

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PROCEEDINGS

before Mr. Gregory Price, Ms. Mandy Chiles, and
Ms. Megan Addison, Attorney Examiners, at the Public
Utilities Commission of Ohio, 180 East Broad Street,
Room 11-A, Columbus, Ohio, called at 9:00 a.m. on
Tuesday, October 27, 2015.

- - -

VOLUME XXXIII

- - -

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

- - -

1 APPEARANCES:

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

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

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

17 On behalf of the Applicants.

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

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

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

On behalf of the Ohio Partners for
Affordable Energy.

1 APPEARANCES: (Continued)

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

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

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

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

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

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

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

On behalf of the Sierra Club.

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

On behalf of the Industrial Energy Users
of Ohio.

1 APPEARANCES: (Continued)

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

6 On behalf of IGS Energy.

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

12 On behalf of The Kroger Company.

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

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

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

On behalf of the Staff of the PUCO.

1 APPEARANCES: (Continued)

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

7 On behalf of Dynegy, Inc.

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

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

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

20 On behalf of EnerNOC, Inc.

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

On behalf of the Ohio Energy Group.

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

On behalf of the Environmental Law &
Policy Center.

1 APPEARANCES: (Continued)

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

9 On behalf of the Nucor Steel Marion, Inc.

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

14 and

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

19 On behalf of the Cleveland Municipal
20 School District.

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

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

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

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

On behalf of the Ohio Hospital
Association.

1 APPEARANCES: (Continued)

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

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

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

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

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

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

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

On behalf of the Ohio Power Company.

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

On behalf of Material Sciences
Corporation.

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

1 APPEARANCES: (Continued)

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

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

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

15 On behalf of the City of Cleveland.

16 Monitoring Analytics
17 By Jeffrey Mayes
18 2621 Van Buren Avenue, Suite 160
19 Eagleville, Pennsylvania 19403

20 On behalf of the Independent Market
21 Monitor for PJM.

22 Dickinson Wright, PLLC
23 By Mr. Terrence O'Donnell
24 150 East Gay Street, Suite 2400
25 Columbus, Ohio 43215

On behalf of the Mid-Atlantic Renewable
Energy Coalition.

- - -

6779

INDEX

- - -

WITNESSES PAGE

Raymond L. Evans (Rebuttal)

Direct Examination by Mr. Lang	6783
Cross-Examination by Mr. Soules	6784
Cross-Examination by Ms. Fleisher	6790
Cross-Examination by Mr. Sauer	6791
Redirect Examination by Mr. Lang	6793
Recross-Examination by Ms. Fleisher	6794

Jason Lisowski (Rebuttal)

Cross-Examination by Ms. Bojko	6798
Cross-Examination by Ms. Fleisher	6811
Cross-Examination by Mr. Soules	6818
Cross-Examination by Mr. Hays	6837
Cross-Examination by Mr. McNamee	6840
Further Cross-Examination by Mr. Settineri	6844
Redirect Examination by Mr. Kutik	6858
Recross-Examination by Ms. Willis	6880
Recross-Examination by Mr. Settineri	6889
Recross-Examination by Ms. Bojko	6889
Recross-Examination by Ms. Fleisher	6891
Recross-Examination by Mr. Soules	6897
Recross-Examination by Mr. Hays	6904

Eileen M. Mikkelsen (Rebuttal)

Direct Examination by Mr. Kutik	6910
Cross-Examination by Mr. Fisk	6925
Cross-Examination by Mr. Petricoff	6984

- - -

COMPANIES EXHIBITS IDENTIFIED ADMITTED

143 - Rebuttal Testimony of Jason Lisowski	XXXII-6665	6908
144 - Rebuttal Testimony of Jason Lisowski (Confidential)	XXXII-6665	6908
145 - Rebuttal Testimony of Raymond L. Evans	6783	6797
146 - Rebuttal Testimony of		

6780

1	INDEX (Continued)		
2	- - -		
3	OCC EXHIBITS	IDENTIFIED ADMITTED	
4	32 - SEC 10-K	XXXII-6701	6908
5	- - -		
6	SC EXHIBITS	IDENTIFIED ADMITTED	
7	79 - Public Utilities		
8	Commission Staff, Ohio		
9	Utility Rate Survey,		
10	9/15/2013	6956	--
11	80 - FirstEnergy Electric		
12	Apples to Apples Chart,		
13	December, 2013	6961	--
14	81 - Apples to Apples Chart,		
15	March, 2014, Toledo		
16	Edison Company	6970	--
17	82 - Apples to Apples Chart,		
18	March, 2014, Cleveland		
19	Electric Illuminating		
20	Company	6970	--
21	83 - Apples to Apples Chart,		
22	March, 2014, Ohio Edison		
23	Company	6970	--
24	84 - Companies' Apples to		
25	Apples Chart, October,		
	2015	6976	--
	- - -		
	P3/EPISA EXHIBITS	IDENTIFIED ADMITTED	
	7 - Residential Apples to		
	Apples Chart, May, 2014,		
	two-page excerpt	6997	--
	- - -		

6781

1 Tuesday Morning Session,
2 October 27, 2015.

3 - - -

4 EXAMINER CHILES: Let's go ahead and go
5 on the record.

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

14 My name is Mandy Chiles, and with me is
15 Meghan Addison, and we are the attorney examiners
16 assigned by the Commission to hear this case.

17 We will waive appearance this is morning.

18 Before we begin, Mr. Lang.

19 MR. LANG: Yes, thank you, your Honor.
20 Yesterday afternoon in the cross-examination of Don
21 Moul there was an exchange where confidential -- a
22 confidential number was provided, and we had a
23 discussion at that time about identifying that in the
24 transcript and moving it into the confidential
25 portion of the record.

1 And we have reviewed the transcript. The
2 companies would ask that on -- in Volume XXXII, which
3 is on page 6645, starting at line 21 and going to
4 page 6646 through line 9 there are one -- there is
5 three questions and answers that are referenced at
6 those page and line locations and the companies would
7 ask they be moved to the confidential portion of the
8 transcript.

9 EXAMINER CHILES: Thank you.

10 Is there any further discussion or
11 opposition to moving those lines referenced?

12 Hearing none, then the lines referenced
13 by Mr. Lang will be moved to the confidential portion
14 of the transcript.

15 And just for clarity in the record, we
16 will be leaving off with Mr. Lisowski. We will be
17 taking Witness Evans, and then picking up with
18 Witness Lisowski after we are done with Witness
19 Evans.

20 Mr. Lang, you may proceed.

21 MR. LANG: Thank you, your Honor. The
22 companies call for rebuttal testimony Raymond L.
23 Evans.

24 (Witness sworn.)

25 EXAMINER CHILES: Thank you. You may be

1 seated.

2 MR. LANG: And, your Honors, the
3 companies would ask that the rebuttal testimony of
4 Mr. Evans be marked as Company Exhibit 145.

5 EXAMINER CHILES: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 - - -

8 RAYMOND L. EVANS

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

11 DIRECT EXAMINATION

12 By Mr. Lang:

13 Q. Mr. Evans, can you introduce yourself,
14 please.

15 A. Yes. I am -- yes. My name is Raymond L.
16 Evans. I am employed by FirstEnergy Service Company
17 as vice president, environmental and technologies.
18 My business address is 76 South Main Street, Akron,
19 Ohio.

20 Q. And do you have in front of you Company
21 Exhibit 145?

22 A. I do, Mr. Lang.

23 Q. Can you identify that, please?

24 A. Yes. Company Exhibit 145 is the rebuttal
25 testimony of myself on behalf of the Ohio Edison,

1 Cleveland Electric Illuminating Company, and The
2 Toledo Edison Company dated October 20, 2015.

3 Q. Do you have any corrections or additions?

4 A. I do not.

5 Q. Mr. Evans, if I were to ask you the
6 questions set forth in company Exhibit 145, would you
7 provide the same answers?

8 A. I would.

9 MR. LANG: Your Honors, Mr. Evans is
10 available.

11 EXAMINER CHILES: Thank you. Let's go
12 off the record for a minute.

13 (Discussion off the record.)

14 EXAMINER CHILES: Let's go back on the
15 record.

16 Mr. Soules.

17 MR. SOULES: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Soules:

21 Q. Good morning, Mr. Evans. My name is
22 Michael Soules, and I represent Sierra Club in this
23 proceeding. How are you today?

24 A. I'm fine. How are you, Mr. Soules?

25 Q. Very good. Thank you. Could you please

1 turn to page 1 of your rebuttal testimony.

2 A. Yes, sir.

3 Q. Starting on line 16 of page 1 through
4 line 17 at page 2, you respond to Tyler Comings'
5 supplemental testimony regarding effluent limitation
6 guidelines; is that correct?

7 A. Could I have the question repeated? You
8 cut off, and I couldn't quite hear you.

9 Q. Yes. Your rebuttal testimony from page
10 1, line 16, through page 2, line 17, is responding to
11 Tyler Comings' supplemental testimony regarding
12 effluent limitation guidelines, correct?

13 A. That is correct.

14 Q. And Mr. Comings' supplemental testimony,
15 in turn, discusses your supplemental testimony,
16 correct?

17 A. Correct.

18 Q. Okay. And do you have a copy of your
19 supplemental testimony with you this morning?

20 A. I do.

21 Q. Thank you. Before we turn to a specific
22 reference in your supplemental testimony, on page 1
23 of your rebuttal testimony, lines 16 through 17, you
24 state, "My supplemental testimony addressed
25 compliance with the proposed provisions -- "My

1 supplemental testimony addressed compliance with the
2 proposed revisions to the ELGs to the full extent
3 possible." That's your testimony, correct?

4 A. That is correct.

5 Q. Okay. And then if you could please turn
6 to page 3 of your supplemental testimony, please let
7 me know when you are there.

8 A. I am there.

9 Q. Okay. On line 12 there is a reference to
10 "revisions to the ELG regulations." Do you see that
11 reference?

12 A. Yes.

13 EXAMINER CHILES: Let's go off the record
14 for a moment.

15 (Discussion off the record.)

16 EXAMINER CHILES: Let's go back on the
17 record.

18 MR. SOULES: Thank you, your Honor.

19 Q. (By Mr. Soules) So sorry about that,
20 Mr. Evans. So on page 3 of your supplemental
21 testimony, line 12, there's a reference to "revisions
22 to the ELG regulations." Do you see that reference?

23 A. I see that reference.

24 Q. Okay. And that reference is the only
25 place in your supplemental testimony where you

1 explicitly mention the proposed revisions to the
2 ELGs, correct?

3 A. That is correct.

4 Q. Okay. Now, on September 30 of this year,
5 U.S. EPA finalized its revisions to the ELG
6 requirements, correct?

7 A. That is correct.

8 Q. And if I refer to that rule as the new
9 ELG rule, will you understand what I mean?

10 A. I will.

11 Q. Okay. Thank you. Now, in this
12 proceeding FirstEnergy never produced to the parties
13 any written evaluation of the pollution controls that
14 might be needed to bring the Sammis plant into
15 compliance with the new ELG rule, correct?

16 A. That is correct.

17 Q. And FirstEnergy never produced to the
18 parties a written evaluation of the potential costs
19 to bring the Sammis plant into compliance with the
20 new ELG rule; is that correct?

21 A. That is correct.

22 Q. Okay. Can we look at page 2 of your
23 rebuttal testimony?

24 A. I'm on page 2.

25 Q. Great. Thank you. On lines 14 through

1 15 there is a reference to "current processes at
2 Sammis allow the plant to meet the new requirements
3 for nearly all applicable pollutants." Do you see
4 that reference?

5 A. That is correct.

6 Q. Okay. So under current processes, there
7 are some applicable pollutants that the Sammis plant
8 is not able to meet; is that correct?

9 A. That is correct.

10 Q. Okay. And which pollutants is the Sammis
11 plant not currently capable of meeting the limits
12 for?

13 A. Based on our analysis of the rule and our
14 wastewater data, that is selenium. We have, since
15 the rule came out on September 30, done a compliance
16 plan. We believe the treatment process necessary to
17 control selenium is biological treatment. The cost
18 of said system ranges between 8 and 18 million
19 dollars spread out over three to four years.

20 MR. SOULES: Your Honor, could I have
21 that question and answer read back?

22 EXAMINER CHILES: You may.

23 (Record read.)

24 MR. SOULES: Okay. Thank you.

25 Q. (By Mr. Soules) And, Mr. Evans, are there

1 any other pollutants that the Sammis plant is not
2 capable of meeting the limits for?

3 A. If you are referring to FGD wastewater
4 treatment, no.

5 Q. Okay. Thank you, Mr. Evans. Could you
6 please turn to page 3 of your rebuttal testimony.

7 A. I'm on page 3.

8 Q. Great. Thank you. On lines 8 through 10
9 there is a sentence that reads, "The area around the
10 Sammis plant currently is in attainment with the 2015
11 ozone standard of 70 ppb based on ozone
12 concentrations net in Jefferson County."

13 Do you see that sentence in your
14 testimony?

15 A. I do.

16 Q. And then on turning to page 4 on line 11,
17 you again reference Jefferson County as being in
18 attainment for ozone; is that correct?

19 A. That's correct.

20 Q. Okay. And Jefferson County's attainment
21 status was determined based on ozone concentrations
22 measured in a monitor in Steubenville; is that
23 correct?

24 A. That is correct.

25 Q. And it's your understanding that ozone

1 monitor is located upwind of the Sammis plant,
2 correct?

3 A. That is correct.

4 MR. SOULES: Nothing further, your Honor.

5 EXAMINER CHILES: Let's go off the
6 record.

7 (Discussion off the record.)

8 EXAMINER CHILES: Let's go back on the
9 record. Ms. Fleisher.

10 MS. FLEISHER: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Fleisher:

14 Q. Mr. Evans, you may still be on page 3 of
15 your testimony, lines 10 to 12. There your testimony
16 reads, "Moreover, the U.S. EPA projects ozone levels
17 will fall to 60 ppb in Jefferson County by 2025 and,
18 thus, that Jefferson County will not be nonattainment
19 with the 2015 ozone standard."

20 Did I read that correctly?

21 A. That's correct.

22 Q. Okay. And do you know whether EPA's
23 projections that you referred to here assume Ohio
24 compliance with the Clean Power Plan?

25 A. I do not at this time.

6791

1 MS. FLEISHER: That's it for me. Thank
2 you.

3 EXAMINER CHILES: Thank you.
4 Mr. O'Brien?

5 MR. O'BRIEN: No questions, your Honor.

6 EXAMINER CHILES: Mr. Settineri?

7 MR. SETTINERI: No questions, your Honor.

8 EXAMINER CHILES: Ms. Bojko?

9 MS. BOJKO: No questions you, your Honor.

10 EXAMINER CHILES: Mr. Kurtz?

11 MR. KURTZ: No questions.

12 EXAMINER CHILES: Mr. Sauer?

13 MR. SAUER: Thank you, your Honor, just a
14 couple.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Sauer:

18 Q. Good morning, Mr. Evans.

19 A. Good morning.

20 Q. With regards to the ELG regulations that
21 were finalized on September 30, 2015, have you
22 identified any compliance costs associated with the
23 flue gas mercury control?

24 A. The ELG deals only with wastewater
25 discharge. It does not deal directly with flue gas

1 or flue gas mercury control, so at this point, you
2 know, it's nonapplicable.

3 Q. Okay. And with regards to that same
4 regulation, have you identified any additional
5 compliance costs associated with the gasifications of
6 fuel such as coal or petroleum?

7 A. Here again, the rule only deals with
8 wastewater discharge from the power plant.

9 Q. Okay. Thank you.

10 A. It's not applicable.

11 MR. SAUER: No further questions, your
12 Honor.

13 EXAMINER CHILES: Thank you, Mr. Sauer.
14 Mr. McNamee?

15 MR. McNAMEE: I have no questions. Thank
16 you.

17 EXAMINER CHILES: All right. Mr. Lang,
18 redirect?

19 MR. LANG: Your Honor, could we take a
20 few minutes?

21 EXAMINER CHILES: Yes. Off the record.

22 (Discussion off the record.)

23 EXAMINER CHILES: Let's go back on the
24 record.

25 Mr. Lang.

1 MR. LANG: Thank you, your Honor. I had
2 one question on redirect.

3 - - -

4 REDIRECT EXAMINATION

5 By Mr. Lang:

6 Q. Mr. Evans, you were asked earlier whether
7 you had produced a written evaluation of ELG
8 compliance costs. Earlier in the proceeding you
9 stated you had not. Why not?

10 A. At the time of my supplemental testimony
11 and deposition, EPA had not completed the final rule.
12 They were considering eight different proposals at
13 that time, and we had not produced any documentation
14 regarding compliance with that rule at that time.

15 Since that time, beginning on
16 September 30, we completed a plan of cost and
17 schedule for the ELG rule in its entirety for the
18 Sammis plant.

19 MR. LANG: Thank you, Mr. Evans. No
20 further questions, your Honor.

21 EXAMINER CHILES: Thank you.

22 Recross, Mr. Soules?

23 MR. SOULES: No questions, your Honor.

24 EXAMINER CHILES: Ms. Fleisher?

25 - - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RECROSS-EXAMINATION

By Ms. Fleisher:

Q. Mr. Evans, at the time you testified previously in this proceeding, that was before the September 30 issuance of the ELG rule, correct?

A. That is correct.

Q. And at that time you testified to a cost for lining the bottom ash settling pond; is that correct?

A. That is correct.

Q. Okay. So you had produced that -- done the analysis to produce that cost before the ELG rule was issued, correct?

A. That is correct. And, in addition, we completed the cost estimate for the bottom ash system, and that's 3 to 5 million dollars, and that includes the liner that I had mentioned at my previous testimony of half a million -- or, I'm sorry, a million.

MR. SOULES: Your Honor, could I have the last question and answer read back.

EXAMINER CHILES: You may.

Were you finished with your answer?

THE WITNESS: Yes.

EXAMINER CHILES: Okay.

1 (Record road.)

2 MR. SOULES: Your Honor, I would move to
3 strike everything after "in addition" as
4 nonresponsive.

5 EXAMINER CHILES: Mr. Lang, do you have a
6 response?

7 MR. LANG: Yes, your Honor. The question
8 was about the cost of the liner, and he was
9 explaining how the liner relates to the analysis that
10 he -- the liner cost relates to the analysis he was
11 asked about, so I believe it was responsive to the
12 question.

13 MS. FLEISHER: Your Honor, as the one who
14 asked the question, it was pretty clearly about
15 whether at the time he testified previously he had
16 done an analysis. That's a simple "yes" or "no"
17 question.

18 EXAMINER CHILES: I understand. But
19 consistent with our practice, I am going to deny the
20 motion to strike.

21 But I will direct the witness to please
22 answer only the question and any additional context
23 can be -- cannot be brought up.

24 MS. FLEISHER: Your Honor, unless you are
25 going to allow them re-redirect.

1 EXAMINER CHILES: We will not be allowing
2 re-redirect, but I am still going to deny the motion
3 to strike.

4 MR. SOULES: Thank you, your Honor.

5 MS. FLEISHER: Thank you.

6 EXAMINER CHILES: Do you have further
7 questions, Ms. Fleisher?

8 MS. FLEISHER: No, your Honor.

9 EXAMINER CHILES: Thank you.

10 Mr. O'Brien?

11 MR. O'BRIEN: No questions, your Honor.

12 EXAMINER CHILES: Mr. Settineri?

13 MR. SETTINERI: No questions, your Honor.

14 EXAMINER CHILES: Ms. Bojko?

15 MS. BOJKO: No, thank you.

16 EXAMINER CHILES: Mr. Kurtz?

17 MR. KURTZ: No questions.

18 EXAMINER CHILES: Mr. Sauer?

19 MR. SAUER: No questions, your Honor.

20 EXAMINER CHILES: Mr. McNamee?

21 MR. MCNAMEE: No, thank you.

22 EXAMINER CHILES: I have no questions so,
23 Mr. Evans, you are excused.

24 THE WITNESS: Thank you, your Honor.

25 MR. LANG: And, your Honor, at this time

1 the company would move Company Exhibit 145.

2 EXAMINER CHILES: Are there any
3 objections to the admission of Company Exhibit 145?

4 Hearing none, it will be admitted.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 EXAMINER CHILES: Let's go off the
7 record.

8 (Discussion off the record.)

9 EXAMINER PRICE: Let's go back on the
10 record.

11 At this time we will continue with our
12 cross-examination of Mr. Lisowski.

13 Mr. Lisowski, I remind you you are still
14 under oath.

15 THE WITNESS: Yes, your Honor.

16 EXAMINER PRICE: Ms. Bojko.

17 MS. BOJKO: Thank you.

18 - - -

19 JASON LISOWSKI

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

22 CROSS-EXAMINATION

23 By Ms. Bojko:

24 Q. Good morning, sir.

25 A. Good morning.

1 Q. I apologize again for mispronouncing your
2 name yesterday. Obviously, there was no ill intent
3 or disrespect intended.

4 A. Thank you. No problem at all.

5 Q. Sir, turning to page 4 -- can you hear
6 me? In turning to page 4 of your testimony, your
7 rebuttal testimony, beginning on lines 15, here you
8 are discussing the current financial status of FES;
9 is that correct?

10 A. Yes, of FES and its plants.

11 Q. And then you also discuss the negative
12 effects on FES's balance sheet; is that correct?

13 A. Yes, the negative cash flow and earnings
14 losses, the effect that's had on FES's financial
15 statements.

16 Q. And then if we go to page 5, beginning on
17 line 19, here you are discussing various past
18 decisions of FES; is that correct?

19 A. Yes.

20 Q. And these business decisions that you are
21 talking about on pages 5 through 7, they go from
22 decisions made in 2010 through 2013; is that correct?

23 A. No. I would say those are the business
24 decisions FES has made as a result of the low energy
25 and capacity prices that they've experienced over

1 those last several years through the year 2014.

2 Q. And I see on the bottom of page 5, line
3 22, a decision that was made in 2010. I see on page
4 6, line 6, a decision that was made in 2012; is that
5 correct?

6 A. Yes, among other decisions outlined in
7 those pages.

8 Q. I didn't want to get accused of a
9 compound question so I stopped there. So on line 8,
10 page 6, I see a decision that was made in 2010; is
11 that correct?

12 A. Yes.

13 Q. And another one on line 10 made in 2013?

14 A. Yes.

15 Q. And then down on line 17, a decision made
16 to sell facilities in 2011; is that correct?

17 A. Yes.

18 Q. And then page 6, line 18 over to page 7,
19 line 1, a decision in 2013 to sell another 11 power
20 stations; is that correct?

21 A. Yes.

22 Q. And, I guess, in your response to my last
23 question the only reference to 2014 is a
24 hydroelectric asset sale in Figure 1, the last item
25 listed? Oh, and then there's a Mad River

1 deactivation in 2014. Are those the two decisions
2 you were talking about for 2014?

3 A. Yes. Those -- yes. Those occurred in
4 2014, and you can also see in Figure 1 that several
5 units had closed in April of 2015 as well, so I
6 believe that that would be relevant as well to my
7 prior response.

8 MR. BOJKO: Well, your Honor, I am going
9 to move to strike as nonresponsive. I asked him
10 about the 2014 numbers.

11 EXAMINER PRICE: Granted.

12 MR. BOJKO: Thank you.

13 Q. (By Mr. Bojko) On line 4, page 7, you
14 then say, "Despite these efforts to improve FES's
15 balance sheet, FES still required additional
16 financial support."

17 And these efforts you're talking about
18 are efforts in the preceding paragraphs which are
19 changing your operations at several plants, decisions
20 to deactivate certain plants, and decisions to sell
21 certain plants; is that correct?

22 THE WITNESS: May I have that read back,
23 please.

24 EXAMINER PRICE: You may.

25 (Record read.)

1 A. Yes.

2 Q. And then on -- well, before going on,
3 let's go back to page 2 of your testimony. On line 3
4 you say that you are the "Assistant
5 Controller-FES/FEG." And under your controller FEG
6 which is FirstEnergy Generation -- is that correct?

7 A. Yes.

8 Q. -- do you have responsibility for
9 Allegheny Energy Supply, AE Supply, that was
10 discussed a little bit yesterday?

11 A. Yes. Supply responsibilities over AE
12 Supply would be similar to my responsibilities over
13 FED and FEG.

14 Q. And so with that responsibility, are you
15 familiar with the FirstEnergy -- the decision to sell
16 another FirstEnergy affiliate, the 80 percent of the
17 Harrison power plant to the regulated West Virginia
18 utility?

19 MR. KUTIK: Objection.

20 EXAMINER PRICE: Grounds?

21 MR. KUTIK: Relevance.

22 EXAMINER PRICE: He has been talking
23 about business decisions relating to power plants, so
24 this is certainly related to that. Overruled.

25 THE WITNESS: May I have that question

1 read back, please.

2 EXAMINER PRICE: You may.

3 (Record read.)

4 A. My familiarity with that transaction was
5 that it was not a plant sale. It was related to an
6 asset swap with a regulated affiliate of FirstEnergy.

7 Q. So the plant was unregulated and you did
8 an asset swap to put it under Mon Power, a regulated
9 utility in West Virginia; is that correct?

10 EXAMINER PRICE: If you could rephrase
11 your question. There are a lot of affiliates and
12 "yous" bouncing around right now. If you could try
13 to rephrase it as to which FirstEnergy entity sold it
14 to which other FirstEnergy entity or swapped it so
15 the record is clear.

16 Q. (By Ms. Bojko) It's my understanding,
17 sir, that Allegheny Energy Supply is the entity that
18 owned the Harrison power plant prior to the asset
19 swap; is that correct?

20 A. No, that's not correct.

21 Q. Who owned Harrison power plant -- which
22 unregulated affiliate of FirstEnergy owned Harrison
23 power plant before the asset swap?

24 A. Allegheny Energy Supply owned a portion
25 of the Harrison power station.

1 Q. Okay. Thank you for that clarification.
2 And that portion that they owned was the 80 percent
3 referenced earlier?

4 A. I believe it was approximately
5 80 percent.

6 Q. Okay. So the 80 percent ownership in the
7 Harrison power plant by AE Supply, there was an asset
8 swap from AE Supply to Mon Power; is that correct?

9 THE WITNESS: May I have that question
10 read back again, please?

11 Q. Let me try again. I was trying to be
12 specific. The 80 percent owned by AE Supply was
13 swapped to Mon Power; is that correct?

14 A. When you use the word "swapped," could
15 you define for me what you mean by "swapped"?

16 Q. I am using your "asset swap." You
17 didn't -- you stated that it wasn't sold. It was an
18 asset swap, so the asset swap went from AE Supply to
19 Mon Power; is that correct?

20 A. I struggle with the question you are
21 asking because you are saying "swapped," and you are
22 asking me to confirm that's correct. Swapped to me
23 is you give something and get something, and so I'm
24 struggling with the question that you are asking me
25 to confirm that that's correct. That's why I'm -- I

1 wanted to make sure I get clarity to answer your
2 question.

3 Q. Sure. I am using -- I used the word
4 sell. You said that wasn't accurate, that it was an
5 asset swap. So I am now using asset swap as you used
6 asset swap. So AE Supply gave the Harrison power
7 plant, 80 percent, to Mon Power; is that correct?

8 A. No. I would disagree with that. To me
9 gave means there was nothing in exchange.

10 Q. Okay. What was received by -- was the
11 swap between AE Supply and Mon Power? Let's start
12 there.

13 A. Yes.

14 Q. Okay. And so was AE Supply unregulated
15 at the time?

16 A. Yes, although it's a FERC-regulated
17 entity.

18 Q. Of course. And Mon Power is a regulated
19 utility in West Virginia; is that correct?

20 A. Yes, I believe so.

21 Q. Okay. So the 80 percent ownership of
22 Harrison Pond transitioned from AE Supply to Mon
23 Power; is that correct?

24 A. Could you -- you say "transitioned."
25 That sounds to me as if it occurred over a period of

1 time.

2 Q. Okay. There was a swap. AE Supply gave
3 Mon Power 80 percent of Harrison Pond -- Harrison
4 power plant, excuse me; is that correct? And we will
5 talk about the other side. Is that correct?

6 A. You are using the word "gave." To me if
7 I give someone, it doesn't necessarily mean there was
8 something given back in exchange for that.

9 Q. Right. Well, I used the swap word and
10 you didn't like that, so what word would you use for
11 what happened between AE Supply and Mon Power?

12 A. Maybe I'll say it this way. In the
13 transaction AE Supply transferred its partial
14 ownership of Harrison to Mon Power in exchange for
15 taking on the ownership that Mon Power had in another
16 power plant.

17 Q. And the Harrison power plant is now under
18 a regulated West Virginia utility; is that correct?
19 It's now owned by Mon Power?

20 A. Yes, I would agree with that.

21 Q. Okay. And the regulated -- or excuse me.
22 Strike that.

23 The ratepayers in West Virginia now are
24 responsible for the costs of the Harrison power
25 plant; is that correct?

1 MR. KUTIK: Objection.

2 EXAMINER PRICE: Grounds?

3 MR. KUTIK: Relevance, beyond the scope.

4 EXAMINER PRICE: We gave Mr. Olier some
5 leeway yesterday in the hopes that he could prove it
6 up. Let's see if Ms. Bojko has more success than he
7 did. Overruled.

8 MS. BOJKO: Thank you.

9 THE WITNESS: May I have the question
10 read back, please?

11 EXAMINER PRICE: You may.

12 (Record read.)

13 EXAMINER PRICE: She is not asking you
14 for a legal conclusion.

15 THE WITNESS: Thank you, your Honor, for
16 that clarification.

17 EXAMINER PRICE: Your expertise.

18 A. I don't know because I am not involved
19 with the West Virginia ratemaking activities of Mon
20 Power.

21 Q. And I don't think you ever answered this
22 question. Mon Power is a regulated utility in West
23 Virginia; is that correct?

24 A. Yes, I believe so.

25 Q. And so with your last answer, you then

1 are not aware that Mon Power of FirstEnergy regulated
2 utility company recently requested a 12.5 percent
3 rate increase for the Harrison power plant, are you?

4 MR. KUTIK: Objection.

5 EXAMINER PRICE: Grounds?

6 MR. KUTIK: Relevance, beyond the scope,
7 assumes facts.

8 MS. BOJKO: I just asked him if he was
9 aware. There is no assumption of facts. It is very
10 relevant because we are talking about past decisions
11 of FirstEnergy affiliates. FirstEnergy Solutions is
12 in the same competitive energy segment that AE Supply
13 is. He said he was responsible for AE Supply
14 activities.

15 He's talking about on page 8 of his
16 testimony, each business standing on its own. AE
17 Supply and the power plants are businesses, just as
18 FES and their power plants are businesses standing on
19 its own, which were discussed yesterday. On pages 5
20 through 7, he is talking about past business
21 decisions.

22 The proposed transaction of putting an
23 unregulated plant under the arm or umbrella of a
24 regulated entity and having ratepayers pay for that
25 is very relevant to the case before us.

1 MR. KUTIK: Your Honor, we are talking
2 about the balance sheet of FES, not Allegheny, number
3 one. So these are issues relating to Allegheny.

4 What's happening in West Virginia has no
5 bearing on FirstEnergy Solutions' balance sheet.

6 MS. BOJKO: May I respond?

7 EXAMINER PRICE: No, because you are
8 going to win.

9 So we are going to continue to give Miss
10 Bojko some leeway on this line of questioning and we
11 will see where it goes.

12 You can answer the question.

13 MR. KUTIK: Again, your Honor, the
14 question also assumes facts.

15 EXAMINER PRICE: I understand. She is
16 going to accept his answer one way or the other, and
17 then we'll move on.

18 THE WITNESS: May I have the question
19 read back, please.

20 EXAMINER PRICE: You may.

21 (Record read.)

22 A. I don't know.

23 Q. Thank you. Let's turn now to page 8 of
24 your testimony. On page 8 of your testimony you
25 discuss additional support that FES received via

1 equity infusions by the parent company; is that
2 correct?

3 A. Yes, from FirstEnergy Corp.

4 Q. In making your recommendations in your
5 rebuttal testimony, you do understand that FES is a
6 nonregulated utility -- or is not regulated by the
7 Public Utilities Commission of Ohio; is that correct?

8 A. Yes, that's my understanding.

9 Q. And you're not offering a legal opinion
10 as to whether your recommendations are legally
11 possible; is that correct?

12 MR. KUTIK: Well, I'll object. I am not
13 sure he is making a recommendation, your Honor.

14 EXAMINER PRICE: Can you rephrase?

15 MS. BOJKO: Sure.

16 Q. (By Ms. Bojko) Your comments about what
17 the Commission should look at or shouldn't look at
18 with regard to FES's balance sheet and FES's business
19 practices, you're not offering a legal opinion as to
20 whether the Commission -- it's legally possible for
21 the Commission to consider or look at those things,
22 are you?

23 MR. KUTIK: We'll stipulate to that, your
24 Honor.

25 MS. BOJKO: Well, I don't -- I need the

6810

1 witness whose offering rebuttal testimony in this
2 case to explain what his positions or --

3 EXAMINER PRICE: I think he made it clear
4 throughout his testimony he is not an attorney and he
5 is not giving any legal opinions on any topic.

6 MS. BOJKO: Thank you.

7 Q. (By Ms. Bojko) And, sir, are you familiar
8 with the AEP ESP 3 proceeding, Case No.
9 13-2385-EL-SSO, where the Commission set forth
10 factors for a purchase power arrangement transaction
11 and what the applications for such should look to or
12 discuss?

13 A. Not in great detail, no.

14 Q. But you are aware that the Commission set
15 forth eight factors for purchase power arrangements?

16 A. I recall reading about it in the paper
17 when they came out. That's essentially the extent of
18 it.

19 Q. So you don't believe your testimony is
20 put forth today to present evidence on an AEP factor?

21 MR. KUTIK: Objection.

22 EXAMINER PRICE: Grounds?

23 MR. KUTIK: Relevance.

24 EXAMINER PRICE: We'll give her a little
25 bit of leeway.

6811

1 THE WITNESS: May I have the question
2 read back, please.

3 EXAMINER PRICE: You may.

4 (Record read.)

5 A. I'm sorry, ma'am, I may not be following
6 your question completely, but there is -- nowhere in
7 my rebuttal testimony do I refer to the AEP case or
8 any of those specific factors.

9 MS. BOJKO: Great. Thank you. No
10 further questions.

11 EXAMINER PRICE: Ms. Fleisher?

12 MS. FLEISHER: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Fleisher:

16 Q. Mr. Lisowski, can we start in your
17 testimony on page 7, Figure 1.

18 A. Rebuttal testimony, correct?

19 Q. Yes, apologies, your rebuttal testimony.

20 A. Okay.

21 Q. And there you have a list of plants that
22 FirstEnergy Solutions has deactivated since 2010,
23 correct?

24 A. Yes, as well as the plant sales there at
25 the bottom of the figure.

1 Q. And I am interested particularly in the
2 list of deactivations. Can you identify for me which
3 of these units were at the time of their deactivation
4 facing significant compliance costs under the EPA
5 MATS rule?

6 THE WITNESS: May I have that question
7 read back, please.

8 EXAMINER PRICE: You may.

9 MR. KUTIK: And, Mr. Lisowski, you need
10 to turn on your microphone.

11 (Record read.)

12 A. Several of them that I recall
13 specifically were the Burger units with the exception
14 of the Burger peaking unit; the Eastlake units; the
15 Bay Shore units; Armstrong; Lake Shore; Ashtabula; R.
16 Paul Smith; Hatfield; and Mitchell, and it was not
17 just those compliance costs that led to their
18 deactivation.

19 MS. FLEISHER: Your Honor, I move to
20 strike the last phrase "and it was not just their
21 compliance costs." I just asked whether they were
22 facing compliance costs.

23 EXAMINER PRICE: Could I have the
24 question back again.

25 (Record read.)

1 EXAMINER PRICE: Granted.

2 MS. FLEISHER: Thank you, your Honor.

3 Q. (By Ms. Fleisher) And on the next page,
4 page 8, lines 2 through 4, you discuss cash equity
5 infusions that FES received from FirstEnergy Corp.,
6 correct?

7 A. Yes.

8 Q. And those infusions were to improve FES's
9 balance sheet, correct?

10 A. Yes.

11 Q. And those weren't tied to a particular
12 plant, correct?

13 A. While the equity when it was infused into
14 FES was not specifically identified in that equity
15 infusion, the part of the equity infusion going to
16 FES would have indirectly been to help cover for the
17 losses that these plants had incurred over the last
18 several years.

19 Q. Thank you for that clarification. And
20 it's your position that FirstEnergy Corp. will not be
21 able to provide any further capital infusions,
22 correct?

23 A. Yes, that's correct.

24 Q. Okay. And so the proposed transaction
25 and PPA rider will be in lieu of capital infusion

1 from FirstEnergy Corp.; is that correct?

2 THE WITNESS: May I have that question
3 read back, please?

4 EXAMINER PRICE: You may.

5 (record road.)

6 A. No. I would -- no. And the reason for
7 that is FE Corp. is not going to be giving equity
8 infusions to FES. It is unable to do so
9 irregardless -- irrespective, excuse me, if the PPA
10 is approved or not. If the PPA is not approved, FE
11 Corp. is still unable to give FES any additional
12 equity infusions, which may lead to the deactivation
13 of these units.

14 Q. Okay. So let me make sure I understand
15 this. So I think you've said that you view FES's
16 current balance sheet as weak, correct?

17 A. I believe I have said previously it's not
18 strong.

19 Q. Okay. And one solution to that that FES
20 has utilized in the past is a capital infusion from
21 FirstEnergy Corp., correct?

22 A. Yes, that's been one way to help improve
23 FES's balance sheet in the past.

24 Q. Okay. And it's your position that at
25 this point with no further capital infusions from

1 FirstEnergy Corp. on the horizon, FES may have to
2 instead retire Sammis and Davis-Besse because of the
3 state of its balance sheet, correct?

4 EXAMINER PRICE: Could I have the
5 question back again?

6 (Record read.)

7 A. Yes. FE Corp. cannot provide any
8 additional infusions into FES. Any time an infusion
9 is made, there would be an expectation a return on
10 and return of an investment, and since there's no --
11 there's a risk that is not going to be there, and the
12 forecast in the near term doesn't show that, it's not
13 clear that FE Corp. is going to be able to do that,
14 in addition to FE Corp. has already provided that in
15 the past as a means. So that's why that's no longer
16 a possibility for FE Corp. to do that in the future.

17 Q. Okay. And FES on its own, given the
18 state of its balance sheet, thinks it's unable -- it
19 may be unable to keep Sammis and Davis-Besse
20 operating, correct?

21 MR. KUTIK: May I have the question read,
22 please.

23 EXAMINER PRICE: You may.

24 (Record read.)

25 A. Yes, because of the fact that FES knows

1 that it can no longer get equity contributions from
2 FE Corp. and knowing that it can is no longer incur
3 additional debt, there's risk that these plans have
4 in the near term on having additional negative cash
5 flow and negative earnings that would put strain on
6 FES's balance sheet to the point where it cannot
7 operate those plants, even though they provide value
8 over the long term.

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

10 EXAMINER PRICE: Yes.

11 (Discussion off the record.)

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

14 Where are we? Please proceed.

15 Q. (By Ms. Fleisher) Mr. Lisowski, if the
16 proposed transaction goes through between FES and the
17 companies, will that strengthen FES's balance sheet?

18 A. While day one that that's approved and it
19 starts, that would not have a day-one improvement on
20 the balance sheet at that point in time. It will
21 ensure that the Davis-Besse and the Sammis station
22 continue its operation, though, over the long term.

23 Q. And I am not sure if that answered my
24 question as to the state of FES's balance sheet.
25 Maybe we could get the question reread.

1 EXAMINER PRICE: Can we have it back,
2 please.

3 (Record read.)

4 A. Maybe I'm not understanding your question
5 fully, but the day that that contract starts, there
6 is nothing that happens on FES's balance sheet that
7 day. However, it would ensure that these two plants
8 continue their operation for at least the next 15
9 years.

10 EXAMINER PRICE: Consider the question
11 not on day one but a year-by-year basis. At the end
12 of the first year, would that improve FES's balance
13 sheet? At the end of the second year, would that
14 improve FES's balance sheet?

15 THE WITNESS: Using the hypothetical all
16 else equal, ignoring any other potential things that
17 could happen with the rest of FES's fleet, is that
18 your question?

19 Q. (By Ms. Fleisher) Yes. Yes, thank you
20 for clarifying, your Honor.

21 A. Yes, over time I think it's something
22 that could help FES's balance sheet.

23 MS. FLEISHER: That's all I have. Thank
24 you, your Honor.

25 Thank you, Mr. Lisowski.

1 EXAMINER PRICE: Sierra Club.

2 MR. SOULES: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Soules:

6 Q. Good morning, Mr. Lisowski. My name is
7 Michael Soules. I represent Sierra Club in this
8 proceeding. How are you this morning?

9 A. Good morning. Very well, thank you.

10 Q. Could you please turn to page 3 of your
11 rebuttal testimony.

12 A. Okay.

13 Q. On lines 4 through 5, there is a
14 reference to "a plant in this position must limit
15 capital expenditures." Do you see that reference?

16 A. Yes.

17 Q. And the position that you are referring
18 to here is when a plant is financially challenged; is
19 that correct?

20 A. Yes.

21 Q. And it's your opinion that Sammis and
22 Davis-Besse are financially challenged; is that
23 correct?

24 A. Yes.

25 Q. And one of your main concerns about the

6819

1 plants' financial situation is that FES may be unable
2 to pay for necessary capital expenditures of the
3 plants, correct?

4 THE WITNESS: Could I have that question
5 read back, please?

6 (Record read.)

7 A. Yes. It's really twofold. One is FES
8 being able to finance the short-term operations of
9 these plants as well as the plants on a stand-alone
10 basis being able to generate enough sufficient
11 revenue to cover its operating costs.

12 Q. And those costs include the costs of
13 necessary capital expenditures, correct?

14 A. Yes.

15 Q. Okay. Let's focus on the Sammis plant
16 specifically. The direct owner of Sammis is
17 FirstEnergy Generation, LLC; is that correct?

18 A. Yes.

19 Q. And FirstEnergy, LLC, is a subsidiary of
20 FES, correct?

21 THE WITNESS: I'm sorry. Could I have
22 that question read back, please?

23 EXAMINER PRICE: You may.

24 (Record read.)

25 EXAMINER PRICE: I think he meant to say

1 FirstEnergy Generation, LLC.

2 Q. Oh, yes, FirstEnergy Generation is a
3 subsidiary of FES, correct?

4 A. Thank you for that clarification. That's
5 correct.

6 MR. SOULES: Thank you, your Honor.

7 Q. Are you aware of any capital expenditure
8 at Sammis that has been deferred due to FES's
9 financial situation?

10 A. I don't know.

11 Q. You don't know if you are aware, or you
12 don't know if any capital expenditure at Sammis has
13 been deferred due to FES's financial situation?

14 THE WITNESS: May I have that question
15 read back, please?

16 EXAMINER PRICE: You may.

17 (Record read.)

18 A. I am trying to understand your question
19 so I can answer it accurately. I would say over the
20 last couple of years, the Sammis plant may have
21 deferred some capital. I don't believe it's at a
22 point where it's started to cut and defer capital.
23 That goes to page 3 that we were just discussing.
24 But, I don't know if there's anything in my forecast
25 that would be deferred further, if that's what your

1 question is.

2 MR. SOULES: Your Honor, could I have
3 that last answer read back?

4 EXAMINER PRICE: You may.
5 (Record read.)

6 MR. SOULES: Okay. Thank you.

7 Q. Mr. Lisowski, let's set aside your
8 forecast for a moment. I am just trying to
9 understand your knowledge about whether capital
10 projects at Sammis have been deferred, and I believe
11 you stated that Sammis may have deferred some
12 capital; is that correct? I'm sorry, strike that.

13 Is it your understanding that in the last
14 couple of years some capital projects at Sammis have
15 been deferred?

16 A. It's been my understanding that the
17 Sammis plant, in light of the low energy and capacity
18 prices, has deferred or canceled or suspended certain
19 capital projects to try to help with the cash flow
20 situation that the plant is experiencing, as well as
21 the impacts of FES. I don't believe that those
22 cancellation of capital projects and deferring of
23 projects has started this spiral effect that I talk
24 about on page 2 and 3 of my rebuttal testimony.

25 Q. Do you know when capital expenditures at

1 Sammis were first starting to be deferred due to the
2 low energy and capacity revenues the Sammis plant was
3 receiving?

4 A. Well, I can't say for the entire term of
5 FES owning the Sammis plant. I can say that since
6 I've entered my position as the assistant controller
7 in 2012 that the Sammis plant, as well as the
8 Davis-Besse plant and all of our plants, continually
9 review its capital expenditures that are required and
10 whether there's any type of flexibility to defer or
11 cancel projects, given the cash flow situation of
12 that plant and the effect it has on FES.

13 Q. Do you know if any capital projects at
14 Sammis were deferred in 2012?

15 A. I entered my position near the end of
16 2012, the end of September of 2012. At that point
17 2012 was nearly over. Three quarters was done.
18 Based on coming into my position and seeing the
19 process that all of FES's plants undertake in
20 reviewing capital expenditures, I would have expected
21 that that year these plants, as well as the rest of
22 FES's plants, would have been looking at its capital
23 portfolio and where it was spending its money.

24 MR. SOULES: Your Honor, could I have the
25 last question and answer read back.

1 EXAMINER PRICE: You may.

2 (Record read.)

3 MR. SOULES: Your Honor, I would move to
4 strike that answer as nonresponsive to my question.

5 MR. KUTIK: Your Honor, he asked whether
6 there were capital expenditures deferred in 2012, and
7 he gave the answer and expectation.

8 EXAMINER PRICE: I deny the motion to
9 strike, but why don't you try again.

10 Are you aware today -- do you have
11 personal knowledge today of any capital expenditure
12 projects that were deferred for the Sammis plant in
13 2012?

14 THE WITNESS: I don't know what specific
15 projects would have been canceled or deferred into
16 2012 sitting here today.

17 EXAMINER PRICE: So the answer to my
18 question is "no"?

19 THE WITNESS: Yes.

20 MR. SOULES: Thank you, your Honor.

21 Q. (By Mr. Soules) And, Mr. Lisowski, do you
22 know if any capital expenditure projects at Sammis
23 were deferred in 2013?

24 A. Sir, for clarification with your
25 question, are you asking me if I am aware of specific

1 capital projects?

2 Q. Well, let's take it both categorically
3 and with respect to specifics. Why don't we start
4 with specifics. Do you know of any specific capital
5 projects at Sammis that were deferred in 2013?

6 A. While sitting here today I don't recall
7 any specific capital projects, I am aware that in
8 2013 Sammis and Davis-Besse reviewed their capital
9 portfolio and looked at what flexibility existed in
10 either deferring or canceling certain capital
11 projects in light of the cash-flow concerns of the
12 plant and the impact it has had on FES's balance
13 sheet.

14 Q. Okay. Without inquiring into the actual
15 numbers, do you know if for the Sammis plant, a
16 certain amount of capital expenditures were deferred
17 or canceled in 2013?

18 THE WITNESS: May I have that question
19 read back, please?

20 EXAMINER PRICE: You may.

21 MR. KUTIK: Your Honor, I am not sure how
22 that's different from the previous answer, the
23 previous question, so I'll object as asked and
24 answered.

25 EXAMINER PRICE: Response?

1 MR. SOULES: I am sorry. Could I have
2 the question and answer read back again before I
3 respond?

4 EXAMINER PRICE: Yes. Let's have the
5 previous question and answer reread again.

6 (Record read.)

7 MR. SOULES: And, your Honor, my last
8 question was getting at whether, in fact, a deferral
9 or cancellation has been made which his prior
10 response did not indicate.

11 MR. KUTIK: I'm sorry. I couldn't hear
12 what he said.

13 MR. SOULES: My mic went off. I'm sorry,
14 Mr. Kutik. Mr. Lisowski's prior answer did not
15 indicate whether or not projects had been deferred --
16 expenditures had been deferred or canceled, so I was
17 following up to inquire as to whether, after looking
18 at the balance sheet, they had made a deferral or
19 cancellation.

20 MR. KUTIK: Well, he said he was aware
21 that things had been done. He wasn't aware of what
22 specific things had been done. That was the point of
23 his answer.

24 EXAMINER PRICE: If you could just
25 rephrase your -- your pending question because I am

1 not sure I understood it, and maybe that's the source
2 of the confusion.

3 MR. SOULES: I would be happy to, your
4 Honor. Thank you.

5 Q. (By Mr. Soules) Mr. Lisowski, after FES
6 looked at the financials related to Sammis in 2013,
7 did FES make a decision to defer or cancel any
8 capital expenditures?

9 MR. KUTIK: I'll object again, your
10 Honor. It's the same question.

11 MS. WILLIS: Your Honor, if I may add?

12 EXAMINER PRICE: I'm going to overrule
13 his objection. Mr. Soules is trying to get a clean
14 record here.

15 You can answer it if you know.

16 THE WITNESS: If I could have the
17 question reread, please.

18 EXAMINER PRICE: You may.

19 (Record read.)

20 A. Sir, if you could just clarify for me, in
21 your question you say "after looking at 2013's
22 financials." The capital would have already been
23 spent in 2013, and based on the financials, you
24 couldn't go back in time and change your capital
25 projects. At that point after 2013's financials were

1 done, you had already spent the capital, so I'm
2 confused by your question a little bit.

3 Q. Thank you for that clarification. I am
4 trying to understand at whatever point in time FES
5 looked at the financial situation of Sammis for 2013,
6 was a decision made to either defer or cancel any
7 capital expenditures?

8 MR. KUTIK: Again, your Honor, I will
9 object. Again, the question was unclear, given the
10 witness's quandary.

11 EXAMINER PRICE: Why don't I try.

12 You speak in terms of every plant
13 underwent a review in light of FirstEnergy Solutions'
14 financial situation as to whether or not financial
15 capital expenditures could be deferred or canceled.
16 I think what Mr. Soules is just asking is, as a
17 result of the review, did you actually defer or
18 cancel some projects for 2013 for the Sammis plant?

19 THE WITNESS: With that clarification I
20 don't recall specific to 2013.

21 MR. SOULES: Thank you, your Honor.

22 Q. (By Mr. Soules) And, Mr. Lisowski, same
23 question with respect to 2014, am I correct in
24 assuming that FES would have reviewed the financials
25 related to Sammis for 2014 at some point in time?

1 A. Yes.

2 Q. And following that review, did FES make a
3 decision to defer or cancel any capital expenditures
4 for Sammis for 2014?

5 A. I know FES as part of its normal process,
6 reviewed its capital portfolio and its capital
7 forecast. I do not recall specific to 2014 if
8 anything was canceled or deferred in particular that
9 year for these plants.

10 Q. And when you say "these plants," you mean
11 the Sammis plant specifically, correct?

12 A. Yes. It would be Sammis and Davis-Besse.

13 Q. Okay. At some point in time FES reviewed
14 the financial situation relating to the Sammis plant
15 for 2015, correct?

16 A. Yes.

17 Q. And following that review, did FES make a
18 decision to defer or cancel any capital expenditures
19 at Sammis for 2015?

20 A. I recall Sammis and Davis-Besse, as part
21 of Generation's regular capital review of all capital
22 forecasts and expenditures over the horizon, they
23 reviewed those for the Sammis and Davis-Besse.
24 However, I don't recall if there was anything
25 specifically canceled or deferred for 2015.

1 Q. Okay. Just so the record is clear,
2 sitting here today you cannot identify any capital
3 expenditures of Sammis that were deferred or canceled
4 for 2012, 2013, 2014, or 2015; is that correct?

5 THE WITNESS: May I have that question
6 read back, please?

7 EXAMINER PRICE: You may.

8 (Record read.)

9 A. Yes, that's correct.

10 Q. Thank you. Mr. Lisowski, could you
11 please look at page 7 of your rebuttal testimony.

12 A. Okay.

13 Q. In Figure 1 on page 7, you provide a list
14 that shows, among other things, competitive
15 generation plants that were deactivated since 2010,
16 correct?

17 A. Yes, as well as those that were sold.

18 Q. Right. Okay, thank you. Just stepping
19 back for a moment, in this proceeding that we are in
20 here today, the companies provided a net present
21 value analysis of the future profit and loss stream
22 for the plants that would be included in the proposed
23 transaction, correct?

24 A. You used the word "profit and loss
25 stream." I'm confused by that. I'll say

1 Mr. Ruberto's testimony lays out the net present
2 value of the benefit that customers will receive
3 under the proposed PPA.

4 Q. Okay. So Mr. Ruberto provides a net
5 present value calculation for Sammis, Davis-Besse,
6 and the OVEC entitlement during the term of the
7 proposed transaction, correct?

8 A. Yes.

9 Q. And that net present value calculation
10 was performed using a cost-of-revenue projection that
11 you provided for Sammis, Davis-Besse, and the OVEC
12 entitlement, correct?

13 MR. KUTIK: Your Honor, at this point
14 I'll object as beyond the scope.

15 MR. SOULES: Your Honor, I am just laying
16 a little bit of foundation before we turn back to
17 Figure 1. I have one more question after this one.

18 EXAMINER PRICE: The objection is
19 overruled.

20 THE WITNESS: May I have the question
21 read back, please.

22 (Record read.)

23 A. Yes.

24 Q. And you developed that projection using
25 FirstEnergy Service Company's Microsoft Excel-based

1 dispatch model, correct?

2 MR. KUTIK: Again, I'll object. It's
3 beyond the scope.

4 EXAMINER PRICE: We'll continue to give
5 Mr. Soules a little leeway on this line.

6 THE WITNESS: May I have the question
7 read back, please?

8 EXAMINER PRICE: You may.

9 (Record read.)

10 A. Yes.

11 Q. Okay. And going back to Figure 1, you're
12 aware that a net present value calculation was
13 performed for several of the deactivated plants
14 listed in that figure, correct?

15 A. Yes.

16 Q. And the plants for which a net present
17 value calculation was performed that you are aware of
18 were Hatfield's Ferry, Mitchell, R. Paul Smith,
19 Ashtabula, Lake Shore, Eastlake, and Bay Shore; is
20 that correct?

21 A. Yes.

22 Q. And were those net present value
23 calculations developed by FES?

24 A. Yes.

25 Q. And those net present values were

1 calculated using cost-of-revenue projections for each
2 of those plants that I listed, correct?

3 A. Yes.

4 Q. And those were long-term projections
5 extending out over the useful life of those plants,
6 correct?

7 A. Yes.

8 Q. Okay. Were those cost and revenue
9 projections created using the same dispatch model you
10 used in this proceeding to project the cost of
11 revenues of Sammis, Davis-Besse, and the OVEC
12 entitlement?

13 A. Yes.

14 Q. With respect to the Hatfield's Ferry
15 plant specifically, do you know when the net present
16 value calculation for that plant was performed?

17 A. Yes, I am. It was calculated just before
18 the final decision to deactivate that plant. And it
19 was used in part as part of the discussions on
20 whether that plant was going to be deactivated. In
21 particular, because of the fact that it showed a
22 positive net present value for this plant, and so
23 that shows the Hatfield plant had long-term value,
24 even when investing the MATS capital that was
25 required at that time to keep the plant operational.

6833

1 So while that net present value for the
2 life of the plant was positive, it was the short-term
3 cash flows that ultimately led to deactivation.

4 MR. SOULES: Your Honor, could I have
5 that last question and answer read back?

6 EXAMINER PRICE: You may.

7 (Record read.)

8 MR. SOULES: Your Honor, I would move to
9 strike everything in that answer after "the final
10 decision to deactivate the plant" as being
11 nonresponsive to the question.

12 EXAMINER PRICE: Mr. Kutik.

13 MR. KUTIK: Your Honor, the question was
14 asking about the circumstances under which the NPV
15 was done, and the witness provided that answer.

16 EXAMINER PRICE: Actually the question
17 was when.

18 MR. KUTIK: Which to me means
19 circumstances.

20 EXAMINER PRICE: It doesn't mean
21 circumstances to me. He took a "when" question and
22 turned it into a "how and why," and that certainly is
23 an appropriate topic for redirect, but not as part of
24 the response to a "when" question.

25 I am going to grant your motion.

1 MR. SOULES: Thank you, your Honor.

2 Q. (By Mr. Soules) Mr. Lisowski, do you know
3 when the final decision was made to deactivate the
4 Hatfield plant?

5 A. Yes. It was in July of 2013.

6 Q. Thank you. Shifting to the Mitchell
7 plant, do you know when the net present value
8 calculation for the Mitchell plant was performed?

9 A. It was at the same time as the Hatfield
10 plant, so it would have been right around the time
11 just before the decision was made to deactivate
12 Mitchell.

13 Q. Thank you. And do you know when the net
14 present value calculation for the R. Paul Smith plant
15 was performed?

16 A. That one was also done just before the
17 decision to deactivate the R. Paul Smith plant. So
18 that would have been around the time of January,
19 2012, to December of 2011, somewhere in that time
20 period.

21 Q. Okay. The Hatfield, Mitchell, and Smith
22 units were purchased as part of FES's corporation
23 merger with Allegheny Energy, correct?

24 THE WITNESS: May I have that question
25 read back, please.

1 EXAMINER PRICE: You may.

2 (Record read.)

3 A. I think I understand your question.
4 These plants were owned by Allegheny Energy Supply,
5 which was a subsidiary of Allegheny Energy, Inc., so
6 when FirstEnergy Corp. purchased Allegheny Energy
7 Inc., it acquired Allegheny Energy Supply.

8 I hope that answered your question.

9 Q. Yeah. Thank you. Thank you for that
10 clarification. And that would have been completed in
11 February of 2011; is that correct?

12 MR. KUTIK: Well, again, your Honor, the
13 details about the merger have been asked and
14 answered.

15 EXAMINER PRICE: Go ahead. You can
16 respond.

17 MR. SOULES: I was just previously laying
18 a foundational question since this is a new day, and
19 there was a lot discussed yesterday.

20 MR. KUTIK: That doesn't mean you can
21 continue to ask the same questions that were asked
22 yesterday.

23 EXAMINER PRICE: I understand. We will
24 give Mr. Soules a little bit of leeway on this
25 question. Overruled.

1 THE WITNESS: May I have the question
2 read back, please.

3 EXAMINER PRICE: You may.

4 (Record read.)

5 A. Yes. The merger between FirstEnergy
6 Corp. and Allegheny Energy, Inc. was completed in
7 February, 2011.

8 Q. Thank you. Are you aware of whether a
9 net present value calculation for Hatfield, Smith, or
10 Mitchell was performed prior to the completion of the
11 merger with Allegheny Energy?

12 MR. KUTIK: Objection.

13 EXAMINER PRICE: Grounds?

14 MR. KUTIK: Relevance.

15 EXAMINER PRICE: Mr. Soules, where are
16 you going with this?

17 MR. SOULES: Your Honor, we've had
18 testimony from both Mr. Moul and Mr. Lisowski
19 about -- about these plants other than, you know,
20 Sammis, Davis-Besse, and the OVEC entitlement and
21 regarding their financial situation, and
22 Mr. Lisowski, in particular, analogizes the situation
23 of Hatfield's Ferry with Sammis's situation, so I was
24 just exploring the circumstances under which folks
25 within FirstEnergy Corporation had looked at the

1 financials.

2 EXAMINER PRICE: I understand that. But
3 I guess the question is I don't understand the
4 relevance as to the merger. They own the plants now,
5 and they did do the net present value before they --
6 apparently before they closed the plants. And so I
7 understand the parallels to Sammis and Davis-Besse.
8 I just don't understand the relevance of whether --
9 how much due diligence they did or didn't do in
10 buying Allegheny Energy.

11 MR. SOULES: Okay. I will withdraw the
12 question.

13 Thank you, your Honor. Nothing further
14 on the public session, your Honor. Thank you.

15 EXAMINER PRICE: Thank you.

16 Ms. Fleisher? I'm sorry. You're right.

17 Mr. O'Brien.

18 MR. O'BRIEN: No questions, your Honor.

19 EXAMINER PRICE: Mr. Hays?

20 MR. HAYS: Just one question. I need to
21 find a...

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Hays:

25 Q. Mr. Lisowski, hopefully you can see me.

1 A. I can.

2 Q. On page 7, I think you've got a chart
3 there that talks about the deactivations, and that
4 deactivation meant closure, closure of the plants?

5 A. Yes, that's correct.

6 Q. Did each of these plants have a book
7 value when they were closed?

8 A. I don't know what you mean by the term
9 "book value," so let me explain it this way. At the
10 time --

11 Q. If you would --

12 MR. KUTIK: Let him finish his answer,
13 please, sir.

14 MR. HAYS: All right. Fine.

15 A. So while I don't know what you mean by
16 book value, I'll try and explain it this way. At the
17 time each of these plants were either deactivated or
18 had a significant change in the operations, it
19 triggered an impairment where we had to write off the
20 net book value at that time of these assets.

21 So because at that point in time,
22 although they had some book value associated with the
23 long-term future value of these assets, that was the
24 train of events of the deactivation or part of the
25 impairment, so there was no book value as a result of

1 the deactivation or change in operations.

2 Q. Okay. A year before you made -- a year
3 before FirstEnergy Solutions made the decision to
4 close these plants, they each had a positive book
5 value?

6 A. I'm sorry, sir, could you clarify your
7 question for me? You are saying it was a year before
8 they were closed?

9 Q. Yes. I am asking to you step back a year
10 before each of them was closed and asking you if the
11 year before each of these was closed, if each had a
12 positive book value.

13 A. Again, I am not sure you are saying book
14 value, so let me respond this way. A year before the
15 decision to close these plants there was a net book
16 value on the balance sheet associated with each of
17 these assets because at that point in time they had a
18 long-term future value that was expected to be in
19 excess of its book value at that time, and so there
20 would have been something on the balance sheet
21 associated with each of these assets.

22 MR. HAYS: Thank you very much.

23 EXAMINER PRICE: No further questions?

24 Thank you.

25 Mr. McNamee?

1 MR. McNAMEE: A few.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. McNamee:

5 Q. I just had a couple of questions about
6 deactivation. What happens when a plant is
7 deactivated?

8 A. There is a couple of things that I'm
9 aware of that I've gotten involved with. There may
10 be others from an operational perspective. First is,
11 my understanding, there is a notification process
12 that happens with PJM. If you look at the Hatfield,
13 for example, the plant, we announced the deactivation
14 in July. That's when PJM was notified, and three
15 months later the plant was deactivated. So there is
16 a very quick, short time period. It doesn't require
17 a lot in that regard. So that's the first step.

18 The second step is from an
19 accounting/financial perspective. It triggers an
20 asset impairment test, and, quite frankly, that's a
21 pretty easy test. When your plant is deactivated,
22 you are going to have an impairment because there are
23 no future cash flows coming in to offset the book
24 value, so, generally speaking, you end up with a very
25 significant asset impairment.

1 There's other operational things that
2 occur. I think there's HR things that need to be
3 involved with it, but those are the two aspects that
4 I have been involved with in regard to a
5 deactivation.

6 Q. Is it possible to reactivate a plant, if
7 you know.

8 A. I know that I've heard from -- well,
9 there's -- there's two things that I am aware of in
10 regard to reactivating a plant. One is there's a lot
11 of operational issues and considerations as part of
12 that. One of the things when you deactivate a plant
13 is you need to get rid of all the fixed O&M. A big
14 part of that is the labor. All of the employees are
15 gone. Those employees have -- I mean we just -- if
16 you are going to shut a plant down, you need to get
17 rid of all that fixed stranded costs as well, so
18 there is operational issues that I am aware of that
19 how do you get employees back to the station to get
20 that plant running again in a reliable manor?

21 Additionally, I know there is equipment
22 issues. Equipment could be sitting there for months
23 or even years potentially with no heat there. Could
24 be pipe issues, pipes bursting. There is a lot of
25 maintenance that's required to get the plant

1 operational again. That requires a significant
2 amount of cost, both capital because if there is any
3 new environmental legislation or things that have
4 broken that need to be replaced. The maintenance I
5 talk about, so it could be very, very costly.

6 Additionally, I don't know what it takes
7 with PJM, and if you have lost any type of injection
8 rights with PJM, all the electricity and capacity,
9 and whether you have lost any permits associated with
10 that plant being able to operate. So, for example,
11 EPA permits, you may have lost those, and so is it
12 possible to get those permits back? Because my
13 understanding, there is some time frame you would
14 have that they expire. So those are a couple of
15 things I can think of here.

16 Q. Okay. Yesterday I believe you indicated
17 that it was important in your view that the
18 Commission consider the financial state of
19 FirstEnergy Solutions. Do you recall that?

20 A. I do.

21 Q. Okay. Would it also be your view that in
22 making its decision in this case the Commission
23 should consider the effect of potential approval of
24 the companies' proposal on the companies' financial
25 situation?

1 THE WITNESS: May I have that question
2 read back, please.

3 EXAMINER PRICE: You may.

4 (Record read.)

5 MR. KUTIK: I'll object. Beyond the
6 scope.

7 EXAMINER PRICE: Mr. McNamee.

8 MR. McNAMEE: It's directly related to
9 the question that he was asked yesterday.

10 MR. KUTIK: He said nothing about the
11 companies, your Honor, the companies' financial
12 state.

13 EXAMINER PRICE: I am going to overrule
14 the objection. Give Mr. McNamee a little leeway on
15 this question.

16 MR. McNAMEE: It is my last one.

17 EXAMINER PRICE: The last one.

18 A. Sir, I don't know. I haven't really
19 given that much thought.

20 MR. McNAMEE: Okay. Thank you. That's
21 all I have.

22 EXAMINER PRICE: At this time we will go
23 on to the confidential portion of our transcript for
24 the confidential cross. .

25 (CONFIDENTIAL PORTION EXCERPTED.)

6844

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(OPEN RECORD.)

EXAMINER PRICE: Redirect?

MR. KUTIK: Yes, your Honor.

- - -

REDIRECT EXAMINATION

By Mr. Kutik:

Q. Mr. Lisowski, your Honor asked some questions about the deactivated plants in Figure 1 of your testimony, your rebuttal testimony. And you were asked if those plants did not incur costs with respect to the compliance with the MATS rules. Do you remember that?

A. I do.

Q. Was the avoidance of those costs the only reason for the deactivation of those facilities?

A. No, it was not.

Q. What were the other reasons or why do you say that?

A. There were two other reasons. While there was a capital cost required for the MATS rule, the other two factors that played into the decision were, one, near-term losses that were potential for these plants, and there was no certainty. There was risk that these plants were not going to be able to

1 cover the revenues in the short-term.

2 Additionally, FES did not have a strong
3 enough balance sheet to be able to continue to take
4 on additional debt or take additional equity
5 infusions from FE Corp. for the reasons we talked
6 about earlier that could get the plants through those
7 couple of years.

8 So while all of these plants had a future
9 benefit, a positive net present value that showed
10 that you should make that capital investment today to
11 get it within compliance with MATS, it was those
12 near-term losses is what ultimately led to the
13 deactivation.

14 Q. And specifically with respect to the
15 Hatfield plant, you were asked some questions again
16 about the Hatfield plant avoiding costs with respect
17 to compliance with the MATS rule and that the Sammis
18 plant obviously incurred those costs. Do you
19 nevertheless believe that those plants are similarly
20 situated?

21 A. Yes, I believe they are.

22 Q. Why?

23 A. There's a lot of similarities between the
24 Sammis plant and the Hatfield plant. A couple of
25 those items I note on page 6 of my rebuttal

1 testimony. From an operational perspective, they are
2 both coal-fired units. They are both located on
3 rivers that provided a lower transportation type
4 coal. Physically speaking, they are located about
5 60 miles apart from one another. Both plants are in
6 the PJM RTO. Both plants are deregulated power
7 plants. They both have baseload generation unit
8 capability. Hatfield I, believe, is around
9 507 megawatts for each of those three units. Sammis
10 6 and 7 are about 600 megawatts for each of those
11 units. They both have boilers that were designed and
12 built by Babcock & Wilcox. They both have scrubbing
13 equipment that was installed that was built and
14 designed by Babcock & Wilcox. Hatfield was installed
15 around 2009. Sammis was around 2010.

16 So it was essentially the exact same
17 scrubbing equipment. Both plants had invested a
18 significant amount of money in that scrubbing
19 equipment. Hatfield was around 8 to 9
20 hundred million back in 2009 to invest in that
21 scrubbing technology, still led to the closure of the
22 plant.

23 They both -- they both also are
24 supercritical units, which is a very efficient way to
25 generate electricity through the burning of coal.

1 From a financial perspective, they are also very
2 similar because in both scenarios both of these
3 plants have long-term net present values that are
4 positive that show that these plants provide value
5 over the long term. However, both plants also show,
6 or showed in the case of Hatfield, that in the near
7 term the plants were at risk, and they were at risk
8 of being able to provide sufficient revenue to be
9 able to cover the costs associated with those -- with
10 the capital expenditures and other expenditures
11 required to keep those plants operating.

12 Q. You were asked some questions about
13 impairments and the fact that there were no
14 impairments taken relating to the Sammis and
15 Davis-Besse plants. Were any impairments taken with
16 respect to any of the facilities in Figure 1, either
17 before the deactivation or in the case of the Lake
18 plants before the drastic reduction in operations?

19 A. No.

20 Q. Why not?

21 A. For the reasons that I talk about in my
22 rebuttal testimony on impairments, and when an
23 impairment is taken, all of the plants that you see
24 in Figure 1 that were ultimately deactivated had a
25 future long-term positive value that was in excess of

1 its net book value at that time. And as a result,
2 there was no impairment that would be required under
3 the accounting rules.

4 What triggered that, however, because of
5 those short-term losses and the weakened balance
6 sheet of FES and not being able to get through those
7 couple of years and take on additional debt, the
8 plants were decided to be deactivated. Because of
9 that decision, that triggered another asset
10 impairment test, and since you are no longer going to
11 provide future cash flows, ultimately you have to
12 take an impairment. You have to write down the book
13 value of that asset at that time.

14 Q. Mr. Lisowski, I want to talk to you about
15 a passage that appears on page 6707 of the transcript
16 for yesterday's proceedings. And you were asked a
17 question, I believe by Ms. Willis, starting on line
18 6, and you gave the following answer to this
19 question:

20 Question: "Now, is it your testimony that
21 FES may no longer be able to continue to borrow funds
22 for the next several years?"

23 Answer: "Yes. My testimony leaves out
24 that FES may not be able to borrow additional funds
25 related to keeping these plants operating in the

1 short-term."

2 My question to you, sir, is did you say
3 that or did you mean to say that, given that we know
4 we have one of the world's great court reporters?

5 A. I don't believe I said that. If I did, I
6 intended for that to be "points out" instead of
7 "leaves out."

8 Q. I also wanted to talk to you about a
9 passage that appears on page 6731. And, again, this
10 is a colloquy you had with Ms. Willis. Starting at
11 page 6731 on line 14 you had the following
12 exchange -- excuse me. Starting at line 21:

13 Question: "Do you consider a balance
14 sheet with approximately 68 percent common-equity
15 ratio to be a weak balance sheet?"

16 Answer: "Can you define for me in your
17 example 68 percent? Are you saying that's FES's
18 capitalization?"

19 Question: "Let's start with just -- we
20 will take any company. A competitive -- let's say a
21 competitive energy services company. Would you
22 consider a balance sheet with this 68 percent
23 common-equity ratio to be a weak balance sheet for a
24 competitive generation owner?"

25 Answer: "Okay. So, ma'am, in your

1 hypothetical that ratio is including all debt
2 instruments, including any type of off-balance sheet
3 arrangements or any off-balance sheet parental
4 guarantees or other commitments, contingencies, or
5 guarantees that are not reflected on the balance
6 sheet?"

7 Question: "Yes. We can agree to that."

8 Answer: "Using that hypothetical that we
9 just discussed, that is not including all debt,
10 including off-balance sheet arrangements, I would
11 agree with that."

12 Did you mean to agree, subject to your
13 caveats, that a company with a balance sheet showing
14 a 68 percent equity capital ratio was weak?

15 A. No, it would be a strong balance sheet.

16 Q. Okay. In your discussions with
17 Ms. Willis yesterday, you did discuss how an
18 equity-to-capital ratio would be discussed or
19 calculated, in part. Are you aware of how rating
20 agencies calculate such a ratio?

21 A. Yes.

22 Q. Do you have Exhibit 32, OCC Exhibit 32,
23 which is the 10-K?

24 A. I do.

25 Q. I want to refer you to page 16 of the

1 10-K or page 222 or 223 of the exhibit.

2 A. Okay.

3 Q. Using that balance sheet or any other
4 part of the 10-K that you think is material, could
5 you walk us through how that calculation would be
6 done as you understand credit agencies making that
7 calculation?

8 A. Yes. So I would start in that
9 calculation on page 116 of the 10-K or 223 of the
10 exhibit. I would start by taking the long-term debt
11 and other long term obligations of 2 billion, 608
12 million dollars. I would also add in the retirement
13 benefit liability obligation that is on their balance
14 sheet, which is \$324 million, and you can see it
15 several lines below the long-term debt line.

16 I would also add still on page 116 of the
17 10-K, but 222 of the exhibit, the currently payable
18 long-term debt of 506 million. I would also add in
19 the short-term borrowings.

20 Q. Why would you do that?

21 A. Short-term borrowings are -- is debt.
22 There is a legal liability obligation to repay that
23 from the borrower, by the borrower to the lender.
24 And so it is no different than long-term debt other
25 than it's short-term and requires a repayment within

1 one year, generally speaking.

2 Q. Please continue with your calculation.

3 A. So I would also then add in the
4 \$35 million of affiliated company short-term
5 borrowings, and I would also add the 99 million of
6 other short-term borrowings, which would be with
7 nonaffiliates, such as under revolving credit
8 facility, for example. I would also need to add in
9 some off-balance-sheet arrangements that the rating
10 agencies typically view as financing debt.

11 Q. Does the 10-K talk about that?

12 A. It does.

13 Q. Where?

14 A. If you move over to page 146 of the 10-K
15 or page 274 of the exhibit, the most significant
16 off-balance sheet arrangement that FES has is related
17 to its sale/leaseback obligations. Sale/leasebacks
18 are an off-balance-sheet means of financing.

19 At the bottom of that page you'll see
20 that the discounted net lease payments for FES is
21 approximately 1 billion, 3 million dollars, so I
22 would add that 1 billion, 3 million dollars as well
23 as part of the debt.

24 I would sum all of those items. That
25 would be my numerator. To get my denominator, I

1 would take that same number and also add in my
2 equity. And flipping back to page 116 of the 10-K or
3 223 of the exhibit, the amount of total common
4 stockholders's equity to add in to the denominator is
5 \$5,585,000,000.

6 Q. So when you do that calculation, put all
7 those numbers together, what does the math come up
8 to?

9 A. That would give me a 45 percent
10 debt-to-capitalization ratio or a 55 percent
11 equity-to-total-capitalization ratio.

12 Q. And for a competitive generation firm, is
13 a balance sheet with 55 percent equity-to-capital
14 ratio considered, in your view, to be a balance sheet
15 that's strong?

16 A. No, I would view it as not strong.

17 Q. Now, you were also asked some questions
18 about cash and short-term facilities available to
19 FES. So let's make it clear on the record. Could
20 you describe the specific things that FES would have
21 access to in that regard?

22 A. Sure. There's -- for FES there is
23 primarily three sources of funds and liquidity. One
24 is the cash that it has on hand. The cash on hand,
25 cash reserves, things of that nature, something

1 that's very liquid.

2 The second means is a revolving credit
3 facility that FES has, which we discussed yesterday,
4 is about \$1.5 billion of total commitment.

5 The third is an intercompany money pool
6 arrangement that FES has access to with other
7 nonregulated affiliates of FirstEnergy.

8 Q. Now, I would like you to refer to page 43
9 of the exhibit or page 72 of the 10-K -- 143, excuse
10 me, of the exhibit.

11 A. I'm sorry, the page number again?

12 Q. 143 of the exhibit.

13 MR. SOULES: I'm sorry, your Honor, could
14 I have the last question and answer read back before
15 we move on?

16 EXAMINER PRICE: You may.

17 Could we have the previous question and
18 answer, please.

19 (Record read.)

20 MR. SOULES: Thank you.

21 Thank you, your Honor.

22 EXAMINER PRICE: Please proceed,
23 Mr. Kutik.

24 Q. (By Mr. Kutik) Are you at page 143 of the
25 exhibit?

1 A. I am.

2 Q. There is a heading there on that page
3 "Short-Term Borrowings." And there is a line under
4 that that says "FES/AE Supply," and it talks about a
5 revolving facility with available liquidity of \$1.43
6 billion. Do you see that?

7 A. Yes.

8 Q. Now, assume that that's about the current
9 level today. Why couldn't FES use that amount of
10 money to fund the operations of Davis-Besse and
11 Sammis?

12 A. There's a couple of reasons. A revolving
13 credit facility is one of the primary sources of
14 liquidity that FES has available to it in the event
15 something significant happens in the business that
16 requires an immediate use of cash. It is not
17 something that is to be used to fund the regular
18 operations or short-term financing needs of the
19 business. A company to be able to operate at any
20 capacity needs to have some type of liquidity
21 available to it.

22 The -- while the 1.4 billion may sound
23 like a large number, there are things that could
24 happen in FES that could require this cash to be
25 posted pretty quickly. Two examples I can provide

1 are collateral calls that FES may have related to its
2 commodity desk and selling of purchased power and --
3 or wholesale power, or selling of wholesale power.

4 One of the things we saw in the first
5 quarter of 2014 was a lot of volatility that required
6 FES to post a significant amount of cash collateral,
7 quite frankly, to the tune of over \$400 million.
8 That number is public. You can see that in our first
9 quarter 10-Q. FES had to post over \$400 million of
10 cash essentially during that quarter and that posting
11 is immediate, usually within a couple of days. So
12 that does not allow you the ability to go and try to
13 market long-term debt, try to get some equity
14 infusion. That could take a long time.

15 The second is if you look at page 80 of
16 the 10-K or page 159 of the exhibit, in addition to
17 the collateral requirements of its commodity
18 business, FES has other contractual obligations that,
19 based on the credit rating of FES, could require it
20 to post up to \$886 million of cash immediately.

21 If those factors occur in, those
22 triggering events occur, 886 million is more than
23 half of the entire committed revolving credit
24 facility. So for those two reasons is why FES needs
25 to maintain a significant amount of liquidity and

1 cannot borrow against that revolving credit facility
2 to fund its normal operations.

3 Q. What would happen if the company had a
4 call on its -- one of those obligations you just
5 described and the company didn't have the cash
6 immediate -- that is, FES didn't have the cash to
7 immediately satisfy those obligations?

8 A. Well, we've established a lot that I am
9 not an attorney. I would expect that would be an
10 event of default to FES. So in that case, I believe
11 it would put not only the Davis-Besse and Sammis
12 plants at risk, but all of FES's other plants at risk
13 as well as FES as a legal entity at risk.

14 Q. Now, I would like to have you move to
15 page 118 of the 10-K or pages 225 and 226 of the
16 exhibit.

17 A. Okay.

18 Q. And you were asked some questions
19 yesterday about a line item, net cash provided from
20 operating activities. Do you remember that?

21 A. I do.

22 Q. Does this reflect all of the cash flows
23 in and out of FES?

24 A. No, that line item does not.

25 Q. What else needs to be included to

1 understand that?

2 A. So while the net cash provided by
3 operating activities is the flow of funds that FES
4 earned as part of its operations, it does not take
5 into account the capital that's required to fund
6 those operations through investing activities.

7 And still on page 118 of the 10-K but
8 over on 226 of the exhibit, you'll see under cash
9 flows from investing activities two items that are
10 required by FES to fund its normal operations. And
11 those two line items are "Property additions" and
12 "Nuclear fuel." So in order to calculate the true
13 cash flow for the operations of FES, you would need
14 to take into consideration these two items as well.

15 Q. So if we did all that math for 2014, what
16 would it show?

17 A. For 2014 I would take the \$571 million
18 that was provided from operating activities, and I
19 would subtract the cash outflow or cash spent for
20 property additions of \$839 million and nuclear fuel
21 of \$233 million, which would be a net -- negative
22 cash flow, net cash outflow from FES of approximately
23 \$500 million.

24 Q. Now, let me have you go to page 71 of the
25 10-K or page 142 of the exhibit.

1 A. Okay.

2 Q. You were shown this page yesterday in
3 questioning from Ms. Willis, and she read you this
4 sentence, the first sentence on the page where it
5 says, "FirstEnergy expects its existing sources of
6 liquidity to remain sufficient to meet its
7 anticipated obligations and those of its
8 subsidiaries."

9 Does this mean that FES intends to fund
10 the operation of Sammis and Davis-Besse out of
11 existing sources of liquidity?

12 A. No, it does not.

13 Q. Why not?

14 A. For the reasons we discussed earlier,
15 because of FES's revolving credit facility, the
16 approximately 1.4 billion is at the end of January,
17 because of the fact that FES knows it needs to
18 maintain that liquidity. We cannot use that to fund
19 operations. It continues to need that liquidity to
20 meet its anticipated obligations. That's what makes
21 that first sentence very applicable here and why FES
22 cannot use that revolving credit facility.

23 MS. WILLIS: Objection, your Honor. A
24 little late in my objection. I would move to strike
25 the question and the answer.

1 EXAMINER PRICE: Grounds, please?

2 MS. WILLIS: Your Honor, this witness
3 testified in my cross-examination that he was aware
4 of these statements, not that he had -- he understood
5 what the statements meant or what they were intended
6 to mean. I don't think he has the background nor is
7 he the author of these statements.

8 MR. KUTIK: Your Honor, he was asked
9 basically to read it and to confirm that it's in the
10 10-K. It's a fair comment for him to provide his
11 understanding of what's in the 10-K, given his
12 position in the company and his involvement with the
13 10-K.

14 MS. WILLIS: The 10-K speaks for itself.

15 EXAMINER PRICE: Well, and he is
16 providing additional comment on the 10-K. Overruled.
17 The motion to strike is denied.

18 Q. (By Mr. Kutik) You were also asked some
19 questions about whether -- about deferral of capital
20 projects. Does anything with respect to any deferral
21 of the capital projects change any of your
22 conclusions in your testimony in this case?

23 A. No.

24 Q. You were also asked some questions about
25 the possibility of a bunch of different financing

1 schemes, like an equity infusion, using the plants as
2 collateral, a parental guarantee, or forming an LLC
3 with an equity partner. Do you remember those
4 questions?

5 A. I do.

6 Q. Are any of those --

7 MR. SETTINERI: Object, your Honor.
8 Mischaracterizing. I don't believe he was asked
9 about an LLC with an equity partner. That was
10 Mr. Moul's testimony.

11 EXAMINER PRICE: I don't recall.

12 MR. KUTIK: All right. I will withdraw
13 that part of the question, your Honor.

14 MR. SETTINERI: Thank you.

15 Q. (By Mr. Kutik) Do you remember all those
16 things?

17 A. I do.

18 Q. Now, not talking about forming an LLC
19 with an equity partner, would any of those be
20 feasible?

21 A. No, they wouldn't.

22 Q. Why not?

23 A. For a couple of reasons. The first
24 reason is, as Figure 1 on page 7 of my rebuttal
25 testimony lays out, a long list of deactivated plants

1 that all had future long-term net present value,
2 positive cash. Those plants were decided to be
3 deactivated, and none of those options were credible
4 then, and as a result, are still not credible today.

5 The second reason is that any of those
6 kind of scenarios assumes that there is going to be
7 some type of additional investment in these plants.
8 Any time there is some type of investment, whoever
9 the investor, is going to assume there is going to be
10 a return on and return of that invested capital.

11 The returns on these plants in the near
12 term are not sufficient enough to ensure that that
13 investment is available there, that one would want to
14 commit and invest that capital. And so as a result,
15 I don't believe any of those options are relevant or
16 a potential option for these plants today.

17 Q. Let me refer you back to page 71 of the
18 10-K and page 12 of the exhibit. With respect to the
19 second-to-last paragraph, Ms. Willis read to you the
20 first sentence of that paragraph which reads, "The
21 Utilities and FirstEnergy's competitive generation
22 operations expects to fund their capital expenditures
23 over the next several years through cash from
24 operations, debt, and, depending on the operating
25 company, equity contributions from FE."

1 Do you remember that?

2 A. Yes.

3 Q. Does that sentence and the passage that
4 follows that sentence on this page mean that Sammis
5 and Davis-Besse plants are not at risk for retirement
6 in the near future?

7 MS. WILLIS: I am going to object.

8 EXAMINER PRICE: Grounds?

9 MS. WILLIS: Again, he is asking the
10 witness to interpret.

11 EXAMINER PRICE: I guess what I am
12 struggling with, clearly he can read, so you must
13 have asked him this question for a reason. Why isn't
14 that just opening the door to Mr. Kutik asking a
15 follow-up question on that?

16 MS. WILLIS: I was asking the witness
17 whether he was aware of those statements, not whether
18 he is familiar with those statements, and he has
19 knowledge of those statements, and he actually worked
20 on those statements, and that was part of his
21 responsibilities.

22 I don't believe that this witness --
23 there is anything in the record that would show he is
24 responsible for those statements or that he was in
25 any way, shape, or form involved in making those

1 statements.

2 EXAMINER PRICE: And that would be a fair
3 issue for recross, but I don't think that that
4 doesn't mean you did not open the door. So I am
5 going to overrule your objection.

6 And you can answer the question if you
7 know.

8 THE WITNESS: May I have the question
9 read back?

10 EXAMINER PRICE: You may.

11 (Record read.)

12 A. No. They are still at risk.

13 Q. Why do you say that?

14 A. For a couple of reasons. This paragraph
15 itself is the essence of my rebuttal testimony. This
16 proves exactly what I lay out in my rebuttal
17 testimony. We've talked before about various ways
18 that you can finance a capital project. One way to
19 finance that, as this paragraph is saying, is through
20 cash from operations. Another way is through issuing
21 of debt. Another way listed here is equity
22 contributions, so those are three ways that we lay
23 out here.

24 If you go to the paragraph just after
25 that paragraph, it says, "Any financing plans by

1 FirstEnergy, including refinancing its reductions in
2 short-term debts, are subject to market conditions
3 and other factors."

4 Those "market conditions and other
5 factors" stipulate to the fact that we expect to be
6 able to fund our capital expenditures. So in terms
7 of each of those three ways that you can finance a
8 capital project, cash from operations being one of
9 them, there's risk in the near term that these plants
10 may not be able to generate positive cash from
11 operations to cover the expenditures necessary to
12 keep themselves operating.

13 In terms of debt, we've talked at length
14 that FES does not have a balance sheet that can take
15 on additional debt.

16 Thirdly, equity contributions from FE,
17 we've spent a lot of time talking about how equity
18 contributions are not sustainable and how FE has
19 already received \$2 billion from FE and that the
20 near-term projections still do not show a sufficient
21 amount of return that would attract capital needed to
22 invest in these plants. So for those reasons the
23 Form 10-K is -- says nothing different than what my
24 rebuttal testimony lays out.

25 MR. KUTIK: No further questions. Thank

1 you.

2 EXAMINER PRICE: Thank you.

3 Ms. Grady, recross?

4 MS. WILLIS: Thank you, your Honor.

5 - - -

6 RE CROSS-EXAMINATION

7 By Ms. Willis:

8 Q. Mr. Lisowski, you talked with your
9 counsel with respect to the revolving credit
10 facilities on redirect, did you not?

11 A. Could you help me understand when you say
12 "I talked to my counsel"?

13 Q. You were asked questions by Mr. Kutik
14 with respect to the revolving credit facility,
15 correct?

16 A. Yes.

17 Q. Have you looked at the terms of a
18 revolving credit facility?

19 A. I believe the 10-K lays out the relative
20 terms that would be necessary associated with the
21 credit facility of which I looked at and relied on as
22 part of my answer.

23 Q. So you didn't look at the revolving
24 credit facility, the instrument itself; is that
25 correct? You are relying upon what is contained in

1 the 10-K?

2 A. I reviewed the discussion and significant
3 terms of the revolving credit facility, which are a
4 Securities and Exchange Commission requirement to
5 disclose as part of our public filings. There's no
6 reason for me to believe that would be inaccurate.
7 We'd probably have a bigger issue here today.

8 Q. But to answer my question, you didn't
9 look at the credit facility document itself to
10 determine whether or not what you -- you did not look
11 at the terms of the revolving credit facility itself
12 to denote what uses are permitted and not permitted
13 in that document with respect to the funds?

14 A. No, I did not need to go to the revolving
15 credit facilities because all of the relevant terms
16 necessary to make my statements are outlined in the
17 Form 10-K.

18 Q. And all of the relevant -- when you look
19 at all of the relevant terms that are listed in the
20 10-K under the discussion of the revolving credit
21 facilities, do you see anything that prohibits FES
22 from using the revolving credit facility to fund its
23 ongoing obligations?

24 A. Yes. I believe at the top of page 71 of
25 the 10-K and page 142 of the exhibit by FirstEnergy

1 saying that FES needs to remain -- keep a sufficient
2 amount of liquidity, and FirstEnergy, being also the
3 parent company of FES, directing FES that it must
4 remain -- excuse me -- must keep a sufficient amount
5 of liquidity for potential anticipated obligations.

6 Q. So the sufficient liquidity that you are
7 speaking of is the available liquidity to FES of 1.43
8 million -- or billion, correct?

9 A. Yes. And the two examples I provided
10 earlier would use essentially all of that up through
11 collateral calls.

12 Q. So, again, my question, is there anything
13 specifically with respect to the terms of the
14 revolving credit fund that prohibits FES from using
15 the fund to fund its ongoing obligations?

16 MR. KUTIK: Your Honor, I object. Asked
17 and answered.

18 EXAMINER PRICE: You can go ahead.

19 Overruled.

20 A. Yes. I believe FES is limited in being
21 able to use the revolving credit facility through the
22 discussion at the top of page 71 of the 10-K and page
23 142 of the exhibit by FirstEnergy being the parent
24 company owner of FES and that FES needs to keep a
25 sufficient amount of liquidity for anticipated

1 obligations.

2 Q. Do you see the discussion of "Revolving
3 Credit Facilities" on page 143 carrying over to 144?

4 A. Yes.

5 Q. Do you see anything in that discussion
6 that prohibits FirstEnergy Solutions from using the
7 revolving credit fund to fund its ongoing
8 obligations?

9 A. No. Since there is nothing in that
10 paragraph that says what it can be used for or cannot
11 be used for, I believe that the paragraph on page 71
12 of the 10-K or page 142 of the exhibit is what you
13 would need to look at.

14 MS. BOJKO: Objection, your Honor. I
15 move to strike everything after the word "no" as
16 being nonresponsive to the question posed.

17 EXAMINER PRICE: Well, I think that's
18 Ms. Grady's call -- Ms. Willis' call, whether she
19 thought it was nonresponsive.

20 MS. WILLIS: I would support that, yes.
21 He answered my question. It is very straightforward.
22 I have tried it now three times. I would like it to
23 be there with the extraneous information and
24 interpretation deleted.

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

1 EXAMINER PRICE: Sure.

2 MR. KUTIK: Your Honor, you used the word
3 today "leeway" a bunch of times. And we are in a
4 situation now where the companies really have no
5 response other than this witness, so this witness
6 should be given some leeway in terms of how he
7 responds to questions.

8 EXAMINER PRICE: I understand that. And,
9 you know, when we discuss the issue of discovery, it
10 was -- of rebuttal witnesses, we did indicate we
11 would give counsel some leeway in asking questions
12 because there is limited discovery of rebuttal
13 witnesses, although I do understand this witness was
14 made available for a deposition.

15 Nonetheless, I am going to grant the
16 motion to strike, but I think he made his point very
17 clearly in the preceding answers, and I think
18 Ms. Willis is entitled to a straight up "yes" or "no"
19 at that point.

20 MS. WILLIS: Thank you, your Honor.

21 Q. (By Ms. Willis) Now, just to be clear,
22 Mr. Lisowski, earlier your counsel questioned you
23 with respect to how an agency -- a rating agency uses
24 a debt capitalization ratio, correct?

25 A. Yes.

1 Q. And you went through a calculation based
2 upon your understanding of how the rating agency
3 would view the debt-to-capitalization ratio, correct?

4 A. Yes.

5 Q. And is it your understanding -- let me
6 strike that.

7 That calculation does not necessarily
8 hold true for the revolving credit facility
9 debt-to-capitalization ratio; is that correct?

10 MR. KUTIK: Objection.

11 EXAMINER PRICE: Grounds?

12 MR. KUTIK: I'm not sure what it means,
13 your Honor.

14 MS. WILLIS: The witness can state if he
15 doesn't understand.

16 MR. KUTIK: Well, the record needs to be
17 clear as to that.

18 EXAMINER PRICE: Let's have the question
19 back again, please.

20 Ms. Grady, can you just rephrase the
21 question?

22 MS. WILLIS: Yes. I would be happy to.

23 Q. (By Ms. Willis) Mr. Lisowski, during my
24 cross-examination we talked about the
25 debt-to-capitalization ratio under the revolving

1 credit facility. Do you remember that
2 cross-examination?

3 A. I do.

4 Q. And do you recall that you said that the
5 debt-to-capitalization ratio was -- let me strike
6 that.

7 And do you recall that you did not have
8 an understanding of how that debt-to-capitalization
9 ratio was calculated under the revolving credit
10 facility?

11 MR. KUTIK: Well, now I'll object as
12 beyond the scope of redirect.

13 EXAMINER PRICE: I tend to agree. I tend
14 to agree with Mr. Kutik.

15 MS. WILLIS: I am just trying to make
16 sure that the record is clear that there -- that the
17 debt-to-capitalization ratio that a rating agency
18 uses is different than the debt-to-capitalization
19 ratio that must be maintained in order to borrow
20 under the revolving credit facility.

21 EXAMINER PRICE: Just ask him that
22 question right there. That was perfect. Just ask
23 him that in the form of a question.

24 Q. (By Ms. Willis) Mr. Lisowski, is it your
25 understanding that the debt-to-capitalization ratio

1 used by rating agencies is different than the
2 debt-to-capitalization ratio required to be met under
3 the revolving credit facility?

4 THE WITNESS: May I have that question
5 read back, please?

6 EXAMINER PRICE: You may.

7 (Record read.)

8 A. There may be a difference, and I would
9 expect that the rating agency view is when you would
10 need to be looking at it in the context of whether a
11 balance sheet was strong or not strong or weak. In
12 particular, as I mentioned earlier, in the event of a
13 downgrade, FES could be exposed to over \$800 million
14 of collateral primarily hinging on that factor.

15 So while there may be a difference under
16 a covenant view, that would be important, I think
17 looking at the strength of a balance sheet, how the
18 rating agency, who are paid to do that kind of
19 analysis, this would be more applicable in answering
20 the question.

21 Q. So are you saying how the credit rating
22 agency defines the debt-to-capitalization ratio is
23 what should be applied to the revolving credit
24 facility; is that your testimony?

25 A. No, that's not my testimony. My

1 testimony was in regards to determining whether a
2 balance sheet is strong or not strong. I believe the
3 way that you should look at it, in my opinion, is on
4 a rating-agency view, which is what I laid out
5 earlier.

6 Q. And is it your understanding that the
7 revolving credit facility is necessarily concerned
8 about the strength or weakness of the balance sheet
9 in determining whether or not a loan should be --
10 funds shall be dispersed?

11 MR. KUTIK: Objection.

12 EXAMINER PRICE: Grounds?

13 MR. KUTIK: Again, beyond the scope of
14 redirect.

15 MS. WILLIS: It's a follow-up to his
16 question, your Honor -- or his answer.

17 MR. KUTIK: Well, that doesn't mean it's
18 within the scope.

19 EXAMINER PRICE: Sustained.

20 MS. WILLIS: That's all the questions I
21 have. Thank you, Mr. Lisowski.

22 EXAMINER PRICE: Thank you.

23 Mr. Settineri?

24 MR. SETTINERI: Thank you.

25 - - -

1 RECROSS-EXAMINATION

2 By Mr. Settineri:

3 Q. Mr. Lisowski, you were asked -- you
4 spoke extensively --

5 MR. KUTIK: Sir, could you turn your
6 microphone on. Thank you.

7 Q. (By Mr. Settineri) Mr. Lisowski, if you
8 turn to page 39 of OCC Exhibit, I believe it was 32,
9 the 10-K.

10 A. Page?

11 Q. It's 39 of 432.

12 A. Okay.

13 Q. And am I correct on that page it
14 indicates for FES that its capital expenditures
15 forecast for 2015 is \$508 million?

16 A. Yes.

17 MR. SETTINERI: Thank you.

18 No further questions, your Honor.

19 EXAMINER PRICE: Thank you.

20 Ms. Bojko?

21 MS. BOJKO: Yes, thank you, your Honor.

22 - - -

23 RECROSS-EXAMINATION

24 By Ms. Bojko:

25 Q. Could you turn to page 222 of 432 of OCC

1 Exhibit 32, sir?

2 A. Okay.

3 Q. This is the "FirstEnergy Solutions Corp.
4 consolidated Balance Sheets" that you were discussing
5 with your counsel; is that correct?

6 A. Yes.

7 Q. And when you are referencing this balance
8 sheet, the balance sheet includes FirstEnergy
9 Solutions' entire generation fleet; is that correct?

10 A. It would include all of the plants and
11 all of the balance sheets of all of the subsidiaries
12 of FES, if that's your question.

13 Q. Well, so it would include generating
14 units in addition to Sammis and Davis-Besse, correct?

15 THE WITNESS: I'm sorry. Could I have
16 that read back, please.

17 EXAMINER PRICE: You may.

18 (Record read.)

19 A. Yes.

20 Q. And that means it would also include
21 plants outside of Ohio; is that correct?

22 A. You mean plants that are owned by FES
23 that are physically located outside of Ohio?

24 Q. Of course, yes.

25 A. Yes.

1 MS. BOJKO: Thank you. I have no further
2 questions.

3 EXAMINER PRICE: Ms. Fleisher?

4 MS. FLEISHER: Thank you. Just a couple.

5 - - -

6 RECROSS-EXAMINATION

7 By Ms. Fleisher:

8 Q. So you testified that you think
9 Hatfield's Ferry was in a similar situation at the
10 time of its retirement as Sammis is today, correct?

11 A. Yes, for the reasons I noted earlier.

12 Q. Okay. And at the time of its retirement,
13 Hatfield's Ferry was facing a certain major capital
14 expenditure within the next few years to comply with
15 MATS, correct?

16 A. Among the other financial challenges I
17 mentioned earlier, that's correct.

18 Q. Okay. And do you have a sense of what
19 the anticipated capital expenditure for compliance
20 with MATS was for Hatfield's Ferry?

21 A. I don't recall sitting here today, but I
22 believe Don Moul may have answered that question
23 yesterday.

24 Q. Would it be fair to say in the hundreds
25 of millions of dollars?

1 A. I would prefer not to speculate. I would
2 need to go and check with Mr. Moul.

3 Q. Certainly. And to the best of your
4 knowledge, is Sammis facing any certain major
5 anticipated capital expenditure in the next three
6 years of a similar scale?

7 A. I believe that Sammis does have a
8 significant amount of capital expenditures that it's
9 going to need to invest to keep the plant
10 operational. Although it may be in compliance with
11 MATS today, I believe that does not preclude the fact
12 that the plant could still shut down because of the
13 fact that the revenue streams still may not be
14 sufficient to cover that capital in the short-term
15 like was the case with Hatfield.

16 Q. And you are basing it on your projection
17 of capital expenditures for Sammis over the next
18 three years?

19 A. When you say "my projection," as outlined
20 in my testimony?

21 Q. Yeah.

22 A. Yes.

23 Q. But you don't know how large the
24 anticipated capital expenditure was for Hatfield's
25 Ferry for compliance with MATS?

1 MR. KUTIK: Objection. Asked and
2 answered.

3 EXAMINER PRICE: Sustained.

4 Q. (By Ms. Fleisher) And do you know whether
5 FES may have been able to sell Hatfield's Ferry or
6 the other deactivated plants listed in Figure 1 of
7 your testimony if they had been MATS compliant?

8 MR. KUTIK: Objection.

9 EXAMINER PRICE: Grounds?

10 MR. KUTIK: Beyond the scope of redirect.

11 MS. FLEISHER: Do I need to respond?

12 EXAMINER PRICE: You can respond.

13 MS. FLEISHER: Okay. I think he very
14 clearly in redirect asserted that he felt that Sammis
15 was similar to Hatfield's Ferry, and one of the ways
16 in which that's relevant is whether Sammis could be
17 sold rather than retired.

18 EXAMINER PRICE: I understand your point,
19 but I do think your question calls for speculation
20 so.

21 MS. FLEISHER: Can I rephrase to address
22 that issue then, your Honor?

23 EXAMINER PRICE: You can try.

24 MS. FLEISHER: Okay.

25 Q. (By Ms. Fleisher) Mr. Lisowski, do you

1 know whether there were any offers to purchase any of
2 the deactivated plants listed in Figure 1, including
3 Hatfield's Ferry?

4 A. While I was not involved in any specific
5 marketing efforts to sell the Hatfield Ferry station,
6 in my position of being chiefly responsible for the
7 accounting and financial matters of FES and AE
8 Supply, I would have certainly expected to have been
9 pulled in if there was any reasonable offers that
10 were being considered as part of a sale, and I was
11 never pulled in to any of those discussions.

12 Additionally, I believe Mr. Moul talked
13 about this yesterday as well.

14 Q. And so to be clear, so you cannot speak
15 to whether there would have been any offers to
16 purchase the deactivated plants if they had been --

17 MR. KUTIK: Objection.

18 Q. -- MATS compliant?

19 MR. KUTIK: Objection, asked and
20 answered.

21 EXAMINER PRICE: Let her get her question
22 in first.

23 Let's have the question back again, make
24 sure the record is clear.

25 (Record read.)

1 MR. KUTIK: And, again, my objection is
2 it's asked and answered, your Honor.

3 MS. FLEISHER: I think Mr. Kutik objected
4 when I asked it before so I don't think there is an
5 answer.

6 MR. KUTIK: Well, I did.

7 EXAMINER PRICE: Direct to me, please,
8 not to each other.

9 MR. KUTIK: Yes, your Honor, I was.

10 EXAMINER PRICE: Okay.

11 MR. KUTIK: I believe he did talk about
12 that, your Honor. He said that while he wasn't
13 directly involved basically because of his position,
14 if there had been offers that were serious, he would
15 have been -- he would have heard about it and
16 provided information relating to it.

17 EXAMINER PRICE: If you can rephrase your
18 question. I am going to sustain his objection, but
19 if you want to try to rephrase.

20 MS. FLEISHER: Certainly.

21 Q. (By Ms. Fleisher) I guess, so when you
22 say you weren't involved in any discussions regarding
23 offers for the deactivated plants listed in Figure 1
24 of your rebuttal testimony, that means you aren't
25 aware of any -- of whether any of those offers

1 have -- had it just a second ago. That means you
2 wouldn't be aware of whether any of those discussions
3 failed because of the issue of the MATS compliance
4 cost, correct?

5 MR. KUTIK: Objection. Mischaracterizes
6 his testimony.

7 EXAMINER PRICE: Sustained.

8 Q. Would you be aware if any discussions
9 regarding purchases of the deactivated plants listed
10 in Figure 1 failed because of the issue of MATS
11 compliance costs?

12 MR. KUTIK: Objection. This witness has
13 already testified that he wasn't aware of any
14 discussions.

15 EXAMINER PRICE: She asked if he would be
16 aware. He can answer this question.

17 MR. KUTIK: Well, may I have the question
18 read, your Honor.

19 EXAMINER PRICE: You may.

20 (Record read.)

21 A. I'm not aware of any discussions that
22 have been had with me where MATS compliance was --
23 was a factor.

24 MS. FLEISHER: Thank you. That's all I
25 have.

1 EXAMINER PRICE: Thank you.

2 Mr. Soules?

3 MR. SOULES: Thank you, your Honor.

4 - - -

5 RECROSS-EXAMINATION

6 By Mr. Soules:

7 Q. Hello again, Mr. Lisowski. Mr. Lisowski,
8 on redirect -- well, going back to Figure 1 on page 7
9 of your rebuttal testimony, I believe on redirect you
10 testified that the net present value for some of
11 these deactivated plants was calculated to be
12 positive; is that a fair statement?

13 A. Yes.

14 Q. And in order to calculate those net
15 present values, FES would have had to have used a
16 forecast of energy and capacity prices; is that
17 correct?

18 A. Yes.

19 Q. Do you know if that was an internal FES
20 price forecast of energy and capacity that was used
21 for those NPV calculations?

22 A. Yes. In those situations FES used its
23 most recent forecast it had available to itself at
24 that time.

25 MR. SOULES: Your Honor, could I get that

1 answer read back?

2 EXAMINER PRICE: You may.

3 (Record read.)

4 Q. So is it fair to say that FES had an
5 internal energy and capacity price forecast in the
6 2012-2013 time frame?

7 A. Yes.

8 Q. Okay. Mr. Lisowski, on redirect I
9 believe you testified in the first quarter of 2014,
10 FES needed to post approximately \$400 million; is
11 that correct?

12 A. Yes, with cash collateral with
13 third-party nonaffiliates.

14 Q. Okay. Why did FES need to post that
15 \$400 million?

16 A. From what I recall, it was driven by the
17 volatility in the commodity markets in the first
18 quarter of 2014.

19 Q. And, I'm sorry, the \$400 million went to
20 third party -- what you did you say, third party
21 what?

22 A. I believe it would have been third-party
23 nonaffiliates of FES, which I guess is redundant.

24 Q. And do you know why FES, in particular,
25 needed to pay those third-party nonaffiliates?

1 MR. KUTIK: Object. Asked and answered
2 and also mischaracterizes his testimony.

3 MR. SOULES: Your Honor, I believe his
4 earlier response indicated volatility in the markets,
5 and I was just trying to get a little more detail
6 about, in particular, why that \$400 million was
7 posted.

8 MR. KUTIK: Well, again, the question
9 pending related to pay parties. It's not what
10 happened. He also testified as to the reason for
11 that posting.

12 EXAMINER PRICE: If you can rephrase your
13 question.

14 MR. SOULES: Thank you, your Honor.

15 Q. (By Mr. Soules) Mr. Lisowski, the
16 \$400 million posting to third-party nonaffiliates,
17 was that different than paying third-party
18 affiliates?

19 A. Yes.

20 Q. And can you describe the difference
21 between posting and paying?

22 A. Yes. Collateral is put on deposit with a
23 third party. If facts and circumstances change, you
24 may be able to get that collateral back. If you buy
25 something, you've acquired something in exchange for

1 that cash. So in very simple terms that's how I
2 differentiate the two.

3 Q. Thank you. Shifting gears I believe you
4 also testified on redirect that capital project
5 deferrals for Sammis and Davis-Besse to the extent
6 any occurred did not change your testimony, your
7 direct testimony at all; is that correct?

8 A. That's correct.

9 Q. And that includes your projection of
10 costs for the Sammis plant, correct?

11 A. Yes, as outlined in my direct testimony.

12 Q. And that cost projection is provided in
13 Attachment JYL-1 to your direct testimony, correct?

14 A. I don't have my direct testimony
15 confidential with me today to confirm that. I will
16 say it's included as part of the attachments
17 confidential and the workpapers confidential.

18 Q. Okay. And the cost projection
19 incorporates projected capital expenditures at
20 Sammis, correct?

21 THE WITNESS: May I have that question
22 read back, please.

23 EXAMINER PRICE: You may.

24 (Record read.)

25 A. My forecast in my direct testimony

1 includes a forecast for capital expenditures.

2 Q. And earlier today you testified that you
3 didn't know if any particular capital expenditures at
4 Sammis were deferred for 2012, 2013, 2014, and 2015;
5 is that correct?

6 MR. KUTIK: Objection. Asked and
7 answered.

8 EXAMINER PRICE: Is this just a
9 foundational question?

10 MR. SOULES: It is.

11 EXAMINER PRICE: I will allow it.

12 THE WITNESS: May I have the question
13 read back, please.

14 (Record read.)

15 A. That's correct.

16 Q. Given your lack of personal information
17 about any capital expenditure deferrals that may have
18 occurred, how do you know that your capital
19 expenditure forecast in the attachments to your
20 testimony are still accurate?

21 A. There is a couple of reasons. One is my
22 direct testimony forecast was prepared during the
23 summer of 2014. So that would have been using FES
24 and FE Generation's most recent, most accurate
25 forecasts for the long-term forecast that I used. So

1 that would take into consideration all the things
2 that we were just talking about for all those prior
3 years. In anticipation of any questions I was going
4 to get in hearing several weeks ago, I had gone back
5 and taken a high level look at whether any internal
6 forecasts were different and there was nothing that
7 was significantly different from what I had.

8 And so as a result, I believe in
9 preparation of when I was here several weeks ago
10 covers that my forecast is still accurate and that
11 there has been no changes to my forecast.

12 Q. Is it possible if a decision somebody
13 made to defer the capital expenditure for 2015, that
14 that decision may have been made after August 4 of
15 2014?

16 MR. KUTIK: Objection. Calls for
17 speculation.

18 MR. SOULES: I'll withdraw the question,
19 your Honor.

20 Q. (By Mr. Soules) Mr. Lisowski, for a given
21 calendar year like, let's say, for example, 2015, do
22 you know generally speaking when decisions about
23 capital expenditures are made for that year?

24 MR. KUTIK: Well, I'll object, your
25 Honor. The question is vague. Are we talking about

1 decisions about capital expenditures? What decisions
2 about capital expenditures?

3 EXAMINER PRICE: Mr. Soules, do you want
4 to clarify or respond?

5 MR. SOULES: Your Honor, if Mr. Lisowski
6 does not understand my question, I am quite happy to
7 clarify.

8 A. And that's why I paused, I was confused
9 by your question as well. If you could try to
10 clarify for me.

11 Q. Sure. I would be happy to.

12 MR. SOULES: Thank you, your Honor.

13 Q. Do you know -- do you know when the 2015
14 capital budget for Sammis was made?

15 A. It would have been sometime in 2014.

16 Q. But you don't know at what point in time
17 in 2014; is that correct?

18 A. I would need to go back and take a look
19 at the time period when we finalized the capital
20 budget for 2015 in particular.

21 EXAMINER PRICE: When do you usually
22 finalize a capital budget for a given year?

23 THE WITNESS: So it's an iterative
24 process. Sammis will look at its capital forecasts
25 regularly. Generally speaking it's for the following

1 year so in this case for 2016 -- excuse me, for 2015
2 it would be in pretty good shape by the summer of
3 2014. There may be some minor adjustments, of
4 course, but nothing significant, nothing materially
5 speaking. But generally speaking usually about I
6 will call it six to three months -- three to six
7 months before the end of the year into which you are
8 going into your budget, very generally speaking.

9 EXAMINER PRICE: Thank you.

10 MR. SOULES: Thank you, your Honor.

11 Nothing further, your Honor. Thank you.

12 EXAMINER PRICE: Thank you.

13 Mr. O'Brien?

14 MR. O'BRIEN: No questions, your Honor.

15 EXAMINER PRICE: Mr. Hays?

16 MR. HAYS: A couple of quick ones, your
17 Honor.

18 - - -

19 RECROSS-EXAMINATION

20 By Mr. Hays:

21 Q. Mr. Lisowski, in the 2014 10-K, which is
22 OCC Exhibit 32, or subsequently in 2015, has FES ever
23 advised the investment community that its balance
24 sheet is weak?

25 A. Could you clarify for me, sir, what you

1 mean by advise the investment community?

2 Q. You know what I mean by advise. You know
3 how the company issues statements. It issues the
4 10-Ks. It issues quarterly statements. It has
5 periodic meetings with the investment community. And
6 I am asking you again in the 2014 10-K or
7 subsequently in 2015, has FES ever advised the
8 investment community that its balance sheet is weak?

9 A. While I don't know if we've ever stated
10 the word weak in any of those documents that you are
11 talking about, all of which are public, I would say
12 that it has been publicly disclosed that FES's
13 balance sheet is not strong and that these plants are
14 at risk and that the ESP term would help ensure that
15 these plants continue to operate during the next 15
16 years.

17 Q. So the answer to my question is "no."

18 MR. KUTIK: Objection.

19 EXAMINER PRICE: Grounds?

20 MR. KUTIK: It's asked and answered. He
21 has given his answer.

22 EXAMINER PRICE: Sustained.

23 Q. Do you believe that the balance sheet is
24 weak?

25 MR. KUTIK: Objection, asked and

1 answered.

2 EXAMINER PRICE: He's answered this
3 question already today, today or yesterday.
4 Sustained.

5 Q. Prior to -- excuse me. Prior to -- prior
6 to the injection -- well, first, you testified that
7 there was a \$2 billion worth of capital injected from
8 the parent company to FirstEnergy Solutions, correct?

9 A. Yes, there was a \$2 billion cash equity
10 infusion.

11 Q. Prior to the injection of this \$2 billion
12 to the -- excuse me. Prior to the injection of the
13 \$2 billion to strengthen the balance sheet, were any
14 loans called as a result of the FES balance sheet?

15 A. I'm sorry, sir. If you could help me
16 understand when you say loans were called?

17 Q. Yes. You earlier testified that you
18 might need to post \$886 million if loans were called;
19 am I correct?

20 MR. KUTIK: Objection. Mischaracterizes
21 his testimony.

22 EXAMINER PRICE: You can answer the
23 question.

24 A. No, that's not what I said. I referred
25 to a specific area of the document that was related

1 to potential outcomes requiring \$886 million of
2 collateral under those situations.

3 Q. Okay. Prior to the injection of the \$2
4 billion to strengthen the balance sheet, was it
5 necessary for FES to post any collateral as a result
6 of loans due to FES's balance sheet?

7 A. While I don't know if there is any
8 related to loans, the collateral that I referred to
9 earlier is all related to things other than loans.
10 So I think to your question while there may not have
11 been any collateral for loans, that would just
12 further support the need for sufficient liquidity if
13 any loans required a collateral call.

14 Q. But in the past, I am asking prior to the
15 \$2 billion, infused or injected, did FES have to post
16 any collateral as a result of loans?

17 A. I don't know.

18 MR. HAYS: No further questions. Thank
19 you, Mr. Lisowski.

20 EXAMINER PRICE: Mr. McNamee?

21 MR. McNAMEE: No questions, thank you.

22 EXAMINER PRICE: Thank you, Mr. Lisowski.
23 You are excused.

24 THE WITNESS: Thank you.

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

1 company moves for the admission of Company Exhibit
2 143 and Company Exhibit 144 Confidential.

3 EXAMINER PRICE: Any objections?

4 Seeing none, it will be admitted.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER PRICE: Ms. Grady.

7 MS. WILLIS: Yes, your Honor. OCC moves
8 for the admission of Exhibit 32.

9 EXAMINER PRICE: Any objections?

10 MR. KUTIK: No objections.

11 EXAMINER PRICE: It will be admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER PRICE: At this time we will
14 take our break for lunch and reconvene at 2 o'clock,
15 at which time we would take Ms. Mikkelsen. Thank
16 you, all.

17 (Thereupon, at 12:42 p.m., a lunch recess
18 was taken until 2:00 p.m.)

19 - - -
20
21
22
23
24
25

6909

Tuesday Afternoon Session,
October 27, 2015.

- - -

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

The companies can call their next
witness, please.

MR. KUTIK: Yes, your Honor. For our
next rebuttal witness, the companies call Eileen M.
Mikkelsen.

(Witness sworn.)

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

THE WITNESS: Good afternoon. My name is
Eileen Mikkelsen. My business address is 76 South
Main Street, Akron, Ohio, 44308.

MR. KUTIK: Your Honor, at this time we
would ask to have marked for identification as
Company Exhibit 146 the rebuttal testimony of Eileen
M. Mikkelsen.

EXAMINER PRICE: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

- - -

1 EILEEN M. MIKKELSEN

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

4 DIRECT EXAMINATION

5 By Mr. Kutik:

6 Q. Ms. Mikkelsen, do you have before you
7 what has been marked as Company Exhibit 146?

8 A. Yes.

9 Q. What is that?

10 A. It is my rebuttal testimony in this
11 proceeding.

12 Q. Do you have any additions or corrections
13 to make to this document?

14 A. I do.

15 Q. Would you take us through those, please.

16 A. Certainly. Starting on page 3 the table
17 near the top of the page above Columns E and F, the
18 heading reads "Hours LMP Exceeds." After that it
19 should be -- you should add "\$100 per megawatt-hour."

20 Moving over on the same page, the same
21 table to the heading on top of the columns titled
22 "(G)" and "(H)," it reads "Average on-peak Daily" and
23 the word "Volatility" should be added after that.

24 Next moving to page 4, line 13, the
25 number that currently reads "0.073" should be changed

1 to "0.074."

2 On the same page 4 at line 14, the number
3 that reads "0.081" should be changed to "0.079."

4 Also on page 4 at line 16, the number
5 that reads "35%" should be changed to "32%."

6 Continuing along to page 6, at line 18,
7 the words "retail price mitigation" should be
8 stricken.

9 Moving on to page 11, at line 12, the
10 words "the Companies see" should be replaced with the
11 words "there is."

12 Continuing on to page 11 to line 13, the
13 word "them" should be removed and an "s" should be
14 added after "EDU" so that the sentence reads "There
15 is no significance in being the first EDUs in Ohio to
16 make this proposal."

17 Page 12, line 19, the words "experience
18 is" should be replaced with the word "forecast."

19 Also on page 12 at line 20, the word
20 "large" should be deleted.

21 That is all the corrections or
22 modifications I have to my testimony.

23 Q. With those additions and corrections, if
24 I asked you the questions that appear in Exhibit 146,
25 would your answers be the same?

1 A. Yes.

2 MR. KUTIK: No further questions.

3 EXAMINER PRICE: Thank you.

4 Mr. Fisk, Sierra Club has filed a motion
5 to strike with respect to this -- with respect to
6 this testimony. Do you want to get us caught up
7 again so we are all on the same page as to exactly
8 what you would like stricken?

9 MR. FISK: Certainly, yes. Your Honor,
10 we have filed a motion to strike portions of
11 Ms. Mikkelsen's testimony as improper rebuttal. In
12 our motion we set forth kind of three segments. The
13 first is starting page 2, line 16 to page 4, line 17.
14 The second is page 4, line 18 through page 5, line 7
15 including the footnotes. And the third is page 5,
16 line -- I'm sorry. Okay. Page 6, line 7 through
17 page 7, line 8. And did you want argument on it
18 or --

19 EXAMINER PRICE: If you would like to
20 briefly summarize your argument.

21 MR. FISK: Okay. In short, the scope of
22 rebuttal testimony is supposed to be limited to
23 testimony that a party could not have presented as
24 part of its direct case and testimony that is
25 rebutting new evidence first introduced by

1 intervenors in the proceeding. And we believe the
2 portions that I have identified of Ms. Mikkelsen's
3 testimony does neither.

4 Ms. Mikkelsen has offered in her rebuttal
5 data purporting to show retail rate volatility. This
6 is an issue that was initially flagged in the
7 application that FirstEnergy filed stating that one
8 of the purposes of the proposed transaction in rider
9 RRS is to facilitate and address retail rate
10 volatility.

11 All of the testimony that Ms. Mikkelsen
12 has put into her rebuttal testimony on this issue
13 could have been included in her direct. There were
14 other witnesses in their direct testimony, Mr. Rose,
15 Mr. Strah, who did address these volatility issues,
16 and simply allowing this new information to come in
17 through rebuttal is nothing more than a free swing by
18 the companies at the retail rate volatility issue in
19 a -- in testimony that the parties have not been able
20 to do any discovery on in terms of written discovery
21 or any deposition on.

22 So we believe that it is both beyond the
23 scope of rebuttal testimony and prejudicial to the
24 intervenors to have this information that could have
25 been and should have been presented earlier instead

1 presented through rebuttal.

2 MR. PETRICOFF: Your Honor, if we could,
3 we would like to join and add to the argument the
4 fact that in the supplemental testimony that was
5 filed in this case, one of the issues that we were
6 supposed to address were the points that were made by
7 the Commission in the AEP ESP III case, which
8 included rate stability, so it should have come in as
9 supplemental if it was going to come in.

10 MS. BOJKO: Your Honor, OMAEG would join
11 the motion.

12 MS. FLEISHER: As does the ELPC.

13 EXAMINER PRICE: I'm posing a question to
14 you.

15 MR. FISK: Yes.

16 EXAMINER PRICE: In Commission
17 proceedings, obviously, generally, and a little
18 deviation in this proceeding, but generally the
19 company files its direct testimony more or less with
20 the application, and then some time rolls by, and the
21 intervenors file their intervenor testimony.

22 How could the companies anticipate which
23 areas intervenors are going to file their testimony
24 on? You know what I am saying? Do you understand
25 what I am saying?

1 MR. FISK: I do.

2 EXAMINER PRICE: There is no question
3 that Dr. Kalt and Mr. Comings addressed retail rate
4 volatility, right?

5 MR. FISK: Well, they -- for example,
6 Mr. Comings noted that the application failed to
7 provide any evidence of retail rate volatility and
8 then offered one set of evidence on that issue. And
9 if the companies had wanted to directly critique what
10 Mr. Comings provided on Figure 5 in his supplemental
11 testimony on page 27, that might have been proper
12 rebuttal directly saying, okay, here's why
13 Mr. Coming's analysis is wrong.

14 Instead, what they have done is they've
15 offered a bunch of analyses of the Apples to Apples
16 website and some PJM numbers that go far beyond any
17 sort of direct response to Mr. Comings, and, instead,
18 is simply trying to paper the record on something
19 that should have been included in the direct
20 testimony. It wasn't.

21 EXAMINER PRICE: Mr. Kutik, care to
22 respond?

23 MR. KUTIK: Yes, I do, your Honor. The
24 moving parties here, your Honor, I believe I think is
25 your question, indicates -- labor under a

1 misimpression about how -- misimpression as to how
2 this proceeding works.

3 The companies in filing their application
4 were duty-bound under the Commission's regulations to
5 file an application plus supporting -- material
6 supporting the application. That was the companies'
7 burden with respect to its filing.

8 The intervenors then had the opportunity
9 to take months of discovery, and we have been -- and
10 I have cited to you in prior arguments the mounds of
11 discovery that they have been able to obtain.

12 They then filed their testimony. It
13 is -- all that testimony then becomes subject to
14 cross-examination in this case. It is now our time
15 to respond to the written testimony that's filed by
16 the intervenors. That's how the process works.

17 To set up the standard that is proposed
18 by the movants here would set up a standard of
19 prescience, of omniprescience, with respect to the
20 companies; that the companies should somehow
21 anticipate, even with respect to issues that are
22 raised in whole or in part in their application, to
23 cover all aspects of those issues.

24 And that clearly isn't the Commission
25 rule and it clearly isn't what Commission precedent

1 is. For example, your Honor, this very issue was
2 addressed in the AEP ESP I case on the order on
3 remand, and that case is Case No. 08-917-EL-SSO, and
4 the order on remand on October 3, 2011. In that
5 order, your Honor, one of the things that was
6 discussed was the remand testimony of Dr. LaCasse
7 from AEP with respect to modeling.

8 The companies, AEP, said in its
9 application that its POLR charge could be supported
10 by modeling. Intervenors, particularly IEU,
11 submitted testimony which said, in part, that
12 modeling should be done a certain way, and AEP's
13 rebuttal witness then did the modeling that way. IEU
14 and others argued that rebuttal testimony was
15 improper because the modeling was mentioned and
16 should have been done in AEP's case in chief.

17 The Commission rejected those arguments
18 finding that as the way the Commission proceedings
19 work, and particularly ESP proceedings, that it is
20 fair for the companies to have an opportunity to
21 respond to intervenors's witnesses with rebuttal
22 testimony.

23 The order further observed that the
24 parties opposing the company did not suffer any
25 prejudice because they had the opportunity, as do

1 these parties here, to cross-examine Ms. Mikkelsen.

2 Now, with respect to the precedence or
3 the case -- I shouldn't call them precedence -- cited
4 by Sierra Club, none of them stand for the
5 proposition that a party with the burden of proof is
6 prevented from writing testimony where that party has
7 not had an opportunity to squarely address the issue
8 raised by opposing testimony.

9 In the one case, in the Ameritech case,
10 it was the opposing parties who were banned from
11 providing rebuttal testimony because they had the
12 opportunity to respond to the companies' testimony in
13 that case.

14 In the Cincinnati Bell case, it was OCC
15 that was denied the opportunity to provide rebuttal
16 testimony in response to staff.

17 In the Toledo Edison case, the company
18 was barred from providing rebuttal testimony because
19 the company was responding to the staff report, and
20 the order correctly points out that the company had
21 the opportunity to respond to the staff report in
22 filing supplemental testimony, and they did file
23 supplemental testimony. In this case we have not had
24 the opportunity to file in response to testimony, and
25 this is our opportunity.

1 Now, with respect to the three areas that
2 were mentioned as part of the motion to strike, these
3 all squarely deal with issues that were raised by
4 opposing witnesses. And, in fact, counsel for Sierra
5 Club has mischaracterized his own witness's
6 testimony.

7 With respect to the testimony,
8 Mr. Comings, in his supplemental testimony, was asked
9 this question, "Is there any evidence of retail rate
10 stability in Ohio?" The question wasn't about this
11 case. It was about Ohio. And then Mr. Comings went
12 on and provided what analysis he felt necessary to
13 provide.

14 Ms. Mikkelsen certainly is entitled and
15 the companies are certainly entitled to put
16 Ms. Mikkelsen on to testify about its views with rate
17 stability and rate volatility in Ohio and that's
18 exactly what we've done.

19 With respect to the other issues, your
20 Honor, with respect to the testimony at page 4, line
21 18 to page 5, line 7, that specifically responds to
22 the statement by Mr. Kalt -- Dr. Kalt and Mr. Comings
23 that the rider RRS would not mitigate price increases
24 and volatility. And further, your Honor, you also --
25 this also responds to the testimony that you elicited

1 from Mr. Wilson with respect to the impact of rider
2 RRS on a gross basis, and Ms. Mikkelsen responds to
3 Mr. Wilson's testimony in that regard.

4 Also with respect to page 6, line 7 to
5 page 7, line 8, that specifically responds to
6 statements by Dr. Choueiki with respect to laddering
7 and staggering, and we provide our view through
8 Ms. Mikkelsen with respect to that and with respect
9 specifically to Dr. Choueiki's comments.

10 These are -- this is all fair game for us
11 to respond to. It's all fair to be put in
12 Ms. Mikkelsen's testimony, and as was the case in the
13 AEP case, your Honor, Ms. Mikkelsen is available for
14 cross-examination, and that's the process that -- the
15 due process they are entitled to.

16 As we indicated when we had our argument
17 before you off the record, Ms. Mikkelsen's
18 testimony -- and with respect to e-mails following,
19 all the data in Ms. Mikkelsen's testimony is publicly
20 available on the PJM website or PUCO website. So for
21 all those reasons, your Honor, the motion to strike
22 should be denied.

23 EXAMINER PRICE: Mr. Petricoff, care to
24 respond?

25 MR. PETRICOFF: No, your Honor. My

1 comments have already been presented.

2 EXAMINER PRICE: Mr. Fisk, care to
3 respond?

4 MR. FISK: Thank you, your Honor. Just
5 quickly on the impressions issue, this is not some
6 surprise issue that, you know, the intervenors
7 brought up at the proceedings. The companies filed
8 an ESP that includes something referred to as a
9 retail rate stability rider and specifically say in
10 their application that the purpose of the rider is
11 "to address retail price volatility."

12 This was clearly something that they are
13 well aware of in their application and easily could
14 have included the information that Ms. Mikkelsen is
15 now providing in their direct case in chief.

16 In terms of the precedent that would be
17 set, the concern here is that if this sort of
18 rebuttal testimony is allowed in, the incentive for
19 an applicant is to simply hold information back until
20 rebuttal when they know that the parties -- the
21 intervenors are generally not entitled to or at least
22 severely limited in their ability to do any
23 discovery.

24 EXAMINER PRICE: Take a lot of nerve to
25 do that, wouldn't it, if they have the burden of

1 proof?

2 MR. FISK: Well, it's an easy way for
3 them to submit information that there has been no
4 discovery on, which is what is happening here. And,
5 you know, in terms of addressing testimony raised by
6 intervenors, you know, I think it's notable that
7 unlike the other rebuttal testimony that's been filed
8 where there was specific page citations and specific
9 identifying specific areas in intervenor testimony
10 that they are rebutting, here there is nothing.
11 Ms. Mikkelsen simply says Mr. Comings says this.
12 Mr. Kalt says this. Here is all my evidence on that.
13 But there is no actual citations anywhere in her
14 testimony that she claims to be rebutting
15 specifically.

16 EXAMINER PRICE: But could you ask her
17 that on cross? I mean, I certainly remember
18 Dr. Choueiki's testimony on staggering and laddering,
19 so I mean, it's -- is it your position that failure
20 to pinpoint cites is fatal?

21 MR. FISK: I think it is further evidence
22 that this is not really a serious attempt at
23 rebuttal. It's an attempt to fix a problem that
24 should have been addressed in their initial
25 application late in the rebuttal phase.

1 EXAMINER PRICE: Mr. Kutik addressed the
2 cases you cited. Why don't you explain how you think
3 the AEP remand order should be distinguished?

4 MR. FISK: To be honest, I have not read
5 that AEP remand order. I would say that the -- the
6 fundamental point there, my understanding of that
7 case, is that the parties specifically -- the
8 intervenors in that proceeding specifically said this
9 is how you should have analyzed X issue. You should
10 have done X modeling, and that's what happened.
11 That's what AEP then did.

12 In this proceeding here, the bulk of the
13 testimony on rate volatility from Mr. Comings was
14 simply the companies haven't made any showing at all
15 on something that they say is the basis for their
16 entire proposal. To allow the company to then
17 suddenly make this showing in rebuttal prejudices the
18 intervenors, and is the type of free-swing issue that
19 the Commission has previously said is not allowed.

20 EXAMINER PRICE: We are going to deny the
21 motions to strike at this time. Mr. Fisk indicates
22 we may be setting a precedent. I frankly think the
23 precedent case as already been set by the remand
24 case, and, frankly, I think the remand case
25 memorializes the way Commission practice typically is

1 in these situations.

2 I don't know about Mr. Kutik's argument
3 about prescience, but certainly you can't ask the
4 company to put in their application every plausible
5 or remotely foreseeable piece of data that supports
6 their application, so we will deny the motions to
7 strike at this point.

8 Mr. Petricoff, did you have another
9 motion to strike?

10 MR. PETRICOFF: No, your Honor. Our only
11 point was just -- and I guess it's moot at this
12 point. We joined because we think that the
13 supplemental testimony created an obligation that
14 wasn't met, but I assume we have lost on that, so we
15 are ready to move on.

16 EXAMINER PRICE: I think that rebuttal
17 still applies to supplemental testimony.

18 Mr. Sauer, do you have a motion to strike
19 as well?

20 MR. SAUER: I do not.

21 EXAMINER PRICE: Okay. So we covered all
22 the motions to strike?

23 Mr. Fisk.

24 MR. FISK: Thank you, your Honor.

25 - - -

1 CROSS-EXAMINATION

2 By Mr. Fisk:

3 Q. Good afternoon, Ms. Mikkelsen.

4 A. Good afternoon.

5 Q. How are you doing today?

6 A. Fine, thank you.

7 Q. Good. If you could turn to your rebuttal
8 testimony, let's start on page 3. The table I
9 believe you referred to in making a couple
10 corrections, who created this table?

11 A. This table was created under my direction
12 by someone who reports to me in my organization.

13 Q. And who was that?

14 A. By name?

15 Q. Yes.

16 A. Rick Pajevic.

17 MS. BOJKO: Your Honor, I'm sorry. I
18 hate to interrupt, but just for consistency sake, I
19 am assuming that any party opposing this -- or
20 agreeing with the application, supporting the
21 stipulation, or agreeing not to oppose would go prior
22 to any intervenors.

23 MR. FISK: Right.

24 EXAMINER PRICE: Mr. Kurtz, you don't
25 have any questions?

1 MR. KURTZ: I don't have any questions,
2 your Honor.

3 MS. BOJKO: There are other intervenors
4 in the room.

5 EXAMINER PRICE: Mr. Pritchard, are you
6 going to have any questions?

7 MR. PRITCHARD: No questions.

8 EXAMINER PRICE: Mr. Lavanga?

9 MR. LAVANGA: No questions.

10 MS. BOJKO: Thank you, your Honor. I
11 appreciate that.

12 MR. FISK: Forgot to mention that.

13 Q. (By Mr. Fisk) Okay. And so this table on
14 page 3 of your rebuttal testimony, it has a header
15 that says "Companies' Load Zone"; is that right?

16 A. Yes.

17 Q. And so the data report reported in this
18 table, is this data for ATSI?

19 A. No.

20 Q. No. What zone is it for?

21 A. FE Ohio aggregate.

22 Q. And when you say "aggregate," so what is
23 being aggregated?

24 A. The FE Ohio utilities.

25 Q. Okay. And how is that -- I guess, how is

1 ATSI Ohio aggregate different from if you were
2 looking at just the ATSI zone?

3 A. I didn't refer to it as ATSI Ohio
4 aggregate, sir. I referred to it as FE Ohio
5 aggregate, so if I could ask you to just restate your
6 question, please.

7 Q. I apologize. I believe -- I thought you
8 said ATSI. Okay, FE Ohio aggregate. How would FE
9 Ohio aggregate differ from looking at the ATSI zone?

10 A. It would not include Penn Power located
11 in Pennsylvania and AMP-Ohio and Buckeye within the
12 ATSI zone.

13 Q. Okay. And when you say "it would not
14 include," you mean the FE Ohio aggregate would not
15 include that?

16 A. Correct.

17 Q. Okay.

18 MR. KUTIK: Mr. Fisk, could you turn on
19 your microphone?

20 MR. FISK: Oh, yes. Sorry.

21 Q. (By Mr. Fisk) Okay. And then if you go
22 over to the far right side of the table, it says
23 "Average on-peak Daily Volatility," correct?

24 A. Yes.

25 Q. Okay. And there's then a column for "Day

1 Ahead" and a column for "Real Time"; is that correct?

2 A. Yes.

3 Q. Okay. How was the 10 percent figure for
4 day-ahead calculated?

5 A. Focusing on these columns, I wanted to
6 append to my earlier answer that a different
7 gentleman prepared these calculations that are
8 included in this table for me. It was also done
9 under my direction by a gentleman who reports to me,
10 but it wasn't Mr. Pajevic.

11 Q. Okay. Thank you.

12 A. You're welcome. Regarding how the
13 calculation for the average on-peak daily volatility,
14 day-ahead for the period June '11 through May '15, we
15 looked at the on-peak hours on a daily basis through
16 that period, and the on-peak hours for this purpose
17 from the PJM website are 7 a.m. to 11 p.m. We
18 calculated an average on-peak value for each of the
19 on-peak days throughout that two-year period, and
20 then we calculated what the absolute value of the
21 difference was from a day-to-day basis and then
22 averaged those to come up with the average on-peak
23 daily volatility.

24 Q. Okay.

25 MR. KUTIK: Your Honor, may I have the

1 first couple of sentences of that answer read? I
2 believe Ms. Mikkelsen misspoke.

3 EXAMINER PRICE: You may. Let's have the
4 answer back.

5 (Record read.)

6 MR. KUTIK: Thank you.

7 A. Well, the answer is correct. For the
8 whole period through June 15, I think the question
9 posed to me was specifically through May of '13, but
10 the calculation is the same. It's just for a shorter
11 period.

12 Q. Okay. Thank you. And this calculation
13 to come up with that 10 percent figure was done by
14 the individual on your staff that you referenced; is
15 that correct?

16 A. Yes.

17 Q. Okay. So that 10 percent figure is not a
18 figure that is located on the PJM website; is that
19 right?

20 A. Correct.

21 Q. Okay. And did the gentleman who created
22 this figure, did he create any sort of workpaper in
23 creating -- in calculating that figure?

24 A. He would have taken the daily peak hours,
25 the LMPs associated with the day-ahead peak hours for

1 the period of June 1st of 2011 through May 31st of
2 2013, downloaded that information off the PJM
3 website, and then, as I described, calculated the
4 absolute value of the change day-to-day and average
5 loads to calculate the daily volatility.

6 Q. And he would have done that in some sort
7 of a spreadsheet?

8 A. Yes.

9 Q. Have you seen that spreadsheet?

10 A. Yes.

11 Q. And has that spreadsheet been provided to
12 any party in this proceeding?

13 A. No.

14 Q. Okay. And the 16 percent figure also in
15 the column G on this table, that was calculated in
16 the same way as the 10 percent figure; is that right?

17 A. Same calculation, different time period,
18 correct.

19 Q. Okay. And also done on a spreadsheet?

20 A. Yes.

21 Q. Okay. And that spreadsheet also has not
22 been provided to any party in this proceeding; is
23 that correct?

24 A. Yes.

25 Q. Okay. Looking over to Column H in this

1 table that says "Real Time," for the 20 percent
2 figure, how was that derived?

3 A. The calculation was the same as the
4 calculation I described for the day-ahead
5 calculation. The only difference was the source of
6 the data from the PJM website would have focused on
7 on-peak, real time LMPs as opposed to the day-aheads.

8 Q. Okay. And so with regards to that --
9 that 20 percent figure, someone on your staff would
10 have pulled those on-peak, real time LMP numbers off
11 the PJM website; is that right?

12 A. Yes.

13 Q. Okay. And then put them into a
14 spreadsheet; is that right?

15 A. They download off the PJM website into a
16 spreadsheet.

17 Q. Okay.

18 A. That's part of the downloading process,
19 but they end up in a spreadsheet, yes.

20 Q. And then someone on your staff ran
21 calculations in that spreadsheet; is that right?

22 A. They calculated the absolute value of the
23 change day-to-day and averaged it, correct.

24 Q. And you've seen that spreadsheet?

25 A. Yes.

1 Q. Okay. And that spreadsheet has not been
2 provided to any party in this proceeding; is that
3 correct?

4 A. Yes.

5 Q. Okay. And with regards to the 27 percent
6 figure on Column H, would all your answers regarding
7 how it's calculated be the same?

8 A. Except it would be a different time
9 period; otherwise, the calculation would be the same,
10 correct.

11 Q. Okay. And also that calculation was also
12 done on a spreadsheet, right?

13 A. Yes.

14 Q. And that spreadsheet has never before
15 been provided to any party; is that correct?

16 A. Yes.

17 Q. Okay. And so the column -- the two
18 columns, I guess, labeled E and F under the header
19 "Hours LMP Exceeds \$100 Per Megawatt-hour," do you
20 see that?

21 A. Yes.

22 Q. Okay. So for the day-ahead, is that
23 using the same on-peak LMP data that was used in
24 Column G?

25 A. No.

1 Q. Okay. What data was used in the
2 day-ahead Column E for hours LMP exceeds \$100 per
3 megawatt-hour?

4 A. It would have started with the same PJM
5 dataset but in Column E there would not have been a
6 screen for on-peak hours. The screen would have been
7 for any hour greater than \$100 per megawatt-hour.

8 Q. Okay. And is that with regards to the
9 real time Column F, you would do the on-peak real
10 time -- I'm sorry. The real time LMP data from PJM
11 for all hours?

12 A. Yes.

13 Q. Okay. Okay. And on the left Column A
14 and B under "Highest LMP," let's say for the June,
15 '13 to May, 2015, period, how was that number
16 derived?

17 A. Again, starting with the PJM dataset for
18 LMPs for FirstEnergy Ohio aggregate, day-ahead for
19 the period June, '13 through May 31st of 2015, we
20 would have sorted that hourly data looking for the
21 highest day-ahead LMP in that dataset.

22 Q. Okay. And do you know what day that
23 highest LMP for the June, 2013, to May, 2015, time
24 period, on what day that highest LMP occurred?

25 A. I don't recall.

1 Q. Okay. And what would you have to do to
2 determine that?

3 A. Look at the dataset.

4 Q. Okay. And that's a dataset that you
5 downloaded from the PJM website?

6 A. The data is on the PJM website. Anyone
7 can look at that data on the PJM website.

8 Q. Okay. But you then -- that data used in
9 Column A for the June, 2013 to May 2015, time period,
10 you downloaded that into a spreadsheet that you could
11 then look at to determine what the highest LMP was?

12 A. Yes.

13 Q. Okay. So if the parties had access to
14 that spreadsheet, they would know -- they would be
15 able to determine whether that -- on what day that
16 highest LMP was?

17 A. And the parties could determine it by
18 looking at the PJM website as well, sir.

19 Q. Okay. Would there be any way simply
20 looking at your written testimony to know what set of
21 PJM data to download?

22 A. Yes.

23 Q. Where does it identify in the table that
24 you would need to download the FE Ohio aggregate
25 data?

1 A. On page 2, at line 21, it says, "The
2 chart below summarizes PJM hourly prices for the
3 Companies load zone."

4 Q. Okay. So somebody reading that would
5 have to know that that is referring to the FE Ohio
6 aggregate as opposed to some other set of data on the
7 PJM website?

8 A. That is the companies' load zone, sir.

9 Q. But nowhere does your testimony identify
10 specifically that FE Ohio aggregate data was used,
11 correct?

12 MR. KUTIK: Objection.

13 EXAMINER PRICE: Grounds?

14 MR. KUTIK: Asked and answered.

15 EXAMINER PRICE: Sustained.

16 Q. (By Mr. Fisk) So for the highest LMP
17 prices, either day-ahead or real time, during the
18 June, 2013, to May, 2015, period, do you know whether
19 those prices were during the polar vortex?

20 A. I don't think the real time highest LMP
21 was during the polar vortex. I don't remember with
22 respect to the day-ahead.

23 Q. Do you know when the real time highest
24 LMP was?

25 A. I believe the real time highest LMP

1 occurred later in the month of January, 2014.

2 Q. And just so I make sure we're on the same
3 page, what is your understanding of the time frame of
4 the polar vortex?

5 A. January 7, maybe bounded by January 6 and
6 8, 2014.

7 Q. Okay. And then am I correct that there
8 was a second cold snap later in January, 2014?

9 A. January, 2014, was a very cold month.

10 Q. Yes, it was. And so the real time
11 highest LMP number occurred sometime during that cold
12 month of January, 2014?

13 MR. KUTIK: Objection. Asked and
14 answered. She said it was later in the month of
15 January.

16 EXAMINER PRICE: Overruled. She can
17 answer this one.

18 A. My recollection is it was later in the
19 month of January, 2014.

20 Q. Okay. And if you turn to page 2 of your
21 rebuttal, starting on line 19, you have a sentence
22 there that says, "One example would be customers who
23 take service under a variable price contract with a
24 CRES provider based on Day-Ahead or Real Time LMPs
25 with a retail adder." Do you see that?

1 A. Yes.

2 Q. Okay. And so those customers who take
3 service under such a variable-priced contract,
4 essentially their contract is indexed to the LMPs; is
5 that right?

6 A. There are a number of different products
7 available to customers that index in total or in part
8 to either the day-ahead LMPs or the real time LMPs.

9 Q. Okay. And the data on the table on
10 the -- towards the top of page 3 of your rebuttal
11 testimony is relevant to whether those customers who
12 have a contract that is indexed to the LMP would
13 experience some sort of rate volatility; is that
14 right?

15 THE WITNESS: May I ask that you reread
16 the question, ma'am.

17 (Record read.)

18 A. The table at the top of page 3
19 demonstrates increasing volatility as we move through
20 time since the companies moved into PJM, and
21 customers that take electric service on a partial or
22 fully indexed product to the LMPs would be
23 susceptible to that volatility.

24 Q. Okay. So the data on the table on page 3
25 doesn't reflect volatility that customers who are

1 taking service that isn't indexed to the LMPs might
2 experience, correct?

3 A. No. I don't think I can agree with that.

4 Q. Well, if the customers are not indexed to
5 the LMPs, they would not be directly subject to the
6 price changes identified in this table on page 3,
7 correct?

8 A. I think that the volatility and the
9 increasing frequency and magnitudes in the swings of
10 the prices would be reflected in offers made by
11 competitive suppliers who are offering fixed price,
12 or for wholesale participants, who are bidding into
13 the SSO auction. I think in both of those instances
14 as well, the volatility in the market would influence
15 the level of the offers.

16 Q. Okay. And those two circumstances, you
17 address those on page 4, lines 1 through 17 of your
18 rebuttal testimony, correct?

19 A. Yes.

20 Q. Okay. So I guess I'm just -- I'm just
21 leaving aside that discussion on page 4, the table on
22 page 3, that data is really addressing the customers
23 who have an indexed contract, correct?

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

1 EXAMINER PRICE: He's just seeking
2 clarification. Overruled.

3 A. The data presented here in the table at
4 the top of page 3 would illustrate very directly what
5 the volatility impacts were to customers taking
6 service on a product that's indexed in whole or in
7 part to the market. But the same underlying
8 volatility would, as you have pointed out, apply to
9 the examples that I have listed on page 4 of my
10 testimony.

11 Q. Okay. And do you know approximately how
12 many of the companies' customers take service under a
13 variable-price contract that is indexed either in
14 whole or in part to the LMPs?

15 A. While I don't know the number of
16 customers that take service from a competitive
17 supplier indexed in whole or in part to the LMPs, I
18 do know that the CRES community in the companies'
19 service territory, a review of their website to
20 indicate that there are a number of variable-priced
21 or indexed products, whether they are indexed to the
22 LMP on the real time basis or the day-ahead basis or
23 a block and load following product or a load-shaped
24 fixed with an indexed following. Many, many of the
25 retail suppliers offer those types of products.

6940

1 I'm also aware from my experience when I
2 ran an energy consulting business and advised a
3 national client base, that a number of clients that I
4 advised at that time, some of whom were in the
5 companies' service territory, did take service on an
6 indexed, at least this whole or in part, product,
7 product indexed to market, in whole or in part.

8 MS. BOJKO: Your Honor, may I have that
9 question reread, please.

10 EXAMINER PRICE: You may.

11 (Record read.)

12 MS. BOJKO: Thank you.

13 Q. (By Mr. Fisk) Okay. But you don't -- you
14 don't know, am I correct, what percent of
15 customers -- shopping customers end up selecting one
16 of those contracts that's indexed, either in whole or
17 in part, to the LMPs, correct?

18 A. No. As an employee of the utility
19 companies, I wouldn't have access to that
20 information, sir.

21 Q. Okay. And the consulting work that you
22 referred to, when did you do that?

23 A. 2006 to 2010.

24 Q. Okay. And where was that?

25 A. The E Group.

1 Q. And was that for clients based in PJM?

2 A. We had a nationwide client base with
3 customers that took service in PJM, as well as across
4 the entire nation, all of the energy markets and the
5 regulated markets.

6 Q. Okay. And customers who decide to enter
7 into these variable-price contracts that are indexed,
8 either in whole or in part, to the LMPs, those are
9 shopping customers, correct?

10 A. Yes.

11 Q. Okay. And so those customers have
12 voluntarily chosen to enter into such contracts,
13 correct?

14 A. Yes.

15 Q. Okay. So on page 3 of your rebuttal
16 testimony, at lines 10 through 18, there you have a
17 discussion of the companies' rider ELR customers; is
18 that right?

19 A. Yes.

20 Q. Okay. And you discuss how rider ELR
21 customers are subject to an economic buy-through
22 provision; is that right?

23 A. Yes.

24 Q. Okay. And can we agree to refer to that
25 as the EBT?

1 A. Yes.

2 Q. Okay. Great. And on lines 15 to 16 on
3 page 3, you state that "For delivery years 2011/2012
4 and 2012/2013 that Rider ELR customers had 194 EBT
5 hours." Do you see that?

6 A. I do.

7 Q. Okay. And did you calculate the number
8 of EBT hours?

9 A. Independent of this proceeding, under my
10 direction, an employee of mine keeps a running log of
11 the EBT hours, when they occur, and what the
12 buy-through price is, so I had that information
13 accessible to me in the normal course of my
14 responsibilities.

15 Q. Okay. So to your knowledge, is the 194
16 EBT hours a figure publicly available to -- to the
17 intervenors outside of what's now being included in
18 your testimony?

19 A. I think the information is publicly
20 available insomuch as an EBT hour is called when the
21 day-ahead LMP exceeds 1.5 times the average auction
22 clearing price, as I say here in my testimony, so
23 that information is available publicly, yes.

24 Q. There's no place in the -- at, say, the
25 Commission, correct, where that specific number is

1 filed; is that right?

2 THE WITNESS: May I have that question
3 reread, please?

4 EXAMINER PRICE: You may.

5 MR. FISK: I can restate the question.

6 Q. Is there anywhere that you can go in a
7 Commission filing and find that 194 EBT hours figure,
8 outside of, obviously, your rebuttal testimony?

9 A. No.

10 Q. Okay. And is there anywhere on the PJM
11 website where that the 194 EBT hours figure is
12 reported?

13 A. The PJM website contains the underlying
14 data, the day-ahead LMPs, which are used to determine
15 whether an EBT exists. The No. 194 I don't believe
16 you would see on the PJM website.

17 Q. Okay. So you would have to -- so someone
18 interested in figuring out the EBT hours would have
19 to go to the PJM website and download the day-ahead
20 LMPs for the delivery years at issue, correct?

21 A. Yes.

22 Q. Okay. And would that be the FE Ohio
23 aggregate zone?

24 A. Yes.

25 Q. Okay. And then they would have to

1 compare it to the average auction clearing price for
2 the delivery year; is that right?

3 A. Yes.

4 Q. And where would the average action
5 clearing price be located?

6 A. Those values would be available on the
7 PUCO website as part of our rider GEN filings.

8 Q. Okay. And you did not provide any source
9 data in your testimony for where to find the average
10 auction clearing price, correct?

11 A. The FirstEnergy Ohio auction clearing
12 price is a fairly well-known number. I did not
13 provide a source for that in my testimony.

14 Q. Okay. And so did you personally do the
15 review of the PJM LMP figures and the average auction
16 clearing price to determine how many EBT hours there
17 were?

18 MR. KUTIK: Objection, asked and
19 answered.

20 EXAMINER PRICE: Mr. Fisk.

21 MR. FISK: I didn't recall asking that
22 before, whether she had personally done that
23 analysis.

24 MR. KUTIK: Well, she said that someone
25 under her supervision keeps a -- keeps a regular log

1 of that information, and that information is
2 available to her on a -- in her normal course of her
3 duties.

4 EXAMINER PRICE: Sustained.

5 MR. FISK: Okay. Fair enough.

6 Q. (By Mr. Fisk) Okay. And is that the same
7 for the 687 EBT hours figures for delivery years
8 2013-2014, and 2014-2015?

9 A. I'm sorry, sir, may I ask you to be more
10 specific with respect to is what the same?

11 Q. Is it the same source for that 687-hour
12 figure?

13 A. The underlying source for all of this
14 data is the PJM day-ahead LMPs, right. That's the
15 underlying source of the data, right. And then we --
16 under my direction -- what happens is if on a
17 day-ahead basis we see that the LMP will exceed 1.5
18 times the auction clearing price on a day-ahead
19 basis, we send notice out to all of our ELR customers
20 advising them the hours that there will be an
21 economic buy-through and what the buy-through price
22 will be, so that's sort of our process.

23 And in doing that, then we log on that
24 information because there's a cap in the tariff on
25 the annual amount of economic buy-through hours that

1 can occur. So we need to keep a running tally of
2 those hours so that we don't make the mistake of
3 calling an economic buy-through event when we have
4 already exceeded the annual cap.

5 EXAMINER PRICE: I think he was just
6 asking you if you use that running total to get the
7 687.

8 THE WITNESS: Yes.

9 MR. FISK: Thank you, your Honor.

10 Q. (By Mr. Fisk) Okay. And so when the EBT
11 notice goes out, the rider ELR customer then has the
12 objection of either curtailing the load or doing a
13 buy-through; is that right?

14 A. Yes.

15 Q. Okay. So the rider ELR customers did not
16 necessarily buy through for all 194 EBT hours in the
17 2011-2012 and 2012-2013 EBT hours; is that right?

18 A. Each ELR customer makes the decision
19 based on the day-ahead prompt each time there's an
20 economic buy-through, whether they choose to buy
21 through or curtail their firm load levels.

22 Q. Okay. And do you know approximately what
23 percentage of the time for that 194 hours the ELR
24 customers chose to buy-through rather than curtail?

25 A. I don't. But a customer who chooses to

1 buy-through or curtail, in my mind, is subject to the
2 volatility. They are making a decision that impacts
3 their operation or their economics based on the
4 volatility in the market.

5 Q. Okay. And do you also not know what
6 percentage of the 687 EBT hours for 2013-2014 and
7 2014-2015 customers -- ELR customers chose to curtail
8 versus buy through?

9 A. I don't know the exact percentage.

10 Q. Okay. And with regards to the 687 EBT
11 hours, do you know what portion of those hours were
12 for the 2013-2014 delivery year as opposed to the
13 2014-2015 delivery year?

14 A. I know that approximately 480 of those
15 hours were for the period January, 2014, through
16 March of 2014.

17 Q. Okay. And rider ELR customers have
18 chosen to participate in that rider, correct?

19 A. Yes.

20 Q. And those customers can choose to
21 withdraw from rider ELR; is that right?

22 A. There are notice provisions associated
23 with participating in rider ELR so they cannot just
24 simply decide in a period of dramatic economic
25 buy-through hours to withdraw from the tariff.

1 There's, I think, a 36-month forward notice in order
2 to exit the tariff, so.

3 Q. Okay.

4 A. Very limited opportunity to move off that
5 tariff and on at will.

6 Q. Okay. But if they follow the notice
7 provisions, they can choose to withdraw, subject to
8 following those -- those provisions?

9 A. 36 months later they can remove
10 themselves from the tariff, correct.

11 Q. Okay. And customers who participate in
12 rider ELR are compensated for doing so, correct?

13 A. Customers who participate in rider ELR
14 receive a \$5 per kW ELR credit for their
15 participation.

16 Q. Okay. Okay. If you could turn to page 4
17 of your rebuttal testimony down on line 23, you have
18 a sentence that goes over onto page 5 that says
19 "Estimated total generation charges over the 15-year
20 period, on an illustrative \$71.2 billion." Do you
21 see that?

22 A. Yes.

23 Q. Okay. And so this \$71.2 billion figure,
24 is that total generation charges for serving all of
25 the companies' customers?

1 A. It is the estimated total generation
2 charge for serving all of the companies' customers.

3 Q. Okay. And on line 1 of page 5 when you
4 say "on an illustrative basis," what do you mean by
5 that?

6 A. That I took information that was
7 available to the parties in the record and used that
8 information to come up with an estimate. I guess
9 it's probably redundant with estimate for
10 illustrative purposes of what that generation charge
11 would be over the period of the Economic Stability
12 Program.

13 Q. Okay. And you calculated that figure by
14 taking the energy and capacity prices included in
15 witness Strah's workpapers and then applying those to
16 estimated retail sales for the -- for the three
17 companies; is that right?

18 A. Yes.

19 Q. Okay. Did you do that calculation
20 yourself?

21 A. It was done under my direction.

22 Q. Okay. And do you know, was any sort of a
23 workpaper created in making that calculation?

24 MR. KUTIK: Other than Mr. Strah's
25 workpaper?

1 MR. FISK: Yes.

2 A. There was a spreadsheet used to perform
3 the calculation.

4 Q. And that spreadsheet hasn't been provided
5 to any of the parties in this proceeding, correct?

6 A. No. But the information contained in the
7 spreadsheet has been provided to the parties in the
8 case.

9 Q. Okay. And \$71.2 billion figure is
10 referred to as estimated total generation charges.
11 Does that mean it does not include transmission
12 charges?

13 A. Correct. It is the conversion of the
14 energy and capacity prices from Judah Rose into a
15 retail dollar per megawatt-hour number for
16 generation.

17 Q. Okay. And then starting on line 4 on
18 page 5, you have a sentence that says, "Similarly,
19 total retail revenue is estimated, on an illustrative
20 basis, at \$104 billion over the term of the Economic
21 Stability Program." Do you see that?

22 A. Yes.

23 Q. Okay. And how is that \$104.2 billion
24 dollars figure calculated?

25 A. That number, as you can see in footnote

1 No. 3, was based on information reported to EEI for
2 the 12th months ending December 31, 2014. So what we
3 did was look at that EEI rate book as of 12-31-2014,
4 and identify for the FirstEnergy Ohio utilities what
5 percent of their total bill was associated with
6 generation, and we discerned from that document that
7 that was 68 percent, so we used that number to gross
8 up the generation number of 71.2 billion in order to
9 come up with an illustrative estimate of 104.2
10 billion.

11 Q. Okay. So \$71.2 billion figure is
12 approximately 68 percent of 104.2 billion; is that
13 right?

14 A. What I said was we grossed up the 71.2 to
15 reflect the fact generation was 68 percent, so if
16 your question to me is 71.2 68 percent of 2.018, is
17 that --

18 Q. No.

19 A. I'm sorry. 104.2?

20 Q. Yes.

21 A. Yes.

22 Q. Okay. Thank you. And the information
23 reported to EEI that's referenced in footnote 3 on
24 page 5, was that FirstEnergy-specific information, or
25 what information was that?

1 A. The information we used in the
2 calculation was information for the FirstEnergy Ohio
3 utilities only as of 12-31-2014. All other utilities
4 also report data to this EEI rate book as well, but
5 we used only the FirstEnergy Ohio information.

6 Q. Okay. And what's the name of that
7 report, the EEI report?

8 A. I am not sure of the exact title. You
9 refer to it as the EEI rate comparison book.

10 Q. And EEI is Edison Electric Institute; is
11 that right?

12 A. Yes.

13 Q. Okay. Over on page 6 of your rebuttal
14 testimony, line 16, you have a sentence there that
15 says, "But the majority of the Companies' customers
16 are shopping." Do you see that?

17 A. Yes.

18 Q. Okay. And is that majority in terms of
19 the number of customers, or by some other
20 measurement?

21 A. The majority of the customers in terms of
22 number of customers as well as load are shopping.

23 Q. Okay. And all those customers have
24 chosen to shop, correct?

25 A. All of the shopping --

1 MR. KUTIK: I'll object, your Honor, to
2 the extent that, as you know, there are aggregation
3 issues and opt out and opt in, those type of things.

4 EXAMINER PRICE: We would like to believe
5 that people who do not return their opt-out cards are
6 choosing to stay in the aggregation, so your
7 objection is overruled.

8 THE WITNESS: May I ask that the question
9 be reread, sir?

10 EXAMINER PRICE: You may.

11 (Record read.)

12 A. All of the shopping customers have chosen
13 to shop.

14 Q. Okay. And on line 18 of page 6, I
15 believe an hour or so ago when you were doing your
16 corrections, you deleted the words "retail price
17 mitigation" from that sentence; is that right?

18 MR. KUTIK: Objection.

19 EXAMINER PRICE: Sustained. She's
20 corrected her testimony.

21 MR. FISK: Okay. I was just trying to
22 lay the foundation.

23 EXAMINER PRICE: Okay.

24 Q. So the sentence reads, "Both approaches
25 provide benefits and should be used together to

1 provide both short and longer term stability for
2 customers." What are the benefits that the
3 staggering and laddering approach provides?

4 A. Staggering and laddering provides a role
5 in mitigating retail rate volatility in the short run
6 for our nonshopping customers. Rider RRS, as I say
7 earlier in my testimony, isn't a substitute for
8 staggering and laddering. Rider RRS provides retail
9 rate mitigation benefits over the longer term for all
10 of our customers.

11 MR. FISK: Your Honor, I would move to
12 strike starting with rider RRS. I asked just about
13 the staggering and laddering.

14 EXAMINER PRICE: If I can have the
15 question back.

16 (Record read.)

17 EXAMINER PRICE: We will grant the motion
18 to strike beginning at the words "rider RRS."

19 Ms. Mikkelsen, if you could simply listen
20 carefully to counsel's question and answer that
21 question, only that question. Any additional
22 information you would like to provide the Bench,
23 Mr. Kutik will ask you on redirect.

24 THE WITNESS: Thank you, your Honor.

25 MR. FISK: Thank you, your Honors.

1 Q. (By Mr. Fisk) Turning over to page 4 of
2 your rebuttal, the very top of the page you discuss
3 retail rate volatility for SSO customers; is that
4 correct?

5 A. Retail rate volatility our SSO customers
6 faced after the polar vortex, yes.

7 Q. Okay. And is it -- it's your testimony
8 that the polar vortex led to higher SSO prices
9 starting with June, 2014 and June 1, 2015; is that
10 right?

11 A. Yes.

12 Q. Okay. And those higher SSO prices were
13 then included in the SSO rates paid by the customers;
14 is that right?

15 A. Paid for by the nonshopping customers of
16 the companies.

17 Q. Okay. And the SSO price is a portion of
18 the bill that the customer pays; is that right?

19 A. Customers pay generation charges,
20 transmission charges, as well as distribution
21 charges. The SSO charges relate to generation
22 charges.

23 Q. Okay. Great.

24 MR. FISK: May we approach, your Honor?

25 EXAMINER PRICE: You may.

1 MR. FISK: Your Honor, may we have this
2 marked as Sierra Club Exhibit 79?

3 EXAMINER PRICE: Let's go off the record
4 for a second.

5 (Discussion off the record.)

6 EXAMINER PRICE: Let's go back on the
7 record.

8 How would you like this marked, Mr. Fisk?

9 MR. FISK: Sierra Club Exhibit 79.

10 EXAMINER PRICE: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. FISK: Thank you.

13 Q. (By Mr. Fisk) Okay. Ms. Mikkelsen, you
14 have been handed a document that's been marked as
15 Sierra Club Exhibit 79, and it is the Public
16 Utilities Commission Staff, "Ohio Utility Rate
17 Survey" for September 15, 2013, September 15, 2014,
18 and September 1, 2015. Does that appear to be
19 correct?

20 A. Yes.

21 Q. Okay. And have you ever seen these Ohio
22 utility rate surveys before?

23 A. I have seen Ohio utility rate surveys. I
24 don't recall whether I've seen the September '13 or
25 the September '14 one in particular. I have seen

1 these --

2 Q. Okay.

3 A. -- surveys.

4 Q. And if you could turn to the first page
5 of the September, 2013, survey it says "Ohio Utility
6 Bills - Residential Customers" at the top. Do you
7 see that?

8 A. Yes.

9 Q. Okay. And then there's a comparison of
10 utility bills for 16 major Ohio cities. Do you see
11 that?

12 A. Yes.

13 Q. Okay. And around the middle of the table
14 above that it says, "Electric Standard
15 Service 9/15/13." Do you see that?

16 A. Yes.

17 Q. And then there is a listing of 16
18 different cities with the -- a cost for the electric
19 standard service offer bills; is that right?

20 A. Yes.

21 Q. Okay. And so Youngstown is -- those
22 customers would be customers of the companies,
23 correct?

24 A. They would be customers of the Ohio
25 Edison Company.

1 Q. Okay. And Toledo, those customers would
2 be customers of Toledo Edison; is that right?

3 A. Yes.

4 Q. Okay. And then Akron, those would be
5 customers of the companies -- of one of the
6 companies; is that right?

7 A. Ohio Edison.

8 Q. Okay. And so if you -- looking at
9 Youngstown for September, 2013, the electric standard
10 service offer bill is reported as \$104.63 cents. Do
11 you see that?

12 A. I do.

13 Q. Okay. And then if you flip over to the
14 similar table in the September, 2014, survey, which
15 is probably the back of the fourth page in.

16 A. I have it.

17 Q. Okay. For Youngstown the price -- the
18 bill for the electric standard service offer is
19 reported as \$96.22; is that right?

20 A. Yes.

21 Q. Okay. And that bill is after the polar
22 vortex; is that right?

23 A. Yes.

24 Q. Okay. And the September, 2013, bill was
25 before the polar vortex; is that correct?

1 A. Yes.

2 Q. Okay. So the electric standard service
3 offer bill for customers in Youngstown was lower
4 after the polar vortex than before in terms of
5 comparing September to September for 2013 and 2014,
6 correct?

7 A. What is not clear to me in looking at
8 these tables is what is included in the electric
9 standard service offer, whether it is simply the
10 generation rate or whether that number includes all
11 of the generation-related bypassable charges. That's
12 not clear to me, but I think that's an important bit
13 of information to know when comparing these numbers.

14 Q. And would you expect those other charges
15 that you referred to to be the same or similar over
16 the -- between September, 2013, and September, 2014?

17 A. Not necessarily, no.

18 Q. Okay. Do you know if they changed
19 significantly between September, 2013, and September,
20 2014?

21 A. I don't recall.

22 Q. All right. Going back to page 4 of your
23 rebuttal testimony to paragraph of lines 5 through
24 line 17, there you talk about average CRES offers for
25 three different months; is that right?

1 A. I discuss average residential monthly
2 fixed price full requirement offers excluding
3 introductory offers or, you know, offers with
4 additional green components, things of that nature,
5 so standard fixed price full requirements residential
6 offers.

7 Q. Okay. And you do that based on data from
8 the Commission's Apples to Apples website; is that
9 right?

10 A. Yes.

11 Q. Okay. And you provide an average price
12 for those -- for those CRES offers for December,
13 2013, March, 2014, and May, 2014; is that right?

14 A. Yes.

15 Q. Okay. And did you, yourself, calculate
16 what those -- what the average of those offers were?

17 A. The calculations were performed under my
18 direction.

19 Q. Okay.

20 MR. FISK: May we approach, your Honor?

21 EXAMINER PRICE: You may.

22 MR. FISK: Could we go off for one
23 second?

24 EXAMINER PRICE: We can.

25 (Discussion off the record.)

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

3 MR. FISK: Your Honor, may we have this
4 document marked as Sierra Club Exhibit 80?

5 EXAMINER PRICE: You may.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MR. FISK: Thank you.

8 Q. Ms. Mikkelsen, you have been handed a
9 document marked Sierra Club Exhibit 80, and it is the
10 FirstEnergy Electric Apples to Apples Chart from the
11 Public Utilities Commission website for the charts
12 that were published December of 2013. Does that
13 appear to be correct to you?

14 A. Yes.

15 Q. Okay. And would the documents in Sierra
16 Club Exhibit 80, is that where you got the data for
17 the calculation of the average CRES offers for
18 December, 2013, that you provide in your rebuttal
19 testimony?

20 A. The information contained in my rebuttal
21 testimony for December, 2013, would have come from
22 the December 9, 2013, Apples to Apples chart in your
23 handout.

24 Q. Okay. So only December 9, not the other
25 December charts; is that right?

1 A. Correct.

2 Q. Okay. And why did you select the
3 December 9 as opposed to any of the other December
4 dates?

5 A. I think when we started to prepare the
6 rebuttal testimony, we started with the most current
7 Apples to Apples chart around. Then when we decided
8 to move backwards through time, we tried to select
9 the Apples to Apples chart that was approximately one
10 month before that, so we established that as kind of
11 our protocol for selecting the document that we would
12 use in any given month.

13 Q. And when did you begin preparing your
14 rebuttal testimony?

15 A. As it relates specifically to this, or in
16 general, sir?

17 Q. In general.

18 A. Late September.

19 Q. Of which year?

20 A. 2015, sir.

21 Q. Okay. And with regards to this specific
22 discussion of the Apples to Apples website on page 4,
23 lines 5 through 17 of your rebuttal, when did you
24 start preparing this analysis?

25 A. Probably in the early October time frame

1 of 2015.

2 Q. Okay. So why then did you use an Apples
3 to Apples comparison from December, 2013; March,
4 2014; and May, 2014 as opposed to any more recent
5 ones?

6 A. I selected those months because I was
7 trying to illustrate the retail rate volatility that
8 our shopping customers faced, and I thought using the
9 period of time around the polar vortex provided a
10 very clear example of the impact of market price
11 volatility on even fixed price offers to our
12 residential customers.

13 So I focused first on December, 2013, the
14 period that preceded the polar vortex, and saw an
15 average fixed price of 6 cents per kilowatt-hour. As
16 we've discussed, the polar vortex occurred in January
17 of '14 so I looked at then the rates in March of '14,
18 given the market time to react to that, and saw that
19 that same product on average had climbed up to a rate
20 of 7.4 cents a kilowatt-hour, and by May that product
21 was at 7.9 cents per kilowatt-hour.

22 Perhaps the most illustrative, which I
23 don't have included in my testimony here, is looking
24 at the difference between the average offer price in
25 February of 2014 versus March of 2014 and the

1 significant increase month over month that occurred
2 in those as well as the number of suppliers who
3 dropped out of the market or removed making offers in
4 the market during that time frame, demonstrating,
5 again, the impact of the volatility even on the fixed
6 price market.

7 MR. FISK: Your Honor, I would move to
8 strike the discussion starting with the "February,
9 2014," which wasn't responsive to my question, which
10 was regarding the months that were actually reported
11 in Ms. Mikkelsen's rebuttal testimony.

12 EXAMINER PRICE: Can I have the question
13 back.

14 MR. FISK: Starting with "perhaps".

15 (Record read.)

16 EXAMINER PRICE: I think asking her wide
17 questions is not going to get you a motion to strike.
18 Denied.

19 Q. (By Mr. Fisk) And have you carried out
20 any similar analysis of the average CRES offers for
21 any months in 2015?

22 A. Yes.

23 Q. You don't report any such data in your
24 rebuttal testimony regarding any month in 2015,
25 correct?

1 A. Correct.

2 Q. Okay. So looking at Sierra Club Exhibit
3 80, if we could look at the December 9, 2013, chart
4 which starts on the third sheet of paper, I want
5 to -- I guess I want to make sure I'm clear on how --
6 on what was and was not included in your averaging.
7 So my understanding is that one factor in what you've
8 decided to select was it had to be a 12-month fixed
9 price; is that correct?

10 A. Yes.

11 Q. Okay. And so if you are looking at
12 Exhibit 80, the December 9, 2013, chart, the third
13 column over on the chart it says "Contract Term"; is
14 that right?

15 A. Yes.

16 Q. Okay. So if the contract term says 12
17 months, for example, for AEP Gas & Electric, then it
18 would have been included, assuming none of the other
19 reasons that you excluded it apply; is that right?

20 A. If it would have been included as a
21 12-month product, again, assuming there was no
22 additional green element or there was not an
23 introductory offer associated with it or a monthly
24 fee, correct.

25 Q. Okay. So to your knowledge AEP Gas and

1 Electric was included?

2 A. Yes.

3 Q. Okay. So turning over to the very next
4 page for Border Energy Electric for a term it says
5 through December 31, 2014. Do you see that?

6 A. I do.

7 Q. Okay. So would that have been included
8 since it's approximately 12 months?

9 A. Yes.

10 Q. Okay. And the third one down on that
11 page, Direct Energy, the term it says "12 Billing
12 Cycles From Enrollment." Does that also fit within
13 something that would have been included?

14 A. Yes.

15 Q. Okay. And so on the right column there
16 is very -- there is references to early termination
17 fees for some of these offers; is that correct?

18 A. Yes.

19 Q. Okay. And did whether there is an early
20 termination fee play any role into whether you
21 included an offer in your calculation?

22 A. No.

23 Q. Okay, okay. And your testimony does not
24 identify that the -- you only averaged the
25 December 9, 2013, CRES offers, correct?

1 A. Correct.

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

3 (Discussion off the record.)

4 EXAMINER PRICE: Let's go back on the
5 record.

6 Mr. Fisk.

7 MR. FISK: Thank you, your Honor.

8 Q. (By Mr. Fisk) Okay. Ms. Mikkelsen, if we
9 could go back to Sierra Club Exhibit 80, just a few
10 more questions to make sure I'm clear on what was and
11 was not included in your averaging.

12 On the second page of the December 9,
13 2013, chart, about two-thirds of the way down the
14 page there is a Duke Energy Retail offer at a fixed
15 price offer through December, 2014, Meter Read. Do
16 you see that?

17 A. Yes.

18 Q. Okay. And would that fit within the
19 12-month category you would have included?

20 A. I believe so, yes.

21 Q. Okay. And turning over to the next page,
22 the second one down is from FirstEnergy Solutions.
23 And on -- in the right column it references "Savings
24 off PTC offer." Do you see that?

25 A. Yes.

1 Q. Okay. Do you know what that means?

2 A. No.

3 Q. Okay. Do you know if that in any way
4 excluded this offer from your averaging?

5 A. I don't think that language would have
6 excluded it.

7 Q. Okay. So to your knowledge, this
8 FirstEnergy Solutions offer, this second one down on
9 page 3, was included?

10 A. Yes.

11 Q. Okay. And how about the very next
12 FirstEnergy Solutions offer, do you know whether that
13 was included?

14 A. That would have been excluded.

15 Q. Okay. And why would that have been
16 excluded?

17 A. The 3 percent cash back provision.

18 Q. Okay. Would that have been -- I know in
19 your testimony you state that you excluded
20 introductory offers. Is that why that would have
21 been excluded?

22 A. I think purely it would have been
23 excluded because it wasn't a fixed price, full
24 requirements. It had additional elements that would
25 have distorted the comparability.

1 Q. Okay. And then turning to page 4 of the
2 December 9, 2013, chart, the very last entry is for
3 Verde Energy, U.S.A. Do you see that?

4 A. I see that.

5 Q. Okay. And this -- it says it's
6 introductory fixed price for 12 billing cycles and
7 variable thereafter. Would this offer have been
8 included or excluded from your averaging?

9 A. This would have been excluded.

10 Q. Okay. And why?

11 A. Again, new enrollments and introductory
12 offer receive a \$50 bonus.

13 Q. Okay, okay. So in your rebuttal
14 testimony you also provide an offer -- or an average
15 of the offers from March, 2014; is that right?

16 A. Yes.

17 Q. Okay. Do you know which Apples to Apples
18 chart you used to calculate the March, 2014, average
19 offer?

20 A. That would have been the March 14, 2014,
21 Apples to Apples comparison.

22 Q. Okay. And are the Apples to Apples
23 charts for the three companies for March 14, 2014,
24 the same?

25 A. I think in large measure they are the

1 same. As I sit here today, without having the
2 document in front of me, I can't assure you they are
3 absolutely the same.

4 Q. Okay. Fair enough. Do you know which --
5 did you use all three of the companies, or did you
6 only use one of them?

7 A. I looked at all three, sir.

8 Q. Okay.

9 MR. FISK: Your Honor, may we approach?

10 EXAMINER PRICE: You may.

11 MR. FISK: And we are handing out three
12 documents which are the March, 2014 Apples to Apples
13 comparison charts for Toledo Edison Illuminating
14 Company and Ohio Edison. If we can mark the Toledo
15 Edison one as Sierra Club Exhibit 81.

16 EXAMINER PRICE: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MR. FISK: The Illuminating Company as
19 Sierra Club Exhibit 82.

20 EXAMINER PRICE: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. FISK: And the Ohio Edison as Sierra
23 Club Exhibit 83.

24 EXAMINER PRICE: Also will be so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MR. KUTIK: Can I have that again?

2 EXAMINER PRICE: Toledo Edison is 81; CEI
3 is 82; and Ohio Edison is 83. Is that correct?

4 MR. FISK: Yes.

5 MR. KUTIK: Thank you, your Honor.

6 MR. FISK: Thank you, your Honor.

7 Q. (By Mr. Fisk) Ms. Mikkelsen, you have
8 been handed what's been marked as Sierra Club
9 Exhibits 81, 82, and 83 which are the March 14,
10 March 21, and March 28, 2014, Apples to Apples
11 comparison charts for Toledo Edison, the Illuminating
12 Company, and Ohio Edison. Does that appear to be
13 correct?

14 A. Yes.

15 Q. Okay. And the March 14, 2014, portions
16 of Sierra Club Exhibits 81, 82, and 83, are what you
17 used to calculate the March, 2014, average CRES offer
18 in your rebuttal testimony; is that right?

19 A. Yes.

20 Q. Okay. If we could look at Sierra Club
21 Exhibit 81, which is the Toledo Edison chart, I just
22 wanted to again make sure that I understand which
23 offers were included and which were not. If you
24 could turn to page 4 of 6 of that March 14, Toledo
25 Edison chart.

1 A. I'm there.

2 Q. Okay. And the third full one -- full
3 offer down is Integrys Energy Services, Incorporated.
4 Do you see that?

5 A. Yes.

6 Q. Okay. And over on the right side it says
7 "5 percent renewable." Do you see that?

8 A. Yes.

9 Q. Okay. So would this offer have been
10 excluded from your averaging?

11 A. Yes.

12 Q. Okay. And that's because there is some
13 percentage of renewable; is that right?

14 A. Some percentage of renewable in excess of
15 the state benchmarks, yes.

16 Q. Okay. So what state benchmarks are you
17 referring to?

18 A. Senate Bill 221 renewable mandates for
19 the State of Ohio.

20 Q. Okay. So am I correct that any CRES
21 offer that has a renewable component that's in excess
22 of the Senate Bill 221 benchmarks you would have
23 excluded from your averaging of CRES offers in your
24 rebuttal testimony?

25 A. Yes. In all instances, the renewables

1 listed are in excess.

2 Q. Okay. Thank you. Okay. And if you turn
3 to page 3 of 6 of this March 14, Toledo Edison chart,
4 in the middle of the page there is an offer from
5 FirstEnergy Solutions Corporation. Do you see that?

6 A. I do.

7 Q. Okay. And it has a term length of 50
8 months; is that right?

9 A. Yes.

10 Q. Okay. You did not include in your
11 analysis of CRES offers any offer that was over 12
12 months, correct?

13 A. Correct.

14 Q. Okay. But you would agree with me there
15 are CRES offers made that are in excess of 12 months;
16 is that right?

17 A. There are CRES offers in excess of 12
18 months. However, the number of CRES offers declines
19 as the term extends.

20 Q. So if you look at page 4 of the March 14,
21 2014, chart for Toledo Edison, the first full entry
22 there is IGS Energy. Do you see that?

23 A. I do.

24 Q. Okay. And it refers -- it's identified
25 as a fixed rate, zero percent renewable. But then

1 under "Additional Information," it says is "100%
2 green fixed rate." Do you see that?

3 A. I do.

4 Q. Okay. So would this have been included
5 or excluded?

6 A. I would have excluded this entry, and I
7 would have included the proceeding entry that's
8 marked 100 percent renewable, but then when you read
9 the notes under "Additional Information," it says
10 "Fixed rates through 12 billing cycles," so my
11 assumption was it was posted in error, and that the
12 100 percent renewables should have gone with the
13 second entry, which is the higher priced of the two,
14 and I base my determination on the column or the
15 line entitled "Additional Information."

16 Q. But generally if it said "100 percent
17 renewable," it would not have been included, correct?

18 A. That's correct. I think this was an
19 error in the website.

20 Q. Sure. Do you know of any other errors in
21 the March 14, 2014 Apples to Apples charts that led
22 you to include something that, at least on its face,
23 didn't seem to fit within your factors?

24 A. No. That was the one, sir.

25 Q. That was the one. Did you personally

1 identify which CRES offers to include or not include
2 in your analysis?

3 A. There was an additional determination
4 made about which offers to include and exclude, and
5 then I went through each of the Apples to Apples
6 charts for each of the companies based on the
7 criteria I had established and agreed or disagreed
8 with the determination about the inclusion.

9 Q. Okay. And were the -- how did you --
10 strike that. The initial determination, that was
11 done by someone on your staff?

12 A. Yes.

13 Q. And how did they present that initial
14 determination to you?

15 A. That was presented to me in the form of a
16 number of printouts of the Apples to Apples charts.

17 Q. Okay.

18 A. Kind of marked up.

19 Q. Was the information in order to do the
20 averaging then put into any sort of a spreadsheet?

21 A. Yes.

22 Q. Okay. And you've seen that spreadsheet
23 personally?

24 A. I have.

25 Q. Okay. And do you know if that

1 spreadsheet has been presented to any party in this
2 proceeding?

3 A. It has not. But, again, the information
4 for calculating the averages is available on the
5 Commission's website.

6 MR. FISK: Your Honor, may we approach?

7 EXAMINER PRICE: You may.

8 MR. FISK: Thank you.

9 Oh, can we have this document marked as
10 Sierra Club Exhibit 84?

11 EXAMINER PRICE: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MR. FISK: Thank you.

14 Q. (By Mr. Fisk) Ms. Mikkelsen, you have
15 been handed a document marked Sierra Club Exhibit 84
16 which is the October 23, 2015, residential Apples to
17 Apples comparison chart for the three companies.
18 Does that appear to be correct?

19 A. Yes, although I will admit I have not
20 reviewed or seen the October 23 Apples to Apples
21 charts.

22 Q. Okay. Does it appear to be -- this
23 October, 2015, appears to be the same format as the
24 information that you reviewed for the March, 2014,
25 and May, 2014, calculations?

1 A. Yes.

2 Q. Okay. And so if I were to want to figure
3 out the average of the CRES offers for October 23,
4 2015, I could apply the same screening method that
5 you describe in your rebuttal testimony to the offers
6 that are listed in Sierra Club Exhibit 84; is that
7 right?

8 A. You could apply the same screening
9 criteria to the offers in Sierra Club 84, recognizing
10 that Sierra Club 84 is basing offers on a whole
11 different capacity period going forward. The three
12 periods that I quoted for the 12 months were all in
13 the same capacity area of going-forward prices in a
14 comparable period, so now we are starting in a whole
15 different capacity here. So I am not sure if you
16 were going to compare it to the numbers I had, how
17 relevant that comparison would be.

18 Q. Okay. And when you are referring to
19 capacity year, are you referring to the PJM capacity
20 auction years?

21 A. Yes.

22 Q. Okay. And are you -- why would the fact
23 that the October, 23, 2015, offers are in a different
24 capacity year affect the comparison between the
25 October, 2015, and the months that you analyzed?

1 A. The capacity price for the delivery year
2 '15-'16 for the ATSI zone was higher, measurably
3 higher, than in the preceding years, and while it is
4 lower in '16-'17 and '17-'18, it is still higher than
5 the capacity rates that would have been in effect in
6 the 12-month periods that we were looking at.

7 We started with a December, 2013,
8 delivery year, so 12 months would have been in the
9 '13-'14 delivery year. These would have been all in
10 the '13-'14 delivery year, not at all picking up the
11 higher capacity clearing prices in ATSI in '15-'16
12 and thereafter.

13 Q. Okay. And that higher capacity clearing
14 price could have a downward effect on the price of
15 the CRES offers; is that correct?

16 A. No.

17 Q. What impact would the higher capacity
18 price have on the CRES offers?

19 A. I believe, all else equal, higher
20 capacity costs would give rise to higher offers so
21 that the CRES providers could recover the higher
22 capacity costs through the charges.

23 Q. Okay. So all else being equal, if there
24 were lower capacity prices, the CRES offers would
25 probably be lower; is that right?

1 A. Lower than what, sir?

2 Q. I take -- let's take the baseline of the
3 capacity prices at issue when you -- for the March
4 and May, 2014, numbers that you calculated. If the
5 capacity prices were lower than what they were for
6 those months, all else being equal, that would lead
7 to lower CRES price offers; is that right?

8 A. If you have a 12-month offer in March of
9 '14 that runs through March of '15, for the sake of
10 discussion, and the capacity price is lower in that
11 '14-'15 delivery year, all else equal, then a
12 capacity price in the '15-'16 delivery year, and you
13 are comparing then the March 15 to March 16 price,
14 yes, I would expect the offer in March of '14 to be
15 lower as a result of the lower capacity charge.

16 Q. Okay. And looking at Exhibit 84, on page
17 3, the third entry down is Champion Energy Services,
18 LLC. Do you see that?

19 MR. KUTIK: I'm sorry, what page?

20 MR. FISK: The third page.

21 MR. KUTIK: Thank you.

22 A. Yes, I see that.

23 Q. Okay. And it's identified as a 12-month
24 fixed rate, 0 percent renewable offer, correct?

25 A. It is noted it's a promotional offer, but

1 yes.

2 Q. Okay. So in your rebuttal testimony on
3 page 4, line 11, you say that you exclude
4 introductory offers, correct?

5 A. Yes.

6 Q. Okay. But I guess I'm trying to clarify,
7 did you also exclude promotional offers?

8 A. Well, as we discussed earlier, if there
9 was a cash back or some sort of an element like that
10 that would have made it not comparable, I would not
11 have included it.

12 Q. Okay. So with regards to the Champion
13 Energy Services on page 3 of Sierra Club Exhibit 84,
14 because it's referred to as a promotional offer, is
15 that something you would exclude from an average?

16 A. I didn't look at this Apples to Apples
17 chart, so I haven't given this any thought prior to
18 sitting here, so I'm not sure I can answer you with
19 confidence. I would note that it does also say it's
20 not an introductory offer, but I haven't thought this
21 one through.

22 Q. Okay. Fair enough. Okay. And if you
23 look over on page 2 of Exhibit 84, do you see the
24 third offer down is an AEP Energy, Incorporated
25 offer? Do you see that?

1 A. Yes.

2 Q. And it's a fixed rate for 30 months; is
3 that right?

4 MR. KUTIK: Well, I am going to object at
5 this point. She hasn't seen the document. It's not
6 a document she used. So I'll object.

7 EXAMINER PRICE: Mr. Fisk.

8 MR. FISK: It is simply the latest
9 version of the document that she based a significant
10 part of her rebuttal testimony on regarding the
11 Apples to Apples chart. It's publicly available on
12 the Commission website, and I'm just trying to get a
13 sense of if -- how her analysis would apply to more
14 recent data that's publicly available on this
15 website.

16 MR. KUTIK: Your Honor, she has earlier
17 said in response to a similar question she hasn't
18 seen this. She hasn't thought about it. It's unfair
19 to ask her about it at this stage without an
20 opportunity for her to have included it in her work.

21 EXAMINER PRICE: How many more instances
22 are you going to ask her, Mr. Fisk?

23 MR. FISK: I only had one more, and this
24 is the last document I had.

25 EXAMINER PRICE: I'll allow the two more

1 questions on this document.

2 MR. FISK: Thank you, your Honor.

3 THE WITNESS: May I ask that the question
4 be reread, please.

5 EXAMINER PRICE: You may.

6 (Record read.)

7 A. Yes.

8 Q. Okay. And the rate identified is 7.3
9 cents per kilowatt-hour?

10 MR. KUTIK: Again, I'll object, your
11 Honor. To what end?

12 EXAMINER PRICE: Overruled. I know you
13 hate this word today, but I'll give Mr. Fisk a little
14 bit of leeway.

15 MR. KUTIK: As long as that goes both
16 ways, your Honor.

17 EXAMINER PRICE: I will try.

18 MR. FISK: Thank you, your Honor.

19 A. The rate I see listed is 7.35 cents per
20 kilowatt-hour.

21 Q. Okay. And that rate is lower than the
22 May, 2014, average offer rate that you identified in
23 your rebuttal testimony on page 4, correct?

24 MR. KUTIK: Well, again, your Honor, he
25 is asking her to verify facts of a document she

1 hasn't seen. So I'll object.

2 EXAMINER PRICE: I understand, and I'm
3 not sure where this is going, and I'm not sure whose
4 case he is helping right now, but it seems to me he
5 is just showing volatility, which was her point, but
6 let's just push on through this.

7 A. The rate is lower, as are the underlying
8 facts and circumstances that would give rise to the
9 offer, such as forward capacity prices.

10 MR. FISK: Can I have one minute, your
11 Honor?

12 EXAMINER PRICE: You may.

13 (Discussion off the record.)

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

16 MR. FISK: I have nothing further on the
17 public session.

18 EXAMINER PRICE: Thank you.

19 MR. FISK: Thank you, your Honor.

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

21 (Discussion off the record.)

22 EXAMINER PRICE: Let's go back on the
23 record.

24 Mr. Sauer, would you like to begin your
25 cross-examination? Again, we will be halting at

1 5 o'clock sharp.

2 MR. SAUER: I think Mr. Petricoff had a
3 few questions.

4 MR. PETRICOFF: I asked Larry if I could
5 switch with him.

6 EXAMINER PRICE: Perfect.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Petricoff:

10 Q. Good afternoon.

11 A. Good afternoon, sir.

12 Q. I want to start with, if you could, I am
13 just going to follow-up on a -- on lines of questions
14 which I think has already been covered, but I have
15 got a few details I want to fill in.

16 And first, if you would, turn to page 2,
17 line 19 of your -- of your testimony. And there you
18 indicate that there are customers who take service
19 under variable price contracts with competitive
20 retail electric suppliers. Do you see that?

21 A. I do.

22 Q. Isn't it true that customers who buy
23 variable-priced power -- who buy variable-priced
24 power based on hourly or day-ahead indexes tend to be
25 large industrial or large commercial customers?

1 A. Large industrial and commercial customers
2 do take indexed prices. There are residential fixed
3 price offers that switch to a variable indexed price
4 after set periods of time, which subject residential
5 customers to indexed prices. And I believe there are
6 index prices, whether they be full or in part,
7 offered to small- and medium-sized commercial
8 customers as well.

9 Q. So is it your testimony then that
10 residential customers rely on indexed products on the
11 PJM hourly and day-ahead market?

12 A. No. My testimony is there are
13 fixed-price offers available to residential customers
14 that have automatic renewal terms that place those
15 customers on variable indexed prices.

16 Q. Okay. But right now I want you to focus
17 in on the customers who are buying variable priced
18 products on the PJM hourly and day-ahead markets.
19 Isn't it true that those are large industrial or
20 large commercial customers?

21 MR. KUTIK: Objection, asked and
22 answered.

23 MR. PETRICOFF: It hasn't been answered.

24 MR. KUTIK: It has been answered.

25 EXAMINER PRICE: Overruled. Trying to

1 get a more straightforward answer. You can answer.

2 A. There are large commercial and industrial
3 customers on indexed rates. I know there are offers
4 even for residential customers for indexed rates, and
5 certainly indexed-type products for small- and
6 medium-sized commercial customers.

7 Q. Once again, I want to limit you just down
8 to customers who are buying in the PJM hourly and
9 day-ahead markets. Do you have personal knowledge of
10 any residential customer buying in the PJM hourly or
11 day-ahead market?

12 A. No, sir. My comment was about offers. I
13 don't -- working for the company, not a competitive
14 electric supplier, I would not know what contracts
15 are being executed. I only am aware of what offers
16 are available.

17 Q. And from your days as a consultant in the
18 industry, do you know whether large industrial and
19 large commercial customers buy in the PJM hourly and
20 day-ahead market?

21 A. Yes.

22 Q. And generally do those customers have
23 either in-house energy managers or use consultants to
24 advise them?

25 A. My experience as a consultant would have

1 been with those customers who used a consultant to
2 advise them, so I will answer yes to that part.

3 Q. We will stipulate it's a valuable
4 service. Okay.

5 And basically for the large industrial
6 and commercial customers, do they have, because of
7 their size and sophistication, an opportunity to
8 hedge those day-ahead and hourly purchases with
9 futures?

10 A. They do, although in many, many instances
11 the hedge was more a physical hedge where they would
12 curtail or manage load based on price signals.

13 Q. Okay. Actually, that's a good point. So
14 you could have -- a large industrial or commercial
15 customer could purchase a -- either a physical hedge
16 or a financial hedge?

17 A. I'm not sure I said they could purchase a
18 physical hedge. I'm not --

19 Q. They could utilize.

20 MR. KUTIK: Excuse me. Had you finished
21 your answer?

22 THE WITNESS: Yes.

23 Q. Okay. Well, just so we're clear, a large
24 industrial or industrial customer could hedge their
25 purchases in the hourly or day-ahead market with

1 either a physical or a financial instrument?

2 A. Yes. But they would still be subject to
3 the volatility. It's just how they manage that
4 volatility.

5 MR. PETRICOFF: Move to strike the "but"
6 and everything that followed.

7 EXAMINER PRICE: Granted.

8 Q. Okay. Okay. If you would, I would now
9 like you to turn to page 3 of your testimony, and you
10 had a long discussion with -- with the Sierra Club
11 counsel about the chart on page 3, so I want to draw
12 your attention. Do you see the chart on page 3?

13 A. Yes.

14 Q. Now, in the chart you have aggregated --
15 you have aggregated the data into two-year blocks,
16 one block covering basically the delivery year 2011
17 through 2013 and one block covering 2013 to 2015. Is
18 that a correct summary?

19 A. Yes.

20 Q. Okay. Now, in an answer to a question on
21 terms of the -- let's see, let me go back.

22 In the first column the highest LMP
23 and -- maybe, actually, let me go back.

24 The acronym LMP that you use in the
25 charts, that's for locational marginal price?

1 A. Yes.

2 Q. And the highest LMP price that you list,
3 and we'll look at the 2013 to 2015 delivery year, did
4 that occur in 2014?

5 A. Sir, does your question relate to the
6 day-head or the real time column?

7 Q. Well, I'm sorry. I am in the day-ahead.

8 MR. KUTIK: I'll object. These questions
9 were asked already. So I object.

10 MR. PETRICOFF: I have just two
11 foundational ones, and then I will get to the point.

12 EXAMINER PRICE: Overruled.

13 A. I don't recall the date that the
14 day-ahead highest LMP occurred in the period between
15 June of '13 and May of '15.

16 Q. Okay. So if you broke it out by year,
17 would there be a lower number for the 2014-2015 year
18 or a higher?

19 A. I did look at the information in this
20 table on an annual basis, as well as in the two-year
21 increments. And what I saw when I looked at the
22 information annually was that in the year -- the data
23 elements for the '13-'14 delivery year and the
24 '14-'15 delivery year individually were both higher
25 than the individual or collective years in the

1 '11-'12 and 12-13 delivery years.

2 Q. But there was a difference between the
3 2014 and 2015 year, delivery year?

4 A. I apologize. I don't understand the
5 question, sir.

6 Q. Okay, never mind. Let me -- let me try
7 another way. In fact, let's move on to the real
8 time. Is there a limit that PJM puts on the maximum
9 real time price?

10 A. During this time frame there would have
11 been a limit on the generation capacity price, but I
12 don't believe there would have been a limit on the
13 demand-response capacity. So I believe this number
14 was likely set by demand response.

15 Q. If we restricted -- let's see, from the
16 data you had, would it have been possible to separate
17 between generation and demand response?

18 MR. KUTIK: May I have the question read,
19 please?

20 EXAMINER PRICE: You may.

21 (Record read.)

22 A. I suppose it would have been if you knew
23 what the limits were throughout the period in terms
24 of the caps on the prices. You could then sort them.

25 Q. And you agree with me the caps are

1 established in PJM rules?

2 A. Yes.

3 Q. Let's move on now and talk about the ELR
4 customers, and this would be on lines 10 to 18 of
5 your testimony. Now, am I correct, looking at lines
6 15 and 16, that the 194 economic buy-through hours is
7 for a 24-month period?

8 A. Yes.

9 Q. So if I was looking to see what
10 percentage of the -- of the time the EBT was in
11 effect, could I simply divide the 194 hours by the
12 number of hours in two years, which I'll tell you is,
13 let's see -- hang on one second. Well, actually, let
14 me stop the question there.

15 Could we get the percentage of EBT time
16 for this two-year period by dividing the number of
17 clock hours into 194?

18 A. You could determine the percent of hours
19 in the two-year period that were EBT hours by making
20 that calculation.

21 Q. Okay. And the same would be true for the
22 687 hours for the 2013 to 2015 delivery years?

23 A. Yes.

24 Q. And would you -- well, okay. In a
25 question earlier you indicated that of the 687 hours,

6992

1 approximately 480 of those occurred in the 2013-2014
2 delivery year; is that correct?

3 A. No.

4 Q. Okay. I misunderstood. So could you
5 tell me of the 687 EBT hours in the 2013 to 2015
6 delivery year period, how much of that occurred in
7 the 2014-2015 year or the 2013-2014 year? You have
8 your choice.

9 A. What I said earlier is I don't recall the
10 breakout year by area, but do I recall about 480 of
11 those hours occurred in the January, 2014, through
12 March of 2014 time frame.

13 Q. Okay. And that's because of the polar
14 vortex?

15 A. No.

16 Q. Okay. What was the cause that such a
17 disproportionate share came in the four months -- the
18 first four months of 2014?

19 MR. KUTIK: Objection. Asked and
20 answered.

21 EXAMINER PRICE: I'm not sure if I recall
22 that question being asked, so overruled.

23 A. I would start with I referred to a
24 three-month period, not a four-month period, so to
25 table set, January of '14 through March of '14. And

1 the polar vortex, as we discussed earlier, I believe
2 was in the January 7, maybe shoulder it with the 6
3 and 8 around it, so I am talking about a three-month
4 period. So it would have been volatility, continuous
5 volatility, throughout that three-month period that
6 drove that level of economic buy-through hours.

7 Q. Okay. Well, if there are 687 hours in
8 the two-year period and 480 of them occurred in this
9 three-month period, this only leaves 207 maximum for
10 the earlier period; is that correct?

11 A. For the period that isn't included in
12 January of '14, through March of '14, so this is a
13 period that precedes it and a period that follows
14 that, sir.

15 Q. And with that clarification, the answer
16 is "yes."

17 A. Yes.

18 Q. Now, I want to talk to you a bit about
19 the Apples to Apples chart. Are you familiar with
20 the rules that the Commission has on competitive
21 retail electric suppliers as to what information they
22 must put on the Apples to Apples chart?

23 A. Not specifically, no.

24 Q. Is it your understanding that if a
25 competitive retail electric supplier puts an offer on

1 the Apples to Apples chart, it must accept that offer
2 from anyone who -- any customer who calls in and
3 accepts?

4 A. I don't know that, but that would not
5 surprise me.

6 Q. Do you know whether there is a
7 requirement by Commission rule that a CRES has to put
8 their lowest offer on the Apples to Apples chart?

9 A. I don't know.

10 Q. If I understood your testimony -- your
11 rebuttal testimony and your cross-examination
12 correctly today, you basically summed the 12-month
13 nonpromotional, nonintroductory Apples to Apples
14 offer from the December 9 Commission summary charge
15 to come up with an average December, 2013, price of 6
16 cents?

17 A. No. I would modify what you said to
18 include fixed price, 12-month offers, sir.

19 Q. Would a residential customer -- one
20 thing, these are all for residential customers,
21 correct?

22 A. Correct.

23 Q. Is there an offer anywhere where a
24 residential customer in December could have bought
25 the average, or do they have to buy just the

1 individual contracts that are listed on the Apples to
2 Apples chart?

3 EXAMINER PRICE: Could I have the
4 question back.

5 MR. PETRICOFF: I'm sorry, what?

6 EXAMINER PRICE: I would like the
7 question reread.

8 MR. PETRICOFF: Oh, certainly.

9 (Record read.)

10 A. I haven't performed the study to
11 determine if there was a unique offer that was the
12 same as the average in December of 2013.

13 Q. But you will agree with me that the
14 average is not the lowest cost that was offered in
15 December, '13, to all customers on the Apples to
16 Apples -- residential customers on the Apples to
17 Apples chart?

18 THE WITNESS: May I ask that that
19 question be reread, please?

20 EXAMINER PRICE: You may.

21 (Record read.)

22 A. Yes.

23 Q. And, in fact, looking at Sierra Club
24 Exhibit 80, a customer in December of 2013 could have
25 signed with AEP Gas & Electric for 5.9 5 cents.

1 A. Yes.

2 Q. And similarly do you have Sierra Club
3 Exhibit 81 handy?

4 A. Yes.

5 Q. And during March 14 or -- I guess the
6 published week of March 14, 2014, a customer could
7 have signed up with Constellation -- it will be on
8 page 2, Constellation for 12-month contract at 6.89
9 cents.

10 A. Yes.

11 Q. And that is lower than the average for
12 March that you have in your testimony.

13 A. And in both instances there would be
14 offers that are higher than the average, sir.

15 MR. PETRICOFF: Move to strike in both
16 instances and what followed.

17 EXAMINER PRICE: I am going to give the
18 witness a little bit of leeway and deny the motion to
19 strike.

20 MR. PETRICOFF: Fair enough because we
21 are closing in on the bewitching hour here.

22 Your Honor, at this point I would like to
23 have marked, as I guess we will call it P3 -- P3/EP
24 SA Exhibit, I think we are up to 10.

25 EXAMINER PRICE: It will be so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MR. PETRICOFF: Your Honor, may I
3 approach?

4 EXAMINER PRICE: You may. Let's go off
5 the record for a second.

6 (Discussion off the record.)

7 EXAMINER PRICE: Let's go back on the
8 record.

9 We are going to amend the marking of this
10 exhibit. It will be marked as P3/EPSA 7.

11 Please proceed, Mr. Petricoff.

12 MR. PETRICOFF: Okay.

13 Q. (By Mr. Petricoff) Okay. Have you had a
14 chance to take a look at what has been marked as
15 P3/EPSA Exhibit 7?

16 A. Yes. And I would note I have page 1 of 7
17 and 2 of 7. I do not have the balance of the
18 document.

19 Q. That's correct because I am just going to
20 ask you a limited question. And that is, could a
21 customer -- residential customer in May of 2014,
22 purchase a 12-month firm contract from Censtar Energy
23 at 6.89 cents for a year in -- well, I think that's
24 the end of the question.

25 MR. KUTIK: May I have the question read,

1 please?

2 MR. PETRICOFF: Actually, may I rephrase?

3 EXAMINER PRICE: You may rephrase.

4 Q. Isn't it true that a customer --
5 residential customer in May of 2014 could have
6 accepted an offer from Censtar to buy a firm power
7 contract for 12 months at 6.89 cents per
8 kilowatt-hour?

9 MR. KUTIK: Objection.

10 EXAMINER PRICE: Grounds?

11 MR. KUTIK: Foundation.

12 EXAMINER PRICE: Well, I think she's
13 demonstrated familiarity with the Apples chart so
14 we'll overrule.

15 A. There is a 12-month fixed price offer for
16 6.89 cents per kilowatt-hour on the document.

17 MR. PETRICOFF: I have no further
18 questions.

19 EXAMINER PRICE: Thank you.

20 MR. PETRICOFF: Thank you, Ms. Mikkelsen.

21 THE WITNESS: Thank you, sir.

22 EXAMINER PRICE: We will break for the
23 evening, and we will reconvene and begin with
24 Ms. Mikkelsen. Thank you all. Let's go off the
25 record.

6999

1 MR. PETRICOFF: Your Honor, before we go
2 off the record at this -- should I wait to the end to
3 the move for the exhibit, or do you want to do
4 that --

5 EXAMINER PRICE: Let's go off the record
6 real fast.

7 (Discussion off the record.)

8 (Thereupon, at 5:00 p.m., the hearing was
9 adjourned.)

10 - - -
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

7000

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Tuesday, October 27,
2015, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6109-79590)

- - -

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/30/2015 10:16:33 AM

in

Case No(s). 14-1297-EL-SSO

Summary: Transcript In the Matter of the application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company hearing held on 10/27/15 - Volume XXXIII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.