

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

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

- - -

PROCEEDINGS

before Ms. Greta See and Ms. Sarah Parrot, Attorney
Examiners, and Commissioner Asim Haque at the Public
Utilities Commission of Ohio, 180 East Broad Street,
Room 11-A, Columbus, Ohio, called at 9:30 a.m. on
Friday, January 8, 2016.

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

- - -

1 APPEARANCES:

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

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

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

16 On behalf of the Ohio Power Company.

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

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

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

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

1 APPEARANCES: (Continued)

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

6 On behalf of EnerNOC, Inc.

7 Ohio Environmental Council
8 By Mr. Trent A. Dougherty
9 1145 Chesapeake Avenue, Suite I
10 Columbus, Ohio 43212

11 On behalf of the Ohio Environmental
12 Council and the Environmental Defense
13 Fund.

14 Taft, Stettinius & Hollister LLP
15 By Mr. Mark S. Yurick
16 65 East State Street, Suite 1000
17 Columbus, Ohio 43215

18 On behalf of The Kroger Company.

19 Ohio Partners for Affordable Energy
20 By Ms. Colleen L. Mooney
21 and Mr. David C. Rinebolt
22 231 West Lima Street
23 Findlay, Ohio 45840

24 On behalf of the Ohio Partners for
25 Affordable Energy.

Carpenter Lipps & Leland LLP
By Ms. Kimberly W. Bojko
Ms. Danielle Ghiloni
and Mr. Ryan P. O'Rourke
280 North High Street, Suite 1300
Columbus, Ohio 43215

On behalf of the Ohio Manufacturers'
Association Energy Group.

1 APPEARANCES: (Continued)

2 Sierra Club Environmental Law Program

3 Ms. Kristin Henry

4 and Mr. Tony Mendoza

5 85 Second Street, 2nd Floor

6 San Francisco, California 94105

7 Olson, Bzdok & Howard

8 By Mr. Christopher M. Bzdok

9 420 East Front Street

10 Traverse City, Michigan 49686

11 Earthjustice

12 By Mr. Shannon Fisk

13 Northeast Office

14 1617 John F. Kennedy Boulevard, Suite 1675

15 Philadelphia, Pennsylvania 19103

16 On behalf of the Sierra Club.

17 Spilman, Thomas & Battle, PLLC

18 By Mr. Derrick Price Williamson

19 1100 Bent Creek Boulevard, Suite 101

20 Mechanicsburg, Pennsylvania 17050

21 Spilman, Thomas & Battle, PLLC

22 By Ms. Carrie Harris

23 310 First Street, Suite 1100

24 Roanoke, Virginia 24011

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

IGS Energy

By Mr. Joseph Oliker

6100 Emerald Parkway

Dublin, Ohio 43016

On behalf of IGS Energy.

Boehm, Kurtz & Lowry

By Mr. Michael L. Kurtz,

Mr. Kurt J. Boehm

and Ms. Jody Kyler Cohn

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

On behalf of the Ohio Energy Group.

1 APPEARANCES: (Continued)

2 Environmental Law & Policy Center
3 By Ms. Madeline Fleisher
4 21 West Broad Street, Suite 500
5 Columbus, Ohio 43215

6 Environmental Law & Policy Center
7 By Mr. Justin M. Vickers
8 35 East Wacker Drive Suite 1600
9 Chicago, Illinois 60601

10 On behalf of the Environmental Law &
11 Policy Center.

12 Ohio Poverty Law Center
13 By Mr. Michael R. Smalz
14 555 Buttles Avenue
15 Columbus, Ohio 43215

16 On behalf of the Appalachian Peace and
17 Justice Network.

18 FirstEnergy Corp.
19 By Mr. Mark Hayden
20 and Mr. Scott J. Casto
21 76 South Main Street
22 Akron, Ohio 44308

23 Calfee, Halter & Griswold LLP
24 By Mr. N. Trevor Alexander
25 1200 Huntington Center
41 South High Street
Columbus, Ohio 43215

On behalf of the FirstEnergy Solutions
Corp.

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

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

1 APPEARANCES: (Continued)

2 Bruce J. Weston, Ohio Consumers' Counsel
3 By Mr. William J. Michael
4 Mr. Kevin F. Moore
5 and Ms. Jodi Bair,
6 Assistant Consumers' Counsel
7 10 West Broad Street, Suite 1800
8 Columbus, Ohio 43215-3485
9 Bricker & Eckler, LLP
10 By Mr. Dane Stinson
11 100 South Third Street
12 Columbus, Ohio 43215-4291

13 On behalf of the Residential Consumers of
14 the Ohio Power Company.

15 Mr. Richard L. Sites
16 155 East Broad Street
17 Columbus, Ohio 43215

18 Bricker & Eckler, LLP
19 By Mr. Thomas J. O'Brien
20 100 South Third Street
21 Columbus, Ohio 43215-4291

22 On behalf of the Ohio Hospital
23 Association.

24 Mike DeWine, Ohio Attorney General
25 By Mr. William L. Wright,
Section Chief
Mr. Steven L. Beeler
and Mr. Werner L. Margard, III,
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

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

On behalf of Buckeye Power.

1 APPEARANCES: (Continued)

2 Dickson Wright PLLC
3 By Mr. Terrence O'Donnell
4 and Mr. Raymond D. Seiler
5 150 East Gay Street, Suite 2400
6 Columbus, Ohio 43215

7 On behalf of the Mid-Atlantic Renewable
8 Energy Coalition.

9 Monitoring Analytics
10 By Mr. Jeffrey Mayes
11 2621 Van Buren Avenue
12 Eagleville, Pennsylvania 19403

13 On behalf of Monitoring Analytics.

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1 Friday Morning Session,
2 January 8, 2016.

3 - - -

4 EXAMINER SEE: Let's go on the record.

5 Mr. Michael, would you like to call your
6 next witness.

7 MR. MICHAEL: Yes, your Honor. OCC would
8 like to call James F. Wilson.

9 (Witness sworn.)

10 EXAMINER SEE: Thank you.

11 MR. MICHAEL: And, your Honor, for
12 identification purposes we would request that the
13 public version of the supplemental direct testimony
14 of James F. Wilson be marked as OCC Exhibit No. 34,
15 and that the confidential version of the supplemental
16 direct testimony of James F. Wilson be marked as OCC
17 Exhibit No. 35.

18 EXAMINER SEE: So marked.

19 (EXHIBITS MARKED FOR IDENTIFICATION.)

20 - - -

21 JAMES F. WILSON

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

24 DIRECT EXAMINATION

25 By Mr. Michael:

1 Q. Would you state your name, please.

2 A. James F. Wilson.

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

5 A. 4800 Hampden Lane, Suite 200, Bethesda,
6 Maryland 20814.

7 Q. And, Mr. Wilson, did you cause direct
8 testimony to be filed in this matter?

9 A. Yes, I did.

10 Q. And supplemental direct testimony?

11 A. Yes.

12 Q. And you have before you what was
13 previously marked as OCC Exhibit No. 34. Could you
14 identify that document, please?

15 A. Is that what was just put before me up
16 here?

17 Q. Yes. Public version.

18 A. It doesn't have a "34" on it. This is my
19 supplemental direct testimony.

20 Q. Okay. And that's the public version,
21 correct?

22 A. Public version. Okay.

23 Q. And the other document should be marked as
24 OCC Exhibit No. 35. And can you identify that
25 document, please?

1 A. That's my supplemental direct testimony
2 confidential version.

3 Q. And, Mr. Wilson, were those documents
4 prepared by you or at your direction?

5 A. Yes.

6 Q. And do you have any additions or
7 corrections to either one of those documents?

8 A. No, I don't.

9 Q. And if I were to ask you the questions in
10 those documents today, would your answers be the
11 same?

12 A. Yes.

13 MR. MICHAEL: Your Honor, I move for the
14 admission of OCC Exhibits No. 34 and 35, subject to
15 cross-examination.

16 EXAMINER SEE: Any cross for this witness,
17 Ms. Petrucci?

18 MS. PETRUCCI: No questions, thank you.

19 EXAMINER SEE: Mr. O'Rourke?

20 MR. O'ROURKE: No questions, your Honor.

21 EXAMINER SEE: Ms. Fleisher?

22 MS. FLEISHER: No questions, your Honor.

23 EXAMINER SEE: Mr. Kurtz?

24 MR. KURTZ: Thank you, your Honor. I
25 think I do have questions for the confidential

1 session, but I just have a few very brief ones for
2 the public section.

3 EXAMINER SEE: Okay.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Kurtz:

7 Q. Good morning, Mr. Wilson.

8 A. Good morning.

9 Q. Would you turn to Table 1 on your
10 testimony at page 5.

11 A. Page 5.

12 Q. Are you there? Okay. Hey, what I would
13 like to do is understand the capacity factors for the
14 PPA units that result from the net generation you
15 assume they'll run at. Do you have a calculator?

16 A. I have my telephone.

17 Q. Okay. Well, it's pretty -- the gross
18 generation of the PPA units is 3,100 megawatts; is
19 that right?

20 A. Where are you?

21 Q. That's just a general number from the
22 record. That's not on this page.

23 A. Oh.

24 Q. Do you understand that the gross -- that
25 the capacity of the PPA units is 3,100 megawatts?

1 A. I don't recall, but I'll accept that.

2 Q. Okay. If we multiply that by the number
3 of the hours in a year, 8,760, that would -- that
4 will give us the megawatt-hours of 100 percent
5 capacity factor, correct?

6 A. Correct.

7 Q. Okay. Let's do that. 3,100 times 8,760.
8 So the maximum hours that the PPA units could
9 generate are 27.156 million; is that what you get?

10 A. Yes.

11 Q. Okay. Now, in year 2017, you have the PPA
12 units producing 11.2 million megawatt-hours?

13 A. Yes.

14 Q. Okay. So if we divide 11.2 million times
15 the maximum generation, we calculate it, I get 41.2
16 percent. Is that what you get?

17 A. Yeah.

18 Q. Okay. I don't want to do every year. I
19 just want to do a couple of representative years.
20 Can you calculate the capacity factor for 2019?

21 A. It's about 22, 23 percent.

22 Q. I get 22.5 percent. Is that what you get?

23 A. Yeah.

24 Q. Okay. And then one more year, 2022,
25 what's the capacity factor you get for 2022?

1 A. It's about 11 percent.

2 Q. 10.7 percent; is that correct?

3 A. Yes.

4 Q. Okay. Did you -- what is your general
5 experiences to -- these are all baseload coal units
6 in the PPA proposal, correct?

7 A. They have been historically, yes.

8 Q. Okay. And what is the historical capacity
9 factor that the baseload coal units typically run at?

10 A. You probably want to be up 60, 80 percent.

11 Q. Okay. Now, did you -- when you conclude
12 in year 2022 that these units are only going to be
13 running at 10.7 -- producing 10.7 percent of the
14 maximum energy that they could produce, did that
15 cause you to call into question your -- the results
16 of your study?

17 A. What I did is if -- if they are economic
18 in an hour, I have them run, and if they would lose
19 money, I would have them not run.

20 Q. Okay. Now, when you say -- what you do,
21 you look at the energy rate -- the energy price in
22 PJM compared to the variable cost to the units?

23 A. Correct.

24 Q. Now, when we say "variable cost," you
25 use -- is that what you use the energy cost, you use

1 energy and capacity, so is energy the equivalent of
2 variable cost?

3 A. Only energy, yes.

4 Q. I'm sorry. What?

5 A. Only the variable costs.

6 Q. Yes. So energy is equivalent to the
7 variable costs? In your modeling?

8 A. Energy and consumables.

9 Q. Right, fuel --

10 A. Yes.

11 Q. -- emission allowances, --

12 A. Right.

13 Q. -- limestone, reagent for the scrubbers
14 and so forth, all the variable costs of producing
15 energy, correct?

16 A. Yes.

17 Q. Okay. The market energy rate, how did
18 you -- I know you used your forwards and extrapolated
19 off what AEP did. But is the market energy rate that
20 you used -- explain to me how you calculated that for
21 your study.

22 A. I used the low case prices which vary
23 hourly and then I took the forwards and I compared
24 the forwards to the averages during peak and off-peak
25 periods by month, and then I adjusted the low case

1 prices that they would average the forwards, so they
2 got scaled up or down a little bit, and then those
3 are the prices that I used.

4 Q. So you scaled up or down the ATC of the
5 around-the-clock, on-peak/off-peak average?

6 A. No. I scaled hourly prices.

7 Q. Okay. 2022, when you assume that these
8 baseload coal units will only run at 10.7 percent
9 capacity factor, these units are fairly comparable in
10 heat rate and efficiency and coal costs to the coal
11 fleet throughout PJM, would you agree?

12 A. I haven't checked that and I didn't assume
13 that 10 percent. That's an outcome of the analysis.

14 Q. Okay. As an outcome of the analysis, if
15 you assume these base load coal units are only going
16 to run at 10.7 percent capacity factor, what does
17 your analysis -- where does -- what does your
18 analysis assume or calculate? Where is the energy
19 going to come from to keep the lights on? I mean, if
20 the baseload coal fleet is only running 10 percent of
21 the time, where is the energy going to come from?

22 A. It could come from other, more efficient
23 coal plants, nuclear plants, new wind and solar, and,
24 of course, new combined-cycle plants.

25 Q. So does your -- does your analysis assume

1 sort of a large wave of new natural gas plants coming
2 on line in the next five -- four or five years?

3 A. Well, I used the forward prices, and the
4 forward prices reflect a consensus of market
5 participants' expectations about what those prices
6 are going to be. Those expectations probably do
7 anticipate quite a few new gas-fired power plants.

8 Q. Now, if there is this big new wave of
9 gas-fired power plants, what is that going to do to
10 the demand for natural gas and does your model assume
11 that gas prices will go up as a result?

12 A. Well, gas is pushing very hard out of the
13 Marcellus and Utica region, which is right in the
14 middle of western PJM. It's got nowhere to go. It's
15 driving the basis very large. There are many, many
16 projects to try to build additional pipeline capacity
17 out of the Marcellus and Utica, but those gas-fired
18 plants, for many years, are going to benefit from the
19 glut and excess of natural gas in that region. That
20 demand will only allow that huge basis to come back
21 toward a more normal level.

22 Q. What does your study assume is the
23 price -- the price of coal is going to do if -- if
24 the demand -- if the coal-fired power plants are only
25 running 10 percent of the time? Do you assume a

1 downward pressure on coal prices? Is that reflected?

2 A. No, I didn't change the coal price
3 forecast as I discussed in my direct. It looked like
4 a reasonable level. Coal consumption will go down.
5 That doesn't necessarily mean price would go down,
6 plants will close, some will be exported, the market
7 will adjust.

8 Q. Okay. So you didn't change the coal price
9 in the face of drastically reduced output from coal
10 generation?

11 A. No, I didn't.

12 MR. KURTZ: Okay. I think I am going to
13 reserve the rest of my questions for the confidential
14 session. Thank you, Mr. Wilson.

15 EXAMINER SEE: Okay. Mr. Darr?

16 MR. DARR: No questions, your Honor.

17 EXAMINER SEE: Ms. Spinosi?

18 MS. SPINOSI: No questions, your Honor.

19 EXAMINER SEE: Mr. Conway?

20 MR. CONWAY: Thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Conway:

24 Q. Good morning, Mr. Wilson.

25 A. Good morning.

1 MR. CONWAY: And I, too, your Honor, would
2 reserve a short amount of time for the confidential
3 record.

4 EXAMINER SEE: Okay.

5 Q. Mr. Wilson, a few questions about the
6 differences or similarities between what you did this
7 time around and your supplemental direct testimony as
8 compared to your original direct testimony. In your
9 supplemental direct testimony you have updated your
10 estimate of the cost impacts of customers of the
11 proposed affiliate PPA and the PPA rider, correct?

12 A. Correct.

13 Q. And the changes that you made to your
14 earlier analysis and in this current version of your
15 analysis are listed at the bottom of pages -- page 9
16 and then on the top of page 10 of your direct
17 supplemental testimony, correct?

18 A. Yes.

19 Q. And let me just go through the changes
20 quickly with you. The first one involved updating
21 the time period of the PPA rider and the PPA to the
22 period January, 2016, through May of 2024, correct?

23 A. Correct.

24 Q. And that changed as a result of the
25 stipulation, correct?

1 A. Yes.

2 Q. And that change is also included in the
3 company's revised estimate reflected in Mr. Allen's
4 work of the impacts on customers of the PPA and the
5 PPA rider, right?

6 A. Yes.

7 Q. And the company's revised estimate is
8 provided by Mr. Allen in Exhibit WAA-2 to his
9 testimony in support of the stipulation, correct?

10 A. Yes.

11 Q. Now, the second change that you made
12 compared to your earlier estimate provided in your
13 direct testimony is that you updated the PPA units'
14 forecast costs, and by "forecast cost," I mean the
15 fixed costs or the investment costs, based on the
16 revised ROE that the stipulation provides, the 10.38
17 percent?

18 A. Correct.

19 Q. And so, again, that change is based on the
20 stipulation, right?

21 A. Yes.

22 Q. And is also reflected in Mr. Allen's
23 testimony, correct?

24 A. Yes.

25 Q. And then the third change that you made

1 was to update your estimate to include slightly
2 different revenue values for PJM's RPM transitional
3 capacity auctions, right?

4 A. Correct.

5 Q. And that change that you made was based on
6 the transition capacity auction revenue values that
7 Mr. Allen also included in his estimate reflected in
8 his Exhibit WAA-2, correct?

9 A. Yes.

10 Q. And then the next change, the fourth
11 change you made to your work this time was to
12 incorporate the \$100 million credit commitment that
13 the stipulation provides for the last four years of
14 the PPA rider?

15 A. Yes.

16 Q. And then the last change, the fifth change
17 you made was to use forward prices reported by CME
18 Group as of November 30, 2015; is that right?

19 A. Yes.

20 Q. And you use forwards or futures prices to
21 make adjustments to AEP Ohio's forecast of wholesale
22 prices that the PPA units received from the market
23 for their output, right?

24 A. Yes.

25 Q. And it's the last adjustment you make that

1 really drives the differences in your -- your
2 estimate of the cost impacts as reflected in your
3 revised testimony compared to the company's estimates
4 of those impacts that Mr. Allen describes in his
5 Exhibit WAA-2, correct?

6 A. Yes.

7 Q. Now, the way in which you used the forward
8 prices this time around to make adjustments to AEP
9 Ohio's forecasted wholesale electric power prices in
10 your supplemental direct testimony is the same way
11 that you used the forward prices in your earlier
12 testimony?

13 A. Yes.

14 Q. The only difference is that you used the
15 AEP Dayton Hub forward prices reported by the CME
16 Group as of November 30, 2015, this time around
17 instead, of using the September 5, 2015, forward
18 prices that you used the last time, right?

19 A. Yes. I don't recall the exact date, but
20 that sounds about right, yes, of the earlier ones.

21 Q. And it's reflected in your Footnote 19 of
22 your original testimony, the date that you accessed
23 the CME Group forwards the first time around, right?

24 A. Okay.

25 Q. Now, in your direct testimony you provided

1 on October 21, 2015, in this proceeding which was OCC
2 Exhibit 16, I believe I am referring to the
3 confidential version, you describe in some detail the
4 assumptions and methods you used to develop your
5 estimate of the cost impacts of the PPA rider. Do
6 you recall that?

7 A. Yes.

8 Q. And do you recall that your description of
9 what you did is provided in your Q and A No. 61 at
10 pages 51 through the top of page 53 of your original
11 direct testimony?

12 A. Yes.

13 Q. And I believe you've already answered
14 generally that you used the same approach this time
15 around as you used the first time around, but I just
16 wanted to ask just several confirmatory follow-up
17 questions about that and that's what I am about to
18 do, okay? Again, did you use the same assumptions
19 and methods this time around that you described in
20 your direct testimony at Q and A 61, making just the
21 five changes that we just discussed?

22 A. Yes.

23 Q. Okay. So, for example, looking at what's
24 identified as item little Roman numeral "i" on page
25 51 of your direct testimony, OCC Exhibit 16, does

1 that description and that item, little Roman
2 Numeral i, also describe what you did to develop your
3 revised hourly energy prices this time around, except
4 that the reference in Footnote 19, of course, would
5 be changed to refer to forward prices from
6 November 30?

7 A. Yes.

8 Q. Okay. And then going on to Roman Numeral
9 little ii on page 52 of your earlier direct
10 testimony, does that also describe how, based on your
11 revised hourly energy prices, you re-dispatched the,
12 quote-unquote, re-dispatched the PPA units for your
13 supplemental direct testimony cost impacts?

14 A. Yes.

15 Q. And then let me turn your attention to
16 little Roman Numeral iii on page 52 which extends
17 over to the top of page 53 of your earlier direct
18 testimony. Are you there?

19 A. Yes.

20 Q. Does that still describe how you
21 incorporated the capacity price projections into your
22 estimate with the revision that you mention in your
23 supplemental direct testimony that you actually used
24 Mr. Allen's values for that item?

25 A. Yes.

1 Q. Okay. Now, could you turn to exhibit --
2 could you turn to Exhibit JFW-22, the supplemental.
3 I'm sorry. Yes, to the supplemental direct
4 testimony.

5 A. In the confidential version?

6 Q. It's in the confidential version and
7 I'm --

8 MR. CONWAY: Just a second, your Honor.

9 EXAMINER SEE: Okay.

10 Q. I tell you what, I'll save these questions
11 to the confidential session in the cross-examination
12 just to be safe.

13 Mr. Wilson, I would like you to turn your
14 attention to page 17 of your supplemental direct
15 testimony. Are you there?

16 A. Yes.

17 Q. At this point in your testimony you are
18 discussing the \$100 million credit commitment that
19 the company and the signatory parties have included
20 in the stipulation; is that right?

21 A. Yes.

22 Q. And you state at lines 17 through 20
23 that -- I may be paraphrasing to some degree, but you
24 state that the \$100 million of credits that that
25 section of the stipulation, which I believe is

1 III.A.3, provides during the last four years of the
2 PPA rider that \$100 million of credit commitments
3 that are provided in the last four years of the PPA
4 rider will not provide AEP Ohio with an incentive to
5 make sure that the units are managed effectively and
6 the market value of their output is maximized, right?
7 That's what you say there.

8 A. The sentence begins with "As long as."

9 Q. Sure.

10 A. So it's qualified.

11 Q. Okay. So you believe that's the case as
12 long as it's clear that the cost to the customers of
13 the PPA rider is going to be greater than the maximum
14 annual credit amount for the year that's being
15 evaluated, correct?

16 A. Correct.

17 Q. Okay. So converse -- conversely, if it
18 isn't clear that the cost to customers will be
19 greater than the maximum annual credit amount, then
20 that credit provided by the \$100 million credit
21 provision in the stipulation would provide an
22 incentive.

23 A. Yes, if the outcome is likely to fall in
24 the range that is considered likely at the beginning
25 of the year to fall in the range such that the credit

1 would grow with this outcome, then there would be
2 incentive. But according to my analysis, I think
3 that the rider will be greater than the maximum
4 credit and under those circumstances there is no
5 incentive impact.

6 Q. That's right. So there is a disagreement
7 here about whether or not your estimates are -- are
8 reliable around accurate, correct?

9 A. I don't know.

10 Q. Well, you've made adjustments to what the
11 company has projected, what the estimated results are
12 going to be, so there is a difference there, correct?

13 A. Yes.

14 Q. Okay. Let me just follow-up with just a
15 couple more questions about your method and your use
16 of the forwards to make your adjustments. It is the
17 case, I believe you indicated, you used the same
18 approach this time around as last time, so you
19 stopped using the AD Hub electric forward energy
20 prices after October, 2020, this time like you did
21 the last time; is that correct?

22 A. Yes.

23 Q. Okay.

24 A. Yes.

25 MR. CONWAY: Your Honors, that's all I

1 have.

2 EXAMINER SEE: And Mr. Beeler.

3 MR. BEELER: Nothing, your Honor. Thank
4 you.

5 EXAMINER SEE: Let's go off the record for
6 a second.

7 (Discussion off the record.)

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

10 Mr. Michael, any public redirect for this
11 witness?

12 MR. MICHAEL: No, your Honor.

13 (Discussion off the record.)

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

16 Mr. Kurtz, you indicated you had some
17 questions for this witness in the confidential
18 portion?

19 MR. KURTZ: Thank you, your Honor.

20 (CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

1 MR. KURTZ: I want to move the admission
2 of OEG 4.

3 EXAMINER SEE: Okay. We will in just a
4 minute. Let's go back into the public portion of the
5 transcript. I believe Mr. Michael has already moved
6 for the admission of OCC Exhibit 34 and confidential
7 OCC Exhibit 35. Are there any objections to the
8 admission of OCC's exhibits?

9 MR. CONWAY: No, your Honor.

10 EXAMINER SEE: OCC Exhibit 34 and
11 confidential OCC Exhibit 35 are admitted into the
12 record.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 EXAMINER SEE: Mr. Kurtz?

15 MR. KURTZ: We move the admission of OEG
16 Exhibit 4 confidential.

17 EXAMINER SEE: Are there any objections to
18 the admission of confidential OEG Exhibit 4?

19 MR. MICHAEL: Yes, your Honor. OCC
20 objects to the admission of that document. It's an
21 interrogatory that Mr. Wilson had not seen before.
22 It was prepared by counsel for AEP Ohio and Bill
23 Allen and there's absolutely no way that this
24 document can come into evidence through a witness
25 that didn't prepare the document, didn't provide

1 input into the document, it's not an OCC document,
2 and Mr. Wilson had never seen it before. So it
3 should be excluded.

4 MR. KURTZ: Your Honor, the probative
5 value of this document is important and it certainly
6 outweighs any prejudice that I don't think anybody
7 would have.

8 The Commission is being asked to approve
9 an eight-year lease of 3,100 hundred megawatts of
10 power plants on behalf of consumers. What this
11 document shows is how these plants have performed in
12 the most recent period of time. I would think the
13 Commissioners, the Commission would want to know that
14 before ruling on the PPA. It's important, factually
15 information prepared by the company. I don't think
16 there is any question about its authenticity or its
17 importance.

18 MR. MICHAEL: And, your Honor, although
19 Mr. Kurtz makes those arguments, the prejudice for
20 the admissibility would be to all of the other
21 parties because Mr. Wilson can't lay any foundation
22 for this document. He can't say whether the figures
23 in the document are accurate. It's an interrogatory
24 prepared by counsel for AEP and Mr. Allen, and were
25 your Honors to let this document into the record it

1 would give some indication of some sort of
2 verification which Mr. Wilson didn't provide and
3 couldn't possibly provide because he didn't prepare
4 it. He has never seen it.

5 MR. CONWAY: Your Honor, I would just like
6 to interject that, of course, we stipulate to the
7 authenticity of the discovery responses. They were
8 prepared by the company and essentially are
9 statements by the company and they were served on all
10 the parties well in advance of the hearing, so all
11 the parties have had access to the discovery
12 responses including this one. They had an
13 opportunity to review them.

14 MR. MICHAEL: And that's obviously
15 irrelevant to the nature of our objection, your
16 Honor.

17 MR. KURTZ: Your Honor, what's relevant is
18 that the Commission has an adequate record to make
19 what Vice-Chairman Haque has characterized at the
20 very beginning of this case as one of the most
21 important decisions he or the current Commission is
22 going to make.

23 I think that understanding how these PPA
24 units have performed in 2015 in term of the
25 availability, heat rate, capacity factor, is -- I

1 don't know why you -- why you wouldn't want that in
2 the record.

3 MR. CONWAY: Your Honor, one final point
4 if I might, a number of the values in the documents
5 have already been discussed on the confidential
6 record and so at this point I think it probably is
7 appropriate to include the complete document for
8 completeness. Thank you.

9 MS. PETRUCCI: Your Honor, if I could
10 interject. Mr. Kurtz and AEP are both arguing that
11 the document is being offered for the truth of the
12 matters asserted within it. The witness isn't able
13 to provide that foundation for the document.

14 MR. MICHAEL: And further, your Honor, any
15 discussion that took place during Mr. Wilson's
16 cross-examination about those numbers was over my
17 objection. The point is that Mr. Wilson couldn't
18 conceivably testify to anything about this document,
19 its accuracy, its veracity, when it was counsel for
20 AEP Ohio that prepared it and Mr. Allen.

21 MR. O'ROURKE: OMAEG will join in the
22 objection raised by OCC.

23 MS. FLEISHER: Your Honor, I'll just join
24 the objection, and I want to point out something that
25 may be substantively relevant to this issue.

1 The authenticity, I was just checking
2 back, Volume III of the transcript, the confidential
3 version, Dr. Pearce's testimony. As I recall, there
4 was confusion at points about the terms in this case.
5 It's about what the meaning of forced outage rate
6 was. So in terms of verifying not just what the
7 numbers are but what they mean in terms of the
8 operation of the plant, I'm not sure that Mr. Wilson
9 may well really not be in a position to speak to
10 that.

11 MR. CONWAY: Your Honor, with regard to
12 that point, similar identical types of information
13 have already been admitted particularly in connection
14 with Dr. Chernick's testimony and discovery responses
15 discussed in connection with that, so it's of the
16 same time and it's consistent, so that bridge has
17 already been crossed in this case.

18 EXAMINER SEE: Thank you. Are those all
19 the parties' arguments either way? Thank you. We
20 are going to take a break, and we'll come back to
21 this issue.

22 (Recess taken.)

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

25 After considering the arguments of the

1 parties as to confidential exhibit OEG Exhibit 4,
2 that document is not going to be admitted into the
3 record.

4 Mr. Wilson, thank you very much. You are
5 dismissed.

6 EXAMINER PARROT: Mr. Settineri.

7 MR. SETTINERI: Thank you, your Honor. At
8 this time on half the of the Retail Energy Supply
9 Association, we would like to call Mr. Stephen
10 Bennett to the stand.

11 (Witness sworn.)

12 EXAMINER PARROT: Please have a seat.

13 MR. SETTINERI: Your Honor, at this time
14 we would like to mark RESA Exhibit 1. I know we have
15 used different nomenclature, but I don't believe we
16 have had a RESA Exhibit 1 yet.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 EXAMINER PARROT: Can you identify the
19 document for us, please, Mr. Settineri.

20 MR. SETTINERI: Yes, thank you, your
21 Honors. What's been marked as RESA Exhibit 1 is the
22 stipulation direct testimony of Stephen E. Bennett on
23 behalf of Retail Energy Supply Association.

24 - - -
25

1 STEPHEN E. BENNETT

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

4 DIRECT EXAMINATION

5 By Mr. Settineri:

6 Q. Good morning, Mr. Bennett.

7 A. Good morning.

8 Q. Can you please state your name and
9 business address for the record, please.

10 A. My name is Stephen Bennett and my business
11 address is 402 Valley Drive, Lincoln University,
12 Pennsylvania 19352.

13 Q. And do you have in front of you what's
14 been marked as RESA Exhibit 1?

15 A. I do.

16 Q. Okay. And can you identify that for us,
17 please?

18 A. Yes. It is the stipulation direct
19 testimony of Stephen E. Bennett on behalf of the
20 Retail Energy Supply Association.

21 Q. And do you have any corrections or changes
22 to your testimony today, sir?

23 A. Yes, I do.

24 Q. If you could walk us through those,
25 please.

1 A. Yes. On page 2, on line 6, at the very
2 end the sentence that begins "the" I need to add
3 "many of" before the "the," so it reads "many of the
4 terms." The second correction would be on the same
5 page 2, line 8, the sentence that begins "rather",
6 after "rather" and before "the" it should say
7 "several of." So the correction would be "Rather,
8 several of the Stipulation's terms."

9 The final correction will be on page 6 and
10 that will be on line 31, the sentence that begins
11 "the weakest part of the Stipulation" there should be
12 where it says the "weakest part of the Stipulation is
13 the promise." Instead of the "promise" it should say
14 the "lack of a promise." So add "lack of a" between
15 "the" and "promise."

16 Q. Any other changes or corrections to your
17 testimony at this time?

18 A. No.

19 Q. If I were to ask you the questions in your
20 testimony today, would your answers, as modified by
21 your corrections, be the same?

22 A. Yes.

23 MR. SETTINERI: Okay. Thank you. At this
24 time, your Honor, Mr. Bennett is available for
25 cross-examination.

1 EXAMINER PARROT: Thank you.

2 Mr. O'Rourke?

3 MR. O'ROURKE: No questions, thank you,
4 your Honor.

5 EXAMINER PARROT: Mr. Michael?

6 MR. MICHAEL: No questions, your Honor.

7 EXAMINER PARROT: Mr. Darr?

8 MR. DARR: No questions.

9 EXAMINER PARROT: Mr. Kurtz?

10 MR. KURTZ: No questions.

11 EXAMINER PARROT: Ms. Spinosi?

12 MS. SPINOSI: No questions, your Honor.

13 EXAMINER PARROT: Mr. Satterwhite.

14 MR. SATTERWHITE: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Satterwhite:

18 Q. Good morning, Mr. Bennett. Good to see
19 you again.

20 A. Hello.

21 Q. You are here testifying on behalf of the
22 RESA today, correct?

23 A. Correct.

24 Q. But you're aware there are two signatory
25 parties, Direct Energy and IGS, that are members of

1 RESA, correct?

2 A. Correct.

3 Q. So are your representations in your
4 testimony on behalf of all of RESA or are they
5 contradictory to two of the parties' positions in
6 this case?

7 MR. SETTINERI: I would just object. He
8 is -- just to be clear for the record, Mr. Bennett is
9 testifying as an expert, so just object to the
10 class -- the characterization, the implication that
11 he is here as a member of RESA.

12 MR. SATTERWHITE: Your Honor, I asked the
13 initial question, is he testifying on behalf of RESA
14 and he said yes. So now I am probing into whether
15 he's contradicting individual members of RESA in his
16 advocacy for RESA.

17 EXAMINER PARROT: Mr. Satterwhite, could
18 you just restate your question for me.

19 MR. SATTERWHITE: Sure. No problem.

20 EXAMINER PARROT: I am not sure what it
21 was.

22 Q. Mr. Bennett, you are aware your testimony
23 here today contradicts the positions -- the position
24 of at least two RESA members, correct?

25 A. I -- can you -- I am not sure that I know

1 that it contradicts them. Can you be more specific
2 as to how or where it's contradictory?

3 Q. Sure. Are you aware that Direct Energy
4 and IGS have signed as a signatory party on the
5 stipulation?

6 A. Yes. My understanding is that they've
7 signed on as signatories, but there is several
8 provisions in which they are not participating.

9 Q. And that's your -- have you talked to
10 them, on the side, to understand exactly -- I won't
11 get into that. That's confidential discussions.

12 But you did acknowledge they are signatory
13 parties on the stipulation, correct?

14 MR. SETTINERI: Object. Mischaracterizes
15 the testimony he just gave. That was asked and
16 answered as well.

17 MR. SATTERWHITE: I am just trying to get
18 back, your Honor, to the flow there. If you would
19 like to stipulate that, yes, they are signatory
20 parties, that's fine. I am just trying to get back
21 into the questioning.

22 EXAMINER PARROT: That's fine. Overruled.

23 A. My understanding is that they have signed
24 the stipulation.

25 Q. Okay. And as signatories of the

1 stipulation, they have signed to support the
2 stipulation, correct?

3 A. Again, my understanding is that they
4 signed the stipulation. There is several provisions
5 in which they are not participating. I believe one
6 of the footnotes indicates they are not obligated to
7 defend the stipulation. Other than that, I just know
8 that they have signed the stipulation.

9 Q. And that's different from your testimony
10 which opposes the stipulation, correct?

11 A. My testimony opposes the stipulation.

12 Q. Okay. So back to my initial question
13 which was so your testimony is contradictory to
14 individual RESA members, correct?

15 A. The way RESA operates is that the -- any
16 individual member of RESA is allowed to have their
17 own position. We have way -- we have disclaimers
18 about that in all of our information filings. So the
19 fact that RESA, as a whole, has taken a position, you
20 know, we usually don't look at it as contradicting an
21 individual member because they have a right to
22 advocate for whatever they would like to advocate.

23 Q. I understand the rules, but that doesn't
24 mean that your position is consistent with the
25 signatory party in this case, correct?

1 A. Again, I guess maybe in some areas it is
2 and some areas it isn't. There is areas that my
3 testimony opposes in the stipulation that my
4 understanding is, again, that IGS and Direct Energy
5 are not participating. So perhaps in certain aspects
6 of the testimony there is -- there is the appearance
7 of conflict. I'm not sure.

8 Q. I -- are you done?

9 A. Yeah, I'm done.

10 Q. I don't think you have answered my
11 question yet, so I am going to ask it again. Your
12 testimony opposes the stipulation, correct?

13 A. Correct.

14 Q. And there are members of RESA that do not
15 oppose the stipulation and are signatory parties to
16 it, correct?

17 A. Yes.

18 Q. So the overall question is, then, your
19 testimony is not consistent at least with some of the
20 positions of some of the RESA members, correct?

21 MR. SETTINERI: Objection. Calls for
22 speculation as to the positions of our RESA members
23 and this question has been asked and answered at
24 least twice.

25 MR. SATTERWHITE: Your Honor, I don't

1 believe he answered. He said our policies allow us
2 to do different things, and I think it should be a
3 simple answer.

4 EXAMINER PARROT: Overruled.

5 A. Yes. On the basis of the fact that my
6 testimony, on behalf of RESA opposes, the
7 stipulation, and there are members of RESA that have
8 gone out on their own and supported the stipulation,
9 those two positions are different.

10 Q. So if the Commission is trying to judge
11 the position of RESA in comparison to what a
12 competitive retail electric supplier position might
13 be, they can't consider the position of RESA the
14 position of all CRES providers, correct?

15 A. Whether or not members of RESA have taken
16 a different position or not, the Commission can never
17 assume that RESA's position is the position of all
18 competitive suppliers because it doesn't represent
19 all competitive suppliers.

20 In this case, RESA represents the members
21 that are participating, and my testimony represents
22 the position of RESA as a trade association made up
23 exclusively of competitive retail electric suppliers.

24 Q. Okay. That's fair. And I apologize. Not
25 all CRES members are members of RESA. But those that

1 are members of RESA, your testimony can't be judged
2 by the Commission to represent the position of all
3 the members of RESA individually, correct?

4 A. Yeah, I suppose that's correct.

5 Q. Let's turn to your testimony here on
6 page 3, please. And let me just compliment you and
7 say I appreciate that you, not just the line numbers,
8 but your Question 8, Answer 8, that you put a number
9 by your questions, has really made it easier to
10 prepare, so I appreciate that. So you or your
11 counsel, I am not sure whose idea that was.

12 So on Question 8, I am looking
13 particularly on line 15, you cite to the first phase
14 of this proceeding and some of the testimony from the
15 PJM market monitor. Do you see that?

16 A. Yes.

17 Q. And, in general, you would not disagree
18 with the market monitor's classification of what
19 constitutes a subsidy in the market, correct?

20 A. Did you say I wouldn't disagree? You are
21 saying do I agree?

22 Q. You would agree with the independent
23 monitor, in the independent monitor's -- it sounds
24 like it went out, didn't it?

25 MR. DARR: Yours also.

1 Q. Your -- you wouldn't disagree or you would
2 agree with the independent market monitor of what
3 constitutes a subsidy in the market, correct?

4 A. Yes.

5 Q. And on page 3, line 31, you testified that
6 a subsidy, like the PPA rider, can "inflict
7 significant and irreparable harm on a market system"
8 and over on page 4, line 17, the sentence starting
9 "any provision" you talk about the negative impact on
10 retail markets from these types of subsidies,
11 correct?

12 A. Yes.

13 Q. Okay. So are there current irreparable
14 harms existing from the subsidies in the market
15 today?

16 MR. SETTINERI: Object as to lack of
17 foundation as to the phrase any subsidies existing
18 today.

19 MR. SATTERWHITE: That's a question, your
20 Honor. I am asking if there is any irreparable harm
21 from existing subsidies.

22 MR. SETTINERI: The question assumes there
23 are existing subsidies. He has not asked the witness
24 to the extent he is aware of those.

25 MR. SATTERWHITE: He can answer the

1 question, your Honor, and we can see what he thinks.

2 EXAMINER PARROT: Overruled.

3 THE WITNESS: Can you please repeat the
4 question?

5 MR. SATTERWHITE: Can you please reread
6 it.

7 (Record read.)

8 A. It's definitely a challenging question.

9 Q. Thank you.

10 A. There's -- there are -- there are probably
11 subsidies in the market today and one that would jump
12 to mind would be some of the inducements and
13 incentives for renewables. Are they doing
14 irreparable harm? I don't know that I can say that
15 for sure. Are they creating a situation where prices
16 can be skewed? Are they creating a situation where
17 an asset might run when it otherwise, without a
18 subsidy, would be, you know, at a loss? Possibly. I
19 think that would probably be the extent of how I
20 would answer that.

21 Q. Would that answer be the same or -- strike
22 that.

23 Would you consider the traditional cost of
24 service generation, the recovery of cost of service
25 of generation in a regulated state when that is then

1 sold to the PJM market, a subsidy?

2 A. It's a bit of a gray area. Do I think
3 it's the most efficient market construct? No. But
4 in the event that the state has not restructured its
5 wholesale market, that's the structure of that state.
6 In Ohio, where you have restructured the wholesale
7 market, and you don't have vertically-integrated
8 utilities, and I assume you are probably referencing
9 something like Virginia, Ohio is very different. So.

10 I think the -- I think it's an apples and
11 oranges comparison to look at cost of service for a
12 generation asset in a vertically-integrated state
13 that hasn't made the decision to become a competitive
14 state, and a cost of service ratemaking for something
15 that is an unregulated asset that's part of an
16 unregulated subsidiary that's now being transitioned
17 into a cost of service ratemaking.

18 Q. But those are rules that govern the
19 generation before it's sold to the PJM market,
20 correct?

21 A. I think -- well, the rules of -- I mean,
22 the state makes a decision on whether it has
23 restructured or not. And so, yes, technically
24 participation in PJM, the state would have made that
25 decision those assets exist in a

1 vertically-integrated or competitive state and then,
2 yeah, those assets then participate in PJM.

3 Q. So for purposes of the PJM market, that
4 generation doesn't come in with a special blue
5 feather and is treated differently. It's treated the
6 same in the market, it just means something sold in
7 the market, correct?

8 A. That's correct.

9 Q. And are you aware that yesterday the
10 independent market monitor, in fact, did say that
11 traditional cost of service generation represents a
12 subsidy?

13 A. I was not aware of that.

14 Q. Would it surprise you if he did?

15 A. No.

16 Q. What about traditional PPAs where a
17 regulated utility recovers costs for the PPA from
18 customers and then sells that into PJM? Would that
19 be a subsidy?

20 A. I'm sorry. Can you repeat the question?

21 (Record read.)

22 A. So what I heard from the question was that
23 traditional PPAs, where a regulated utility purchases
24 power and then sells it back to a customer. Can
25 you -- can you provide an example of what -- of that

1 structure?

2 Q. I don't believe that's what I said, so let
3 me rephrase it and it may be easier for you.

4 When I say "traditional PPAs" I just want
5 to differentiate between what we are talking about
6 here today. That's the only reason I used
7 "traditional PPAs."

8 A. Okay.

9 Q. But if someone -- if a utility, regulated
10 utility has entered into a PPA with some provider,
11 recovering the costs for that from their ratepayers,
12 but selling the output from that PPA into the PJM
13 market, would that be considered a subsidy?

14 A. I don't think -- I don't think I can
15 answer that just based on that information. I think
16 a lot of it would be determined on the structure of
17 the PPA.

18 I think where you get into the concern
19 about a subsidy is when the generation owner, itself,
20 is held completely harmless from risk so the -- if
21 the generation owner is in a position where they can
22 run the unit any way they want. They can bid the
23 unit any way they want, you know, obviously within
24 PJM rules and regulations, but. And regardless of
25 what they do or how they run that unit, they receive

1 all their costs and a return, that would be a
2 subsidy.

3 So if the PPA is set up that way, it
4 sounds like a subsidy. I imagine there is probably
5 ways to set up a PPA where it's not a subsidy, but I
6 haven't done an extensive review of PPAs across PJM
7 to know which ones are set up as a subsidy and which
8 ones are not.

9 Q. Okay. The definition you just gave of a
10 subsidy, is that the definition you want the
11 Commission to use to judge whether this is a subsidy
12 or not, the PPA that's under review in this case?

13 A. I think -- well, I think the important
14 aspects about this case in looking at whether or not
15 this is a subsidy is specifically around whether or
16 not the risk associated with the generation rests
17 with the ratepayers or the generation shareholders,
18 and whether or not payment is being made in order to
19 make sure that a guaranteed return is -- is achieved.

20 I think if I was asking the Commission to
21 think through whether or not this is a subsidy, I
22 would ask them to look at where the risk is, and is
23 there an unregulated entity that is guaranteed a
24 return on their asset in almost every situation.

25 Q. And I believe the distinction you gave

1 earlier, and I think you just stated at the end
2 there, was regardless of the generators's action,
3 that they are going to get a return, they have no
4 risk, correct?

5 A. No. I would just say if they get a return
6 paid for from a regulated entity, then that's --
7 that -- that they are guaranteed a return because the
8 market doesn't guarantee a return. An unsubsidized
9 market, there is no guarantee of return. And in this
10 case you have a guarantee of return. That's the
11 subsidy.

12 Q. Well, let's circle back then because I
13 thought I was there with you and then your answer
14 went a different way when we were talking about a PPA
15 that a utility might use. It sounds like what we
16 were describing before, where a utility enters into a
17 PPA, it's -- customers pay the costs of that PPA, the
18 utility sells that -- the output of that generation
19 unit into the PJM market, that would be a subsidy
20 under your definition, correct?

21 MR. SETTINERI: Object. That question has
22 been asked and answered.

23 MR. SATTERWHITE: Your Honor, I asked that
24 simple question and he went through a long
25 explanation, saying he doesn't think he could say

1 that because there's -- a true subsidy would be
2 absolutely no risk. So I followed up again and he
3 goes, well, it's absolutely not no risk, there is
4 other areas. I am trying to get back to the original
5 question so we are on the same page.

6 MR. SETTINERI: His answer, your Honor, at
7 one point, because we have been through this a bit
8 now, he had mentioned that he had not looked at
9 various specific PPAs, and I think his answer was
10 pretty clear on this point and it has been asked and
11 answered.

12 MR. SATTERWHITE: That's my problem, your
13 Honor. At one point he did say that, but when I
14 followed up on that, it didn't seem to fit the
15 definition. So I am trying to figure out what he
16 really thinks.

17 EXAMINER PARROT: Overruled.

18 A. So I will try to be clear. A subsidy
19 doesn't have to remove all risk. A subsidy can
20 remove some risk, most risk, or all risk. Subsidies
21 is not defined simply by the removal of the entire
22 risk. And a subsidy that removes any amount of risk
23 can be damaging to a marketplace and can undermine
24 the market fundamentals and can skew prices.

25 Q. I apologize, I think my question we had on

1 the table at that moment was, therefore, what we were
2 calling the traditional PPA would be a subsidy,
3 correct?

4 MR. SETTINERI: Objection. Asked and
5 answered.

6 MR. SATTERWHITE: Your Honor, this is
7 where we are trying to get.

8 MR. SETTINERI: You are not getting the
9 answer you want.

10 EXAMINER PARROT: Overruled.

11 A. So I will try to be clear on my answer
12 again here. One, I am not that familiar with a lot
13 of traditional PPAs in PJM. Because usually there's
14 a separation between -- certainly between a
15 generation affiliate and a regulated utility
16 affiliate and there is rarely PPAs that I know of
17 between those to.

18 The problem with whether or not I define a
19 PPA, traditional PPA as a subsidy or not, depends on
20 whether or not that PPA removes any amount of risk
21 from the unregulated generation asset. So if you are
22 saying the traditional PPA removes risk from the
23 generation asset, then, yes, it's a subsidy.

24 Q. And you wouldn't disagree if the
25 individual market monitor testified yesterday that

1 that would be a subsidy, correct?

2 A. If you are -- so I am not sure I
3 completely understand the question, but if you are
4 saying that the independent market monitor testified
5 that it would be a subsidy, then I believe I would
6 agree with him and I wouldn't be surprised that he
7 said so.

8 Q. Okay. Yeah, because earlier my first line
9 of questioning talked about you agree with the
10 independent market monitor, and then I was testing
11 what you thought and then giving you the opportunity
12 to see if you disagreed with the independent market
13 monitor about what he testified about yesterday.
14 That's why I asked that question.

15 And I believe you also talked about,
16 earlier, that it is a subsidy when tax incentives are
17 provided for generation, for renewables I believe was
18 your example, and later that the output of those
19 units are then sold into the PJM market. That can
20 also be considered a subsidy, correct?

21 A. Yes.

22 Q. So you are aware there is already in
23 existence today a number of subsidies for generation
24 that is sold in the PJM market, correct?

25 A. Generally aware, correct.

1 Q. I'll take you back then to your testimony
2 on line -- page 4, line 17, where you say "Any
3 provision that undermines or erodes the wholesale
4 market will ultimately have a negative impact on the
5 retail market and suppliers...." And this is in the
6 context of when we are talking about subsidies. So
7 why haven't the current subsidies already had the
8 parade of horrors that you complain of?

9 A. I'm not sure you can say with certainty
10 there hasn't been an impact. You know, I think you
11 see -- I think you see -- I think you see the fact
12 that PJM and its stakeholders refine the market and
13 the market rules over time, is, in some part,
14 responsive to the fact there are impacts in the
15 market places.

16 I think the MOPR rule would be a good
17 example of that, where you saw the potential for
18 state subsidies that could create impacts in the
19 wholesale market and there are a -- there was a lot
20 of concern as to what that impact would be. So the
21 stakeholders got together and created a rule to try
22 to mitigate any potential impact on those kinds of
23 subsidies.

24 Q. Who did that apply to?

25 A. The MOPR rule? The MOPR rule applies to

1 capacity, the capacity market.

2 Q. All generators? In existence or new?

3 A. Yeah. I'm not an expert on the MOPR rule.
4 My recollection is that it was on -- yeah, you know
5 what, I'm not even going to go there.

6 Q. That's fair. That's fine.

7 So you -- I believe, correct me if I am
8 wrong, your testimony is, because PJM makes changes
9 from time to time in its rules, there must be
10 negative effects and that's the proof that there is
11 negative effects from current subsidies; is that what
12 you were trying to state?

13 A. No, I didn't say that. What I said was
14 you can't assume there haven't been impacts from the
15 subsidies. That would be an incorrect assumption. I
16 used PJM's changing market rules and the MOPR as an
17 example where there was a concern about a subsidy. I
18 didn't say that was the proof.

19 Q. Okay. And that's the MOPR that you don't
20 know much about, correct?

21 A. I'm not an expert, no.

22 Q. So let me ask you then, you sort of
23 answered the question the opposite way, so you're
24 saying in your testimony again that any provision is
25 going to undermine, and we've established that

1 current subsidies are out there, so as an expert
2 saying that bad stuff is coming when you have
3 subsidies, I am asking you for the examples you know
4 of that's already out there that has undermined the
5 market and has had negative consequences because of
6 those subsidies.

7 MR. O'ROURKE: Your Honor, I am going to
8 object at this point. He is here to address the
9 proposal advocated by AEP, not a sweeping analysis of
10 any subsidy that may exist in the wholesale markets.

11 MR. SATTERWHITE: Your Honor, he is
12 asserting if there is any subsidies, that bad things
13 will happen, and I think we've established with the
14 market monitor and others that there is already
15 subsidies out there and the parade of horrors he is
16 saying is going to face the world have not been here,
17 so it's directly attacking his position.

18 EXAMINER PARROT: Overruled.

19 A. Okay. Can you please repeat the question?

20 Q. I can restate if it helps.

21 Based on our understanding, there is
22 subsidies in the current market today. As an expert,
23 can you please give me examples of the negative
24 consequences that have come from that, the negative
25 impacts.

1 A. Okay. So thinking of an example, one that
2 I have some direct experience with was in Illinois.

3 In Illinois, they created subsidies for
4 the development of renewables, mostly wind
5 generation. The subsidies were very effective. In
6 fact, so executive that a lot of wind generation was
7 built. That wind generation got to the point where
8 so much of it was built, the subsidies that were
9 originally designed to incent it, became insufficient
10 to provide the revenue that they had originally
11 anticipated. And so they went back to the state to
12 ask for additional subsidies.

13 You know, in this case they were looking
14 then to change rules where retail suppliers would
15 have to have additional requirements hoisted upon
16 them they didn't have before, certainly didn't have
17 when they signed contracts at the time.

18 So the subsidies created a situation where
19 there were more subsidies, those subsidies created
20 financial requirements and mandates for the CRES --
21 well, they are not called "CRES" out there, they are
22 called "ARES," so we will say retail suppliers in
23 Illinois.

24 And then what happened was those retail
25 suppliers, where they had contracts existing with

1 customers, now they had a new mandate and a new cost
2 structure that they had to deal with and they didn't
3 have a really good way to actually recover or address
4 the fact that they had another mandate based on the
5 subsidy put on them.

6 So, you know, you keep saying "parade of
7 horribles." It's not a parade of horribles. It's
8 the idea that any subsidy can create a negative
9 impact and that negative impact can be minor or that
10 negative impact can be excessive. That negative
11 impact can have a real financial impact on suppliers.
12 For a small supplier, it could be enough to drive
13 them out of business.

14 So the reality is we've seen incentives,
15 we've seen subsidies impact the market. Is the
16 market folding in on itself? No. But, you know that
17 doesn't mean that the subsidies that exist haven't
18 caused negative impacts to this point and that the
19 subsidies in this application could be even worse
20 going forward.

21 Q. So it's okay to have a subsidy and a
22 subsidy can have a negative impact and that's not
23 necessarily a reason to oppose the subsidy; is that
24 correct?

25 A. No. I don't think that's correct. I

1 think, again, the idea is that the market -- the
2 wholesale market that underlies the retail market,
3 the sustainability and the robustness of it is
4 important because, without a wholesale market, the
5 retail market doesn't exist.

6 So it's not, quote-unquote, okay not to
7 oppose the subsidy. Can subsidies exist without
8 completely destroying the market, yeah, they can.
9 But, again, that doesn't mean that the market escapes
10 without a negative impact.

11 Q. So would you consider a bilateral contract
12 in the wholesale market for a price that ends up
13 being higher than the market price a subsidy?

14 A. No.

15 Q. Why is that not a subsidy?

16 A. Well, if it's a -- if it's a bilateral
17 contract in the wholesale market negotiated between
18 two willing parties, you know, fully transparent
19 information as appropriate between the two parties,
20 that's just a business transaction. There is no
21 subsidy there. There is no government mandate.
22 There is no requirement. That counterparty wasn't
23 required to enter into that bilateral contract. They
24 did so of their own volition. It's not a subsidy.

25 Q. So it changes if the buyer is a regulated

1 utility with retail customers, then that's the
2 distinction that changes it to a subsidy in that
3 situation?

4 A. I don't think it's necessarily that. I
5 think if there's any kind of mandate that says that
6 you must do this, regardless of how you would conduct
7 your business otherwise, regardless of what your
8 business, you know, agenda and strategy and advocacy
9 would say you would do, you must do this thing.

10 So if you are required by federal, state,
11 local, government mandate of any kind, then that is
12 what lends itself to the potential for a subsidy. It
13 is not necessarily that it is just a regulated
14 utility, because, again, everybody is subject to the
15 impacts of the subsidy on wind generation. That's
16 not a utility-retail-customer-limited subsidy.

17 Q. Now, further down on page 4 of your
18 testimony, around lines 26 to 29, you talk about how
19 AEPGR could manage its remaining generation in a
20 manner that belies proper market behavior and
21 outcomes." Do you see that?

22 A. I do.

23 Q. I am trying to understand what you mean by
24 that so let me ask a question. Do you mean that
25 AEPGR could bid its remaining assets, besides the

1 ones in the PPA, in a way that belies the market?

2 A. Yes.

3 Q. You are aware, aren't you, that there is a
4 code of conduct requirements that bar abuse of
5 market?

6 A. Yes.

7 Q. And AEPGR would have to abide by those
8 code of conduct, all those federal standards, if it
9 was aware of what was being done by AEP Ohio with the
10 PPA units versus its own units?

11 MR. SETTINERI: Just object to the extent
12 it calls for a legal conclusion. This witness is not
13 an attorney.

14 MR. SATTERWHITE: That's fine.

15 EXAMINER PARROT: Okay. With that, you
16 may answer the question, Mr. Bennett.

17 A. Yes. Yes, I understand that, yes, I
18 understand that.

19 Q. Let's look a little further down page 4,
20 lines 30 to 32, where you talk about how the PPA
21 rider will put AEP Ohio in a situation where it will
22 need to offer the output without any direct financial
23 incentive. Do you see that?

24 MR. SETTINERI: I just want to clarify for
25 the record that we are not reading the testimony

1 verbatim.

2 MR. SATTERWHITE: Correct, correct.

3 MR. SETTINERI: Thank you,
4 Mr. Satterwhite.

5 A. Yes.

6 Q. You talk about the lack of a financial
7 incentive and then this goes over the top of page 5
8 where you have a concern that AEP Ohio could sell the
9 generation output to an affiliate at prices that
10 would allow the affiliate to undercut CRES providers,
11 correct?

12 A. Yes.

13 Q. I believe this idea has two assumptions
14 underlying it. I want to make sure I'm correct so
15 you tell me. Did your testimony assume that AEP Ohio
16 would not have an interest in maximizing the revenue
17 from the sale of the units in a responsible manner to
18 increase the credit as a benefit for its customers?

19 THE WITNESS: I'm sorry. Can you read the
20 question again, please?

21 (Record read.)

22 A. So my understanding of the agreement and
23 the structure of the PPA is that AEP Ohio receives
24 cost recovery under the PPA rider unless the
25 Commission finds that they are due -- that they have

1 done something that can be considered unreasonable.
2 So they have -- other than the concern about
3 disallowance of cost, I don't know of any other
4 direct financial incentive they have to optimize or
5 maximize the units.

6 Q. All right. That was going to be my second
7 assumption. So you agree there is an assumption that
8 the AEP Ohio does have a financial incentive to make
9 sure there's proper operations of the units because
10 there is a risk of disallowance from the Commission,
11 correct?

12 A. I don't know that they necessarily are
13 incentive to completely optimize or maximize. I mean
14 the incentive is don't do anything unreasonable.
15 Does that mean they are bidding the units in a way to
16 optimize the revenue? Not necessarily.

17 You could run -- you could bid the units
18 as a must-run. You could just take whatever price
19 the PJM market provides because it doesn't matter, at
20 the end of the day, if that price isn't sufficient to
21 cover your costs, then the costs are refunded through
22 the customers.

23 So it's not an incentive to necessarily
24 optimize and maximize. The incentive is to do
25 something that's considered reasonable. Reasonable

1 is, I imagine, opened up to some interpretation.

2 Q. Is that an indictment on state commissions
3 that they don't review the costs of regulated
4 utilities, like someone in the private market would,
5 and it just has to be some lower level of
6 reasonableness?

7 MR. SETTINERI: I would just object,
8 argumentative.

9 MR. SATTERWHITE: I think it's a
10 straightforward question, your Honor. I think he was
11 attacking state commissions and the regulatory
12 process and I think it's important we hear this
13 answer.

14 MR. SETTINERI: His answer was directed
15 specifically at the stipulation and the structure
16 that's there. It wasn't directed at a commission --
17 state commission, and the word "indictment" I think
18 is very prejudice and inflammatory.

19 MR. SATTERWHITE: I am asking if it is,
20 your Honor. He can tell us.

21 EXAMINER PARROT: Overruled.

22 A. No. This is not an indictment of state
23 commissions. What I'm saying is the way the PPA is
24 structured is that there is no incentive to maximize
25 the output off the profitability of the unit. If it

1 was simply a market-based unit, then there would be
2 financial incentive to do so.

3 In this case, something that could be
4 considered reasonable is not necessarily a maximized
5 or optimizing strategy. It can be considered
6 reasonable, and any competent and forthright
7 commission could say, yes, it is reasonable, and
8 there is no indictment there. But is it necessarily
9 completely maximizing the return on the unit? Not
10 necessarily.

11 Q. And a commission looking at
12 reasonableness, a state commission, might look at
13 more than just maximizing the profit for that quarter
14 for that corporation, correct?

15 A. Can you repeat the question, please?

16 (Record read.)

17 A. Actually, yes, and I think your -- I think
18 that actually is getting to what I am saying. AEP
19 Ohio would be directing the bidding of these units in
20 a way where their goal would be to do everything in a
21 reasonable manner. Sounds good.

22 But, again, in an unsubsidized market,
23 it's not just reasonableness. It's do I, am I, can
24 I, do I run my unit in a way that maximizes
25 profitability or at least covers my costs in all

1 cases?

2 The issue with the way this PPA is
3 structured is that's no longer the incentive. The
4 incentive is not for market behavior that makes sure
5 that you cover your costs because that's what the
6 market's based on. The market is based on rational
7 behavior, the bidding of marginal costs, behavior
8 that seeks to cover those costs and earn a profit.
9 What this PPA does is it removes that incentive.

10 So something could be reasonable, not
11 maximizing your profits could be deemed reasonable,
12 but it's not how the market would work without the
13 subsidy.

14 Q. So let's get back to my first point. You
15 went to the second one there. The first point was
16 that your position here that there is no financial
17 incentive for AEP Ohio, assumes that there is no
18 interest in maximizing the revenue in a reasonable
19 way to increase the credit for the benefit of
20 customers, correct?

21 A. There is nothing in the PPA that
22 incentivizes you to do that.

23 Q. And so your assumption is there is no
24 incentive of AEP Ohio to make sure that happens? You
25 are assuming that, correct?

1 A. I'm reading the PPA and seeing no direct
2 financial incentive that requires maximization of
3 profit. That's what I am basing my testimony on.

4 Q. Let's go to page 5 of your testimony,
5 Question 11. And here you talk about the provision
6 involving Ohio Partners for Affordable Energy to
7 support the application. Do you see that?

8 A. I do.

9 Q. And you say in there that the stipulation
10 is paying OPAE to support the application with
11 ratepayer money and that's wrong in the -- and the
12 PUCO should stop it, correct?

13 A. Yes.

14 Q. Where in the stipulation does it say OPAE
15 is only supporting the stipulation for the provisions
16 you reference here in your testimony?

17 A. Can you repeat the question, please?

18 Q. Maybe I will repeat it another way. Do
19 you have the joint stipulation that was marked as
20 Joint Exhibit 1?

21 A. I do not.

22 MR. SATTERWHITE: Can I grab that from the
23 reporter or the Bench? Thank you.

24 THE WITNESS: Thank you.

25 Q. All right. Can you identify anywhere in

1 this stipulation that says OP&E is supporting the
2 stipulation only for the provisions that you cite on
3 page 5 between lines 8 and 19?

4 A. No.

5 Q. And you are not providing any evidence
6 that any single provision of the stipulation is sole
7 motivation of any party to support the stipulation,
8 correct?

9 A. Nothing in writing.

10 Q. So you are providing no evidence to this
11 Commission today on that, correct?

12 MR. MICHAEL: Objection.

13 MR. SETTINERI: Object, asked and
14 answered.

15 MR. SATTERWHITE: Your Honor, he said
16 "nothing in writing." I am trying to make sure there
17 is no evidence.

18 MR. SETTINERI: Follow-up and ask an
19 alternative question. He just asked him the same
20 question.

21 MR. SATTERWHITE: I think it's pretty
22 clear, your Honor.

23 EXAMINER PARROT: Sustained,
24 Mr. Satterwhite.

25 Q. (By Mr. Satterwhite) So you testified that

1 you -- you are not providing any evidence in writing
2 to this Commission that any single provision of the
3 stipulation is the sole motivation of any party to
4 support the stipulation, correct?

5 A. No. What I meant to say is there's
6 nothing in writing in the stipulation that indicates
7 that any one party is signing the stipulation simply
8 because of a payment or inducement it is receiving in
9 the stipulation.

10 Q. So my question to you is separate from
11 within the stipulation. I am asking you as the
12 person testifying today, are you providing any
13 evidence that there's any single provision of the
14 stipulation? Let me rephrase that.

15 Are you testifying -- are you providing
16 any evidence that any single provision of the
17 stipulation is the sole motivation of any party to
18 support the stipulation?

19 MR. SETTINERI: Just object to the extent
20 it calls for a legal conclusion.

21 MR. SATTERWHITE: I am asking if he has
22 evidence, your Honor.

23 EXAMINER PARROT: Overruled.

24 A. I don't have any evidence.

25 Q. Are you aware of the type of energy

1 efficiency programs involved in AEP Ohio's CAP
2 program that deal with home-energy audits, lighting,
3 refrigeration recycle, those types of
4 energy-efficiency programs?

5 A. Very limited basis.

6 Q. How familiar are you with OPAGE?

7 A. Very limited.

8 Q. Is it your understanding that OPAGE is
9 focused on low-income residential customers?

10 A. Yes.

11 Q. And that they have an existing
12 relationship with a number of community agencies?

13 A. Yes.

14 Q. Are you aware that, in the past, OPAGE
15 administered the CAP program that's contemplated in
16 the stipulation?

17 A. I am, actually. My understanding is that
18 maybe it was 2014 they were the CAP administrator,
19 and then somehow, I guess, somebody else became the
20 administrator in the last year or two. And now,
21 through the stipulation, OPAGE will once again become
22 the administrator and receive its -- the grant and
23 the administrative fees.

24 Q. I would like to move to page 5, line 25 of
25 your testimony. And here you talk about the global

1 settlement with IEU. Do you see that?

2 A. Yes.

3 Q. And you testified that the settlement
4 includes a payment as part of an agreement which
5 includes "IEU dropping its opposition to the
6 Stipulation." Do you see that?

7 A. Yes.

8 Q. You have no evidence that IEU ever opposed
9 the stipulation, do you?

10 MR. SETTINERI: Just object to the extent
11 it hasn't been established that this witness was even
12 involved in settlement negotiations, which the
13 company has stated all along are confidential.

14 MR. SATTERWHITE: Your Honor, he's making
15 a claim that IEU dropped its opposition, and I am
16 asking what that's based on, if he has an
17 understanding if they ever did oppose it.

18 EXAMINER PARROT: Overruled.

19 A. My recollection is that in the beginning
20 of the case before the stipulation was -- was
21 produced, that IEU opposed the PPAs, but I don't
22 know -- you know, there would be no way for me to
23 know whether IEU opposed the stipulation. I just
24 know that they opposed the PPAs.

25 Q. So your testimony is just inaccurate that

1 they are dropping their opposition to the
2 stipulation, correct?

3 MR. SETTINERI: Could I have that question
4 reread, please?

5 (Record read.)

6 A. Well, I mean, my understanding is that one
7 of the provisions of the settlement was IEU agreeing
8 not to oppose the stipulation. My understanding is
9 that IEU opposed many of the terms of the PPA --
10 opposed the PPAs prior to the stipulation. But, you
11 know, I do admit I don't -- I don't have evidence
12 that IEU supported the stipulation and then dropped
13 it with the settlement.

14 MR. DARR: Would you read back the last
15 part of that answer.

16 (Record read.)

17 Q. And all I am trying to distinguish between
18 -- was that a correct reading of your answer, did you
19 mean to say "opposed"?

20 A. I'm sorry. Can you read it again?

21 Q. You said and "then dropped it with the
22 settlement."

23 MR. SETTINERI: Could you have the answer
24 reread, I would appreciate it.

25 (Record read.)

1 MR. SETTINERI: Thank you.

2 A. Okay. So just to clarify what I was
3 saying is I have no evidence that said that IEU
4 supported the stipulation and then dropped its
5 support -- no, I'm sorry. I'm sorry, yes. Let me
6 start over. That they opposed the stipulation, I
7 understand what I am saying wrong here, that they
8 opposed the stipulation and then with the settlement
9 they dropped that opposition. I apologize. You're
10 right, I misspoke.

11 Q. No problem. Just want to be clear. Glad
12 we got it that way.

13 So you would agree that the stipulation is
14 a package that is different than what was litigated
15 in the past case before the stipulation was reached,
16 correct?

17 A. Yeah, the stipulation, while keeping the
18 conceptual aspects of the litigated part of the PPAs,
19 there are changes.

20 Q. So, again, I am not trying to trick you.
21 Just a simple point. So when you say they are
22 dropping its opposition -- IEU is dropping its
23 opposition to the stipulation, the stipulation wasn't
24 in existence for it to drop. Let me rephrase.

25 So when you say on line 25, page 5 of your

1 testimony that IEU is dropping its opposition to the
2 stipulation, IEU had not taken a position to the
3 stipulation at any point until filing a letter in
4 this docket, correct?

5 MR. SETTINERI: Object. This witness
6 is -- he hasn't established that this witness was
7 involved in any settlement negotiations which, again,
8 are confidential. This witness cannot answer that
9 question.

10 MR. SATTERWHITE: I can rephrase it, your
11 Honor.

12 Q. You are wrong on page 5, line 25, that IEU
13 dropped its opposition to the stipulation, correct?

14 MR. SETTINERI: Objection. Asked and
15 answered. He gave an answer to that.

16 MR. SATTERWHITE: That's the answer we are
17 trying to get, your Honor.

18 MR. SETTINERI: That's exactly correct.

19 EXAMINER PARROT: Overruled.

20 A. You know, I numbered my questions and then
21 you say I'm wrong? I mean, that doesn't seem to be a
22 back and forth here.

23 Q. You can take it.

24 (Laughter.)

25 A. Yeah. Yeah, I think the wording should

1 have been "dropped its opposition to the PPA" so.

2 Q. And that's fair. I think that's what you
3 meant is they opposed it in the initial phase of
4 this, but you can never say they were opposed to the
5 package that's represented from the stipulation,
6 correct?

7 A. Correct.

8 Q. Okay. And right after that, you talk
9 about the pilot program and you have a concern
10 because you say the pilot programs are directly
11 limited to the signatory parties, correct?

12 A. Yes.

13 Q. Would you agree with me that pilot
14 programs are typically experimental programs?

15 A. Typically.

16 Q. And these programs can require changes
17 midstream to achieve the goal, correct?

18 A. They can.

19 Q. And it's appropriate to enter into pilot
20 programs with cooperative partners focused on the
21 same goal, correct?

22 A. Yes, but I think the important part is
23 partners that are willing to cooperate with the goal
24 of the pilot program, not necessarily partners that
25 are just willing to cooperate with the PPA

1 stipulation.

2 Q. Okay. Because it would be difficult to
3 enter into a pilot program with a partner that was an
4 adversary, correct?

5 A. Yes.

6 Q. And there will be signatory parties -- the
7 signatory parties that are able to participate in
8 these pilot programs including certain RESA members,
9 correct?

10 A. Yes.

11 Q. Now, let's go to page 6 of your testimony.
12 Here is where you talk about limiting the scope of
13 the settlement to agreements that impact the PPA,
14 correct?

15 A. Can you -- I'm sorry, was there a line
16 number or question number that you are referring to?

17 Q. Sure. Really I am talking about line 3 to
18 4. Your concern overall in this area is about
19 limiting what the Commission might approve as part of
20 the stipulation, correct?

21 A. Yes.

22 Q. And your concern directly here is that
23 there are certain situations that, you say on line 4,
24 "should be discussed and debated through an
25 appropriate proceeding," correct?

1 A. Yes.

2 Q. And the concern is that doing it in this
3 stipulation doesn't give it its full time to be
4 baked? Is that fair?

5 A. So since I think your question is around
6 getting at characterizing what I mean here, what I
7 mean is several things. One, you know, these
8 programs may have merit, but a rider case that has
9 nothing to do with these programs is probably not the
10 right place to discuss them.

11 Probably there are almost certainly
12 counterparties or entities that would have
13 participated had they had any idea that these
14 programs were going to be discussed, and would have
15 had a reasonable, you know, a reasonable indication
16 that they would be discussed here.

17 I think the other thing that gets a little
18 bit dicey is the fact that we are talking about
19 implementing programs here, you know, that provide
20 value to certain entities but also in the discussion
21 of a PPA and a stipulation that provides direct value
22 to AEP as well.

23 You know, and I think back to the Market
24 Development Working Group in Ohio when some of these
25 pilot programs that are being proposed were discussed

1 there, and I don't remember AEP being supportive at
2 that time, at least not publicly, and now we get to
3 the stipulation and these programs are suddenly, you
4 know, part of the stipulation.

5 So I think what I am saying here is there
6 are other places that these can be debated. There's
7 other places that these are currently being debated
8 and those are the more appropriate places to talk
9 about programs that have really nothing to do with
10 the PPA.

11 Q. You are an advocate of making sure things
12 are discussed and debated through the appropriate
13 proceeding as you state in your testimony, correct?

14 A. I am saying that in order to ensure proper
15 regulatory outcomes, it is important to discuss
16 things in the right proceeding where you have the
17 right participation and you have the right focus and
18 you have the appropriate -- well, we'll cut it off at
19 "the right focus."

20 Q. And RESA, without getting into any
21 details in their participation in the negotiations
22 here, did participate in the negotiations, correct?

23 A. I'm sorry, in the negotiations of?

24 Q. For this stipulation.

25 A. You know, I don't know that -- I assume

1 so. I don't know -- they didn't actually indicate to
2 me they participated in the discussions.

3 Q. If they were present in negotiations, they
4 would have every opportunity to raise any issue and
5 have any discussion they would want on the issues in
6 the stipulation, correct?

7 MR. SETTINERI: Object. This witness --
8 there is no foundation laid that this witness was
9 present during those discussions and what the
10 structure was of those discussions. He can't answer
11 that.

12 MR. SATTERWHITE: Your Honor, that's why I
13 followed up, if they were, they would have that
14 opportunity.

15 MR. SETTINERI: Again, goes back to the
16 foundation laid as to the structure of those
17 discussions and to the extent they even took place.
18 The witness gave an answer previously.

19 EXAMINER PARROT: Mr. Bennett, you may
20 answer the question if you can. I'm not sure that
21 this is something you have knowledge of so.

22 THE WITNESS: Sure.

23 EXAMINER PARROT: You can say that if
24 that's the case.

25 THE WITNESS: I'm sorry. I didn't mean to

1 cut you off.

2 A. Yeah. So let's take it on a theoretical.
3 RESA is part of a discussion on the stipulation, and
4 the RESA members there have a desire to implement
5 some of these pilot programs, but they look at this
6 application in whole and decide that it's not worth
7 it. You know, there's not -- the concern about the
8 impacts of the application as a whole don't warrant
9 support or dropping opposition or partial
10 participation in the -- in the stipulation to get
11 those particular programs.

12 So could they have negotiated it?
13 Ostensively, yes. If they didn't, it probably was
14 because they didn't think it was worthy or worthwhile
15 in light of the entire package. This is an entire
16 package that we are talking about. We are not
17 talking about one program. We're talking about one
18 program while accepting the PPAs and the subsidies
19 associated with the PPAs.

20 Q. Right. But in all fairness, your
21 discussion here is that these individual programs, so
22 we are talking individually, I am not talking about
23 the whole package. That's not what my question is
24 about here. I am following up on your testimony and
25 you are saying these individual points should be

1 discussed and debated among interested parties,
2 correct?

3 A. What I am saying is they shouldn't be part
4 of the stipulation. What I am saying is that you
5 shouldn't tie the support of a program to a package
6 that includes the PPA rider. Not just the PPA rider.
7 You shouldn't have something that is completely
8 disparate as part of the stipulation.

9 So there -- again, there are places to
10 discuss the retail supply related programs here and
11 they are being discussed and they were being
12 discussed. And, again, my recollection is AEP didn't
13 support them at the time. So I'm -- I don't
14 understand why then they are here in this stipulation
15 and they are being supported now.

16 Q. Isn't that the exact point? You admit
17 that it's being discussed in the industry, that
18 Market Development Working Group. But typically
19 there has not been a utility willing to step out and
20 say we are willing to do a pilot program.

21 So now we are in a different case and the
22 opportunity comes up as part of an overall package
23 that a utility will be willing to do something, it's
24 already been discussed in a Market Development
25 Working Group, and now utilities are willing to do it

1 as part of an overall package. Isn't that
2 appropriate?

3 A. I guess I struggle -- I struggle with it
4 because, again, I mean, it's a rider case. It's a
5 PPA rider case. You know, I don't -- I don't -- I go
6 back to, you know, there are existing dockets with
7 participants that are there to discuss these
8 programs. You know, the benefits and the impacts and
9 the challenges of these programs with the -- what I
10 would consider a more appropriate set of
11 counterparties.

12 You know, putting them in here when we are
13 talking about a stipulation that has a clear benefit
14 to the company, it just -- it doesn't -- it doesn't
15 have the appearance of okay, here is a package,
16 let's, you know, let's submit pilot programs for
17 things that are being discussed in the industry. It
18 has the appearance of, you know, what can we do to
19 get, you know, signatories on the stipulation in.

20 Q. So if the Commission were to approve the
21 PPA, are you testifying on behalf of RESA that you
22 want the Commission to remove the competition
23 investment rider, the pilot on consolidated supplier
24 billing, and the warm transfer standard discount from
25 the stipulation?

1 A. My testimony indicates that those are
2 topics that should be discussed separate and apart
3 from the stipulation itself.

4 Q. Right. So that's a yes, if the Commission
5 were to approve the stipulation, it should pull those
6 provisions out of the stipulation in its approval of
7 the PPA?

8 MR. O'ROURKE: Asked and answered.

9 MR. SATTERWHITE: He didn't answer it, you
10 Honor. He said they should be discussed separately.

11 EXAMINER PARROT: Overruled.

12 A. Yes, I mean, you know, I don't believe
13 that they belong in the stipulation. Obviously RESA
14 opposes the stipulation, so we hope it's not
15 approved. But if it's approved, it shouldn't be
16 approved with these programs or any of the other
17 programs that are in here that aren't directly tied
18 to the PPA itself.

19 Q. Let's go on to page 6, line 10, the
20 paragraph starting "Further." And that paragraph
21 states that the items in the stipulation are simply
22 promises to revisit items later on, I believe, lines
23 10 and 11, correct?

24 MR. SETTINERI: Just to clarify the
25 record. Are you are paraphrasing?

1 MR. SATTERWHITE: Yes.

2 MR. SETTINERI: Thank you,
3 Mr. Satterwhite.

4 A. Yes.

5 Q. So, first, you say everything should be
6 discussed and debated later through an appropriate
7 proceeding, and here you are providing testimony that
8 says it simply promises to revisit later, and you are
9 opposed to waiting to do something later. Isn't that
10 inconsistent?

11 A. Well, no, because that's not what I am
12 saying I am opposed to. I am not saying I am opposed
13 to waiting to discuss it later. What I am saying
14 here is that there's this implication that if you
15 include all these programs in the stipulation, and
16 many of the programs, like the retail-related pilot
17 programs, are promises to bring them up again with
18 the Commission.

19 The only way for the signatory parties to
20 actually benefit, the ones that support the --
21 support these programs, would be if the Commission
22 actually implements the pilot. And so there is an
23 implication here that, you know, that the Commission
24 should or would approve them in the future.

25 So it's not the discussion is put out

1 later. Again, it's saying, you know, it shouldn't be
2 part of this stipulation and these -- and these --
3 you know, that the promised benefits or the proposals
4 to propose these at a later date shouldn't be here.
5 The discussion should be in a more appropriate
6 docket.

7 Q. And how is that consistent? Because I
8 thought you said this stipulation shouldn't include
9 these things because they need to have more debate
10 and more discussion later. So in a number of areas
11 the stipulation includes a promise by a utility,
12 which you stated, in the Market Development Working
13 Group, utilities were unwilling to make commit to try
14 things. Now a utility is saying we will do something
15 if the Commission approves it. So it pushes
16 something for that discussion if approved by the
17 Commission. How is that not solving the problem that
18 you raised?

19 A. Yeah. I guess the point I get hung up on,
20 again, is the fact that the proposal to do that is
21 tied to support for the PPAs themselves. I just --

22 Q. So it's the overall package then.

23 A. Yeah. It's the inclusion of these
24 programs that the company never supported, but now
25 that they are looking for stipulation signatories,

1 are willing to now -- what's the word I am looking
2 for -- consider. You know, if they are valid
3 programs, consider them. Don't consider them just
4 because they are in the stipulation. Consider them.

5 Use the dockets that this Commission has
6 provided to have a consideration of whether these are
7 beneficial for customers. If that's the goal to get
8 a program that's beneficial for customers, then --
9 then, you know, consider it under that. Don't
10 consider it just because there's "you know" people,
11 counterparties that have signed on to the
12 stipulation.

13 Q. And that's your view of what the
14 motivation was of why these are included in the
15 stipulation, correct? The company has not provided
16 testimony that said we are only providing these
17 programs because it would help us get a stipulation,
18 correct?

19 A. Yeah. It's just the appearance they
20 didn't exist before the stipulation and now they do.

21 Q. You were involved in the prior ESPs of AEP
22 Ohio, correct?

23 A. Yes.

24 Q. And there were discussions in those, RESA,
25 Dwayne Pickett, sitting in the back of the room right

1 now, proposed a standard discount proceeding.

2 MR. SETTINERI: Object. If we are going
3 into confidential settlement discussions from prior
4 proceedings, I think that needs to be addressed.

5 Q. In the testimony of Dwayne Pickett, in the
6 ESP III, he --

7 MR. SATTERWHITE: May I continue, your
8 Honor?

9 EXAMINER PARROT: You may.

10 Q. -- he raised the concept that's included
11 in the stipulation of a standard discount rate,
12 correct?

13 A. Yeah, I believe so.

14 Q. And are you aware that AEP's position on
15 that was that it needed more discussion to get
16 comfortable with that kind of idea before it could
17 implement something like that?

18 A. I'm willing to believe you.

19 Q. So if AEP was able to get comfortable with
20 that through a Market Development Working Group and
21 an opportunity came up in another case that it was
22 comfortable now proposing and moving forward with
23 something, isn't that to the benefit of customers?

24 A. Isn't it -- okay. So isn't that to the
25 benefit of customers?

1 Q. Isn't -- or we can just say isn't that to
2 the benefit of carrying out what you think are good
3 programs, if AEP Ohio now thinks it's a good program
4 and is willing to implement that, is the fact that
5 it's in a stipulation on something else a bad thing?

6 A. Okay. So part of me thinks that if that
7 were actually the way this occurred, if, you know
8 RESA Witness Pickett brought this up in direct
9 testimony in the ESP and the response was we need
10 more time to get comfortable with it, and then there
11 was the Market Development Working Group and, you
12 know, things occurred and the company thought through
13 it and then they filed the rider case, if they had
14 gotten comfortable with it at that point, why not
15 make it part of the rider without the stipulation?
16 Why not put it in there and have it be part of the
17 rider case itself?

18 Again, what we are seeing is, you know,
19 the programs are inserted with the stipulation. Is
20 it good or bad for the programs, you know, to be in
21 the stipulation? It's hard to say because, again,
22 you said -- as you said, we are looking at a package
23 and this package includes things that could be very
24 damaging to the retail market.

25 So, you know, Duke does one or more of

1 these pilot programs if they are accepted,
2 counterbalance the potential damage, I can't say
3 that. There is no guarantee, certainly, that it
4 does.

5 Q. So it's RESA's position then, in the
6 future, in front of the Commission, whatever
7 proceeding it has, that it's only going to sign
8 stipulations that have a very specific single issue
9 and any request by RESA will only relate to that very
10 specific single issue?

11 MR. SETTINERI: Objection. This witness
12 is here as an expert today. He cannot speculate as
13 to a specific future position of RESA.

14 MR. SATTERWHITE: I will ask it this way.
15 I can rephrase, your Honor.

16 Q. As an expert for RESA, the basis of your
17 recommendation here today is that, in the future, if
18 RESA is thinking about settlement discussions, it
19 should make sure it sticks to the single issue that's
20 the base of the initial application, in asking and
21 negotiating any terms related to that stipulation,
22 correct?

23 A. Well, yeah, I don't know that I would
24 necessarily give them that advice in every case, but
25 I certainly would advise them to be careful about

1 what types of terms they are putting in a stipulation
2 depending on, you know, the subject matter of the
3 case itself.

4 Q. And are you aware of the three-part test
5 applied by the Commission and approved by the Supreme
6 Court in Ohio to review stipulations in cases before
7 it?

8 A. I am aware of it.

9 Q. What's your understanding of that test?

10 A. My understanding that there are, as you
11 indicated, as the name says, there's three prongs.
12 One is that negotiations are held between willing
13 counterparties at arm's length. So basically, you
14 know, proper negotiations.

15 Q. And it isn't a test. I am not asking you
16 to do the three if that's where you think I wanted
17 you to go.

18 A. Yeah.

19 Q. I can rephrase. I am not trying to trick
20 you and make sure you know every word of the
21 three-part test.

22 Let me ask it this way, is it your
23 understanding that part of the three-part test or the
24 basis of the three-part test is for the Commission to
25 review the stipulation as a complete package?

1 MR. SETTINERI: Just object to the extent
2 it calls for a legal conclusion.

3 MR. SATTERWHITE: No problem.

4 EXAMINER PARROT: You may answer the
5 question, Mr. Bennett, with the understanding we know
6 you are not testifying today as anything other than a
7 regulatory expert.

8 THE WITNESS: Thank you.

9 A. That's my understanding, yes.

10 Q. And reviewing something as a package is to
11 review all provisions of the package together,
12 correct?

13 A. Yes.

14 Q. And are you aware -- and that's because
15 the signatory parties -- there is no way to tell,
16 among the signatory parties, why one portion of the
17 test -- if one portion of the stipulation is more
18 important or less important to any individual party,
19 correct?

20 A. Generally, although in this case there's a
21 lot of nonparticipation, so I think you could
22 probably assume those parts aren't particularly
23 important to the nonparticipating parties. But, in
24 general, yes, I agree with you.

25 Q. And the "nonparticipation," that's just

1 your review of the stipulation, correct?

2 A. That's the footnotes that say they are not
3 participating.

4 Q. Right. But you don't know what those
5 means -- when those mean because you were not
6 involved in the settlement discussions, correct?

7 A. That's correct.

8 Q. Now, you discuss in your testimony the
9 issues that you believe are not beneficial in the
10 stipulation. But let's discuss the issues that you
11 think -- I want to see if RESA believes or you
12 believe as an expert for RESA are beneficial. Are
13 you familiar with the competition investment rider on
14 page 12 of the stipulation?

15 A. Yes.

16 Q. Do you believe that is a benefit? By
17 itself?

18 A. By -- yes, by itself, the idea of
19 unbundling, making sure that the principles of cost
20 causation are followed, making sure there is no
21 cross-subsidization for -- for SSO customers, is very
22 important.

23 Q. And is there value in a utility offering
24 to include that in an ESP filing?

25 A. Yes.

1 Q. What about the pilot for supplier
2 consolidated billing, is that a benefit?

3 A. It can be, yes.

4 Q. Is anyone currently administering supplier
5 consolidated billing in the State of Ohio?

6 A. Not on the electric side that I know of.

7 Q. So would you agree this is a potential big
8 first step for the electric side to have a pilot in
9 this area?

10 A. I think it -- it's a step forward.

11 Q. And it's your understanding this will
12 involve RESA members, certain RESA members that are
13 signatory parties, and the Commission staff, in
14 reviewing how this works, correct?

15 A. Yes.

16 Q. And do you believe that will be valuable
17 information to see if it can be expanded across the
18 state in the electric industry?

19 A. Hard to say because there's not a lot of
20 detail surrounding, you know, what information is
21 going to be shared and how that information is going
22 to be shared, and who, besides the signatory parties,
23 are allowed, you know, if they are allowed to see the
24 information. There's no details around the program
25 itself.

1 And one of the things that we've seen
2 programs like the consolidated billing and the CIR
3 is, you know, concepts are great. Details are what's
4 important. And there's not a lot of detail in either
5 the program or how the information will be shared
6 from the program on the consolidated billing.

7 Q. But the consolidated billing does have
8 staff as an active partner in developing that and
9 studying that, correct?

10 A. That's my understanding.

11 Q. And you would agree that staff's
12 understanding and support or nonsupport of an issue
13 is very important in implementing changes in the
14 industry in Ohio, correct?

15 A. Yes. Partnering with staff is always a
16 beneficial thing.

17 Q. And let's talk about the warm transfer and
18 the standard discount rate provision. Is that a
19 benefit?

20 A. So, again, conceptually, yes. The -- one
21 of the things I struggle with when I read through the
22 stipulation is that there are zero details around
23 what that program is going to look like, and I
24 realize some of that is because it's a promise to
25 propose the program. But, you know, conceptually it,

1 could be very valuable, it could be beneficial to
2 customers and to the retail market, but the details,
3 you know, I've seen programs that sound great and
4 then when they are implemented, the implementation
5 is -- it just goes terribly wrong and it turns into
6 something that's not a benefit, but --

7 Q. So it would -- I apologize.

8 A. No, that's okay.

9 Q. So it would have been better for the
10 signatory parties not to include this and not have a
11 standard discount?

12 A. No. I'm saying I can't assess whether
13 it's going to be a benefit because there is no
14 details to tell me what the problem is going to look
15 like. So I don't know for sure that the way this is
16 implemented is going to be a benefit.

17 Q. But the movement forward to have a utility
18 willing to propose this, that, in itself, is not a
19 movement, a benefit?

20 A. I mean, yes, but the willingness to move
21 forward is -- is a small piece of -- is a small piece
22 of it. It's -- again, without knowing what the
23 details of the program are, you know, if you are
24 willing to move forward but you are only willing to
25 move forward implementing details that would create

1 an ineffective product or program, then, no, please
2 don't move forward.

3 If you are willing to move forward and the
4 program, you know, provide details, if you had
5 provided details here, indicating what the program
6 would look like, maybe then I would be able to assess
7 whether it is positive or not.

8 Q. Are you aware that AEP Ohio filed the
9 comments in the, what we have been calling "the warm
10 transfer" docket, I believe two days ago, suggesting
11 to the Commission that it start this pilot program?

12 A. I was not aware of that.

13 Q. And wouldn't that be another proceeding
14 that RESA and everybody else can comment on and help
15 try to shape what that might look like?

16 A. Sounds like it.

17 Q. Would that fit the standard you have on
18 page 6 of your testimony to discuss and debate
19 something through an appropriate proceeding?

20 A. And, I'm sorry, where did you file --
21 where were the comments filed and where was the
22 filing made?

23 Q. The warm transfer docket. There were
24 comments due on the 6th.

25 A. Yes, then that sounds like an appropriate

1 docket.

2 Q. Now, let's talk about changes in the
3 stipulation, and I understand that if the stipulation
4 is approved, you don't necessarily agree with the
5 stipulation, but I want to talk about what's in the
6 stipulation compared to what was in the amended
7 application, so the changes that came about because
8 of the stipulation, okay?

9 A. Okay.

10 Q. And I want to determine if the changes are
11 a benefit in comparison to what was in the amended
12 application before the stipulation changed them, all
13 right?

14 A. Okay.

15 Q. So the fact that the return on equity
16 impact has gone down from the amended application, is
17 that a benefit?

18 A. I can't say it's necessarily a benefit. I
19 mean, the fact there's a guaranteed return at all is
20 not a benefit to the market. It's still a subsidy,
21 whether it's 1 percent or 20 percent. So whether
22 it's 15 or 10, it's not a benefit.

23 Q. So you don't recognize the benefit on what
24 the retail customer would have to pay? That's
25 irrelevant to you? It's just a matter that it's in

1 existence that it doesn't matter to you what the
2 difference might be, correct?

3 A. You know, I'm not trying to paint it as I
4 don't care what the customer has to pay. I don't
5 think the customer should pay the subsidy at all.
6 Again, I don't care if it's -- the customer shouldn't
7 pay a 1-percent subsidy. So reducing the subsidy,
8 reducing the guaranteed return doesn't make it a
9 benefit. It just makes it less of a negative impact.

10 Q. Correct. But my question was we're
11 assuming it's going to be approved as a hypothetical.

12 A. Okay.

13 Q. And so I am asking the difference between
14 what's in the stipulation and what was in the amended
15 application, and are you saying it's not a benefit
16 that the impact of the ROE is lower now?

17 MR. SETTINERI: Object, asked and answered
18 twice.

19 MR. SATTERWHITE: He didn't answer, your
20 Honor. He just said he doesn't like the overall
21 system.

22 EXAMINER PARROT: Overruled.

23 A. If you are going to charge a subsidy to
24 your customers, it should be as low as possible.

25 Q. And the fact that the length of the PPA

1 has moved from the life of the units to a shorter
2 period, approximately eight years, that's a benefit,
3 comparing the result of the stipulation compared to
4 what was in the amended application, correct?

5 A. Again, no, I don't -- probably not. I
6 mean, again, it's -- you're talking about eight years
7 of subsidized returns for an unregulated entity. You
8 are talking about eight years of risk that's being
9 transferred from your shareholders to your customers.
10 So, again, 15, 8, or 1, none of that is a benefit.

11 Q. But if you are opposed to the PPA as a
12 construct, having it for eight years versus having it
13 for a longer period is a better resolution, correct?

14 A. Yeah. I don't know that I can say that.
15 I don't know that I can say for certain that eight
16 years is better. I mean, there is no good. You
17 know, I don't know what a shorter time frame
18 necessarily gets the customers.

19 Q. The stipulation has an opportunity for
20 additional credits, credits in the final four years,
21 you are aware of that, correct?

22 A. Yes.

23 Q. And there was not an opportunity for those
24 additional credits in the amended application, that's
25 a change in the stipulation, correct?

1 A. Yes.

2 Q. So that's a benefit above what was in the
3 amended application, correct?

4 A. So providing potential credits to
5 customers is better than not, but, again, as I said
6 in my testimony, it's very likely that it's
7 insufficient to make sure that this is an overall
8 financial benefit to customers. There is a lot of
9 risks inherent to this program. \$100 million might
10 cover those risks, but there's no guarantee that it
11 will.

12 Q. And, again, I know you keep adding on your
13 overall position on the overall PPA, but my questions
14 here are very limited. Is there a benefit as a
15 result of what's in the stipulation versus what's in
16 the amended application, the difference between the
17 two, if it were to be approved?

18 So I think you agree, and correct me if I
19 am wrong, that the addition of additional benefits in
20 the final four years is a benefit over the lack of
21 those additional benefits, the opportunity for them
22 that was in the amended application, correct?

23 MR. SETTINERI: Could I have that question
24 reread, please? I got lost.

25 (Record read.)

1 MR. SETTINERI: I will just object. There
2 were multiple questions there and I don't know what
3 question was being asked.

4 MR. SATTERWHITE: Your Honor, I am trying
5 to be polite and trying not to move to strike all the
6 extra global statements when I think I am asking very
7 direct questions. So I prefaced my question, showing
8 how very simple that is, the question, but I could
9 ask the question -- I can rephrase.

10 MR. SETTINERI: I would appreciate that.

11 EXAMINER PARROT: Rephrase.

12 Q. So do you understand what I am asking you
13 about is the difference between what's the result of
14 the stipulation and what was in the amended
15 application?

16 A. Yes.

17 Q. So we also established that as a result of
18 the stipulation, the company's offering to provide
19 additional credits in the final four years,
20 potentially offer additional credits in the final
21 four years, correct?

22 A. Yes.

23 Q. And you would agree with me that that is a
24 benefit over what was in the amended application when
25 those additional credits did not exist, correct?

1 A. Yes.

2 Q. Would you also agree that the commitment
3 to explore options for renewable resources that exist
4 in the stipulation is a benefit over the amended
5 application that did not include that? And I am
6 focused again on just the difference between the two.

7 A. No, I am not sure that I -- I am not sure
8 that I could agree with that.

9 Q. So you don't see value -- never mind.

10 Page 8 of your testimony, it discusses the
11 900 megawatts of renewables, and paraphrasing
12 basically you state that you -- I don't think it's
13 appropriate to let AEP Ohio or an affiliate own that
14 generation, correct?

15 A. Well, I am not saying that an affiliate
16 couldn't own it if it was developed outside of the
17 PPA rider. But what I am saying here in this part of
18 the testimony is the stipulation shouldn't allow
19 900 megawatts of renewable energy be built under a
20 cost of service ratemaking proposal where, at least
21 for the first year, half of it has to be owned by the
22 generation affiliate of AEP.

23 And, again, you know, my testimony opposes
24 the idea of 3,000 megawatts of generation being put
25 in the PPA. We don't support -- I don't support

1 putting another 900 megawatts of generation in the
2 PPA.

3 Q. Right. Again, I will ask you -- I am not
4 going to move to strike that; but, again, I have
5 asked you to stick to the questions I am asking and
6 not get to the global proposal. Let's just stick to
7 what I am asking, all right?

8 So are you aware that there are provisions
9 under Ohio law, as a regulatory expert, not as an
10 attorney, that allow for a distribution utility, like
11 AEP Ohio, to own generation?

12 A. So my understanding of that there are
13 certain provisions that have to be met, but that,
14 yes, the utility can own generation.

15 Q. And the proposal in this stipulation that
16 we have here today, all recovery of such costs will
17 be subject to a future PUCO proceeding, correct?

18 A. Yes.

19 Q. And so that would meet the standard you
20 introduced on page 6 that it should be discussed and
21 debated through an appropriate proceeding, correct?

22 A. Perhaps.

23 Q. Let's move to page 8, Question 18, on
24 federal advocacy. Again summarizing, you say the
25 PUCO should be careful about asking for comments

1 because it involves a lot of complex issues, correct?

2 A. Yes.

3 Q. And this just provides a forum to talk
4 about the issues that people are filing comments,
5 correct?

6 A. My understanding that the stipulation
7 seeks to almost compel the Commission to solicit the
8 comments which I thought was somewhat odd but --

9 Q. But if the Commission has comments in this
10 area on federal advocacy, that would meet the
11 standard you give us on page 6 that it could be
12 discussed and debated through an appropriate
13 proceeding, correct?

14 A. Yes. If the Commission, of its own
15 volition, wants to solicit comments from the public
16 on this, then absolutely, that would be a more
17 appropriate place to discuss it.

18 Q. Because you favor proceedings where people
19 can discuss the issues, correct?

20 A. I favor -- I favor proceedings where the
21 counterparties that are involved know and have a
22 reasonable expectation of what's going to be
23 discussed so that they can choose to participate in
24 the proceeding and make sure that the right people
25 are in the room when you are discussing something as

1 important as, you know, capacity products, coal plant
2 retirements, capacity markets, and reliability for
3 Ohio.

4 Q. I'm sorry. I didn't mean to cut you off.
5 That would include making sure RESA was in the room;
6 is that your testimony?

7 A. I mean, if RESA decides that it's a
8 subject that it would want to be involved in, and I
9 think it would be, yes, then RESA should be in the
10 room for that.

11 Q. I think you took it to a general statement
12 you favor proceedings that involve, and I was just
13 asking are you saying RESA should typically be
14 involved in conversations to make sure things are
15 debated and discussed?

16 A. I think every -- no. I think what I said
17 was every entity should have a reasonable expectation
18 to know what is going to be discussed in the docket
19 and participate based on that reasonable explanation.
20 If you are going to discuss capacity markets and
21 reliability, then probably every generator in PJM
22 should be a part of that discussion.

23 So the point is not that RESA should or
24 shouldn't participate in a docket or not. The point
25 is the docket should be clear, the terms that are

1 being discussed should be reasonably anticipated, and
2 then parties can join the docket and participate in
3 the discussion under reasonable terms.

4 Q. And on page 9, Question 19, you talk about
5 co-firing. I will just shortcut this. It's your
6 understanding decisions on co-firing are going to
7 occur later in a docket where the issues can be
8 discussed and debated, correct, under your standard?
9 That fits your standard on page 6?

10 MR. SETTINERI: Just object. Compound
11 question.

12 MR. SATTERWHITE: Do you want me to
13 restate it?

14 EXAMINER PARROT: Just take them one at a
15 time.

16 MR. SATTERWHITE: I was just trying . . .

17 EXAMINER PARROT: I know. I appreciate
18 the attempt.

19 Q. (By Mr. Satterwhite) I believe you agree
20 that the decisions on co-firing will occur in a
21 future docket, correct?

22 A. Yes.

23 Q. And in this future docket parties will
24 have the opportunity to discuss -- in that future
25 docket it will meet the criteria you lay out on

1 page 6 of your testimony because parties will be able
2 to discuss and debate the issues in that future
3 docket, correct?

4 A. Presumably so.

5 MR. SATTERWHITE: One second, your Honor.

6 Thank you, your Honors. Thank you,
7 Mr. Bennett. That's all I have for cross.

8 EXAMINER PARROT: Mr. Beeler?

9 MR. BEELER: No questions, thank you.

10 EXAMINER PARROT: Mr. Settineri, would you
11 like a short break to figure out whether you have
12 further questions?

13 MR. SETTINERI: Yes, this would be
14 appreciated, short break.

15 EXAMINER PARROT: Take a short break.

16 (Recess taken.)

17 EXAMINER PARROT: Okay. Let's go back on
18 the record.

19 Any redirect, Mr. Settineri?

20 MR. SETTINERI: Yes, your Honor. We do.
21 Thank you.

22 - - -

23 REDIRECT EXAMINATION

24 By Mr. Settineri:

25 Q. Mr. Bennett, do you recall a number of

1 questions today regarding concerns you have with the
2 items in the stipulation that don't relate to the
3 PPA?

4 A. Yes. Yes.

5 Q. What is your concern about the items in
6 the stipulation that don't relate to the PPA?

7 A. So when we talk about the three-prong test
8 and we thought about the need to not violate any
9 regulatory principle or practice, the concern I have
10 is that when you have a stipulation where you've got
11 a large number of disparate terms and stipulation
12 items, that you run the risk of, you know, violating
13 the practice of favor trading or at least the
14 appearance of favor trading, so that's where my
15 concern lies.

16 MR. SETTINERI: Thank you. No further
17 questions, on redirect. Thank you.

18 EXAMINER PARROT: Mr. O'Rourke.

19 MR. O'ROURKE: No questions, your Honor.

20 EXAMINER PARROT: Mr. Michael.

21 MR. MICHAEL: No questions, your Honor.

22 Thank you.

23 EXAMINER PARROT: Mr. Darr.

24 MR. DARR: No questions.

25 EXAMINER PARROT: Mr. Kurtz.

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1 MR. KURTZ: No questions, your Honor.

2 EXAMINER PARROT: Ms. Spinosi.

3 MS. SPINOSI: No questions, your Honor.

4 EXAMINER PARROT: Mr. Satterwhite.

5 MR. SATTERWHITE: Just one real quick,
6 your Honor.

7 - - -

8 RECROSS-EXAMINATION

9 By Mr. Satterwhite:

10 Q. You just responded to your counsel that
11 your concern that you have in your testimony was
12 based on one of the prongs of the three-part test,
13 correct?

14 A. Yes.

15 Q. But nowhere in your testimony do you
16 indicate that you are testifying at all about the
17 three-part test, your prefiled testimony, correct?

18 A. Correct.

19 MR. SATTERWHITE: Thank you.

20 EXAMINER PARROT: Mr. Beeler.

21 MR. BEELER: No questions, thank you.

22 EXAMINER PARROT: Commissioner Haque.

23 COMMISSIONER HAQUE: Mr. Bennett, how are
24 you? Good afternoon.

25 THE WITNESS: Good afternoon.

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1 COMMISSIONER HAQUE: So, Mr. Bennett, on
2 page 4, towards the bottom of the paragraph there,
3 it's all related, but I just want to ask you, because
4 I essentially don't understand, so I would like for
5 you to explain this to me.

6 The concept, I think really beginning on
7 line 29, going forward, regarding the potential harm
8 to the retail marketplace if AEP Ohio enters into
9 bilateral contracts. I don't have a specific
10 question for you. I would just like for you to
11 unpack the concept.

12 THE WITNESS: Okay. So -- I'm sorry, is
13 that me?

14 COMMISSIONER HAQUE: I turned mine off. I
15 think it was feedback.

16 THE WITNESS: Okay.

17 MR. SETTINERI: Move it a little further
18 away from you.

19 THE WITNESS: How's that? Okay. Sorry
20 about that.

21 So my understanding of the stipulation is
22 that there's no -- there is no prohibition on
23 bilateral contracts for the output. And so my
24 concern or the potential concern is that you have
25 supply, generation supply, that has a guaranteed

1 return, and if that supply is then sold to a CRES
2 provider, you know, more specifically an affiliated
3 CRES provider at an under-market rate because of
4 that -- because of the existence of that guaranteed
5 return, then that CRES provider has a source of
6 below-market supply that nobody else would have.

7 So it's -- the idea is that without a
8 prohibition on bilateral contracts and the existence
9 of supply that has a guaranteed return, that it could
10 then be sold, you know, at a rate below what the
11 market would otherwise bear.

12 COMMISSIONER HAQUE: Would that -- so that
13 concern, is the concern with a bilateral contract
14 with any retailer, or is the concern a bilateral
15 contract the AEP Retail affiliate? Let me just be
16 pointed with the question.

17 THE WITNESS: Right. It would actually be
18 with any of them because -- well, yeah, I think it
19 would be any of them because, again, if -- the
20 difference is if I decide to sell -- if I am a
21 generation owner, I have supply. If I am long supply
22 and I decide to sell to a CRES provider at below
23 market and that's a loss for me because I don't have
24 a subsidy, I don't have an ROE, I don't have a PPA,
25 that's a business decision. It's a terrible business

1 decision, but it's a business decision that I have
2 entered into because for I don't know why. You
3 wouldn't do it, but . . .

4 In this case you have the potential for
5 the -- for AEP Ohio to sell at a below-market rate
6 but not have a loss, and so if they sell it to their
7 affiliate, that maybe has the appearance of the
8 worst-possible outcome in that scenario, but if they
9 sell it to somebody else, then you still have a
10 situation where there is a CRES provider out there
11 that is able to undercut their competitors based on
12 the fact that there's a subsidy that exists in the
13 marketplace.

14 COMMISSIONER HAQUE: Okay. Thanks.

15 EXAMINER PARROT: All right.

16 Mr. Settineri, move your exhibit.

17 MR. SETTINERI: I would like to. At this
18 time we would move for the admission of RESA
19 Exhibit 1.

20 EXAMINER PARROT: Are there any objections
21 to the admission of RESA Exhibit 1?

22 MR. SATTERWHITE: No objection.

23 EXAMINER PARROT: Hearing none, RESA
24 Exhibit 1 is admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

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1 EXAMINER PARROT: Thank you very much,
2 Mr. Bennett.

3 All right. At this point let's take a
4 30-minute break for lunch.

5 (Thereupon, at 1:35 p.m., a lunch recess
6 was taken until 2:05 p.m.)

7 - - -

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Friday Afternoon Session,
January 8, 2016.

- - -

EXAMINER SEE: Let's go on the record.
Mr. Michael.

MR. MICHAEL: Thank you, your Honor. OCC
calls Dr. Noah C. Dormady.

(Witness sworn.)

EXAMINER SEE: Have a seat.

MR. MICHAEL: Your Honor, I would like to
have marked OCC Exhibit No. 36 the direct testimony
of Noah C. Dormady.

EXAMINER SEE: The exhibit is so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

- - -

NOAH C. DORMADY, Ph.D.
being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Michael:

Q. Could you state your name, please.

A. Noah C. Dormady.

Q. And could you state your business address.

A. 1810 College Road, Columbus, Ohio 43210.

Q. And, Dr. Dormady, did you cause direct

1 testimony to be filed in this case?

2 A. I did.

3 Q. And you have been handed what was a copy
4 of OCC Exhibit No. 36. Can you identify that
5 document?

6 A. That's my supplemental written direct
7 testimony in this case.

8 Q. And it was prepared at your direction?

9 A. It was.

10 Q. And if I were to ask you the questions in
11 what has been marked as OCC Exhibit No. 36, would
12 your answers be the same as reflected in that
13 document?

14 A. Yes, they would.

15 MR. MICHAEL: I move for admission, your
16 Honor, of OCC Exhibit No. 36 into the record, subject
17 to cross.

18 EXAMINER SEE: Okay. Mr. Settineri, any
19 cross for this witness?

20 MR. SETTINERI: No, your Honor. Thank
21 you.

22 EXAMINER SEE: Mr. O'Rourke?

23 MR. O'ROURKE: No, your Honor.

24 EXAMINER SEE: Mr. Kurtz?

25 MR. KURTZ: No, your Honor.

1 EXAMINER SEE: Mr. Darr?

2 MR. DARR: No, your Honor.

3 EXAMINER SEE: Mr. Darr.

4 MR. DARR: Thank you, ma'am. It's been a
5 long week. I understand.

6 EXAMINER SEE: Ms. Spinosi.

7 MS. SPINOSI: No questions, your Honor.

8 EXAMINER SEE: And Mr. Miller.

9 MR. MILLER: I do.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Miller:

13 Q. Dr. Dormady, how are you?

14 A. I am well. How are you?

15 Q. Good to see you again. I have been
16 admonished by my co-counsel to facilitate the speed
17 of these questions to get out of here, so hopefully
18 we'll get through these relatively quickly. Just a
19 couple of preliminary questions. You are still
20 employed as an instructor at Ohio State, my
21 understanding.

22 A. I am a professor, not an instructor.

23 Q. Assistant professor, I made the mistake.
24 And you are appearing today as an expert for the OCC.

25 A. That's correct.

1 Q. And OCC has paid you a fee out of its
2 operating budget to prepare your testimony and appear
3 here today?

4 A. They have.

5 Q. And are you appearing as an expert on the
6 economics of public utility matters in regards to
7 your testimony?

8 A. The economics of what?

9 Q. Public utility matters in regards to your
10 testimony.

11 A. Yes, generally.

12 Q. Are you appearing as an expert on
13 regulatory matters?

14 A. No.

15 Q. And are you appearing as an expert on
16 settlement discussions or negotiations?

17 A. Only to the extent that there's an
18 economic or public policy aspect of the three-prong
19 test that pertains to the regulatory matters in this
20 case.

21 Q. Do you consider yourself to have any
22 experience with regulatory proceedings?

23 A. No.

24 Q. Subsequent to your testimony you provided
25 for the hearing, we talked about this, I think, on

1 October 13, 2015, your original testimony in this
2 case, did you review any of the transcripts
3 documenting the testimony and cross-examination of
4 the other intervening parties -- witnesses, I'm
5 sorry, of the other intervening parties?

6 A. Can you repeat the first part of the
7 question?

8 Q. Yes, sir. Subsequent to your testimony
9 which you filed initially in this case.

10 A. In September.

11 Q. Yes. And we talked about it on
12 October 13, I believe, did you have an opportunity to
13 review or did you review any of the transcripts,
14 documenting the testimony and cross-exam of the other
15 witnesses in this case?

16 A. No, I did not.

17 Q. Have you reviewed the Joint Stipulation
18 filed by the parties in this case on December 14 of
19 last year?

20 A. I have.

21 Q. And have you reviewed the testimony
22 supporting that stipulation as filed by Witness Allen
23 for the company?

24 A. I have.

25 Q. Have you reviewed those in their entirety?

1 A. I'm sorry?

2 Q. Have you reviewed those in their entirety?

3 A. The testimony of William Allen or the
4 stipulation?

5 Q. Both.

6 A. Both. I reviewed the stipulation in its
7 entirety, not the testimony of William Allen.

8 Q. So just to be clear, you reviewed the
9 stipulation cover to cover, if you will.

10 A. Yeah.

11 Q. And Bill Allen's testimony, portions of
12 it.

13 A. A significant portion of it.

14 Q. A significance portion. Can you tell me
15 approximately how much time you spent reviewing the
16 Joint Stipulation document?

17 A. About a day.

18 Q. When you say "a day," can you break that
19 into hours for me?

20 A. Approximately seven hours.

21 Q. And can you tell me how much,
22 approximately how much time you spent reviewing
23 Mr. Allen's testimony?

24 A. Approximately an hour and a half, two
25 hours.

1 Q. Could you indicate to me which parts of
2 his testimony you may have reviewed?

3 A. Mostly the front portion of his testimony.
4 Then I skipped on over to the back.

5 Q. I hope you are not making a statement
6 about his testimony in regards to reviewing only the
7 first part and stopping. So you -- you reviewed the
8 front part, is that the front half or several pages?
9 Do you have any idea?

10 A. I don't recall.

11 Q. Okay. There's some rather esoteric and
12 nuanced concepts and terms that are contained in the
13 stipulation, regulatory-esque, kind of stuff.

14 A. Sure.

15 Q. Did you understand all those when you read
16 them the first time?

17 A. I did not.

18 Q. And what did you do in the case of
19 situations where you didn't understand those?

20 A. I either went back and reviewed them in
21 some detail, or spoke with counsel at OCC.

22 Q. And so you sought answers to those things
23 you didn't understand.

24 A. Yes, I did.

25 Q. How much time do you think you spent

1 seeking answers from the OCC and out doing your own
2 research?

3 A. Approximately two or three hours.

4 Q. And how much research did you have to do
5 to figure out all those various details you didn't
6 understand that you couldn't get answers from the
7 OCC?

8 A. One more time.

9 Q. The items that you did not go to the OCC
10 to seek answers on, you looked those up or did
11 research or tried to make a determination as to what
12 things meant?

13 A. Yes, I did.

14 Q. What kind of time did you spend doing
15 that?

16 A. That would have been contained within my
17 seven and a half hours time frame.

18 Q. So total.

19 A. In total.

20 Q. Between talking to the folks at the OCC,
21 counsel, between seeking out additional information,
22 and I am sure, if you are like the rest of America,
23 you Googled it or something, you spent seven hours.

24 A. Approximately, yes.

25 Q. And your testimony represents that it's

1 intended to address the Commission's three-prong test
2 for evaluating the reasonableness of settlements and
3 stipulations; is that correct?

4 A. One more time.

5 Q. Your testimony represents that it is
6 intended to address the Commission's three-prong test
7 for evaluating the reasonableness of stipulations and
8 settlements.

9 A. That's correct.

10 Q. And can you tell me what the three-prong
11 consists of?

12 A. Would you like it verbatim?

13 Q. If you can give it to me, that would be
14 great.

15 A. Sure. Referring to line 1, page 2 of my
16 testimony. "Is the settlement a product of serious
17 bargaining among capable, knowledgeable parties,
18 where this is diversity of interests among the
19 stipulating parties. 2, Does not violate any
20 important regulatory principle or practice. And, 3,
21 As a package, benefits ratepayers and the public
22 interest."

23 Q. So as I read your testimony, this is sort
24 of the linchpin you are focusing on these issues,
25 this test?

1 A. I wouldn't characterize them as a
2 "linchpin" but I am focusing on them.

3 Q. Where did you come across the three-part
4 test? Where did you first learn of it?

5 A. In William Allen's testimony.

6 Q. And what did you do in regards to seeing
7 that in Mr. Allen's testimony? What did you do to
8 make determinations as to what the test entailed,
9 what it involved, what kind of research did you do?

10 A. I made the determination on my own and
11 based on my common knowledge of these terms.

12 Q. So --

13 A. I also, as well, spoke with counsel at OCC
14 as to the meaning of these terms to make sure my
15 understanding was consistent with their legal
16 definition of these terms.

17 Q. And so to be clear, you had the
18 opportunity to review Mr. Allen's testimony --

19 A. Uh-huh.

20 Q. -- that listed or described some of the
21 test --

22 A. Yes.

23 Q. -- or the test, and then you had your own
24 interpretation of the test.

25 A. Yes.

1 Q. You also asked questions, if you had them,
2 I assume, of OCC counsel?

3 A. I did.

4 Q. And then subject -- subsequent to doing
5 all of that, you then wrote your testimony.

6 A. That's correct.

7 Q. Okay. Do you have any idea where this
8 test comes from?

9 A. I do not. I understand simply that it's a
10 test that the Commission has put forward for
11 evaluating stipulations or agreements.

12 Q. So you don't know whether this is a
13 statutory requirement in Ohio?

14 A. I do not. I am an economist.

15 Q. And you are not aware of whether the
16 Commission has used this test before?

17 A. I am not.

18 Q. And you don't have any other information
19 on how this test was created or perhaps what --
20 answer that question first. You don't have any idea
21 how this test was created?

22 A. I don't. I saw that it's inappropriate to
23 my -- unnecessary to my testimony.

24 Q. So just to be clear, so your testimony
25 essentially analyzes the stipulation and reviews it

1 in light of the three-part test.

2 A. That's correct.

3 Q. But your understanding of the history, the
4 formulation, the creation of the test is not
5 important to your testimony.

6 A. As long as my understanding of the test is
7 consistent with the definition of the -- of the
8 three-prongs of the test, I saw that it was not.

9 Q. And you are certain that your -- I believe
10 you read into the record your listing of the
11 three-part test, as described in your testimony, are
12 you certain that's correct?

13 A. I'm not 100 percent certain that it's
14 correct. I don't think that "correct" is the correct
15 word to use. If there is a common definition for
16 words like "capable" or "knowledgeable," I made sure
17 that I was -- that I understood what those terms
18 meant before I referred to them in my testimony. Is
19 there a specific term or understanding that --

20 Q. I am trying to get to my understanding, so
21 I can satisfy my own curiosity in regards to your
22 specific listing of the requirements of the test and
23 your understanding of those, and whether or not you
24 understand the way this test is applied or perhaps
25 has been applied in the past. I think you indicated

1 you are not -- correct me if I am wrong, you are not
2 certain this test has been applied before?

3 A. I am not and I have no background on the
4 legal history of this test.

5 Q. Or otherwise; legal or otherwise.

6 A. Or otherwise.

7 Q. You indicate on page 2 of your testimony
8 that the stipulation was not a product of serious
9 bargaining among capable, knowledgeable parties. Is
10 that basically what you said?

11 A. Where are you locating this?

12 Q. Lines 14 and 15, I believe.

13 A. Okay.

14 Q. Is that fair?

15 A. That's correct.

16 Q. Do you have any idea if the parties in
17 this proceeding, in regards to talking about the
18 stipulation that what you reviewed in its entirety,
19 had any settlement meetings or discussions?

20 A. I understand that they did have settlement
21 meetings and discussions, yes.

22 Q. How did you come about that understanding?

23 A. That was listed both in Allen's testimony,
24 Witness Allen's testimony, as well as interrogatories
25 that I reviewed.

1 Q. So you reviewed interrogatories in this
2 case?

3 A. I did.

4 Q. How many?

5 A. Oh, my goodness.

6 MR. MICHAEL: One moment, Dr. Dormady, if
7 I could just object and get a clarification. When
8 you are talking about this proceeding, I just want
9 clarification are you talking about the stip aspect,
10 the first part of the hearing, or in its entirety,
11 please. Thanks, Mr. Miller.

12 Q. Let me rephrase. Let me back up and ask
13 the question this way. You indicated to me you
14 reviewed interrogatories.

15 A. That's correct.

16 Q. Did you review interrogatories in regards
17 to this proceeding prior to the stipulation being
18 filed?

19 A. For the PPA rider case itself, I did.

20 Q. And did you review interrogatories
21 subsequent to the stipulation being filed?

22 A. Yes, yes, I did.

23 Q. And those interrogatories that I am
24 speaking of now, were interrogatories in regards to
25 the details, perhaps, of the stipulation?

1 A. That's correct.

2 Q. How many of those did you review?

3 A. How many interrogatories?

4 Q. Correct.

5 A. I don't recall the exact number. I want
6 to say approximately 300 questions or so.

7 Q. And so you have been provided those
8 documents by, I assume, counsel?

9 A. That's correct.

10 Q. So you reviewed those in their entirety.

11 A. No, I did not.

12 Q. How did you go about reviewing those?

13 A. I skimmed them for appropriate questions
14 consistent with what I felt was important for
15 responding to questions about my testimony.

16 Q. And did you feel you covered those in sort
17 of, cover to cover, by skimming?

18 A. By skimming, absolutely.

19 Q. But you didn't review Mr. Allen's
20 testimony.

21 A. I did review Allen's testimony, I just
22 didn't review it 100 percent in its entirety.

23 Q. Okay. So back to my question. So, on
24 page 2, your testimony indicates that you feel like
25 this stipulation was not the product of serious

1 bargaining. We talked about that. I asked you about
2 settlement meetings or discussions and you indicated
3 you were aware of some?

4 A. I'm sorry. Just for the sake of
5 clarification, you used the word "feel." I don't
6 think my feelings have anything --

7 Q. We'll avoid your feelings, and ask you
8 questions that are differently worded.

9 So you indicated to me that -- let me ask
10 this again. We are starting from the top. You
11 indicated to me the stipulation was not the product
12 of serious bargaining, correct?

13 A. Correct.

14 Q. You indicated to me you were aware of --

15 A. Let me clarify that. Serious bargaining
16 among capable and knowledgeable parties.

17 Q. Thank you.

18 A. Correct.

19 Q. Thank you. You indicated to me there were
20 settlement meetings or discussions among the parties?

21 A. Yes.

22 Q. About the stipulation?

23 A. To my -- that's what was referred to in
24 Witness Allen's testimony.

25 Q. Do you know how many meetings were held?

1 A. I do not.

2 Q. Do you know how many parties or which
3 parties were involved?

4 A. I only -- I am aware of those who are
5 signatories.

6 Q. So were the signatories involved in those
7 discussions?

8 A. To my understanding they were.

9 Q. And you obtained this understanding how?

10 A. Through Witness Allen's testimony.

11 Q. Was the OCC involved in these discussions?

12 A. I do not know.

13 Q. Do you have any idea how much time the
14 parties may have spent on these discussions and
15 negotiations regarding the formulation of the
16 stipulation document?

17 A. I don't. However, that length of time
18 might be located in specificity within Witness
19 Allen's testimony. He may have -- if I recall
20 correctly, he may have listed a number of hours or
21 some qualitative statement as to the length of hours
22 involved.

23 Q. Right. And I am not asking about Witness
24 Allen's testimony which you skimmed.

25 A. Sure.

1 Q. I am asking you about your personal
2 knowledge.

3 A. Personal knowledge, no.

4 Q. Do you know if the parties who engaged in
5 those discussions, you believe were held, had
6 experience in these types of settlement negotiations
7 with regards to stipulations before this Commission?

8 A. I have no knowledge of that.

9 Q. And you know or don't know who those
10 parties may have used to engage in those discussions,
11 whether they were members of their organizations,
12 whether they were legal counsel?

13 A. Same answer.

14 Q. Same answer.

15 Do you have any idea how many different
16 drafts or versions of this?

17 A. Same answer.

18 Q. Same answer.

19 Do you know if the OCC exchanged any
20 drafts or versions?

21 A. Same answer.

22 Q. Do you know how many parties were
23 intervenors in this case?

24 A. I do not.

25 Q. Do you know how many parties were

1 signatories to the stipulation that was filed?

2 A. I could count them on the back, but other
3 than counting them, no.

4 Q. On page 2, line 2 of your testimony, you
5 reference "diversity of interests among the
6 stipulating parties." And we spoke a little bit
7 about the test if you remember.

8 A. Yeah.

9 Q. Do you know -- do you know if that
10 language regarding "diversity of interests among the
11 stipulating parties" is typically used by the
12 Commission when applying this test?

13 A. I do not.

14 Q. Would it surprise you if I told you it
15 wasn't?

16 A. If it was the Commission's standard to use
17 it and they did not use it on a regular basis, would
18 surprise it me, yes.

19 Q. But you don't know what the Commission
20 standard is.

21 A. I do not.

22 Q. I believe that you were -- I think, you
23 understand parties participated, you've seen the
24 stipulation, read it, have you looked to see who the
25 signatories are?

1 A. Correct.

2 Q. Would you agree the parties entering into
3 the stipulation represented different interests,
4 different groups?

5 A. Different, yes.

6 Q. Did they represent environmental
7 interests?

8 A. I believe some of them did, yes.

9 Q. Trade associations?

10 A. Yes.

11 Q. Competitive providers?

12 A. Yes.

13 Q. Large and small users?

14 A. Yes.

15 Q. Can I direct your attention to page 2,
16 line 20 of your testimony. Can you read that for me?

17 A. "First, there is a lack of diversity in
18 that residential customers are not represented."

19 Q. So it's your approximation that
20 residential customers are not represented by any
21 signatory party of the stipulation; is that correct?

22 A. That's correct; only a subset of them.

23 Q. And I think --

24 A. As I indicate there in my first footnote.

25 Q. And I was going to ask you about that. So

1 you indicated on your footnote that OP&E or Ohio
2 Partners for Affordable Energy, according to your
3 footnote, represents a subset of those residential
4 customers; is that correct?

5 A. That's correct.

6 Q. And so just to clean up any inconsistency
7 so I understand, were the interests of residential
8 customers represented in the stipulation or not? Or
9 was it a subset of residential customers?

10 A. Only a subset.

11 MR. MICHAEL: Objection, asked and
12 answered.

13 Q. What can you tell me about OP&E?

14 MR. MICHAEL: We have a pending objection
15 or are you withdrawing?

16 EXAMINER SEE: There was an objection, but
17 the witness answered the question.

18 MR. MILLER: Yeah. He already answered.

19 Q. What can you tell me about OP&E?

20 A. It's my understanding OP&E represents
21 low-income residential ratepayers.

22 Q. Do you know anything else about the
23 organization?

24 A. Not a whole lot.

25 Q. Do you know what they do?

1 A. Yes. They represent low-income
2 residential ratepayers.

3 Q. For what purpose?

4 A. To advocate on their behalf as a consumer
5 organization.

6 Q. Did the Commission staff sign on to the
7 stipulation?

8 A. They did.

9 Q. Who do you believe the Commission staff
10 represents in these proceedings?

11 A. I believe the Commission staff represents
12 all customers, residential, industrial, commercial,
13 as well as the regulated entities themselves such as
14 Ohio Power.

15 Q. And so is it fair to say that the
16 Commission staff participated and signed on, that the
17 entirety of their constituency would have been
18 represented?

19 A. The entirety of their constituency?

20 Q. The entirety of their constituency.

21 A. No, that's not their sole charter.

22 Q. That's not my question.

23 A. To my understanding -- sure.

24 Q. That's not the question I asked. If the
25 staff signs on, I believe you just told me they

1 represent a multitude of parties in Ohio.

2 A. Yes.

3 Q. Including residential and industrials and
4 commercial. If they sign on to the stipulation, are
5 they not signatory parties on behalf of their
6 constituency as a whole?

7 A. They are only signing on on behalf of all
8 of the constituents.

9 Q. The entirety.

10 A. I found no signatory to the stipulation
11 that solely represented the entirety of residential
12 ratepayers.

13 Q. On page 10 and 11 of your testimony, you
14 discuss your opinion that rates should be fair --

15 A. I'm sorry, which pages?

16 Q. I'm sorry, pages 10 and 11. And just in
17 general you go through a discussion that it's your
18 opinion that rates should be fair and
19 nondiscriminatory across customer classes. You go on
20 to indicate that, for example, the CIR is essentially
21 a tax that certain customers would pay and certain
22 customers would receive what you referred to as a
23 refund or something along those lines. So will --
24 are you saying that that is a tax, for example?

25 A. The CIR?

1 Q. Yes.

2 A. Yes. From the standpoint of -- from an
3 economic standpoint, it is a tax.

4 Q. And then on page 14 you indicate that the
5 benefits being provided to certain stipulating
6 parties, but that are paid for by the entirety of AEP
7 Ohio customers as described --

8 A. Can you refer to a specific line or?

9 Q. Well, just in general. Can you turn to
10 page 14 of your testimony?

11 A. I'm there.

12 Q. So in this Section A.15. which is the
13 Answer 15, I believe.

14 A. Uh-huh.

15 Q. I think you are having a discussion here
16 about the benefits that are provided to certain
17 stipulating parties; is that true?

18 A. That's correct. No. I am referring to the
19 benefits of the public at large.

20 Q. Let's go about this another way. So I
21 think it's your testimony that if certain parties pay
22 into a potential benefit pool economically, and that
23 benefits the entirety of the customer base, not all
24 who have paid into that, that would be offensive?

25 A. Repeat the question, please.

1 MR. MILLER: Can you read it back, please?

2 (Record read.)

3 A. I don't know if I would characterize it as
4 "offensive." Possibly economically inefficient.

5 Q. And that would be your characterization.
6 Could you further describe that?

7 A. Sure. Any time you have a
8 cross-subsidization, as it were, that's an economic
9 distortion. That leads to either over- or
10 under-consumption on both the supply or the demand
11 side.

12 Q. And is the reverse true?

13 A. Absolutely.

14 Q. So just to be clear, so if we had the
15 entirety of a customer base paying into something and
16 only selected portions of the customer base receiving
17 the benefit economically, the output, that would be,
18 I used the word "offensive," and you used the
19 words --

20 A. I used the word "inefficient." And
21 another word that I would also choose to use that I
22 believe I used in my testimony was "distortionary."

23 Q. So you're of the position that concept is
24 distortionary.

25 A. Yes.

1 Q. On page 15, lines 1 through 7, you again
2 kind of go into some of these details and economic
3 discussions. Do you see on line 4 you indicate
4 beginning with the word "these." "These incentives
5 and benefits to signatory parties are textbook
6 classic examples of a public interest violation."

7 A. I see that.

8 Q. And that's your feeling?

9 A. Again, the word "feeling."

10 Q. I'm sorry. That's your opinion.

11 A. Yes, yes, it is.

12 Q. So is it your opinion that such funding
13 mechanisms, either/or, large pool, small beneficiary,
14 small input, large pool beneficiary, would not be
15 appropriate, correct?

16 A. Correct.

17 Q. Are there -- strike that.

18 I think I asked you before if the OCC was
19 paying for you to be here today; is that correct?

20 A. I believe you did, yes.

21 Q. Are you aware of how the office of the
22 Ohio Consumers' Counsel is funded?

23 A. I'm not.

24 Q. Would it surprise you to learn that in
25 Ohio, the funding for the OCC comes from utilities --

1 fees that the utilities pay?

2 MR. MICHAEL: Object to relevance.

3 MR. MILLER: I asked him if he was
4 receiving a payment from the OCC in regards to his
5 being here today. He's indicated to me there are
6 certain economic processes that he feels are not
7 appropriate. And I am trying to get an understanding
8 of what he understands how the State of Ohio, which
9 would be approving essentially by default this
10 agreement, operates in regards to certain similar
11 types of economic processes.

12 MR. MICHAEL: Then I will supplement my
13 objection with asked and answered, because you asked
14 that question and he said he didn't know, and the
15 question I objected to you asked, "would it surprise
16 you if you were to learn." And I don't think that's
17 relevant.

18 EXAMINER SEE: Do you want to respond to
19 that Mr. Miller or do you want to rephrase?

20 MR. MILLER: Does the Bench have a ruling?
21 I mean, I can try to rephrase if that's what you
22 prefer.

23 EXAMINER SEE: Then yes.

24 Q. (By Mr. Miller) I asked you the question
25 if you knew how the Ohio Consumers' Counsel was

1 funded and you answered no. Do you know if utilities
2 in Ohio pay a fee to the OCC?

3 A. I do not.

4 Q. If -- if the OCC was funded by a fee, that
5 was paid by the utilities, which was then, on the
6 back end, distributed to its customers, and the OCC
7 only represented a limit portion --

8 A. I'm sorry, can you say that --

9 Q. Sure.

10 A. -- go ahead one more time, please.

11 Q. If the -- if utilities in Ohio paid a fee
12 into a fund for the sole purpose of distribution to
13 one entity in Ohio, and the utilities obtain the
14 money to subsidize that fee from the entirety of
15 their rate base, and the benefits of that fee that
16 was paid into the fund were only distributed to a
17 very limited portion of the utility's rate base,
18 would that be inefficient?

19 MR. MICHAEL: Objection to relevance and
20 characterization.

21 MR. MILLER: I think I am entitled to ask
22 the question.

23 EXAMINER SEE: Overruled. You can answer
24 the question, Dr. Dormady.

25 THE WITNESS: Could I have it read back

1 one more time, please?

2 (Record read.)

3 A. Very limited, yes.

4 Q. Would it be distortionary?

5 A. It could be, yes.

6 Q. Would it be inappropriate?

7 A. I don't know if I'm the appropriate person
8 to answer a question of appropriateness.

9 Q. Would it be in the public interest?

10 A. That depends how those funds were used,
11 but, generally speaking, if it was a very narrow
12 group as you have described, I would say no.

13 Q. So, in general, are there times that in
14 your opinion, as an expert, are there times that such
15 payments, I think you referred to them as a "tax,"
16 may provide overall benefits and may be in the public
17 interest?

18 A. There is a time, yes. There can be
19 corrective taxes or corrective subsidies.

20 Q. So earlier I think you indicated that, in
21 all instances, those kinds of situations were
22 distortionary.

23 A. I don't think I said "in all."

24 Q. So there are some that aren't.

25 A. There are some that are corrected for

1 otherwise in distortionary effects. And this is a
2 longstanding theory in microeconomics known as the
3 "Theory of Second Best," where you utilize one market
4 failure to correct another market failure.

5 Q. Okay. Thank you.

6 Let me direct you to page 16, lines 1
7 through 6 of your testimony.

8 A. Which page again?

9 Q. Page 16, lines 1 through 6 of your
10 testimony.

11 A. Okay.

12 Q. And this is Question 16, I believe, and
13 Answer 16. And you are talking about stipulation
14 provisions in regards to renewable energy resources;
15 is that correct?

16 A. That's correct.

17 Q. Are you aware of any construction of
18 utility-scale wind and solar facilities during the
19 last five years?

20 A. I am aware generally there is. Some --
21 some construction.

22 Q. Are you aware of how those may have been
23 funded?

24 A. I am not.

25 Q. Do you know if any of those were funded

1 through purchase power agreements?

2 A. I am not.

3 Q. Can you look at page 8 of your testimony,
4 lines 4 and 5, please. Is it your understanding that
5 customers will pay the entire cost of the capital
6 outlay to convert Conesville Units 5 and 6 to natural
7 gas co-firing?

8 A. Just a moment, please. It's generally my
9 understanding, yes. However, there may be a
10 provision within the stipulation that allows for AEP
11 Ohio to provide some initial capital, but I don't
12 recall specifically.

13 Q. But I think your testimony, correct me if
14 I am wrong, but I think your testimony is that the
15 cost associated with that will be paid by customers
16 through the PPA process.

17 A. That's correct, yes.

18 Q. Do you know what term the proposed PPA and
19 PPA rider covers time-wise?

20 A. It's an eight-year agreement.

21 Q. And subject to check, would you agree with
22 8.5, up until May, 2024?

23 A. Sure.

24 Q. Do you know when AEP proposes to convert
25 the units to natural gas co-firing?

1 A. I believe it was 2017, by the end of.

2 Q. December 31st, subject to check. So the
3 period from the end of 2017 through the end of the
4 PPA term which I believe we've agreed is May of
5 2024 --

6 A. That's correct.

7 Q. -- is 6.5 years.

8 A. Okay.

9 Q. So AEP is committed that Conesville 5 and
10 6 will cease coal consumption and co-firing by
11 December 31, 2029, correct?

12 A. Could I be provided with a copy of the
13 stipulation to verify?

14 Q. Sure.

15 A. And can you refer to a specific page?

16 Q. I can. Stipulation, page 20, and I think
17 if you look, all of this is discussed in paragraph c.
18 and d. on that page.

19 A. Okay.

20 Q. So can we agree that AEP is committed in
21 the stipulation that Conesville 5 and 6 will cease
22 coal consumption and end co-firing by December 31,
23 2029?

24 A. That's what the stipulation says, yes.

25 Q. And so can we agree that 2029, at the end

1 of the year, is 12 years after the co-firing is
2 proposed to be completed, correct?

3 A. That's correct.

4 Q. Okay. So knowing that, do you understand
5 that the capital costs of the co-firing would be
6 depreciated over the remaining life of the units?

7 A. I don't know what the agreement would be,
8 but yes, that's generally sounds correct.

9 Q. So I think your original statement was
10 that customers would pay the entire cost of the
11 capital outlay to convert, correct?

12 A. Correct.

13 Q. But when we look at these numbers, the
14 years we have tried --

15 A. The timeline.

16 Q. -- the timeline, right, do you now believe
17 the customers will pay the entire cost?

18 A. I do. I believe that refueling will take
19 place during those eight-year terms -- during the
20 eight-year term in terms of the cost recovery.

21 Q. You are saying you believe the entirety of
22 the costs will be folded into those?

23 A. Into those eight years.

24 Q. If the capital costs of the co-firing were
25 depreciated over a period longer than 6.5 years,

1 would you agree customers would not pay for the
2 entire capital outlay?

3 A. Not necessarily, no.

4 Q. And, again, why?

5 A. I don't know what the repayment schedule
6 would be under the -- under the agreement.

7 Q. But you don't know whether or not those
8 would be depreciated over a longer period of time and
9 whether or not it would be paid off over a longer
10 period of time.

11 A. I see no statement of the depreciation
12 schedule in here.

13 Q. Okay. Thank you.

14 Let me direct you to your testimony on
15 pages 15 -- I am sorry, page 15, lines 9 through 12.

16 A. You said of my testimony or the
17 stipulation?

18 Q. Testimony, sir.

19 A. Okay.

20 Q. Page 15, again, lines 9 through 12, can
21 you look at those for a moment.

22 A. Okay.

23 Q. In reviewing that testimony, and I would
24 like to have you opine on this a little bit for me,
25 you seem to imply that certain parties to the

1 stipulation I think that in your words you say opted
2 out of participating in several of the provisions.
3 You seem to imply those certain parties shouldn't be
4 considered signatory parties?

5 A. I didn't imply that at all.

6 Q. What do you mean?

7 A. I meant that they opted out of specific
8 provisions consistent with the footnotes provided in
9 the stipulation.

10 Q. I am just curious, you placed those words
11 "signatory parties" I think several times in quotes.

12 A. Simply to refer to the parties that signed
13 the stipulation.

14 Q. It just seems unusual to me you would
15 quote those when you wrote that.

16 MR. MICHAEL: Objection. Form, vague
17 characterization.

18 MR. MILLER: I'll withdraw.

19 MR. MICHAEL: Thank you.

20 Q. Dr. Dormady, what's your understanding of
21 these caveats and footnotes in the stipulation you
22 refer to?

23 A. Very little actually. Some of the
24 interrogatories that I did review, it's my
25 understanding that OCC went to some length to try to

1 get some clarity on what these footnotes mean. And
2 they were met with objection in describing them and
3 in detailing them and trying to explain them.

4 It's my understanding that the only
5 information that we were given and that I was given
6 through either reading the stipulation or the
7 interrogatories that I read was that they were --
8 they should be taken at their plain language meaning.

9 Q. Since you read the stipulation in its
10 entirety and you are aware of who the signatory
11 parties are, did any of the signatory parties have
12 information that related to their participation in
13 the footnote?

14 A. So you are asking me if I know of
15 information that signatory parties had?

16 Q. No. Let me try to rephrase that a little
17 bit. The signatories to the stipulation, did some of
18 them -- some of the footnotes, did they relate to the
19 signatories?

20 A. Some of them did, absolutely. Their names
21 are specified therein.

22 Q. And so those signatory parties, you would
23 assume, had unique interests or specific things they
24 wanted detailed?

25 A. Specific customer classes they may have

1 represented, sure.

2 Q. Would you characterize any of the
3 signatory parties as different from the rest?

4 A. I would not.

5 Q. So you signed the document, you signed the
6 document.

7 A. Different how? Firm size? Number of
8 employees?

9 Q. Well, not actually different in regards to
10 who or how they are structured, who they are. A
11 signatory party to the document is just that,
12 correct?

13 A. Is just?

14 Q. Just is some -- is an entity that entered
15 into the agreement with the other parties who have
16 signed through some bargaining process, some
17 negotiation process, and is now just like any other
18 contract, entered into an agreement whereby they
19 support the details of the agreement, correct?

20 A. Correct. That's my understanding.

21 Q. You don't have any experience or have not
22 ever reviewed any of the stipulations or settlements
23 that have been before the Commission, have you?

24 A. I have not.

25 MR. MILLER: Just a minute, if you can

1 give me.

2 EXAMINER SEE: Sure.

3 MR. MILLER: That's all I have.

4 EXAMINER SEE: Mr. Beeler?

5 MR. BEELER: No questions.

6 EXAMINER SEE: Mr. Michael?

7 MR. MICHAEL: May I have a moment with the
8 witness, your Honor, please?

9 EXAMINER SEE: Yes.

10 MR. MICHAEL: Thank you.

11 (Discussion off the record.)

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

14 Redirect, Mr. Michael?

15 MR. MICHAEL: Briefly, your Honor.

16 - - -

17 REDIRECT EXAMINATION

18 By Mr. Michael:

19 Q. Dr. Dormady, I wanted, if I could, please
20 turn your attention to page 15 with reference to the
21 questions from AEP's counsel regarding the meaning of
22 "signatory appears" and your use of quotes there.

23 A. Yes.

24 Q. Do you recall that discussion you had with
25 Attorney Miller?

1 A. I do.

2 Q. Could you please explain what you meant in
3 that particular section of your testimony a little
4 bit more?

5 A. Sure. As you review -- as I reviewed the
6 stipulation, there are a number of locations within
7 the stipulation where footnotes indicate that various
8 signatory parties have decided to opt out of
9 provisions within the stipulation. It seems to be
10 very clear that the document itself would be
11 fundamentally different if it was submitted without
12 those footnotes. And the signatory parties do have
13 some differences among themselves in that some have
14 opted out of various provisions.

15 Q. And if you could, Dr. Dormady, any further
16 explanation of Attorney Miller's reference to the
17 "signatory parties" in the paragraph I referred you
18 to, could you describe how the quotes with "signatory
19 parties" relates to the degree of concentration, if
20 you could, please.

21 A. Sure. The point that I am making in this
22 paragraph more generally is that I'm addressing the
23 issue of public choice, and public choice from the
24 standpoint of concentrated benefits. And these
25 footnotes further concentrate the degree of benefits

1 that are allocated by the stipulation. Certain
2 parties are opting out of specific provisions. The
3 remaining parties that are included in those specific
4 provisions becomes even more concentrated than they
5 would have without the footnotes.

6 MR. MICHAEL: Thank you, your Honor. I
7 don't have any further questions.

8 EXAMINER SEE: Recross, Mr. Settineri?

9 MR. SETTINERI: No, your Honor.

10 EXAMINER SEE: Mr. O'Rourke?

11 MR. O'ROURKE: No, your Honor.

12 EXAMINER SEE: Mr. Kurtz?

13 MR. KURTZ: No, your Honor.

14 EXAMINER SEE: Mr. Darr?

15 MR. DARR: No, your Honor.

16 EXAMINER SEE: Ms. Spinosi?

17 MS. SPINOSI: No, your Honor.

18 EXAMINER SEE: Mr. Miller?

19 MR. MILLER: Happily, no, your Honor.

20 EXAMINER SEE: Mr. Beeler?

21 MR. BEELER: No, your Honor. Thank you.

22 EXAMINER SEE: Mr. Michael has already
23 moved for the admission of OCC Exhibit 36. Are there
24 any objections? Hearing none, OCC Exhibit 36 is
25 admitted into the record.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER SEE: Thank you, Dr. Dormady.

3 EXAMINER PARROT: All right. I think we
4 are at the end of our regularly scheduled, so to
5 speak, witness list for the week.

6 Mr. Michael, I guess I will look to you at
7 this point. You have now had the opportunity,
8 pursuant to the Bench's direction from earlier in the
9 week, to conduct depositions. It's my understanding
10 of the witness for Direct Energy, IGS, and Sierra
11 Club, you have, as we asked, provided copies of those
12 deposition transcripts to the examiners. We
13 appreciate that.

14 I guess at this point I would look to you
15 and ask now that you have had some time to yourself
16 review the transcripts if you are intending to move
17 forward with the subpoenas and if you are still
18 seeking to command testimony in this stage of the
19 hearing from a witness for each of those three
20 parties?

21 MR. MICHAEL: At this time we are, your
22 Honor, yes.

23 EXAMINER PARROT: So you are seeking a
24 ruling from the Bench on the motions to quash then at
25 this point in the process, I take it from that?

1 MR. MICHAEL: Well, actually what I would
2 request, your Honor, is the ability to first address
3 the motion to quash filed by AEP Ohio. And I have
4 every intent at the conclusion of this hearing to go
5 back. I understand I do have paper to look at and as
6 the lead counsel in the case finalize in terms of a
7 memorandum contra. And so my request would be that
8 your Honors wait until that memorandum contra is
9 filed before making a ruling. And as I said, I
10 anticipate, if not filing it yet tonight, first thing
11 Monday morning.

12 MR. NOURSE: Your Honor, I mean, obviously
13 the other motions to quash were filed even prior to
14 that and I think I already responded to. Obviously
15 we have been moving forward in this proceeding on an
16 expeditious pace with the hopes, at this point,
17 Friday afternoon having finished all the witnesses to
18 move into the briefing phase of this case. So, I
19 mean, I guess I would ask just that they make any
20 comments that they want to make about our motion at
21 this time and then we can get a ruling and move
22 forward.

23 I think, furthermore, the witnesses
24 involved with these subpoenas, you know, I think have
25 been sort of on hold as well and have other -- other

1 scheduling issues. I'm sure I am aware of some of
2 them. So I am sure they would appreciate a ruling as
3 well.

4 MR. MICHAEL: I would simply respond, your
5 Honor, by saying, indeed, we did file a memorandum
6 contra to the motions to quash by Sierra Club, IGS,
7 and Direct Energy. AEP Ohio's motion raises some new
8 and different issues. I won't remark on -- because
9 your Honors are well aware of the time we have
10 available to us to respond. OCC would like to
11 respond in writing. And I would suggest, your Honor,
12 that we would be prejudiced if we were not able to do
13 so.

14 I certainly understand the points Mr.
15 Nourse is raising. But I think given the timelines
16 that are generally afforded responding to motions,
17 the importance of this issue, we would like to
18 respond in writing with memorandum contra before your
19 Honors make a ruling on the motions to quash.

20 MR. NOURSE: And, your Honor, you know, I
21 think your Honors, of course, is able to direct OCC
22 when and how to respond to a motion that's pending,
23 so that's really what I was asking, to finish it off
24 here.

25 And, I guess, the other point is that the

1 other two motions to quash -- three, yes, I'm sorry,
2 and if those are ruled upon in the correct manner,
3 I'll say, you know, our motion could be moot.

4 So certainly I don't think if Mr. Michael
5 is suggesting that they would take the full time
6 under the rule or something like that to respond, I
7 think that's, you know, inappropriate under these
8 circumstances.

9 MR. MICHAEL: And I specifically indicated
10 that it would be yet tonight or first thing Monday
11 morning that I would file. I am not asking for 15
12 days.

13 MR. NOURSE: Okay. My answer is the same.

14 MR. MICHAEL: Your Honor, if I submit -- I
15 apologize, but I did want to raise one more point and
16 this will be addressed in our brief, but the -- some
17 of the deposition testimony, I think, has to be
18 considered in light of some of the responses to the
19 written discovery. And that is a subject matter I
20 will address in the memorandum contra.

21 But I have -- I just think looking solely
22 at the deposition testimony is half of the picture at
23 best and that those responses have to be read in
24 light of what the written responses are. And at
25 least without the benefit of the memorandum contra,

1 your Honors wouldn't be able to do that. So I just
2 want to add that additional point for your Honors'
3 consideration.

4 MR. NOURSE: Your Honor, if you would like
5 to discuss --

6 EXAMINER SEE: Just a second.

7 MR. NOURSE: Okay. Sorry.

8 EXAMINER PARROT: Mr. Nourse.

9 MR. NOURSE: Yeah, I was just going to
10 mention the other procedural issue out there is the
11 briefing schedule if you wanted to talk about that,
12 you know, in addition or side by side with the
13 subpoena ruling.

14 EXAMINER PARROT: Hold off on that for
15 now. We are just going to take what should hopefully
16 be a short 15-minute break. We are off the record.

17 (Recess taken.)

18 EXAMINER PARROT: Let's go back on the
19 record.

20 Mr. Michael, the attorney examiners have
21 reviewed the motions to quash that were filed on
22 December 31, 2015, by Sierra Club, IGS Energy, and
23 the Direct Energy companies. We have also reviewed
24 OCC's memorandum contra. Those three motions that
25 was filed by OCC on January 4, 2016. Additionally,

1 we have reviewed the deposition transcripts that you
2 provided to us of the depositions of individuals that
3 were deposed for Sierra Club, Direct Energy, and IGS
4 earlier in the week.

5 At this point the Bench is going to grant
6 the motions to quash that were filed by Sierra Club,
7 IGS Energy, and the Direct Energy companies pursuant
8 to Ohio Administrative Code 4901.125(C) on the basis
9 that the subpoenas are unreasonable.

10 The Bench is reluctant to set a precedent
11 that would require -- I should say would allow a
12 nonsignatory party to command the testimony of a
13 signatory party witness, as we're also concerned
14 that -- we think this would have to go both ways, I
15 guess. We don't want to set a precedent that a
16 nonsignatory party could command the testimony of a
17 signatory or that a signatory could command the
18 testimony of a nonsignatory party witness. So on the
19 basis that the subpoenas are unreasonable, we are
20 going to grant those three motions to quash.

21 Mr. Nourse, we are going to go ahead and
22 find that your motion that was filed on behalf of
23 Ohio Power Company on January 6 is moot. And no need
24 to file a response or take further argument on that
25 one at this time, Mr. Michael.

1 At this point let's go ahead and talk
2 about a briefing schedule. Have the parties talked
3 about this already? Do you have a schedule you wish
4 to propose?

5 MR. SETTINERI: The parties have not
6 discussed it.

7 EXAMINER PARROT: Let's go off the record
8 and discuss the briefing schedule at this point then.

9 (Discussion off the record.)

10 EXAMINER PARROT: Let's go back on the
11 record.

12 Mr. Nourse, when will the company be
13 making the transcripts available in the dockets?

14 MR. NOURSE: Well, we said the complete
15 set would be Monday, I am hoping the reporter may be
16 able to file some of that today.

17 EXAMINER PARROT: But definitely by
18 Monday, I want to get that on the record.

19 MR. NOURSE: Yeah.

20 EXAMINER PARROT: Okay. With that, we are
21 going to direct that initial briefs be filed no later
22 than February 1, 2016, with your reply briefs due by
23 February 8, 2016.

24 Anything else to before come before us
25 today?

1 MR. MICHAEL: Your Honor, very
2 respectfully, with the utmost respect in light of
3 your Honors' motion to quash, I would like to proffer
4 the deposition transcript into the record in the
5 event OCC chooses to entertain further review of your
6 Honors' decision. Once again, very, very
7 respectfully, I would ask for the ability to proffer
8 the transcript into the docket. Obviously, not for
9 citing into the briefs, but, again, for purposes of
10 further consideration on appeal if necessary.

11 MR. NOURSE: I guess I don't understand
12 why you would proffer them into the record. I mean,
13 I thought the question was whether witnesses would be
14 subpoenaed and forced to give opinion testimony in
15 this hearing about the stipulation.

16 I guess I would rather suggest
17 alternatively now that there is a ruling, they could
18 be filed in the docket, not being considered
19 evidence, but filed in the larger sense of the
20 record, rather than being proffered as evidence in
21 this hearing record. So that they could be referred
22 to if you are filing an interlocutory appeal or
23 something like that. It would be in the docket but
24 it wouldn't be in the evidentiary record.

25 EXAMINER PARROT: So if you are looking

1 for approval from us to docket them at this point,
2 Mr. Michael, yes.

3 MR. MICHAEL: Okay.

4 EXAMINER PARROT: That's fine.

5 MR. MICHAEL: Okay. Because in the normal
6 course of things, obviously, on an evidentiary
7 ruling, if things were to change, then I would want
8 the ability for the Commission, and very
9 respectfully, your Honors, were we to seek further
10 review beyond that, the reviewing court to evaluate
11 the nature of the questions and testimony that we
12 sought. So if filing in the docket is okay with your
13 Honors, I very much appreciate that and I made the
14 request respectfully. Thank you.

15 EXAMINER PARROT: Yes.

16 MR. SETTINERI: Your Honors, if I may,
17 just for the record, I would like to just register an
18 objection to the briefing schedule. Case No. 14-1297
19 is going to hearing next week, starting the 14th, it
20 is projected to go through, the minimum, the 22nd if
21 not longer.

22 The briefing schedule of February 1 for
23 initial briefs provides scant time to properly brief
24 and prepare this matter in addition to the 14-1297
25 matter which contains similar issues and very large

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1 transcripts. So we just want to object on the record
2 that the briefing schedule raises issues of due
3 process and fundamental fairness.

4 EXAMINER PARROT: Noted, Mr. Settineri.

5 MR. SETTINERI: Thank you.

6 EXAMINER PARROT: Anything else?

7 Hearing nothing, we are adjourned. Thank
8 you, everyone.

9 (Thereupon, at 3:45 p.m., the hearing was
10 concluded.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by us in this matter on Friday, January 8, 2016, and
5 carefully compared with my original stenographic
6 notes.

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9
10 Karen Sue Gibson, Registered
Merit Reporter.

11
12
13 Carolyn M. Burke, Registered
14 Professional Reporter.

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16 (KSG-6137)

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Case No(s). 14-1693-EL-RDR, 14-1694-EL-AAM

Summary: Transcript In the Matter of the application of Ohio Power Company hearing held on 01/08/16 - Volume XXII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.