

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application Seeking :
Approval of Ohio Power :
Company's Proposal to : Case No. 14-1693-EL-RDR
Enter into an Affiliate :
Power Purchase Agreement :
for Inclusion in the Power:
Purchase Agreement Rider. :

In the Matter of the :
Application of Ohio Power :
Company for Approval of : Case No. 14-1694-EL-AAM
Certain Accounting :
Authority. :

- - -

PROCEEDINGS

before Ms. Greta See and Ms. Sarah Parrot, Attorney
Examiners, at the Public Utilities Commission of
Ohio, 180 East Broad Street, Room 11-D, Columbus,
Ohio, called at 9:00 a.m. on Wednesday, October 21,
2015.

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VOLUME XV

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

- - -

1 APPEARANCES:

2 American Electric Power
3 By Mr. Steven T. Nourse
4 Mr. Matthew J. Satterwhite
5 and Mr. Matthew S. McKenzie
6 1 Riverside Plaza, 29th Floor
7 Columbus, Ohio 43215

8 Porter, Wright, Morris & Arthur LLP
9 By Mr. Daniel R. Conway
10 41 South High Street
11 Columbus, Ohio 43215

12 Ice Miller
13 By Mr. Christopher Miller
14 250 West Street
15 Columbus, Ohio 43215

16 On behalf of the Ohio Power Company.

17 McNeese, Wallace & Nurick LLC
18 By Mr. Frank P. Darr
19 and Mr. Matthew R. Pritchard
20 21 East State Street, 17th Floor
21 Columbus, Ohio 43215

22 On behalf of the Industrial Energy Users
23 of Ohio.

24 Vorys, Sater, Seymour & Pease, LLP
25 By Mr. M. Howard Petricoff
Ms. Gretchen Petrucci
Mr. Stephen M. Howard
and Mr. Michael J. Settineri
52 East Gay Street
Columbus, Ohio 43215

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

1 APPEARANCES: (Continued)

2 Carpenter Lipps & Leland LLP
3 By Mr. Joel E. Sechler
4 280 North High Street, Suite 1300
5 Columbus, Ohio 43215

6 On behalf of EnerNOC, Inc.

7 Kravitz, Brown & Dortch, LLC
8 By Mr. Michael D. Dortch
9 Mr. Justin M. Dortch
10 and Mr. Richard R. Parsons
11 65 East State Street, Suite 200
12 Columbus, Ohio 43215

13 On behalf of Dynegy, Inc.

14 Ohio Environmental Council
15 By Mr. Trent A. Dougherty
16 1145 Chesapeake Avenue, Suite I
17 Columbus, Ohio 43212

18 On behalf of the Ohio Environmental
19 Council and the Environmental Defense
20 Fund.

21 Taft, Stettinius & Hollister LLP
22 By Mr. Mark S. Yurick
23 and Ms. Celia Kilgard
24 65 East State Street, Suite 1000
25 Columbus, Ohio 43215

On behalf of The Kroger Company.

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

On behalf of the Ohio Partners for
Affordable Energy.

1 APPEARANCES: (Continued)

2 Sierra Club Environmental Law Program
3 Ms. Kristin Henry
4 85 Second Street, 2nd Floor
5 San Francisco, California 94105

6 Olson, Bzdok & Howard
7 By Mr. Christopher M. Bzdok
8 420 East Front Street
9 Traverse City, Michigan 49686
10 Sierra Club Environmental Law Program
11 By S. Laurie Williams
12 50 F Street, NW, Eighth Floor
13 Washington, DC 20001

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

19 On behalf of the Sierra Club.

20 Carpenter Lipps & Leland LLP
21 By Ms. Kimberly W. Bojko
22 and Ms. Danielle Ghiloni
23 280 North High Street, Suite 1300
24 Columbus, Ohio 43215

25 On behalf of the Ohio Manufacturers'
Association Energy Group.

Spilman, Thomas & Battle, PLLC
By Mr. Derrick Price Williamson
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, Pennsylvania 17050

Spilman, Thomas & Battle, PLLC
By Ms. Carrie Harris
310 First Street, Suite 1100
Roanoke, Virginia 24011

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

1 APPEARANCES: (Continued)

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

6 On behalf of IGS Energy.

7 Boehm, Kurtz & Lowry
8 By Mr. Michael L. Kurtz,
9 Mr. Kurt J. Boehm
10 and Ms. Jody Kyler Cohn
11 36 East Seventh Street, Suite 1510
12 Cincinnati, Ohio 45202

13 On behalf of the Ohio Energy Group.

14 Environmental Law & Policy Center
15 By Ms. Madeline Fleisher
16 21 West Broad Street, Suite 500
17 Columbus, Ohio 43215

18 Environmental Law & Policy Center
19 By Mr. Justin M. Vickers
20 35 East Wacker Drive Suite 1600
21 Chicago, Illinois 60601

22 On behalf of the Environmental Law &
23 Policy Center.

24 Ohio Poverty Law Center
25 By Mr. Michael R. Smalz
555 Buttles Avenue
Columbus, Ohio 43215

On behalf of the Appalachian Peace and
Justice Network.

FirstEnergy Corp.
By Mr. Mark Hayden
and Mr. Scott J. Casto
76 South Main Street
Akron, Ohio 44308

On behalf of the FirstEnergy Solutions
Corp.

1 APPEARANCES: (Continued)

2 Direct Energy
3 By Ms. Jennifer L. Spinosi
4 21 East State Street, 19th Floor
5 Columbus, Ohio 43215

6 On behalf of Direct Energy Business, LLC,
7 and Direct Energy Services, LLC.

8 Bruce J. Weston, Ohio Consumers' Counsel
9 By Mr. William J. Michael
10 Mr. Kevin F. Moore
11 and Ms. Jodi Bair,
12 Assistant Consumers' Counsel
13 10 West Broad Street, Suite 1800
14 Columbus, Ohio 43215-3485

15 Bricker & Eckler, LLP
16 By Mr. Dane Stinson
17 100 South Third Street
18 Columbus, Ohio 43215-4291

19 On behalf of the Residential Consumers of
20 the Ohio Power Company.

21 Mr. Richard L. Sites
22 155 East Broad Street
23 Columbus, Ohio 43215

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

On behalf of the Ohio Hospital
Association.

Thompson Hine
By Mr. Michael Austin
41 South High Street, Suite 700
Columbus, Ohio 43215

On behalf of Buckeye Power.

1 APPEARANCES (Continued):

2 Monitoring Analytics
3 By Jeffrey Mayes
4 2621 Van Buren Avenue, Suite 160
5 Eagleville, Pennsylvania 19403

6 On behalf of the Independent Market
7 Monitor for PJM.

8 Dickinson Wright, PLLC
9 By Mr. Terrence O'Donnell
10 150 East Gay Street, Suite 2400
11 Columbus, Ohio 43215

12 On behalf of the Mid-Atlantic Renewable
13 Energy Coalition.

14 Mike DeWine, Ohio Attorney General
15 By Mr. William L. Wright,
16 Section Chief
17 Mr. Steven L. Beeler
18 and Mr. Werner L. Margard, III,
19 Assistant Attorneys General
20 Public Utilities Section
21 180 East Broad Street, 6th Floor
22 Columbus, Ohio 43215

23 On behalf of the Staff of the PUCO.

24 - - -
25

3656

INDEX

- - -

WITNESSES	PAGE
Lael Campbell	
Direct Examination by Mr. Petricoff	3659
Voir Dire Examination by Mr. Satterwhite	3661
Cross-Examination by Mr. Satterwhite	3677
Redirect Examination by Mr. Petricoff	3745
Recross-Examination by Mr. Satterwhite	3748
James E. Wilson	
Direct Examination by Mr. Michael	3764
Cross-Examination by Mr. Conway	3782
Redirect Examination by Mr. Michael	3845

- - -

EXHIBITS

COMPANY EXHIBITS	IDENTIFIED	ADMITTED
41 - Constellation Terms and Conditions	3697	3762
42 - AEP Ohio Apples to Apples Chart, 1/6/14	3712	3762
43 - EnergyChoice Ohio Apples to Apples Chart, 4/25/14	3713	3762
44 - AEP Cross Exhibit 12- and 24-month Offers	3713	3762
45 - PJM AEP-Dayton Hub Day-Ahead LMP Calendar-Month 5 MW Futures, Quotes	3804	3853
46 - PJM AEP-Dayton Hub Day-Ahead Off-Peak Calendar-Month, 5 MW Futures, Quotes	3804	3853

3657

INDEX (Continued)

- - -

COMPANY EXHIBITS IDENTIFIED ADMITTED

47 - PJM AEP-Dayton Hub
Day-Ahead LMP
Calendar-Month, 5MW
Futures, Settlements 3806 3853

48 - PJM AEP-Dayton Hub
Day-Ahead Off-Peak
Calendar-Month, 5MW
5 MW Futures, Settlements 3806 3853

- - -

EXELON/RESA EXHIBITS IDENTIFIED ADMITTED

1 - Direct Testimony of
Lael Campbell 3660 3755

- - -

OCC EXHIBITS IDENTIFIED ADMITTED

15 - Direct Testimony of
James E. Wilson 3765 3852

16 - Direct Testimony of
James E. Wilson
(Confidential) 3765 3852

17 - Redline and Final
Table 2 3766 3852

18 - JFW-2 Revised
(Confidential) 3766 3852

19 - JFW-3 3766 3852

- - -

3658

Wednesday Morning Session,
October 21, 2015.

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EXAMINER PARROT: Good morning, everyone.

This is the continuation of the hearing
in Case No. 14-1693-EL-RDR, et al.

I'm Sarah Parrot. With me is Greta See.
We are the attorney examiners assigned to hear these
cases.

Let's start with appearances, beginning
with the company, please.

MR. NOURSE: Thank you, your Honors. On
behalf the Ohio Power Company, Steven T. Nourse,
Matthew J. Satterwhite, Matthew McKenzie, and Daniel
R. Conway.

MS. COHN: On behalf of the Ohio Energy
Group, Michael Kurtz, Kurt Boehm, and Jody Kyler
Cohn.

MR. YURICK: Mark Yurick on behalf of
Kroger.

MR. PETRICOFF: On behalf of Exelon
Generation, Constellation NewEnergy, the Energy Power
Supply Association, the PJM Power Providers, and the
Retail Energy Suppliers, Gretchen Petrucci, Mike
Settineri, and Howard Petricoff.

1 MR. PRITCHARD: On behalf of the IEU
2 Ohio, Matt Pritchard and Frank Darr.

3 MR. MARGARD: On behalf of the staff of
4 the Public Utilities Commission, Steven Beeler,
5 Warner L. Margard, assistant attorneys general.

6 MR. MICHAEL: Good morning your Honors.
7 On behalf of AEP Ohio's residential utility
8 consumers, the Office of the Ohio Consumers' Counsel
9 by William J. Michael, Jodi Bair, Kevin Moore, and as
10 outside counsel, Dane Stinson.

11 MR. MENDOZA: On behalf of the Sierra
12 Club, Tony Mendoza, Kristen Henry, and Christopher
13 Bzdok.

14 EXAMINER PARROT: Thank you.

15 Mr. Petricoff?

16 MR. PETRICOFF: Thank you, your Honor.
17 At this time we would like to call Lael Campbell to
18 the stand.

19 - - -

20 LAEL CAMPBELL

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

23 DIRECT EXAMINATION

24 By Mr. Petricoff:

25 Q. Could you please state your business

1 address and tell us on behalf of whom you are
2 appearing?

3 A. 101 Constitution Avenue, Washington, D.C,
4 and I'm here on behalf of Constellation NewEnergy,
5 Exelon Generation, and the Retail Energy Supply
6 Association.

7 MR. PETRICOFF: Your Honor, at this time
8 we would like to have marked as Exelon/RESA
9 Exhibit No. 1 the direct prepared testimony of Lael
10 Campbell.

11 EXAMINER PARROT: So marked.

12 MR. PETRICOFF: And I have supplied a
13 copy this morning to the court reporter.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. (By Mr. Petricoff) Mr. Campbell, do you
16 have a copy of what has now been marked Exelon/RESA 1
17 with you?

18 A. Yes, I do.

19 Q. Do you have any changes you would like to
20 make to this document?

21 A. Not at this time.

22 Q. If I would ask you today the same
23 questions that appear in Exhibit 1, would your
24 answers be the same?

25 A. Yes, they would.

3661

1 MR. PETRICOFF: Your Honor, the witness
2 is available for cross-examination.

3 EXAMINER PARROT: Thank you,
4 Mr. Petricoff.

5 Any questions, Mr. Mendoza?

6 MR. SATTERWHITE: If I may, prior to
7 questions I have a short voir dire in support of a
8 motion to strike.

9 EXAMINER PARROT: Okay.

10 - - -

11 VOIR DIRE EXAMINATION

12 By Mr. Satterwhite:

13 Q. Good morning, Mr. Campbell. My name is
14 Matthew Satterwhite with AEP Ohio. We met this
15 morning, correct?

16 A. Yes.

17 Q. I have a couple of questions here. You
18 are an attorney, correct?

19 A. Yes.

20 Q. Are you providing legal advice to your
21 corporate clients in connection with this case?

22 A. No, I am not currently in the role of
23 providing legal advice for my company.

24 Q. And you're not acting as a lawyer for
25 purposes of your testimony in this case, correct?

1 A. I am not.

2 Q. Do you practice law in your current
3 position for Exelon at all?

4 A. I do not.

5 Q. And do you have an Ohio license to
6 practice law?

7 A. I do not.

8 Q. Now on page 29 of your testimony, if you
9 would open that up and get to that point, I'd like to
10 draw your attention to line 1 and line 16 where you
11 make a representation that you will be presenting
12 Exelon and Constellation NewEnergy trial brief. Do
13 you see that?

14 A. I do, yes.

15 Q. Is this something you independently
16 developed or something that was shared with you by
17 your counsel?

18 A. This language was developed in
19 conjunction with working with my counsel.

20 Q. And also throughout your testimony, I
21 have citations if you'd like them, you refer to the
22 term "captive." Are you familiar with that?

23 A. Sure.

24 Q. And are you referring to the legal
25 meaning of "captive" as used by FERC for captive

1 customers when you use that term?

2 A. I believe the term "captive" is used
3 throughout the testimony, and it means
4 Merriam-Webster's definition of "captive."

5 Q. So you're not using it as captive that's
6 used in the Edgar test, correct?

7 A. Let me double-check my testimony because
8 I do believe I mention the Edgar, test, or the FERC
9 test, at some point. And if I used the word
10 "captive" in that section of my testimony, it would
11 be captive in that sense, I believe.

12 Q. Let me draw your attention to page 10,
13 line 13, I believe is the first time you use it.

14 A. Okay. So in this section of the
15 testimony I am talking about a nonbypassable
16 generation charge, and I'm using captive in the
17 typical use of the word.

18 Q. Not for the purposes of applying the
19 Edgar test; is that correct?

20 A. My testimony here does not discuss the
21 Edgar test. It discuss what a nonbypassable
22 generation charge is.

23 Q. Right. But I want to make sure I'm
24 understanding the meaning of the word you're using
25 here. Are you using it in the general sense of

1 captive, not captive to be applied to the Edgar test,
2 correct?

3 A. I'm using it in the sense that customers
4 that are paying a nonbypassable charge are captive to
5 that charge; in other words, they can't escape that
6 charge.

7 Q. Right. But you understand the
8 distinction I'm asking, correct? There's the general
9 sense of the word "captive" that a fifth grader might
10 use, and then in the regulatory world there's the
11 captive customer used for the Edgar test, correct?

12 A. Well, captive, the term, "captive
13 customer" in the FERC world in the Edgar test does
14 have legal meaning, yes.

15 Q. And that's my point. So when I ask you
16 these questions of how you're using it here, are you
17 using it for purposes of the legal meaning in the
18 FERC regulatory world, or just the general sense of
19 the word "captive"?

20 MR. PETRICOFF: Just for clarification,
21 you're still on page 10, line 13?

22 MR. SATTERWHITE: That's the first
23 example we have. I'm trying to figure out throughout
24 the testimony how he uses it so I know how to move
25 from here.

1 A. This section of the testimony here is not
2 discussing the Edgar test. It's discussing a
3 nonbypassable charge. That's where I mean -- so the
4 use of the word "captive" there is in the standard
5 fifth-grade, definitional meaning for captive.

6 Q. And that's what I'm trying to determine.
7 You wrote this testimony. I don't know what you
8 meant by it. So you stated that there is a
9 difference. There's the fifth-grade meaning and
10 there's the FERC legal meaning. So for this example
11 you're saying it's the fifth grade, regular meaning,
12 correct?

13 A. For this particular section, yes.

14 Q. Okay. Now let's go to page 13, line 13.
15 Same question, was your intention to apply the FERC
16 legal meaning of captive here or the fifth-grade
17 meaning of captive?

18 A. So, again, this section of the testimony
19 is not addressing the Edgar issue, so the meaning of
20 captive here would be in the context of the Webster's
21 dictionary definition.

22 Q. Let's go to page 29 of your testimony,
23 line 9.

24 A. Okay.

25 Q. Same question, are you intending to use

1 captive here under the FERC legal usage of the term
2 or the fifth-grade, dictionary term?

3 A. Well, here I am discussing the FERC
4 affiliate restrictions, so I think captive has both
5 meanings, really. I mean, they are captive in the
6 dictionary sense, but it's also my opinion that the
7 AEP proposal would be contrary to the definition of
8 captive customer in the FERC sense. So to the extent
9 that the use of the word captive is here within the
10 context of the affiliate restrictions, it's being
11 used in both senses.

12 Q. Then on page 30, the last page of your
13 testimony, on line 5, same question, how are you
14 using that term, the fifth-grade meaning or the FERC
15 legal meaning?

16 A. This would be in the context of the
17 spirit of Ohio law, not the FERC affiliate
18 restrictions, so captive here would be more of a
19 general sense, the dictionary meaning.

20 MR. SATTERWHITE: Your Honor, if it
21 pleases the Bench, I'd like to enter a motion to
22 strike at this time. To start with, page 29, lines 1
23 through 22, carrying over to page 30, lines 1 through
24 2. I think if you look at the introductory, each of
25 the answers in that, an admission that this is a

1 legal argument for a trial brief when it says, "As
2 will be presented in the Exelon and Constellation
3 NewEnergy, Inc., trial brief, the proposed PPA Rider
4 violates the spirit, if not the letter, of FERC
5 restrictions," and it goes on.

6 And the same below, it starts off with
7 the same beginning talking about how recent Federal
8 Court decisions have been found unlawful. And the
9 second answer also from 16 to the top of 30, it's
10 really just a set of string cites that you would
11 typically find in a legal brief.

12 This type of analysis or testimony is not
13 typically provided as expert testimony, factual
14 testimony. This really, as admitted by Mr. Campbell
15 is his testimony, it's pretty much a section that he
16 would put into a legal brief, legal analysis.

17 MR. PETRICOFF: Your Honor, if I may be
18 heard on this.

19 EXAMINER PARROT: Just a moment. Were
20 you finished, Mr. Satterwhite?

21 MR. SATTERWHITE: No. He's already said
22 he's not an attorney licensed to practice law in the
23 state of Ohio, and RESA and Constellation NewEnergy
24 will have their chance to make its arguments in the
25 brief, but we do not need these legal conclusions in

1 the testimony.

2 I'd also point out that there are other
3 points in this testimony I'm not going to move to
4 strike, which is typical of what witnesses use. I
5 point that out on page 11, lines 14 through 19,
6 there's sort of an analysis to SB 221 as a regulatory
7 expert might apply them. I'm not moving to strike
8 those types of areas in his testimony. I think this
9 is much different though. This is specific legal
10 analysis, which, by their admission, is proper for
11 the trial brief.

12 I have another motion to strike, but
13 Mr. Petricoff wants to respond to this one.

14 MR. PETRICOFF: Your Honor, two points.
15 First of all, Mr. Campbell is an attorney.
16 Mr. Campbell does have experience in practicing in
17 both federal and state agencies. The fact that he is
18 not practicing now does not diminish his expertise,
19 and, as a matter of fact, it just complements his
20 testimony as a regulatory expert because he also has
21 the added perspective of legal training.

22 I believe that the first sentence in the
23 answer to 43 and the first sentence in the answer to
24 44 is basically where he is explaining that he is not
25 going to be presenting the legal arguments, that he

1 could give a full legal argument here, that will be
2 provided in the brief. Instead he wants to make the
3 point as a regulatory expert that you do have these
4 legal barriers that must be considered, without a
5 full explanation of the legal theory behind it or all
6 of the citations.

7 I believe what you have in 19 to 22 are
8 just a -- he could have just left it with the 3rd an
9 4th court decisions. I guess you never lose your
10 legal training, he does provide the cite to it. But
11 that doesn't make it a legal argument. It just makes
12 it easier to identify which decisions he's referring
13 to.

14 MR. SATTERWHITE: And if I may, your
15 Honor, I don't think he has. It's not a matter of
16 him losing the lawyer in him. I believe in voir dire
17 he testified that this was developed with his
18 attorney, so I think this is probably his attorney's
19 legal work put in here.

20 And also I forgot to mention on line 9,
21 this is the one place where he mentioned the word
22 captive he said is absolutely not the fifth-grade
23 definition. This is the legal definition, legal FERC
24 definition, of that term.

25 I don't believe that the Commission

1 typically allows attorneys to show up to give legal
2 testimony as part of the expert testimony. That's
3 not the purpose of the evidentiary hearing. Your
4 Honors get enough of that when they get the briefs
5 and all the prose and poetry that we put in there.

6 MR. PRITCHARD: I would join in Howard's
7 opposition. Yesterday, for example, earlier this
8 week, and throughout the first three weeks of this
9 hearing, AEP has repeatedly asked intervenor
10 witnesses whether they believe certain provisions are
11 lawful, whether they provide stability and certainty.

12 And yesterday, for example, we had
13 lengthy discussions from all the intervenors whether
14 they thought the PPA would be lawful and provide the
15 important stability that the Commission noted in its
16 order, and AEP asked the witnesses to opine on their
17 opinion about whether that fit into -- the PPA as
18 proposed would fit into that legal scheme.

19 Here the witness is talking about whether
20 the PPA would fit into a legal scheme of FERC. It's
21 a different legal construct that the witness is
22 analyzing, but I don't believe it's any different
23 than AEP's cross-examination, for example, all
24 yesterday morning.

25 MR. SATTERWHITE: That statement is

1 factually inaccurate. We asked each of the witnesses
2 their opinion whether they agreed or not.

3 EXAMINER PARROT: Agreed or not,
4 Mr. Satterwhite.

5 MR. MENDOZA: Your Honor, if I may,
6 briefly. I'd just like to note that the rule against
7 legal testimony makes a lot of sense, I think, in a
8 jury context where there would be questions on
9 confusion about who was making factual determinations
10 and who was making legal determinations.

11 It's substantially less relevant in an
12 administrative proceeding like this one where there
13 could be no risk of confusion. The Commission would
14 not be confused about what Mr. Campbell is testifying
15 about. There is no risk of confusion by the company.
16 If they disagree with anything, they can argue
17 against it in their brief.

18 MR. PETRICOFF: Your Honor, if I may,
19 there was one comment made by Mr. Satterwhite after I
20 had given my presentation on why the motion to strike
21 should be denied. He did make a reference to page
22 29, line 9, and I do want to supplement my earlier
23 comment by responding to that, because I think it
24 actually really highlights the distinction that needs
25 to be made here.

1 It is true that the word "captive" is
2 used on line 9 on page 29, but it doesn't say the
3 Edgar test. I can assure you that you will read
4 about the Edgar test in the briefs. If you were
5 making a legal argument, you would have used that
6 distinction, and you would have explained that.

7 But he's not making legal arguments. He,
8 as a regulatory expert, is simply pointing out that
9 there are barriers here that must be considered.

10 MR. SATTERWHITE: And, your Honor, it's
11 different. If you need me to respond, let me know.

12 EXAMINER PARROT: Go ahead.

13 MR. SATTERWHITE: I think what
14 Mr. Petricoff misses is the testimony of his own
15 witness where he says this is absolutely intended to
16 mean the legal definition. It's a legal argument
17 he's making in this response.

18 I'm sure Mr. Petricoff will have lengthy
19 discussion in his brief. That's my point, that's the
20 appropriate place. I didn't move to strike the other
21 use of the word "captive" because it's the
22 fifth-grade definition.

23 It seems to be a slippery slope if we're
24 going to ask for briefs before hearings even start
25 and there's attorneys on the stand trying to make

1 their legal arguments. The purpose of the hearing is
2 for factual statements, factual evidence to assist
3 the Commission.

4 EXAMINER PARROT: The Bench is going to
5 grant the motion to strike in part. Let's start with
6 question 43 and the answer to that. We're going to
7 allow the "yes" to stand. Then we will strike the
8 next sentence beginning with "As will be presented,"
9 and the striking will continue through the first part
10 of line 8 where it ends with "affiliate
11 transactions"; and then the remainder of that answer
12 that begins "The PPA rider would make all customers"
13 through the end of the response will stand.

14 Mr. Satterwhite, if you want to get back
15 into the issue of the use of the word "captive" and
16 the meaning that was intended beyond that, please do
17 that on your cross-examination.

18 MR. SATTERWHITE: Thank you, your Honor.

19 EXAMINER PARROT: We also will be
20 striking question 44 and its response in its
21 entirety. Save those arguments for your legal brief.

22 You said something else you had,
23 Mr. Satterwhite?

24 MR. SATTERWHITE: Yes, your Honor, one
25 more. Page 12, line 10, there's a statement

1 "contrary to Ohio law," and also page -- sorry, let
2 you get it first.

3 EXAMINER PARROT: So you're moving to
4 strike that entire sentence?

5 MR. SATTERWHITE: I would just move to
6 strike "is contrary to Ohio law."

7 EXAMINER PARROT: Does that leave us with
8 a complete sentence otherwise?

9 MR. SATTERWHITE: Yeah. So "contrary to
10 Ohio law," I'm sorry, yeah.

11 EXAMINER PARROT: Got it. All right.

12 MR. SATTERWHITE: And then page 30, on
13 line 6 to 7, move to strike "is contrary to Ohio and
14 Federal law." Make sure that makes sense now. Yes,
15 it does still make sense. I guess the comma would go
16 with it. I agree that the substance of the sentence
17 still reads properly.

18 EXAMINER PARROT: All right.

19 MR. SATTERWHITE: And, again, your Honor,
20 this is a cursory legal conclusion intended to stand
21 on its own. It is not contained in advice by
22 counsel. The witness has stated he's not an Ohio
23 attorney. He's making conclusions about what is
24 contrary to Ohio law.

25 I would also point out -- I have a copy

3675

1 of it here, if your Honor would like it. Your Honor
2 also struck this "contrary to Ohio law" in the ESP
3 III proceeding of Mr. Campbell, and that was in
4 transcript Volume VII at page 1576, and I brought a
5 copy of the page if you would like to see the ruling
6 in that case.

7 EXAMINER PARROT: Hold off on that.

8 MR. SATTERWHITE: Okay.

9 EXAMINER PARROT: Anything else?

10 MR. SATTERWHITE: And I would also just
11 point out, again, I'm not moving to strike many of
12 the other representations throughout the testimony
13 where its just describing the regulatory point of
14 view of setting something up. This is a conclusion
15 versus context, instead of a discussion. I tried to
16 limit my motions to strike to those areas.

17 EXAMINER PARROT: Mr. Petricoff?

18 MR. PETRICOFF: Yes, your Honor. Once
19 again, I think the prohibition here is a prohibition
20 on presenting legal argument. He can certainly have
21 a legal opinion. He can certainly have a legal
22 opinion about Ohio law based on his understanding and
23 knowledge. You do not have to have a license in
24 order to form such an opinion.

25 In terms of the ESP case, that's another

1 proceeding that may be taken out of context, and I
2 don't think that should be given any weight here.
3 Instead, I think we should just look at his
4 expressing his opinion here but not presenting a
5 legal argument, and those comments should stay.

6 MR. SATTERWHITE: If I may, your Honor.
7 He's exactly making a legal argument. He's making a
8 determination that its contrary to Ohio law, even
9 though he's not an Ohio attorney, and he didn't
10 include the typical "as advised by my counsel," which
11 AEP typically does not object to because it does give
12 it context. This witness is making a factual
13 distinction, even though he's declared that he's not
14 an Ohio attorney; therefore, it fits within the same
15 context of what your Honor previously struck. It's
16 making a legal argument that could be saved for
17 brief.

18 EXAMINER PARROT: The Bench will grant
19 the motion to strike as you've presented it,
20 Mr. Satterwhite, with respect to both pages 12 and
21 30. Again, like to hear those opinions in the
22 briefs.

23 MR. SATTERWHITE: Thank you, your Honor.

24 EXAMINER PARROT: Anything else,
25 Mr. Satterwhite?

1 MR. SATTERWHITE: That is it for my
2 initial.

3 EXAMINER PARROT: Thank you.

4 Mr. Mendoza, back to you?

5 MR. MENDOZA: No questions, your Honor.

6 EXAMINER PARROT: Mr. Michael?

7 MR. MICHAEL: No questions, your Honor.

8 EXAMINER PARROT: Mr. Pritchard?

9 MR. PRITCHARD: No questions, your Honor.

10 EXAMINER PARROT: Mr. Yurick?

11 MR. YURICK: No questions.

12 EXAMINER PARROT: Ms. Cohn?

13 MS. COHN: No.

14 EXAMINER PARROT: Mr. Satterwhite?

15 MR. SATTERWHITE: Thank you.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Satterwhite:

19 Q. Nice to see you again. Mr. Campbell, how
20 have you been?

21 A. I've been well.

22 Q. I want to make sure we -- its been
23 helpful with past witnesses to make sure we're
24 talking about the same thing. I'd like to talk about
25 different acronyms, so when I talk about AEP Ohio,

1 you understand that is the distribution company,
2 correct?

3 A. That is correct.

4 Q. And the applicant in this case?

5 A. Yes.

6 Q. And AEPGR is the generating company
7 that's one of the parties to the proposed PPA,
8 correct?

9 A. Correct.

10 Q. And AEP Corp. is the parent company; is
11 that fair?

12 A. Right.

13 Q. And when I say the "PPA," you understand
14 that's in reference to the draft PPA proposal between
15 AEPGR and AEP Ohio, correct?

16 A. Yes.

17 Q. And that's different than the PPA rider,
18 which is the rider that the Commission established in
19 ESP III case that now the company is seeking to
20 populate with the costs in this case, correct?

21 A. Yes.

22 Q. And your testimony today -- I believe we
23 covered this a little bit earlier, but it was in voir
24 dire. So just to be clear, you're providing
25 testimony as a regulatory expert with your background

1 dealing with regulatory matters, correct?

2 A. Correct.

3 Q. And it's your understanding on that basis
4 that the PUCO has jurisdiction -- would have
5 jurisdiction over the PPA rider going forward,
6 correct?

7 A. I would hope so, yes.

8 Q. And that FERC would be the entity that
9 would have jurisdiction over a PPA wholesale contract
10 if one were to be entered into, correct?

11 A. FERC does have jurisdiction over
12 wholesale contracts, yes.

13 Q. And I'm asking in relation to this case,
14 if the PPA that we talked about earlier is executed,
15 that would be under FERC's jurisdiction, correct?

16 A. Well, if it is, indeed, considered to be
17 a wholesale contract, it would be under -- it would
18 be a wholesale contract subject to FERC jurisdiction,
19 yes.

20 Q. And you also, when you discussed a little
21 bit in your testimony in different places, but you
22 understand that the PUCO will have some audit control
23 related to the PPA rider, correct?

24 A. There's mention of audit controls in the
25 testimony. It's very unclear what specific controls

1 those would be in the process, timing, and oversight
2 authority the Commission would have.

3 Q. Have you reviewed all of the testimony
4 filed by the company in this case?

5 A. I've reviewed most of it, good chunk of
6 it.

7 Q. Are you saying you're not aware of the
8 PUCO's ability to audit the company AEP Ohio's
9 decisions made in relation to the PPA?

10 A. What decisions made? What decisions are
11 you talking about?

12 Q. I'm asking what your understanding --

13 A. Its very unclear to me what decisions the
14 PUCO would be able to audit.

15 Q. So when you read the testimony, you don't
16 understand what the PUCO's ability is to audit in
17 relation to the PPA rider; is that fair?

18 A. The testimony did not make it clear to me
19 what the specific authority would be of the
20 Commission to audit costs flowing through the PPA
21 rider as a result of the PPA.

22 Q. And when you prepared your testimony, you
23 had that same lack of knowledge, clarity of what the
24 Commission's rights to do audits would be, correct?

25 MR. MICHAEL: Objection. Compound. He

1 asked about knowledge and then clarity. They're
2 different things.

3 MR. SATTERWHITE: I'm asking about where
4 he prepared his testimony, the same understanding.

5 MR. MICHAEL: But you said do you have
6 "knowledge," and then you said "clarity." Those are
7 two separate things, two separate concepts.

8 MR. SATTERWHITE: Your Honor, I believe
9 the knowledge I was referring to was the lack of
10 clarity he explained in his previous answer, so I was
11 giving the example of what he didn't have knowledge
12 of.

13 EXAMINER PARROT: Let's rephrase it, I
14 guess.

15 Q. (By Mr. Satterwhite) Mr. Campbell, when
16 you prepared -- as you sit here today, I believe your
17 testimony is that you're not sure about what the
18 audit rights of the Commission are in relation to the
19 PPA rider, correct?

20 A. I've reviewed the testimony that
21 discusses the audit rights of the Commission. Those
22 audit rights include some type of financial auditing
23 to make sure the math is correct. It provides the
24 ability for the Commission to go in and obtain
25 records from AEP Ohio but not AEP Generation

1 Resources, and there's some mention of the Commission
2 being able to make a filing with FERC in relation to
3 the PPA.

4 As far as being able to audit monies
5 flowing between the companies in relation to the PPA
6 and what ultimately is getting billed to Ohio
7 customers and whether those costs are reasonable, it
8 is very unclear within the testimony what the audit
9 authority of the Commission would be with regard to
10 that.

11 When I say it's not clear, that's what
12 I'm discussing, the ability of the Commission to
13 conduct a reasonableness review of the costs that are
14 flowing is very unclear

15 Q. Thank you for that clarification.

16 My question is, that's your understanding
17 today, that was your understanding when you wrote
18 your testimony and it with the Commission, correct?

19 A. Yes.

20 Q. So the recommendations and the testimony
21 that you provide is based on that universe of
22 understanding of what the Commission's audit rights
23 are, correct?

24 A. I guess, yeah. I guess. I don't
25 necessarily understand what you're asking. I mean, I

3683

1 wrote my testimony after reviewing the testimony that
2 was filed by AEP Ohio, which I felt did not clearly
3 delineate what authorities the Commission would have,
4 especially reasonableness of costs that are flowing
5 through the PPA rider, so yes.

6 Q. Thank you. Now, you reviewed the ESP III
7 decision in 13-2385 to prepare your testimony,
8 correct?

9 A. Yes.

10 Q. I'd like to go through some of the
11 Commission's discussion in that case and see if you
12 agree with how the Commission made determinations in
13 that case, okay?

14 A. Okay. Is there an exhibit or something I
15 can look at?

16 Q. I can give you -- we have an excerpt from
17 that case that deals with --

18 MR. SATTERWHITE: May we approach, your
19 Honor?

20 EXAMINER PARROT: You may.

21 Q. It's the cover page of the opinion and
22 order and the section that directly deals with the
23 Commission's discussion on the PPA rider.

24 MR. SATTERWHITE: Howard, do you need
25 one?

1 MR. PETRICOFF: No, I have one. Thank
2 you.

3 MR. SATTERWHITE: I point out that this
4 excerpt is a cover page and table of contents, and on
5 the table of contents under Roman numeral II, B, C,
6 it talks about the conclusion for the purchased power
7 agreement rider starting on page 11 -- sorry, page
8 19, and so we started the excerpt on 18 to have the
9 Commission's full discussion of the conclusion as
10 part of the excerpt, so we didn't have to print the
11 entire thing and waste more paper.

12 Take a second and verify that's what we
13 provided to you.

14 A. Yes.

15 Q. And the first area that I'd like to talk
16 about is on page 22, and it's the first full
17 paragraph, the first indented paragraph. It starts
18 off, "The Commission finds." Do you see that?

19 A. I do see that.

20 Q. Do you disagree with the Commission's
21 finding here that the authorization of a
22 nonbypassable rider for a PPA rider in an ESP has a
23 stabilizing effect to provide certainty for retail
24 electric service?

25 A. I do disagree with that.

1 Q. Do you also disagree that both shopping
2 and SSO customers may benefit from the PPA rider
3 because of its stabilizing effect on retail electric
4 rates?

5 A. My testimony is that the PPA rider would
6 have an unstabilizing effect on retail rates,
7 especially for choice customers, so I would disagree
8 with that statement.

9 Q. And on page 25, if you could turn over to
10 that page, in the first full paragraph the Commission
11 has a discussion -- my question is, do you disagree
12 with the position that "a PPA rider proposal, if
13 properly conceived, has the potential to supplement
14 the benefits derived from the staggering and
15 laddering of SSO auctions, and to protect customers
16 from price volatility in the wholesale market"?

17 A. My testimony is that the PPA rider, as
18 proposed, would expose customers that are on a
19 fixed-price contract, it would essentially unfix the
20 contract and expose them to volatility because of the
21 monies flowing into the PPA are changing over time.
22 Someone who's on a fixed price would now be exposed
23 to an unfixed price, essentially.

24 The concept that there may be a possible
25 way to construct a PPA rider, yeah, anything's

1 possible, so I agree with the Commission to the
2 extent they say that something is possible. It's
3 hard to disagree with the chance that something
4 someday could be possible. But as this proposal
5 goes, as I've previously stated, I do not believe
6 that it has a rate stabilizing effect.

7 Q. So you're really focusing on the part
8 that says "if properly conceived," and there's a way
9 to conceive of something, is what you're saying.

10 A. Anything's possible. The human mind is
11 great.

12 Q. And then could a nonbypassable rider be
13 part of something being properly conceived to allow
14 the benefits talked about by the Commission?

15 A. Acting on the premise that it is possible
16 to conceive of something, I guess the possibilities
17 could include a nonbypassable rider.

18 Q. And also do you agree with the Commission
19 that "rate stability is an essential component of the
20 ESP"?

21 A. The Ohio statute certainly mentions the
22 rate stability, yes. The SSO procurement process,
23 there's many ways to provide rate stability, so, yes,
24 I think that is important.

25 Q. And the last sentence on page 25 of the

1 first full paragraph, the Commission mentions that it
2 has consistently emphasized rate stability as an
3 essential component. Do you agree that it's
4 appropriate for the Commission to emphasize that rate
5 stability component as being essential to the ESP?

6 A. The legislature has identified rate
7 stability, and it is certainly appropriate for the
8 Commission to consider that as well, absolutely.

9 Q. Is it your testimony, then, that you
10 agree that rate stability is an important function or
11 important factor in the ESP, correct?

12 A. It is a factor and -- it is a factor that
13 the Commission should consider. I mean, importance,
14 what level of importance you give it, I guess, could
15 vary, depending on who you talk to, but it is a
16 factor that the Commission should certainly consider.

17 Q. I'm talking to you. So the Commission in
18 this statement has said they emphasized it. Now I
19 switched to you. Is it something that you emphasize,
20 or is it one the x number of factors are equally as
21 important as all the others?

22 A. Considering all the factors that go into
23 an ESP, you're asking me my opinion, I would say that
24 Ohio's in a wonderful place having embraced
25 competitive markets and choice, and that the

1 competitive markets offer the best source of rate
2 stability for customers because we can offer
3 customers fixed-price contracts that allow them to
4 hedge their risk long term.

5 So I think the most important part of an
6 ESP would be to encourage the growth and prosperity
7 in competitive markets, which do provide the best
8 form of rate stability for customers.

9 On top of that, I think it's important
10 that the SSO procurement, which procures default
11 supply for customers, is done in a way that provides
12 a fixed long-term hedge for customers, and that would
13 be the laddering and staggering approach the
14 Commission has adopted and has worked very well for
15 Ohio and its default customers.

16 That has a rate stabilizing effect, but
17 it also has the effect of providing the lowest cost
18 to customers due to the competitive bidding process.
19 So when I look at all the factors, I'd say expanding
20 choice, making sure that it's the lowest cost that
21 customers are paying by a competitive, open market,
22 transparent processes, all would be more important
23 than rate stability because all those things do
24 already provide rate stability.

25 Q. Thank you for that. But I think I was

3689

1 asking what you would emphasize and how you would
2 emphasize rate stability. And correct me if I'm
3 wrong, I'll move on after this, what you just said if
4 you come to a fork in the road, encouraging
5 competition is a more important part of an ESP than
6 retail stability, in your opinion, correct, retail
7 rate stability?

8 A. Well, I think encouraging competition
9 also encourages rate stability because competition
10 provides not only stability but also lower costs --
11 the lowest costs.

12 Q. But if there's a fork in the road, you
13 can only go one way or the other, that's how you
14 prioritize. When you have to say one is more
15 important than the other --

16 A. But important implies that one --

17 Q. Let me finish. Let me finish my
18 question.

19 So if you have to choose one over the
20 other and you have to emphasize and prioritize one
21 over the other, you're saying that you would
22 prioritize the encouragement of competition over
23 retail rate stability, correct?

24 MR. PETRICOFF: Objection, asked and
25 answered.

1 MR. MICHAEL: Objection, asked and
2 answered.

3 EXAMINER PARROT: I don't think it has
4 been, overruled.

5 If you're not able to make that sort of
6 distinction, please tell us that, if you can.

7 THE WITNESS: I don't think there is a
8 distinction. He's putting a fork in the road that is
9 not a fork because competition does provide rate
10 stability.

11 EXAMINER PARROT: But the question is,
12 which one do you rank higher in priority.

13 THE WITNESS: I would rank competition
14 higher because competition has the added benefit of
15 also including rate stability.

16 Q. (By Mr. Satterwhite) Thank you.
17 Now, on page 16 of your testimony, you talk how the
18 PPA rider shifts the risk from generator investing
19 resources to ensure reliability because its got a
20 guaranteed recovery, correct?

21 A. Let me get to my testimony. All right.
22 What line are we at?

23 Q. I just have page 16. I think you talk
24 about it multiple places in your testimony, the
25 concept of guaranteed recovery changing the

1 investment decisions of the generator, correct?

2 A. Sure.

3 Q. And your testimony assumes that AEP Ohio
4 will not want the units to perform as efficiently as
5 possible because you say customers are paying for the
6 cost regardless, correct?

7 A. Did I use "not want," or would they not
8 be incentivized? So I don't --

9 Q. If you need to answer with clarification,
10 please go ahead.

11 A. So I would not use the term "not want."
12 I don't think that's what I'm saying. I think what
13 I'm saying is the PPA rider will provide a full cost
14 recovery, guaranteed return, so, therefore, they
15 would not be exposed to market risk, like other
16 generators in the market would be exposed to risk.
17 They would be fully hedged, the generator would, and,
18 therefore, they would not be incentivized to make
19 market-based decisions the same way that other
20 generators would be incentivized to make market-based
21 decisions since they are shielded from risk by
22 ratepayers.

23 Q. And the "they" you're talking about in
24 that statement is AEPGR, correct?

25 A. Yeah. I think the ultimate beneficiary

1 of the rider PPA is AEPGR as the ultimate owner of
2 the generation. They are now shielded from market
3 risk, yes.

4 Q. But you would agree that AEP Ohio has an
5 interest in making sure that the plants are run
6 efficiently and dispatched properly, correct?

7 MR. PETRICOFF: Sorry, could I have the
8 question read back?

9 (Record read.)

10 MR. PETRICOFF: Your Honor, I think I'm
11 going to object. There's nothing in the record that
12 says that AEP Ohio is going to dispatch. In fact,
13 dispatch would be done by PJM, so I object to the
14 question. It has a false premise.

15 MR. SATTERWHITE: I can rephrase, your
16 Honor. I wasn't talking about physical dispatch.

17 EXAMINER PARROT: Please do so.

18 Q. (By Mr. Satterwhite) You would agree that
19 AEP Ohio has an interest in making sure that the
20 plants are run efficiently, and so, therefore, the
21 units can be bid into the market to make a profit,
22 correct?

23 A. I don't think they would have the same
24 motivations or incentives than a generator that is
25 completely exposed to market fundamentals. However,

1 I think, I would hope, that AEP would want the units
2 to run efficiently, operate efficiently, so yes.

3 Q. You would expect them to do that so they
4 could try to provide a credit to its customers as
5 part of the PPA rider, correct?

6 A. I would hope they did that, but, again,
7 they would be shielded from risk. If the units don't
8 run, they're still going to get paid.

9 Q. In your discussion of there won't be a
10 proper incentive to act as you describe a generator
11 should act, that's all tied back to your testimony on
12 the lack of adequate prudence review to question the
13 decisions that are made, correct?

14 A. That's part of the concern, is what --
15 you know, if you're taking away the market-based
16 incentives for someone to operate a unit efficiently
17 and schedule the units economically, it should be
18 replaced with other incentives to do that, which, if
19 you're taking away the market incentive, it should be
20 then a Commission incentive, like the Commission
21 should have full oversight of how these units are
22 being run to make sure the ratepayers are ultimately
23 protected.

24 So if you're taking away -- what this
25 does is it takes away the market economic incentives

1 to dispatch economically and efficiently, and it
2 needs to be replaced with something, and if you're
3 going to replace it with something, it should be a
4 strict Commission oversight, in my opinion.

5 Q. So that was a "yes," that it relates --
6 your concern relates back to what you believe is
7 inadequate prudence review ability by the Commission,
8 correct?

9 A. Well, my concern relates back to the
10 impact that the ratepayer guarantee would have on the
11 market generally, competitive markets, wholesale and
12 retail. One of the pieces that is lacking, and only
13 a part of it, would be the Commission oversight. So
14 that's part of it, but it's not -- your question
15 implied that was the sole reason, my sole concern.

16 Q. But it's your understanding, as you
17 stated earlier, that the Commission will have some
18 oversight of the AEP Ohio decisions in relation to
19 the PPA, correct?

20 A. AEP has proposed there be some oversight,
21 but it's very unclear to me what oversight the
22 Commission would have with regard to the decisions
23 that are made day to day and how, as far as revenues
24 flowing through the rider, a reasonableness, yes.

25 Q. And I was just asking. And your lack

1 of -- I won't say understanding. That's not my
2 intention. Your lack of belief that there's clarity
3 of what that is leads you to say the incentives
4 aren't there for the units to be treated as they
5 properly would be treated, correct?

6 A. Incentives aren't there because there's
7 no economic risk anymore. They do not have economic
8 risk, so if it costs \$30 to fuel a unit and operate
9 the unit, they don't care whether the market's only
10 going to give them \$10 because the \$20 gap is going
11 to be made up by ratepayers. There's no economic
12 incentives to schedule the units based on variable
13 costs and do things in an economically rational
14 manner.

15 That's what the rider PPA does, it takes
16 away the market risk for AEPGR and puts that risk on
17 the hands of ratepayers in Ohio, so the beneficiary
18 of the hedge is AEPGR. They don't have any risk
19 anymore, and who's paying for that hedge?
20 Ratepayers.

21 Q. You would agree, though, that if the
22 units -- the ability of AEPGR to make a profit on its
23 units is capped by the level of competition in the
24 PPA agreement, correct?

25 A. I think that's fair, yes.

1 Q. You mentioned earlier, on page 16 to 17
2 you talk about it again, that the PPA rider will not
3 benefit consumers that are in CRES contracts because
4 you believe it just increases the generation charges,
5 and you argue that some of the customers have used
6 CRES contracts to shield themselves already from
7 market forces, correct?

8 A. That is correct.

9 Q. So is it your testimony that a fixed CRES
10 contract cannot be changed if a provider incurs
11 higher-than-expected costs?

12 A. It depends on the provisions of the
13 contract. So there are some contracts that are
14 unfixed, fixed for a certain portion, unfixed for
15 others. It literally depends on the terms of the
16 contract.

17 Q. And, in fact, some fixed CRES-provider
18 contracts include language that they can revise a
19 fixed contract anytime upon the occurrence of any
20 event beyond its reasonable control that materially
21 increases the obligations of the CRES or the cost of
22 performing in some job locations, correct?

23 A. I don't have specific knowledge of
24 language to that effect. Contracts do have
25 change-in-law provisions. The exact wording, if

1 there's something you want to show me --

2 Q. I will accept your invitation.

3 MR. SATTERWHITE: Your Honor, I believe
4 we're on AEP Exhibit 41.

5 EXAMINER PARROT: You are.

6 MR. SATTERWHITE: May we approach? I
7 would like to mark AEP Exhibit 1, "Constellation
8 Terms and Conditions."

9 EXAMINER PARROT: 41.

10 MR. SATTERWHITE: Did I say 31?

11 EXAMINER PARROT: I think you just said
12 1.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. (By Mr. Satterwhite) Mr. Campbell,
15 you're aware of the Commission's Apples to Apples
16 website, correct?

17 A. I am, yes.

18 Q. And as part of that website, customers
19 can go on and review the differences between
20 different CRES suppliers, correct?

21 A. Correct.

22 Q. And if they happen to choose a certain
23 CRES provider, there's a link within the Apples to
24 Apples chart where they can get access to the
25 potential contracts with that provider, correct?

1 A. Correct.

2 Q. Can you identify the document that I've
3 placed in front of you?

4 A. I have not -- first of all, I have not
5 seen this document before, but it does indicate at
6 the top that it is a "Constellation Terms and
7 Conditions," is what it says.

8 Q. And you work for Constellation, correct?

9 A. I am employed by Exelon, which is -- yes,
10 Constellation is part of our corporate family. Yes,
11 I'm here on behalf of Constellation.

12 Q. And you're familiar with the offering
13 that Constellation provides in Ohio, correct?

14 A. I'm familiar with some of the offerings,
15 yeah.

16 Q. Does this appear to be one of those
17 offerings?

18 A. I've never seen this specific document
19 before. It does appear to be a terms and conditions
20 sheet. I don't know the date of this. If it was
21 pulled off yesterday, then -- off Apples to Apples
22 yesterday, I guess it is what it is.

23 Q. Sorry, were you done?

24 A. I'm done.

25 Q. And the Web address on the bottom, can

1 you confirm that is the website for Constellation?

2 A. Home2.constellation.com, I don't know
3 about the "home2," but the constellation.com is the
4 Web address.

5 Q. And earlier you were discussing different
6 CRES contracts may have different terms in relation
7 to what can be changed in a fixed contract, correct?

8 A. That's right.

9 Q. I'd like to draw your attention to page
10 3. They're not numbered.

11 A. Okay.

12 Q. Where it says "Change in Pricing and
13 Other Terms," do you see that?

14 MR. PETRICOFF: Your Honor, I'd like to
15 object at this time. He indicated he's not familiar
16 with this document, so it's unfair to then grill him
17 on the language that's in this document, and that's
18 particularly true if they're going to ask for a legal
19 interpretation because we've established that he is
20 not permitted to give interpretations.

21 MR. SATTERWHITE: Your Honor, this is a
22 contract fully marked as a Constellation contract.
23 This is a party admission, really. I can use it for
24 impeachment purposes of this witness to discuss the
25 concept of fixed contract not truly being a fixed

1 contract.

2 At this point he's discussed that many
3 contracts have many terms. I was going to ask him
4 generally looking at this term here if this is a
5 typical type of term that appears in CRES contracts.

6 EXAMINER PARROT: I'll allow that
7 question, Mr. Satterwhite, as you just put it there.

8 MR. SATTERWHITE: Thank you.

9 Q. (By Mr. Satterwhite) Mr. Campbell, can
10 you review the paragraph on "Change in Pricing And
11 other Terms"? Read it to yourself for me.

12 A. Okay.

13 Q. And is this the type of language you
14 testified to earlier that can appear in fixed
15 contracts for CRES providers?

16 A. I don't know the answer to that, only
17 because I'm familiar with contracts having,
18 generally, change-in-law provisions. I'm not
19 familiar with this specific language, really not.

20 Q. So all of your opinions that you provide
21 in your testimony about fixed contracts, you're not
22 actually aware of any of the terms of any of the
23 fixed contracts that you report to defend your
24 testimony.

25 A. The terms of contracts can vary, but if

1 we're offering fixed price for 36 months, we're
2 offering a customer a fixed price for 36 months.

3 Q. Right. But the question here is there
4 could be terms in those contracts that truly make
5 them not fixed contracts, correct?

6 A. Well, there could be terms in the
7 contracts that allow for change in law or
8 pass-throughs of certain items. I mean, these are
9 all things that can be in contracts. I don't see any
10 pass-through provisions here, so it looks like the
11 person who signs up for this would get a fixed price
12 for 36 months. This appears to be a version of
13 change-in-law provision. Again, I've never seen it
14 before, so...

15 Q. So you don't take any issue with the
16 paragraph, "Change in Pricing and Other Terms," as a
17 term that you expect to see in CRES contracts,
18 correct?

19 A. I've testified that I'm generally aware
20 that contracts can contain change-in-law provisions.

21 Q. Right. And I'm asking you this one that
22 you have in front of you right now.

23 A. The one that I said I've never seen
24 before? Yes.

25 Q. You're able to make a determination by

3702

1 reading something and make a decision as an expert,
2 correct?

3 A. As a legal contracts expert? I mean,
4 this appears to be a version of a change-in-law
5 provision.

6 Q. And is this an appropriate change-in-law
7 provision that you would expect to see in CRES
8 contracts?

9 A. I don't know.

10 Q. So you would agree that a fixed-price
11 contract can be changed for a change-of-law
12 provision, correct?

13 A. If the contract has a change-of-law
14 provision, the contract -- you know, that would be
15 the term of the contract that the parties agreed to;
16 and, yeah, it would be a term of the contract.

17 Q. But there could be other issues besides
18 changes of law where the CRES provider was unable to
19 perform and, therefore, would be able to change the
20 contract, correct?

21 A. Under this contract?

22 Q. We can use this one if you like. That's
23 what this statement says, correct?

24 THE WITNESS: What was the question?

25 (Record read.)

1 A. Could change the contract?

2 Q. I can restate it if you'd like.

3 A. Yeah.

4 Q. Your testimony so far has been, yes,
5 contracts can have change-of-law provisions and,
6 therefore, things can change because of a change of
7 law, correct? I'm talking about rates when I say
8 "things" there.

9 A. Contracts can have change-in-law
10 provisions.

11 Q. So let's park change-of-law provisions to
12 the side.

13 A. Okay.

14 Q. And contracts can also have provisions
15 that allow for a change if the CRES provider is
16 unable to perform, correct?

17 A. A CRES provider is unable to perform?

18 Q. Correct.

19 A. That would probably be a violation of the
20 CRES provider's obligations under the contract.

21 Q. So your testimony is that the example
22 that we have here that states, "This Contract may be
23 revised at anytime by Constellation upon the
24 occurrence of any event beyond its reasonable control
25 that materially increases the obligation of

1 Constellation or the cost of performing such
2 obligations under this Contract" would violate the
3 CRES, I believe you said, conduct?

4 MR. PETRICOFF: Your Honor, I'm going to
5 object. We are now back to asking a legal
6 interpretation of a contract he has not seen before
7 and should not be the basis of cross-examination.

8 MR. SATTERWHITE: Your Honor, this is a
9 Constellation contract with the cite on the bottom.
10 I'm impeaching this witness with his own contract.
11 This witness has also gone on ad nauseam in his
12 testimony about the sanctity of fixed contracts and
13 what AEP is doing with the PPA rider. This
14 absolutely impeaches this witness with a document
15 from his own company. But I've asked it in a general
16 sense, trying to see if he has any awareness of these
17 types of terms.

18 EXAMINER PARROT: And, Mr. Satterwhite,
19 are you asking him to give you a legal opinion?

20 MR. SATTERWHITE: I'm asking as a
21 regulatory expert and employee of Constellation.

22 EXAMINER PARROT: With that, I will allow
23 it for the purposes of impeachment.

24 You need us to reread it, Mr. Campbell?

25 THE WITNESS: Yes.

1 (Record read.)

2 A. So that question does not reflect the
3 language here, so I'd ask that you rephrase the
4 question to make it consistent with the language in
5 the contract.

6 Q. I believe I read the language from the
7 contract to you.

8 A. Okay.

9 Q. The previous question I asked you we
10 parked the change-of-law provisions to the side, and
11 I read from this as an example because you said they
12 wouldn't be able to change the fixed contract other
13 than change of law because that would be a violation.
14 So I read you the language of this example and asked
15 if this language is a violation.

16 A. And my testimony was this language
17 appears to be a version of a change in law.

18 Q. And where in that sentence does it talk
19 about solely law? Specifically I'll call your
20 attention to the term "any event."

21 A. So, again, not having seen this language
22 before, "any event," I guess, would include a change
23 in law event.

24 Q. So it's not exclusive. It's just
25 inclusive of the change of law; is that your

1 testimony?

2 A. You're asking for a legal interpretation
3 of a legal document that was not prepared by me that
4 I've never seen before, but "any event" in my mind
5 could include both a change in law, and, I guess,
6 something else beyond that.

7 Q. Sir, in what capacity are you testifying
8 here today, under what expertise?

9 A. Rate, regulatory policy.

10 Q. As an employee for who?

11 A. I'm employed by Exelon, and I'm here
12 testifying on behalf of Constellation, Exelon
13 Generation, and Retail Energy Supply Association.

14 Q. And your testimony makes a number of
15 representations dealing with the sanctity of fixed
16 contracts, correct?

17 A. That is correct.

18 Q. But it's your testimony that you didn't
19 review the terms and conditions of any fixed
20 contracts to make the statements you've made in your
21 testimony?

22 A. Did I review specific -- the entire terms
23 and conditions of all contracts? The answer is no.

24 Q. Did you review any?

25 A. No. I reviewed the Apples to Apples

1 website, which I cite in my testimony.

2 Q. And you've made the assumption that a
3 fixed contract means unless there's a change of law,
4 the fixed contract will never change any terms,
5 correct?

6 A. The fixed contract is a fixed price for
7 generation for the term of the contract pursuant to
8 the terms of the contract. So again, contracts can
9 have different terms. I'm familiar with
10 change-in-law provisions.

11 Q. So is that a "yes"?

12 A. What's the question?

13 Q. I can restate. You assumed for purposes
14 of your testimony that fixed contracts had fixed
15 terms, and they could not change but for a
16 change-of-law provision, correct?

17 A. In my mind, fixed means fixed, and there
18 are provisions in contracts that would allow for the
19 termination of the contract, and typically those are
20 change-in-law provisions. That was within the scope
21 of my knowledge at the time I drafted my testimony.

22 Q. And those are typically called force
23 majeure clauses, correct?

24 A. That is another form of a term in a
25 contract, but I think that would be different than a

1 change in law.

2 Q. Would you turn to the next page?

3 A. Okay.

4 Q. There's a "Force Majeure." Is this an
5 example of a change-in-law provision where in the
6 second-to-last line, last full line of Force Majeure,
7 it lists specifically "changes in laws"?

8 A. This does specifically mention changes in
9 laws, yes.

10 Q. So a change-of-law provision that you
11 assume generally exists, that's covered there in this
12 example, correct?

13 A. Appears in this provision. Force Majeure
14 mentions changes in law, yes.

15 Q. So back to the other example we were
16 talking about with language, you said a change in law
17 may be in there, but clearly that goes on to any
18 event, not just a change of law, correct?

19 A. I believe I did testify to that, yes.

20 Q. And that would include price and term,
21 correct?

22 A. If there's any event beyond the
23 reasonable control of Constellation.

24 Q. Or materially increases the obligations
25 of Constellation or the cost of performing them,

1 correct?

2 A. That is what it says, yes.

3 Q. Do you know if Constellation intends to
4 pass through the increase in the capacity costs from
5 the recent BRA capacity auction through a clause such
6 as this to customers?

7 A. I do not have knowledge of that.

8 Q. And you would agree that volatility in
9 the wholesale market can result in volatility in the
10 CRES retail market, correct?

11 A. In what sense? Trying to figure out
12 context.

13 Q. Do you think that there is a link between
14 volatility in the wholesale market that has an impact
15 on what CRES providers can offer in the retail
16 market?

17 A. I think CRES providers procure their
18 supply to serve their customers from the wholesale
19 market, so there's a link, yes.

20 Q. So extreme changes in the wholesale
21 market can show up as a price change for customers in
22 the CRES offerings in the retail market, correct?

23 A. It would depend on the term of various
24 contracts. I would hope that CRES providers may
25 hedge and may lose their risk appropriately,

3710

1 particularly if they're offering a fixed-price
2 contract to their customers. They are, in turn,
3 using that risk in the wholesale market. But there
4 is a link between the wholesale market, yes.

5 Q. And CRES offerings from month to month
6 are impacted by what happens in the wholesale market,
7 correct?

8 A. I can't speak to the period by which a
9 CRES changed their offerings. Again, it would depend
10 on the type of offerings. If it was an unfixed
11 contract or an index-based contract, it would not
12 change at all, just be based on the index. If it's a
13 fixed-price contract to the extent CRES providers are
14 updating those, it probably should be some reflection
15 of their view in the wholesale market.

16 Q. So there's two impacts here. One, it's
17 of the different offerings that a CRES provider may
18 provide that a customer may take advantage of?

19 A. Uh-huh.

20 Q. Second, there's provisions in CRES
21 contracts that a CRES provider can change the terms
22 of their contract that would also have a have an
23 impact, potentially, of what is in the retail rate,
24 correct?

25 A. Sorry, you're going on have to repeat

1 that question.

2 Q. I'll leave the first part out. We agreed
3 about the different change in offering. But, also,
4 if a CRES contract has a provision that allows the
5 CRES to change the terms of a fixed contract
6 dependent upon any event that changes the ability to
7 perform, that could also impact a customer's retail
8 price under a CRES contract, correct? This is all in
9 the context of a change in the wholesale market be
10 reflected down.

11 A. If the terms of a contract can change,
12 then the wholesale market may play a role in that,
13 yes.

14 Q. And you said before you were familiar
15 with the Apples to Apples comparison on the PUCO's
16 website, correct?

17 A. I've reviewed it.

18 Q. And how often do you review that?

19 A. Well, I've reviewed it in conjunction
20 with preparing my testimony and doublechecked it
21 yesterday.

22 Q. You think that's an usual tool for
23 consumers in Ohio.

24 A. I would think so.

25 Q. Now, the CRES offerings before the polar

1 vortex in 2014 and after the occurrence of the polar
2 vortex were extremely different, correct?

3 A. I don't have any specific data that I can
4 recollect right now. And you used the word
5 "extreme." I don't know what that means, but I can
6 imagine that forward risk was viewed differently
7 after the polar vortex.

8 Q. So, on average, you would believe if you
9 looked at the data from the Apples to Apples before
10 and after, that CRES offerings increased after the
11 polar vortex, right?

12 A. I have not done that analysis. I have no
13 personal knowledge of that, but that would probably
14 be right. I would think that would be right.

15 Q. And you could do that by looking at the
16 Apples to Apples chart offerings from January of 2014
17 comparing that to a later time period 2014, correct?

18 A. That could be one way, yes.

19 MR. SATTERWHITE: Your Honor, I'd like to
20 mark a couple of exhibits now. AEP Exhibit 42 will
21 be the Apples to Apples residential offerings from
22 January 6, 2014.

23 EXAMINER PARROT: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MR. SATTERWHITE: And I also have a

1 certified copy that I can make available to the
2 witness to show it has been certified by docketing as
3 the official docket for PUCO.

4 And AEP Ohio Exhibit 3.

5 MR. MICHAEL: Also known as 43, I think,
6 Matt. You said 3.

7 MR. SATTERWHITE: I'm not saying my "40"
8 strong enough.

9 AEP Exhibit 43 is the Apples to Apples
10 chart from April 25, 2014.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. SATTERWHITE: May we approach?

13 EXAMINER PARROT: You may.

14 MR. SATTERWHITE: And I also have a
15 certified copy from docketing stamped certifying and
16 authenticating this document as an official document
17 from the Commission's website.

18 And, third, I have an AEP Ohio cross
19 exhibit. I thought it might be easier to see the
20 numbers we were talking about from these two
21 documents. I'd like to mark that as AEP Ohio Cross
22 Exhibit 44.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MR. SATTERWHITE: May we approach, your
25 Honor?

1 EXAMINER PARROT: You may.

2 Q. (By Mr. Satterwhite) Do you have Exhibits
3 42, 43, and 44 in front of you, sir?

4 A. I do, yes.

5 Q. And would this be the type of
6 documentation that you could determine what we were
7 talking about earlier about the change in prices from
8 offerings from CRES offerings before the polar vortex
9 in 2014 and after?

10 A. One of the Apples to Apples documents is
11 from the day before the polar vortex, and the other
12 one is April, the April after, so a few months after,
13 yes.

14 Q. So I'd like to walk through this just to
15 kind of test this concept and make sure we're clear
16 for the Commission about what the impact and what the
17 change in prices might have been. So if I can ask
18 you to look at AEP Exhibit 42 for me.

19 A. Okay.

20 Q. And this is the January 6, 2014, Apples
21 to Apples chart.

22 A. All right.

23 Q. And just so you know, like I said I was
24 going to just do this orally, but I thought it would
25 be easier to go ahead and show my work. So AEP

3715

1 Exhibit 44, it is something I've created trying to
2 gather the data from these two documents to put it
3 into one for illustrative purposes, all right?

4 A. Lot of numbers for a lawyer.

5 MR. MICHAEL: Make sure you check them.

6 Q. My tenth grade daughter helped me.

7 So looking at AEP Exhibit No. 42, and the
8 purpose of what I was looking at was to look for
9 12-month and 24-month offers from CRES providers that
10 did not include any renewable offer, so that's the
11 subset of what I was looking for.

12 A. So just 12 and 24 months fixed.

13 Q. Correct. So I went through this chart
14 and tried to identify, first of all, the 12 months.
15 The first one I see is AEP Energy for 12 months fixed
16 at 0.0689. Do you see that?

17 A. I do, yes.

18 Q. And what's easier for you? For me to go
19 down and read what I believe is the next one, or
20 would you like to determine what's the next one?

21 A. You can direct me to it, that's fine.

22 Q. And the next one, AEP Gas & Electric,
23 which is three down from the last one, is a 12-month
24 fixed for 0.0649, correct?

25 A. Correct.

1 Q. And then two down from that is
2 Constellation, another 12-month fixed for 0.0739,
3 correct?

4 A. Yes.

5 Q. And the next one is shown on 44, and then
6 the next 12-month fixed in the Apples to Apples
7 chart, DP&L at the bottom of this page, 12 months
8 fixed for 0.0649, correct?

9 A. Correct.

10 Q. But I don't see another one until page 4
11 of 7, Glacial Energy of Ohio. Can you confirm that?

12 A. That looks like the next fixed 12 month.

13 Q. And that price is 0.0719, correct?

14 A. Yes.

15 Q. And the next one I see is Integrys at a
16 price of 0.0699 for 12 months.

17 MR. PRITCHARD: Your Honor, at this point
18 I'm going to object. Mr. Campbell indicated he had
19 looked at the Apples to Apples website before, but
20 there's no indication that he's reviewed the data on
21 these days. I don't know that there's any foundation
22 for him to confirm or answer any questions about the
23 data on these specific two days of 2014 as compared
24 to all the other days since then or before then.

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

3717

1 join. Obviously, the purpose of this is to basically
2 substantiate the work chart over here, which has been
3 marked. But we could cut through this very quickly.
4 The Commission could take administrative notice of
5 the Apples to Apples charts for these periods. And I
6 would ask that it be because what we have here in the
7 exhibits are just the less than a year, a year, and
8 two years, and there are also some three-year offers,
9 and, probably, if we're going to be talking about
10 this in the briefs, we ought to be able to look at
11 those as well, and then everyone can make their
12 comparisons.

13 And in that regard you can certainly ask
14 him questions about it if we take administrative
15 notice about the relative rates that are given.

16 MR. SATTERWHITE: And, your Honor, I went
17 ahead and authenticated these with the Commission
18 this morning on the off chance that this witness was
19 not familiar with these time periods. So I don't
20 think there's any question as to the authenticity of
21 these documents. They wouldn't be hearsay.

22 My only concern about administrative
23 notice is, as your Honors rule, I'm not sure how
24 people are going to treat administrative notice in
25 briefs. I would hope we would be able to do exactly

1 what Mr. Petricoff said, but in abundance of caution,
2 I went ahead and got these certified by the
3 Commission so we could prove this, which I think is
4 an important point, to show the volatility before and
5 after and really tests some of the theories
6 Mr. Campbell is putting his test on.

7 I'm happy to move forward. I can even
8 move forward faster through this, if you'd like. I
9 just want to make sure we can show the Commission 12
10 and 24 months was a good approximation to show the
11 Commission a good sample size from these two periods.
12 And this witness has already stated that this is what
13 you need, something before the vortex and after.

14 MR. PETRICOFF: Once again, your Honor, I
15 think we're on the same page, and we are not
16 contesting the authenticity of the Commission's
17 documents, but I think it's better if we have
18 administrative notice of the Apples to Apples charts,
19 and then people could make the appropriate arguments,
20 and we could cut to that right now and save time.

21 MR. PRITCHARD: It would take care of my
22 objection as well. I agree with him.

23 MR. SATTERWHITE: Just for clarification,
24 Mr. Petricoff, are you asking for administrative
25 notice of these documents or all Apples to Apples on

1 the Commission website?

2 MR. PETRICOFF: No. I would say that
3 what we ought to do is Apples to Apples from the
4 period of January 2014 through -- actually, from
5 January 2014 through today. These are Commission
6 records, remember, that are public, because what
7 we're looking at is trends. We ought to look at all
8 the data from the trends. A data point the trend
9 does not make.

10 MR. SATTERWHITE: I think a data point
11 does make, your Honor. We're talking about the polar
12 vortex here and the difference from before and after.
13 I'm trying to work with Mr. Petricoff, but I think we
14 withdrew our request to take administrative notice of
15 the internet. I think that's what Mr. Petricoff is
16 now sort of asking to do that.

17 MR. PRITCHARD: If we're not going to
18 take administrative notice, I would renew my
19 objection. Whether these are authentic documents or
20 not is not my objection. This witness, there's no
21 foundation he has looked at the Apples to Apples
22 website for these two days and that he is able to
23 testify about what the data on these specific two
24 days mean compared to other days.

25 MR. SATTERWHITE: And, your Honor, this

1 witness specifically said that is the type of
2 information you would need to test the theory that I
3 asked him about, which is why I brought these up and
4 had them authenticated by the Commission.

5 MR. PETRICOFF: Your Honor, I mean, we're
6 not objecting to the technique of using specific
7 dates and asking about specific dates. We're just
8 saying that when it comes time for the briefing in
9 this record or to consider the point-to-point
10 differentials that are going to be made here, which I
11 think is valid, that it cover all the points between
12 January 6 I think probably makes sense to start with
13 January 1 to the present and then we can all talk
14 about trends.

15 MR. SATTERWHITE: And I intended to move
16 for the admission of these into evidence which would
17 have all that information in there that Mr. Petricoff
18 can use as he sees fit.

19 MR. PETRICOFF: If we take administrative
20 notice, that won't be necessary.

21 EXAMINER PARROT: Mr. Petricoff, you're
22 not willing to stipulate to the admission of these
23 two particular exhibits? I just want to make sure I
24 understand.

25 MR. PETRICOFF: That is correct.

3721

1 EXAMINER PARROT: If that's the case,
2 then, I think we need to just continue with what
3 Mr. Satterwhite was doing at this point and then
4 we'll move for the admission and we will hear your
5 objections at that point. I'm not hearing an
6 agreement between you, Mr. Petricoff, and you,
7 Mr. Satterwhite, on how we proceed here.

8 MR. PRITCHARD: Was the Bench's
9 suggestion that we admit these but then take
10 administrative notice of other Apples to Apples?

11 EXAMINER PARROT: I'm saying I'm not
12 hearing an agreement, and I'm not making a ruling at
13 this point on whether or not, as Mr. Satterwhite
14 prefers, we just admit these particular exhibits
15 outright.

16 I'm overruling your objection at this
17 point, Mr. Pritchard, and I'm not hearing an
18 agreement between the two of you in terms of how we
19 proceed at this point. I think we just need to
20 continue is what I'm saying.

21 MR. PETRICOFF: Your Honor, let me take
22 it out one step. I think we were willing to allow
23 cross-examination using this chart.

24 EXAMINER PARROT: And I think that's what
25 I'm saying.

1 MR. PETRICOFF: But not based upon these
2 two points in time, but permitting administrative
3 notice of the Apples to Apples charts from --
4 basically for 2014 and 2015. If we have that, we're
5 not objecting to the use of this. We can argue later
6 about whether it should go into the record or not.
7 But it would -- I guess that would supersede the need
8 to both have these in and to go through all of the
9 background necessary to establish the numbers on the
10 chart.

11 MR. SATTERWHITE: And, your Honor, I was
12 not in agreement because my concern is I'm trying to
13 use that in cross-examination, show the math.
14 Redirect can be done on that. I don't want briefs to
15 be a 40-page treatise on different math equations.

16 EXAMINER PARROT: That's my concern as
17 well. I'm not sure I am on board yet, Mr. Petricoff,
18 which I was proposing that we reserve a ruling, but
19 if you're going to force me at this point, I'm not
20 comfortable taking Apples to Apples data starting
21 2014 going all the way through the present. If you
22 want a narrower window, January 2014 through, say,
23 the end of April 2014, that would encompass
24 Mr. Satterwhite's period and make his point, I'm more
25 comfortable with that.

1 MR. PETRICOFF: Your Honor, the problem
2 is that these are 24-month offers, so I think that's
3 why you've got to have a 24-month period, because
4 these are rates that change day to day, but it's for
5 24 months. So if you start with a January 1st of
6 2014 or January 6, if you take two years, you've got
7 2014 and 2015. So I think you have to have them --

8 EXAMINER PARROT: Aren't these fixed
9 rates? I guess I'm missing the point. Are these
10 fixed contracts we're talking about or not?

11 MR. PETRICOFF: Yes, these are fixed
12 contracts, but they go for a period you're fixing for
13 24 months. So this is the price they have a year on
14 January 6 and if you take administrative notice what
15 the offer was on January 7 and January 8 and
16 January 9.

17 In the end, the arguments are going to be
18 made about trends, not what's available on any
19 particular day. Any particular day is -- I guess,
20 we're back to the objection you've picked one day
21 with no basis for that day.

22 EXAMINER PARROT: But at this point it's
23 Mr. Satterwhite's cross-examination. He's trying to
24 make a very narrow point, which is what the offers
25 were at one point before the polar vortex and

1 increased afterwards, and so that's -- I'm willing
2 again to take a broader period.

3 I do appreciate your point,
4 Mr. Petricoff, that he's picked one specific date in
5 April. I'm willing to take a slightly broader period
6 of time, I think, but I'm not willing to extend this
7 out into 2015.

8 MR. SATTERWHITE: The company would
9 agree, your Honor. When you look at retroactive,
10 there's two months, I believe, that come out, so I
11 don't think it's for every day as far as what you can
12 get on the website.

13 So we are more than -- I think it's
14 appropriate, we don't have a problem with taking
15 notice of the other ones from this time period in
16 between these two dates. I don't think you need to
17 do the two years out because that kind of, as you've
18 pointed out, making a very narrow point here, and we
19 don't believe fixed is fixed, so that would be really
20 relevant.

21 So may I continue?

22 EXAMINER PARROT: So, again, the ruling
23 I'm prepared to make here, Mr. Satterwhite, is we
24 will take administrative notice from January 2014
25 through the end of April 2014. That's the period of

1 time which I'm willing to notice at this point, and
2 again, Mr. Satterwhite, we'll kind of see where it
3 goes, and you may still move for the admission of the
4 exhibits at the end of your cross.

5 MR. SATTERWHITE: I want to make clear
6 I'm not saying I'm not going to move for these. I
7 think they're still appropriate. I have no problem
8 allowing that.

9 MR. PETRICOFF: But, your Honor, I could
10 make additional motions for administrative notice at
11 the end of the cross and the redirect?

12 EXAMINER PARROT: We'll see where things
13 go. I will leave that door open at this point based
14 on how things move from here.

15 MR. SATTERWHITE: Your Honor, can we go
16 off the record for just a second, and I can talk to
17 Mr. Petricoff and maybe speed things up?

18 EXAMINER PARROT: Yes.

19 (Off the record.)

20 EXAMINER PARROT: Let's go back on the
21 record. Ready to proceed, Mr. Satterwhite?

22 MR. SATTERWHITE: I've talked to counsel
23 for Mr. Campbell, and I hope we're able to move
24 quickly.

25 Q. (By Mr. Satterwhite) Mr. Campbell, we've

1 gone through AEP Exhibits 42 and 43 and I've kind of
2 showed you how I came up with the different offerings
3 for the 12-month offers, correct?

4 A. Yes.

5 Q. And are you willing to accept, subject to
6 check, that it's also accurate for the April 25,
7 2015, 2014, and the 24 months for January 6, that I
8 accurately portrayed the offers of the 12- and
9 24-month offers without renewable offerings? That
10 make sense?

11 A. It does. And subject to check of your
12 ten-year-old daughter's math, we will --

13 Q. Tenth grade.

14 A. That's better.

15 Q. All right. And then underneath, so that
16 would deal with the numbers and the number of
17 offerings from those two periods of those Apples to
18 Apples charges on those dates, correct?

19 A. Correct.

20 Q. And then underneath in the shaded area,
21 this is on AEP Cross Exhibit 44, I've tried to apply
22 that math and show the average and the median of
23 those numbers, do you see that?

24 A. Yes.

25 Q. And are you willing to accept, subject to

1 check, that those numbers are accurate?

2 A. Subject to check, yes.

3 Q. And that's just simple mathematical
4 equations, correct?

5 A. That's what it appears to be.

6 Q. And this shows in the 12-month offer the
7 average increased 21.5 percent, correct? Between
8 January 6 and April 25.

9 A. That is what it says, yes.

10 Q. 24-month offerings, the increase was
11 14.7 percent for the average of those offers,
12 correct?

13 A. That's what this says, yes.

14 Q. And then the high in the 12-month offers,
15 the maximum offer increased 35.2 percent and
16 15 percent between the 12 and the 24 months, correct,
17 respectively, two different numbers? That was
18 compound. Let me rephrase that.

19 So for the 12-month offer the increase
20 for the maximum offer between January 6 of '14 and
21 April 25 of '14 was a 35.2 percent increase, correct?

22 A. Yes, although I will note that the max
23 offer in April is a different entity than the max
24 offer in January. Maybe that makes no difference
25 but --

1 Q. No problem with that caveat.

2 And then the minimum offer increased
3 15.4 percent for the 12 month.

4 A. Correct, with the same caveat.

5 Q. And the numbers equally are
6 representative on the 24-month offer, correct? Just
7 to shortcut this.

8 A. Yes.

9 Q. As represented on Cross Exhibit 44.

10 MR. PETRICOFF: I'm sorry, your Honor,
11 could I have that question read back?

12 MR. SATTERWHITE: I can rephrase, your
13 Honor.

14 Q. And over on Cross Exhibit 44 to the right
15 of the April 25th table, I've shown the increase is
16 the average 14.7 percent, the max offer of
17 15 percent, the minimum offer 12.4 percent, and the
18 median 15 percent, correct?

19 A. Yes, you have shown those. And with the
20 same caveat, that they're different entities
21 providing the min and max in each of the two dates.

22 Q. I'd like to talk about your testimony on
23 page 18. You talk about the reliability must-run
24 contracts.

25 A. Yes.

1 Q. Let me know when you get there.

2 A. I'm there.

3 Q. And it's your understanding that the --
4 okay if I call it the RMR?

5 A. Sure.

6 Q. This is a last-resort option requested by
7 PJM after notification of retirement, correct?

8 A. After notification of retirement and if a
9 reliability study is conducted, this is a last resort
10 I guess is a way you could nickname it, I guess. The
11 purpose is to preserve units that have been
12 determined, based on the study, to be necessary for
13 reliability.

14 Q. Typically used as a bridge until the
15 transmission system is changed to allow for the
16 retirement, correct?

17 A. The reliability need is resolved by not
18 having to, yes.

19 Q. And typically that deals with the
20 transmission changes, correct?

21 A. Typically could involve transmission,
22 yes.

23 Q. And under a RMR the only costs that are
24 paid are the costs to run, no depreciation or any
25 return is provided to the generator, correct?

1 A. My understanding is that the RMR
2 contracts are negotiated on an individual basis. I
3 don't have any intimate familiarity as to what the
4 specific items that would go into an RMR contract are
5 because they're each individually negotiated.

6 Q. So it's your belief that an RMR contract
7 could include depreciation and a return for the
8 generator?

9 A. I don't know one way or another.

10 Q. And the generator has to agree to accept
11 the RMR contract, right?

12 A. I believe it would, yes.

13 Q. And on page 19 you compare this to the
14 Ginna plant?

15 A. Ginna.

16 Q. And that was a request by Exelon. Exelon
17 requested if they needed to continue operation for
18 reliability reasons, correct?

19 A. Well, Exelon made an -- indicated that it
20 was in financial distress and that it was going to be
21 shut down, and I believe there was a joint filing
22 with the local utility, which is not an Exelon
23 affiliate, by the way. An independent reliability
24 study was conducted to determine that the unit was
25 going to be necessary for reliability purposes. So

3731

1 Exelon did not conduct that reliability study, it was
2 a reliability study that I believe a local utility
3 participated in conducting, and after, it was
4 determined there was reliability need. Both Exelon
5 and the utility then worked with the other parties,
6 and it wasn't you guys, went to FERC with a proposal
7 for a contract to again preserve the unit for
8 reliability purposes.

9 Q. And Exelon also argued that among the
10 benefits of keeping the plant in operation was that
11 it employs 700 people during normal operations and
12 800 to a thousand during refueling, correct?

13 A. I'm sure that was part or one of the
14 factors indicated in the application, yes.

15 Q. And Exelon also asked the Commission to
16 consider the level of taxes paid to the county as
17 part of its operation, correct?

18 A. I'm sure that was a consideration that
19 was noted in the application, yes.

20 Q. And the final agreement approved by FERC
21 has a fixed monthly charge of over \$17 million that
22 will go to Exelon for the facility, correct?

23 A. So there is a monthly payment. I don't
24 know the specific number, but that sounds right,
25 although I know that there's another agreement being

1 negotiated. So I don't know if that is the final
2 agreement.

3 Q. You testified about this in the 14-1297
4 case.

5 A. I did, yes.

6 Q. Would it help refresh your recollection
7 about whether it was \$17 million as the dollar amount
8 to review the transcript in that case?

9 A. That was proposed in the initial
10 application to FERC, yes.

11 Q. It would help to see that?

12 A. No. That's fine.

13 Q. You except that?

14 A. I'll accept that.

15 Q. And if its \$17 million, Exelon will
16 receive that regardless of the market price for
17 energy or capacity from the plant, correct?

18 A. That is -- yes. That is the rate, yes.

19 Q. And regardless of what -- strike that.

20 A. Sorry, that was the rate proposed.

21 Again, there was no final approved contract.

22 Q. That was the agreement by the parties
23 that was provided to FERC?

24 A. Correct.

25 Q. And the \$17 million payment is received

1 by Exelon every month regardless of the amount of
2 capacity or energy that's sold in the market,
3 correct?

4 A. I believe that is correct.

5 Q. And that \$17-million-a-month proposal
6 includes a 10.7 percent return on equity, correct?

7 A. So my understanding is that the number is
8 sort of a black-box calculation, and that the
9 10.75 percent was part of the showing to FERC that
10 there was a financial -- that the unit was uneconomic
11 and in financial distress.

12 So my understanding, and this is since my
13 FirstEnergy testimony, is that the 10.75 is actually
14 separate from the actual monthly amount which is more
15 of a black-box settlement amount.

16 Q. So is it your testimony that there's no
17 telling what the return on equity is that's
18 encompassed within the \$17 million?

19 A. That is correct. And, again, this is
20 based on conversations I've had since my testimony in
21 FirstEnergy. My understanding is that the monthly
22 amount is a black-box amount that was negotiated by
23 the parties, and, frankly, what I understand is that
24 it's not on -- it's fairly breakeven, if that, for
25 us.

1 Q. But the black box was based on a
2 cost-of-service study that you did discuss in the
3 FirstEnergy proceeding, correct?

4 A. There was a study that went in and, I
5 believe, is part of the FERC filing that they had to
6 show the economics of the unit, that there was an
7 economic need, and that the 10.5 percent was part of
8 that aspect of showing. But the actual number, the
9 actual contract amount, is a negotiated amount where
10 there is no public detail, and I certainly don't have
11 the detail as to how they arrived at that specific
12 number.

13 Q. And just for clarification, you said
14 10.5, you meant 10.7.

15 A. As far as the ROE?

16 Q. Yeah.

17 A. Right. It was 10 something.

18 Q. We've been saying 10.7, and you just said
19 10.5. Wanted to make sure that was clear.

20 You agree that the PJM capacity market is
21 a very robust and transparent market, correct?

22 A. I would agree with that.

23 Q. And you agree that there are generators
24 that are vertically integrated utilities within PJM
25 operating in nonretail-choice states, correct?

1 A. Correct.

2 MR. SATTERWHITE: Can we go off the
3 record for one second?

4 (Off the record.)

5 Q. And it's your understanding that these
6 utilities that we talked about in nonretail-choice
7 states charge customers a bundled rate, correct?

8 A. Yes. That would be consistent with my
9 understanding.

10 Q. And you believe these companies are also
11 getting subsidies that could be anticompetitive,
12 correct?

13 A. I believe that has been my testimony.

14 Q. And you also recognize that these
15 companies do have incentives to control their costs
16 and be efficient from their state commissions,
17 correct?

18 A. Yes. Those incentives come from the
19 state commission at the state-commission level
20 consistent with my discussion earlier around
21 incentives.

22 Q. And you are aware of an Exelon statement
23 that they do not see new-build economics working on
24 the western side of PJM, correct?

25 A. I didn't agree with that.

1 Q. I'm asking if you're aware of that
2 statement.

3 A. Oh, I'm not, I'm not aware of that. I
4 mean, I see new build coming to the western side of
5 PJM.

6 Q. So you're not aware of any documentation
7 from Exelon that makes that representation?

8 A. Not aware of that, no.

9 Q. Did you have a discussion in the
10 FirstEnergy proceeding about an investor transcript?

11 A. The FirstEnergy counsel did put in front
12 of me a few transcripts from investor calls, I
13 believe none of which I had any personal knowledge of
14 or had reviewed.

15 Q. And since your testimony in FirstEnergy,
16 you haven't explored to see whether that was your
17 company's position on something you testified on?

18 A. I have not.

19 Q. Were you instructed not to look into that
20 any further?

21 A. No.

22 Q. You just didn't think it was important to
23 look into?

24 A. I didn't look into it further. I guess
25 that was a reflection of my view of importance,

1 maybe. I don't know.

2 Q. Did you not want to know if that was an
3 official position of Exelon?

4 A. No.

5 Q. Exelon sells its energy into PJM,
6 correct?

7 A. Exelon does make sales into PJM, yes.

8 Q. Does Exelon also participate in bilateral
9 agreements?

10 A. Sure. Exelon can sell generation
11 bilaterally, yes.

12 Q. How many units does Exelon bid into the
13 PJM market?

14 MR. PETRICOFF: Your Honor, I object.
15 This is outside the scope of his testimony.

16 MR. SATTERWHITE: I believe cross is very
17 broad. This expert has been provided by Exelon to
18 testify to issues involved in this proceeding. This
19 is foundation for questions I've asked from other
20 witnesses as well.

21 A. I don't know right sitting here today --

22 EXAMINER PARROT: Hang on a minute.

23 MR. PETRICOFF: This is not confined to
24 Ohio. This is not confined to the AEP service
25 territory.

3738

1 MR. SATTERWHITE: I agree.

2 EXAMINER PARROT: I'll allow the
3 question.

4 A. Yeah. I don't know sitting here today --
5 off the top of my head, I do not know the total
6 amount of generation that Exelon offers to PJM.

7 Q. And I'm not looking for specifics. I'm
8 just asking ballpark number of units. More than 5,
9 more than 10, more than 15?

10 MR. MICHAEL: Objection. Compound.

11 EXAMINER PARROT: Overruled.

12 A. Exelon owns a number of generation units
13 within the PJM footprint. It is certainly in excess
14 of ten.

15 Q. Has Exelon ever sought to use its units
16 to improperly manipulate a specific result in an
17 auction?

18 A. That's no.

19 Q. Is that a "no"?

20 A. That's a no.

21 Q. And you're laughing. Why is that a silly
22 question?

23 A. I just think it's a silly question.

24 Q. So you're saying that a generator
25 wouldn't do that?

1 A. I'm saying a generator is not allowed to
2 do that.

3 Q. Why are they not allowed to do that?

4 A. That would be unlawful.

5 Q. And what protections are there to be sure
6 that that doesn't happen?

7 A. Protections to make sure that what
8 doesn't happen?

9 Q. That there's not that type of
10 manipulation.

11 A. And what type of manipulation? Go back
12 to what type of manipulation.

13 Q. The manipulation that you referred to
14 earlier in response to my question of affecting a
15 result of an auction, and I believe you said it was
16 unlawful for a generator to manipulate that and use a
17 bidding strategy to manipulate the auction result,
18 correct?

19 A. Let me rephrase. I understand. So there
20 are a number of protections, obviously, the PJM
21 tariff, as well as FERC inside manipulation, and
22 CFTC, FERC anti-manipulation authority.

23 Q. And there's an independent market monitor
24 as well, correct?

25 A. That is correct.

1 Q. You are aware that it's not uncommon for
2 a generator to bill in their facilities at zero,
3 correct?

4 A. That is correct.

5 Q. Now, when Exelon enters into bilateral
6 agreements, it has the opportunity to recover some of
7 its costs outside of the PJM -- outside of the PJM
8 market, correct?

9 MR. PETRICOFF: Your Honor, I'm going to
10 renew my objection here. This appears to be far
11 afield of his testimony. It's not restricted to the
12 service territory, and, quite frankly, probably
13 borders on confidential information, depending on the
14 level of detail that follows.

15 MR. SATTERWHITE: I'm talking theory
16 here. I think there's been a number of accusations
17 that the PPA rider is somehow inappropriate because
18 it seeks to recover costs from another entity. I'm
19 just exploring. We have someone here that has
20 generation, that is a generator, and has other
21 instruments beyond selling in the market to recover
22 costs, which I think is comparable.

23 EXAMINER PARROT: And you're not asking
24 Mr. Campbell to divulge confidential information, I
25 assume?

3741

1 MR. SATTERWHITE: Absolutely not, your
2 Honor, talking in theory.

3 EXAMINER PARROT: With that, I'll allow
4 the question.

5 A. So you're asking about a hypothetical
6 generation or my specific company?

7 Q. I'm talking about in general in PJM, does
8 your company have the ability -- don't talk about any
9 bilaterals that you actually have. But in bilateral
10 agreements you have the ability to recover costs of a
11 unit by your bilateral agreement, correct?

12 MR. PETRICOFF: Your Honor, I would not
13 object -- I would not object to the question if it
14 was, does a generator have the ability to do
15 bilateral, but I don't think we should be asking
16 about Exelon in particular.

17 MR. SATTERWHITE: Your Honor, I'm still
18 on the generator, and he's here testifying.

19 EXAMINER PARROT: Testifying on behalf of
20 Exelon. I'm overruling the objection.

21 THE WITNESS: So what is the question?

22 (Record read.)

23 Q. (By Mr. Satterwhite) I can restate it.
24 In your experience as a representative of Exelon,
25 Exelon has the ability -- without getting into the

3742

1 specifics of any bilaterals you might or not be a
2 part of -- but you could enter into a bilateral
3 agreement and recover some of the costs of the unit
4 that are providing energy by that bilateral
5 agreement, correct?

6 A. So a bilateral agreement would
7 essentially be transferring the energy, whatever the
8 product is that you are bilaterally selling, to the
9 counterparty that would come at a price. Now,
10 whether you could find a counterparty in the market
11 that was willing to pay you a price that's above the
12 market price that's uneconomic for them, I would
13 question that.

14 I mean, that's one of the benefits of the
15 market, is that supply and demand fundamentals
16 determine what the price is that people buy and sell
17 things for. So if I'm a counterparty to my company,
18 or any other company looking to sell generation, I'm
19 probably not going to enter into a bilateral
20 agreement to purchase that generation for a price
21 that I think is more than what the market is willing
22 to offer.

23 Q. And bilateral agreements are entered into
24 in anticipation of the future, correct, needs for the
25 future?

1 A. That would be a physical forward
2 contract, so yeah. If it were the typical bilateral
3 forward PPA, for power purchase agreements, that
4 would be for a, yeah, going-forward commodity supply,
5 yes.

6 Q. And it wouldn't be inappropriate to enter
7 into a bilateral agreement that did allow that
8 generator to recover all of its costs in that
9 agreement, correct?

10 A. If the generator could find a
11 counterparty to agree to purchase whatever the
12 commodity the generator is looking to sell, the
13 generator could certainly enter into that contract,
14 yes.

15 Q. You believe that reliability is a federal
16 or RTO function, correct?

17 A. I do believe that.

18 Q. Let's talk about the FERC affiliate
19 transaction rules and your use of the term "captive"
20 in your testimony.

21 A. Okay.

22 Q. I believe we covered earlier that you
23 intended the word "captive" to be, I can't remember
24 if we did this in voir dire or regular so I want to
25 revisit this, you used the term "captive" in your

1 testimony as a fifth grade meaning of just the word
2 "captive," correct? Other than on page 29 on line 9.

3 A. Other than on page 29, so the answer is
4 yes, the use of the word "captive" in the bulk of my
5 testimony is meant to convey the Webster's dictionary
6 meaning of captive. "Captive" does have legal
7 meaning, "captive customer" does have legal meaning
8 in the context of FERC, and my discussion on page 29
9 I do, I discuss some of the FERC rules there.
10 Although I believe that might have been struck from
11 the testimony, so.

12 But in the context of the FERC
13 restriction, my use of the word "captive" in that
14 section I said was used in both contexts, both in the
15 dictionary as well as the broader FERC context.

16 Q. And you're aware that FERC has found that
17 the option for competitive supplier means the
18 customers are not captive, correct?

19 A. I believe that is an ultimate legal
20 question that needs to be answered by the courts.
21 But to date FERC has defined "captive customers"
22 similar to what you just described.

23 MR. SATTERWHITE: Thank you very much,
24 Mr. Campbell. That's all I have, your Honor.

25 EXAMINER PARROT: Mr. Margard?

1 MR. MARGARD: No questions. Thank you,
2 your Honor.

3 EXAMINER PARROT: Redirect, would you
4 like a few minutes?

5 MR. PETRICOFF: Yes, I would like a few
6 minutes.

7 (Recess taken.)

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

10 Any redirect?

11 MR. PETRICOFF: Thank you, your Honor.

12 - - -

13 REDIRECT EXAMINATION

14 By Mr. Petricoff:

15 Q. Mr. Campbell, earlier today
16 Mr. Satterwhite asked you some questions concerning a
17 Constellation contract which he had shown you, and I
18 think it is AEP Exhibit 41.

19 A. Yes.

20 Q. Under that contract to your understanding
21 what would be the options that would be open to a
22 customer if the change in law provision was
23 exercised?

24 A. Right, so important to note that the
25 provision that he showed would be one where there

1 would be -- the supplier would have the ability to
2 invoke it but doesn't necessarily have to invoke it.
3 And if it was invoked, the customer would have the
4 freedom and opportunity to terminate the contract,
5 which is an important distinction, because under the
6 rider PPA proposal, customers do not have the ability
7 to go to find a different supplier under different
8 terms. They're captive to the terms of the PPA
9 rider.

10 Here the customer is not captive. If the
11 supplier does decide to invoke the change in price or
12 other terms or provisions, the contract would end,
13 and the customer would have the freedom and ability
14 to go contract with a different supplier.

15 Q. I want you to focus back to where you
16 were asked questions about the polar vortex and the
17 pricing before and after the polar vortex. Do you
18 know, did any Constellation customer during the polar
19 vortex with a fixed-price contract have their
20 contract price increased because of the polar vortex?

21 A. My understanding is that Constellation
22 did not invoke any type of change-in-law or other
23 provisions in fixed-price contracts for their
24 residential customers after the polar vortex, so
25 these provisions were not exercised by Constellation.

1 Q. Are you aware of a Commission
2 investigation of CRES providers concerning increases
3 because of the polar vortex?

4 A. I believe as part of -- there was a
5 Public Utilities Commission of Ohio investigation of
6 the retail markets that did come into place in the
7 wake of the polar vortex exploring practices of
8 retail suppliers, yes.

9 Q. Did RESA file comments in that
10 proceeding?

11 A. I believe RESA did file comments in that
12 proceeding.

13 Q. What is RESA's position?

14 A. RESA's position is that the polar vortex
15 event was not a change-in-law event.

16 MR. PETRICOFF: We have no further
17 questions.

18 Thank you, Mr. Campbell.

19 EXAMINER PARROT: Mr. Mendoza?

20 MR. MENDOZA: No questions, your Honor.

21 EXAMINER PARROT: Ms. Mooney?

22 MS. MOONEY: No questions, your Honor.

23 EXAMINER PARROT: Mr. Michael?

24 MR. MICHAEL: No questions, your Honor.

25 Thank you.

1 EXAMINER PARROT: Mr. Pritchard.

2 MR. PRITCHARD: No questions, your Honor
3 thank you.

4 EXAMINER PARROT: Mr. Yurick?

5 MR. YURICK: No questions.

6 EXAMINER PARROT: Ms. Cohn?

7 MS. COHN: No questions.

8 EXAMINER PARROT: Mr. Satterwhite?

9 MR. SATTERWHITE: Thank you, your Honor.
10 I do.

11 - - -

12 RECROSS-EXAMINATION

13 By Mr. Satterwhite:

14 Q. Mr. Campbell, in response to a question
15 by your counsel dealing with whether Constellation
16 canceled any of its fixed contracts as a result of
17 the polar vortex, do you remember those questions?

18 A. I do.

19 Q. Do you know if the provision that's in
20 the Constellation contract we're looking at now, AEP
21 Ohio Exhibit 41, was in the contracts at that time?

22 A. I don't know the answer to that question.

23 Q. And you also stated that under the
24 contract the customer has the right to withdraw from
25 the contract if the terms are changed, correct?

1 A. Under the provisions that we discussed
2 during my testimony today it notes that Constellation
3 will provide the customer with notice if they decide
4 to request the change and that the customer will have
5 an opportunity to terminate this contract without any
6 further obligation.

7 Q. So you're saying if something comes up
8 that Constellation was unable to perform and had to
9 change the terms of the contract, the customer would
10 have the right to exit the contract; is that your
11 testimony?

12 A. That is how I read this language, yes.

13 Q. And if that were to happen, looking at
14 AEP Exhibit 44, the customer would be canceling the
15 fixed contract it had on one of the 12-month offers
16 here and moving to the offers that were available
17 April of 2014 which were increased, correct?

18 MR. PETRICOFF: Your Honor, I object to
19 the last part about the April of 2014, that that was
20 not --

21 MR. SATTERWHITE: I can rephrase, your
22 Honor. I'm not sure what the objection is, but I can
23 rephrase to make it clear.

24 EXAMINER PARROT: Okay.

25 Q. So if a customer were to choose to exit

1 the contract, they would be back at the mercy of the
2 market, correct?

3 A. If the customer chose to exit the
4 contract, they could return to default service under
5 the fixed SSO supply rate that's established by the
6 laddering process of the SSO procurement process, or
7 they could take supply from a new retail supplier
8 under the terms and conditions of that supplier's
9 offer.

10 Q. Right, and from AEP Ohio Exhibit No. 44
11 what we saw there was a major event of the polar
12 vortex and a few months later there were increases in
13 the offerings as compared to the fourth polar vortex,
14 correct?

15 MR. PRITCHARD: Objection,
16 mischaracterizes the evidence in AEP Exhibit 44. I
17 don't believe that there's evidence of the pre-polar
18 vortex prices.

19 MR. SATTERWHITE: Your Honor, I believe
20 Mr. Pritchard is not following the testimony that we
21 set up when we walked into those exhibits that that
22 was the day before the polar vortex and the prices
23 were offered at the time versus the prices that were
24 offered in April. So I think that's appropriate.

25 MR. PRITCHARD: With that caveat I'll

1 withdraw my objection.

2 MR. SATTERWHITE: Thank you.

3 A. So hypothetically speaking, if these
4 provisions were invoked in April 25th of 2014 and
5 the customer enters the contract on January 6 and he
6 then terminated the contract on April 25 and was
7 seeking a new offer, then yes, it appears that the
8 offers reflected in the Apples to Apples charts in
9 the exhibits would be reflective of what the market
10 was offering customers for fixed-price contracts at
11 those times.

12 Q. And you previously testified that at the
13 time of the polar vortex Exelon was offering a .0689
14 rate, but a year later after the vortex the rate went
15 up to .0859, correct?

16 A. I don't know about that.

17 Q. Would you like me to show you your
18 FirstEnergy testimony to refresh your recollection?

19 A. Yes.

20 MR. SATTERWHITE: Howard, do you need a
21 copy?

22 MR. PETRICOFF: Yes.

23 Q. And there's a discussion on page 5243 to
24 44, if that helps refresh your recollection.

25 MR. SATTERWHITE: Your Honor, I only have

1 three copies.

2 MR. PETRICOFF: What page was it?

3 MR. SATTERWHITE: 5243.

4 MR. PETRICOFF: Your Honor, I'm going to
5 object because this was in a different service
6 territory. It's irrelevant.

7 MR. SATTERWHITE: Your Honor, this is the
8 point of what we're talking about here with this
9 witness is the impact of the wholesale market on
10 retail rates. So it's within Ohio based on the
11 Apples to Apples charts and the difference of changes
12 what this company had between one period to the next.

13 MR. PETRICOFF: And that is why I'm
14 objecting because the Apples to Apples charts are
15 done by service territory and there are big price
16 differences between service territories and this is a
17 different service territory.

18 MR. SATTERWHITE: And I'm not going to
19 what the price is; I'm going to the difference in
20 price, your Honor, from one period to the next.

21 MR. PETRICOFF: Outside the scope of the
22 testimony. That's another utility, it's another set
23 of circumstances, and it's outside the redirect.

24 MR. SATTERWHITE: The premise of the
25 argument, your Honor, is how wholesale prices can

1 flow down into retail prices for the CRES offering
2 volatility, just making that overall point.

3 EXAMINER PARROT: Overruled.

4 A. So what's the question then?

5 Q. (By Mr. Satterwhite) You're aware that
6 the price that Constellation changed from 6.89 cents
7 per kilowatt-hour to 8.59 cents per kilowatt-hour in
8 that year.

9 EXAMINER PARROT: Can we be clear though,
10 Mr. Satterwhite, what territory?

11 Q. In the FirstEnergy territory between
12 March of '14 and March of '15.

13 A. So where in the March -- in the testimony
14 you directed me to I don't see -- I see a one-month
15 period, but I don't see the specific period.

16 Q. So you don't recall what that was? If it
17 helps, on page 5177 it identifies the exhibits of the
18 Apples to Apples chart 3/21/14 and 3/21/15 which are
19 the two documents that are listed.

20 MR. PETRICOFF: I'm sorry, can I have
21 those pages again?

22 MR. SATTERWHITE: 5177 is the company's
23 exhibits, declaration of exhibits.

24 MR. PETRICOFF: So we're just talking
25 reference to an exhibit that's been identified and

1 admitted?

2 MR. SATTERWHITE: He asked for
3 clarification of what this relates to and what I've
4 provided him to refresh his recollection he wasn't
5 sure what that meant. What I provided to him
6 identifies two exhibits that are the source of the
7 numbers that are refreshing his recollection so I'm
8 providing him with the index of what those documents
9 were so he can verify.

10 A. So I'm looking at page 5242 and it says
11 March 20, 2015, which would be year, March a year
12 after the polar vortex. We're talking about a whole
13 year and a number of months. My testimony refers to
14 Exhibit 105 on 5243, and then on page 5242
15 Exhibit 105 is described as Apples to Apples from
16 March 2015.

17 Q. My question is that was the change
18 between that year, between March of 2014 and March of
19 2015, correct?

20 A. That would be consistent with my
21 testimony in the FirstEnergy case, year, year review.

22 MR. SATTERWHITE: Thank you, your Honor.
23 That's all I have.

24 EXAMINER PARROT: Mr. Margard?

25 MR. MARGARD: No questions, your Honor.

1 Thank you.

2 MR. PETRICOFF: Your Honor, could we have
3 leave to ask one question in response to this last
4 piece of evidence as to FirstEnergy?

5 EXAMINER PARROT: I'm sorry, no,
6 Mr. Petricoff. We're going to let it stand. I'm
7 with you, I don't know that it's relevant, we're just
8 going to leave it be.

9 Please move your exhibit.

10 MR. PETRICOFF: At this point we would
11 move for admission of Exelon/Constellation
12 Exhibit No. 1.

13 EXAMINER PARROT: It was marked as
14 Exelon/RESA Exhibit 1. Any objections to its
15 admission?

16 MR. SATTERWHITE: No objection.

17 EXAMINER PARROT: Hearing none,
18 Exelon/RESA Exhibit 1 is admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER PARROT: Mr. Satterwhite?

21 MR. SATTERWHITE: Thank you, your Honor.
22 I would move for admission of AEP Exhibits 41 through
23 44.

24 EXAMINER PARROT: Are there any
25 objections?

1 MR. PRITCHARD: Yes, your Honor. I again
2 renew my objection about this witness did not --
3 there was no questions about whether the witness had
4 previously reviewed the information on these two
5 specific days.

6 I believe the question from
7 Mr. Satterwhite was could you look at the Apples to
8 Apples website to see the change before and after the
9 polar vortex, and I believe Mr. Campbell indicated
10 that would be one way to look at how the polar vortex
11 reflects CRES offerings.

12 This exhibit is two random days of the
13 Commission's Apples to Apples website. I know we've
14 taken administrative notice of several months of
15 Commission of the Apples to Apples website but I
16 believe it would be more complete if we're going to
17 look at the Apples to Apples website that we should
18 again look at it from January 2014 through current.

19 Again, we cross-examined a witness who
20 had -- there was no questions about whether he had
21 reviewed the information on these days, other days,
22 and so we have an exhibit here that is just a change
23 of two days. But it wasn't reflective of I believe
24 any points in his testimony or even validated the
25 point that Mr. Satterwhite had asked on

1 cross-examination about reviewing the Apples to
2 Apples website to verify change.

3 MR. PETRICOFF: Your Honor, we would join
4 and I want to take them separately. As to AEP 42 and
5 43, I think the fact that we're taking administrative
6 notice negates the need to put this in as evidence
7 because we're going to look at all the time periods.
8 The advantage of taking administrative notice is that
9 it is, at that point it would cover the 36 month
10 offers as well as the 24 and the 12 which I think are
11 important.

12 And it dispenses the need of going
13 through as we agreed going through the laborious task
14 of going through. I would also at this point --
15 actually let me finish this, and I want to renew my
16 administrative notice request.

17 In terms of Exhibit 44, in light of the
18 agreement that we had with Mr. Satterwhite, we do not
19 object to the reflections of those numbers on
20 January 6, January 25, for both the 12 and 24 month
21 for the noted companies. We would, however, object
22 to the average maximum and medium. The only evidence
23 in the record as to that use was just asking the
24 witness, subject to check, to approve the math. But
25 there was no indication that average max or min or

1 median has any relevance.

2 And, in fact, they could certainly make
3 these arguments in their brief, and if so, we will
4 point out that no one buys the average max or min,
5 they buy a contract. So I think that the
6 calculations ought to be struck.

7 So I'll stop there on ruling on the
8 exhibits, and then I want to come back and renew my
9 motion.

10 Oh, and also I guess we would object to
11 41. The witness did indicate that he did not, he had
12 not seen this before.

13 EXAMINER PARROT: Anyone else on this
14 side of the room to my left here?

15 All right, Mr. Satterwhite, response?

16 MR. SATTERWHITE: Thank you, your Honor.
17 I'll start with 41, the contract. This was even used
18 on redirect.

19 EXAMINER PARROT: It was.

20 MR. SATTERWHITE: So if you need me to go
21 further with other arguments.

22 EXAMINER PARROT: No, that's fine. Thank
23 you for pointing that out.

24 MR. SATTERWHITE: Exhibits 42 and 43,
25 again, I understand the desire to put other documents

1 for administrative notice but these documents were
2 authenticated by the Commission. I used them for a
3 very specific purpose including 44 as well with this
4 witness. It would benefit the record to have these
5 in the record, not administrative notice in general
6 but these actual documents as notice in the record.
7 There's no question of the authenticity as all.

8 And as far as AEP Ohio Exhibit No. 44,
9 counsel indicated there was no use of the increased
10 numbers but actually I did ask the witness and the
11 witness pointed out as result of the redirect that a
12 customer that leaves or is kicked off their fixed
13 contract would be exposed to these types of
14 increases. Fits a very narrow point that your Honor
15 noticed that we're trying to move in this case.

16 So the average price the peak in the
17 minimum is relevant to a customer and the average
18 price just really shows the point that AEP Ohio's
19 trying to make of the volatility in the market of
20 what a customer might face when they're potentially
21 forced off of their fixed price contract and how the
22 wholesale market can affect the retail market.

23 But absolutely relevant and these were
24 absolutely used and discussed extensively during
25 cross-examination and benefits the record to have

1 them in. So with that I would move for admission of
2 all these.

3 EXAMINER PARROT: Mr. Petricoff, you did
4 say you wanted to renew your request with respect to
5 the administrative notice, the period of time in
6 which we would take notice. You proposed that we
7 take notice of Apples to Apples data, let's go ahead
8 and deal with that as well.

9 MR. PETRICOFF: Yes, your Honor. We're
10 looking at two days that were selected. There's
11 nothing really I think in the record here as to the
12 significance of the 6th and the 25th other than the
13 polar vortex came in the period and, in fact, there's
14 really nothing in this record as to when the polar
15 vortex came in.

16 I think the important part is that for
17 this period of time from January 6 through April,
18 we'll just stick with 2014, basically every day
19 there's an offer that the Apples to Apples chart is
20 out there every day and it changes every day.

21 And what we don't know is there anything
22 so specific about these dates, so I think it is
23 important that we look at all of the contracts and
24 all of the dates. That is the best way people are
25 going to draw conclusions about the impact of the

1 polar vortex because you've got to know when it
2 occurred.

3 There could be anomalies on these
4 individual dates and once again I think it's also
5 important that we look at all of the offers and most
6 importantly the 36-month offers as well as the 12 to
7 24. It's available from the Commission, it's public
8 record, and I think we should have more than just the
9 dates that happen to have been selected for this
10 chart.

11 MR. SATTERWHITE: Your Honor, I believe
12 that the company didn't object to administrative
13 notice of the, I believe its done weekly, the Apples
14 to Apples weekly that you can go back and look at
15 retroactively between the first date and the last
16 date. If that's all Mr. Petricoff is asking for,
17 we're okay with that. If he's asking for more, he's
18 trying to expand the scope of my cross-examination to
19 a point I wasn't trying to make in my
20 cross-examination, and I believe I have the right to
21 define the scope of my cross-examination.

22 Mr. Petricoff could have included
23 anything he wanted in his prefiled testimony and
24 could have brought up more information on redirect
25 and he did not. So this was about a narrow point

1 about what a customer might face if that fixed
2 contract is taken away from them and this is the time
3 period I think is appropriate.

4 EXAMINER PARROT: With that we are going
5 to admit -- let's take them in order. We are going
6 to admit Company Exhibit No. 41. I think we did open
7 the door to that through redirect so we will admit
8 that into the record.

9 With respect to Company Exhibits 42 and
10 43, I will also admit those into the record. As
11 stated earlier, I will also take administrative
12 notice of the Apples to Apples data on the
13 Commission's website for the period of January 1,
14 2014, through the end of April 2014, and for your
15 point, Mr. Petricoff, that will include all the
16 offers during that timeframe, not just ones of 12
17 months or 24 months, we will include 36 months as
18 well within that.

19 I will also admit Company Exhibit 44 into
20 the record.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 MR. SATTERWHITE: Thank you.

23 EXAMINER PARROT: At this point we're
24 going to take a break for lunch, and we will
25 reconvene at 1:00 o'clock.

3763

(Lunch recess taken.)

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3764

Wednesday Afternoon Session,
October 21, 2015.

- - -

EXAMINER SEE: Let's go on the record.

Mr. Michael, your next witness, please.

MR. MICHAEL: Thank you, your Honor. OCC
calls Jim Wilson.

(Witness sworn.)

EXAMINER SEE: Mr. Michael.

MR. MICHAEL: Thank you, your Honor.

- - -

JAMES F. WILSON

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

DIRECT EXAMINATION

By Mr. Michael:

Q. Would you state your name, please?

A. James F. Wilson.

Q. And what is your business address,
Mr. Wilson?

A. 4800 Hampden Lane, H-a-m-p-d-e-n, Suite
200, Bethesda, Maryland 20814.

Q. And by whom are you employed?

A. I'm an independent consultant doing
business as Wilson Energy Economics.

3765

1 Q. And did you file direct testimony in this
2 case?

3 A. Yes.

4 Q. And you've been handed what was
5 previously marked as Exhibits 15 and 16. Do you have
6 those documents?

7 A. They're not so marked, but I probably do.

8 EXAMINER SEE: So the record is clear,
9 please indicate what is being marked as OCC 15 and
10 16.

11 MR. MICHAEL: Certainly, your Honor.

12 OCC Exhibit 15 is the direct testimony of
13 James F. Wilson, public version; and Exhibit 16 is
14 the direct testimony of James F. Wilson, confidential
15 version.

16 (EXHIBITS MARKED FOR IDENTIFICATION.)

17 Q. Do you have those document Mr. Wilson?

18 A. I have 16 with me, yes.

19 Q. I believe Exhibit 15 is right beside you,
20 Mr. Wilson.

21 MS. BAIR: The public version? I'll give
22 it to the witness, sorry.

23 Q. Can you identify what has been marked as
24 OCC Exhibit No. 15, please, Mr. Wilson?

25 A. Yes. That's the public version of my

1 direct testimony.

2 Q. And can you also please identify what has
3 been previously marked as OCC Exhibit No. 16?

4 A. Yes. That's the confidential version of
5 my direct testimony.

6 Q. And, Mr. Wilson, do you have any
7 corrections or additions to your direct testimony in
8 this case?

9 A. Yes, I do.

10 Q. And if we could you go ahead and tell us
11 what the first correction is, Mr. Wilson.

12 A. Yes. On page 13 -- and all the
13 corrections are in both versions, if that helps --
14 Table 2 is replaced.

15 MR. MICHAEL: Your Honor, may we
16 approach?

17 EXAMINER SEE: Yes.

18 (EXHIBITS MARKED FOR IDENTIFICATION.)

19 Q. Mr. Wilson, do you have what has been
20 marked as OCC Exhibit No. 17?

21 A. Yes, I do.

22 Q. Could you identify that document, please?

23 A. That's Table 2 in redline and in clean
24 final version.

25 Q. And was that document prepared by you or

1 at your direction or control?

2 A. Yes.

3 Q. And is the final version of the Table 2
4 that replaces the Table 2 that appears on page 13 of
5 your direct testimony?

6 A. Yes.

7 Q. Mr. Wilson, do you have any other
8 additions or corrections to your testimony?

9 A. Yes. There are other changes that are
10 related to this change.

11 Q. Okay. And if you could, please tell me
12 the first other change related to this change?

13 A. Okay. Page 13 still, on line 4, the
14 2.0 -- the "1.8" changes to "2.0" billion, and the
15 "1.4" changes to "1.6" billion.

16 Line 7, the "151" million changes to
17 "176" million; the "240" million changes to
18 "252" million.

19 Line 8, the "66.2" per megawatt-hour
20 changes to "71.6" per megawatt-hour.

21 And on line 9, the "85.3" per
22 megawatt-hour changes to "97.7" per megawatt-hour.

23 Next is page 15, line 21, again "1."8
24 becomes "2.0," "1.4" becomes "1.6."

25 Next is page 53, similarly, line 7, "1.8"

1 becomes "2.0"; line 8, "1.4" becomes "1.6"; line 10,
2 "151" becomes "176" and "240" becomes "252."

3 Line 12, "66.2" becomes "71.6" and "85.3"
4 becomes "97.7".

5 Next on page 55, line 15, "1.4" becomes
6 "1.6," and "1.1" becomes "1.4," same line; and on
7 line 18, "1.4" becomes '1.6.'

8 Next is page 69, line 20, "1.4" becomes
9 "1.6."

10 Page 71, line 8, "1.4" becomes "1.6."

11 And Exhibit JFW-2 is also replaced.

12 Q. And, Mr. Wilson, if I could draw your
13 attention to what has been previously marked as OCC
14 Exhibit No. 18, which you should have with you on the
15 stand --

16 A. Yes.

17 Q. -- could you identify that document,
18 please?

19 A. I believe that's the replacement version
20 of Exhibit JFW-2.

21 Q. And, Mr. Wilson, was that document
22 prepared by you or at your direction?

23 A. Yes.

24 Q. And do you have any other changes to your
25 direct testimony, Mr. Wilson?

1 A. Yes. There are two other changes. On
2 page --

3 EXAMINER SEE: I'm sorry, Mr. Wilson, OCC
4 18 is confidential, correct?

5 MR. MICHAEL: Yes, it is, your Honor.

6 A. On page 50, the footnote, at the very
7 beginning it's missing "Julien Dumoulin-Smith,"
8 J-u-l-i-e-n, D-u-m-o-u-l-i-n dash S-m-i-t-h, UVS, and
9 then the U.S. Electric Utilities & IPPs --

10 EXAMINER SEE: I'm sorry, repeat that
11 last revision, Mr. Wilson.

12 THE WITNESS: Julien Dumoulin-Smith,
13 J-u-l-i-e-n, D-u-m-o-u-l-i-n dash S-m-i-t-h, UVS, and
14 then the rest, U.S. Electric Utilities, and the rest
15 is there.

16 And, finally, I understand that in the
17 filed version of my testimony Exhibit JFW-3 was
18 omitted.

19 Q. (By Mr. Michael) If I could draw your
20 attention, Mr. Wilson, to what as previously marked
21 as OCC Exhibit 19. Do you have a copy of that with
22 you, sir?

23 A. I do.

24 Q. And can you identify that document?

25 A. That is Exhibit JFW-3.

3770

1 Q. Was that document prepared by you or at
2 your direction?

3 A. Yes.

4 Q. With the changes, Mr. Wilson, that we
5 just went through, your direct testimony public
6 version was prepared by you or at your direction?

7 MR. CONWAY: Your Honor, at this point
8 I'd like to make an objection, if I may.

9 EXAMINER SEE: Hold on just a minute,
10 Mr. Conway.

11 A. Yes.

12 EXAMINER SEE: Just a minute, gentlemen.

13 THE WITNESS: I'm sorry.

14 EXAMINER SEE: All right. Continue,
15 Mr. Michael.

16 MR. CONWAY: May I speak before he
17 continues and before my objection becomes a motion to
18 strike?

19 EXAMINER SEE: Okay. Let's hear it,
20 Mr. Conway.

21 MR. CONWAY: Your Honor, as we know, we
22 had a debate last week on Friday about revising the
23 witness' testimony to include the new Exhibit JFW-2
24 and Table 2, and I objected to that, and we had an
25 argument over it. And you made a ruling to allow the

1 witness to make that revision at the 11th hour to
2 his testimony, and then we went through the
3 deposition and prepared full cross-examination again
4 as a result of that.

5 And now today as part of the so-called
6 corrections and modifications, part of this witness'
7 direct testimony we're now inserting yet another
8 exhibit that wasn't part of the prefiled testimony,
9 which was JFW-3.

10 It was not prefiled. It wasn't provided
11 to us until we broke for lunch today, and so I object
12 to that for essentially the same reason as I objected
13 last week, but I think this is just insult on top of
14 injury at this point, having his testimony revised in
15 this fashion at the 11th hour again.

16 And then on top of that, he's now
17 changing his footnote on page 50 to add the name of
18 the previously unnamed declarant in the statements
19 that he repeats in his testimony in a narrative and
20 in footnote. And I object to adding at this point
21 the identity, at least by name, of the declarant that
22 he's relying upon in his statements that he is
23 repeating for the truth of the matter asserted by
24 that declarant.

25 So I object to the Exhibit 3 being

1 introduced as part of his direct testimony, and I
2 also object to enhancing, improving his footnote on
3 page 50. I believe it was page 50.

4 At any rate, that's my objection. I
5 could have -- we could have gone forward and could
6 have asked him if everything was correct with the
7 additions, and he goes through the drill of saying
8 yes, and then I'm left with the motion to strike. I
9 just want to let you know that I object to it at the
10 very outset even before we get to the motion to
11 strike.

12 EXAMINER SEE: Would you like to respond,
13 Mr. Michael?

14 MR. MICHAEL: Yes, I would, your Honor.
15 Thank you for the opportunity.

16 First and foremost, and most important,
17 JFW-3 was actually provided along with Mr. Wilson's
18 workpapers long ago. It was workpaper 8, so
19 notwithstanding the clerical error reflected in the
20 testimony filed by Mr. Wilson, in point of fact
21 counsel for AEP Ohio has had what has been marked as
22 JFW-3 for the same period of time they've had all of
23 his workpapers, which has been on the order of four
24 weeks, so they had previously received a copy of that
25 document. So that's the first point.

1 The second point, your Honor, is that
2 Mr. Wilson references JFW-3 on multiple occasions in
3 his prefiled testimony. Counsel for AEP Ohio has
4 deposed Mr. Wilson on two different occasions and had
5 every opportunity to make any inquiry regarding the
6 clerical error that was made and did not do that.

7 And then, lastly, your Honor, I would
8 simply point out that JFW-3 is a reflection that will
9 assist the Commission in evaluating and understanding
10 Mr. Wilson's testimony. It has to do with RPM
11 cleared reserve margin, target reserve margin, and
12 RPM clearing price.

13 It is, I think, important to the degree
14 the Commission wants a full, complete understanding
15 of the issues in this case to have JFW-3 available to
16 the Commission so that it can properly evaluate the
17 testimony of the parties in this case.

18 So, your Honor, I would simply submit
19 that there is no prejudice to AEP Ohio. I wish the
20 clerical error had not occurred, but it did but it
21 did not do so to any disadvantage of AEP Ohio, who's
22 fully had the document for many weeks at this point
23 in time.

24 Thank you.

25 MR. CONWAY: Your Honor, may I just

1 briefly respond?

2 EXAMINER SEE: Only if you agree to speak
3 up.

4 MR. CONWAY: Thank you. I promise I'll
5 speak up.

6 It's not our responsibility to fact-check
7 or to audit or to correct OCC's witness' testimony.
8 So the fact that there's an error of omission in his
9 testimony is not mine or my client's responsibility
10 to figure it out and report it back to Mr. Wilson or
11 Mr. Michael, so that's a nonstarter.

12 As far as this information being buried
13 in his workpapers somewhere, I'm not aware of it.
14 Maybe I could have if I had spent yet another five or
15 six hours poring through his workpapers, but that
16 five or six hours wasn't spent by me to do it, so,
17 again, not my responsibility.

18 I just point out to you, again, that this
19 is the second time on the eve of this man taking the
20 stand they're making material changes to his
21 testimony, and I didn't hear any comment related to
22 the footnote on top of that. That's something that
23 is not -- clearly not my responsibility either, and
24 it could have been corrected, could have been filed
25 in the correct fashion at the outset.

1 So, anyway, I won't burden you any
2 further with my arguments. It's unfair. I think
3 it's surprise, at the last minute, and I think it
4 ought to be excluded.

5 I understand you're going to allow in the
6 first set of revisions that Mr. Wilson has prepared,
7 but I think this is a bridge too far and it should be
8 excluded.

9 EXAMINER SEE: Mr. Conway, as you already
10 observed, you had some additional time to go through
11 and better understand how Mr. Wilson derived and made
12 changes to what has been marked as OCC 17 and 18.
13 Your primary concern is in regard to what has been
14 marked as OCC Exhibit 19, JFW-3?

15 MR. CONWAY: Yes, your Honor. I
16 understand that the argument regarding Exhibit 17 and
17 18 is behind us, and what my objection today is is to
18 the next generation of revisions that is reflected in
19 Exhibit 3, as well as adding the name to the
20 footnote, which I believe is on page 50.

21 EXAMINER SEE: It is.

22 And your objection to the revision to the
23 footnote on page 50 and to the replacement to OCC 19
24 at this point is overruled. You'll have an
25 opportunity to review it and ask Mr. Wilson any

1 questions you feel necessary about the exhibit.

2 MR. CONWAY: Thank you.

3 MR. MICHAEL: Thank you, your Honor.

4 Q. (By Mr. Michael) Mr. Wilson, I wanted to
5 draw your attention back to what had been previously
6 marked as OCC Exhibit No. 15. With those changes,
7 that document was created by you or at your
8 direction?

9 A. Yes.

10 Q. And drawing your attention to OCC
11 Exhibit No. 16, with the changes we just went
12 through, was that document prepared by you or at your
13 direction?

14 A. Yes.

15 Q. And were I to ask you the questions today
16 reflected in what was previously marked as OCC
17 Exhibit No. 15 and OCC Exhibit No. 16, with the
18 changes we just went through, would your answers be
19 the same?

20 A. Yes.

21 MR. MICHAEL: Your Honors, I would move
22 into evidence OCC Exhibit Nos. 15 through 19, subject
23 to cross-examination.

24 MR. CONWAY: Your Honor, I do have a
25 short motion to strike after all that.

3777

1 EXAMINER SEE: Okay.

2 MR. CONWAY: May I proceed?

3 EXAMINER SEE: Yes.

4 MR. CONWAY: With regard to that footnote
5 on page 50 and the related narrative which starts on
6 page 49, the motion to strike is starting on line 20
7 and continuing on to line 21 on page 49, the sentence
8 that starts "According to some financial analysts'
9 estimates, new combined cycle power plants," and then
10 it continues on to the next page on page 50 on line
11 1.

12 That sentence I move to strike as well as
13 the footnote No. 18 at the bottom of the page 50.
14 This is hearsay from financial analysts, who until a
15 few moments ago, were entirely unnamed. Now,
16 apparently, we have the name of one of them.

17 But they're not present to be subject to
18 cross-examine today. The statements by these absent,
19 for the most part, unnamed declarants are relied upon
20 by Mr. Wilson for the truth of the matter as
21 asserted. There's no exception in the hearsay rule
22 that is applicable. This is not a learned treatise
23 or something of that type that's being referred to
24 here.

25 And, in addition, I would note that

1 Mr. Wilson included the virtually identical sentence
2 in footnote in his direct testimony in another
3 pending proceeding involving the FirstEnergy
4 utility's ESP, Case No. 14-1297, and a similar motion
5 to strike in that case was granted. And the cite for
6 that ruling is transcript Volume XIII at page 4494.

7 Thank you.

8 EXAMINER SEE: Is that your only motion
9 to strike, Mr. Conway?

10 MR. CONWAY: Based on your prior ruling
11 on Exhibit 3, yes.

12 EXAMINER SEE: Response, Mr. Michael?

13 MR. MICHAEL: Thank you, your Honor. The
14 sentence and citation cited in Mr. Wilson's direct
15 testimony is subject to the hearsay exception of rule
16 803.17 for market reports and commercial publications
17 generally used and relied upon by the public or by
18 persons in particular occupations, point number one.

19 Point number two, at the very least, I
20 don't think the Bench has, at this point in time, any
21 grounds to say that that exception doesn't apply. If
22 Mr. Conway wants to cross-examine Mr. Wilson to
23 confirm my representation that this is a market
24 report generally used and relied upon by the public
25 or by persons in particular occupations, he's free to

1 do so. And if he gets an answer that doesn't support
2 the applicability of that particular section of the
3 hearsay rule, then the result will be what the result
4 will be.

5 MR. CONWAY: If I might briefly respond,
6 I don't think that this reference, there's any
7 indication from what we have here that that reference
8 is within the category of exception that Mr. Michael
9 is relying upon. This is, from all appearances,
10 simply a periodical that is consumed for whatever
11 purposes all of its readers might use, but it's not
12 clear from the footnote that it falls within some
13 sort of authoritative source based on exception.

14 I would also notice, I would observe that
15 AEP Exhibit No. 34, the Bernstein research piece that
16 was used in the Bowring cross-examination, involved
17 an interview of Mr. Bowring, was not admitted on a
18 similar basis that I'm advocating for denial, or I'm
19 basing my motion to strike, in this instance.

20 So thank you.

21 MR. MENDOZA: Your Honor, if I may,
22 briefly, just one quick point. Putting aside the
23 footnote and the phrase "According to some financial
24 analysts' estimates," there's been no demonstration
25 that Mr. Wilson lacks personal knowledge of the rest

1 of the testimony.

2 For example, the statement "new combined
3 cycle power plants are economic at recent capacity
4 price levels," it may be the case that Mr. Wilson has
5 personal knowledge of that information based on
6 information he's reviewed and can testify to that,
7 even putting aside the reference to the market
8 report.

9 MR. CONWAY: And, your Honors, I think
10 it's a little bit late in the day to revise his
11 testimony to try to get around a flaw, and I also
12 respectfully object to being double-teamed by counsel
13 for parties that are not even sponsoring the witness.

14 But, in any event, I don't think it's a
15 good solution to say that he might be able to revise
16 his testimony in this fashion and still leave part of
17 the reference.

18 MR. MICHAEL: One quick final point, your
19 Honor, if I might. I just wanted to point out that
20 Mr. Conway's responses to my argument highlighted the
21 point that I made that the Bench doesn't have, at
22 this point in time, sufficient grounds to say that
23 that's not the type of document relied upon by people
24 in Mr. Wilson's profession.

25 The fact that he cited the document in

1 there indicates that, in fact it is. But if
2 Mr. Conway wants an opportunity to question him about
3 that, I don't begrudge him that, and if it turns out
4 that's not the type of document that someone in
5 Mr. Wilson's profession relies on, then the result is
6 what the result is. I'm simply suggesting, your
7 Honor, we need to wait and see what the testimony is
8 on that document.

9 EXAMINER SEE: I'm going to grant
10 Mr. Conway's motion to strike the last sentence of
11 page 49, starting with the sentence "According to
12 some financial analysts' estimates, new combined
13 cycle power plants," and ending on page 50 with the
14 word "levels," and for that reason, the footnote is
15 also stricken.

16 Now, any cross-examination for this
17 witness, Mr. Mendoza?

18 MR. MENDOZA: No questions, your Honor.

19 EXAMINER SEE: Mr. Darr?

20 MR. DARR: No questions.

21 EXAMINER SEE: Ms. Cohn?

22 MS. COHN: No questions, your Honor.

23 EXAMINER SEE: And that leaves
24 Mr. Conway.

25 MR. CONWAY: Yes, I do have a few

1 questions for Mr. Wilson.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Conway:

5 Q. Good afternoon, Mr. Wilson.

6 A. Good afternoon.

7 Q. Let me turn right to your testimony, page
8 21, and over to the top of page 22. And let me know
9 when you're there.

10 A. There.

11 Q. At this point in your testimony you're
12 discussing 10,000 megawatts of additional potentially
13 new power plants that have never cleared yet in PJM's
14 RPM auction; is that correct?

15 A. Yes.

16 Q. And the power technology for these
17 potential new power plants, it will be primarily the
18 natural gas-fired combined-cycle technology; is that
19 right?

20 A. That's probably correct, but the report
21 that I'm relying on here doesn't actually specify.

22 Q. That's your best estimate, though, of
23 what the technology would be?

24 A. Yes.

25 Q. And is it your understanding that none of

3783

1 that potential new 10,000 megawatts of capacity will
2 be coal-fired?

3 A. I don't know.

4 Q. What's your best estimate of how much of
5 it is going to be coal-fired?

6 A. I wouldn't expect there to be coal-fired
7 within that mix, but there might be an expansion of
8 an existing plant or something like that.

9 Q. But putting that aside, the expansion of
10 an existing site you wouldn't expect any of the new
11 construction of power plants in that 10,000 megawatts
12 to include coal-fired technology, right?

13 A. Correct.

14 Q. And then at pages 20 to 21, the previous
15 two pages to the two we just looked at, you note that
16 a total of 24,889 megawatts of generation plant
17 capacity has already been retired from 2010 to
18 mid-2015?

19 A. Yes.

20 Q. And you also note, I believe, at page 21
21 at lines 5 through 7, you also note, do you not, that
22 plans have been announced to retire another
23 2,745 megawatts by 2020?

24 A. Yes. This is according to PJM's list,
25 yes.

1 Q. So that would be a total of in the
2 retired or to-be-retired category by 2020 since 2010
3 a total of 27,634 megawatts of capacity?

4 A. Sounds right, yes.

5 Q. And is it your understanding that most of
6 that capacity that's been retired or is to be retired
7 is coal-fired?

8 A. Yes.

9 Q. And you also report that PJM has already
10 obtained commitments for the 27,499 megawatts of new
11 capacity that, I believe, it's your view would
12 replace nearly all the capacity retired or scheduled
13 to retire; is that correct? I'm referring to lines 9
14 through 11, page 21.

15 A. Right. I mean, it's a little bit
16 different. 135 megawatts are outside of the time
17 window for which PJM has acquired capacity. So I
18 wouldn't necessarily associate those megawatts with
19 the retirements. In fact they've acquired excess
20 capacity for that period. But there are
21 135 megawatts of planned retirements that fall
22 outside of the window through May of 2019 for which
23 capacity has already been acquired.

24 Q. So let me just make sure I understand.
25 The only aspect in which you quibbled with my

1 question that I posed is with regard to that last
2 135 megawatts?

3 A. No. You seemed to associate PJM's
4 acquisitions with the specific retirements, and
5 that's not what PJM does.

6 Q. Do you say in your testimony -- maybe I
7 can clear this up just by referring to your direct
8 testimony at page 21, lines 9 through 11 you do say,
9 do you not, "Put another way, replacement capacity
10 has already been acquired for 27,499 megawatts of the
11 27,634 megawatts scheduled to retire from 2010 to
12 2020"?

13 A. Yes. And that's just putting another way
14 the previous line, important thing is that adequate
15 capacity and, in fact, excess has been acquired
16 through May 31, 2019, which is the period during
17 which 99.5 percent of the total retirements will
18 occur and only 135 megawatts falls out of that
19 window.

20 Q. And if you haven't answered this question
21 already, please do so, and bear with me if you
22 already did. How much of that 27,499 megawatts of
23 new capacity that essentially replaces capacity
24 that's retired or will be retired, how much of that
25 27,499 megawatts is coal-fired generation?

1 A. Well, PJM doesn't acquire specific
2 megawatts to replace specific megawatts. They
3 acquire 160,000 or whatever to meet the requirement.
4 Within that total, there's quite a bit of coal
5 generation, but you can't line up the specific
6 megawatts to the retirements.

7 Q. So you cannot trace to the
8 27,499 megawatts of capacity that you reference in
9 your testimony any particular technology, gas-fired,
10 coal-fired, or otherwise?

11 A. You can't distinguish what's incremental
12 capacity. They acquire the total amount. It
13 includes existing resources. It includes new
14 resources. It includes some existing resources that
15 hadn't earlier cleared and now are clearing again
16 because the owners have changed their mind. You
17 can't identify what's the incremental capacity.

18 Q. Fair enough. How much generation
19 capacity that has come online from 2007 through today
20 in PJM is coal-fired?

21 A. I don't know.

22 Q. Would you estimate that it's close to
23 none?

24 A. I would estimate that it's small, yes.

25 Q. So less than 10 percent of the amount of

1 capacity that's come online? Just so I can get some
2 sort of idea what you mean by "small."

3 A. Yeah. I can imagine that it might be
4 less than 10 percent, yes.

5 Q. And how much of the capacity that is
6 under construction or under development in PJM right
7 now, how much of that is coal-fired?

8 A. I don't know.

9 Q. Would it be fair to estimate or to say
10 that it's close to none?

11 A. It's probably quite small, yes.

12 Q. I think we agreed that of the
13 10,000 megawatts of potential new generation capacity
14 that you identified, none of that is coal-fired
15 capacity, right?

16 A. You already asked that, and I said I
17 didn't know.

18 Q. I believe what you said, actually, was
19 that out of that 10,000 megawatts, there might be
20 some that is -- strike that question.

21 Do you recall telling me that of the
22 potential new 10,000 megawatts that you identified at
23 the bottom of page 21 and onto the top of page 22,
24 that close to none of that capacity, in your
25 estimate, is going to be coal-fired?

1 A. You're asking me what I said a few
2 minutes ago?

3 Q. Right.

4 A. You're asking me that question again?

5 Q. Yes. I'm asking you just to confirm out
6 of that 10,000 megawatts that you've identified as
7 potential new power plant capacity that's never
8 cleared in PJM's RPM auctions before that you
9 described on page 21 and then on the top of page 22,
10 that very little or none of that capacity is
11 coal-fired.

12 A. Yes. I said that the information I'm
13 relying on there does not identify the technology,
14 but I would expect that very little of it is
15 coal-fired. That's what I said.

16 Q. Would you agree that these changes in
17 capacity of PJM, that the generation capacity that's
18 under development or that has come online since 2007,
19 as well as the retirements that have occurred since
20 2007 or that are going to occur through 2020, that
21 they are changing the mix of generation technologies
22 and the capacity that serves the PJM market?

23 A. Yes.

24 Q. And as a result of that, the supply
25 diversity characteristics of PJM are changing?

1 A. Yes. They're becoming more diverse.

2 Q. And the change is away from coal in a
3 material way; is that right?

4 A. Yes.

5 Q. And the change is toward natural gas in a
6 material way; is that right?

7 A. Natural gas and renewables, in
8 particular, yes.

9 Q. And focusing on Ohio, is it your
10 understanding, would you agree, that the supply
11 diversity of generation in Ohio is also changing?

12 A. Yes. Diversity is increasing in Ohio.

13 Q. Is changing in a material way away from
14 coal-fired capacity, right?

15 A. Yes.

16 Q. And it's changing in a material way
17 towards being gas-fired capacity; is that correct?

18 A. Gas-fired and renewables, yes.

19 Q. And between the two of them, renewables
20 and gas-fired, would you agree that -- or, can you
21 tell me whether or not the portion of the diversity
22 or the migration away from coal is weighted more
23 heavily towards natural gas-fired capacity than
24 renewables?

25 A. Can we clarify? I think your question is

1 specifically about Ohio soil?

2 Q. Yes.

3 A. I haven't looked at that, but I believe
4 probably the natural gas is larger, at least on a
5 capacity basis.

6 Q. And would you have an estimate or would
7 you have an understanding about whether it's
8 materially greater weighted towards natural gas than
9 renewables?

10 A. I would expect that it is at this point
11 in time, yes.

12 Q. And your understanding of the length of
13 time it takes to build a combined-cycle natural gas
14 plant is that it takes three years or more; is that
15 right?

16 A. We usually think of it in terms of three
17 years. It can be done a little faster. It can take
18 a lot longer, yes.

19 Q. And, conversely, with regard to the
20 retirement of existing generation in PJM, including
21 Ohio, a generator's owner only has to wait three
22 months to shut down a generating unit after notifying
23 PJM; is that right?

24 A. Yeah. The formal rule is the 90-day
25 rule, yeah.

1 Q. Let me turn your attention to pages 24
2 through 25. And at this point in your testimony on
3 pages 24 through 25 in question 32, in your answer to
4 that question you discuss five gas-fired power plants
5 under development in Ohio; is that right?

6 A. Yes. Or under construction, yes.

7 Q. And one of them is the Oregon Energy --
8 excuse me. Strike that. One of them is the Oregon
9 Clean Energy Center?

10 A. Yes.

11 Q. And another is the Carroll County Energy
12 project.

13 A. Yes.

14 Q. And then the third one is the Tenaska
15 Rolling Hills Generating Station?

16 A. Yes.

17 Q. And the fourth one is NTE Energy's
18 Middletown Energy Center; is that right?

19 A. Yes.

20 Q. And then the last one is the Clean Energy
21 Future, Lordstown project?

22 A. Yes.

23 Q. Now, for each of these projects already
24 completed, the project must obtain an executed
25 interconnection agreement, right?

1 A. Yes.

2 Q. And for each of these projects, these
3 five projects we just ticked off, does each of them
4 have an executed interconnection agreement at this
5 point?

6 A. No, just three of them at this point.

7 Q. And then in addition to an executed
8 interconnection agreement, each project will need
9 various regulatory approvals and permits in order to
10 complete its construction and allow it to go into
11 operation?

12 A. Yes. They all need that.

13 Q. And if you know, have all of these
14 projects received all the necessary regulatory
15 approvals and permits that they needed in order to
16 complete their construction and go into operation?

17 A. I don't know. I didn't research that.

18 Q. Has each of these five projects secured
19 the financing sufficient to complete its construction
20 and bring it into service at this point?

21 A. No. I believe three of them have.

22 Q. And it is the case, is it not, that
23 generation plant projects can be delayed or canceled
24 because of difficulties getting the necessary
25 regulatory approvals, right?

1 A. Yes. For a number of reasons, yes.

2 Q. And that's one them, isn't it?

3 A. Yes.

4 Q. And then another reason is the developers
5 might change their mind about long-term market
6 conditions and decide that the project is no longer
7 attractive, correct?

8 A. Correct.

9 Q. And inability to get financing, that's a
10 reason why projects can be delayed or canceled?

11 A. It can be, yes.

12 Q. PJM's reliability pricing model was
13 established in 2007, right?

14 A. That's when the first delivery year that
15 was in operation, yes.

16 Q. The first delivery year was 2007-2008?

17 A. Yes, June 1, 2007, to May 31, 2008.

18 Q. Are you familiar with in Ohio the Ohio
19 Power Siting Board's role for approving the siting of
20 major facilities in Ohio, such as power plants?

21 A. Yes I'm aware of that rule, yes.

22 Q. Do you know how much generating capacity
23 located, sited in Ohio, has come online since RPM
24 began in 2007?

25 A. No. I haven't made that calculation.

1 Q. Do you have any idea of how much it is?
2 For example, is it more or less than 5,000 megawatts?

3 A. I don't know, no. There's been excess
4 capacity in western PJM for a very long time so there
5 has not been a very large amount of new capacity, so
6 I don't know.

7 Q. And do you know how much generating
8 capacity that the Ohio Power Siting Board has
9 authorized through the siting of generating
10 facilities over the same period, 2007 to date period?

11 A. I know that all of these are approved,
12 but no, I don't know how much in total.

13 Q. Do you know how much generating capacity
14 has gone into service since 2007 in Ohio that's been
15 both developed and then owned and operated by what
16 I'll call merchant owner/operators?

17 A. No.

18 Q. Just to complete that line, I take it
19 then you would not know how much generating capacity
20 has gone into service in Ohio since 2007 that was
21 developed and then owned by rural electric
22 cooperatives, munis, that is, municipal electric
23 utilities, and PUCO-regulated investor-owned
24 utilities?

25 A. No, I haven't done that calculation.

1 Q. Do you know with regard to events in Ohio
2 since 2007, how much wind powered capacity has come
3 into service?

4 A. In Ohio?

5 Q. Yes.

6 A. No, I don't.

7 Q. Is it the case that for wind-powered
8 generation, the units' nameplate rating is actually
9 discounted to some lower level for capacity planning
10 purposes?

11 A. Yes.

12 Q. And what is the percentage of the
13 discount if you know?

14 A. I may recall 13 percent. But that may
15 have changed recently.

16 Q. So the discount is 87 percent.

17 A. Yes.

18 Q. And then so you end up with 13 percent of
19 the nominal or the nameplate capacity as the actual
20 capacity for planning purposes?

21 A. It's something like that. I'm not sure
22 it's 13 percent, but it's low.

23 Q. Turning back to PJM just for a second, or
24 maybe a few seconds, do you know what portion of the
25 new generation capacity built and placed in service

1 in PJM since 2007 has been built to meet the states
2 within PJM footprint, those states' renewable energy
3 mandates?

4 A. What was built to meet demand, I don't --
5 I'm not sure exactly how you would determine that. I
6 know I don't know the number.

7 Q. Let me try a different question. Do you
8 know how much new generation built and placed in
9 operation since 2007 when the PJM footprint was built
10 in states within that footprint that have cost-based
11 rate regulation?

12 A. No, I haven't done that calculation.

13 Q. And do you understand -- did you
14 understand my question to be a reference to cost
15 based rate regulation for generation? Hopefully you
16 did.

17 A. Yes.

18 Q. Okay. So you do not know what portion of
19 generating capacity built in PJM since 2007 doesn't
20 depend on PJM capacity revenues and energy margins to
21 recover its costs?

22 A. I haven't made that calculation, no.

23 Q. Let me turn to your discussion of
24 forwards prices. And my first series of questions
25 starts at question 51, and answer 51 on page 44.

3797

1 Just as a preliminary matter, Mr. Wilson,
2 you typically refer to the item, the thing that we're
3 talking about here as a forward price or a forward
4 contract, but is it true that if others refer to
5 futures price or futures contract, it would be
6 referring to the same thing?

7 A. Yes.

8 Q. Now, you state at page 44 at lines 11
9 through 13 that "Electricity forward prices result
10 from market participants' actions to lock in or hedge
11 future prices for electricity sales or purchases."
12 Do you see that? It's actually on lines 11 through
13 12.

14 A. Yes.

15 Q. Now, the forwards price curve is not a
16 forecast, correct?

17 A. Correct.

18 Q. And I believe that you would say the
19 forward prices, would you not say -- excuse me, that
20 forward prices are an accurate measure of what future
21 prices will be, correct?

22 A. Kind of a double negative in there.

23 Q. Let me start over again.

24 You would say that forward prices are not
25 an accurate measure of what future prices will be,

1 correct?

2 A. Well, they're no less or more accurate
3 necessarily than any other forecast. There's
4 uncertainty about future prices, so I would not
5 expect them to be an accurate forecast in the sense
6 that show me the future price and I can be confident
7 that's what the price would be. So as long as that's
8 what we're saying, yes, it's not an accurate forecast
9 because no forecasts are accurate.

10 Q. Do you recall your deposition being taken
11 in this case on September 30th in my offices?

12 A. Yes.

13 Q. Do you have a copy of your deposition
14 with you?

15 A. I do.

16 Q. Could you take it out for me?

17 Mr. Wilson, when you took your
18 deposition, you were under oath, right?

19 A. Yes.

20 Q. And you had an opportunity to review and
21 make corrections to your deposition transcript,
22 correct?

23 A. Yes.

24 Q. Could you turn to page 40 of your
25 deposition transcript.

1 A. Yes.

2 Q. And at that point in response to the
3 question I posed, you provide the answer as follows:

4 Question: "Okay. So would you agree
5 that the usefulness, the accuracy, the reasonableness
6 of your method depends in large part on the premise
7 that the forward prices are an accurate measure of
8 what future prices will be?"

9 Answer: "Well, I wouldn't say it's a
10 accurate measure. It reflects what market
11 participants collectively believe to be a fair price
12 for the future deliveries."

13 So is that what you testified to on your
14 deposition?

15 A. Yes, I would --

16 MR. MICHAEL: Objection. Your Honor.
17 Improper impeachment. That's exactly what Mr. Wilson
18 confirmed on the stand when Mr. Conway asked the
19 question.

20 MR. CONWAY: And, your Honor, I don't
21 think it was exactly the same. I think that the
22 record will show whether or not it was the same and
23 whether it was a proper impeachment so I think it
24 should stand.

25 EXAMINER SEE: The objection is

1 overruled.

2 A. Yeah, just clarify --

3 EXAMINER SEE: Go ahead.

4 A. I mean, in my answer, I was objecting to
5 the word "measure." Forward prices are not a
6 measure. I wasn't objecting to the word "accurate,"
7 so I think maybe you're misunderstanding my answer
8 here. it's not a measure. It's something that
9 reflects what market participants collectively
10 believe.

11 Q. And by the "market participants," you
12 mean the parties that are participants in the market
13 for the forwards contracts?

14 A. Yes.

15 Q. And would you agree that when two of
16 those market participants enter into a forwards
17 contract for a future month, what they're trying to
18 do is arrive at a price mutually that meets their
19 respective financial objectives?

20 A. Yes.

21 Q. And would you agree that they're not
22 trying to predict what the price will be during that
23 future period?

24 A. Each brings their own forecast, their own
25 expectations of what the price is likely to be in

3801

1 that period. And you can expect that the price they
2 agree on is going to reflect those forward forecasts
3 and probably not be very far from those forecasts.
4 But there are things like risk aversion and other
5 financial objectives that enter in that might cause
6 the price they agree on to be a little different than
7 their forecast, yes.

8 Q. So there are reasons for entering into
9 the price, which are not efforts to actually price
10 their transaction at some forecasted level, but
11 rather to handle their risk-aversion objectives; is
12 that right?

13 A. Well, both will enter in. They'll have a
14 forecast anticipation of what the price might be. It
15 may well be a probabilistic forecast that reflects a
16 whole range of possible outcomes, and the prices they
17 might be willing to agree to will reflect their risk
18 aversion and have other considerations, yes.

19 Q. Well, the forwards prices that you have
20 used in your analysis, you obtained them from CME
21 Group, correct?

22 A. Correct.

23 Q. And footnote 19 on page 51 you provide a
24 cite to the Web page of CME Group's website from
25 which you obtain the future prices that you -- or

1 forwards prices that you used in your testimony?

2 A. Yes.

3 Q. Now, let me go to your analysis, your use
4 of the forwards prices, which starts on page 51, I
5 believe, your description of it; is that correct?

6 A. Yes.

7 Q. And in preparing your estimate of the
8 cost to AEP's customers of the proposed PPA rider,
9 you made an adjustments to AEP's forecasted hourly
10 energy prices, correct?

11 A. Yes.

12 Q. And specifically you began with AEP's
13 hourly energy prices under the low load scenario --
14 is that right?

15 A. Yes.

16 Q. And you scaled those hourly prices to
17 match or average by month and peak and off peak, the
18 AEP-Dayton Hub day-ahead forward prices; is that
19 right?

20 A. Yes.

21 Q. And, again, in order to develop your
22 forecasted hourly energy prices, your adjusted
23 forecasted hourly energy prices, you used the CME
24 Group's forward price for the AEP Dayton Hub, right?

25 A. Yes.

1 Q. And the forward prices that you used were
2 for the October 2015 through the October 2020 period,
3 correct?

4 A. Yes.

5 Q. And just to be specific, you cite to the
6 specific product that you used in your footnote No.
7 19, right?

8 A. Yes.

9 Q. And not to belabor the record here
10 unduly, but the complete title of the products are as
11 referenced in your footnote, the PJM AEP-Dayton Hub
12 Day-Ahead Calendar-Month 5MW Futures, Peak and Off
13 Peak," is that right?

14 A. Yes. That's two different peak and then
15 all the same thing off peak.

16 Q. So when you get into the CME Group's web
17 page that you cite here you had to go to actually two
18 different Web pages, one for the peak price products
19 and one for the off-peak price products, right?

20 A. Correct.

21 MR. CONWAY: At this time, your Honors,
22 I'd like to mark as Exhibits 45 and 46. And 45 will
23 be the "PJM AEP-Dayton Hub Day-Ahead LMP
24 Calendar-Month, 5 MW Futures, Quotes?"

25 EXAMINER SEE: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MR. CONWAY: And then as AEP Exhibit 46,
3 I'd like to mark a document entitled "PJM AEP-Dayton
4 Hub Day-Ahead Off Peak Calendar-Month 5 MW Futures
5 Quotes."

6 EXAMINER SEE: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. And I'd like to start with the
9 Exhibit 45, which addresses the peak-price
10 information, okay?

11 A. Yes.

12 Q. And the PJM AEP-Dayton Hub, or sometimes
13 referred to as AD Hub, peak 5-megawatt futures
14 information on Exhibit 45, it's included in the
15 Quotes tab of the web page that you cite in your
16 testimony at footnote 19; is that correct?

17 A. Yeah, this is one of the pages around
18 this contract, yes.

19 Q. And are you familiar with it then?

20 A. Yes.

21 Q. And if you could turn your attention
22 briefly to the other exhibit, No. 46, and just
23 confirm that this is also a document that is
24 available from the CME Group's web page dealing with
25 the information at the Quotes tab for the off-peak

1 contract --

2 A. Yes.

3 Q. And is this tab of the CME Group Web page
4 version of these contracts, the peak and the off-peak
5 contracts, is this the tab that you used to obtain
6 pricing information for your analysis?

7 A. I believe I used the Settlements tab, but
8 my workpapers would identify it. My workpapers would
9 provide the actual language that I always cut and
10 paste.

11 Q. We went over your workpapers at some
12 length in the deposition, did we not?

13 A. Yes.

14 Q. And it turned out that the headings for
15 your spreadsheets that had the CME Group information
16 in it, they were cut off, right?

17 A. No.

18 Q. Well, in any event, you either used the
19 Quotes tab or the Settlements tab to develop the
20 prices or to obtain the prices that you used in your
21 analysis, right?

22 A. Yes.

23 MR. CONWAY: Let me go ahead and mark for
24 you two more exhibits for us. For the record, two
25 more exhibits, 47 will be the information at the

1 Settlements tab for the peak, the on-peak contracts.

2 And then I'd like to mark as AEP

3 Exhibit 48 the Settlements tab from CME Group's web
4 page for the off-peak futures contract.

5 EXAMINER SEE: Okay.

6 (EXHIBITS MARKED FOR IDENTIFICATION.)

7 Q. Mr. Wilson, in the course of your
8 analysis for this case, you went to the CME Group web
9 pages for the peak and the off-peak contracts and
10 reviewed the information on those web pages, correct?

11 A. Correct.

12 Q. And you reviewed the Settlements tab
13 information; is that correct?

14 A. Yes. The links in my worksheet take you
15 to the exact tabs that I used, yes.

16 Q. And you also used the Quotes tab
17 information or you reviewed the Quotes tab
18 information in your work?

19 A. Yes. And I used the Prior Settle
20 numbers.

21 Q. And how did you use the Prior Settle
22 numbers?

23 A. Those are the numbers I actually --

24 Q. From the Quotes tab?

25 A. Yes, I believe those were the ones I

1 used, prior settle.

2 Q. Not from the Settlements tab, right?

3 A. Looks like the Settlements tab doesn't
4 have a Prior Settle field, at least not this time of
5 day, perhaps, so that suggests I used the Quotes tab,
6 yes.

7 Q. And so just to be clear, for the on-peak
8 contract, which is reflected on Exhibit 45 and for
9 the off-peak contract, which is reflected on
10 Exhibit 46, you used the Quotes tabs to obtain the
11 prices that you used for the forwards contracts that
12 you used in your analysis, right?

13 A. I believe I did, yes.

14 Q. But you did look at the Settlements tabs
15 also for those two contracts, correct?

16 A. Yes.

17 Q. Now, to be accurate about the
18 conversation that we're having here, do you see that
19 the date that I printed these Quotes tab documents
20 and these Settlements tab documents was
21 October 21st?

22 A. That's what the footer says, yes.

23 Q. Yes. And the quotes for the prices are
24 as of October 21st; is that right?

25 A. The prior settle --

1 Q. On the Quotes page, yes, the prior Settle
2 prices.

3 A. That would probably be the prior day, I
4 think.

5 Q. Okay. So October 20th or
6 October 21st, correct?

7 A. Yes.

8 Q. And the Settlements information is as of
9 October 20th, is that your understanding reviewing
10 these documents?

11 A. Yes, probably so.

12 Q. But this is the same type of information
13 that may perhaps be of a more recent vintage, but
14 it's the same type of information that you used,
15 correct?

16 A. Correct.

17 Q. So, for example, you would have gone to
18 the Quotes tab for the on-peak futures contract and
19 you would have extracted each of the prior Settle
20 prices from November, or whenever it is,
21 October-November 2015 through October of 2020 to use
22 in your analysis?

23 A. Yes.

24 Q. And would you have done the same thing
25 for the off-peak --

1 A. Yes.

2 Q. -- information?

3 A. Yes, that's what I did.

4 Q. Let's go to the Settlements tab
5 documents, which are Exhibits 47 and 48. And you see
6 the last column on each of those exhibits is headed
7 "Prior Day Open Interest"?

8 A. Yes.

9 Q. And what is open interest in your
10 understanding?

11 A. Well, the number of outstanding contracts
12 for each of these calendar months for the peak and
13 off peak.

14 Q. Let me just read to you several
15 statements and see whether or not you find them
16 consistent -- to be consistent with your
17 understanding of what is meant by "open interest."

18 Open interest is a total number of
19 futures contracts, long or short, in a delivery month
20 for market that has been entered into and not yet
21 offset or fulfilled by delivery. Does that sound
22 right?

23 A. That sounds like the formal definition,
24 yes.

25 Q. Open interest is also known as open

1 contracts or open commitments. Does that sound
2 correct to you?

3 A. Could be. I haven't heard those terms
4 for open interest.

5 Q. Fair enough. And then, finally, with
6 regard to open interest, each open transaction has a
7 buyer and seller but for calculation of open
8 interest, only one side of the contract is counted.
9 Does that sound right?

10 A. That's how they do it, yes. That's how
11 they report it.

12 Q. Now, I think we just discussed that you
13 utilized the prices from the Quotes tab in these
14 reports that CME Group provides for the months that
15 you examined in your analysis, which went from
16 October of 2015 through October of 2020. Does that
17 sound right?

18 A. Yes.

19 Q. And you did that for both the peak and
20 the off-peak contracts, right?

21 A. Yes, day-ahead.

22 Q. Now, turn to the Settlements tab
23 documents, which are Exhibits 47 and 48. Start with
24 47, which is the report of Settlements tab
25 information for on-peak contracts. You have that?

1 A. Yes.

2 Q. Would you agree that this tab of the CME
3 Group's report, this Settlements tab, indicates that
4 as of Tuesday, October 20th, there isn't any open
5 interest for delivery months after December of 2017?

6 A. No, I don't think you can conclude that.
7 They reported out to December 17. I'm not sure that
8 that's the end of it. I think there may be another
9 tab there that you can see it's taken out until it
10 actually goes to zero.

11 Q. You see that the final row of that page
12 under the row December 17 indicates Total -- I'm
13 sorry. December of 2017, do you see where it's
14 entitled -- the row that's entitled "Total"?

15 A. I see that, yes.

16 Q. And it sums up all of the prior day open
17 interest for the months from November of 2015 through
18 December of 2017?

19 A. I don't know.

20 Q. Is that what you think that 13,691
21 represents?

22 A. I don't know. It might, but it might
23 also represent a total that includes additional
24 months, and they just haven't shown. I don't know.

25 Q. So would you like to add up the prior day

3812

1 open interest for me then for November through
2 December of -- November of 2015 through December of
3 2017 to confirm or determine whether or not the sum
4 of all those open-interest values for those months
5 accumulates to 13,691?

6 A. We can do that if you like.

7 Q. Okay.

8 MR. MICHAEL: Your Honor, may we approach
9 and give Mr. Wilson a calculator to do that, please?

10 THE WITNESS: It's okay.

11 EXAMINER SEE: Yes, you may.

12 A. No. It's about right, yes.

13 Q. So does that clarify for you that, in
14 fact, for the Settlements tab, CME Group doesn't
15 report open interest, prior day open interest, for
16 the months after -- any open interest for the months
17 after December of 2017?

18 A. No. That's the sum of what they've
19 reported on this sheet. It doesn't say anything
20 about beyond 2017.

21 Q. Let me turn your attention to the
22 Settlements tab for the off-peak count. The off-peak
23 forwards contract that's Exhibit 48, and would you
24 agree with me that that tab indicates that as of
25 Tuesday, October 20, CME Group reports no prior day

1 open interest past May of 2017?

2 A. They haven't reported any yet. They
3 haven't reported that there isn't any.

4 Q. Back to the on-peak futures price of
5 on-peak futures contracts Settlements tab
6 information, AEP Exhibit No. 47. Would you agree
7 that as the months go by from November of 2015
8 through December of 2017, the amount of prior day
9 open interest declines significantly?

10 A. Yes.

11 Q. And would you agree that if you look at
12 Exhibit 48 and the prior day open interest for the
13 off-peak futures contract, that the prior day open
14 interest also declines significantly from November of
15 2015 through May of 2017?

16 A. It goes up and down, but it generally
17 declines, yes.

18 Q. If you know, for months after
19 December 2017 for the on-peak futures contract for
20 which you used prices that you obtained from the
21 Quotes tab, were any of the months for that period
22 after December 2017 on-peak futures contracts months
23 where the open interest was zero when you did your
24 analysis?

25 A. I didn't check. I don't remember exactly

1 how far out the open interest goes.

2 Q. So it's possible that there are months in
3 that range that had zero open interest?

4 A. It's possible. Let me just clarify.
5 This is the CME Group, and there are other exchanges
6 on which there's trading, so there's other volume and
7 liquidity there potentially.

8 In addition, this is the day-ahead
9 market. There's also contracts for a realtime market
10 which have prices very similar to these and much
11 larger volume and open interest going quite a bit
12 further out.

13 And then there's also trading at other
14 hubs that are geographically close and well
15 interconnected with this, and there's additional open
16 interest in those hubs for day-ahead and for
17 realtime.

18 So this is only a small part of a much
19 larger picture.

20 Q. The prices that you used were prices
21 provided through the CME Group's marketplace and
22 their reports, correct?

23 A. Correct.

24 Q. And you only used the day-ahead futures
25 contract for the prices that you used, correct?

1 A. Yes.

2 Q. And with regard to each of those other
3 markets that you just identified, you did not use the
4 prices that those markets provided or that those
5 markets might have produced in your analysis, right?

6 A. I didn't use them. I checked them, and,
7 in particular, the realtime are very close. But,
8 yes, I used -- I decided that AEP-Dayton Hub
9 day-ahead were the right prices to use for my
10 analysis.

11 Q. And you don't know, sitting here today,
12 what the open interest was for each of those other
13 trading places that you just referred to.

14 A. No, I don't.

15 Q. And as far as you know, the open interest
16 from those other trading places for months during the
17 period that you did look at on the CME Group could
18 have been at the zero level also, right?

19 A. No. I know the realtime market goes out
20 a few more months than the day-ahead market.

21 Q. Now let me go back to your testimony at
22 page 51 and discusses the adjustments you made to the
23 AEP forecasted hourly energy prices.

24 A. Yes.

25 Q. Again, you started with the hourly energy

1 prices from the AEP low-load scenario, correct?

2 A. Yes.

3 Q. And then you scaled those hourly prices
4 to match on average by month and peak, and peak and
5 off-peak the AD Hub day-ahead futures prices.

6 A. Yes.

7 Q. And you developed, did you not, scaling
8 factors to adjust each hourly price from AEP's
9 low-load scenario?

10 A. Yes.

11 Q. And because the futures prices that you
12 used on average are less than the AEP hourly energy
13 prices, that adjustment that you made generally
14 lowered the hourly prices, correct?

15 A. They weren't always lower. They went
16 both directions, but more of them reduced than
17 increased, yes.

18 Q. Generally they're lower, correct?

19 A. Yes.

20 Q. And then you use the CME Group's future
21 prices in this manner for the October 2015 through
22 the October 2020 period, correct?

23 A. Correct.

24 Q. And then because you didn't believe that
25 the futures prices available after October 2020 were

1 suitable, you used a different method to adjust the
2 hourly energy prices that AEP had developed for
3 periods after October of 2020, right?

4 A. Yes. There were only a few more months,
5 and I dropped those. And --

6 Q. And the reason you dropped -- I'm sorry.

7 A. Yes. And there were only a few more, and
8 they deviated from trend, so I dropped a few of them
9 off the back end. That way I used the five years,
10 the 25th of October 2015 to October 2020.

11 Q. And so from November of 2020 through the
12 end of the study period, which I believe is December
13 of 2024, you didn't actually use forwards prices for
14 that period to develop your adjustments, right?

15 A. I used the multipliers that were
16 developed based on earlier forward prices, yes.

17 Q. So in that regard, you took the scaling
18 factors that you developed for each of the months in
19 the 12-month period November 2019 through October of
20 2020 and used them for each of the 12-month periods
21 subsequent to October of 2020, right?

22 A. Correct.

23 Q. And just to provide an example, just to
24 make sure I have you correctly, you used the scaling
25 factors or ratios that you developed for

3818

1 November 2019 to adjust the AEP forecasted hourly
2 prices for November of 2020, right?

3 A. Yes.

4 Q. And then you used the December 2019
5 factors that you developed to adjust the AEP
6 December 2020 hourly prices, right?

7 A. Yes. I think I heard that right.

8 Q. December 2019 factors were applied to
9 December of 2020 hourly prices of AEP, right?

10 A. Yes.

11 Q. And then you continued to do that, right?
12 The January 2020 factors that you had developed using
13 the forwards were used to adjust the January 2021
14 price, correct?

15 A. Correct.

16 Q. And you did that month by month through
17 October of 2021 using those prices from November of
18 2019 through October of 2020, right?

19 A. Correct.

20 Q. And then in November of 2021, then you
21 started over again, but you still used the same
22 factors that you had developed for 2019 November
23 through 2020 October, correct?

24 A. Correct.

25 Q. And you did that and you continued on in

1 that fashion until you made your way into
2 December 2024, correct?

3 A. Yes.

4 Q. So the adjustments that you made to the
5 AEP hourly prices for the November 2020 through the
6 December 2024 period are not based on forward prices
7 for the months in that period, right?

8 A. Correct. There aren't forward prices for
9 those months for AD Hub day-ahead.

10 Q. Okay. The adjustments that you made for
11 that period October -- excuse me, November 2020
12 through December 2024, they're all made based on the
13 forward prices from November 2019 through October of
14 2020, right?

15 A. They're based on the relationship between
16 the forward prices and the peak and off-peak monthly
17 averages of the load-case prices that prevailed at
18 that time, that relationship was extended out to
19 2024, yes.

20 Q. And then after you revised the AEP
21 low-load scenario hourly energy prices downward in
22 the manner that we just described, you then applied
23 those new prices to the output of the PPA units; is
24 that right?

25 A. I revised them upward and downward, and

3820

1 then I used those prices for the PPA and OVEC units,
2 yes.

3 Q. And you said upward and downward, but,
4 again, generally on the whole, it's downward, right?

5 A. I believe more went down than went up,
6 yes.

7 Q. In your analysis of the credits and
8 charges that would result from the PPA rider, you
9 didn't change the PPA units' costs that the company
10 used in their analysis; is that correct or not?

11 A. The fixed cost, no.

12 Q. And the variable costs also no?

13 A. I tried to use the same, but as we
14 discussed last week, the consumables information
15 wasn't provided on an hourly basis. It was only
16 provided on a monthly basis.

17 Q. But you didn't change the consumables
18 costs that the company had used.

19 A. I didn't change them, but the values I
20 used, because I was only provided monthly data, may
21 have been a little different than what was probably
22 hourly data in the original analysis. So that
23 probably created a small difference between my
24 analysis and Mr. Pearce's analysis.

25 Q. Let me change topics for a moment,

1 Mr. Wilson.

2 You are aware, are you not, that the PUCO
3 has authorized public utilities subject to its
4 jurisdiction to utilize cost recovery riders, also
5 sometimes referred to as cost trackers?

6 A. Yes.

7 Q. And with regard to cost trackers or cost
8 recovery riders, is it your understanding that the
9 PUCO utilizes an audit process to review them?

10 A. Yes.

11 Q. And is it your understanding that AEP
12 Ohio has proposed an audit process for the PPA rider?

13 A. Yes.

14 Q. And under the audit process that AEP has
15 proposed for the PPA rider, is it your understanding
16 that there is a risk that the PUCO can disallow costs
17 if it finds them to be imprudently incurred?

18 A. Yes, there would be some risk.

19 Q. And you're not an expert regarding Ohio's
20 retail market for CRES services, are you?

21 A. No, I'm not.

22 Q. And you're not familiar with the products
23 or terms of service offered by CRES providers in
24 Ohio?

25 A. No. I haven't researched that.

1 Q. And you're not aware of fixed-price
2 contracts being currently offered by CRES providers
3 in Ohio that have terms greater than three years?

4 A. Well, I'm aware of one longer term
5 fixed-price contract, but I have not generally
6 researched that, no.

7 Q. So there's one instance that you're aware
8 of, and that's it?

9 A. Yes.

10 Q. And you're also aware that a nonshopping
11 customer, an SSO customer, standard service offer
12 customer can experience price changes for SSO service
13 from one ESP to the next?

14 A. Yes.

15 Q. And the changes can be potentially large.

16 A. Yes.

17 Q. And you're also aware that a shopping
18 customer may also experience price changes from one
19 contract to another.

20 A. Yes.

21 Q. And are you aware that the FERC, the
22 FERC, the Federal Energy Regulatory Commission, has a
23 rule that prohibits market manipulation?

24 A. Yes.

25 Q. And you're aware that economic

1 withholding generation from the market for the
2 purpose of raising prices for the benefit of
3 affiliated plants is considered to be market
4 manipulation?

5 A. Yes, if you could ever identify purpose,
6 it would be, yes.

7 Q. And FERC has an Office of Enforcement,
8 right?

9 A. Yes.

10 Q. And a Division of Investigations,
11 correct?

12 A. Yes.

13 Q. And also has a Division of Analytics and
14 Surveillance?

15 A. I believe they may, yes.

16 Q. And one or more of those agencies monitor
17 the PJM market looking for instances of market
18 manipulation and economic withholding.

19 A. Yes.

20 Q. And PJM also has a market monitor,
21 correct?

22 A. Yes.

23 Q. And he also reviews trades looking for
24 improper trading patterns; is that right?

25 A. They do, yes.

1 Q. Now, in your testimony you discussed the
2 range of capacity prices in PJM since RPM was
3 established, right?

4 A. Yes.

5 Q. And you state, I believe at page 19 of
6 your testimony, that the rest of RTO capacity prices
7 have been reasonably stable in the \$100 to \$175 per
8 megawatt-day range over the twelve RPM delivery years
9 that have occurred to date; is that correct?

10 A. With the exception of -- yes.

11 Q. Yes, with the exception of what?

12 A. Well, the rest of the sentence notes four
13 exceptions, yes.

14 Q. So there's four delivery prices when --
15 I'm sorry, there's four delivery years when capacity
16 prices were outside of the 100 to 175 dollar per
17 megawatt-day range?

18 A. Yes, were lower.

19 Q. And could you, just for the record,
20 explain what the rest of RTO is?

21 A. Well, classic PJM, before expansions over
22 the last 15 years, was PJM Pennsylvania, New Jersey
23 and Maryland and some Delaware and some DC, and not
24 originally all of Pennsylvania, and that area
25 typically today is called the Mid-Atlantic zone of

1 PJM. So that's New Jersey, most of Pennsylvania,
2 most of Maryland and DC and Delaware, and maybe a
3 tiny bit of Virginia.

4 So when we talk about the rest of RTO,
5 we're usually talking about the rest of the PJM
6 footprint of the present time, which would include
7 Western Pennsylvania, Ohio, little bit of Indiana,
8 little bit of Michigan, little bit of Illinois, part
9 of Kentucky, Virginia, and much or all of West
10 Virginia.

11 Now, at times there can be in the RPM
12 context -- there can be subzones of the rest of RTO
13 that are defined in the auction, and it might have
14 price separation, for instance, the FirstEnergy ATSI
15 zone, price separated one time; the ComEd zone
16 recently. And anytime those zones are separate, then
17 that is not a part of the rest of RTO.

18 Q. Thank you.

19 Now, the four delivery years that you
20 exclude from your assessment at page 19 that the rest
21 of RTO capacity prices have been reasonably stable,
22 those are the prices from the 2007-2008 delivery
23 year; is that right

24 A. That's one of them, yes?

25 Q. Another one is the 2012-2013 delivery

1 year.

2 A. Yes.

3 Q. And then third one is the 2013-2014
4 delivery year?

5 A. Yes.

6 Q. And then finally the 2016-2017 delivery
7 year?

8 A. Yes.

9 Q. And your Exhibit JFW-3, which I was
10 unsuccessful in excluding from the record,
11 Mr. Wilson, graphically depicts the variation in the
12 RPM BRA, base residual auction, prices over the
13 history of RPM; is that right?

14 A. Yes.

15 Q. And the prices that you've excluded are
16 the four that are at the bottom below that range,
17 below \$75 per megawatt-day range, right?

18 A. Below 100, yes.

19 Q. Below 100, yes.

20 What's the lowest price of the
21 delivery-year prices that you excluded?

22 A. If I recall, it was \$16 and change.

23 Q. What was the next lowest?

24 A. Wasn't it 25 or 26?

25 Q. And then the third lowest back in 2007,

1 what was that?

2 A. That was 40.

3 Q. And then the fourth one in 2016-17, what
4 was that?

5 A. I don't recall the exact number, but it
6 appears it was probably in the high 50s, 59 maybe;
7 maybe I recall 59.

8 Q. So you excluded all those prices from
9 your assessment of the volatility of capacity prices
10 during the RPM lifetime, correct?

11 A. No.

12 Q. Those four prices fall outside the \$100
13 to \$175 per megawatt-day range that you reference in
14 your testimony, right?

15 A. Correct.

16 Q. And you regard prices within the \$100 to
17 \$175 per megawatt-day range to exhibit stability,
18 correct?

19 A. It's reasonably stable in that range,
20 gone up and down.

21 Q. You don't regard that as exhibiting
22 volatility, right?

23 A. No, not for capacity prices.

24 Q. And if you were to include the four
25 prices that you excluded from your assessment, would

1 you agree that when included, those prices along with
2 the other prices that prevailed during the history of
3 RPM, does exhibit volatility?

4 A. Along with the other prices?

5 Q. If you include all twelve years' worth of
6 prices in your assessment, you don't exclude four of
7 them like you did, would you agree that looking at
8 all twelve prices over the course of RPM's, history
9 that those prices do exhibit volatility?

10 A. Well, usually when we say "volatility,"
11 we're concerned about upward price spikes, not times
12 when the prices fall below, and this is, of course,
13 only the RTO region. There have been much higher
14 prices in the zones of PJM. So that's not really
15 what people would usually mean by volatility, the
16 fact that a price can go quite low, has gone quite
17 low on a future.

18 Q. Perhaps it depends on which side of the
19 volatility you're impacted, right?

20 A. Perhaps so.

21 Q. So on my side of the volatility standard,
22 would you agree that it exhibits volatility, this
23 range of prices exhibits volatility?

24 A. I guess for a seller that would be the
25 kind of price pattern that would make you uneasy,

1 yes.

2 Q. As part of your work for this proceeding,
3 you didn't do any independent forecast of hourly
4 energy prices for PJM, correct?

5 A. I did the analysis that we just
6 discussed. No. So no, I did not do any independent
7 forecast.

8 Q. So you didn't, as part of your analysis,
9 make decisions or determinations about all the inputs
10 that would go into a comprehensive forecast, right?

11 A. No.

12 Q. You made adjustments to the results of
13 the forecast that AEP prepared, correct?

14 A. Yes.

15 Q. You did not examine in the course of your
16 analysis how the adjusted energy prices, hourly
17 energy prices that you developed, might impact the
18 operation of the entire population of generators that
19 participate in PJM's market, did you?

20 MR. DARR: Could I have that question
21 reread, please?

22 (Record read.)

23 MR. DARR: Thank you.

24 A. No. I just wanted to take the analysis
25 that had been provided in Mr. Pearce's workpapers. I

3830

1 wanted to make the minimal changes so that it would
2 be easy for the audience to compare the two studies
3 to understand exactly what was different and to draw
4 their own conclusions about which was more soundly
5 based.

6 So all I did was I changed the energy
7 prices, as we've discussed. I updated three RPM
8 auction prices, and then using Mr. Pearce's hourly
9 generation numbers, I just checked for every hour
10 that a plant hadn't lost money based on the new
11 prices, and if they had lost money, I eliminated that
12 hour in order that the plant wouldn't lose money in
13 that hour.

14 My price adjustments were rather small
15 and down, so I think it's pretty reasonable to start
16 with Mr. Pearce's analysis and just make that one
17 modification that I've described.

18 Q. Thank you.

19 And as a follow-up question, you didn't
20 examine, for example, whether your adjusted energy
21 prices would have had an impact on coal and gas
22 prices.

23 A. I think the arrow of causality tends to
24 go the other way with coal and gas prices determining
25 energy prices.

1 Q. The answer is, no, you didn't do that,
2 correct?

3 A. No.

4 Q. The answer is --

5 A. No. All I changed were the energy
6 prices.

7 Q. No, you didn't do that; all you changed
8 were the energy prices?

9 A. The electricity prices, yes.

10 Q. Okay. And you didn't evaluate as part of
11 your analysis whether your adjusted energy prices
12 would have had an impact on capacity prices in PJM or
13 what such an impact might be?

14 A. No. I -- just as I mentioned in my
15 testimony, that capacity prices are supposed to
16 provide the missing money, the missing earnings that
17 aren't coming from the energy market and the
18 ancillary services market, but it's small. So if you
19 have energy prices going up in the later part of the
20 period, the energy prices are going up, you don't
21 really expect capacity prices to be going up.

22 But, in fact, I used Mr. Pearce's and
23 Mr. Bletzacker's forecast of the capacity prices,
24 which are going up quite considerably over the entire
25 horizon.

1 Q. Thank you. You did no analysis of the
2 impact of any proposed environmental regulations on
3 energy prices either in PJM or elsewhere, correct?

4 A. No. That's reflected in Mr. Pearce's
5 workpapers' analysis, and I didn't change it.

6 Q. You do believe that carbon -- you agree
7 that carbon emission regulations would likely have an
8 upward pressure on energy prices, correct?

9 A. Yes, to some extent. They're going to
10 cause big change in the fuel mix, and with natural
11 gas prices as low as they are now and as low as
12 they're expected to be for a long time, and with the
13 cost of wind and solar coming down, it's not clear
14 how much impact they're going to have as fuel mix
15 changes.

16 Q. Would you agree that carbon regulations
17 could have an upward pressure on natural gas prices?

18 A. They could.

19 Q. And are you familiar with the Energy
20 Information Administration's Annual Energy Outlook
21 for 2015?

22 A. Yes, I am.

23 Q. And is it your understanding that EIA's
24 natural gas and electric energy pricing projections
25 do not reflect the potential impacts of pending or

1 proposed legislation regulations and standards?

2 A. Yes, they generally don't reflect pending
3 regulations. They have not modeled in any specific
4 pending regulations, correct.

5 Q. So the EIA's Annual Energy Outlook for
6 2015 wouldn't have included any impacts from future
7 carbon regulations like the Clean Power Plan, right?

8 A. I don't agree with that. I think we're
9 already seeing in the marketplace impacts of
10 anticipation of eventual legislation of that type. I
11 think we're already seeing that, and I think their
12 forecast, to some extent, picked up on that and
13 reflect that. They have not modeled in a specific
14 CO2 price or anything like that, but we're already
15 seeing the market reacting and responding to the
16 coming CO2 legislation.

17 In fact, all those retirements we've had
18 in the last few years, to some extent, that's market
19 participants seeing the writing on the wall and
20 starting to move in the directions we need to move.

21 Q. You would agree that the EIA forecast for
22 2015 doesn't include any explicit accounting for the
23 EPA's Clean Power Plan, right?

24 A. Yes, they have not specifically modeled
25 the impacts of the proposed Clean Power Plan in AEO

1 projections.

2 Q. EIA's Energy Outlook for 2015 would not
3 have included any impacts from the introduction of
4 PJM's capacity performance product, right?

5 A. They wouldn't have specifically modeled
6 those tariff changes. I don't think such tariff
7 changes necessarily would have been reflected in
8 their model, so I don't know what assumptions they
9 have adopted and whether they would reflect that or
10 not.

11 I mean, PJM's position is that capacity
12 performance merely will cause generators to do what
13 PJM has always assumed that they were going to do.
14 So to the extent that's true for EIA, arguably, yes,
15 capacity performance is reflected in their modeling.

16 Q. But you would agree, would you not, that
17 the PJM capacity performance product that's been
18 established recently will exert an upward pressure on
19 capacity prices in the future?

20 A. Well, it already did. We've already had
21 the auction for 2018-19, and, yes, it will exert some
22 upward pressure. I think it might keep them within
23 the 100 to 175 range.

24 Q. And for the subsequent two years,
25 2019-2020 delivery year and then the 2020-2021

3835

1 delivery year, its capacity performance product will
2 increase from being an 80 percent share of the
3 capacity in those auctions to 90 percent in 2019 and
4 2020 and then hundred percent in 2020-2021, right?

5 A. That's what is currently in the tariff
6 but there are discussions about changing that.
7 There's some conversation PJM quoted the idea of
8 changing a construct to have separate summer and
9 winter requirements to accommodate both winter only
10 and summer only types of capacities such as
11 summer-only demand response. So that's what's in the
12 tariff right now. But I believe that before we get
13 there, there will be some changes to better
14 accommodate winter-only and summer-only capacity.

15 Q. And I want to focus on the current plan
16 by PJM to increase the fraction of capacity for those
17 future auctions from 80 percent capacity performance
18 to 90 percent and then a hundred percent, okay?

19 A. Okay.

20 Q. And would you agree that by doing that
21 the upward pressure will increase even from the
22 pressure exerted at the 80 percent level upward
23 pressure on prices for capacity?

24 A. Yes. That would tend to have more upward
25 pressure. Whether that will actually have an upward

1 impact on prices is to be seen given that I've noted
2 that there's 10,000 megawatts of additional capacity
3 that's eligible for PJM that hasn't cleared an RPM
4 and stands ready to offer into the next auctions.
5 And there's more in the pipeline.

6 Q. I believe you indicated in one of your
7 previous answers, and correct me if I got this wrong,
8 that the Clean Power Plan will dramatically change
9 the fuel mix adversely affecting coal and favoring
10 other types of generation; is that correct?

11 A. I don't remember saying "dramatically"
12 but with or without Clean Power Plan, maybe something
13 else, the world and the United States are facing up
14 to the fact that we've got to do something to reduce
15 carbon emissions, whether it's the Clean Power Plan
16 or something else, it's going to happen.

17 The world recognizes, market participants
18 recognize it already, the retirements that have
19 already happened many of them recognize it. So the
20 fuel mix will change, whether it's Clean Power Plan
21 or not. The fuel mix is and will continue to change.

22 Q. Let me focus on the impacts of the Clean
23 Power Plan and coal-fired generation, okay? Do you
24 have an opinion as to the level of change, the
25 significance of change that will be brought about by

1 the Clean Power Plan if implemented on the fraction
2 of the electric energy supply that's furnished by
3 coal-fired generation?

4 A. I would expect it will decline.

5 Q. And that's my question: How much?

6 A. I haven't done that analysis. PJM has
7 run some scenarios, other entities have run some
8 scenarios. There's lots of different evaluations but
9 I haven't performed an evaluation of it.

10 Q. Do you know what the current fraction of
11 the electric energy supply provided in PJM, for
12 example, that's provided by coal-fired generation?

13 A. I don't have that number in front of me.
14 It's pretty high.

15 Q. What does that mean?

16 A. I don't have that number in my head.

17 Q. So more than half?

18 A. The gigawatt hours?

19 Q. Yes.

20 A. It might be more than half. I'm not
21 sure. It's around there probably.

22 Q. And you have in your mind an estimate of
23 what the impact of the Clean Power Plan would be on a
24 percentage basis for when applied to the coal-fired
25 portion of the generation in PJM? If 50 percent is

1 where it is right now, what would be the impact on
2 Clean Power Plan?

3 A. I don't recall. I've seen PJM's reports
4 but I don't remember that. I haven't focused on that
5 number.

6 MR. CONWAY: Just a second, your Honor.

7 EXAMINER SEE: Mr. Conway.

8 MR. CONWAY: Yes, your Honor.

9 EXAMINER SEE: Now is a good time for us
10 to take a 10-minute break.

11 MR. CONWAY: Okay, thank you. I may be
12 close.

13 EXAMINER SEE: That's fine, it's been a
14 couple hours. Let's take a break.

15 (Recess taken.)

16 EXAMINER SEE: Let's go back on the
17 record.

18 Mr. Conway.

19 MR. CONWAY: Thank you, your Honor.

20 Q. (By Mr. Conway) Mr. Wilson, I asked you a
21 question or two previously about whether after having
22 done your analysis, you examined whether your
23 adjusted energy prices would have an impact on coal
24 and natural gas prices, and what that impact might
25 be. Do you recall that?

1 A. Yes.

2 Q. And I believe you indicated you really
3 didn't do that, correct?

4 A. Yes. I could add that my energy prices
5 are based on the forward prices, and those forward
6 prices are going to be consistent with natural gas
7 forward prices.

8 Q. I'm talking about the coal and natural
9 gas prices that are used as fuel for generating
10 units, that's the context I'm in right now. Okay?

11 A. Yes.

12 Q. And I understand you adjusted the
13 electric energy prices in a manner that you did, but
14 now I'm concentrating on focusing on potential
15 impacts of whether or not you considered potential
16 impacts of what you did on coal prices and natural
17 gas prices. Okay?

18 A. Yes.

19 Q. So with regard to the coal prices, you
20 did not -- just to put a point on it, you did not
21 examine whether or not the reduction in the operation
22 of the coal-fired generation would have had a
23 depressing impact on coal fuel prices for those
24 units, did you?

25 A. No. I accepted the assumptions about

1 coal prices. I accepted Mr. Bletzacker's and
2 Mr. Pearce's assumptions about coal prices.

3 Q. And would you agree that their
4 assumptions about coal prices were, in part,
5 dependent upon their estimates of what the
6 consumption was going to be of coal by the coal-fired
7 units that they were studying?

8 A. There would be some connection there, but
9 it's a large market, and so it's not clear how much a
10 small reduction in production of coal plants would
11 have on coal prices. It's not clear there would be
12 much impact.

13 Q. So your assessment is that the results of
14 your adjustments would result in a small adjustment
15 to the output of the coal plants; is that right?

16 A. In my analysis, the output of the coal
17 plants is lower than in Mr. Pearce's analysis.

18 Q. And would you agree with me that it's
19 substantially lower?

20 A. Yes.

21 Q. And my question is you did not, did you,
22 assess the impact on coal prices in the market that
23 would result from a reduction in utilization of coal
24 by coal-fired generation in the portion that you have
25 developed in your study?

1 A. Yes, I used Mr. Pearce's coal prices. I
2 did not change them, correct.

3 Q. But you would agree that if the use of
4 coal declines substantially from the levels assumed
5 by Dr. Pearce and by Mr. Bletzacker, that the price
6 of coal would also decrease, right?

7 A. Not necessarily. There are economies of
8 scale, and as production declines, I could also see
9 an argument that the costs might go up.

10 Q. So your testimony is that, for example,
11 coal-fired generation output declines by 20 percent,
12 all else held the same, prices of coal may
13 nevertheless go up or will nevertheless go up.

14 A. Are you talking about 20 percent across
15 the United States or --

16 Q. Yes.

17 A. Okay. I don't know. You'd have to -- I
18 mean, it's a complicated question. The coal is going
19 to shrink, and as it does, where would its average
20 cost go? I mean, a 20 percent reduction would,
21 obviously, be over many years. It would cause the
22 industry to shrink. You would lose high-cost
23 producers, lose on economies of scale. It's not
24 really clear what that would fashion. I haven't
25 evaluated it.

1 Q. You mentioned missing money for
2 generators at one point in one of your answers. Do
3 you recall that?

4 A. Yes.

5 Q. The fixed costs of a generator in PJM,
6 participating in PJM, not subject to state cost of
7 service regulation, makes its money through capacity
8 revenues and energy margins, right?

9 THE WITNESS: Could you reread the
10 question please.

11 (Record read.)

12 A. Okay. I mean, the question's a little
13 garbled, but I think you meant to say that if you're
14 operating in the PJM market, you're making money
15 through capacity and energy and ancillary services
16 revenues.

17 Q. Fine. Is that accurate?

18 A. Yes. I mean, you might have a bilateral
19 contract, but --

20 Q. Okay. And would you agree that over the
21 long term, those energy margins, capacity revenues,
22 ancillary services revenues will recover the cost of
23 new entry?

24 A. In principle you would expect there to be
25 new entry only when those revenues are enough to make

1 the new entry economic. So you would expect that,
2 yes.

3 Q. Did you examine whether the results of
4 your analysis, the prices that you produced through
5 your analysis, coupled with capacity revenues would
6 be sufficient over the long run to meet or cover the
7 costs of new entry? Have you run that analysis?

8 A. Well, they're more than sufficient
9 because we've had sufficient new entry over recent
10 years under recent capacity prices and recent energy
11 prices, and in my analysis, energy prices are going
12 up. They're kind of flat, and then they go up in the
13 later years, while capacity prices are rising. So in
14 my analysis, total energy and capacity income is
15 rising starting from a place where it already is
16 apparently enough to attract sufficient new entry,
17 so, yes.

18 Q. So what you're saying is that you checked
19 to see whether or not the capacity revenues and
20 energy margins that result from your view of what
21 hourly energy prices will be over the long term are
22 sufficient to provide sufficient -- or, sufficient to
23 provide recovery of the costs of new entry.

24 A. No, not exactly. But what we observe at
25 the present time is there's a substantial amount of

1 entry by gas-fired generation under current forward
2 prices, forward prices for natural gas, for energy,
3 and forward prices for capacity, which we see out
4 three years.

5 We've already got substantial new entry,
6 enough to drive capacity prices below the
7 administrative Net CONE parameter and provide a
8 4 percent reserve margin. So that suggests that the
9 parties who are building new gas-fired generation are
10 good with current price levels.

11 And so the fact that my analysis has
12 price levels higher than that gives me confidence
13 that there's enough money in my analysis to attract
14 new entry.

15 Q. Do you know whether or not the new
16 entrants that you just referenced, whether they're
17 assuming capacity prices higher than what you would
18 assume in your analysis in the future?

19 A. Well, they've got the same prices out
20 through May of 2019. Beyond that, I used the
21 assumptions in Mr. Pearce's workpaper, which has them
22 rising pretty sharply. My guess is they're a little
23 skeptical about such increases. I expect they would
24 like to see prices move in that manner, but I doubt
25 if they're counting on it.

3845

1 MR. CONWAY: Thank you, Mr. Wilson. No
2 further questions.

3 EXAMINER SEE: Mr. Margard?

4 MR. MARGARD: I have no questions. Thank
5 you, your Honor.

6 EXAMINER SEE: Any redirect, Mr. Michael?

7 MR. MICHAEL: May I have just a brief
8 moment, your Honor.

9 EXAMINER SEE: Certainly.

10 (Off the record.)

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

13 Mr. Michael, redirect?

14 MR. MICHAEL: Yes, your Honor. Thank
15 you.

16 - - -

17 REDIRECT EXAMINATION

18 By Mr. Michael:

19 Q. Mr. Wilson, I'd like to bring you back to
20 pages 24 and 25 of your direct testimony, please.

21 A. Yes.

22 Q. Do you recall questions by Mr. Conway
23 regarding which of the five projects you have listed
24 there are interconnected?

25 A. I think the question had to do with

1 having an interconnection service agreement.

2 Q. Correct.

3 A. Yes.

4 Q. And my recollection is that you
5 identified three as having an interconnection
6 agreement?

7 A. Yes.

8 Q. Which of those three out of the five
9 actually have an interconnection agreement?

10 A. The Oregon Clean Energy Center, No. 1;
11 the Carroll County, No. 2; and then the fourth one,
12 Middletown, all have an interconnection service
13 agreement and construction service agreement.

14 Q. And, Mr. Wilson, do you know what the
15 status is of an interconnection agreement with the
16 plants identified in Nos. 3 and 5 are?

17 A. Those are not as far along in the process
18 so they do not yet have an interconnection service
19 agreement.

20 Q. And do you recall questions from
21 Mr. Conway regarding the status of financing for the
22 plants in items 1 through 5?

23 A. Yes.

24 Q. And you conveyed to Mr. Conway that three
25 have financing; is that correct?

1 A. Yes.

2 Q. I ask you to identify which three have
3 financing.

4 A. It's the same three. It's the Oregon
5 Clean Energy, the Carroll County, and the Middletown
6 that have construction service agreements,
7 interconnection service agreements, and that have
8 obtained financing.

9 Q. Thank you, Mr. Wilson.

10 I also want to refer back to Mr. Conway's
11 question regarding the status of new coal generation
12 builds. Do you recall those questions?

13 A. Yes.

14 Q. And if recollection serves, you responded
15 to Mr. Conway that new coal gen build was quite
16 small. Do you remember that conversation?

17 A. Yes.

18 Q. Can you describe, please, why new build
19 coal gen is quite small?

20 A. I think it goes back to the fact that we
21 see carbon regulation of some kind coming. Natural
22 gas prices are very low, so in terms of new build
23 based on the Marcellus and the Utica shale, which is
24 right underneath us, natural gas is clean and very
25 economical, and new coal just isn't competitive and

1 would face this uncertain future about coming carbon
2 legislation.

3 Q. I also want to refer back to Mr. Conway's
4 questions to you regarding new entry and the degree
5 to which cost of new entry would be recovered. Do
6 you recall those questions from Mr. Conway?

7 A. Yes.

8 Q. What is the status of new entry and the
9 degree to which new entry is occurring with prices
10 covering cost of new entry or not?

11 A. Well, as I explained, we're seeing a lot
12 of new entry. We're seeing a lot of plants in the
13 interconnection queue, so all the evidence is that
14 current price levels are sufficient to support enough
15 new entry in PJM to replace retiring capacity and
16 meet the modest load growth that's occurring.

17 Q. And you identified five plants on pages
18 24 and 25 of your testimony; is that right?

19 A. Yes.

20 Q. Are there any others recently in Ohio?

21 A. There is one since my testimony was
22 filed. There's another one. Southfield Energy has
23 now made an application to the Ohio Power Siting
24 Board, so there's a sixth, and I expect there will be
25 more.

1 Q. Do you know, Mr. Wilson, what the
2 proposed megawatt of the Southfield plant is?

3 A. I don't have that with me.

4 MR. MICHAEL: Thank you, your Honor. I
5 have no further questions.

6 EXAMINER SEE: Mr. Mendoza?

7 MR. MENDOZA: No questions, your Honor.

8 EXAMINER SEE: Mr. Darr?

9 MR. DARR: No questions.

10 EXAMINER SEE: Ms. Cohn?

11 MS. COHN: No questions.

12 EXAMINER SEE: Mr. Conway?

13 MR. CONWAY: No questions, your Honor.

14 EXAMINER SEE: Mr. Margard?

15 MR. MARGARD: Thank you, no, your Honor.

16 EXAMINER SEE: Mr. Wilson, you filed your
17 OCC Exhibit 15 on September 11, correct?

18 THE WITNESS: Yes.

19 EXAMINER SEE: And just prior to your
20 testimony, which was scheduled to occur last Friday,
21 you had revisions to your testimony, correct?

22 THE WITNESS: Yes.

23 EXAMINER SEE: And I think those two
24 items reflected a redline of Table 2 and then a final
25 of Table 2 in your testimony?

3850

1 THE WITNESS: Yes.

2 EXAMINER SEE: You also had an update to
3 JFW-2.

4 THE WITNESS: Yes.

5 EXAMINER SEE: What was the reason for
6 the changes to Table 2 and JFW-2?

7 THE WITNESS: Yes. Thank you. Late on
8 Wednesday I was preparing for testimony and reviewing
9 my workpapers and my analysis, and I saw some numbers
10 in the hourly details that raised some questions, and
11 I ultimately determined that I had interpreted the
12 consumables data that I was relying on which were in
13 Mr. Pearce's worksheet, I had interpreted the units
14 of that data incorrectly.

15 So I had noticed right away okay, to do
16 my analysis I had hourly prices as I've explained, I
17 had hourly generation and I needed hourly variable
18 cost numbers. I had hourly fuel cost numbers in
19 Mr. Pearce's worksheet but unfortunately this was
20 only monthly consumables data and I needed hourly
21 consumables data.

22 And so I had to use the monthly data I
23 was provided and I immediately noticed that was much
24 smaller than the fuel data so the units obviously
25 were different and my initial presumption was that it

3851

1 was monthly average hourly consumables data and then
2 through my auditing I determined that in fact it was
3 monthly total consumables data in thousands.

4 So that essentially the consumable
5 information that I used when I made that, when I
6 changed that interpretation of his worksheet
7 essentially raised the consumables which are about
8 \$3, about a tenth of fuel cost, raised them by a
9 factor of about one-third.

10 EXAMINER SEE: All right, thank you.

11 And, Mr. Wilson, that change, the change
12 you just discussed would affect both the revenue and
13 the capacity side of JFW-2?

14 THE WITNESS: It doesn't --

15 EXAMINER SEE: I'm sorry, the energy and
16 capacity.

17 THE WITNESS: Yes. The impact of that is
18 a small increase in variable cost, a very small
19 increase through 2021 and then a larger increase in
20 '22 to '24 because CO2 is one of the consumables. So
21 a larger impact. And larger variable cost causes the
22 generation to go down because there's more hours when
23 the plants would incur losses and I zeroed out hours
24 when they incurred losses and that will include both
25 the average energy revenue and the average energy

1 cost to change.

2 EXAMINER SEE: Mr. Michael?

3 MR. MICHAEL: Yes, your Honor, at this
4 point I would like to move into evidence OCC Exhibits
5 15 through 19.

6 EXAMINER SEE: Are there any objections
7 to the admission of OCC Exhibits 17 through 19?

8 MR. CONWAY: Your Honor, as I explained
9 before, we have a continuing objection but we
10 understand your ruling, so I'm not going to reiterate
11 it at this point.

12 EXAMINER SEE: So you have a continuing
13 objection to OCC Exhibit 19? Or are you talking
14 about all of them?

15 MR. CONWAY: No, I'm talking about the
16 revisions to Table 2 on the one hand and
17 Exhibit JFW-2 on the other hand and Exhibit JFW-3.

18 EXAMINER SEE: Your objection is noted.

19 With that OCC Exhibits 15, 16, 17, 18,
20 and 19 are admitted into the record.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 EXAMINER SEE: Just so that the record is
23 clear, OCC Exhibit 16 and OCC Exhibit 18 are
24 confidential.

25 Mr. Conway?

3853

1 MR. CONWAY: Thank you, your Honor. The
2 company moves for the admission of AEP Exhibits 45,
3 46, 47, and 48.

4 EXAMINER SEE: Any objection?

5 Hearing none, AEP Exhibits 45, 46, 47,
6 and 48 are admitted into the record.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 EXAMINER SEE: Thank you, Mr. Wilson.

9 With that we are adjourned until Friday
10 at 9:00 a.m. where we will pick up with Mr. Lesser
11 and Dr. Choueiki.

12 MR. MARGARD: I presume in that order,
13 your Honor?

14 EXAMINER SEE: That is the plan.

15 (Thereupon, at 3:48 p.m. the hearing was
16 adjourned.)

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3854

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, October 21, 2015, and carefully compared with my original stenographic notes.

Julieanna Hennebert,
Registered Professional
Reporter RMR, and Notary
Public in and for the
State of Ohio.

My commission expires February 19, 2018.

Rosemary Foster Anderson,
Registered Professional
Reporter and Notary Public
in and for the State of Ohio.

My commission expires April 5, 2019.

(rfa-79554)

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Summary: Transcript In the Matter of the application of Ohio Power Company hearing held on 10/21/15 - Volume XV electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.