 don't know the typical geographic scope of an air  
6 dispersion modeling study.

7           A.    That's right.

8           Q.    You don't know if ozone, for example, is  
9 modeled on a local, state, or regional basis.

10          A.    No, I don't.

11          Q.    And you don't know what the Lake Michigan  
12 Air Directors Consortium is.

13          A.    I have heard the name, but other than  
14 that, no.

15          Q.    And you don't know what it does.

16          A.    No.

17          Q.    You don't know whether it has anything to  
18 do with modeling air dispersion or doing air  
19 dispersion models for any part or all of the state of  
20 Ohio, correct?

21          A.    Correct.

22          Q.    Now, would you agree with me that air  
23 dispersion modeling is not the same thing as  
24 photochemical grid modeling?

25          A.    I don't know for sure.

1           Q.    Okay.  Are you aware that the EPA has  
2           guidelines on models for the use of the ozone  
3           standard compliance?

4           A.    It would not surprise me, but I don't  
5           know for sure.

6           Q.    Okay.

7           MR. KUTIK:  Your Honor, at this point, I  
8           am going -- I would like to show the witness some  
9           publication from the U.S. Environmental Protection  
10          Agency, and I guess for discussion purposes, I would  
11          like to have it marked as Company Exhibit 134.

12          And specifically, your Honor, I would  
13          like to show the witness some material out of the  
14          Federal Register for Wednesday, November 9, 2005,  
15          Environmental Protection Agency Revision to Guideline  
16          on Air Quality Models, Adoption of a Preferred  
17          General Purpose Flat and Complex Terrain Dispersion  
18          Model and Other Revisions Final Ruling.

19          EXAMINER ADDISON:  It will be so marked.

20          (EXHIBIT MARKED FOR IDENTIFICATION.)

21          MR. KUTIK:  May I approach, please?

22          EXAMINER ADDISON:  You may.

23          Q.    (By Mr. Kutik) Mr. Comings, I have handed  
24          you what's been marked for identification as Company  
25          Exhibit 134, and I am sure in your studies at

1 Synapse, you have seen materials from the EPA and the  
2 Federal Register, correct?

3 A. I have not seen this document before.

4 Q. So you would have been familiar with what  
5 this document calls for in terms of a particular tape  
6 of models that should be used for ozone compliance?

7 A. No. I may have heard of some of these  
8 models. As I said, I didn't -- I have never seen  
9 this document.

10 MR. KUTIK: Your Honor, we ask that the  
11 Bench take administrative notice of this publication.

12 EXAMINER ADDISON: Any objection?

13 MR. FISK: Objection.

14 EXAMINER ADDISON: We will take  
15 administrative notice.

16 Q. (By Mr. Kutik) Now, with regard to the  
17 SO-2 air quality standards, there are areas that are  
18 called attainment areas and areas that are called  
19 nonattainment areas, and then there are some areas  
20 that are not designated as either, correct?

21 A. Yes.

22 Q. And as the name implies, nonattainment  
23 areas indicate that the area is above the topical  
24 standard, correct?

25 A. Yes.

1           Q.    And would it be fair to say that all of  
2   the coal-fired plants at issue with respect to the  
3   SO-2 standard are not in nonattainment areas?  In  
4   other words, none of the places where the plants are  
5   located are nonattainment areas?

6           A.    That's my recollection.

7           Q.    And with respect to the ozone air quality  
8   standard, all of the coal-fired plants at issue in  
9   this case are in attainment areas.

10          A.    One of the -- I don't think that's true.  
11   One -- I remember one of the plants, the OVEC plants,  
12   I believe it's Jefferson County, Indiana, so it would  
13   be Clifty Creek, there is no monitor.

14          Q.    All right.  So it's either in -- so these  
15   are either in an attainment area or an unclassified  
16   area.

17          A.    I believe that's true.

18          Q.    Okay.  Now, would it also be true that  
19   you don't know whether there is a consent decree  
20   between any FirstEnergy company and the USEPA for  
21   emissions for any of the plants at issue here?

22          A.    I believe there was an NSR case and  
23   settlement that involved some of the plants here.

24          Q.    Okay.  Let me refer you to your  
25   deposition, sir, page 131.  At the top of the page,

1 did you not answer the following question the  
2 following way, "Question: Do you know whether  
3 there's a consent decree -- there is a consent decree  
4 between any FirstEnergy company and EPA regarding any  
5 of the emissions relating to any -- to the plants at  
6 issue in this case?

7 "Answer: The plants at issue in this  
8 case, I don't know."

9 Did I read that correctly?

10 A. Yes.

11 Q. So at your deposition, you didn't know,  
12 correct?

13 A. Correct. I subsequent -- well, I should  
14 say I did not recall at the deposition.

15 Q. Okay.

16 MR. KUTIK: Your Honor, I would like to  
17 have marked as Company Exhibit 135 a document that  
18 was filed in case -- in a case before the United  
19 States District Court for the Southern District of  
20 Ohio, Eastern Division, in the case of the United  
21 States of America, Plaintiff, versus Ohio Edison  
22 Company, et al., Civil Action No. C2-99-1181, and it  
23 is an amended notice of lodging with the attached  
24 proposed consent decree in lieu of original proposed  
25 consent decree attached to the March 18, 2005 notice

1 of lodging and a consent decree attached to that  
2 dated March 18, 2005.

3 EXAMINER ADDISON: It will be so marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MR. KUTIK: May I approach?

6 EXAMINER ADDISON: You may.

7 Q. Mr. Comings, I have handed you what's  
8 been marked for identification as Company Exhibit  
9 135. Do you recognize that?

10 A. This document, no.

11 Q. So it would be fair to say you have never  
12 seen this consent decree before?

13 A. I don't believe so, no.

14 MR. KUTIK: Your Honor, we ask that the  
15 Bench take administrative notice of the consent  
16 decrees issued in this case.

17 EXAMINER ADDISON: Any objection?

18 MR. FISK: No objection.

19 EXAMINER ADDISON: We will take  
20 administrative notice.

21 Q. Now, would it be fair to say you haven't  
22 seen emission standards ozone data since after 2013?

23 A. That's not fair to say, no.

24 Q. Let me refer you to page 150 of your  
25 deposition, sir. Are you there, sir?

1           A.    Yes.

2           Q.    And starting at line 9, did you not give  
3 the following answers to the following questions:  
4 "Question: Have you seen data regarding ozone levels  
5 in Sammis County?

6                   "Answer: I don't think there's a Sammis  
7 County.

8                   "Question: I'm sorry. Jefferson County,  
9 in Sammis's county.

10                   "Answer: Okay. Jefferson County, yeah,  
11 I've reviewed EPA's data for Jefferson County.

12                   "Question: Okay. Have you compared the  
13 data from 2012 through 2014 versus 2011 through  
14 2013 -- excuse me, 2012 through 2014 versus 2011 to  
15 '13?

16                   "Answer: I have not seen data past 2013.  
17 I have seen data from 2011 through 2013."

18                   Did I read that correctly?

19           A.    Yes. Subsequently EPA posted 2012  
20 through 2014 data which I reviewed after this  
21 deposition.

22                   MR. KUTIK: May I, your Honor, strike  
23 everything after the word "yes"?

24                   EXAMINER ADDISON: Motion to strike will  
25 be granted. You can bring it up during redirect,



1 Mr. Fisk.

2 MR. FISK: Thank you, your Honor.

3 Q. Would it also be fair to say, sir, you  
4 have not modeled the amount of NOx reductions that  
5 have been achieved at Sammis?

6 A. I have not modeled, no.

7 Q. What I said was correct?

8 A. Yes.

9 Q. And you haven't seen any ozone models  
10 that involve Ohio or any part of Ohio.

11 A. Correct.

12 Q. You believe that there is a real risk  
13 that SCRs would be required for Sammis because there  
14 is -- there was a proposed ozone standard that's  
15 lower than the -- than previously allowed, correct?

16 A. That is one of the reasons I list, yes.

17 Q. And a new ozone standard was released  
18 earlier this month, correct?

19 A. Yes.

20 Q. And that ozone standard is 70 parts per  
21 billion, correct?

22 A. That is correct.

23 Q. And it's down from 75 parts per billion,  
24 correct?

25 A. That's correct.

1           Q.    And would it be fair to say that the  
2           latest data from Jefferson County, Ohio, is that  
3           ozone levels are below 70 parts per billion?

4           A.    No, it's not correct.

5           Q.    Have you seen, sir, any projections by  
6           EPA of ozone levels for 2025?

7           A.    Yes, I have.

8                   MR. KUTIK:  Your Honor, I would like to  
9           have marked at this time as Company Exhibit 136 a  
10          document entitled "Counties Projected to Violate the  
11          2015 Primary Ground Level Ozone Standards."

12                   EXAMINER ADDISON:  So marked.

13                   (EXHIBIT MARKED FOR IDENTIFICATION.)

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

15                   EXAMINER ADDISON:  You may.

16           Q.    (By Mr. Kutik) Mr. Comings, I have handed  
17          you what has been marked as Company Exhibit 136.  Do  
18          you recognize these as projections from EPA as to  
19          ozone levels in -- for 2025 for various counties in  
20          the United States?

21                   MR. FISK:  Your Honor, this document  
22          doesn't have a link on it or any reference to EPA on  
23          it.  What is the source of this document?

24                   EXAMINER ADDISON:  Mr. Kutik?

25                   MR. KUTIK:  Well, I don't believe I need

1 to answer that question, your Honor, if the witness  
2 can identify it, but it comes from the USEPA website.

3 EXAMINER ADDISON: Do you need that last  
4 question read back?

5 THE WITNESS: I'm sorry. I've  
6 reviewed -- there is a map on the EPA's website that  
7 I believe this is the underlying data for that map.  
8 I have not seen this specifically.

9 Q. And are you aware that for Jefferson  
10 County, Ohio, EPA -- excuse me, USEPA indicates that  
11 ozone levels in 2000 -- projects 2025 ozone levels  
12 would be below 70 parts per billion?

13 A. According to this document, yes.

14 Q. Well, are you aware of that otherwise,  
15 sir?

16 A. No.

17 Q. Do you recognize this as the data that  
18 underlines the map that you saw?

19 A. I am inferring that based on the  
20 description at the beginning of the document.

21 Q. Would it be correct, sir, in the map you  
22 reviewed, no map -- no county in Ohio would be  
23 considered nonattainment as projected for 2025?

24 A. I believe that's true. I remember seeing  
25 Allegheny County, Pennsylvania, which is right over

1 the border, but -- and that's on here, 71. But it  
2 appears not in Ohio.

3 Q. Now, would it be fair to say that you  
4 believe that a requirement to install SCRs on Sammis  
5 units or Clifty Creek could come from a lawsuit by  
6 downwind states or communities?

7 A. That's my understanding.

8 Q. And you don't know if downwind  
9 communities or states suing EPA is even a  
10 possibility, correct?

11 A. I believe state -- states have some  
12 recourse, and I am not sure exactly how that's  
13 carried out.

14 Q. So the --

15 A. Cross downwind states, I should say.

16 Q. So is the answer to my question "yes"?

17 A. Yes.

18 Q. Would it be fair to say Sammis has been  
19 operating for several decades?

20 A. Yes.

21 Q. And would it also be fair to say you are  
22 not aware of any changes in the prevailing winds  
23 which would change which communities or states are  
24 downwind of Sammis?

25 A. Yes, I am not aware of any changes in

1 wind patterns.

2 Q. Would it be fair to say you are not aware  
3 of any states or communities that has sued EPA  
4 because of any ozone standard from the emissions from  
5 Sammis?

6 A. I am not aware of any.

7 Q. Now, the decision to install an SCR would  
8 be a decision made by FES, correct?

9 A. Ultimately, that may be needed in  
10 response to -- FES would -- wouldn't do that out of  
11 the goodness of their hearts. I believe it would be  
12 some sort of either anticipation of compliance or  
13 compliance to the existing regulation.

14 Q. But the ultimate decision would be FES's  
15 decision, correct?

16 A. Ultimately, and FES could also choose to  
17 retire part of the plant as well.

18 Q. Is the answer to my question "yes"?

19 A. Yes.

20 Q. And you would agree, would you not, that  
21 an SCR or installing one would not be the only means  
22 of compliance?

23 A. Yes. As I just stated, partial or full  
24 retirement could also be a means of compliance.

25 Q. Well, there may be other -- other methods

1 too, correct?

2 A. For the Cross-State Air Pollution Rule,  
3 there are also allowances.

4 Q. Okay. Now, you are not aware of any law  
5 that requires the installation of an SCR, correct?

6 A. Again, it's in compliance with the law  
7 that the SCRs are installed. They're not installed  
8 for the -- units don't typically install SCRs because  
9 they want to. It's in compliance with regulations.

10 Q. There is no law that says you must  
11 install an SCR, correct?

12 A. Where it's stipulated in the law, not  
13 that I can recall, no.

14 Q. And you are not aware of any state that  
15 required SCRs to be installed on all coal units.

16 A. On all coal units, no.

17 Q. And you are not aware of any state that's  
18 proposed to do that, correct?

19 A. On all coal units, no.

20 Q. Okay. Now, you do know utilities trade  
21 NOx allowances, correct?

22 A. Yes.

23 Q. And you haven't analyzed whether the  
24 companies could comply with more stringent standards  
25 by using the NOx emissions market?

1           A.    No.  And I don't know what future  
2 versions of CSAPR would look like even.

3           MR. KUTIK:  Your Honor, I move to strike  
4 everything starting with the word "And."

5           MR. FISK:  Your Honor --

6           EXAMINER ADDISON:  Mr. Fisk, go ahead.

7           MR. FISK:  Mr. Comings was simply  
8 providing context and explanation for his answer.

9           EXAMINER ADDISON:  You can make those  
10 arguments during redirect.  Thank you, Mr. Fisk.

11          MR. KUTIK:  So is the motion to strike  
12 granted?

13          EXAMINER ADDISON:  Motion to strike is  
14 granted.

15          Q.    (By Mr. Kutik) And isn't it true you  
16 can't really tell the likelihood that an SCR would be  
17 required at Sammis?

18          A.    I can't give you a probability, and I  
19 don't think it's zero, but I can't give you a number.

20          Q.    Okay.  Now, I want to refer you to page  
21 26 of your testimony, Table 5.

22          A.    Direct?

23          Q.    Yes.

24          A.    Yes.

25          Q.    Now, we see a table there, do we not?

1 A. Yes.

2 Q. And that table is taken from your  
3 Kentucky testimony, right?

4 A. I believe that's the same table.

5 Q. Well, it is the same table, isn't it?

6 A. Yes, I believe so, yes.

7 Q. And would it be fair to say that here in  
8 this case, the companies did not need the capacity  
9 and don't intend to use it to serve customers,  
10 correct?

11 A. That's right.

12 Q. So the middle column really doesn't have  
13 any relevance to our case; isn't that correct?

14 A. Yes. Well, I am talking here about  
15 general decision making, and in this case the company  
16 does not need capacity, that is true.

17 Q. Okay. Now, there is some comments here  
18 about stranded investments. Would it be fair to say  
19 you don't know Ohio law on stranded investments?

20 A. I believe it's determined by the  
21 Commission whether those can be recovered or not.

22 Q. Okay. Was the answer to my question  
23 "yes"?

24 A. I can't tell you the law specifically.  
25 My understanding is that the Commission can decide.



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

2 A. Sure.

3 Q. Page 205. And specifically did you  
4 answer the following question the following way  
5 starting at line 13, "Question: Now, do you know  
6 whether stranded costs or stranded investments can be  
7 recovered under Ohio law?" Mr. Fisk objected, and  
8 you answered: "I don't know what the Ohio law is on  
9 stranded investment." Did I read that correctly?

10 A. Yes.

11 MR. FISK: I would just like to note for  
12 the record the objection that it was called for a  
13 legal conclusion.

14 EXAMINER ADDISON: Thank you, Mr. Fisk.  
15 It will be noted.

16 Q. (By Mr. Kutik) And would it be fair to  
17 say you don't know if any stranded investment has  
18 been recovered on Davis-Besse or Sammis?

19 A. When a stranded investment -- When I hear  
20 that, I typically think of after a retirement. It's  
21 possible if there are other things that were invested  
22 in the plant -- plants were no longer used, those  
23 would -- those can be considered stranded  
24 investments, but no, I can't say for sure.

25 Q. Okay. So your answer is you don't know.

1           A.    Not for sure, no.

2           Q.    Is it also the case, sir, you don't know  
3 what an electric transition plan is? Transition plan  
4 is, excuse me.

5           A.    I have heard the term. I can't tell you  
6 anything beyond that.

7           Q.    Okay. Isn't it true that you don't know  
8 what a rate certainty plan is?

9           A.    Yeah, I don't know what that is.

10          Q.    Isn't it true you don't know what a rate  
11 stabilization plan is?

12          A.    I've heard rate stabilization mentioned  
13 in this case and in the orders by the Commission.  
14 This particular plan, I am not sure.

15          Q.    So you don't know what a rate  
16 stabilization plan is, correct?

17          A.    Presumably has to do with stabilizing  
18 rates. I can't tell you anything beyond that.

19          Q.    Right. So would it be fair to say if the  
20 companies had such plans, either electric transition  
21 plan, rate certainty plan, or rate stabilization  
22 plan, you haven't reviewed the companies' cases  
23 involving such plans?

24          A.    That's fair to say.

25          Q.    I want to talk to you a little bit

1 about -- well, let me ask to go off the record.

2 EXAMINER ADDISON: Let's go off the  
3 record.

4 (Discussion off the record.)

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

7 Q. (By Mr. Kutik) Now, sir, I want to talk  
8 to you about some natural gas forecasts. You would  
9 not view NYMEX futures as a good indication of  
10 natural gas prices beyond two years, correct?

11 A. That's generally true. There is not  
12 enough volume after the first two years to really  
13 place a lot of stock in those.

14 Q. You have anticipated my next question,  
15 thank you.

16 A. Okay. Try to help you out to hurry.  
17 Just kidding.

18 Q. And would it be fair to say with respect  
19 to oil and gas drilling activity, you don't know how  
20 those have trended, correct?

21 A. With respect to gas, there has been in  
22 recent years more of a trend of hydraulic fracturing  
23 to recover shale gas, more of that.

24 Q. In terms of the number of rigs being  
25 drilled, you don't know what the trend is, correct?

1           A.    No, I don't.

2           Q.    And you are aware of something in wells  
3 and gas wells and oil wells called "depletion rates"?

4           A.    I have heard the term.

5           Q.    Right. And so would it be fair to say  
6 you don't know whether depletion rates for  
7 conventional wells differ from unconventional wells  
8 or wells in shale plays?

9           A.    I'm not sure.

10          Q.    So the answer to my question is yes, you  
11 don't know.

12          A.    Yes, I don't know.

13          Q.    Now, with respect to capacity prices, you  
14 would agree with me there isn't necessarily an  
15 adverse relationship between energy and capacity  
16 prices, correct?

17          A.    Adverse, can you define adverse  
18 relationship?

19          Q.    Negative correlation.

20          A.    Negative correlation. Not necessarily.

21          Q.    Okay. So what I said was correct.

22          A.    Yeah, yes.

23          Q.    And you don't know of any correlation or  
24 negative correlation between natural gas prices and  
25 capacity prices, correct?

1           A.    No, not directly, no.

2           Q.    Okay.  You in your -- for your capacity  
3 prices, would it be fair to say that you use a  
4 historical average price for suggested capacity, for  
5 a suggested capacity price?

6           A.    I use the historical price relative to  
7 the net CONE value in each year.

8           Q.    So you use historical data, correct?

9           A.    Yes.

10          Q.    And would it be fair to say that there  
11 have been some developments over the last year or so  
12 that will affect the capacity market?

13          A.    Yes.  The capacity performance plan and  
14 the change in load forecast methodology being  
15 considered by PJM.

16          Q.    And would the EPSA decision with respect  
17 to demand resources also be a factor that might come  
18 into play to affect capacity markets?

19          A.    It may come into play, yes.

20          Q.    Would you agree with me capacity prices  
21 have not remained flat, only increasing with  
22 inflation?

23          A.    They are not -- my forecast is not -- my  
24 forecast does increase each year with inflation.  
25 It's meant to capture -- again, it's the historical

1 average. It's not meant to capture fluctuations in  
2 each year which do happen in the capacity market.  
3 Historical data does go up and down.

4 Q. I didn't ask you anything about your  
5 forecast. I just asked you whether in the past  
6 capacity prices have not remained flat, only  
7 increasing with inflation. That would be a fair  
8 statement, correct?

9 MR. FISK: Objection, asked and answered.

10 EXAMINER ADDISON: Overruled.

11 THE WITNESS: Can you restate the  
12 question? I'm sorry.

13 MR. KUTIK: May I have it read, please?

14 EXAMINER ADDISON: You may.

15 (Record read.)

16 A. Yes, that's a fair statement.

17 Q. Right. I want to talk to you a little  
18 bit about your second supplemental testimony.

19 A. Okay.

20 Q. And your views with respect to the  
21 findings regarding the regulatory impact models of  
22 the Clean Power Plant, now, you've read the  
23 regulatory impact statement, correct?

24 A. Sections of it. Sorry. Sections of it.

25 Q. And you quote the regulatory impact

1 statement, correct?

2 A. Yes.

3 Q. And it's your view that the regulatory  
4 impact statement says that models for both the  
5 rate-based case and the mass-based case do not allow  
6 a state to refer to, use, or trade for out-of-state  
7 resources to achieve compliance, correct?

8 MR. FISK: And I would object that the  
9 document speaks for itself.

10 EXAMINER ADDISON: You can answer the  
11 question.

12 MR. KUTIK: He has quoted the document  
13 and characterizes it, your Honor.

14 EXAMINER ADDISON: He can answer the  
15 question.

16 A. Yes. In terms of ERCs or allowances.

17 Q. Okay. Now, you quote the regulatory  
18 impact analysis on page 7 of your second supplemental  
19 testimony to illustrate that fact, correct?

20 A. Yes.

21 Q. And you were the one that selected the  
22 quote, correct?

23 A. Yes.

24 Q. You selected where the quote would begin  
25 and where it would end.

1 A. Yes.

2 Q. And you included a couple of dots in the  
3 middle of the quote. Do you see that?

4 A. Yes, I do.

5 Q. What's that called?

6 A. I don't know what you would call it.

7 Q. How about an ellipses?

8 A. Sure.

9 Q. Okay. And you were the one who decided  
10 to use the ellipses, right?

11 A. Yes, yes.

12 Q. And you felt that what ellipses means is  
13 that material is omitted without changing the meaning  
14 of the passage; would you agree with that?

15 A. In general. I can't remember what is in  
16 this spot that you are referring to.

17 MR. KUTIK: May I approach?

18 EXAMINER ADDISON: You may.

19 MR. KUTIK: Your Honor, I would like to  
20 provide the witness with a copy of what has  
21 previously been marked, and I assume admitted or  
22 administrative notice taken, of Sierra Club  
23 Exhibit 54, which was shown to Mr. Evans, and it's  
24 the Regulatory Impact Analysis for the Clean Power  
25 Plan Final Rule.



1 MR. FISK: You meant 64?

2 MR. KUTIK: Yes.

3 Your Honor, if I said 54, I meant 64.

4 EXAMINER ADDISON: Thank you.

5 MR. KUTIK: Thank you, counsel.

6 Q. (By Mr. Kutik) Now, in your testimony,  
7 you quote from page 3-10, correct?

8 A. Yes.

9 Q. And could you go to page 3-10 of this  
10 document, please. And the second full paragraph on  
11 that page is the beginning of your quote, correct?

12 A. Yes.

13 Q. And the first sentence says, "Each of the  
14 two illustrative plan approaches assumes that sources  
15 within each state comply with the applicable state  
16 goals without exchanging a compliance instrument (ERC  
17 or allowance) with sources in any other state," and  
18 then you have the ellipses.

19 So what you didn't quote was the  
20 following "However, in the rate-based scenario,  
21 sources are allowed to procure renewable energy or  
22 demand-side energy efficiency beyond their own state  
23 in order to adjust their effective emission rate,  
24 which is consistent with the conditions for  
25 rate-based implementation in any state that are

1 described in Section VIII of the preamble."

2 And there is a footnote. "For example,"  
3 and then we pick up your quote, "while the final rule  
4 enables states to achieve their mass goals with the  
5 flexibility of interstate trading, this RIA presents  
6 analysis is an illustrative plan approach that  
7 assumes that each state achieves its goal  
8 independently," and that's the end of your quote.

9 The document goes on, "Cooperation  
10 between the states that allows for trading across  
11 states would provide EGUs with additional low cost  
12 abatement opportunities and would, therefore, lower  
13 the overall cost of compliance across the affected  
14 states. While the illustrative plan approaches  
15 assume particular plan types that may limit  
16 compliance options available to affected EGUs, the  
17 equilibrium effects of generation emissions,  
18 et cetera, in a particular state that are forecast in  
19 these analyses depend on the behavior of generators  
20 in neighboring states in response to the regulation.

21 "The full array of estimates for the  
22 benefits, costs and economic impacts of this action  
23 are presented for both the illustrative rate-based  
24 and mass-based plan approaches.

25 "These illustrative plan approaches are

1 designed to reflect, to the extent possible, the  
2 scope and nature of the CPP guidelines. However,  
3 there is considerable uncertainty with regard to the  
4 regulatory form and precise measures that states will  
5 adopt to meet the requirements, since there are  
6 considerable flexibilities afforded to the states in  
7 developing state plans. Nonetheless, the analyses"  
8 -- "the analysis of the benefits, costs, and relevant  
9 impacts of the rule attempts to encapsulate some of  
10 those flexibilities in order to inform states and  
11 stakeholders of the potential overall impacts of the  
12 CPP."

13 Did I read that correctly in terms of  
14 where your quotes began and stopped?

15 A. Yes.

16 Q. And two pages earlier, does the RIA also  
17 discuss the illus -- the rate-based illustrative plan  
18 approach as particularly on page 3-8?

19 Do you see the first full paragraph, it  
20 says, "In the rate-based illustrative plan approach  
21 analyzed in this IRA, the affected EGUs within each  
22 state are required to achieve an average emissions  
23 rate that is less than or equal to the state goals  
24 for each state. In order meet the goal for each  
25 state, the affected sources in this scenario have the

1 ability to do one or both of the following: One,  
2 generate" --

3 MR. FISK: Your Honor, are we just going  
4 to read this?

5 MR. KUTIK: Can I finish the question?

6 MR. FISK: Are we going to read this  
7 whole document?

8 EXAMINER ADDISON: One moment, Mr. Fisk.  
9 Let Mr. Kutik finish his question, and you can raise  
10 any objections that you have. Thank you.

11 Q. Let me start again, the passage says, "In  
12 this" -- "In the rate-based plan illustrative plan  
13 approach analyzed in this RIA, the affected EGUs  
14 within each state are required to achieve an average  
15 emissions rate that is less than or equal to the  
16 state goals for each state. In order meet the goal  
17 for each state, the affected sources in this scenario  
18 have the ability to do one of the following" -- "one  
19 or both of the following: One, generate in amounts  
20 within that state such that the average emissions  
21 rate is achieved, and/or two, include in the average  
22 emissions rate calculation new renewable generation  
23 or demand-side energy efficiency located outside of  
24 the state but within each of the illustrative  
25 Interconnection-based regions shown in Figure 3-1

1 below." Did I read that correctly?

2 MR. FISK: And, your Honor, I would  
3 object to counsel simply reading this document into  
4 the record. We have now read almost a whole page of  
5 this document.

6 EXAMINER ADDISON: I will allow this one  
7 question, but let's move on to another either line of  
8 questioning or another area. I would like to refrain  
9 from reading the entire document.

10 MR. KUTIK: I am not going to read the  
11 entire document. I only have one more question on  
12 this line, your Honor.

13 EXAMINER ADDISON: Please proceed,  
14 Mr. Kutik.

15 Q. Did I read that correctly?

16 A. Yes.

17 Q. And it refers to Figure 3.1 which is on  
18 the next page, correct?

19 A. Yes.

20 Q. So for Ohio, that would include the  
21 eastern interconnection, correct?

22 A. Yes.

23 Q. And that has -- would you accept, subject  
24 to check, 36 states in it?

25 A. Subject to check.

1           Q.    Now, would it also be fair to say that  
2           the mass-based model or the mass-based rule or  
3           approach deals with a concept called leakage?

4           A.    I believe that's true, yes.

5           Q.    And leakage deals with the fact that the  
6           mass-based approach controls mostly existing units?

7           A.    Yes.

8           Q.    And so leakage really addresses what to  
9           do with new units, correct?

10          A.    Yes.

11          Q.    And EPA as part of the rule on the  
12          mass-based approach has proposed to implement  
13          allowance-reduction approaches to address leakage,  
14          correct?

15          A.    That's correct.

16          Q.    And, specifically, they suggest  
17          addressing leakage through establishing either an  
18          output-based allocation set-aside or a set-aside that  
19          encourages the installation of renewable energy  
20          facilities?

21          A.    I believe that's -- I believe that's part  
22          of it.

23          Q.    And would it be fair to say that the IPM  
24          model for the mass-based approach only includes one  
25          of the two set-aside approaches, that is, the

1 installation of renewable energy set-asides?

2 A. I don't know.

3 Q. Let me refer you, sir, to the -- the RIA.  
4 And let me refer you specifically to page 3-45. Are  
5 you there?

6 A. Yes.

7 Q. And the first full paragraph in the  
8 middle of the page in the last -- last section before  
9 the section says "3.2 Social Costs," it says, "The  
10 illustrative mass-based implementation scenario  
11 presented in this chapter includes an RE set-aside  
12 which is only one component of a potential approach  
13 to address leakage to new sources." Do you see that?

14 A. Yes.

15 Q. So would you agree with me that the IPM  
16 model, the IPM for mass-based approach, only includes  
17 one of the two set-aside approaches?

18 A. I would agree it only includes one  
19 component, yes.

20 MR. KUTIK: All right. May I have one  
21 moment, your Honor?

22 EXAMINER ADDISON: You may.

23 Q. Mr. Comings, I think you said in response  
24 to one of my questions earlier that you had seen  
25 emissions data or air quality data with respect to

1 2012 through 2014; is that correct?

2 A. Yes, for ozone, yes.

3 Q. And isn't it true that with respect to  
4 Jefferson County, that shows levels below 70 parts  
5 per billion?

6 A. I thought it was at 70. That was my  
7 recollection.

8 MR. KUTIK: No further questions, your  
9 Honor -- thank you.

10 EXAMINER ADDISON: Thank you.

11 MR. KUTIK: Let me say I have questions  
12 on the confidential session.

13 EXAMINER ADDISON: Yes, of course.

14 Mr. McNamee, any questions?

15 MR. McNAMEE: No questions, thank you.

16 EXAMINER ADDISON: Thank you. Let's go  
17 ahead and go off the record.

18 (Recess taken.)

19 EXAMINER ADDISON: Let's go ahead and go  
20 back on the record. At this time, we will move into  
21 the confidential portion of our transcript.

22 (CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

EXAMINER ADDISON: Mr. Fisk, do you have  
any redirect for the public portion of the  
transcript?

MR. FISK: None, your Honor.

EXAMINER ADDISON: Thank you.

Thank you, Mr. Comings. You are excused.

THE WITNESS: Thank you, your Honor.

EXAMINER ADDISON: I believe, Mr. Fisk  
previously moved for the admission of Sierra Club  
Exhibits 69, 70 Confidential, 71, 72 Confidential,  
73, 74 Confidential, 75, 76 Confidential, 77, and 78  
Confidential. Are there any objections to the  
admission of those exhibits?

1 MR. KUTIK: Yes, your Honor, subject to  
2 our motion to strike and your rulings thereon.

3 EXAMINER ADDISON: Subject to the motions  
4 to strike, these exhibits will be admitted.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 MR. FISK: And, your Honor, we would make  
7 a proffer of the portions of those testimonies that  
8 were struck for the reasons stated in response to the  
9 motions to strike. With all due respect, we believe  
10 that all of those -- all of that testimony should  
11 come in. I am happy to walk through it individually,  
12 if I need to, to proffer them or if we can just rest  
13 on the record as it is.

14 EXAMINER ADDISON: That won't be  
15 necessary. I think you made a sufficient argument  
16 earlier on, so your proffer will be noted for the  
17 record. Thank you, Mr. Fisk.

18 MR. FISK: Thank you.

19 EXAMINER ADDISON: Mr. Kutik?

20 MR. KUTIK: Your Honor, other than the  
21 items that you have already ruled upon with respect  
22 to administrative notice, I have no further motions  
23 at this time.

24 EXAMINER ADDISON: Thank you.

25 We will adjourn for the day and -- oh,

1 I'm sorry, we will not be adjourning for the day. We  
2 have a ruling regarding the rebuttal testimony  
3 schedule.

4 Attorney Examiner Price.

5 EXAMINER PRICE: At this time, we are  
6 prepared to rule on or at least I guess rule on the  
7 schedule for rebuttal testimony. FirstEnergy will be  
8 filing its rebuttal testimony today and tomorrow; is  
9 that correct?

10 MR. KUTIK: Yes, your Honor.

11 EXAMINER PRICE: We will take our first  
12 rebuttal witnesses on October 26 and hopefully will  
13 conclude by October 29.

14 Mr. Kutik, I understand you have one  
15 witness with a date certain; is that right?

16 MR. KUTIK: Well, actually two, your  
17 Honor.

18 EXAMINER PRICE: Two.

19 MR. KUTIK: Mr. Evans, we would like to  
20 have him date certain on Tuesday. We might be able  
21 to do him earlier, but certainly by Tuesday, and  
22 Mr. Rose on Thursday, the 29th.

23 EXAMINER PRICE: Thank you. And we have  
24 tried to coordinate with the Attorney Examiners in  
25 the AEP case. We are hoping there will be no AEP

1       hearings that week, and that AEP will take its  
2       rebuttal the following week, the week of  
3       November 2nd.

4               MS. FLEISHER: Do we have an order of  
5       witnesses?

6               MR. KUTIK: Yes, your Honor. It would be  
7       Mr. Moul, Mr. Lisowski, Mr. Evans, Ms. Mikkelsen, and  
8       Mr. Rose subject to the date certians which may move  
9       their order.

10              MR. FISK: And, your Honor, do we have --  
11       I apologize, I was not here when this was discussed,  
12       but I know the question of depositions was raised.  
13       Is that -- are we waiting to see the testimony, and  
14       we can simply file notices and deal with them then?

15              EXAMINER PRICE: If you have protected  
16       your rights and had Jane Doe and John Doe notices out  
17       there already for rebuttal witnesses, you should be  
18       okay. There are three days -- three or four days to  
19       conduct depositions and if people have their notices  
20       in place, then there should be no issue.

21              MR. FISK: Are new notices allowed at  
22       this point if there has been no -- our reading of the  
23       schedule there was no close.

24              EXAMINER PRICE: I did not have a close.  
25       I did not have a deadline date for notice of

1 deposition. I am not sure the companies are not  
2 going to object to your notice of deposition but  
3 there was no deadline on the notice of deposition in  
4 the procedural schedule.

5 MR. FISK: Okay. Thank you, your Honor.

6 MR. KUTIK: Our silence on the question,  
7 your Honor, shouldn't be read to mean we agree that  
8 depositions are appropriate at this time.

9 EXAMINER PRICE: I understand that  
10 perfectly.

11 Okay. Anything else?

12 MR. KUTIK: And the start time is the  
13 26th at 10 o'clock?

14 EXAMINER PRICE: Yes.

15 Okay. Now, we will adjourn until October  
16 26 at 10 o'clock.

17 (Thereupon, at 4:26 p.m., the hearing was  
18 adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is  
a true and correct transcript of the proceedings  
taken by me in this matter on Monday, October 19,  
2015, and carefully compared with my original  
stenographic notes.

---

Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-6106)

- - -

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**in**

**Case No(s). 14-1297-EL-SSO**

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 10/19/15 - Volume XXXI electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.