

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

VIDEO CAM DEPOSITION

of Nahaliel Kanfer, taken before me, Rosemary F.
Anderson, a Notary Public in and for the State of
Ohio, at the Office of Ohio Consumers' Counsel, 10
West Broad Street, 18th Floor, on Tuesday, January 5,
2016 at 4:05 p.m.

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

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APPEARANCES:

Sierra Club Environmental Law Program
By Mr. Tony Mendoza (via telephone)
and Ms. Kristin Henry (via telephone)
85 Second Street, 2nd Floor
San Francisco, California 94105
On behalf of the Sierra Club.
Bruce J. Weston, Ohio Consumers' Counsel
By Mr. Kevin F. Moore
Mr. William J. Michael
Ms. Jodi Bair,
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
On behalf of the Residential Consumers of
the Ohio Power Company.

American Electric Power
By Mr. Matthew S. McKenzie (via telephone)
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
On behalf of the Ohio Power Company.
McNees, Wallace & Nurick, LLC
Mr. Matthew R. Pritchard (via telephone)
21 East State Street, 17th Floor
Columbus, Ohio 43215

On behalf of the Industrial Energy Users
of Ohio.

MR. MOORE: We are going to start the
deposition now.

My name is Kevin Moore, and I am an
attorney for OCC and the residential ratepayers of
AEP Ohio in the proceeding.

We will take brief appearances from
counsel on the phone.

MR. MENDOZA: This is Tony Mendoza. I
represent Sierra Club in this proceeding.

MR. PRITCHARD: This is Matt Pritchard.
I represent IEU-Ohio.

MS. HENRY: This is Kristin Henry. I
represent Sierra Club.

MR. McKENZIE: This is Matthew McKenzie,
counsel for Ohio Power Company.

MR. MOORE: This deposition is being
conducted pursuant to notice with agreement by
counsel regarding the time and place to be done
telephonically and visually In the Matter of the
Application Seeking Approval of Ohio Power Company's
Proposal to Enter into an Affiliate Power Purchase
Agreement for Inclusion in the Power Purchase
Agreement Rider, Case No. 14-1693-EL-RDR, et al.

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1 NAHALIEL KANFER
2 (via video cam and telephone)
3 being first duly sworn, as hereinafter certified,
4 deposes and says as follows:
5 CROSS-EXAMINATION
6 By Mr. Moore:
7 Q. Good afternoon, Mr. Kanfer.
8 A. Good afternoon. Can I call you Kevin or
9 Mr. Moore?
10 Q. Either would be fine.
11 A. Okay. Good afternoon, Kevin. Can you
12 see the video okay?
13 Q. I can, thank you.
14 A. I feel a little foolish with my cell
15 phone here, but we'll struggle through it.
16 Q. Okay. Can you state your full name and
17 spell it for the record?
18 A. Sure. My full name is Nahaliel Kanfer,
19 N-A-H-A-L-I-E-L, K-A-N-F-E-R. Most people call me
20 Nachy. That's spelled N-A-C-H-Y.
21 Q. Would you like me to refer to you as
22 Nachy or Mr. Kanfer?
23 A. Nachy is fine.
24 Q. Very well. Could you also state your
25 business address for the record?

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1 A. Sure. 2331 Victory Parkway, spelled as
2 it sounds, Suite 401, Cincinnati, Ohio, 45206.
3 Q. Okay. Have you ever been deposed before?
4 A. Yes.
5 Q. Okay. Great. Going just to reiterate
6 the process real quick. I'm going to ask a series of
7 questions, and you will provide oral responses to
8 those questions. I'll remind you that you're under
9 oath when you answer the questions, and the
10 deposition may be used at the hearing later.
11 If you have any questions or you don't
12 understand a question I'm asking, please ask me to
13 clarify. I'll do my best happy to rephrase or reask
14 it. If you need to take a break at any time, just
15 let me know. I'll be happy to take a break at any
16 time as long as it's not in the middle of a question
17 or you have answered my pending question. Okay?
18 A. Sure.
19 Q. First off, do you have any documents that
20 you have with you right now in preparation for the
21 deposition?
22 A. I have a copy of the Stipulation on this
23 handy tablet here.
24 Q. Okay. We will refer to that as
25 Deposition Exhibit 1 if we could. I'm going to have

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1 the court reporter mark a copy of that here.
2 (EXHIBIT MARKED FOR IDENTIFICATION.)
3 Q. She has marked the Joint Stipulation &
4 Recommendation in Case No. 14-1693-EL-RDR, which was
5 filed December 14, 2015. Is that the document you're
6 referring to?
7 A. Yes.
8 Q. Okay. Do you have any other documents
9 with you?
10 A. No.
11 THE WITNESS: Tony, is that your e-mail
12 up on the screen there?
13 MR. MENDOZA: Oh, I'm sorry.
14 MS. HENRY: Get rid of it, yeah.
15 MR. MENDOZA: Thank you, Nachy.
16 THE WITNESS: That's what I'm here for.
17 Q. (By Mr. Moore) Nachy, who is your current
18 employer?
19 A. The Sierra Club.
20 Q. Does the Sierra Club have a parent
21 company?
22 A. No.
23 Q. Does it have any other affiliate
24 companies?
25 A. No.

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1 Q. What is your current position with the
2 Sierra Club?
3 A. I am the deputy director for our Eastern
4 Region for our Beyond Coal Campaign.
5 Q. When did you begin serving in this
6 position?
7 A. Actually, about three weeks ago.
8 Q. Okay. What were you doing prior to three
9 weeks ago then?
10 A. I had a different title of deputy
11 director for our Central Region.
12 Q. And how long did you hold that position?
13 A. Since probably the fourth quarter 2011.
14 Q. 2011. And what were you doing prior to
15 that time?
16 A. I was also with Sierra Club. I had a
17 different title. I was called campaign
18 representative, Midwest.
19 Q. And how long did you hold that position?
20 A. That was probably for about two years.
21 Q. Okay. How long have you been working for
22 Sierra Club?
23 A. About eight years.
24 Q. Okay. So around 2008 is when you
25 started?

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1 A. Correct, September 2008.
 2 Q. Okay. So you receive a paycheck from
 3 Sierra Club, correct?
 4 A. Yes.
 5 Q. Do you receive compensation from any
 6 other company?
 7 A. No.
 8 Q. Do you supervise other employees in your
 9 current position?
 10 A. Yes, I do.
 11 Q. How many?
 12 A. Six.
 13 Q. I'm sorry, did you say six?
 14 A. I said six.
 15 Q. Okay. What are those employees'
 16 responsibilities?
 17 A. They each have the title of campaign
 18 representative or senior campaign representative, and
 19 they are each responsible for either one state or a
 20 handful of states on behalf of the Sierra Club's
 21 Beyond Coal Campaign. Collectively, those campaign
 22 representatives' states comprise my region.
 23 Q. Can you name what six states make up this
 24 region then?
 25 A. It's 13 states, and it's basically if you

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1 within Sierra Club?
 2 A. I report to Heather Cusick.
 3 Q. And what is her title?
 4 A. Funny, her title until three weeks ago
 5 was director for the Central and Eastern regions, but
 6 when we had a campaign structure change three weeks
 7 ago and I took my current position, I'm actually not
 8 totally sure what her new title is.
 9 Q. What caused the campaign restructure
 10 three weeks ago?
 11 MR. MENDOZA: Objection, irrelevant;
 12 calls for internal Sierra Club deliberations,
 13 attorney-client privilege, work product. I'll
 14 instruct Nachy not to answer the question.
 15 MR. MOORE: Okay.
 16 Q. (By Mr. Moore) So what are your current
 17 responsibilities as the deputy director of the
 18 Eastern Region of the Beyond Coal Campaign?
 19 A. My primary responsibilities are managing,
 20 guiding, supporting my employees to successfully
 21 achieve their outcomes in the Beyond Coal Campaign.
 22 Typically that includes liaising with litigation
 23 teams, liaising or helping them liaise with
 24 litigation teams; liaising with or helping them
 25 liaise with volunteer structures within the Sierra

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1 imagine a line from Michigan down to Florida. It's
 2 all the Eastern US except for the Northeast from
 3 Pennsylvania up, which is a different region. So
 4 it's Michigan, Indiana, Ohio, Kentucky, Tennessee,
 5 West Virginia, Virginia, North Carolina, South
 6 Carolina, Georgia, Alabama, Mississippi, and Florida.
 7 I think that's all of them.
 8 Q. And do any of those employees have a
 9 number of other employees that report to them?
 10 A. No.
 11 MR. MENDOZA: Kevin, I'm going to object
 12 now at this point. I think we have gone outside what
 13 is going to be relevant to the Commission. If you
 14 ask him about employees he supervises in the state of
 15 Ohio, I think that maybe makes sense, but asking
 16 Nachy about what goes on in all the other states I
 17 think is pretty far afield from what the Commission
 18 cares about.
 19 Q. (By Mr. Moore) Okay. You can go ahead
 20 and answer, Nachy.
 21 A. Was your question whether my direct
 22 employees are managers of other employees?
 23 Q. Yes.
 24 A. No, they're not.
 25 Q. Okay, thank you. Who do you report to

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1 Club. It might include some fundraising. You know,
 2 it's a managerial position so my day-to-day changes.
 3 Q. Okay. And, Nachy, you're not an
 4 attorney, correct?
 5 A. No, I'm not.
 6 Q. So you're not trained to analyze a legal
 7 document as an attorney would have been trained in
 8 law school; is that right?
 9 A. Yes, exactly.
 10 Q. Okay. Have you ever signed a Stipulation
 11 or settlement before?
 12 MR. MENDOZA: Do you mean --
 13 MS. HENRY: Objection.
 14 MR. MENDOZA: Objection as to relevance.
 15 Nachy didn't sign the Stipulation here, but he can
 16 answer the question if he has a recollection.
 17 A. I want to answer the question honestly.
 18 I think usually when we sign a stipulation, our
 19 lawyers sign them. I can't say for sure that I have
 20 never, ever signed one.
 21 Q. Okay. Thank you. Have you been involved
 22 in stipulation or settlement negotiations in the
 23 past?
 24 A. Yes.
 25 Q. Do you recall how many different cases or

3 (Pages 9 to 12)

Page 13

1 proceedings you have been involved in stipulation or
2 settlement negotiations?
3 MR. MENDOZA: Objection as to relevance.
4 Q. (By Mr. Moore) You can go ahead and
5 answer.
6 A. It would be hard to give a precise
7 number. It's been a lot.
8 Q. Okay. So do you know how many
9 stipulation or settlement negotiations you have been
10 involved in in Ohio?
11 MR. MENDOZA: Objection as to relevance.
12 A. That number is much smaller. I don't
13 know off the top of my head. I'd have to go through
14 the past several years, but I'm sure -- I'm sure the
15 answer is under ten.
16 Q. Okay. Fair enough. Do you know what the
17 legal standard of review is for a stipulation in Ohio
18 at the PUCO?
19 A. You might have to remind me.
20 Q. Are you aware that the PUCO analyzes a
21 stipulation using a three-prong test?
22 A. I've heard that. Yes, that's familiar.
23 Q. Do you know what the three-prong test is
24 sitting here today?
25 A. I couldn't recite it for you. It's

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1 probably cited somewhere in the Stipulation.
2 Q. I believe it is. Are you aware that a
3 stipulation is analyzed as a package by the PUCO?
4 MR. MENDOZA: I would object to the
5 extent you're asking for a legal conclusion.
6 A. Yes, that seems -- that seems right.
7 Q. If you could refer to Deposition Exhibit
8 1, the Joint Stipulation & Recommendation -- I'm just
9 going to refer to that as the Stipulation; is that
10 okay?
11 A. I think I can follow you.
12 Q. Okay. Are you familiar with this
13 document?
14 A. Yes.
15 Q. And you've read this document before?
16 A. Yes.
17 Q. When was the last time you read it?
18 A. I scanned it last night.
19 Q. And you didn't sign the Stipulation,
20 right? Mr. Mendoza signed it, correct?
21 A. I believe that's correct.
22 Q. What is Mr. Mendoza's title?
23 MR. MENDOZA: Objection, that's
24 irrelevant.
25 THE WITNESS: Tony, I apologize if I get

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1 this wrong. I think you are a staff attorney.
2 Q. (By Mr. Moore) And who does Mr. Mendoza
3 report to?
4 MR. MENDOZA: Objection as to relevance.
5 You can answer if you know.
6 A. I don't know. He reports to a managing
7 attorney within Sierra Club.
8 Q. Okay. Do you know who at Sierra Club
9 gave Tony Mendoza the authority to sign the
10 Stipulation?
11 MR. MENDOZA: Objection, calls for
12 attorney-client privilege, work product, internal
13 deliberations, First Amendment privilege. I instruct
14 Nachy not to answer the question.
15 MR. MOORE: Okay.
16 Q. (By Mr. Moore) Are there any other
17 representatives or employees of Sierra Club that had
18 to approve of the Stipulation before Mr. Mendoza
19 signed it?
20 MR. MENDOZA: Same objection. Sierra
21 Club's approval process is privileged. I am going to
22 instruct Nachy not to answer the question.
23 MR. MOORE: Tony, why is Sierra Club's
24 approval process privileged but no one else's is?
25 MR. MENDOZA: Because it involves

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1 deliberations with attorneys and staff involving
2 assessment of legal issues, among other things, among
3 other internal considerations, and we don't discuss
4 that publicly.
5 MR. MOORE: I'm not asking for
6 substantive information that you guys spoke about.
7 I'm only asking for who was involved. That's not
8 confidential or privileged.
9 MR. MENDOZA: I think it is confidential
10 who was involved in Sierra Club, which attorneys,
11 which other employees were involved in the discussion
12 of whether we should join the settlement or any other
13 settlement. I also note it is not at all relevant to
14 this proceeding, how we went about making that
15 decision.
16 MS. HENRY: Sierra Club is happy to
17 stipulate that it was not a unilateral decision made
18 by Mr. Mendoza.
19 MR. MOORE: Who is defending the witness
20 today, Mr. Mendoza or Ms. Henry?
21 MR. MENDOZA: That would be me, Kevin,
22 Mr. Mendoza.
23 MR. MOORE: Okay.
24 Q. (By Mr. Moore) Nachy, were you involved
25 in negotiating any terms of the Stipulation?

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1 A. Yes, I was.
 2 Q. Do you recall which terms you negotiated?
 3 MR. MENDOZA: I'm going to object to the
 4 extent that calls for settlement communications.
 5 MR. McKENZIE: This is Matt McKenzie from
 6 AEP. I echo that objection.
 7 MR. MENDOZA: I instruct Nachy not to
 8 answer. It is based, in part, on the Vectren
 9 decision, also Examiner Parrot's ruling today that
 10 discussions in settlement are not going to be --
 11 things that were said in settlement are not going to
 12 be discussed in the proceeding. They aren't
 13 admissible.
 14 MR. MOORE: I don't think I'm asking him
 15 to disclose what was said. I'm just asking him to
 16 divulge or let me know which provisions he helped
 17 negotiate.
 18 MR. MENDOZA: I think it's one and the
 19 same, Kevin. I don't think we can go through this
 20 document and talk about which provisions he
 21 negotiated over without divulging things that were
 22 said in those negotiations.
 23 MR. McKENZIE: This is Matt McKenzie. I
 24 echo that again. His testifying as to which parts of
 25 the Stipulation Sierra Club negotiated obviously?

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1 reveals the content of the negotiations.
 2 MR. MENDOZA: And I would just note this
 3 is res judicata in this case at this point. The
 4 Attorney Examiner ruled today that those types of
 5 discussions are not going -- consistent with the
 6 Commission's rules and case law, particularly the
 7 Vectren decision, which we've cited, that type of
 8 information is not admissible. It's not relevant in
 9 the proceeding.
 10 MR. MOORE: Okay.
 11 Q. (By Mr. Moore) Did you have any meetings,
 12 discussions, or communications of any kind with any
 13 AEP Ohio employee or representative concerning the
 14 Stipulation?
 15 MR. MENDOZA: Nachy, you can answer that
 16 question. I caution you not to reveal any
 17 discussions or information that was exchanged.
 18 A. Could you repeat the question, please?
 19 Q. Yes. Did you have or any other Sierra
 20 Club representative have any other meetings,
 21 discussions, or communications with any AEP Ohio
 22 employee or representative concerning the
 23 Stipulation?
 24 A. Yes.
 25 Q. Do you remember how many?

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1 MR. MENDOZA: Obviously, the same
 2 caution. You can answer to the extent you don't
 3 reveal any information about those discussions.
 4 MR. McKENZIE: This is Matt McKenzie. We
 5 are getting really close to the line revealing what
 6 went on in negotiations. This is completely out of
 7 bounds pursuant to what Tony has already recited for
 8 you.
 9 MR. MOORE: Thank you, Matt. I'm not
 10 asking about any confidential information. I'm
 11 asking did he have a meeting with AEP and how many he
 12 had. That's not confidential or privileged.
 13 MR. McKENZIE: If there were a hundred
 14 meetings or ten meetings, that obviously goes to the
 15 context of the negotiations. I'm just saying you are
 16 going close to the line.
 17 MR. MOORE: I don't agree with you.
 18 MR. MENDOZA: Well, I agree with Matt
 19 that we are close to the line. I think in the
 20 interest of having open discovery, I will let Nachy
 21 answer the question.
 22 MR. MOORE: Thank you, Mr. Mendoza.
 23 A. It would be hard to put a precise number,
 24 at least without revealing my calendar and e-mail and
 25 phone calls. It was quite a few.

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1 Q. Okay, fair enough. Did Sierra Club hire
 2 an outside consultant to conduct any analysis or
 3 study of the Stipulation?
 4 A. No.
 5 Q. Did Sierra Club itself conduct a formal
 6 study or formal analysis of the Stipulation?
 7 MR. MENDOZA: I'm just going to object.
 8 First, it's a compound question. And also the terms
 9 "formal study" or "formal analysis," could you help
 10 us with that, Kevin?
 11 MR. MOORE: Sure.
 12 Q. (By Mr. Moore) So an analysis to me would
 13 be a detailed examination of the elements or
 14 structure of something. Would that be a fair
 15 definition, Mr. Nachy?
 16 A. Sure.
 17 Q. And a study would be a detailed
 18 investigation and analysis of a subject or situation.
 19 Would that be a fair definition?
 20 A. Yes.
 21 Q. Okay. Using those definitions, did you
 22 conduct a formal study of the Stipulation as a
 23 package before you signed -- before Sierra Club
 24 signed it?
 25 A. No.

5 (Pages 17 to 20)

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1 Q. Did Sierra Club conduct a formal analysis
2 of the Stipulation before it was signed?
3 A. No.
4 Q. Did Sierra Club conduct a bill impact
5 analysis regarding how the Stipulation will affect
6 residential utility customers?
7 A. No.
8 Q. Okay. If I could have you turn to the
9 Stipulation, I am going to refer to the last sentence
10 on the first page, which goes over onto the second
11 page. Do you see that sentence, starts "This
12 Stipulation is supported by adequate data and
13 information"?
14 A. Yes, I'm there.
15 Q. At the end of that sentence there's a
16 footnote and the footnote reads, "The Sierra Club,
17 Direct Energy, and Interstate Gas Supply, Inc. (IGS)
18 agree not to oppose this provision." Is that
19 correct?
20 A. Yes.
21 Q. What does the word "oppose" mean in this
22 footnote?
23 MR. MENDOZA: I am just going to object
24 to the extent that you're calling for a legal
25 conclusion here, Kevin.

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1 But, Nachy, you can answer the question.
2 A. Kevin, I remember our attorneys spent a
3 lot of time arguing, particularly Sierra Club and AEP
4 attorneys arguing how this should be worded. I think
5 it has a specific legal meaning that I don't fully
6 grasp. I would define "oppose" just in plain
7 English. That would be just my definition. It
8 wouldn't be specific to the content of this footnote.
9 Q. Okay. So you don't know what this word
10 means in the context of that footnote then. Is that
11 a fair assessment of what you said?
12 A. Yeah, I think that's right.
13 Q. Would you also not know, then, how that
14 footnote affects that sentence?
15 MR. MENDOZA: Objection. That question
16 calls for a legal conclusion.
17 MS. HENRY: Also calls for attorney --
18 MR. MOORE: That only calls for a "yes"
19 or "no" answer. I'm just asking whether or not he
20 knows how it affects it. I'm not asking for him to
21 tell me how it affects it.
22 MR. MENDOZA: I'm just stating an
23 objection.
24 Nachy, you can answer the question if you
25 know, although I also counsel you not to reveal

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1 attorney-client communications.
2 A. Yeah. The wording of this footnote and
3 other footnotes in this document were the product of
4 a lot of haggling back and forth between Sierra
5 Club's attorneys and other attorneys, which, you
6 know, wasn't really my -- wasn't really my
7 wheelhouse, so I think our attorneys would be the
8 ones to define that word in this context for you.
9 Q. Okay. Would the same also be true of the
10 next sentence on page 2 and corresponding footnote 2?
11 MR. MENDOZA: I have the same objection
12 about questions calling for a legal conclusion.
13 But, Nachy, you can answer.
14 A. Exactly.
15 Q. Okay. Again referring to the first
16 footnote and the corresponding sentence, would you
17 agree that Sierra Club approves of this sentence?
18 MR. MENDOZA: Again, that question seeks
19 a legal conclusion. I don't think that Nachy can
20 answer it.
21 THE WITNESS: Should I answer?
22 MR. MENDOZA: I don't think you can. If
23 you provide an answer as a layperson, then without
24 revealing any attorney-client communications, you can
25 give it a try.

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1 A. Could you repeat that, Kevin, please?
2 Q. (By Mr. Moore) Sure.
3 MR. MOORE: And, Tony, I understand
4 you're just raising objections, but I'd appreciate it
5 if try not to counsel the witness by asking whether
6 you think he can or cannot answer a question.
7 MR. MENDOZA: I'm just stating my
8 objections, Kevin.
9 MR. MOORE: I think you are going a
10 little beyond that.
11 Could we have the question reread.
12 (Record read.)
13 A. Yeah. I guess I can't answer that. I'm
14 not sure what you mean. I can tell you that the
15 Sierra Club doesn't oppose the Stipulation as a
16 whole.
17 Q. Okay. Turning to page 4, footnote 3, and
18 the sentence that corresponds with footnote 3, would
19 you also not know what the word "oppose" means in
20 that footnote?
21 A. Similar to as I answered before, yeah.
22 Q. Okay. I'm looking at footnotes 4 and
23 5 and their corresponding sentences underneath
24 Section 3-A-1. Do you see that?
25 A. Yes, I do.

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Q. Both of those footnotes, footnotes 4 and 5, read, "Sierra Club, Direct Energy, and IGS are not participating in the provision but agree not to oppose it." Is that right?

A. That's right.

Q. Do you know what the word "participating" means in that footnote?

MR. MENDOZA: Object, seeks a legal conclusion.

A. That's another term that I know Mr. Mendoza and Ms. Henry put a lot of time with AEP on, and I wasn't exactly privy to what they were saying. It was important to our attorneys exactly how this footnote was phrased, but I wouldn't be able to define it.

Q. Okay. So then you also wouldn't know how that footnote would affect the meaning of the corresponding sentence?

A. No, not in the way I think you're -- not in any sort of legal context, no.

Q. Does have it have any nonlegal context meaning?

A. Only the plain English meaning of the words that are used.

Q. Can you describe what you mean by that?

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legal issues that our attorneys and other attorneys were haggling about.

MR. MOORE: Give me just a minute, guys. (Discussion off the record.)

Q. (By Mr. Moore) Are you ready, Nachy? If we could turn to page 36.

A. I'm there.

Q. Okay. Section E at the top, it says, "The Signatory Parties will support the Stipulation if the Stipulation is contested, and no Signatory Party will oppose an application for rehearing designed to defend the terms of the Stipulation." Do you see that?

A. I do.

Q. Footnote 16 attached to the first line there says, "Sierra Club, Direct Energy, and IGS are not obligated to support the Stipulation." Do you see that?

A. I do.

Q. Do you know what the meaning of that footnote is?

MR. MENDOZA: Same objection, seeks a legal conclusion.

A. I recall our attorneys were pretty concerned how this one was worded as well, so I

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A. What I mean is as a layperson, I could attempt to look the words up in a dictionary and provide definitions for them, but I think that's not the three-prong test you mentioned that the Commission uses.

Q. So the nonlegal context meaning is not -- would have no relevance to footnotes 4 and 5; is that correct?

MR. MENDOZA: Again, I think you're asking him for a legal conclusion as to what is relevant as far as the Commission is concerned.

Q. (By Mr. Moore) You can go ahead and answer if you have an answer.

A. I think I agree with what you just said, Kevin.

Q. Okay. Thank you. So would your answers also be the same to footnote 6 on page 5 then, you wouldn't be able to provide a meaning for what that footnote means either?

A. Yes.

Q. Okay. The same would be true for footnote 7 on page 7, you wouldn't be able to provide a meaning for that either?

A. Like the other footnotes in the Stipulation, these were -- these were essentially

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wouldn't want to say the wrong thing and say it means something that it actually doesn't or it doesn't mean something it does.

Q. So does that mean you don't know what it means?

A. I can't say I -- I can -- I can't say I can tell you what it means for sure in the legal context it was intended.

Q. Okay. Do you know if this footnote is referring to the entire Stipulation or if it's just this sentence?

MR. MENDOZA: Again, I'm going to object to the extent it seeks a legal conclusion.

A. Do I know if it refers to the entire Stipulation or just this? No, I don't.

Q. If you can turn to the next page, page 37, the first sentence on that page and corresponding footnote 17, the footnote reads, "Whether or not Sierra Club exercises its right to terminate its Signatory Party status or withdraw as described above, Sierra Club and its counsel are not obligated to support the reasonableness of this Stipulation before the Commission. Sierra Club and its counsel agree not to oppose the Stipulation before the Commission."

7 (Pages 25 to 28)

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1 Do you know what the meaning of this
2 footnote is?

3 MR. MENDOZA: Objection, legal
4 conclusion.

5 A. I would have to be an attorney to
6 understand what this one means.

7 Q. Okay. Is it fair to say you don't know
8 what that footnote means then?

9 A. Yes.

10 Q. You wouldn't know how that footnote would
11 affect the corresponding sentence then?

12 MR. MENDOZA: Asked and answered.

13 A. Yes.

14 Q. Would you know how it affects the
15 Stipulation as a whole or as a package?

16 MR. MENDOZA: Same objection.

17 A. No.

18 Q. Would you have the same answer to
19 footnote 18 and its corresponding sentence?

20 A. Yes.

21 Q. Okay. If I could have you turn to
22 page 9.

23 A. Okay.

24 Q. The Federal Advocacy prong, footnote 10
25 in relation to that section says, "The Federal

Page 31

1 MS. HENRY: That was my phone. I got an
2 e-mail. Sorry for the noise.

3 Q. (By Mr. Moore) So you would agree that
4 this provision concerns actions that AEP Ohio may or
5 may not take in the future?

6 MR. McKENZIE: This is Matt. I'll object
7 to you asking the witness to testify on behalf of
8 what AEP is going to do in the future.

9 Q. (By Mr. Moore) Did you have an answer?
10 I'm sorry, I think I missed it.

11 A. Yes, I think that's what it says.

12 Q. Okay. And that action would take place
13 through a future filing, correct?

14 MR. MENDOZA: I'm going to object to the
15 extent you're asking for a legal conclusion.

16 But you can answer, Nachy --

17 MS. HENRY: About another party.

18 A. Well, it says, "Before making any such
19 filing," so presumably there would be.

20 Q. Okay. Is there any cost estimate related
21 to this provision you see in the Stipulation?

22 A. No, I do not see any cost estimate
23 related to this provision.

24 Q. Okay. If I could have you turn to
25 page 10, talk a little bit about Section C. I think

Page 30

1 Advocacy commitments are those of AEP Ohio and not of
2 any other Signatory Party." Do you know the meaning
3 behind that footnote?

4 MR. MENDOZA: Same objection.

5 Q. Do you have an answer?

6 A. I mean, I guess it's the same answer. I
7 wouldn't want to give it any meaning -- I mean to
8 say, I wouldn't want to as a nonlawyer -- I don't
9 remember Sierra Club arguing about this or caring
10 about this footnote, but I assume someone did.
11 That's why it's there, so I wouldn't want to, as a
12 nonlawyer, try to explain it incorrectly.

13 Q. Okay. Would it be fair to say you don't
14 know what the footnote means?

15 A. I suppose that is true, yeah.

16 Q. This section, Section B, Federal
17 Advocacy, seeks to implement a longer-term capacity
18 product; is that correct? Let me rephrase that.

19 Section B states that "AEP will advocate
20 in good faith before PJM... for marketing
21 enhancements such as a longer-term capacity product";
22 is that correct.

23 A. Yes, that's what it says.

24 MR. MOORE: Did someone else just join
25 the meeting?

Page 32

1 it goes through page 13. Do you see that?

2 A. Yes, I do.

3 Q. Are you familiar with the terms of the
4 distribution investment rider underneath C-1?

5 A. No, I'm not.

6 Q. Do you know what impact the distribution
7 investment rider could have on customers' rates?

8 A. No, I don't.

9 MR. McKENZIE: This is Matt. Objection,
10 vague and misstates the Stipulation.

11 Q. (By Mr. Moore) Do you agree there's no
12 cost estimate related to the provision?

13 MS. HENRY: Are you asking -- it's vague.
14 Are you asking about the Stipulation or about in
15 general?

16 MR. MOORE: Excuse me?

17 MS. HENRY: I think your question is
18 vague, sir. Could you rephrase it?

19 MR. MOORE: Sure.

20 Q. (By Mr. Moore) Would you agree there's no
21 cost estimate related to provision C-1 of the
22 Stipulation?

23 MR. MENDOZA: Are you asking if there's a
24 cost estimate in the document or if that Sierra Club
25 has one? I think we generally aren't following the

Page 33

1 question.
2 MR. MOORE: I'm just talking about in the
3 Stipulation itself.
4 MR. MENDOZA: Okay. Thank you.
5 MR. MOORE: Uh-huh.
6 A. I don't see one.
7 Q. Okay. Would you agree that Section C-1,
8 the distribution investment rider, will be the
9 subject of a future filing?
10 A. It looks like per Section C, AEP Ohio
11 will file a separate application with the Commission,
12 and then C-1 is something that AEP Ohio will include
13 in that application.
14 Q. So the answer to my question would be
15 yes, correct?
16 A. Yes. I think -- that's what I answered.
17 Yes, there would be a separate application filed.
18 Q. If you could look underneath C-6 it says,
19 "In addition to the foregoing general matters to be
20 addressed in the Application to extend the ESP term,
21 the Company agrees to propose and the Signatory
22 Parties agree to advocate for approval (and the
23 nonopposing parties agree to either support or not
24 oppose) the following items as agreed to in this
25 Stipulation." Do you see that?

Page 34

1 A. I do.
2 Q. Do you know what the term "nonopposing
3 parties" means in that sentence?
4 MR. MENDOZA: Again, object. You're
5 asking for a legal conclusion.
6 A. I think there are nonopposing parties to
7 the Stipulation. Sierra Club is one of them.
8 Q. So Sierra Club is a nonopposing party of
9 the entire Stipulation. Is that what you're -- am I
10 correct in that assessment?
11 A. That is my understanding.
12 Q. So that's different from a Signatory
13 Party; am I right?
14 MR. MENDOZA: Again, you're asking him
15 for a legal conclusion.
16 A. I don't think that's correct. I think
17 Sierra Club is a signatory party and a nonopposing
18 party.
19 Q. Okay. In Section C-7 it talks about the
20 IRP tariff. Do you see that?
21 A. Yes.
22 Q. Do you know which customer class will be
23 responsible for paying the cost of the IRP as
24 proposed?
25 A. No, I don't.

Page 35

1 Q. If I could have you turn to Section D on
2 page 13.
3 A. I'm there.
4 Q. And specifically -- I'm sorry, page 16
5 under Section D and down to No. 7, the Pilot Supplier
6 Consolidated Billing Program, do you see that?
7 A. I do.
8 Q. Are you aware of a cost estimate for how
9 much the Pilot Supplier Consolidated Billing Program
10 will cost?
11 A. I'm not, no.
12 Q. Did Sierra Club conduct an analysis of
13 what the Pilot Supplier Consolidated Billing Program
14 may cost?
15 A. Sierra Club did not.
16 Q. And there is no mention of the costs of
17 that program in the Stipulation itself, correct? Of
18 the total cost estimate, I'm sorry.
19 A. I don't recall seeing one, but I would
20 probably want to scan the whole thing one more time.
21 I don't recall seeing one.
22 Q. Okay. If you could turn to page 19.
23 A. Okay.
24 Q. Talk a little bit about conversion of
25 Conesville Units 5 and 6. Did Sierra Club conduct an

Page 36

1 analysis of that provision in the Stipulation?
2 MR. MENDOZA: I object. I think that's a
3 little vague, Kevin.
4 MR. MOORE: Fair enough.
5 MR. MENDOZA: Could you define that a
6 little bit?
7 MR. MOORE: Sure, I can do that.
8 Q. (By Mr. Moore) Did Sierra Club conduct an
9 analysis of Section D-9 in the Stipulation?
10 MR. McKENZIE: What do you mean?
11 MR. MENDOZA: What are you talking about,
12 a cost analysis?
13 MR. MOORE: Yes.
14 A. No, Sierra Club did not conduct a cost
15 analysis about section -- whatever it is -- D-9.
16 Q. Did Sierra Club conduct a cost analysis,
17 a cost estimate for converting Conesville Units 5 and
18 6 to natural gas co-firing?
19 A. No, we did not.
20 Q. Would you agree that the conversion of
21 Conesville Units 5 and 6 is subject to approval of
22 cost recovery; is that correct?
23 MR. MENDOZA: Objection to the extent
24 you're seeking a legal conclusion there, Kevin.
25 A. Well, Section 9-a says that "AEP Ohio

9 (Pages 33 to 36)

will make a cost recovery filing supporting the conversion."

Q. Right. So the cost recovery will be the subject of a future filing, correct? Is that fair?

A. Yes, it appears that way to me.

Q. Okay. Do you know if retiring, refueling, or repowering Conesville Units 5 and 6 will be the subject of a future filing?

A. I don't know if it would be subject to a future filing. It's outside the limits -- the term of the PPA.

Q. Could you clarify your answer a little bit? What is outside the term of the PPA?

A. The date, December 31, 2029.

Q. Okay. Are you referring to the bottom of page 19 or somewhere else?

A. You asked about the retiring, refueling, or repowering of Conesville Units 5 and 6, right?

Q. Yes.

A. So that's to be done, according to the Stipulation, by December 31, 2029, which is outside the term of the PPA. That's all I was trying to say.

Q. Okay. If you can turn to page 28, please.

A. Okay.

of the provision on its own?

A. No.

Q. Would you agree that the programs described in this provision will be the subject of a future filing or filings?

A. I think they would have to be, yes.

Q. Section G on page 29, Grid Modernization, would you also agree there's no cost estimate related to this provision contained in the Stipulation?

A. Yes, I would.

Q. Did Sierra Club conduct its own cost analysis of this provision?

A. No, we did not.

Q. Would you agree that the programs or initiatives described in this provision will be the subject of a future filing or filings?

A. It appears that way. It appears they will be part of this June 1, 2016.

Q. Can you generally describe what advanced metering infrastructure is?

A. According to my understanding, advanced metering infrastructure is hardware that can be installed to allow the utility and the end user to better talk to one another. In other words, a common example is a smart meter. Instead of having to send

Q. Section E, the Carbon Emission Reduction Plan, did Sierra Club conduct a cost analysis of that provision?

A. No.

Q. Do you know if an economic impact analysis has been filed to date regarding the Carbon Emission Reduction Plan in the Stipulation?

A. Not to my knowledge.

Q. Would you agree there's no cost estimate regarding the Carbon Emission Reduction Plan contained in the Stipulation?

A. Yes, I would agree.

Q. Would you agree that the Carbon Emission Reduction Plan contained in the Stipulation will be the subject of a future filing?

A. Yes. According to the Stipulation, AEP Ohio will make a filing by December 31, 2016.

Q. Okay. On the next page, page 29, under Section F, Fuel Diversification --

A. Okay.

Q. -- would you agree there's no cost estimate related to this provision contained in the Stipulation?

A. Yes.

Q. Did Sierra Club conduct a cost analysis

a meter reader to a home or business, that meter can be read using such things as radio frequency ID from a distance.

Q. Okay. If I could have you turn to the next page, page 30, and refer to Section H, Battery Technology.

A. Okay.

Q. Is there a cost estimate for this provision contained in the Stipulation?

A. No.

Q. Did Sierra Club conduct its own cost estimate analysis for this provision in the Stipulation?

A. No.

Q. Do you know how many megawatts the batteries would be able to store?

MR. MENDOZA: Objection, vague.

A. There's no megawatt value listed for the resource.

Q. Okay. So you don't know, would that be a fair thing to say?

A. Yes, I don't know.

Q. Do you know whether the batteries are planned or intended to be manufactured in Ohio?

A. I do not know.

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1 Q. Do you know which customer class is
2 intended to pay for the batteries?
3 A. I don't even know if there is a plan to
4 allocate those costs among customer classes.
5 Q. Would you agree that the initiatives
6 described in this section will be the subject of
7 future filings before the Commission?
8 A. Yes. It says so explicitly.
9 Q. Okay. The next section, Section I,
10 Environmental and Renewable Energy Projects on
11 page 30, do you see that?
12 A. I do.
13 Q. And I-1 talks about "AEP Ohio and its
14 affiliates will develop a total of at least 500 MW
15 nameplate capacity of wind energy projects in Ohio as
16 follows"; is that right?
17 A. Yes.
18 Q. Do you know whether the wind turbines
19 associated with this section will be built in Ohio or
20 intended to be built in Ohio?
21 A. You mean the turbine as a component of
22 the renewable energy facility?
23 Q. Yes.
24 A. So you're asking me about the
25 manufacturing of the turbine itself?

Page 42

1 Q. Yes.
2 A. I don't know.
3 Q. Do you know whether AEP Ohio has
4 committed to any manufacturing jobs in Ohio related
5 to Section I-1?
6 A. No, I don't know.
7 Q. Do you know what the term "capacity
8 factor" means?
9 A. Yes.
10 Q. Do you know what the capacity factor for
11 the wind energy projects contained in Section
12 I-1 will be?
13 MR. MENDOZA: I'm going to object as to
14 relevance.
15 But you can answer, Nachy, if you know.
16 A. It would be impossible to know, depending
17 on where they were sited and the technology used.
18 Q. Do you know what an approximate capacity
19 factor would be?
20 MR. MENDOZA: Same objection.
21 A. I think it would be fair to have a very
22 rough approximation of 30 percent.
23 Q. Okay. Has Sierra Club done any cost
24 analysis for the initiatives or projects described in
25 this provision?

Page 43

1 A. No, we have not.
2 MR. MENDOZA: Kevin, you're free to ask
3 those questions. I would be willing to enter into a
4 stipulation on that issue if OCC is interested.
5 MR. MOORE: There's not a whole lot of
6 sections left.
7 MR. MENDOZA: Okay.
8 MR. MOORE: I appreciate that, though.
9 Q. (By Mr. Moore) Turning to I-2 on
10 page 31 and going on to 32, with regards to solar
11 energy projects in Ohio that AEP is proposing --
12 A. Yes.
13 Q. -- do you know what kind of solar cells
14 are planned or intended to be used in those projects?
15 A. The Stipulation doesn't specify, and I
16 don't know apart from the Stipulation what may be
17 planned.
18 Q. Okay. Do you know whether the solar
19 cells or any of the other parts of the solar array
20 would be manufactured in Ohio?
21 MR. MENDOZA: Kevin, I just want -- can
22 you help us understand what you mean by solar array?
23 I might suggest it would be helpful if you did that
24 one at a time instead of compound so we are all on
25 the same page as to exactly what you're asking.

Page 44

1 MR. MOORE: Sure, I can do that.
2 Q. (By Mr. Moore) Do you know if any of the
3 solar cells themselves are intended to be
4 manufactured in Ohio?
5 A. I don't. I know that the Stipulation
6 expresses that preference will be given to solar
7 projects that create permanent manufacturing jobs in
8 Ohio.
9 Q. Okay. You're referring to the last
10 sentence of I-2 on page 32?
11 A. That's right.
12 Q. Do you have an approximation of what the
13 capacity factor for the solar energy projects would
14 be?
15 MR. MENDOZA: Objection to relevance.
16 A. Similar to my answer for wind, it would
17 depend, of course, on the site and the quality of the
18 resource and the technology. It's probably fair to
19 approximate it at 25 percent.
20 Q. If you could turn to page 34 --
21 A. Yes, I am there.
22 Q. -- Section L, the MRO Test Results.
23 A. Yes.
24 Q. The lone sentence underneath that section
25 has a footnote attached to it that states, "Sierra

11 (Pages 41 to 44)

1 Club is not participating in this provision but
2 agrees not to oppose it." Is that right?
3 A. That's correct.
4 Q. Would that again mean you don't know what
5 the meaning of that footnote is?
6 A. It would be hard to say specifically what
7 that means in the legal context which it is intended.
8 Q. Do you know whether Sierra Club did a
9 formal analysis of this provision?
10 A. Yes, I do know. We did not.
11 MR. MOORE: If you give me a minute, I
12 might be done. I'll put you on mute real quick.
13 (Recess taken.)
14 MR. MOORE: I have a few more questions.
15 Q. (By Mr. Moore) Nachy, were you the
16 witness that Sierra Club produced in response to the
17 Notice to Take Depositions and Request for Production
18 of Documents by the OCC filed on December 23, 2015?
19 A. Could you repeat that question?
20 Q. Sure. Are you the witness that Sierra
21 Club produced in response to the Notice to Take
22 Depositions and Request for Production of Documents
23 by the OCC filed at the PUCO on December 23, 2015?
24 MR. MENDOZA: Kevin, I'm not sure if
25 Nachy is familiar with that document, but I'll just

1 stipulate that, yes, he's our witness. He's our
2 person. I'm not sure we agree with the phrasing
3 "witness."
4 MR. MOORE: Fair enough. Could we
5 stipulate to have that introduced as Deposition
6 Exhibit 2?
7 MR. MENDOZA: The notice?
8 MR. MOORE: Yes.
9 MS. HENRY: Our notice?
10 MR. MOORE: Yes.
11 MS. HENRY: I note that we do not have
12 a formal response. There were conversations between
13 Mr. Michael and myself.
14 MR. MICHAEL: Hey, Kristin, this is Bill
15 Michael. I just joined the deposition. I just
16 wanted to let you all know I was here.
17 And it was my understanding that
18 Mr. Mendoza was defending this deposition, and I
19 don't know how you-all do it out in California, but
20 in Ohio you have one and only one person that can
21 defend the deposition, so --
22 MS. HENRY: That's correct.
23 MR. MICHAEL: Okay.
24 MS. HENRY: I was just answering the
25 question because Mr. Mendoza was on vacation and I

1 did not know if he knew that.
2 MR. MENDOZA: I was going to say the same
3 thing. Bill and Kristin had those discussions. I
4 know you did have them. I wasn't privy to them so
5 I'm not sure what was said.
6 MR. MICHAEL: Okay. Well, that's fine.
7 The rule in Ohio is still there's one and only one
8 person to defend the witness.
9 MS. HENRY: You're speaking now also,
10 Mr. Michael, so I'll upbraid you as well.
11 MR. MICHAEL: Well, I'm not going to let
12 you guys take advantage of one of my colleagues by
13 having two lawyers defend the deposition. I wanted
14 to announce myself, and I also wanted to make clear
15 that in the state of Ohio, you have one and only one
16 counsel defending a deposition, so to the degree you
17 were unclear about that fact, I wanted to make it
18 clear for you.
19 MR. MENDOZA: That's fine, Bill. I think
20 we can go on.
21 (EXHIBIT MARKED FOR IDENTIFICATION.)
22 Q. (By Mr. Moore) If we could turn back to
23 page 29 and refer to Section G, Grid Modernization,
24 do you see that?
25 A. I'm there.

1 Q. Okay. I think you said earlier that
2 there's no cost estimate related to this provision,
3 correct?
4 A. Correct.
5 Q. And Sierra Club didn't conduct its own
6 cost analysis of this provision, correct?
7 A. Correct.
8 Q. And it also would be the subject of a
9 future filing, correct?
10 A. Yes, it says there will be a grid
11 modernization business plan filed on June 1, 2016.
12 Q. And that future filing may or may not be
13 accepted by the appropriate regulatory body, correct?
14 MR. MENDOZA: I'm going to object.
15 You're asking for a legal conclusion.
16 Q. (By Mr. Moore) You can go ahead and
17 answer.
18 A. As far as I know, yes, the Commission is
19 not required to approve any plan that's filed there.
20 Q. Okay. And so if you don't know what the
21 cost estimates are going to be and you don't know
22 whether the programs or initiatives described in the
23 section are even going to be approved, then how can
24 Sierra Club believe that the initiatives are in the
25 public interest?

MR. MENDOZA: Objection. You have misstated our position. You're assuming facts. You're also asking for us to divulge our attorney-client communications.

If you would like, Nachy, to restate our position, I'm sure you'd be happy to do it.

Q. (By Mr. Moore) Please restate your position with regard to that section.

A. Our position with regard to this section, as well any other section, of the Stipulation is we don't oppose it.

Q. Do you approve of the Stipulation?

MR. MENDOZA: Objection, again, same objection.

Nachy, if you want to tell them our position, you can tell them again.

A. Sierra Club's position is we don't oppose the Stipulation as well as specifically this section, Section G.

MR. MOORE: I think that's all the questions I have, guys.

All right. Does anyone else on the phone have any questions?

Matt, do you have any questions?

MR. McKENZIE: I'm sorry, I have no,

State of Ohio :
: SS:

County of _____:

I, Nahaliel Kanfer, do hereby certify that I have read the foregoing transcript of my deposition given on Tuesday, January 5, 2016; that together with the correction page attached hereto noting changes in form or substance, if any, it is true and correct.

Nahaliel Kanfer

I do hereby certify that the foregoing transcript of the deposition of Nahaliel Kanfer was submitted to the witness for reading and signing; that after he had stated to the undersigned Notary Public that he had read and examined his deposition, he signed the same in my presence on the _____ day of _____, 2016.

Notary Public

My commission expires _____.

questions.

MR. MOORE: Tony and Kristin, you don't have questions to add?

MR. MENDOZA: I don't have any questions. Thanks.

MR. MOORE: Okay. Thank you, Nachy.

THE WITNESS: While we are still on record, Kevin, I just wanted to say that my high opinion of OCC and my organization's high opinion of OCC remains as high as it's ever been. I'm sorry we are on opposite sides of this case.

MR. MOORE: I appreciate that sentiment. Thank you.

MR. MENDOZA: We second that. You know, we second that from California.

MR. MOORE: Thank you, Tony.

Let's go off the record.

(The deposition concluded at 5:31 p.m.)

CERTIFICATE

State of Ohio :
: SS:

County of Franklin :

I, Rosemary F. Anderson, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named Nahaliel Kanfer was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified and completed without adjournment.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 6th day of January, 2016.

Rosemary F. Anderson,
Registered Professional Reporter,
and Notary Public in and for the
State of Ohio.

My commission expires April 5, 2019.

(RFA-79971-3)

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Page	Line	Change	Reason
9	1	"September 2008" to "early 2008"	Transcription error.
19	24	"revealing" to "referring to"	Transcription error.
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