

7488

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PROCEEDINGS

before Mr. Gregory Price, Ms. Mandy Chiles, and
Ms. Megan Addison, Attorney Examiners, and
Commissioner Asim Z. Haque at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 10:00 a.m. on Thursday,
January 14, 2016.

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VOLUME XXXVI

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- - -

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17 On behalf of the Applicants.

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19 By Mr. Larry Sauer
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20 On behalf of the Ohio Energy Group.

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20 Mr. Richard L. Sites
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23 Bricker & Eckler, LLP
24 By Mr. Thomas J. O'Brien
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On behalf of the Ohio Hospital
Association.

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On behalf of the Ohio Environmental
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5 On behalf of the Northwest Ohio
6 Aggregation Coalition and the Individual
7 Communities.

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13 On behalf of the Association of
14 Independent Colleges and Universities of
15 Ohio.

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21 On behalf of the Ohio Power Company.

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25 On behalf of Material Sciences
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On behalf of the City of Cleveland.

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

10 Monitoring Analytics
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14 On behalf of the Independent Market
15 Monitor for PJM.

16 Dickinson Wright, PLLC
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20 On behalf of the Mid-Atlantic Renewable
21 Energy Coalition.

22 Direct Energy
23 By Ms. Jennifer L. Spinosi
24 21 East State Street, 19th Floor
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 On behalf of Direct Energy Business, LLC,
 and Direct Energy Services, LLC.

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1 Thursday Morning Session,

2 January 14, 2016.

3 - - -

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

5 Good morning. The Public Utilities

6 Commission has set for hearing at this time and place

7 Case No. 14-1297-EL-SSO, being in the Matter of the

8 Application of the Ohio Edison Company, The Cleveland

9 Electric Illuminating Company and The Toledo Edison

10 Company for Authority to Provide for a Standard

11 Service Offer pursuant to Revised Code 4928.143 in

12 the Form of an Electric Security Plan.

13 Presiding over today's hearing is myself,

14 Gregory Price, Meghan Addison, Mandy Chiles, and

15 Commissioner Asim Haque.

16 Mr. Haque, did you want to make a brief

17 statement?

18 COMMISSIONER HAQUE: Sure. Well, good

19 morning. It should be no surprise that I'm in the

20 room because I was here during the AEP stipulation

21 proceeding. I want to thank all of you for what I am

22 sure is a lot of hard work leading into this. The

23 AEP stipulation hearing was extremely educative for

24 me, and that's primarily my purpose for being here.

25 I said when we began those proceedings

1 that I did not want to be a distraction and, thus, I
2 would be silent, no, questions. I did not hold up
3 that promise, sorry.

4 And I will reserve the right to ask
5 questions after cross and redirect, but they are not
6 questions that are meant to sort of have the
7 witnesses, you know, answer "yes" or "no." These are
8 not cross-examination type questions. They are more
9 like anbauen questions, questions where I am just
10 trying to obtain a better understanding of what the
11 witness has said in testimony or what the witness
12 said on the stand, so please don't take them as
13 anything other than, again, me trying to educate
14 myself in this case, just as I did in the AEP case.

15 Again, I thank you very much for all of
16 your hard work and I look forward to the testimony
17 and all of the examination. Thank you.

18 EXAMINER PRICE: Thank you. At this time
19 I will note for the record that this is our 36th day
20 of hearing in this matter. Let's begin by taking
21 appearances starting with the company.

22 MR. BURK: On behalf of the companies,
23 your Honor, James W. Burk and Carrie M. Dunn, 76
24 South Main Street, Akron, Ohio. Also on behalf of
25 the companies, David Kutik of the Jones Day law firm,

7500

1 901 Lakeside Avenue, Cleveland, Ohio, and also on
2 behalf of the companies, James Lang and Trevor
3 Alexander of the Calfee Halter law firm, 1405 East
4 6th Street, Cleveland, Ohio.

5 EXAMINER PRICE: Thank you.

6 Consumers' Counsel.

7 MS. WILLIS: Thank you, your Honor. On
8 behalf of the residential customers of the FE
9 utilities, Maureen R. Willis, Ajay Kumar, and Kevin
10 Moore, along with Larry Sauer on behalf of the Office
11 of Consumers' Counsel, Bruce J. Weston, Consumers'
12 Counsel, 10 West Broad Street, Suite 1800, Columbus,
13 Ohio 43215. Thank you.

14 EXAMINER PRICE: Mr. McNamee.

15 MR. McNAMEE: On behalf of the staff of
16 the Public Utilities Commission of Ohio, Thomas
17 Lindgren, and I am Thomas McNamee, assistant
18 attorneys general. The address is 180 East Broad
19 Street, Columbus, Ohio.

20 EXAMINER PRICE: Ohio Energy Group.

21 MR. BOEHM: Good morning. On behalf of
22 the Ohio Energy Group, my name is Kurt Boehm. I
23 would also like to enter the appearance of Mike Kurtz
24 and Jody Cohn with the law firm of Boehm, Kurtz &
25 Lowry, 36 East Seventh Street, Cincinnati, Ohio

1 45202.

2 EXAMINER PRICE: Ohio Manufacturers'
3 Association Energy Group.

4 MS. GHILONI: On behalf of the Ohio
5 Manufacturers' Association Energy Group, Kimberly W.
6 Bojko and Danielle M. Ghiloni, from the law firm of
7 Carpenter, Lipps & Leland, 280 North High Street,
8 Columbus, Ohio.

9 EXAMINER PRICE: Mr. Soules.

10 MR. SOULES: Good morning, your Honor,
11 Michael Soules and Shannon Fisk representing Sierra
12 Club. We are with the Earthjustice law firm. The
13 address is 1625 Massachusetts Avenue Northwest, Suite
14 702, Washington, D.C. 20036.

15 EXAMINER PRICE: Mr. Olikier.

16 MR. OLIKER: Good morning, your Honors.
17 On behalf of IGS Energy, Joseph Olikier, 600 Emerald
18 Parkway, Dublin, Ohio 43016.

19 MR. WILLIAMSON: Good morning, your
20 Honors. On behalf of the Wal-Mart Stores East and
21 Sam's East, Derrick Williamson and Carrie Harris from
22 the law firm of Spilman, Thomas & Battle, 1100 Bent
23 Creek Boulevard, Mechanicsburg, Pennsylvania 17050.

24 MR. PRITCHARD: On behalf of the
25 Industrial Energy Users off Ohio, I would like to

1 make the appearance of Matt Pritchard, Frank Darr,
2 and Sam Randazzo, the law firm McNees Wallace &
3 Nurick, 21 East State Street, Columbus, Ohio 43215.

4 MR. PETRICOFF: Good morning, your Honor.
5 On behalf of the Retail Energy Supply Association,
6 the Electric Power Supply Association, PJM Power
7 Providers Group, Exelon Generation, LLC,
8 Constellation NewEnergy, and Dynegy, Inc., from the
9 law firm of Vorys, Sater, Seymour and Peace, Howard
10 Petricoff, Michael Settineri, and Gretchen Petrucci.

11 EXAMINER PRICE: Ms. Fleisher.

12 MS. FLEISHER: Good morning, your Honor.
13 On behalf of the Environmental Law & Policy Center,
14 Madeline Fleisher, 21 West Broad Street, Suite 500,
15 Columbus, Ohio, and as well as Robert Kelter, pending
16 admission pro hac vice.

17 MR. DOUGHERTY: Good morning. On behalf
18 of the Ohio Environmental Council and the
19 Environmental Defense Fund, Trent Dougherty and John
20 Finnigan, 1145 Chesapeake Avenue, Suite I, Columbus
21 43212.

22 MR. STINSON: On behalf of the Northeast
23 Ohio Public Energy Council, Ohio Schools Council, and
24 Power for Schools, the law firm of Bricker & Eckler,
25 LLP, Dane Stinson, Glenn Krassen, and Dylan Borchers.

1 MR. O'BRIEN: On behalf of the Ohio
2 Hospital Association, Richard Sites and Tom O'Brien.

3 MR. HAYS: On behalf of the Northwest
4 Ohio Aggregation Coalition, Lucas County, City of
5 Toledo, and the other individual communities, Tom
6 Hays, 8355 Island Lane, Maineville, Ohio 45309. Good
7 morning.

8 MS. SPINOSI: On behalf of the Direct
9 Energy Business, LLC and Direct Energy Services, LLC
10 Jennifer L. Spinosi, 21 East State Street, Suite
11 1950, Columbus, Ohio 43215.

12 MR. ROYER: Thank you. Your Honor, on
13 behalf of the Cleveland Municipal School District,
14 Barth Royer, Barth E. Royer, LLC, 2740 East Main
15 Street, Bexley, Ohio and Adrian Thompson from the
16 Taft law firm, Cleveland office.

17 MR. SMITH: On behalf of Material
18 Sciences Corporation, Craig I. Smith, Attorney at
19 Law, 15700 Van Aken Boulevard, Suite 26, Shaker
20 Heights, Ohio 44120.

21 MR. SECHLER: On behalf of EnerNOC, Inc.,
22 Joel E. Sechler, Carpenter, Lipps & Leland, 280 North
23 High Street, Columbus, Ohio.

24 MR. PARRAM: On behalf of the Kroger
25 Company, Attorneys Mark Yurick and Devin Parram,

1 Taft, Stettinius & Hollister, 65 East State Street,
2 Suite 1000, Columbus, Ohio 43215.

3 EXAMINER PRICE: Mr. Lavanga.

4 MR. ALLWEIN: Good morning, your Honors,
5 and Commissioner Haque. On behalf of EverPower Wind
6 Holdings, Christopher J. Allwein, 65 East State
7 Street, Suite 1800, Columbus, Ohio 43215.

8 MR. LAVANGA: Good morning, your Honors.
9 On behalf of Nucor Steel Marion, Michael Lavanga and
10 Garrett Stone of the law firm Stone Mattheis
11 Xenopoulos & Brew, 1025 Thomas Jefferson Street,
12 Washington, D.C. 20007.

13 MR. GRAHAM: Good morning, your Honor.
14 On behalf of the Association of Independent Colleges
15 and Universities of Ohio, Jeremy Graham and Chris
16 Miller of the Ice Miller law firm, 250 West Street,
17 Columbus, Ohio 43215.

18 EXAMINER PRICE: Everybody? Okay.

19 Ms. Addison?

20 EXAMINER ADDISON: We have a pending
21 motion to appear pro hac vice filed by Mr. Robert
22 Kelter on behalf of the ELPC. At this time we will
23 be granting that motion.

24 EXAMINER PRICE: We also have a pending
25 commotion to compel from ELPC. At this time the

1 Examiners find that consistent with the
2 Administrative Law Judge's ruling in Champagne Wind,
3 12-160-EL-PGN, the draft application and other
4 documents are not relevant to this proceeding.
5 Further consistent with the Administrative Law
6 Judge's ruling in Buckeye Wind, 08-666-EL-BGN, the
7 drafts were prepared at the direction of counsel,
8 would be protected by work product, assigned
9 attorney-client privilege, accordingly, the motion to
10 compel is denied.

11 Mr. Kutik, you may call your next
12 witness.

13 MR. KUTIK: Thank you, your Honor. For
14 our witness on the hearing on the third supplemental
15 stipulation, we call Eileen Mikkelsen.

16 (Witness sworn.)

17 EXAMINER PRICE: Please be seated and
18 state your name and business address for the rod.

19 THE WITNESS: Thank you. Good morning.
20 My name is Eileen Mikkelsen. I am here on behalf of
21 The Ohio Edison Company, The Cleveland Electric
22 Illuminating Company and The Toledo Edison Company.
23 My business address is 76 South Main Street, Akron,
24 Ohio 44308.

25 EXAMINER PRICE: Thank you. Please

1 proceed, Mr. Kutik.

2 MR. KUTIK: Your Honor, at this time we
3 would like to mark three exhibits for identification,
4 and I propose that we just continue with the numbers
5 from the last hearing.

6 And so for Company Exhibit 154 we would
7 ask to have marked the Third Supplemental Stipulation
8 and Recommendation.

9 With respect to Exhibit 155 we would like
10 to have that as identification for the Fifth
11 Supplemental Testimony of Eileen M. Mikkelsen on
12 behalf of the Ohio Edison, Cleveland Electric
13 Illuminating Company and The Toledo Edison Company.

14 And with respect to the company -- what
15 we would like to have as Company Exhibit 156, we ask
16 to have marked what has been identified as IEU Set-1
17 Interrogatory 25, Attachment 1, Revised, which is the
18 revised term sheet.

19 If I could provide copies to the Bench,
20 if necessary.

21 EXAMINER PRICE: Please.

22 MR. KUTIK: May I approach?

23 EXAMINER PRICE: You may. All the
24 documents will be so marked.

25 (EXHIBITS MARKED FOR IDENTIFICATION.)

1 MR. SETTINERI: Mr. Kutik, the exhibits
2 that you marked as company Exhibit 156, was that the
3 draft term sheet and did that also include the
4 accompanying interlocutory response?

5 MR. KUTIK: No. What it includes, I will
6 provide copies to the parties.

7 MR. SETTINERI: Thank you.

8 - - -

9 EILEEN M. MIKKELSEN
10 being first duly sworn, as prescribed by law, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 By Mr. Kutik:

14 Q. Ms. Mikkelsen, do you have before you
15 what has been marked for identification as Company
16 Exhibit 154?

17 A. Yes.

18 Q. What is that?

19 A. Company Exhibit 154 is the company's
20 Third Supplemental Stipulation and Recommendation in
21 this proceeding.

22 Q. What is Exhibit 155?

23 A. Company Exhibit 155 is my fifth
24 supplemental testimony in this proceeding.

25 Q. What is Exhibit 156?

1 A. Company Exhibit 156 is a copy of the
2 revised term sheet for the proposed transaction that
3 was provided to the parties in response -- updated
4 response to IEU Set-1, Interrogatory 25. The revised
5 term sheet is dated November 18, 2015 and was
6 executed on that date by a representative of the
7 companies as well as FirstEnergy Solutions.

8 Q. Let me turn your attention to Exhibit
9 155, your testimony. Do you have any additions or
10 corrections to make to that document?

11 A. No.

12 Q. If I asked you today the questions that
13 appear in that document, would your answers be the
14 same as appear in that document?

15 A. Yes.

16 MR. KUTIK: Thank you, your Honor.

17 EXAMINER PRICE: Thank you.

18 Cross-examination, OEG?

19 MR. BOEHM: No questions, your Honor.

20 EXAMINER PRICE: Kroger?

21 MR. PARRAM: No questions, your Honor.

22 EXAMINER PRICE: Mr. Lavanga.

23 MR. LAVANGA: No questions, your Honor.

24 EXAMINER PRICE: OAICU?

25 MR. GRAHAM: No questions, your Honor.

1 EXAMINER PRICE: EnerNOC?

2 MR. SECHLER: No questions, your Honor.

3 EXAMINER PRICE: Mr. Smith?

4 MR. SMITH: No questions.

5 EXAMINER PRICE: Mr. Pritchard?

6 MR. PRITCHARD: No questions, your Honor.

7 EXAMINER PRICE: Mr. O'Brien, are you on
8 the stip?

9 MR. O'BRIEN: I am not on the stip.

10 EXAMINER PRICE: I will come back to you.

11 Any other signatory parties I've missed?

12 Okay. Mr. Soules.

13 MR. SOULES: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Soules:

17 Q. Good morning, Ms. Mikkelsen.

18 A. Good morning, Mr. Soules.

19 Q. How are you this morning?

20 A. Fine, thank you.

21 Q. Ms. Mikkelsen, it's your belief that
22 under the third supplemental stipulation, the
23 estimated nominal value of rider RRS for the
24 companies' customers is \$561 million; is that
25 correct?

1 A. Yes.

2 Q. And in your opinion, that \$561 million
3 figure represents a quantitative benefit of the
4 stipulated ESP; is that correct?

5 A. Yes.

6 MR. SOULES: Your Honor, may we approach?

7 EXAMINER PRICE: You may.

8 MR. SOULES: Your Honor, could we have
9 this document marked as Sierra Club Exhibit 89?

10 EXAMINER PRICE: It will be so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. (By Mr. Soules) Ms. Mikkelsen, you have
13 been handed a document that was filed in this case on
14 December 1, 2015. The document is entitled
15 "Mikkelsen Workpaper, November 30, 2015." Are you
16 familiar with this document?

17 A. Yes.

18 Q. And this workpaper was created under your
19 direction, correct?

20 A. Yes.

21 Q. And you're familiar with the calculations
22 that were used in generating this workpaper, correct?

23 A. Yes.

24 Q. If you could please look at the third
25 table in this workpaper entitled "Retail Rate

1 Stability Rider," do you see that table in the
2 workpaper?

3 A. Yes.

4 Q. Okay. You use this table from your
5 workpaper to come up with the \$561 million figure
6 that's presented in your fifth supplemental
7 testimony, correct?

8 A. Yes.

9 Q. And this table includes a projection of
10 market revenues from the proposed rider RRS, correct?

11 A. Yes.

12 Q. And, more specifically, this was a
13 projection of revenue from the Sammis plant, the
14 Davis-Besse plant, and the OVEC entitlement between
15 June 1, 2016, and May 31, 2024, correct?

16 A. Yes.

17 Q. And this revenue projection was taken
18 directly from Attachment JAR-1 revised, correct?

19 A. Yes, with the noted adjustment for 2024
20 to reflect the partial year.

21 Q. Okay. Thank you for that clarification.
22 The revenue projection that is set forth in JAR-1
23 Revised was used in the energy price forecast by
24 Judah Rose; is that correct?

25 A. Yes.

1 Q. And that forecast was created prior to
2 the companies' initial ESP filing on August 4, 2014,
3 correct?

4 A. Yes.

5 Q. And the revenue projection from JAR-1
6 Revised was developed using a capacity price forecast
7 that was created by Judah Rose, correct?

8 A. Yes, coupled with known capacity prices
9 at the time the forecast was developed.

10 Q. Mr. Rose's capacity price forecast was
11 created prior to August 4, 2014, correct?

12 A. Yes.

13 Q. And the revenue projection in JAR-1
14 Revised was developed using a natural gas price
15 forecast provided by Judah Rose, correct?

16 A. Yes.

17 Q. And that gas price forecast was created
18 prior to August 4, 2014, correct?

19 A. Yes.

20 Q. And the revenue projection in JAR-1
21 Revised was developed using a CO-2 price forecast
22 provided by Judah Rose, correct?

23 A. Yes.

24 Q. And that CO-2 price forecast was created
25 prior to August 4, 2014, correct?

1 A. Yes.

2 Q. So the \$561 million figure presented in
3 your fifth supplemental testimony is based, in part,
4 on energy, capacity, natural gas, and CO-2 price
5 forecasts that are each more than 17 months old; is
6 that correct?

7 A. Yes.

8 Q. This table in your workpaper also
9 includes a projection of costs under rider RRS,
10 correct?

11 A. Yes.

12 Q. And that projection was developed based
13 on Attachments JJL-1, -2, and -3 Revised, correct?

14 A. Yes.

15 Q. And to develop the cost projection in
16 your workpaper, the only change made to those
17 attachments was lowering the return on equity from
18 11.15 percent to 10.38 percent, correct?

19 A. Correct, and making the calculation for
20 the partial year in 2014.

21 Q. Yes, thank you. The companies did not
22 perform any sensitivity analysis projection for rider
23 RRS as presented in your workpaper, correct?

24 A. Correct.

25 MR. SOULES: Your Honor, may we go off

1 the record for a moment?

2 EXAMINER PRICE: You may. Go off the
3 record.

4 (Discussion off the record.)

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

7 You may proceed, Mr. Soules.

8 MR. SOULES: Thank you, your Honor. Your
9 Honor, may we approach?

10 EXAMINER PRICE: You may.

11 MR. SOULES: Your Honor, could we have
12 this document marked as confidential Sierra Club
13 Exhibit 90?

14 EXAMINER PRICE: It will be so marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. (By Mr. Soules) Ms. Mikkelsen, you have
17 been handed a document that was produced in discovery
18 response OCC Set 17-RPD-19. The document is labeled
19 "OCC Set 17-RPD-19, Attachment 1, Competitively
20 Sensitive Confidential." Are you familiar with this
21 document?

22 A. Yes.

23 Q. And this document contains three
24 spreadsheets, correct?

25 A. Yes.

1 Q. And these spreadsheets are the modified
2 versions of Attachments JJL-1, JJL-2, and JJL-3
3 Revised that were used for the cost projection
4 presented in your workpaper, correct?

5 A. Yes.

6 Q. We can set that aside.

7 Ms. Mikkelsen, could you please turn to
8 page 8 of the third supplemental stipulation, and
9 specifically to Section V-D-3-a, entitled "Rigorous
10 Review of Rider RRS." Please let me know when you
11 are there.

12 A. I'm there.

13 Q. Great. Thank you. Just to confirm, the
14 review process that's referred to here is the same
15 review process discussed on pages 14 and 15 of your
16 direct testimony; is that correct?

17 MR. KUTIK: Just to be clear, we are
18 talking about testimony that was filed in August of
19 2014.

20 MR. SOULES: That's correct, yeah.

21 A. Yes. It is also discussed on page 12 of
22 my second supplemental testimony as well as addressed
23 in this third supplemental stipulation.

24 Q. And referenced in your fifth supplemental
25 testimony, correct?

1 A. Yes.

2 Q. Now, there is a difference between the
3 review process that was described in your direct
4 testimony and the review process that's referenced in
5 the third supplemental stipulation, correct?

6 A. I think the third supplemental
7 stipulation and recommendation clarifies what the
8 intent was that was expressed originally in the
9 application filed by the company but does address the
10 subsequent establishment of the capacity performance
11 product in the PJM market to make more clear the goal
12 of that in the review.

13 Q. Thank you. And that clarification that's
14 in the third supplemental stipulation, that's the
15 third sentence under section V-B-3-A; is that
16 correct?

17 A. Yes.

18 Q. Okay. Other than that clarification,
19 there are no differences between the review process
20 described in your direct testimony and the review
21 process that's referenced in the third supplemental
22 stipulation, correct?

23 A. No. I don't think I agree with that.

24 Q. Are there other differences between the
25 review process described in your direct testimony and

1 the review process referenced in the third
2 supplemental stipulation?

3 A. Yes.

4 Q. And what are those differences?

5 A. The Third Supplemental Stipulation and
6 Recommendation also includes a commitment for full
7 information sharing with respect to the FirstEnergy
8 Solutions Corporation fleet, which was not included
9 in the commitments made in the direct testimony in
10 this case with respect to the review process.

11 Q. Are there any other differences between
12 the review process described in your direct testimony
13 and the review process referenced in the third
14 supplemental stipulation?

15 A. None that come to mind at this time.

16 Q. So at present it's your understanding
17 there are two differences which you have already
18 identified between the review process described in
19 your direct testimony and the review process
20 referenced in the third supplemental stipulation; is
21 that correct?

22 A. Yes.

23 Q. And if we could look at the full
24 information sharing provision under 3b, under this
25 provision the companies are agreeing to provide FES

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1 fleet information on any cost component in response
2 to a reasonable staff request, correct?

3 A. Yes.

4 Q. And the reference to FES fleet
5 information is referring to information about
6 generating units that are owned by FES but are not
7 the subject of the proposed transaction; is that
8 correct?

9 A. Yes.

10 Q. So the reference to FES fleet information
11 does not include information about the generating
12 units that are the subject of the proposed
13 transaction; is that correct?

14 THE WITNESS: May I ask to have the
15 question reread, please.

16 EXAMINER PRICE: You may.

17 (Record read.)

18 A. The information relative to the plants
19 included in the proposed transaction was always
20 intended to be made available for a review as part of
21 the staff's review process.

22 Q. So information about cost components of
23 those generating units was contemplated by the review
24 process described in your direct testimony, correct?

25 A. Correct.

1 Q. I would like to talk for a moment about
2 your understanding of the process contemplated by the
3 full information sharing provision of the
4 stipulation. It's your understanding that the
5 Commission staff would issue data requests to the
6 companies. The companies would then get the
7 requested information from FES, and, finally, the
8 companies would provide that information to the
9 staff; is that correct?

10 A. Assuming the request is reasonable, yes.

11 Q. Okay. And the reasonableness of a
12 request would be determined by the Commission; is
13 that correct?

14 A. Assuming the companies and the staff were
15 not able to resolve any issues with respect to
16 reasonableness, then the ultimate disposition would
17 be made by the Commission.

18 Q. Okay. Thank you. So under this
19 provision of the stipulation, the staff would not
20 submit data requests directly to FES, correct?

21 A. Correct.

22 Q. Now, the companies have made this
23 information sharing commitment on behalf of FES,
24 correct?

25 A. The companies have made this information

1 sharing commitment on behalf of FES after checking
2 with the FES business unit management to assure that
3 they could make that commitment on behalf of FES.

4 Q. FES is not a signatory to the third
5 supplemental stipulation, correct?

6 A. Correct.

7 Q. FES's commitment to provide this fleet
8 information was communicated verbally, correct?

9 A. Yes.

10 Q. And that commitment was specifically an
11 oral communication between FES and the companies,
12 correct?

13 MR. KUTIK: Well, verbal communications
14 usually are oral, your Honor.

15 MR. SOULES: Your Honor, I am --

16 EXAMINER PRICE: He's just seeking
17 clarification.

18 A. Yes.

19 Q. And FES itself has not filed any document
20 with the Commission that acknowledges that
21 commitment, correct?

22 A. No. FES made that commitment to the
23 companies, and the companies represented that
24 commitment in this stipulation.

25 Q. So you agree with my prior question that

1 FES itself has not filed any document with the
2 Commission confirming this commitment, correct?

3 A. I am not aware of any such document.

4 Q. The proposed transaction between FES and
5 the companies includes FES's 4.85 percent interest in
6 the OVEC plants, correct?

7 A. Yes.

8 Q. OVEC has made no commitment to share
9 information with the Commission as part of this third
10 supplemental stipulation, correct?

11 A. Correct.

12 Q. So the information sharing commitment in
13 section V-B-3-B does not extend to information that's
14 solely in the possession of OVEC, correct?

15 A. Correct.

16 Q. Now, under this provision of the
17 stipulation, FES fleet information will be provided
18 only in response to a reasonable staff request,
19 correct?

20 A. Yes.

21 Q. So none of the intervening parties in
22 this case would be entitled to request FES fleet
23 information under section V-B-3-b of the stipulation,
24 correct?

25 A. Correct.

1 Q. And under this provision all FES fleet
2 information provided to the staff will be treated as
3 critical energy infrastructure information regardless
4 of its content, correct?

5 A. No.

6 Q. Why is that not correct?

7 A. The stipulation reads it will -- it will
8 not be treated as it is -- pardon me. The
9 stipulation reads it will be treated as if it is
10 highly sensitive proprietary trade secret information
11 and critical energy -- pardon me, critical energy
12 infrastructure information. It isn't designating it
13 as such. It is saying it will be treating it as
14 though it is.

15 MR. SOULES: Your Honor, could I have the
16 last two questions and answers read back.

17 EXAMINER PRICE: You may.

18 (Record read.)

19 MR. SOULES: Thank you.

20 Q. (By Mr. Soules) Ms. Mikkelsen, under this
21 provision of the stipulation, none of the intervening
22 parties in this case would be permitted to see the
23 fleet information provided to the staff, correct?

24 A. Correct.

25 Q. Could you please turn to page 7 of the

1 third supplemental stipulation and specifically to
2 section V-B-2 entitled "Risk Sharing." Please let me
3 know when you are there.

4 A. I'm there.

5 Q. Under this provision of the stipulation
6 the companies' customers would be provided up to
7 \$100 million in credits under certain conditions; is
8 that correct?

9 THE WITNESS: May I ask that that
10 question be reread, please?

11 EXAMINER PRICE: You may.

12 (Record read.)

13 A. Under this provision the companies'
14 customers would be provided up to \$100 million in
15 credits by the companies as distinguished from the
16 credits that would naturally occur under rider RRS.

17 Q. Okay. Thank you for that clarification.
18 This provision does not guarantee that rider RRS will
19 provide a credit to customers in any given year,
20 correct?

21 A. Correct.

22 Q. And, more generally, the third
23 supplemental stipulation does not establish a cap on
24 charges that could flow through rider RRS, correct?

25 A. The Third Supplemental Stipulation and

1 Recommendation does not create a cap on the credits
2 or charges that could flow through rider RRS.

3 Q. Going back to section V-B-2, the
4 companies would be financially responsible for any
5 credits paid under this provision, correct?

6 MR. KUTIK: I'll object, your Honor.

7 EXAMINER PRICE: Grounds?

8 MR. KUTIK: I think it's misleading
9 potentially. There are two types of credits, your
10 Honor. There are credits that may occur as part of
11 the netting process and there are also additional
12 credits. I assume we are talking about the latter in
13 this case, and I think that needs to be clear in the
14 questions, your Honor.

15 EXAMINER PRICE: The objection is
16 sustained. If you could just clarify your question.

17 MS. FLEISHER: Sorry, your Honor. If
18 Mr. Kutik could use his microphone.

19 MR. KUTIK: I will endeavor to do so.

20 MS. FLEISHER: Thank you.

21 Q. (By Mr. Soules) Certainly. Miss
22 Mikkelsen, going back to Section V-B-2 -- everyone is
23 losing their mic. Going back to section V-B-2 and
24 referring specifically to the \$100 million of
25 potential credits that would not naturally flow

1 through rider RRS, the companies would be financially
2 responsible for any credits that are paid under that
3 provision, correct?

4 A. Yes.

5 Q. And the companies would not be
6 subsequently reimbursed for those payments by FES,
7 correct?

8 A. Correct.

9 Q. And the companies would not be
10 subsequently reimbursed for those payments by
11 FirstEnergy Corporation, correct?

12 A. Correct.

13 Q. So any credits that are paid out under
14 this provision would represent a direct cost to the
15 companies, correct?

16 A. Yes.

17 Q. There's no language in the third
18 supplemental stipulation that precludes the companies
19 from recovering those costs from customers in a
20 future Commission proceeding, correct?

21 A. While there is no language in the Third
22 Supplemental Stipulation and Recommendation that
23 precludes the companies from recovering those costs
24 in a future Commission proceeding, it was not the
25 intention of the stipulation that the companies would

1 recover those in a subsequent Commission proceeding.

2 MR. SETTINERI: Your Honor, at this time
3 we move to strike the language after "it was not the
4 intent." It was very direct, and that extra
5 clarification as to what the intent was of the
6 parties to the stipulation should not be allowed in
7 the record.

8 EXAMINER PRICE: Motion to strike is
9 denied.

10 MR. SETTINERI: Thank you.

11 MR. SOULES: Your Honor, could I have the
12 last question and answer.

13 EXAMINER PRICE: You may.

14 (Record read.)

15 MR. SOULES: Thank you. Thank you, your
16 Honor.

17 Q. (By Mr. Soules) Ms. Mikkelsen, if we
18 could look at section V-B-1, the immediately
19 preceding section, under this provision of the
20 stipulation the term of rider RRS would be shortened
21 to an eight-year period, correct?

22 A. Correct.

23 Q. And there is nothing in the stipulation
24 that prevents the companies from seeking an extension
25 of rider RRS beyond May 31, 2024, correct?

1 A. Correct.

2 Q. Ms. Mikkelsen, earlier the revised term
3 sheet was marked as Companies' Exhibit 156. Do you
4 recall that?

5 A. I do.

6 Q. And that revised term sheet has been
7 signed by representatives of FES and the companies,
8 correct?

9 A. Yes.

10 Q. But the companies and FES have not yet
11 executed a purchase power agreement, correct?

12 A. Correct.

13 Q. Could you please turn to page 6 of your
14 fifth supplemental testimony?

15 MR. KUTIK: I'm sorry, what page?

16 MR. SOULES: Page 6.

17 Q. Are you there?

18 A. I am.

19 Q. Great. Thank you. On line 10 there is a
20 reference to a "transmission reliability impact
21 study." Do you see that reference in your testimony?

22 A. Yes.

23 Q. The transmission reliability impact study
24 referenced here is the same study that was described
25 in the testimony of Companies' Witness Rodney

1 Phillips, correct?

2 A. Yes.

3 Q. On the same page starting on line 11, it
4 states, "The Companies agree to make available upon
5 request an electronic version of the economic
6 development analysis conducted by an independent
7 third party for this proceeding." Is that your
8 testimony?

9 A. Yes.

10 Q. And the economic development analysis
11 referenced here is the analysis that Companies
12 Witness Sarah Murley submitted with her direct and
13 supplemental testimony, correct?

14 A. Yes.

15 Q. Could you please turn to page 11 of the
16 third supplemental stipulation. And I would like to
17 look specifically at Section V-E-1. This section of
18 the stipulation discusses a CO-2 reduction goal for
19 FirstEnergy Corp., correct?

20 A. Yes.

21 Q. And to the best of your knowledge, there
22 is currently no plan to achieve that goal, correct?

23 A. I am not aware of a plan that exists
24 today to achieve that goal. I am aware that in the
25 stipulation the companies have agreed to file a

1 report with the Commission by November 1st of 2016,
2 highlighting the then-current strategy for achieving
3 this goal, among other things.

4 Q. And that -- that commitment is in section
5 V-E-5 on the following page, correct?

6 A. Yes.

7 Q. Under this provision of the -- I'm sorry.
8 Going back to Section V-E-1, under this provision
9 there would be no penalty if FirstEnergy Corp. fails
10 to meet the CO-2 emission reduction goal set forth in
11 the provision, correct?

12 A. While the Third Supplemental Stipulation
13 and Recommendation does not include a penalty
14 provision, should FirstEnergy Corp. fail to meet this
15 CO-2 emissions reduction goal, the company takes its
16 regulatory commitments very seriously, and I believe
17 a pattern of failure to meet your regulatory
18 commitments without good cause shown would have a
19 very chilling effect on the companies' ability to
20 work successfully with its regulators in a
21 going-forward basis.

22 MR. SOULES: Your Honor, I would move to
23 strike the portion of her response beginning with
24 "the company takes" as being nonresponsive to the
25 question.

1 MR. KUTIK: Your Honor, I believe what
2 the company -- what the witness was saying, your
3 Honor, is that although there may not be an explicit
4 penalty, there is an implicit penalty about the
5 damage of the relationship that the companies would
6 face with the -- with its regulator if it didn't make
7 a good-faith effort to meet its commitment.

8 EXAMINER PRICE: I think you asked a
9 fairly broad question and she took advantage of your
10 broad question. Your motion to strike is denied.

11 MR. SOULES: Thank you, your Honor.

12 Your Honor, may I approach?

13 EXAMINER PRICE: You may.

14 MR. SOULES: Your Honor, could we have
15 this marked as Sierra Club Exhibit 91?

16 EXAMINER PRICE: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. (By Mr. Soules) Ms. Mikkelsen, you have
19 been handed a response to discovery request OCC Set
20 17-INT-27. Are you familiar with this document?

21 A. Yes.

22 Q. And are you the sponsoring witness for
23 this discovery response?

24 A. Yes.

25 Q. And this interrogatory asks, "Will there

1 be a penalty for the Companies if they fail to reduce
2 their emissions levels by 90 percent below 2005
3 levels by 2045," correct?

4 A. Yes, that's the question.

5 Q. Okay. And the companies' response
6 includes a series of objections and then states,
7 "Subject to and without waiving the foregoing
8 objections the Companies do not own generation. The
9 Stipulation does not include a penalty associated
10 with the emission reduction provision." Is that
11 correct?

12 MR. KUTIK: Well, your Honor, you should
13 note that the -- there were objections, and one of
14 the objections was that it mischaracterizes the
15 stipulation.

16 EXAMINER PRICE: Can you explain why it
17 mischaracterizes the stipulation?

18 MR. KUTIK: Well, your Honor, to the
19 extent there is a reduction goal for the companies.
20 The companies don't own generation.

21 EXAMINER PRICE: Can you ask a more
22 specific question, Mr. Soules?

23 MR. SOULES: Thank you, your Honor.

24 Q. (By Mr. Soules) Ms. Mikkelsen, the
25 stipulation does not include a penalty associated

1 with the emission reduction provision, correct?

2 MR. KUTIK: Again, your Honor, that
3 question has been asked and answered.

4 EXAMINER PRICE: I think it was answered
5 in a very broad sense, and I think Mr. Soules is
6 simply following up and trying to ask a "yes" or "no"
7 answer in a narrow sense; is that correct?

8 MR. SOULES: Yes, your Honor.

9 EXAMINER PRICE: Ms. Mikkelsen, you can
10 answer the question.

11 A. The Third Supplemental Stipulation and
12 Recommendation does not include explicit language
13 with respect to a penalty associated with the failure
14 to meet the CO-2 emission reduction goal.

15 Q. Staying on page 11 of the third
16 supplemental stipulation, if you could please look at
17 section V-E-3, and looking down at subsection a, so
18 V-E-3-a, it states, "The Companies will reactivate in
19 2017 all programs suspended in their EE/PDR Portfolio
20 Plan in Case No. 12-2190-EL-POR," and then the
21 sentence goes on from there. Do you see the language
22 in the stipulation?

23 A. Yes.

24 Q. Under this provision of the stipulation,
25 the companies are committing to reactivate these

1 programs for 2017; is that correct?

2 A. In this provision the companies are
3 committing to reactivate in 2017 all of the programs
4 that were suspended.

5 Q. And the companies would seek to
6 reactivate those programs by including them in their
7 EE/PDR portfolio plan that is anticipated to be filed
8 in April of 2016, correct?

9 A. Yes.

10 Q. And this stipulation provision
11 contemplates the companies will implement those
12 programs that are approved by the Commission,
13 correct?

14 A. Yes.

15 Q. So any specific program that is
16 reactivated will only be reactivated if the
17 Commission approves that reactivation, correct?

18 A. Yes.

19 Q. The companies have not yet developed
20 their EE/PDR portfolio plan, correct?

21 A. The companies are in the process of
22 developing their EE/PDR portfolio plan. It is not
23 complete.

24 Q. All right. Currently the companies do
25 not have an estimate of the costs to reactivate these

1 programs, correct?

2 A. Correct.

3 Q. In the EE/PDR portfolio plan that the
4 companies plan to file in April of 2016 would cover
5 the years 2017 through 2019, correct?

6 A. Correct.

7 Q. So the last four-and-a-half years of the
8 proposed ESP would be covered by subsequent EE/PDR
9 portfolio plans, correct?

10 A. Correct.

11 Q. And under the stipulation the companies
12 have committed to proposing that these energy
13 efficiency programs continue to be implemented
14 through May 31, 2024, correct?

15 A. Correct.

16 Q. And under the stipulation the -- looking
17 specifically at the period beyond 2019, the companies
18 would only implement those energy efficiency programs
19 if they were approved by the Commission, correct?

20 A. Correct.

21 Q. Under this provision of the stipulation,
22 the companies have not committed to propose any
23 minimum level of funding for these energy efficiency
24 programs, correct?

25 A. Correct.

1 Q. Looking specifically at section V-E-3-b,
2 there is a reference to 800,000 megawatt-hours of
3 energy savings annually. Do you see that reference?

4 A. Yes.

5 Q. Under this stipulation provision, the
6 companies are not required to achieve 800,000
7 megawatt-hours of energy savings annually, correct?

8 A. Correct.

9 MR. SOULES: Your Honor, may I approach?

10 EXAMINER PRICE: You may.

11 MR. SOULES: Your Honor, could we have
12 this document marked as Sierra Club Exhibit 92?

13 EXAMINER PRICE: It will be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.))

15 Q. (By Mr. Soules) Ms. Mikkelsen, you have
16 been handed a response to discovery request, SC Set
17 11-INT-221. Are you familiar with this document?

18 A. Yes.

19 MR. SETTINERI: Excuse me. Could I have
20 that reference? I couldn't catch the reference to
21 the exhibit.

22 MR. SOULES: Yes. It's response to SC
23 set 11-INT-221.

24 MR. SETTINERI: Thank you.

25 Q. (By Mr. Soules) And you are the

1 sponsoring witness for this discovery response,
2 correct?

3 A. Correct.

4 Q. And in response to subpart c of this
5 interrogatory, you refer to pages 36 through 39 of
6 the companies' 2015 Electric Long-Term Forecast
7 Report, correct?

8 A. Yes.

9 MR. SOULES: Your Honor, may I approach?

10 EXAMINER PRICE: You may.

11 MR. SOULES: Could we have this document
12 marked as Sierra Club Exhibit 93?

13 EXAMINER PRICE: It will be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. (By Mr. Soules) Ms. Mikkelsen, you have
16 been handed a response to discovery requests SC Set
17 12-INT-225. Are you familiar with this document?

18 A. Yes.

19 Q. And you were the sponsoring witness for
20 this discovery response, correct?

21 A. Yes.

22 Q. In looking specifically at subpart a of
23 the interrogatory, it asks whether the annual energy
24 savings that the companies would strive to achieve
25 under the third stipulation is in addition to the

1 forecasted levels of energy efficiency and demand
2 response savings identified in column 5(b) on pages
3 36 to 39 of the Companies' 2015 Electric Long-Term
4 Forecast Report; is that correct?

5 A. That's what the question says, yes.

6 Q. And in response to that question, you
7 said "no," correct?

8 A. Correct.

9 Q. And subpart b of the interrogatory asks
10 to confirm that the companies' 2015 Electric
11 Long-Term Forecast Report forecasts more than 800,000
12 megawatts of energy savings for the companies from
13 energy efficiency and demand response in each of the
14 years 2021, 2022, 2023 and 2024, correct?

15 A. Yes, that's the question.

16 Q. Okay. And then your response to that
17 question references column (5b) on page 39 of the
18 long-term forecast report, correct?

19 A. Yes.

20 MR. SOULES: Your Honor, may I approach?

21 EXAMINER PRICE: You may.

22 MR. SOULES: Could we have this marked as
23 Sierra Club Exhibit 94?

24 EXAMINER PRICE: So marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. (By Mr. Soules) Ms. Mikkelsen, you have
2 been provided an excerpt from the companies' 2015
3 Electric Long-Term Forecast Report, which was filed
4 in Case 15-649-EL-FOR on April 15th of 2015. Are you
5 familiar with this document?

6 A. Yes.

7 Q. And this excerpt includes page 36 to 39
8 of that forecast report, correct?

9 A. Among other pages, yes.

10 Q. Thank you. Could you please turn to page
11 39. Please let me know when you are ready to
12 proceed.

13 A. I'm there.

14 Q. Looking at the figures in column (5b),
15 would you agree that this column displays an estimate
16 of cumulative energy savings from energy efficiency
17 and demand response?

18 A. Yes.

19 Q. And this column can be used to calculate
20 the annual incremental energy statement from energy
21 efficiency and demand response, correct?

22 A. One could calculate the difference in the
23 cumulative amount from one year to another year to
24 derive an estimate of the annual energy efficiency
25 and demand response savings.

1 Q. Okay. So, for example, if we looked at
2 the year 2016, the row for 2016, and we wanted to
3 know the incremental annual savings that occurred in
4 2016, we could take the figure in column (5b) and
5 subtract it by the figure in the prior line, correct?

6 A. If what you are saying is you could take
7 the 3,028,800 from 2016 and subtract from that the
8 2,973,600 from 2015 to come up with the difference,
9 yes.

10 Q. And that difference would represent the
11 incremental energy savings from energy efficiency and
12 demand response for 2016, correct?

13 A. Based on the assumptions that were used
14 at the time, these numbers were developed relative to
15 the long-term forecast report.

16 Q. Thank you. And based on the figures that
17 are listed in this table, the annual incremental
18 energy savings for the years 2021, 2022, 2023, and
19 2024 is greater than 800,000 megawatt-hours, correct?

20 A. I haven't performed the specific
21 calculation and would note that the numbers listed
22 here really reflect the assumptions that are included
23 in -- as your Sierra Club Exhibit 93 says, the
24 percent reductions from baseline that are included in
25 Ohio Revised Code 4928.66(A) (1) (a) versus the total

1 consumption amounts, yes.

2 Q. Thank you. We can set-aside these past
3 couple of exhibits.

4 Could you please turn to page 12 of the
5 third supplemental stipulation, and specifically
6 looking at section V-E-4 entitled "Increase Renewable
7 Resources, 100 MW of Wind or Solar." Under this
8 provision of the stipulation the companies would seek
9 to procure 100 megawatts of solar or wind power if
10 certain conditions are met, correct?

11 A. Yes.

12 Q. And the companies are not making a firm
13 commitment to procure 100 megawatts of wind or solar
14 resources, correct?

15 A. In the stipulation the companies make a
16 firm commitment that -- to the extent that the staff
17 deems it's helpful in order to comply with a future
18 federal or state law or rule and to the extent that
19 such federal or state law or rule hasn't fostered the
20 development of the new renewable energy resources,
21 then at the staff's request, the company would move
22 to procure 100 megawatts of new Ohio wind or solar
23 resources.

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

1 EXAMINER PRICE: You may.

2 (Record read.)

3 MR. SOULES: Thank you.

4 Q. (By Mr. Soules) So this provision of the
5 stipulation would only be triggered if the staff
6 concluded there was a future law or rule for which
7 new renewable energy resources would be helpful for
8 compliance but the law or rule had not fostered
9 development of those resources, correct?

10 A. Correct.

11 Q. And with respect to the reference to
12 future -- strike that.

13 Do you see the reference to "future
14 federal or state law or rule"?

15 A. I do.

16 Q. And that reference does not include the
17 Clean Power Plan that USEPA issued in August of 2015,
18 correct?

19 A. For purposes of this provision, the
20 federal Clean Power Plan is not considered a future
21 federal law or rule.

22 Q. Okay. This stipulation provision could
23 be potentially triggered by a state plan designed to
24 implement the Clean Power Plan, correct?

25 A. Yes.

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1 EXAMINER PRICE: So just to be clear, the
2 Clean Power Plan itself is not considered a new
3 federal or state law or rule but a state
4 implementation plan to implement the Clean Power Plan
5 would be considered a new state or federal law or
6 rule and trigger this provision?

7 THE WITNESS: Correct.

8 EXAMINER PRICE: Thank you.

9 Q. (By Mr. Soules) Could this provision
10 potentially be triggered by a future Commission
11 ruling?

12 A. Yes.

13 Q. And if the conditions listed in this
14 provision were triggered, the companies would make a
15 filing with the Commission regarding the need to
16 procure 100 megawatts of wind or solar resources,
17 correct?

18 MR. KUTIK: May I have the question read,
19 please.

20 EXAMINER PRICE: You may.

21 (Record read.)

22 A. What this stipulation says is that at the
23 staff's request, the companies will make a filing at
24 the Commission demonstrating the need to procure new
25 renewable energy resources, including wind and solar.

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1 And I would say it's up to 100 megawatts. Should the
2 staff determine that only 50 megawatts are needed and
3 they ask the companies to pursue 50 megawatts, then
4 that would be the filing that the companies would
5 make, for example.

6 Q. If the companies made such a filing, the
7 Commission would have to approve the application
8 before the companies would move forward with the
9 procurement of new wind or solar resources, correct?

10 A. Correct.

11 EXAMINER PRICE: Ask a question. Can the
12 companies dispute the staff's request with the
13 Commission? If the companies say the staff is being
14 unreasonable, can they appeal that to the Commission?
15 Or once the staff asks the companies, it will be
16 obligated to file?

17 THE WITNESS: I think once the company --
18 pardon me. Once the staff asks the companies, they
19 are obligated to file. I would expect as a practical
20 matter if the company had concerns, they could
21 discuss those with the staff, typically very
22 successfully, at resolving matters like that. But
23 ultimately the companies are obligated to act at the
24 request of the staff.

25 EXAMINER PRICE: Thank you.

1 MR. SOULES: Thank you, your Honor.

2 Q. (By Mr. Soules) If there were a future
3 law or rule for which new renewable energy resources
4 would be helpful for compliance, wouldn't that law or
5 rule necessarily foster the development of such
6 resources?

7 MR. KUTIK: Your Honor, at this point
8 I'll object, argumentative.

9 EXAMINER PRICE: Can I have the question
10 back again.

11 (Record read.)

12 EXAMINER PRICE: Overruled.

13 You can answer.

14 A. Not necessarily. You are talking about
15 an eight-year time frame. I don't know all the facts
16 and circumstances that would exist over the
17 eight-year time frame or what might be required
18 coming out of these future federal, state laws or
19 rules, but I don't think you can conclude summarily
20 that they would necessarily drive the behavior.

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

23 EXAMINER PRICE: You may.

24 (Record read.)

25 Q. (By Mr. Soules) Can you identify any

1 situation in which a future federal or state law or
2 rule -- I'm sorry. Strike that.

3 Ms. Mikkelsen, can you identify any
4 situation where a future law or rule for which new
5 renewable energy resources would be helpful for
6 compliance but would not necessarily foster the
7 development of those new resources?

8 MR. KUTIK: I'll object, your Honor.

9 EXAMINER PRICE: Grounds?

10 MR. KUTIK: At this point we are well
11 beyond the speculation and the knowledge of this
12 witness. We are talking about what possible future
13 regulations or rules there might be.

14 MR. SOULES: Your Honor, I merely am
15 trying to probe the precise conditions under which
16 this stipulation provision would actually be
17 triggered.

18 MR. KUTIK: But not with this question,
19 your Honor.

20 EXAMINER PRICE: I think if you want to
21 ask a hypothetical question, you need to -- and we
22 are not looking for 15-layer hypotheticals here, but
23 if you could just give a more specific hypothetical
24 so the witness could respond, so "can you envision a
25 circumstance when" would be helpful.

1 MR. SOULES: Okay. Thank you, your
2 Honor.

3 Q. (By Mr. Soules) Ms. Mikkelsen, let's
4 suppose hypothetically that the state of Ohio
5 develops a plan to implement the Clean Power Plan.
6 If new renewable resources would be helpful to comply
7 with that plan, wouldn't the plan by definition
8 foster the development of renewable resources?

9 A. Not necessarily. I think the development
10 of the resources is going to be driven in large
11 measure by price signals and the ability to recover
12 the investment, and so absent a knowledge of what
13 that circumstance would be to a merchant developer,
14 you could have a circumstance wherein the staff's
15 judgment they would want the utility to take that
16 action in order to help the state -- help achieve
17 compliance with the state or federal law or rule.

18 MR. SOULES: Thank you.

19 Thank you, your Honor. I have no further
20 questions.

21 EXAMINER PRICE: Thank you. Let's go off
22 the record.

23 (Discussion off the record.)

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

1 Ms. Willis.

2 MS. WILLIS: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Ms. Willis:

6 Q. Good morning, Ms. Mikkelsen.

7 A. Good morning, Ms. Willis.

8 Q. Let's go to your testimony, page 1, lines
9 15 through 17. There you testified that the purpose
10 of your testimony is to support the Third
11 Supplemental Stipulation and Recommendation, correct?

12 MR. KUTIK: What page are you on?

13 MS. WILLIS: I'm sorry, that's page 1,
14 lines 15 through 17.

15 MR. KUTIK: Thank you.

16 A. At page 1, line 15 through 16 I say, "The
17 purpose of this testimony is to support the Third
18 Supplemental Stipulation and Recommendation."

19 Q. Thank you. And can we agree that when we
20 use the term "third supplemental stipulation," we can
21 use that interchangeably with the latest filed
22 stipulation for purposes of our questioning this
23 morning?

24 A. Yes.

25 Q. So either way we would be talking about

1 the stipulation that was filed December 1, 2015,
2 correct?

3 A. Yes.

4 Q. Now, Ms. Mikkelsen, you participated in
5 the settlement discussions that gave rise to the
6 latest filed stipulation, correct?

7 A. Yes.

8 Q. And you were involved in negotiating all
9 of the terms of the third supplemental stipulation,
10 correct?

11 A. Yes.

12 Q. But you did not have to approve the terms
13 before they were put into the stipulation; is that
14 correct?

15 A. Yes.

16 Q. The terms contained in the latest
17 stipulation would have been approved, Ms. Mikkelsen,
18 on behalf of the companies by a representative of the
19 rates department, the regulatory affairs division,
20 and the legal team, correct?

21 A. Yes. And as we discussed earlier, to the
22 extent that those folks had to reach out to other
23 business unit leaders in order to gain their support
24 for the provision, they would have done so prior to
25 approving the inclusion in the stipulation.

1 Q. Now, the terms and conditions that were
2 contained in the latest stipulation were not approved
3 by FirstEnergy Solutions, correct?

4 A. FirstEnergy Solutions did not approve the
5 terms and conditions contained in the Third
6 Supplemental Stipulation and Recommendation. They
7 did, as we discussed earlier, agree to the companies
8 that the companies could commit to full information
9 sharing as it relates to the FES fleet under the
10 terms we discussed earlier.

11 Q. Now, Ms. Mikkelsen, you don't know if
12 anyone else within the FirstEnergy Corporation had to
13 approve the terms and conditions contained in the
14 latest stipulation, correct?

15 A. Correct.

16 Q. Now, let's go to your testimony on page
17 3, line 16 through 17. And there you describe what
18 you call "the salient features of the Third
19 Supplemental Stipulation," correct?

20 A. Well, I don't describe the features
21 there. I tee up the fact that I will be describing
22 the features thereafter.

23 Q. Thank you. Included in the salient
24 features is the modified term of rider RRS going from
25 a 15-year to an 8-year period, correct?

1 A. Yes.

2 Q. Now, there are a number of new provisions
3 in the third supplemental stipulation as compared to
4 the earlier stipulations filed in this case, correct?

5 A. Yes.

6 Q. And the new provisions would be included
7 in the bullets that are contained in your testimony
8 from pages 3 through 6, correct?

9 A. The new provisions would be contained
10 most fully in the Third Supplemental Stipulation and
11 Recommendation as summarized in my fifth supplemental
12 testimony on pages 3 through 6.

13 Q. Okay. Now, let's look at your reference
14 in your testimony at page 3, lines 22 through 24, and
15 there you talk about you rider RRS. Do you see that
16 reference?

17 A. Yes.

18 Q. And you say there that the term of rider
19 RRS has been modified from the original term of 15
20 years and is now an 8-year term, correct?

21 A. Subject to final reconciliation, correct.

22 Q. And you would agree with me, would you
23 not, that the stipulation doesn't contemplate a
24 shortening of that eight-year term?

25 A. Correct.

1 Q. So there would be no conditions under
2 which the eight-year term of rider RRS could be
3 shortened.

4 A. Correct.

5 Q. Let's go to the stipulation itself.
6 Let's go to page 7. Specifically I want to direct
7 your attention to the Section V-B-1. And I want you
8 to look at where the term of rider RRS is described
9 under B-1. Can you look at that for a moment?

10 A. Yes.

11 Q. And you are familiar with this section of
12 the stipulation, correct?

13 A. Yes.

14 Q. And the last sentence of that term says
15 that "The Companies agree that the Commission may
16 proceed to terminate the specific charge/credit of
17 Rider RRS for any generation unit upon its sale or
18 transfer pursuant to R.C. 4005.26." Do you see that
19 reference?

20 A. Yes.

21 Q. And you would agree with me, would you
22 not, under this provision that no party has a right
23 to seek to terminate the specific charge or credit of
24 rider RRS for any generation unit upon its sale or
25 transfer?

1 A. Correct.

2 Q. And it's your understanding that this
3 provision in the stipulation covers the FES
4 entitlement to the OVEC plants, the Kyger and Clifty
5 Creek, correct?

6 A. This provision covers all of the plants
7 for the entitlement included in the proposed
8 transaction.

9 Q. Okay. Thank you.

10 A. You're welcome.

11 Q. Now, let's switch gears for a moment, and
12 we are going to talk about instead of the term of the
13 rider RRS, we are going to talk about the term of the
14 ESP. Under the latest stipulation the term of the
15 ESP has been lengthened from three years to eight
16 years, correct?

17 A. Yes.

18 Q. And to your knowledge, the PUCO has never
19 approved an ESP longer than three years for any
20 electric distribution utility in Ohio.

21 A. Correct.

22 Q. And you would agree with me that the
23 eight-year term of the ESP could be shortened under
24 the latest filed stipulation.

25 A. The Third Supplemental Stipulation and

1 Recommendation contemplates an eight-year term for
2 the ESP. There are certain statutory provisions as
3 well as provisions included in the stipulation to
4 address tests associated with an ESP of that
5 duration, but the intention is that the ESP would
6 last for eight years.

7 Q. Now, you mentioned that there are
8 provisions in the -- in the law that could shorten
9 the eight-year term of the ESP, correct?

10 A. There are statutory tests that the
11 Commission can conduct, which based on the results of
12 those, they may terminate a longer term, but they are
13 not obligated.

14 Q. Let's talk about those provisions or
15 statutes. Are you aware that the statute or -- is
16 the statute you are talking about Revised Code
17 4928.143(E)?

18 A. Yes.

19 Q. And that contains tests, does it not?

20 A. Yes. I don't have a copy of the statute
21 in front of me sitting here, so if we get too far
22 down the path, I probably would need one.

23 Q. Right.

24 A. But yes.

25 Q. Now, you are familiar with that statute,

1 correct?

2 A. Yes.

3 Q. And you have read that statute, right?

4 A. Yes.

5 Q. And do you understand that the statute
6 sets forth conditions under which the Commission
7 could terminate an electric security plan?

8 A. Do you have a copy of the statute?

9 Q. I do.

10 A. It would be helpful to me, ma'am. Thank
11 you.

12 MS. WILLIS: May I approach the witness,
13 your Honor?

14 EXAMINER PRICE: You may.

15 THE WITNESS: Thank you, ma'am.

16 MS. WILLIS: Was there a question
17 pending, your Honor? I am not sure.

18 EXAMINER PRICE: There is.

19 Could we have that question back, please.

20 MS. WILLIS: Thank you.

21 (Record read.)

22 A. Recognizing I am not an attorney, but in
23 my mind the statute at 4928.143(E) lays out certain
24 tests that the Commission should conduct in the
25 fourth year and every fourth year thereafter of an

1 ESP that extends longer than three years.

2 Q. Okay. And the ESP proposed under the
3 stipulation is one that extends longer than three
4 years, correct?

5 A. Yes.

6 Q. Now, if we go to the stipulation, page
7 18, provision K, in fact we find mention of the
8 fourth-year test required under RC 4928.143(E),
9 correct?

10 A. Yes.

11 Q. Would you agree with me that the term of
12 the stipulation sets forth specific transition
13 provisions that the PUCO would be required to
14 consider before terminating the ESP?

15 A. Section K lays out more specificity with
16 respect to the tests that the Commission would
17 conduct pursuant to 4928.143(E).

18 Q. And it speaks to the transition, correct,
19 transition provisions that the PUCO would be required
20 to consider before terminating the ESP?

21 A. Yes.

22 Q. And when the stipulation uses the term
23 "transition," it is referring to what occurs after
24 the ESP plan is terminated by the PUCO and a more
25 advantageous alternative is adopted under the

1 statute?

2 A. No. The transition provision spelled out
3 in the third stipulation, as I said earlier, really
4 provides a greater degree of specificity with respect
5 to the test that the Commission would conduct
6 pursuant to the statute prior to ordering
7 termination.

8 Q. Let's talk about the transition
9 provisions in the stipulation Section V-K. There you
10 list "the Commission's test of the plan, which shall
11 include consideration of the prospective quantitative
12 and qualitative effects of the Stipulated ESP IV,
13 including the impact of termination on the financial
14 health of the utilities." Do you see that?

15 A. I do.

16 Q. And would you agree that the specific
17 transition provisions in the stipulation Section V-K
18 are not found in 4928.143(E)?

19 A. The specific words that you see here are
20 not words taken from the statute, but the statutory
21 test requires the Commission to conduct an MRO versus
22 ESP test, much like the one that's spelled out
23 earlier in the statute, which looks -- which asks the
24 Commission to look at the results of the MRO versus
25 ESP test in aggregate, and when we talk about looking

1 at it in aggregate, that includes both the
2 quantitative and qualitative effects, which are, of
3 course, the words you see here.

4 And, further, when it talks about
5 including the impact of the termination of the
6 financial health of the utilities, certainly one of
7 the factors that the Commission could consider when
8 it's looking at the MRO versus ESP in aggregate is
9 the financial health of the utilities, and also,
10 specifically, one of the tests that's spelled out
11 here in the statute is a prospective significantly
12 excessive earnings test which necessarily addresses
13 the financial health of the utilities on a
14 prospective basis.

15 MS. WILLIS: Your Honor, I would like to
16 have my question and that answer reread, please.

17 EXAMINER PRICE: You may.

18 (Record read.)

19 MS. WILLIS: Thank you, Karen.

20 I would move to strike everything after
21 "but." My question was specifically to, Are the
22 transition provisions contained in the stipulation
23 found in 4928.143(E)? She did answer my question at
24 first, and then she diverged into what should the
25 Commission consider and what can it consider. My

1 question was not directed to that, so I would move to
2 strike as nonresponsive.

3 MR. KUTIK: Your Honor, I believe that
4 her answer can be fairly characterized as saying word
5 for word you won't find what's discussed in the
6 stipulation in the statute, but the meaning of the
7 statute does encompass the tests.

8 MS. WILLIS: And I didn't ask her --

9 MR. KUTIK: Let me finish, if I may. In
10 that the statute envisions the type of test and, in
11 fact, the tests that are set out in Section E.

12 MS. WILLIS: If I may quickly. Yes, I
13 didn't ask her what the meaning of the statute is. I
14 asked her if the terms that are specifically in the
15 stipulation are contained in the statute.

16 MR. KUTIK: And I believe her answer was,
17 in effect, yes.

18 EXAMINER PRICE: I think she was just
19 trying to explain her answer, but if you want to
20 follow-up with a more explicit narrower question, I
21 will require the witness to answer "yes" or "no."

22 Q. (By Ms. Willis) Ms. Mikkelsen, is the
23 term found in the stipulation that the Commission
24 shall consider prospective quantitative and
25 qualitative effects of the ESP, is that found

1 specifically in the statutory language of
2 4928.143(E)?

3 THE WITNESS: May I ask to have the
4 question reread, please.

5 EXAMINER PRICE: You may.

6 (Record read.)

7 A. I am trying to be guided by the "yes" or
8 "no."

9 EXAMINER PRICE: Answer "yes" or "no" or
10 explain why you cannot answer yes or no.

11 THE WITNESS: I am having difficulty
12 answering yes or no because the statutory provision
13 very specifically refers to 4928.143(C) (1), the MRO
14 versus ESP test, which calls for comparison in
15 aggregate, which includes the qualitative and
16 quantitative.

17 So while the words as written in the
18 stipulation don't appear verbatim in the statute, I
19 think that they are addressing the statutory
20 provisions.

21 Q. (By Ms. Willis) Ms. Mikkelsen, you
22 mentioned the statute goes back to the -- to another
23 provision that dealt with the MRO test, correct?

24 A. Yes.

25 Q. And what statute was that that you

1 mentioned?

2 A. 4928.143(C)(1).

3 Q. Within that statute, are there -- is
4 there a specific provision that requires the
5 Commission to consider quantitative and qualitative
6 effects of an ESP?

7 MR. KUTIK: That's been asked and
8 answered, and it is now probably beyond the scope of
9 this hearing, your Honor.

10 EXAMINER PRICE: Overruled. She can
11 answer if she knows.

12 A. 4928.143, I apologize, yes, (C)(1)
13 says -- talks about approving an ESP application if
14 the Commission finds that the ESP, including its
15 pricing and all other terms and conditions, including
16 any deferrals, any future recovery of deferrals, is
17 more variable in the aggregate as compared to the
18 expected results that would otherwise apply under an
19 MRO.

20 So I take that statutory language to
21 encompass all of the quantitative and qualitative
22 measures associated with the plan.

23 Q. And that's your interpretation as a
24 nonattorney, correct?

25 A. That's correct.

1 MR. KUTIK: We will stipulate she is a
2 nonattorney, your Honor.

3 EXAMINER PRICE: Well established.

4 Q. Now, Ms. Mikkelsen, would you agree with
5 me that the specific transition provision found in
6 the stipulation, that is, that the Commission must
7 consider the impact of the termination of the ESP on
8 the financial health of the utilities, is not a
9 specific provision that's found under 4928.143(E)?

10 A. Those words are not found specifically?

11 MR. KUTIK: Well, I'll object at this
12 point as compound. Which question should we answer?

13 EXAMINER PRICE: I think she was trying
14 to ask a narrow question to answer a "yes" or "no"
15 reply.

16 MS. WILLIS: That is correct.

17 MR. KUTIK: We have several questions to
18 the witness at this point.

19 EXAMINER PRICE: I think the witness can
20 understand. She is asking if specific words are
21 written into the statute.

22 MS. WILLIS: Thank you, your Honor.

23 A. No.

24 Q. You would agree with a me, would you not,
25 Ms. Mikkelsen, under the statute the Commission does

1 not have to consider the impact of termination of the
2 ESP on the financial health of the utilities?

3 A. The statute does require the Commission
4 to take a prospective look at the financial health of
5 the utilities via the significantly excessive
6 earnings test requirement.

7 Q. But that look is not -- the Commission
8 does not have to look at the impact on the financial
9 health of the utilities if the ESP is terminated,
10 correct?

11 A. I don't think that there is anything in
12 the statute that prohibits the Commission from
13 performing that analysis.

14 Q. But there is nothing in the statute that
15 requires the Commission to look at the impact of
16 termination on the financial health of the utilities,
17 correct?

18 A. Beyond what we have already discussed,
19 no.

20 Q. You would agree with me, would you not,
21 Ms. Mikkelsen, that the PUCO should not look at the
22 impacts of the termination of the ESP on the
23 financial health of FirstEnergy Solutions?

24 A. I would agree with you.

25 Q. And you would also agree with me that

1 Section V-K of the stipulation, that provision is
2 intended to work in conjunction with 4928.143(E).

3 A. Yes.

4 Q. Now, the companies also have a statutory
5 right to terminate the ESP plan; is that correct?

6 A. Yes.

7 Q. And that right exists under 428.143(F),
8 correct?

9 A. Yes.

10 Q. And under the stipulation the companies
11 are not giving up any statutory rights to terminate
12 the ESP plan, correct?

13 A. Correct.

14 Q. And let's go back to the stipulation
15 provision K-1-A, and I want to direct your attention
16 to the last sentence that says, Termination shall not
17 affect the continued cost recovery of Riders DCR and
18 RRS." Do you see that reference?

19 A. Yes.

20 Q. So according to these words under the
21 stipulation, even if the ESP is terminated, rider DCR
22 and rider RRS will continue, correct?

23 A. Correct.

24 Q. At the same time if the ESP is
25 terminated, for example, the \$51 million of

1 shareholder contributions would end; is that correct?

2 A. Any commitments made associated with the
3 ESP would terminate with the ESP with the exception
4 of riders DCR and RRS.

5 Q. Now, Ms. Mikkelsen, you cannot think of
6 any example in the past, can you, where the PUCO has
7 allowed a provision that's approved as part of its
8 ESP to continue even if the underlying ESP is
9 terminated?

10 A. I know at the time of my deposition I
11 could not think of an example as we sat there. I
12 have given it some additional thought in the time
13 since then and recalled a few instances.
14 Specifically I am thinking of rider DSI, which
15 continued into the ESP II period out of the ESP I
16 period. I'm recalling a provision where the
17 companies agreed to absorb certain legacy RTEP costs
18 in the ESP II stipulation and that commitment
19 extended beyond the term of the ESP.

20 I think that there were some -- a couple
21 of riders in ESP I related to deferred costs coming
22 out of the transition, and the continuation of those
23 riders extended beyond the term of ESP I. Those are
24 some examples that I've thought of since we last
25 spoke.

1 EXAMINER PRICE: Can I ask a follow-up
2 question, not to this question but the preceding
3 question? It is going to be two questions, break
4 these things up.

5 When you say continued cost recovery of
6 riders DCR, do you mean the termination of the ESP
7 will allow the companies to continue to recover costs
8 that have already been incurred in future
9 reconciliation, or do you mean the company can
10 continue to incur new costs after the termination?

11 THE WITNESS: The latter.

12 EXAMINER PRICE: The company can continue
13 to incur new costs?

14 THE WITNESS: Yes, sir.

15 EXAMINER PRICE: With respect to rider
16 RRS, termination of the ESP will not affect rider RRS
17 at all; is that correct?

18 THE WITNESS: Correct.

19 EXAMINER PRICE: Thank you.

20 MS. WILLIS: Thank you, your Honor.

21 Q. (By Ms. Willis) Can you point to any
22 statute, Ms. Mikkelsen, that allows a provision
23 that's part of an ESP to continue if the underlying
24 ESP is terminated?

25 A. I think that the ESP Statute 4928.143

1 contemplates certain deferrals and subsequent
2 recovery of deferrals, and I think it contemplates
3 that extending potentially beyond the three-year
4 term.

5 MS. WILLIS: May I approach, your Honor?

6 EXAMINER PRICE: I have a follow-up
7 first. Under 4928.143(B)(2)(c), if the Commission
8 approved a surcharge for the construction of a new
9 generation facility in an ESP of any given length,
10 wouldn't that surcharge continue to be in place for
11 the life of the facility as long as the energy
12 capacity was committed to the State?

13 THE WITNESS: Yes.

14 EXAMINER PRICE: Thank you.

15 Thank you, Ms. Willis.

16 MS. WILLIS: May I approach?

17 EXAMINER PRICE: You may.

18 I had a follow-up. I thought you were
19 moving on to a new topic.

20 MS. WILLIS: These are all the copies I
21 have.

22 EXAMINER PRICE: We'll share.

23 Q. Can you turn to page 51 of that -- let me
24 strike that. You recall being deposed in this
25 proceeding, do you not, Ms. Mikkelsen, by OCC, most

1 recently in December, on December 22, 2015?

2 A. I do.

3 Q. And if you could go to page 51 of that
4 transcript, and I am going to ask you to read into
5 the record -- or I am going to read into the record a
6 question and answer, and I would like you to -- let
7 me strike that.

8 Directing your attention to page 51, line
9 9, the question was posed: "Are you aware of any
10 provision of law that allows a provision that's
11 approved as part of an ESP to continue even if the
12 underlying ESP is terminated?"

13 And Mr. Kutik: "Objection."

14 And the answer: "I am not an attorney
15 and I am not able to point to a statutory reference."

16 Did I read that correctly, Miss
17 Mikkelsen?

18 A. Yes, ma'am.

19 Q. Thank you. Now, going back to the
20 transition provision in the stipulation, under this
21 provision, termination would be based on the PUCO
22 finding that the plan does not continue to be more
23 favorable in the aggregate?

24 THE WITNESS: May I ask to have that
25 question reread, please.

1 EXAMINER PRICE: You may.

2 (Record read.)

3 A. May I ask you to rephrase the question,
4 please? I am not sure I understand the question.

5 Q. You indicate in the stipulation that
6 "Termination shall be only ordered following," and
7 then you have got conditions. And my question really
8 goes to the statute. 4928.143(E) requires that -- or
9 requires termination on the basis of a PUCO finding
10 that the plan does not continue to be more favorable
11 in the aggregate. Is that your understanding of when
12 the Commission can terminate the plan?

13 MR. KUTIK: May I have the question read,
14 please.

15 EXAMINER PRICE: You may.

16 (Record read.)

17 MR. KUTIK: I guess, your Honor, I
18 object. I am not sure what the question is. Is the
19 question does the statute require that termination be
20 based on the MRO versus ESP test?

21 EXAMINER PRICE: Let's ask Ms. Willis to
22 rephrase the question again, please.

23 MS. WILLIS: Thank you.

24 Q. (By Ms. Willis) Is it your understanding,
25 Ms. Mikkelsen, there are two conditions under which

1 the Commission can terminate an ESP plan under
2 Section 4928.143(E)?

3 A. Again, I am not an attorney, but my
4 reading of 4928.143(E) requires the Commission if a
5 plan extends into year four to conduct two tests, and
6 the results of those tests may inform a Commission's
7 decision but not require the Commission to terminate
8 the ESP based on the results of those tests.

9 Q. Would you agree with me that,
10 Ms. Mikkelsen, that Section K of the stipulation
11 could be strengthened as a customer protection if the
12 PUCO had the authority to terminate the entire ESP
13 plan including riders RRS and DCR in year four if the
14 ESP fails the statutory test?

15 A. May I ask which statutory test?

16 Q. The statutory test that you are referring
17 to under 4928.143(E).

18 A. I think Section 4928.143(E) calls out two
19 tests, the MRO versus ESP test and a prospective SEET
20 test. So that's why I am not entirely clear with
21 respect to the question, ma'am.

22 Q. Let's take both of those tests. Now,
23 you're getting back to where I was where I said are
24 there two ways the Commission is conducting the test.
25 One is the MRO under 4928.143. So with respect to

1 that test that is contained under the statute and
2 that is incorporated into provision K of the
3 stipulation, would you agree with me that the
4 stipulation could be strengthened as a customer
5 protection if the PUCO has the authority to terminate
6 the entire ESP plan including riders RRS and DCR in
7 year four if the ESP fails that MRO test?

8 A. Not necessarily.

9 Q. And why is that?

10 A. I'm not clear why under this hypothetical
11 the test is failing. But if the test is failing for
12 reasons not related to the benefits that accrue to
13 the customers arising from rider DCR and rider RRS,
14 then I don't think what you suggest would enhance
15 this from a customer perspective.

16 Q. Let me try it with respect to the second
17 test you've identified. Would you agree with me that
18 Section K of the stipulation could be strengthened as
19 a customer protection if the PUCO has authority to
20 terminate the entire ESP plan including riders RRS
21 and DCR in year four if the ESP fails the SEET
22 prospective test?

23 A. No.

24 Q. Ms. Mikkelsen, let's move on to the DCR
25 cap.

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1 MR. KUTIK: Your Honor, may we go off the
2 record?

3 EXAMINER PRICE: We may.

4 (Discussion off the record.)

5 EXAMINER PRICE: Let's go back on the
6 record. At this time we will break for lunch and
7 reconvene at 1:15. Thank you, all.

8 Let's go off the record.

9 (Thereupon, at 12:05 p.m., a lunch recess
10 was taken until 1:15 p.m.)

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Thursday Afternoon Session,

January 14, 2016.

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

Ms. Willis, you may continue.

MS. WILLIS: Thank you, your Honor.

- - -

CROSS-EXAMINATION (Continued)

By Ms. Willis:

Q. Good afternoon, Ms. Mikkelsen.

A. Good afternoon.

Q. Would you agree with me under the
latest-filed stipulation there are caps that the
company collected from customers under rider DCR?

A. Yes.

Q. And the DCR cap for the period of June 1,
2015, through May 31st of 2016, is \$210 million
before adjustments for over- and undercollections in
the prior period, correct?

A. Yes.

Q. And that means that customers could be
charged for that June 1, 2015, through May 31, 2016,
period up to \$210 million.

A. Subject to adjustment for over/under on

1 the cap, yes.

2 Q. And for the period June 1, 2016, through
3 May 31, 2017, the charges to customers could be as
4 high as \$240 million under the rider DCR, correct?

5 A. Yes. Again, subject to adjustments, if
6 any, associated with exceeding or underrunning the
7 prior year's cap.

8 Q. Okay. And if we take the June 1, 2017,
9 through May 31, 2018, period, the total charges to
10 customers could be as high as 270 million, correct?

11 A. Correct. Subject to the same provision I
12 discussed earlier.

13 Q. And if we take June 1, 2018, through
14 May 31, 2019, period, the total charges to customers
15 could be as high as 300 million.

16 A. Correct, subject to any over- or
17 undercollection relative to the prior year's cap.

18 Q. And if we take the June 1, 2019, through
19 May 31, 2020, period, the total charges to customers
20 could be as high as \$320 million under the DCR rider.

21 A. Correct, subject to any adjustments
22 associated with exceeding or underrunning the cap of
23 the prior year.

24 Q. And if we go to the June 1, 2020, through
25 May 31, 2021, period, the total charged to customers

1 could be as high as 340 million from the DCR rider.

2 A. Correct, subject to any adjustments
3 associated with exceeding or underrunning the cap in
4 the prior year.

5 Q. And if we take the June 1, 2021, through
6 May 31, 2022, period, the total charges to customers
7 could be as high as 360 million, correct?

8 A. Correct. Subject to any adjustments
9 associated with exceeding or underrunning the cap in
10 prior years.

11 Q. And if we take the June 1, 2022, through
12 May 31, 2023, period, the total charges to customers
13 could be as high as \$375 million, correct?

14 A. Correct, subject to any adjustments
15 associated with exceeding or underrunning the cap in
16 prior years.

17 Q. And if we take the June 1, 2023, through
18 May 31, 2024 period, the very end, the total charges
19 to customers could be as high as \$400 million under
20 rider DCR.

21 A. No.

22 Q. And can you tell me what the total
23 charges to customers under that period would be?

24 A. For the period of the delivery year 2023
25 to 2024?

1 Q. Yes.

2 A. \$30 million, subject to adjustments for
3 exceeding or underrunning the cap.

4 Q. Thank you.

5 A. You're welcome.

6 Q. So the total charges that could be
7 collected from customers under the DCR rider proposed
8 in this latest stipulation over the eight-year period
9 is \$2.59 billion; is that correct?

10 A. The total of the caps we've discussed is
11 \$2.595 billion. Again, any collection associated
12 with DCR would be dependent upon the company
13 expending dollars to improve the safety and
14 reliability of their distribution system subject to
15 Commission review and approval before those dollars
16 were allowed into the DCR cap for recovery subject to
17 these caps.

18 Q. Now, Ms. Mikkelsen, the revenue
19 requirement calculation for rider DCR includes a
20 return on equity component, does it not?

21 A. Yes.

22 Q. And the return on equity allowed on the
23 investment for purposes of calculating rider DCR is
24 10.5 percent, correct?

25 A. Correct.

1 Q. And that 10.5 percent return on equity
2 component of the DCR rider will remain in effect
3 during the entire time that the DCR rider is being
4 collected from customers; is that correct?

5 A. 10.5 is the return on equity that will be
6 used in the DCR revenue requirement calculation
7 during the term of ESP IV.

8 Q. Thank you. Now, I want to switch gears
9 for a moment and talk about the fixed variable rate,
10 the straight fixed variable rate design. On page 4
11 of your testimony, lines 23 to 28, you discuss the
12 stipulation provisions related to straight fixed
13 variable rate design. Do you see that?

14 A. I'm sorry. What was that page reference?
15 Pardon me, the line reference, 23 to 28?

16 Q. 23 to 28.

17 A. I have that. Thank you.

18 Q. Now, you indicate in your testimony on
19 lines 23 and 24 that "The Companies will file an
20 Application for Tariff Approval case." Can you tell
21 me, is a tariff approval case different from a
22 distribution rate case, if you know?

23 A. Yes.

24 Q. And the stipulation also lays out a
25 three-year phase-in of the straight fixed variable

1 rate design; is that correct?

2 A. Yes.

3 Q. And under provision F-1-B of the latest
4 stipulation, the cost recovery shall be based on the
5 allocation of 75 percent fixed costs and 25 percent
6 variable costs, correct?

7 A. Subject to the phase-in, it will
8 ultimately in year three culminate in 75 percent
9 fixed costs and 25 percent variable costs.

10 Q. And that 75/25 allocation would remain in
11 effect for the remaining five years of the ESP term;
12 is that correct?

13 A. I think -- I mean, the stipulation
14 requires the company and during -- under the
15 stipulation the companies agree to file a case before
16 the Commission that sets out a straight decoupling --
17 straight fixed variable decoupling mechanism as
18 outlined in the stipulation. Ultimately, what rates
19 are put into effect and the term of those rates, in
20 my mind, is subject to Commission determination as
21 part of that filed case.

22 Q. So the Commission could determine that
23 the 75/25 percent ratio for purposes of that late
24 design is inappropriate?

25 A. Yes.

1 Q. Now, the cost allocation, the 75 percent
2 fixed costs and 25 percent variable costs, was agreed
3 to as part of the negotiated settlement, correct?

4 A. Yes.

5 Q. And there was no study that was relied
6 upon or analysis to support the 75 percent -- 75/25
7 percent allocation; is that correct?

8 A. I can't speak for all of the signatory
9 parties. The companies did not rely on a study when
10 agreeing to the 75 percent fixed/25 percent variable.

11 MS. WILLIS: Your Honor, I guess I don't
12 have to approach because I believe the witness still
13 has the transcript.

14 Q. I would direct your attention,
15 Ms. Mikkelsen, to the transcript of your deposition
16 beginning on page 62, line 24, and I am going to read
17 the question and answer into the record and ask you
18 if I have read that correctly.

19 "Question: If you know, is there any
20 study or analysis that relies upon a 75 percent and
21 25 percent variable cost allocation for straight
22 fixed variable rate design?"

23 And then there is "Mr. Kutik "objection,
24 same instruction."

25 "Answer: I am not aware of any such

1 study."

2 Did I read that correctly?

3 MR. KUTIK: Objection, your Honor.

4 EXAMINER PRICE: Grounds?

5 MR. KUTIK: That's not inconsistent with
6 her testimony. It's improper impeachment.

7 EXAMINER PRICE: I agree. Sustained.

8 MS. WILLIS: May I have her answer reread
9 then?

10 EXAMINER PRICE: You may. Her first
11 answer?

12 MS. WILLIS: Her first answer.

13 (Record read.)

14 Q. (By Ms. Willis) Are you aware of any
15 studies that the signatory parties would have relied
16 upon to support the 75 percent/25 percent allocation?

17 A. No.

18 Q. Are you aware, Ms. Mikkelsen, of whether
19 or not -- let me strike that.

20 Are you aware of any electric
21 distribution utility that has an approved straight
22 fixed variable rate design in the State of Ohio?

23 THE WITNESS: May I ask to have the
24 question reread, please?

25 EXAMINER PRICE: You may.

1 (Record read.)

2 THE WITNESS: Thank you.

3 A. No.

4 Q. Are you aware, Miss Mikkelsen, of any gas
5 utility in Ohio that has a straight fixed variable
6 rate design that uses a 75 percent fixed and 25
7 percent variable cost allocation for its rate design?

8 A. I am not aware of the specifics
9 associated with the gas companies decoupling
10 mechanisms.

11 Q. Thank you. In the latest filed
12 stipulation under the transition to decoupled rates
13 under Section F-2, it states, "All lost distribution
14 revenues shall continue to be recovered in its
15 current fashion up to the time that any decoupling
16 mechanism is implemented." Do you see that reference
17 in the stipulation?

18 A. Yes.

19 Q. Now, the lost distribution revenue is
20 currently being recovered by the companies in rider
21 DSE-2; is that correct?

22 A. Yes.

23 Q. And the companies measured the lost
24 revenues by identifying the kilowatt-hours that have
25 been saved as a result of energy efficiency and then

1 determine what the distribution revenue would have
2 been associated with those kilowatt-hours or kilowatt
3 demand, and then those dollars are recovered in rider
4 DSE-2; is that correct?

5 A. Yes.

6 Q. And when you are determining the
7 distribution revenues that would have been collected,
8 you do not weather normalize the revenues; is that
9 correct?

10 A. Well, it's true that we don't weather
11 normalize the kWh savings when we do the lost
12 distribution revenue calculation. The reason we
13 don't weather normalize is because the values
14 associated with the savings are taken from the TRM,
15 and the values included in the TRM are already
16 weather-normalized so it is not necessary to perform
17 that function when we do the lost distribution
18 revenue calculation.

19 MS. WILLIS: Your Honor, I would move to
20 strike the response beginning with "the reason." My
21 question asked specifically whether or not they
22 weather normalize the revenue, and that's redirect
23 material. If counsel wants to redirect, he can do
24 so, but it's not responsive to my question.

25 MR. KUTIK: It's a misleading question,

1 your Honor. She is allowed to indicate why it is
2 misleading.

3 MS. WILLIS: I don't think she said it
4 was misleading.

5 MR. KUTIK: She doesn't have to call you
6 names. I can.

7 EXAMINER PRICE: Mr. Kutik, let's not do
8 that.

9 MR. KUTIK: It was a gesture, your Honor.

10 EXAMINER PRICE: I understand.

11 I think Mr. Kutik's point is the premise
12 is misleading, and we will deny the motion to strike
13 on that basis.

14 Q. (By Ms. Willis) Now, the approved rates
15 would have been the rates set in the last base
16 distribution rate case; is that correct?

17 A. Relative to the lost distribution revenue
18 calculation?

19 Q. Yes.

20 A. Yes.

21 Q. And is it your understanding that the
22 approved rates in the last base distribution rate
23 case were not based on weather-adjusted base
24 distribution revenue?

25 THE WITNESS: May I ask to have that

1 question reread, please.

2 (Record read.)

3 A. My understanding is the base distribution
4 rates set in the last base distribution rate case
5 were based upon weather-normalized revenues.

6 Q. And what is your understanding based on?
7 Is that what you recall?

8 A. I was not working in the rate department
9 at the time the rates were set, but in my experience
10 that is how the rates are set.

11 Q. Thank you. Now, certain customers may
12 opt out of the companies' energy efficiency programs
13 pursuant to SB 310, and as a result, they would not
14 be charged rider DSE-2; is that correct?

15 A. Customers who opt out of the companies'
16 energy efficiency programs pursuant to SB 310 are --
17 are not charged rider DSE-1 or rider DSE-2.

18 Q. Thank you.

19 A. You're welcome.

20 Q. Now, under the stipulation,
21 weather-adjusted base distribution and lost
22 distribution revenue in kWh sales as of the 12-month
23 period ended September 30, 2018, correct?

24 A. Yes.

25 Q. And under the tariff approval application

1 process that is recommended as part of the
2 stipulation, will parties have the opportunity to
3 review the weather-adjusted base distribution revenue
4 and lost distribution revenue in kWh sales?

5 A. At the time the companies make the
6 filing -- the companies are required to make the
7 filing by April 3rd of 2017, which precedes the
8 12-month period ending September 30, 2018. So the
9 way I envision it working is the companies would make
10 the filing, and then they would update the filing,
11 depending upon the timing of the order, with the
12 actual information as of 12-30-2018; or if the
13 proceeding is, I guess, still continuing, then
14 parties pursuant to the process would have the
15 opportunity to assure themselves that the values
16 being used in the rates are, in fact,
17 weather-adjusted base distribution revenue and lost
18 distribution revenue in kWh sales as of the 12 months
19 ending September 30, 2018.

20 Q. And this is consistent with your
21 understanding of how a tariff approval process works?

22 A. Yes.

23 Q. Now, the companies will make their filing
24 for a grid modernization business plan within 90 days
25 of the third supplemental stipulation being filed; is

1 that correct?

2 A. Yes.

3 Q. And that would be around March 1st of
4 2016?

5 A. February 29 or March 1, yes.

6 Q. At that time the companies -- or, the
7 companies will include a plan for the decoupling
8 mechanism; is that correct?

9 A. The companies will include information
10 associated with the decoupling mechanism in the
11 filing.

12 Q. And what that information will be has not
13 been determined at this time; is that correct?

14 A. That's correct.

15 Q. And the company has not determined that
16 when it files its plan for straight fixed variable
17 rates that it will present customer impacts from the
18 straight fixed variable proposal; is that correct?

19 MR. KUTIK: Objection, your Honor.

20 EXAMINER PRICE: Grounds?

21 MR. KUTIK: The specifics of what gets
22 filed and the companies' plans at this point, your
23 Honor, should be better discussed in another
24 proceeding, not this one.

25 EXAMINER PRICE: She is simply asking

1 whether they have determined it or not. The
2 objection is overruled.

3 A. I am unclear. Maybe we can have the
4 question read, or perhaps I could just ask, is the
5 question relative to the 90-day filing or the actual
6 ATA filing which will occur in a time subsequent?

7 Q. The 90-day filing.

8 A. The companies have not decided yet what's
9 going to be included in the 90-day filing.

10 Q. Would you agree with me, Ms. Mikkelsen,
11 that there is an analysis of the impact showing the
12 effect of straight fixed variable on customers that
13 is currently underway but not yet complete?

14 A. Yes.

15 Q. And that is the analysis that may or may
16 not be included in the plan that's filed in 90 days?

17 A. I am trying to be very particular. I
18 think what I said was the company will file
19 information relative to the decoupling mechanism as
20 required in the stipulation within 90 days. I think
21 the actual decoupling application, which is
22 subsequently filed, would be more specific as to the
23 companies' plans at that time for decoupling.

24 Q. Is it your understanding that the
25 stipulation does not require the company in their

1 90-day filing to present the impact of the straight
2 fixed variable rate design on residential customers?

3 A. I don't think the stipulation requires
4 the company to file in the 90-day filing the impact
5 of the decoupling mechanism on customers. As to
6 whether or not the companies will include that in the
7 90-day filing, that hasn't been decided.

8 Q. Now, Ms. Mikkelsen, you are familiar, are
9 you not, with the PUCO docket which looked at the
10 distribution utilities' rate structures, and
11 specifically I am referring to docket 10-3126-EL-UNC.

12 A. Yes.

13 Q. And is it your understanding that in that
14 docket the PUCO posed discussion questions on
15 decoupling as well as straight fixed variable rate
16 design?

17 A. Yes.

18 Q. And the PUCO sought comments on its
19 questions, correct?

20 A. Yes.

21 Q. And, Ms. Mikkelsen, you are aware the
22 company has filed comments in response to the
23 Commission's entry and request for comments?

24 A. Yes.

25 Q. And you are familiar with those comments,

1 correct?

2 A. Yes.

3 Q. In fact, you assisted in drafting those
4 comments.

5 A. Yes.

6 MS. WILLIS: Your Honor, at this time I
7 would like marked for identification purposes as OCC
8 Exhibit No. 34 the comments of Ohio Edison Company,
9 The Cleveland Electric Illuminating Company, and The
10 Toledo Edison Company filed in Case No.
11 10-3126-EL-UNC on February 11, 2011.

12 EXAMINER PRICE: It will be so marked.

13 MS. WILLIS: May I approach?

14 EXAMINER PRICE: You may.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. (By Ms. Willis) Do you have that -- what
17 has been marked as OCC Exhibit No. 34 in front of
18 you?

19 A. Yes.

20 Q. And can you identify that document,
21 please?

22 A. OCC Exhibit 34 is comments of Ohio Edison
23 Company, The Cleveland Electric Illuminating Company
24 and The Toledo Edison Company, dated February 11,
25 2011, In the Matter of Aligning Electric Distribution

1 Utility Rate Structure with Ohio's Public Policies to
2 Promote Competition, Energy Efficiency, and
3 Distributed Generation.

4 Q. And do you believe that to be a true and
5 accurate copy of the comments that were filed?

6 A. It is a 14-page document. I haven't, as
7 I sit here today, read this to assure myself, but I
8 have no reason to believe that it is not.

9 Q. Thank you. Now, Ms. Mikkelsen, you are
10 familiar with the final order that was issued in this
11 case, correct?

12 MR. KUTIK: You are talking about 10?

13 MS. WILLIS: 10-3126-EL-UNC.

14 A. Yes.

15 Q. And is it your understanding, among other
16 things, the Commission determined that the
17 appropriate time to implement a straight fixed
18 variable rate design is during an electric utility's
19 base distribution rate case?

20 A. While the order did find that the
21 appropriate time for looking at moving to straight
22 fixed variable rate design was in a distribution rate
23 case, it didn't prohibit looking at the change to a
24 straight fixed variable rate design in any other
25 proceeding.

1 Q. Ms. Mikkelsen, can I direct your
2 attention to your deposition transcript, page 76,
3 beginning on line 1. I am going to read the question
4 and answer and ask you if I'm reading that correctly.

5 "Question: And is it your understanding
6 that part of the Commission's determination -- that
7 part of the Commission's determination in this
8 case" -- with 10-31-26 -- "was that the appropriate
9 time to implement an SFE rate design is during an
10 electric utility's rate case?"

11 "Mr. Kutik: Objection. The document
12 speaks for itself."

13 "Answer: That's what the document says
14 on page 20 under paragraph 64."

15 Did I read that correctly?

16 MR. KUTIK: Objection, your Honor.

17 EXAMINER PRICE: Grounds?

18 MR. KUTIK: First, whatever the order
19 says, the order says, and this witness has indicated
20 what she -- her general agreement that the provisions
21 that Ms. Willis suggests are in the document also
22 didn't preclude consideration of straight fixed
23 variable rates in other proceedings. So it's not
24 inconsistent; therefore, it's improper impeachment.
25 It's improper questions and improper impeachment.

1 EXAMINER PRICE: Well, she didn't mention
2 the part about "not preclude" in her deposition, so I
3 don't think it's improper impeachment at this point.

4 MS. WILLIS: Thank you, your Honor.

5 EXAMINER PRICE: Overruled.

6 Q. (By Ms. Willis) Let's go to your
7 testimony on page 3. Specifically I want to direct
8 your attention to line 25 where you testify that "The
9 risk sharing element contained in the Companies'
10 original filing is expanded." Do you see that?

11 A. I'm sorry, may I have that reference
12 again, the page reference? I apologize.

13 Q. Yes. I'm sorry, I may be talking a
14 little bit fast. Page 3, line 25.

15 EXAMINER PRICE: She wants to get you up
16 and down off of the stand.

17 MS. WILLIS: I want to be held to my
18 two-hour time.

19 A. My concern is what document are we
20 talking about?

21 Q. We are talking about your fifth
22 supplemental -- I believe you call it fifth
23 supplemental testimony.

24 A. Okay. So the fifth supplemental
25 testimony, page 3.

1 Q. Yes.

2 A. Lines 25 to 27?

3 Q. Yes.

4 A. I'm there.

5 Q. Okay. Now, when you refer to the
6 risk-sharing element contained in the companies'
7 original filing being expanded, are you speaking of
8 the risk-sharing element that was the audit provision
9 in the application?

10 A. The reference to the risk-sharing element
11 contained in the companies' original filing is the
12 rigorous review process that was outlined in my
13 direct testimony.

14 Q. And that was -- I guess I'm just trying
15 to make -- let me strike that.

16 The risk-sharing element was the audit,
17 correct? Is that what you were referring to?

18 A. Yes.

19 Q. Now, specifically you set forth a review
20 process for the retail rate -- retail stability
21 rider, and that was set forth in your direct
22 testimony of August 4, 2014?

23 A. Yes. And as we discussed earlier today,
24 I think it was also addressed in my second
25 supplemental testimony and then here again in my

1 fifth supplemental testimony.

2 Q. Yeah. In your second supplemental
3 testimony, which is filed on May 4, 2015, you
4 characterized the review process as a risk-sharing
5 mechanism, correct?

6 A. Correct.

7 Q. And by risk sharing, you are meaning that
8 the companies will be sharing risks with their
9 customers; is that correct?

10 A. When I think of the risk-sharing
11 mechanism, I think of it in terms of both the
12 original audit provision as well as the subsequent
13 provision in the third supplemental stipulation as
14 the companies' sharing in the risks associated with
15 rider RRS.

16 Q. And the risks associated with rider RRS
17 are shared by the -- are borne by the customers,
18 correct?

19 A. As shared by the companies here.

20 Q. So the risk sharing is between the
21 customers and the companies?

22 A. Correct.

23 Q. And there is no risk sharing by
24 FirstEnergy Solutions; is that correct?

25 A. I am not sure I understand your question

1 in this context, ma'am.

2 Q. Let's put my question in the context --
3 in the greater context of the stipulation. Under the
4 stipulation there's no risk sharing by FirstEnergy
5 Solutions; is that correct?

6 A. Nothing in this proceeding or any of the
7 stipulations address the proposed transaction and the
8 terms of the proposed transaction between the
9 companies and FirstEnergy Solutions. That matter is
10 not before the Commission for determination.

11 Q. In the proposed transaction between the
12 companies and FES solutions, is there any risk
13 sharing by FirstEnergy Solutions?

14 MR. KUTIK: Well, I'll object now, your
15 Honor. I believe it's beyond the scope of this
16 proceeding. This hearing should be to discuss the
17 third supplemental stipulation and, specifically, the
18 changes that are made by the third supplemental
19 stipulation to the proposal, the effects of those
20 changes in the settlement, and gave rise to that
21 change. All the provisions of the original proposal
22 as it stood at the time of the last hearing, we're
23 well beyond that at this point, your Honor.

24 EXAMINER PRICE: Ms. Willis, fishing
25 expedition.

1 MS. WILLIS: Your Honor, the -- she
2 testified that she's expanding the risk sharing by
3 this stipulation, by provisions in this stipulation,
4 and I am just exploring how that has been expanded.

5 MR. SETTINERI: And, your Honor, if I
6 may, her prior testimony also indicated information
7 sharing with FES where she said information requests
8 that flow to FES, certainly provisions of the PPA,
9 that may implicate certain aspects of the
10 stipulation, and the interaction of FES with FE or
11 the companies in this proceeding --

12 EXAMINER PRICE: But Mr. Kutik's point,
13 she could have asked Miss Mikkelsen this very same
14 question during her previous 35 days of hearing.
15 Nothing in the third supplemental stipulation has
16 changed the provisions that she's talking about in
17 this specific question. Therefore, his objection
18 will be sustained.

19 Q. (By Ms. Willis) Now, focusing on page 3,
20 line 25, and continuing to page 4, line 3, you
21 believe that the risk-sharing element does not
22 require the companies to provide a credit; is that
23 correct?

24 EXAMINER PRICE: Could I have that
25 question again?

1 (Record read.)

2 A. To the extent that rider RRS produces a
3 credit in excess of naturally producing a credit
4 without the companies' augmenting or providing any
5 credit, assuming rider RRS produces a credit of 10
6 million in year five, 20 million, in year six,
7 30 million in year seven, and 40 million in year
8 eight, under that set of circumstances, the companies
9 are not required to make an additional credit payment
10 subject to this risk-sharing element.

11 Q. So would you agree with me under the
12 risk-sharing element contained in the -- that is
13 expanded and contained in the stipulation, that it
14 only creates a circumstance in which -- it only
15 creates a circumstance in which the companies may
16 provide a credit?

17 A. Correct.

18 Q. Now, you would agree with me that the
19 companies' obligation to provide the credit is
20 independent of the credit that would naturally occur
21 under rider RRS and is contingent upon future
22 outcomes, correct?

23 MR. KUTIK: I'll object. What does it
24 mean to be independent?

25 EXAMINER PRICE: Please rephrase.

1 Q. You would agree with me, Ms. Mikkelsen,
2 that the companies' obligation to provide a credit
3 does not depend on whether the credit -- let me
4 strike that.

5 Now, if one or more of the units
6 associated with rider RRS are sold, is the company
7 still obligated under the stipulation to credit
8 customers in years five through eight for the units
9 that have been sold?

10 A. There is nothing in the risk-sharing
11 mechanism included in the third stipulation and
12 recommendation that ties the commitment in that
13 provision specifically to the plants that are
14 included today in the proposed transaction.

15 Q. Ms. Mikkelsen, if one or more of the
16 units associated with rider RRS are sold, are
17 customers still obligated under the stipulation to
18 pay for charges associated with those plants under
19 rider RRS?

20 A. The term sheet has a provision,
21 specifically number 24, which addresses assignment of
22 the agreement between the companies and FES. And
23 that provision dictates that the assignment of the
24 contract can't occur without the prior written
25 consent of the parties to the agreement, so in my

1 mind under the scenario I think you are laying out is
2 if FirstEnergy Solutions were to sell or transfer the
3 plants, it would invoke this assignment provision and
4 the sale would go forward, only with the affirmative
5 approval of the utilities for the assignment in which
6 case the transaction would continue as laid out
7 subject to the provision in the stipulation, which
8 provides the Commission the opportunity should there
9 be a sale or a transfer of the unit, it provides the
10 Commission the opportunity, not the obligation, to
11 proceed to terminate the charge or credit included in
12 rider RRS for any generation unit after the sale or
13 transfer of the unit.

14 Q. Now, I want to break down your answer a
15 little bit and talk to you about things that you
16 mentioned in your answer. You said the transaction
17 would continue. That phraseology, are you saying
18 that the rider RRS collection from customers would
19 continue?

20 A. When I was talking about the transaction
21 continuing, I was referring specifically to the
22 agreement that would exist between the companies and
23 FirstEnergy Solutions, which may subsequently be
24 assigned to whoever in the event of a sale or
25 transfer of the unit independent of the rider RRS.

1 Q. So if the Commission does not take the
2 opportunity that you referenced to change things,
3 then customers would still be obligated under the
4 stipulation to pay for the charges associated with
5 those plants under rider RRS even, if they had been
6 assigned or sold or transferred.

7 A. Well, again, all of the costs and
8 revenues that are netted and the net -- difference
9 between the two that are included in rider RRS are
10 subject annually to the Commission staff and the
11 Commission's rigorous review. So if the units are
12 sold or transferred with the approved assignment by
13 the companies and the Commission hasn't elected to
14 terminate the charge or credit, then those costs will
15 continue to be netted against the revenues arising
16 from the sale of the energy, capacity, ancillary, and
17 environmental attributes. The difference will be
18 proposed for inclusion in rider RRS and subject to
19 the review process.

20 Q. Thank you.

21 A. You're welcome.

22 Q. Now, before the companies were willing to
23 accept the expanded risk sharing that you referred to
24 in the latest stipulation, did they conduct any
25 analysis or study as to its impact on their financial

1 well-being?

2 A. May I ask you to be more specific with
3 your question, please, ma'am?

4 Q. Did you, Miss Mikkelsen, see any study of
5 the financial impact of the stipulation -- the latest
6 stipulation's provisions that have been -- let me
7 strike that.

8 You cannot recall, Miss Mikkelsen, seeing
9 any financial impact analysis being conducted for the
10 utilities with respect to the expanded risk
11 provisions in the stipulation; is that correct?

12 A. That's correct. As proposed, the
13 companies show rider RRS with credits in years five,
14 six, seven, and eight in excess of the levels that
15 would trigger this risk-sharing provision, so from a
16 company perspective, no analysis is necessary.

17 Q. And you can't recall seeing any financial
18 impact analysis being conducted for the utilities on
19 the stipulation as a whole.

20 A. The companies file -- pardon me. For the
21 stipulation as a whole, no. The answer is no. The
22 stipulation is designed, in large measure, to be
23 revenue neutral to the companies. The DCR provisions
24 included in the stipulation were included in the pro
25 forma financial analysis that the company included in

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1 its original application, and beyond that, the
2 additional stipulation commitments are very clear
3 with respect to those provisions that would be funded
4 by the companies. So I think the information is all
5 there, but, no, I have not seen a specific analysis.

6 Q. The financial statements that you refer
7 to supported the application, correct, and not the
8 latest filed stipulation?

9 A. That's correct. But the latest-filed
10 stipulation is, in large measure, designed to be
11 revenue neutral to the utility, so there would not be
12 any change to the utility's financial analysis. The
13 DCR was built in already, so the notable exception to
14 that would be the changes included in the stipulation
15 relative to the company funding low income and
16 economic development and the Customer Advisory Panel
17 without recovery from the customers.

18 Q. And wasn't there also a provision in the
19 stipulation which lowered the rate of return on the
20 riders? Wasn't that agreed to as part of the latest
21 stipulation, and doesn't that have a financial
22 impact?

23 MR. KUTIK: Well, which question should
24 we be answering, your Honor?

25 MS. WILLIS: I can strike that. I can

1 restart.

2 EXAMINER PRICE: Rephrase, please.

3 Q. Miss Mikkelsen, there is a provision
4 under the latest stipulation that revises the rate of
5 return earned on riders; is that correct?

6 A. No.

7 Q. That is not correct. And can you tell me
8 why that is not correct?

9 A. There is no provision in the third
10 stipulation and recommendation that addresses the ROE
11 contained in the proposed transaction between the
12 companies and FirstEnergy Solutions.

13 Q. I'm talking about the transaction -- or
14 the return on equity associated with the charges to
15 customers.

16 MR. KUTIK: That question has been asked
17 and answered, your Honor.

18 EXAMINER PRICE: Care to rephrase?

19 MS. WILLIS: Sure.

20 Q. (By Ms. Willis) Do you recall FirstEnergy
21 Exhibit 156, the revised term sheet?

22 A. I do.

23 Q. Can you tell me how that term sheet
24 differs from the prior term sheet that was provided
25 as part of this proceeding?

1 A. Yes.

2 Q. Please do.

3 A. The delivery period in the term sheet in
4 Company Exhibit 156 has been modified such that the
5 transaction ends May 31, 2024. On page 13 of 15 --

6 Q. Yes.

7 A. -- under the capacity payment,
8 specifically the weighted average cost of capital,
9 the return on equity was changed from 11.15 percent
10 to 10.38 percent. And there was a signature page
11 added to the term sheet which was executed on behalf
12 of the companies as well as FirstEnergy Solutions on
13 May 18th of 2015.

14 Q. Thank you.

15 A. You're welcome.

16 Q. And with respect to the capacity payment
17 where the weighted average cost of capital was
18 revised, that did not have a financial impact on
19 the -- on the utilities; is that your testimony?

20 A. Correct. That does not have a financial
21 impact in the way the Economic Stability Program and
22 rider RRS are designed to work as the costs
23 associated with the proposed transaction which would
24 be determined, in part, by this 10.38 are netted
25 against the revenues that the utilities receive from

1 selling the energy, capacity, ancillary, and
2 environmental attributes into the market, and the net
3 of those two would be included for recovery in rider
4 RRS with no financial impact to the utility.

5 Q. So, essentially, the customers are paying
6 that return on equity, the weighted average cost of
7 capital associated with that provision in rider RRS,
8 correct?

9 MR. KUTIK: Now, I'll object, your Honor.

10 EXAMINER PRICE: Grounds?

11 MR. KUTIK: Beyond the scope of the
12 proceeding.

13 EXAMINER PRICE: We will give her a
14 little leeway on this question.

15 You can go ahead and answer.

16 A. The company -- pardon me. The customers
17 are advantaged by the reduction in the return on
18 equity from 11.15 percent to 10.38 percent in the
19 revised term sheet.

20 Q. Now, under rider RRS, the utilities pass
21 through the costs and revenues associated with the
22 FES generation; is that correct?

23 A. May I ask you to be more specific with
24 respect to your question, ma'am, please?

25 Q. I'm not sure how I can be more specific,

1 Miss Mikkelsen. My question is, under rider RRS, the
2 utilities pass through costs and revenues, net costs
3 and revenues associated with FES generation, correct?

4 A. I'm struggling with the use of the term
5 "FES generation." There are very specific --

6 Q. FirstEnergy Solutions' PPA units.

7 A. May I have the question restated then?

8 Q. Yes. Under rider RRS the utilities pass
9 through the costs and revenues associated with the
10 units that are associated with rider RRS; is that
11 correct?

12 A. Rider RRS is designed as a hedge to the
13 benefit of the customers, and that rider includes the
14 costs that arise from the proposed transaction as
15 netted against the revenues derived from the sale of
16 the energy, capacity, ancillaries, and environmental
17 attributes into the market, and that net difference
18 is included as a charge or a credit in rider RRS.

19 Q. And that net -- let me strike that.

20 We talked earlier today about the SEET
21 test. Do you recall that?

22 A. Yes.

23 Q. And I think when we talked earlier, we
24 were talking about the prospective SEET test; is that
25 correct?

1 A. Yes.

2 Q. And are you familiar with the annual SEET
3 test?

4 A. Yes.

5 Q. And would you agree that there's an
6 annual SEET review contemplated under the stipulation
7 for each of the utilities?

8 A. I would agree that the companies are
9 obligated to make an annual SEET filing for review
10 pursuant, I believe, to the ESP statute.

11 Q. And there's nothing in the stipulation
12 that changes that.

13 A. There is a provision in the Third
14 Supplemental Stipulation and Recommendation that
15 discusses the annual SEET filing, and, specifically,
16 I'm at page 16, paragraph H, item 4, where we agree
17 that the determination of whether to exclude the
18 impact of deferred carrying charges shall be made at
19 the time of the companies' annual SEET filing. That
20 is the only reference to the annual SEET filing that
21 I recall in the Third Supplemental Stipulation and
22 Recommendation.

23 Q. Now, if the utilities experience losses
24 through disallowances under rider RRS, will those
25 losses be factored into the information that's filed

1 with the SEET review?

2 A. Yes.

3 Q. And losses that the utilities would
4 experience would reduce the operating revenues of the
5 utilities, all else being equal, and reduce the net
6 income that would be looked at to determine whether
7 or not there is significantly excessive earnings in
8 that annual review, correct?

9 EXAMINER PRICE: Ms. Willis, don't answer
10 that question yet.

11 How has this changed from the situation
12 we had where we had five weeks of hearings -- seven
13 weeks of hearings by the third supplemental
14 stipulation?

15 MS. WILLIS: Well, your Honor, she did
16 mention a change to the SEET provision that was not
17 on page 16, which was not in the -- in the prior
18 revision.

19 EXAMINER PRICE: But your question is not
20 on that change. You can ask her all the questions
21 you want on that provision, but just asking her if
22 losses -- you could have asked her the question you
23 just asked her in the previous proceeding, and,
24 therefore, it's outside the scope of this proceeding.

25 Q. Now, on page 4, lines 4 through 8 of your

1 testimony, you speak of the rigorous review process
2 that was agreed to by the companies, correct?

3 A. Yes.

4 Q. And that's covered by provision V-B-3 of
5 the latest filed stipulation, correct?

6 A. Yes.

7 Q. And in that section, if you give me a
8 moment, you discuss full information sharing with the
9 PUCO staff, correct?

10 A. For clarity, which section are we
11 referring to now? My testimony or the stipulation?

12 Q. I'm sorry, the stipulation.

13 A. Okay.

14 Q. Section V-3, page 8, 3-b.

15 A. I'm there.

16 Q. Now, you testified earlier that -- let me
17 strike that.

18 You testified earlier that you are
19 committed to share information with the staff upon
20 reasonable staff requests, correct?

21 A. We had a lot of discussion earlier about
22 information that we would share relative to the
23 plants included in the proposed transaction as well
24 as information that would be shared relative to the
25 FirstEnergy Solutions fleet pursuant to the Third

1 Supplemental Stipulation and Recommendation.

2 Q. Now, could you tell me what would be an
3 unreasonable staff request, in your opinion, related
4 to that information sharing provision?

5 A. For example, if the staff were to ask the
6 companies to provide Social Security numbers for each
7 and every employee at the plant, I think I would view
8 that as an unreasonable request because I wouldn't
9 see where that information would provide value to the
10 determination of the reasonableness of the costs
11 included in rider RRS.

12 Q. Can you think of any other requests that
13 would be unreasonable?

14 A. I suppose if I sat here, I am sure I
15 could think of a number, but I am not sure to what
16 end.

17 Q. Now, in the last sentence of 3-b under
18 page 8 of the stipulation, under the review of rider
19 RRS, the statement is made that information provided
20 to the staff "shall not be subject to a public
21 information request and shall be protected
22 indefinitely." Do you see that?

23 A. I do.

24 Q. Now, you are not aware, Ms. Mikkelsen, of
25 any information that is provided to the staff that

1 received indefinite protection; is that correct?

2 A. It was correct at the time of my
3 deposition. I have subsequently become aware -- I
4 actually was reminded that in this very proceeding
5 that relative to transmission-related information,
6 the Commission did grant that indefinite protection,
7 and also in recent Duke and AEP Ohio competitive-bid
8 process proceedings, information was granted the
9 status of indefinite protection.

10 Q. And do you know in order to get the
11 status of indefinite protection what the companies
12 had to do in those instances you just mentioned?

13 A. I am not an attorney, as we've discussed,
14 but I believe they had to file a motion.

15 Q. And the Commission -- it's your
16 understanding the Commission considered the merits of
17 the motion in determining whether or not indefinite
18 protection should be given to the information?

19 A. That's correct, much as being asked to be
20 done here as well.

21 Q. And what here requires the company to
22 file a motion to -- to warrant indefinite protection?

23 MR. KUTIK: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. KUTIK: Argumentative.

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1 EXAMINER PRICE: It's also misleading. I
2 don't believe in all the circumstances that
3 Miss Mikkelsen indicated the Commission has granted
4 indefinite protection that the companies were always
5 required to file protective orders. In fact, as to
6 competitive bidding, it's the staff that files the
7 motion for protective order to protect the
8 competitive bidding information of all the wholesale
9 participation in our competitive bidding process, not
10 the companies.

11 MS. WILLIS: I certainly was --

12 MR. KUTIK: Is my objection sustained?

13 EXAMINER PRICE: It is.

14 MS. WILLIS: I certainly wasn't trying to
15 mislead the witness. I want to know what the witness
16 thought. I appreciate that, your Honor.

17 Q. (By Ms. Willis) Are you aware, Miss
18 Mikkelsen, of a process before the PUCO where a
19 utility would seek to protect information that was
20 filed or given to the staff?

21 A. Beyond the protection being requested or
22 recommended on behalf of the signatory parties in the
23 third stipulation and recommendation?

24 Q. No. My question, Ms. Mikkelsen, are you
25 aware of a process before the PUCO where the utility

1 would seek protection of information that was filed
2 or given to the staff, in general?

3 A. Well, again, I think as we've discussed,
4 the companies could -- are we talking just generally?
5 Am I aware of the process? Yes.

6 Q. That's a general question.

7 A. I would assume generally the companies
8 would, if they were interested in that, would file a
9 motion for protection, or in this instance, spell it
10 out with the agreement of the signatory parties and
11 staff here seeking Commission approval as part of the
12 approval of the stipulation.

13 Q. Would you agree with me that the process
14 proposed in the stipulation at 3-b for dealing with
15 FES's information differs from the general practice
16 before the Commission where parties are required to
17 prove the need for protection?

18 MR. KUTIK: Objection, your Honor.

19 EXAMINER PRICE: Grounds?

20 MR. KUTIK: It assumes there is such a
21 practice, end quote.

22 MR. SETTINERI: It just happened Monday,
23 your Honor, the company's motion for protective
24 order.

25 MR. KUTIK: It was filed, but they are

1 not always filed. That's the point.

2 EXAMINER PRICE: I think, Mr. Settineri,
3 you are illustrating the problem with this line of
4 questioning, which is she is asking a nonattorney
5 questions regarding legal processes, and I think,
6 frankly, this is all well beyond the scope of the
7 expertise of any lay witness at all, so I am going to
8 sustain the objection.

9 Q. (By Ms. Willis) Are you aware of the
10 public records provisions in Ohio, Ms. Mikkelsen?

11 A. Not specifically, no.

12 Q. Are you aware of the public records
13 provisions that pertain to the PUCO?

14 MR. KUTIK: Well, I'll object, your
15 Honor.

16 EXAMINER PRICE: She can answer if she
17 knows.

18 MR. KUTIK: I guess the question is
19 what's the relevance of her awareness?

20 EXAMINER PRICE: I think she is trying to
21 lay a foundation so she can ask further questions
22 along this line.

23 You can answer if you know.

24 THE WITNESS: May I ask to have the
25 question reread, please, sir?

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1 EXAMINER PRICE: You may.

2 (Record read.)

3 A. I think I'm aware that there are, but I
4 am not aware of specifically what they are.

5 Q. And are you familiar with the term
6 "public information request" as it's used in the
7 stipulation at section 3-b, the last sentence?

8 A. Yes.

9 Q. Now, the information that would be fully
10 shared under this provision of the stipulation that
11 is 3-b, that is information that belongs to
12 FirstEnergy Solutions; is that correct?

13 A. Yes.

14 Q. Now, going back to section 3-A under the
15 rigorous review of rider RRS, you indicate there that
16 "the Companies agree to participate in annual
17 compliance reviews before the Commission to ensure
18 that actions taken by the Companies when selling the
19 output from the generation units included in Rider
20 RRS into the PJM market were not unreasonable." Do
21 you see that?

22 A. Yes.

23 Q. So under that provision, the bids, for
24 example, the bids that the company would put into PJM
25 for planning years 2019 and through 2020, would be

1 bid in 2016; is that correct?

2 MR. KUTIK: Well, I'll object, your
3 Honor. I don't think the stipulation requires any
4 bidding procedures. It talks about a review of
5 bidding procedures, so the question I think
6 mischaracterizes the stipulation.

7 EXAMINER PRICE: Please rephrase.

8 Q. (By Ms. Willis) Now, I am trying to
9 understand, Ms. Mikkelsen, how this bidding review
10 that you are agreeing to would work. So could you
11 bear with me for a moment. And let's say that the
12 company bids the capacity and energy into PJM for
13 planning years 2019 and 2020. In that instance would
14 the bid be placed in 2016?

15 MR. KUTIK: Objection, your Honor.

16 EXAMINER PRICE: She is laying a
17 foundation.

18 This is a foundational question?

19 MS. WILLIS: Yes.

20 EXAMINER PRICE: The follow-up which will
21 deal specifically with the stipulation?

22 MS. WILLIS: Yes.

23 EXAMINER PRICE: You can answer.

24 A. So there are a couple of parts to your
25 question which I believe can't be answered

1 collectively but need to be answered separately.

2 Q. Okay.

3 A. I believe your question asked with
4 respect to capacity as well as energy. So let's
5 address the capacity portion first.

6 Q. Thank you.

7 A. To the extent that there is a Commission
8 order in the case prior to the May, 2016, base
9 residual auction, then the companies would have
10 control of the plants in the proposed transaction at
11 that time to include in whatever offer strategy they
12 chose to execute in that process.

13 The same would be true for their offer
14 strategies in the incremental auctions that would
15 occur subsequent to the 2016 base residual auction
16 related to the delivery year of 2019 and 2020.

17 As a separate matter, with respect to the
18 energy, the energy would not -- the energy for
19 delivery year 2019 and 2020 would not be offered into
20 the markets in 2016, as I believe your question
21 suggests.

22 Q. Thank you. I appreciate the explanation.
23 So, Ms. Mikkelsen, when under this review process --
24 let's take the capacity. Let's break it out as you
25 did. With respect to the capacity offer strategy,

1 when would the Commission be reviewing the companies'
2 offer strategy related to capacity under this
3 provision of the stipulation?

4 MR. KUTIK: Objection, your Honor.

5 EXAMINER PRICE: Grounds?

6 MR. KUTIK: Beyond the scope. There is
7 nothing about this part of the review process that's
8 different than the proposal before the parties at the
9 last hearing.

10 EXAMINER PRICE: Let's give -- let's give
11 Miss Willis just a little bit of leeway on this
12 question.

13 MS. WILLIS: Thank you, your Honor.

14 A. The review process outlined in my direct
15 testimony, the second supplemental testimony, and the
16 fifth supplemental testimony calls for an
17 after-the-fact review by the Commission. So the
18 review of the capacity revenue included -- or propose
19 forward inclusion in rider RRS.

20 I guess under the example we have been
21 talking about, in 2019 and 2020 we'd be subject to
22 Commission review as part of that annual review
23 process.

24 Q. And I guess I am trying to determine when
25 that annual review -- how far -- how long after the

1 bid is made, how long after the bid is made will it
2 take before the Commission can review the revenue --
3 the capacity revenues that are associated with the
4 offer strategy?

5 A. So as proposed originally in the
6 application in the case, rider RRS will be comprised
7 of forecasted revenue and forecasted expense for the
8 following year. That rate will go into effect, and
9 then that rate will be subject to a true-up
10 reconciliation to the actual revenues and expenses,
11 and at that time it would be subject to Commission
12 review.

13 Q. And at that time the Commission would
14 review the offer strategy; is that correct?

15 A. Correct.

16 Q. Okay.

17 EXAMINER PRICE: Just to summarize, when
18 the revenue comes in, the year the revenue comes in,
19 whether it's energy or capacity or ancillary
20 services, will be the year when the Commission does
21 the review of whether the actions were reasonable.

22 THE WITNESS: Correct. But the review
23 will be made based on the facts and circumstances
24 that were known at the time the offer was made.

25 EXAMINER PRICE: Just as we do every

1 other prudency determination before this Commission.

2 THE WITNESS: Yes, sir.

3 Q. (By Ms. Willis) Now, I want to direct
4 your attention to the revised term sheet. I believe
5 that was marked as Company Exhibit 156, correct?

6 A. Yes.

7 Q. Would you agree with me there is no
8 purchase power agreement at this time between
9 FirstEnergy Solutions and the utilities, that all we
10 have is a term sheet?

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

13 EXAMINER PRICE: Sustained.

14 Q. Can you tell me, Ms. Mikkelsen, if the
15 term sheet is being submitted for PUCO review, the
16 revised term sheet?

17 A. In this proceeding the companies are
18 seeking approval of the stipulated ESP IV, which
19 includes rider RRS. That's what the companies are
20 seeking approval of. They are not seeking approval
21 of the proposed transaction or approval of the term
22 sheet.

23 Q. Now, if the PUCO approves the latest
24 filed stipulation, FES and the utilities will enter
25 into a purchase power agreement for the eight-year

1 term, correct?

2 A. Yes.

3 Q. And if rider RRS is approved, the
4 utilities will not file the resulting purchase power
5 agreement with the PUCO; is that correct?

6 A. The companies are not going to file the
7 purchase power agreement with the Public Utilities
8 commission of Ohio.

9 Q. Ms. Mikkelsen, do the utilities envision
10 any process with the PUCO that -- let me strike that.

11 Do the utilities envision any process
12 whereby the PUCO would have the ability to require
13 changes to the PPA to protect utility customers if it
14 finds that any of the provisions in the PPA are
15 unreasonable or improper?

16 MR. KUTIK: Objection.

17 EXAMINER PRICE: Grounds?

18 MR. KUTIK: Beyond the scope.

19 EXAMINER PRICE: Sustained. You can ask
20 her a question that relates to whether the third
21 supplemental stipulation contains privileges like
22 that, but you can't ask her questions you could have
23 asked her prior to this hearing.

24 MS. WILLIS: Thank you, your Honor.

25 Q. Does the third supplemental stipulation,

1 the latest-filed stipulation, contain any provision
2 that would allow the Commission to require changes to
3 the PPA to protect the utility customers if it finds
4 that any provisions or contract language to be
5 unreasonable or improper?

6 A. No.

7 Q. And under the Third Supplemental
8 Stipulation and Recommendation, does the PUCO have
9 the ability to deny the utility's recovery of costs
10 under the PPA that are unreasonable or improper due
11 to adverse contract provisions in the PPA between
12 FirstEnergy Solutions and the companies?

13 MR. KUTIK: Objection.

14 EXAMINER PRICE: Grounds.

15 MR. KUTIK: What is due to adverse
16 conditions in a contract?

17 EXAMINER PRICE: Can you please state
18 what you mean more clearly for the witness?

19 MS. WILLIS: Okay.

20 Q. Does the Third Supplemental Stipulation
21 and Recommendation contain provisions that would
22 allow the PUCO to deny the utilities' recovery of
23 costs through rider RRS if it determines that the
24 contract language or the contract provisions between
25 FES and the utilities are unjust or unreasonable?

1 A. The review process laid out in the
2 companies' application provides the Commission and
3 its staff the opportunity to review, with the
4 exception of legacy costs, all costs and all revenues
5 included in rider RRS in order to allow them to make
6 a determination that the costs and the revenues
7 proposed for netting inclusion in rider RRS are
8 reasonable. To the extent that the Commission
9 determines that they are unreasonable, then they are
10 able to make an adjustment to the dollars that are
11 recovered in the rider.

12 Q. And under the provisions of the third
13 supplemental stipulation, can the Commission find
14 costs to be unreasonable because of contract
15 provisions between FirstEnergy Solutions and the
16 utilities?

17 A. The Third Supplemental Stipulation and
18 Recommendation doesn't address contract provisions
19 between the companies and FirstEnergy Solutions.

20 Q. Let's move on to the grid modernization
21 provisions in the stipulation. Let me direct your
22 attention to section V-D-1 through 5 starting on page
23 9. Do you have that reference?

24 A. I do.

25 Q. Now, you believe the utility customers

1 are interested in grid modernization such as smart
2 metering because the companies have conducted a pilot
3 program to have advanced metering installed in their
4 homes; is that correct?

5 THE WITNESS: May I ask to have the
6 question reread, please?

7 EXAMINER PRICE: You may.

8 (Record read.)

9 A. So your question is independent of the
10 stipulation?

11 Q. Correct.

12 A. The companies have conducted a pilot
13 program in one of their service territories which
14 included the installation of advanced metering on a
15 subset of our customers, and that subset of customers
16 had the opportunity to opt out of having a smart
17 meter installed in their home. So as a result of
18 that pilot, we do have some information with respect
19 to customers' receptivity to advanced meter
20 installation in their homes.

21 Q. And let me ask you that question with
22 respect to the stipulation. Within the stipulation
23 do you have -- do you believe that customer -- within
24 the context of the stipulation negotiations you
25 believe that the utilities -- that the utility

1 customers are interested in the grid modernization
2 equipment; is that correct?

3 MR. KUTIK: Can I have the question read,
4 please.

5 EXAMINER PRICE: You may.

6 (Record read.)

7 A. The stipulation represents the collective
8 recommendation of all of the signatory parties to the
9 stipulation, and what the stipulation agreement is
10 among the signatory parties is that the companies
11 should bring forward within 90 days a business plan
12 associated with SmartGrid, advanced metering,
13 distribution automation, Volt/Var control, and then
14 all parties, all interested parties, can participate
15 in the vetting of that business case in order to
16 inform the Commission's decision about how, if at
17 all, the companies should proceed with grid
18 modernization.

19 Q. Now, the grid modernization we are
20 speaking of, is that solely related to residential
21 customers, if you know?

22 A. No.

23 Q. It goes beyond residential customers to
24 industrial and commercial customers; is that correct?

25 A. Yes. At page 9 under D-2-a, it

1 specifically says, "The plan will include a timeline
2 for the Companies to achieve full smart meter
3 implementation." It doesn't limit it. Full, in my
4 mind, doesn't limit it to residential.

5 Q. So it was the collective consensus of the
6 stipulating parties that, for instance, residential
7 customers are interested in grid modernization.

8 A. Well, I think what I said it was the
9 collective agreement of the signatory parties that
10 the companies should put forward a business case that
11 includes the elements included herein, and then all
12 interested parties can participate in the vetting of
13 that business case to help inform the Commission's
14 determination with respect to grid modernization in
15 the companies' service territory going forward.

16 Q. Now, let's go back to the pilot program
17 you mentioned. That pilot program had approximately
18 35,000 customers participate; is that right?

19 A. Yes.

20 Q. And you said it was in one service -- one
21 particular service territory?

22 A. Yes.

23 Q. And what service territory would that
24 have been?

25 A. The Cleveland Electric Illuminating

1 Company.

2 Q. And do you know how many total customers
3 are in the Cleveland Electric Illuminating Company
4 service territory?

5 A. Not specifically, no. Many, many more
6 than 35,000.

7 Q. Now, in the grid modernization section of
8 the stipulation, section 2-d, you refer to
9 "opportunities to leverage smart meter investment
10 being made in Pennsylvania that could benefit smart
11 meter implementation in Ohio." Do you see that?

12 A. I do.

13 EXAMINER PRICE: Let's go off the record
14 for one second.

15 (Discussion off the record.)

16 EXAMINER PRICE: Let's go back on the
17 record. Thank you.

18 MS. WILLIS: Was there a question
19 pending?

20 EXAMINER PRICE: No.

21 Q. Are you, Ms. Mikkelsen, referring to
22 efforts by FirstEnergy affiliates with respect to
23 smart meter investments?

24 MR. KUTIK: Is the question "are you
25 familiar"?

1 Q. Are you referring to efforts by
2 FirstEnergy affiliates with respect to smart metering
3 investments there?

4 A. Yes.

5 Q. And that would be in Pennsylvania,
6 correct?

7 A. Yes.

8 Q. And in Pennsylvania the FirstEnergy
9 affiliates are not at or near full deployment; is
10 that correct?

11 A. They have begun deployment of smart
12 meters. They are not at full deployment of smart
13 meters across the four utility companies.

14 Q. And the full deployment of smart meters
15 in Pennsylvania was mandated by a Pennsylvania law,
16 correct?

17 A. Yes.

18 Q. Do you know how much the smart meter
19 implementation plan filed by your affiliates in
20 Pennsylvania would cost the Pennsylvania customers?

21 A. No.

22 Q. Are you aware of reports by UBS that the
23 value of the Pennsylvania affiliate filing by
24 FirstEnergy is \$1.8 billion?

25 MR. KUTIK: Objection, hearsay.

1 EXAMINER PRICE: Response?

2 MS. WILLIS: I am asking if she is aware
3 of the general cost that's been reported.

4 EXAMINER PRICE: Isn't that you are
5 asking her a question by an out-of-state,
6 out-of-court doctrine for the truth of the matter
7 asserted?

8 MS. WILLIS: Yes.

9 EXAMINER PRICE: Sustained.

10 Q. (By Ms. Willis) So do you know generally
11 how much the smart meter implementation plan filed by
12 your affiliates in Pennsylvania amounts to?

13 A. No.

14 EXAMINER PRICE: When you file your
15 business case, will it include a cost estimate?

16 THE WITNESS: Yes.

17 MS. WILLIS: Thank you.

18 Q. And do you know at this time how much the
19 filing for -- for SmartGrid is expected to be for the
20 FirstEnergy Ohio utilities?

21 A. No.

22 THE WITNESS: Maybe I should have the
23 question reread. I am not sure I understood the
24 question. May I have the question reread?

25 EXAMINER PRICE: Yes, please.

1 (Record read.)

2 A. By "how much" you mean the dollar amount?

3 Q. The total cap expenditures associated
4 with that program.

5 A. No, ma'am.

6 Q. Do you know generally the level of
7 capital expenditures associated with the program
8 that's planned to be filed in 90 days?

9 A. No, ma'am.

10 Q. Okay. Now, if the Commission approves
11 the proposed rate treatment that's laid out in
12 paragraph 3 on page 10 of the stipulation, the
13 Commission will be approving the rate design of rider
14 AMI; is that correct?

15 A. Yes.

16 Q. And the rate design would be a
17 forward-looking formula rate that's reconciled for
18 actual costs compared to forecasted costs?

19 A. Yes, and actual revenues compared to
20 forecasted revenue.

21 Q. And the rider rate design specifically is
22 on a customer-charge basis; is that correct?

23 A. Yes.

24 Q. And the monthly customer charge that is
25 reset each time the rider is reset is constant

1 through the quarterly period until the rider is
2 reset; is that correct?

3 A. Yes.

4 Q. Is it also correct that general
5 transmission customers do not pay rider AMI?

6 A. Did you say general transmission? I
7 guess I would answer the question customers served at
8 the transmission level are not charged rider AMI.

9 Q. Thank you.

10 A. You're welcome.

11 Q. Now, with respect to paragraph 3 under
12 the grid modernization, "The return on equity shall
13 initially be set at 10.38%... with an additional 50
14 basis point adder." Do you see that?

15 A. Yes.

16 Q. Can you tell me why a 50 basis point
17 adder is needed for this particular rider?

18 A. I'm not sure if I understand the context
19 of the use of the word "needed." What I would say is
20 this is what the signatory parties agreed to relative
21 to the return on equity for SmartGrid investment
22 assuming the Commission approves going-forward
23 deployment of grid modernization in some fashion
24 across the companies' service territories.

25 Q. Are you aware, Ms. Mikkelsen, of any PUCO

1 precedent that allows a 50 basis point adder to be
2 placed on a rider that recovers investment?

3 A. No.

4 Q. So the total return on investment would
5 be 11.38 percent associated with the grid
6 modernization investment; is that correct?

7 A. No.

8 Q. Did I do the math wrong?

9 A. Yes.

10 Q. Can you tell me what the total return on
11 investment associated with the grid modernization
12 investment would be?

13 A. Again, to be clear, the stipulation at
14 page 10 says the return on equity shall initially be
15 set at 10.38, so I want to be clear because the
16 question sounds to me like it's set forever, so I
17 wanted to make that clarifying point; and then
18 further make the point that the 10.38 is really
19 equivalent to the current FERC-approved ATSI ROE, and
20 should that change up or down in the future, the
21 10.38 would move accordingly, and then 50 basis
22 points would be added to that number. So initially
23 rider AMI will be set at a rate of 10.88 percent.

24 Q. Thank you. Are you aware of any PUCO
25 precedent which establishes as a reasonable return on

1 investment 10.88 percent for grid modernization
2 investment?

3 A. I'm not aware of the allowed return on
4 equities for the other companies' grid modernization
5 investment.

6 Q. Now, you mentioned that FERC would
7 approve the return on equity for ATSI and that that
8 would then be used for the grid modernization
9 investment, correct?

10 A. Well, I think, more specifically, what I
11 said is that that would be the starting point, and
12 then there would be 50 basis points added to that,
13 and they were the combination of the two that would
14 be the ROE used for rider AMI.

15 Q. So the return on equity would be
16 determined by FERC for the next eight years, is that
17 right, associated with at least the base return on
18 equity before the adder?

19 A. I think of it a little differently. I
20 think the Commission is approving that formula for
21 calculating return on equity in this proceeding, and
22 then it's a mechanical exercise afterwards based on
23 the Commission's approval.

24 Q. And that formula and the rates under that
25 formula would be approved by FERC, correct, not by

1 the PUCO?

2 A. It would as an initial matter be set
3 equal to the ATSI-approved ROE.

4 Q. And all throughout the entire term of the
5 grid modernization rider, that return would be set
6 by -- in part, by FERC's determination of the ATSI
7 ROE; is that correct?

8 A. We may be parsing words. Again, I
9 believe the return is set and approved by the
10 Commission. The underlying data elements that give
11 rise to the number approved by the Commission would
12 come from the FERC ATSI rate.

13 Q. Now, we are going to shift our discussion
14 to resource diversification commitments that are made
15 in Section E of the latest-filed stipulation, and
16 that begins on page 11 and carries over to page 12.

17 In Section E the statement is made that
18 "FirstEnergy Corp. will establish a goal to reduce
19 CO-2 emissions by at least 90 percent below 2005
20 levels by 2045." Do you see that reference?

21 A. Yes.

22 Q. Under the stipulation as well, there will
23 be annual reports to detail the progress in
24 meeting -- let me strike that.

25 Under the stipulation there will not be

1 annual reports to detail the progress in meeting the
2 goal; is that correct?

3 A. Correct. Under the stipulation the
4 companies will file reports with the Commission on
5 the then status of the carbon reduction every five
6 years through 2045.

7 Q. Thank you. And it is a goal to reduce
8 CO-2 emissions for plants that are owned and operated
9 by FirstEnergy Corporation, correct?

10 A. Yes.

11 Q. And that would include plants outside
12 Ohio; is that right?

13 A. Yes.

14 Q. Now, you are not aware of any actions
15 that the companies would need to take to assist in
16 attaining this FirstEnergy Corporation goal; is that
17 correct?

18 A. I am not aware of any actions, but,
19 again, as we have discussed, the companies don't own
20 any generation, so I'm not aware of any actions the
21 companies would take to contribute to the attainment
22 of this goal.

23 Q. Are you aware of any actions that
24 FirstEnergy Solutions would take to assist in
25 attaining this goal?

1 A. No. But as we discussed earlier, the
2 companies as part of this third stipulation and
3 recommendation have agreed to file a report with the
4 Commission by November 1st of 2016, highlighting
5 their then current strategy with respect to carbon
6 reduction.

7 EXAMINER PRICE: I want to go back two
8 questions and follow-up Ms. Willis' question. The
9 energy efficiency provisions that the companies have
10 agreed to in the stip would have an impact on carbon
11 reduction, wouldn't it? If a megawatt-hour of energy
12 efficiency displaces a megawatt-hour of generation,
13 that would have an impact on carbon, wouldn't it?

14 THE WITNESS: Yes. I hadn't thought of
15 it in that context.

16 EXAMINER PRICE: And if there are energy
17 savings from Volt/Var, from the SmartGrid, that would
18 contribute to the carbon reduction, wouldn't it?

19 THE WITNESS: Yes.

20 EXAMINER PRICE: Or any other energy
21 savings resulting from smart grid deployment if the
22 Commission ultimately approves the to-be-filed
23 business plan?

24 THE WITNESS: Yes.

25 EXAMINER PRICE: Okay. Thank you.

1 Thank you, Ms. Willis.

2 MS. WILLIS: Thank you.

3 Q. (By Ms. Willis) Now, in Section E,
4 paragraph 3-a, the companies commit to reactivate in
5 2017 all the programs suspended in their energy
6 efficiency PDR Portfolio Plan in Case No.
7 12-2190-EL-POL, correct?

8 A. EL-POR.

9 Q. POR, sorry.

10 A. Correct.

11 Q. Now, you would expect, would you not,
12 that there will be costs associated with reactivating
13 the programs that have been suspended?

14 A. I expect there will be costs associated
15 with offering the programs. I am not certain whether
16 there will be costs specifically associated with
17 reactivating or not. I think that will be part of
18 the plan and the budgets that are currently being
19 developed.

20 Q. I would direct your attention to your
21 deposition on page 145, lines 19, and I am going to
22 read lines 19 through 23. I am going to read the
23 question and read the answer and ask you if I have
24 read that correctly.

25 MR. KUTIK: Could you hold on for a

1 second?

2 MS. WILLIS: Sure.

3 EXAMINER PRICE: Can I have the line
4 number reference again, please?

5 MS. WILLIS: 19 through 23.

6 EXAMINER PRICE: Thank you.

7 Q. "Would you agree that there will be costs
8 associated with reactivating the suspended programs?

9 "Answer: I would expect there would be
10 costs associated with reactivating programs that have
11 been suspended."

12 Did I read that correctly?

13 A. Yes.

14 Q. And the companies don't have an estimate
15 at this time for what those costs would be; is that
16 correct?

17 A. Correct.

18 Q. And to the extent that the programs are
19 approved by the Commission, then the costs associated
20 with offering those programs would be collected from
21 customers, correct?

22 A. Yes.

23 Q. And the energy efficiency programs that
24 were suspended, as you refer to in the stipulation,
25 were suspended under the companies' amended energy

1 efficiency PDR portfolio plan, correct?

2 A. Yes. They were suspended pursuant to
3 provisions in SB 310.

4 Q. Now, let's move on to Section V-E-c,
5 that's V-E-3-c, where you are talking about
6 white-labeled, customer engagement pilot program. Do
7 you see that?

8 A. Yes.

9 Q. If the Commission approves that program,
10 then the costs associated with it will be collected
11 from customers under existing rider DSE; is that
12 correct?

13 A. Yes. This program would be offered to
14 the companies' small and medium commercial and
15 industrial customers, so the costs associated with
16 this program would be recovered in rider DSE-2 from
17 the companies' small and medium commercial and
18 industrial customers.

19 Q. Now, as part of the stipulation,
20 Ms. Mikkelsen, you've agreed, and I am looking at
21 Section 3-d, the very last section, you've agreed
22 that after tax, annual shared savings caps should be
23 increased from 10 million to 25 million. Do you see
24 that?

25 A. Yes.

1 Q. And this will be collected from customers
2 through rider DSE?

3 A. To the extent the companies are eligible
4 for shared savings, then those shared savings would
5 be recovered from customers in rider DSE.

6 Q. And have the companies done any analysis
7 to demonstrate that this increase in shared savings
8 will benefit customers?

9 A. I'm not sure I understand the question.
10 May I ask you to rephrase it, please?

11 Q. Have the companies produced evidence for
12 purposes of this proceeding that demonstrate that
13 increasing the annual shared savings cap from \$10
14 million to \$25 million will benefit its customers?

15 A. The companies would only be eligible for
16 shared savings for energy efficiency savings that
17 they achieve in excess of the statutory benchmarks
18 that have been established in the state of Ohio.

19 As a separate matter, any programs
20 eligible for shared savings would have to be cost
21 effective, so to the extent that the companies are
22 able to earn shared savings, it is a result of
23 implementation of energy efficiency programs that are
24 cost effective that gave rise to savings in excess of
25 the statutory benchmarks.

1 Q. Did the company -- my question was, did
2 the company provide evidence in this proceeding to
3 demonstrate that that increase specifically will
4 benefit customers?

5 A. Is the increase you are referring to 10
6 to 25 million?

7 Q. Yes.

8 A. Again, the companies will only be able to
9 collect shared savings on an annual basis based on
10 actions taken pursuant to approved Commission plans
11 in any given year. So I can't provide you evidence
12 now of an action that I may take several years hence.
13 But if your question is -- going to --

14 Q. No, that's my question.

15 MR. KUTIK: Excuse me. Let her finish
16 here answer, please.

17 Your Honor.

18 MS. WILLIS: I think she answered my
19 question.

20 EXAMINER PRICE: I think she should
21 finish your question, and then if you wish to address
22 any portion of her answer with a motion to strike, we
23 will take it up at that point.

24 MS. WILLIS: Okay.

25 EXAMINER PRICE: Please finish your

1 answer.

2 A. If the question goes to the increase from
3 10 million to 25 million, the companies have looked
4 at that in terms of a comparison to the other
5 utilities and the shared shavings they're eligible
6 for across the state.

7 So, for example, on an individual by
8 company basis, that \$25 million shared savings cap is
9 lower than the by company shared savings caps for
10 each of the utilities in the state of Ohio with the
11 exception of one. If you look at the shared savings
12 cap on the basis of what are the annual goals that
13 the utilities have to achieve before they are
14 eligible for shared savings, the companies have the
15 highest targets compared to all the utilities and
16 could measure it with the \$25 million increase.

17 If you look at the shared savings on the
18 basis of shared -- eligible shared savings per number
19 of customers, again, the companies' number is lower
20 than all -- well, is lower than all the utilities in
21 the state of Ohio.

22 And if you look at it on a
23 per-megawatt-hour basis, again, that shared savings
24 cap is lower than all but one of the utilities in
25 Ohio, so in that respect that analysis has been

1 conducted to suggest that the increase from 10 to 25
2 million is reasonable.

3 Q. Are you finished?

4 A. I am.

5 MS. WILLIS: I move to strike, your
6 Honor. I believe that's nonresponsive. She answered
7 my question within the first two sentences, and the
8 last three minutes was not responsive.

9 MR. KUTIK: Let me know when I may
10 respond, your Honor.

11 EXAMINER PRICE: I don't think you need
12 to respond. The motion to strike will be denied.
13 You opened the door with a very broad question. She
14 went right through the door. You said "provide
15 evidence." She just gave you evidence.

16 MS. WILLIS: I asked her if she produced
17 evidence in this proceeding, your Honor. I tried to
18 be very clear.

19 MR. KUTIK: She just did.

20 EXAMINER PRICE: We are here in this
21 proceeding, Ms. Willis. This is it.

22 MS. WILLIS: Well, I am going to note my
23 objection to that ruling.

24 EXAMINER PRICE: Noted for the record.

25 Q. (By Ms. Willis) Under your proposal for

1 the shared savings cap to increase from 10 million to
2 25 million, does the cap remain at 25 million for the
3 period of the ESP?

4 A. Again, it is the proposal of the
5 signatory parties, okay, so not my proposal, but the
6 proposal of the signatory parties that the shared
7 savings cap be increased to 25 million over the
8 entire term of the ESP IV.

9 Q. So I guess I am not sure that you've
10 answered my question. Does that mean in year one
11 that the savings cap will be 25 million and then in
12 year two it will be another 25 million up to
13 50 million and then in year three it will be
14 75 million? My question really is what is the cost
15 per year? Is it a \$25 million cap, or is it a
16 cumulative cap?

17 A. Thank you for that clarification. I did
18 misunderstand your question, and for that, I
19 apologize. The annual shared savings cap is \$25
20 million in year one, \$25 million in year two, \$25
21 million in year three, \$25 million in year four, \$25
22 million in year five, \$25 million in year six, \$25
23 million in year seven, \$25 million in year eight.

24 Q. Thank you. And so in total during the
25 eight-year period, that would mean customers could

1 pay up to \$200 million in shared savings under this
2 provision of the stipulation.

3 MR. KUTIK: We will stipulate whatever 25
4 times 8 is, 25 times 8.

5 MS. WILLIS: I think my math is correct
6 this time.

7 EXAMINER PRICE: I think her math is
8 correct.

9 A. I guess --

10 Q. I think you don't need to answer. Your
11 counsel already stipulated to the 200 million. Thank
12 you.

13 MR. KUTIK: I stipulated to whatever the
14 math is, the math is.

15 EXAMINER PRICE: Let's go on to our next
16 question.

17 Q. (By Ms. Willis) Let's go to the carbon
18 reduction emission section under V-E-5. Under that
19 provision the companies would file a report with the
20 Commission, correct?

21 A. On page 12?

22 Q. Yes.

23 A. Yes, ma'am.

24 Q. And that's an additional report followed
25 up by a five-year report later that provides the

1 progress on the initiatives?

2 A. Yes. The initial report November 1st of
3 '16, with a subsequent report every five years until
4 2045.

5 Q. And under this provision the companies
6 would not be seeking PUCO approval of that report,
7 correct?

8 A. Correct.

9 Q. And the stipulation does not envision a
10 basis for the PUCO to alter the strategy contained in
11 the report, correct?

12 THE WITNESS: May I ask to have the
13 question reread, please?

14 EXAMINER PRICE: You may.

15 (Record read.)

16 A. Correct.

17 Q. Now, Ms. Mikkelsen, I would like to take
18 you through the provisions in the stipulation that
19 will affect the rates that residential customers pay,
20 and I want to start with rider RRS. Rider RRS
21 will -- can you tell you the --

22 MS. WILLIS: Your Honor, I'm sorry. May
23 we go off the record for a minute?

24 EXAMINER PRICE: You may.

25 (Discussion off the record.)

1 EXAMINER PRICE: Back on the record.

2 Q. (By Ms. Willis) Now, rider RRS will
3 affect the rates that residential customers pay,
4 correct, because it will be either a credit or a
5 charge to customers over the eight-year period?

6 A. Correct.

7 Q. And you would agree there is a difference
8 of opinion in this case between the companies and
9 intervenors, certain intervenors, about whether
10 customers will be receiving credits or charges under
11 rider RRS.

12 A. I think there have been a number of views
13 shared in this proceeding with respect to what
14 ultimately will be included in rider RRS. There is
15 some agreement by some parties. Some disagreement by
16 others.

17 Q. And the companies project \$561 million of
18 quantitative benefits from rider RRS?

19 A. Yes.

20 Q. And is it your understanding that OCC
21 witness Jim Wilson -- James Wilson projects over \$3
22 billion of costs from rider RRS?

23 MR. KUTIK: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. KUTIK: Mr. Wilson's testimony is

1 what it is. This witness's understanding of his
2 testimony is irrelevant.

3 EXAMINER PRICE: Sustained.

4 Q. Do you understand -- now, residential
5 customers will be charged for the grid modernization
6 efforts that are outlined in the stipulation as the
7 PUCO moves forward with the companies' grid
8 modernization business plan; is that correct?

9 A. I would expect if the Commission approves
10 the company moving forward with grid modernization,
11 that there would be charges arising from that to the
12 residential customers.

13 Q. And although the customers are currently
14 charged for grid modernization under rider AMI, the
15 stipulation contains enhanced grid modernization
16 measures. Would you agree?

17 A. What the stipulation includes, as we
18 discussed earlier, is a commitment by the companies
19 that they will make a SmartGrid modernization filing
20 before the Commission. And that, again, all parties
21 can participate, all interested parties, in that
22 proceeding to help inform the Commission's ultimate
23 decision about whether or not the companies should
24 move forward or not.

25 Q. And that commitment is to file for full

1 deployment of smart meters; is that right?

2 A. The third stipulation and recommendation
3 requires that the plan include a timeline for the
4 companies to achieve full smart meter implementation.

5 Q. Do you know how much residential
6 customers now pay in rates for grid modernization?

7 EXAMINER PRICE: Can you narrow your
8 question to which service territory? I don't mean
9 within OEC. I mean, are you talking AEP, Duke,
10 FirstEnergy?

11 Q. Do you know how much residential
12 customers pay, for instance, in The Cleveland
13 Electric Illuminating Company service territory for
14 grid modernization under rider AMI?

15 A. I don't recall the specific monthly
16 customer charge for residential, but it's publicly
17 available in our tariffs.

18 Q. And do you recall how much the yearly
19 charge under rider AMI would be for grid
20 modernization efforts in The Cleveland Electric
21 Illuminating Service territory?

22 A. No, I don't recall.

23 Q. And if I asked you that question with
24 respect to The Toledo Edison Service territory, would
25 you know how much residential customers now pay in

1 rates for grid modernization efforts under rider AMI?

2 A. I don't remember.

3 Q. If I asked you with respect to Ohio
4 Edison Service territory, do you know how much
5 residential customers currently pay in rates under
6 rider AMI for grid modernization?

7 A. I don't remember.

8 Q. At this time the companies do not have an
9 estimate of the cost to be charged to customers
10 through rider AMI under the grid modernization
11 provisions of the stipulation; is that correct?

12 A. Yes.

13 Q. Now, coal plant retirements, the costs
14 associated with the Commission-approved investments
15 and battery resources would be charged to residential
16 customers under rider AMI; is that correct?

17 A. To the extent that the Commission
18 approves the company making investments in battery
19 resources, then recovery of those investments would
20 be through rider AMI.

21 Q. And to the extent that residential
22 customers participate in PUCO-approved energy
23 efficiency programs, then those costs associated with
24 residential customer participation would be collected
25 from residential customers in rider DSE-2; is that

1 correct?

2 A. Yes.

3 Q. And with respect to the 100 megawatts of
4 wind or solar, residential customers will receive a
5 credit or charge through rider ORR; is that correct?

6 A. With respect to rider ORR, the customers
7 would receive a credit or charge only to the extent
8 that the staff deems it necessary to move forward
9 with the procurement, notifies the company. The
10 companies makes a filing. The Commission approves
11 the filing, and then at that point if the company
12 moves -- moves forward with the procurement, then the
13 charges or credits would be recovered.

14 Q. Have the companies calculated or
15 estimated the charges or credits that are expected
16 under that rider ORR?

17 A. No.

18 Q. Now, residential customers would also be
19 charged under rider DCR for distribution investment,
20 correct?

21 A. Yes.

22 Q. And that is the 2.59 billion that we
23 discussed earlier over eight years; is that correct?

24 MR. KUTIK: Objection, mischaracterizes
25 the rider.

1 EXAMINER PRICE: Sustained. Residential
2 customers will not be charged \$2.9 billion.

3 Q. Residential -- let me strike that.

4 MR. KUTIK: And, your Honor, it's subject
5 to a revenue requirement that sustains in any amount
6 governed under the GCR.

7 EXAMINER PRICE: Exactly.

8 Q. Residential customers will be charged for
9 rider ELR credit through rider DSE-1; is that
10 correct?

11 A. Yes.

12 Q. And residential customers will be charged
13 the automaker credit that is now extended over the
14 eight-year term of the ESP.

15 A. Yes.

16 Q. And that occurs through rider EDI?

17 A. No.

18 Q. And what rider will that occur through?

19 A. EDR provision (i).

20 Q. Thank you. Do you know how many --

21 EXAMINER PRICE: Ms. Willis, one second.
22 I want to clarify the last two questions you asked.

23 Residential customers will be charged a
24 portion of the ELR credit?

25 THE WITNESS: That's correct.

1 EXAMINER PRICE: That's correct?

2 THE WITNESS: That's correct.

3 EXAMINER PRICE: Residential customers
4 will be charged a portion of the automaker provision;
5 is that correct?

6 THE WITNESS: That is correct.

7 EXAMINER PRICE: They will not be
8 charged -- they will not be charged for the full
9 amount of the credit.

10 THE WITNESS: That's correct.

11 EXAMINER PRICE: Thank you.

12 Q. (By Ms. Willis) And how many automakers
13 are there within FirstEnergy's territory?

14 MR. KUTIK: Objection.

15 EXAMINER PRICE: Grounds?

16 MR. KUTIK: Beyond the scope.

17 EXAMINER PRICE: Sustained. Automaker
18 credit hasn't changed.

19 MS. WILLIS: It's been extended for eight
20 years, from three to eight years, your Honor.

21 EXAMINER PRICE: Then you can phrase it
22 that way, from three to eight.

23 Q. (By Ms. Willis) Are you aware,
24 Ms. Mikkelsen, of how much of a credit is being given
25 to the automaker through the extension of the credit

1 from three years to eight years under the latest
2 stipulation?

3 A. The future credits, if any, associated
4 with the automaker provision are dependent upon the
5 eligible automakers using energy in excess of a
6 baseline level that was established in 2009. So as I
7 sit here today, I don't know if in the future what,
8 if any, kilowatt-hours they will use in excess of
9 that baseline level.

10 Q. So are you saying that the -- they have
11 the qualifications for that credit change?

12 A. No.

13 Q. To the extent that there are charges
14 related to commercial high-load-factor time-of-use
15 rates under the stipulation provision V-G-4-a-iv,
16 nonshopping customers -- nonshopping residential
17 customers would be charged through rider GCR; is that
18 correct?

19 MR. KUTIK: May I have the question read,
20 please?

21 EXAMINER PRICE: You may.

22 (Record read.)

23 A. Charges or credits arising from the
24 commercial high-load-factor experimental time-of-use
25 rate would be recovered from all nonshopping

1 customers through rider GCR.

2 Q. And residential customers will be charged
3 for the dollars that are used by the Community
4 Connection program; is that correct?

5 A. Dollars associated with the Community
6 Connections program would be recovered from
7 residential customers in rider DSE.

8 Q. Is that solely recovered from residential
9 customers, or do other customers pay that?

10 A. Community Connection programs are
11 provided to residential customers exclusively, and as
12 a result, the costs are recovered from residential
13 customers.

14 Q. So the answer is yes, it's solely
15 collected from residential customers?

16 A. Correct.

17 Q. And under section V-H-5 of the
18 stipulation, residential customers could be charged
19 up to \$48 million during the eight-year term for the
20 Community Connections program?

21 A. Yes.

22 Q. Now, under the stipulation provision
23 V-H-6, the NMB pilot program may be expanded to allow
24 up to five additional rate GT customers to
25 participate, correct?

1 A. To be more specific, five additional rate
2 GT customers who otherwise would not have been
3 eligible to participate.

4 Q. Thank you. And rider NMB allows for
5 certain nonresidential customers to procure their
6 nonmarket-based service from a CRES rather than from
7 the companies; is that correct?

8 A. Procure it either directly or via a CRES,
9 yes.

10 Q. And do you not know the impact on the
11 remaining customers who pay rider NMB if the
12 customers procure nonmarket-based service from a CRES
13 under this provision in the stipulation?

14 A. I know that the total NMB revenue
15 requirement will be -- will decrease as customers
16 elect not to take nonmarket-based service from the
17 company but rather elect to source it directly or via
18 a CRES.

19 Q. Would you agree that there is a potential
20 for those remaining customers who will pay rider NMB
21 to pay more?

22 MR. KUTIK: Objection, beyond the scope.

23 EXAMINER PRICE: Please rephrase it so
24 that it is within the scope of the hearing.

25 MS. WILLIS: Yes, your Honor. I will be

1 happy to do that.

2 Q. (By Ms. Willis) Under the NMB pilot that
3 was expanded to allow for five additional rate GT
4 customers to participate, would you agree that there
5 is a potential for those remaining customers who pay
6 rider NMB to pay more?

7 A. To the extent that, you know, one or up
8 to five of these additional rate GT customers opt to
9 not take nonmarket-based service from the company,
10 again, the total revenue requirement associated with
11 nonmarket-based services for the company would go
12 down.

13 Now, based on the individual
14 characteristics of the customers operating to source
15 their nonmarket-based services directly, it could
16 result in no change or a higher charge to the
17 remaining customers or a lower charge to the
18 remaining customers.

19 EXAMINER PRICE: Ms. Willis, at this time
20 we are going to take our extended break. We will all
21 return at 3:45 or the conclusion of the Power Siting
22 meeting, whichever is later.

23 We are off the record.

24 (Recess taken.)

25 EXAMINER PRICE: Let's go ahead and go

1 back on the record.

2 Ms. Willis.

3 MS. WILLIS: Thank you.

4 EXAMINER PRICE: You may proceed.

5 Q. (By Ms. Willis) Ms. Mikkelsen, do you
6 expect the grid modernization plan that is to be
7 filed with the Commission to address how cost savings
8 associated with grid modernization will be passed
9 through to customers paying the -- paying for the
10 grid modernization?

11 A. The Third Supplemental Stipulation and
12 Recommendation includes a provision that says any
13 operational savings that are produced by the
14 investment and accrued to the companies, such as
15 reduced meter reading expense, will be credited
16 against the costs during the quarterly update and
17 reconciliation process of rider AMI.

18 Q. Thank you. Now, Ms. Mikkelsen, the
19 company has not presented, for purposes of this case,
20 any information that would show the impact of the
21 latest of the -- totality of the latest stipulation
22 on the rates that customers pay; is that correct?

23 A. The companies did model the impact of the
24 stipulated ESP IV case as well as including the
25 change in the term sheet associated with the ROE

1 provision, and that information was provided to all
2 the parties in this case in discovery.

3 Q. And did that model of the impact of the
4 ESP IV case that was provided to the parties, is
5 that -- is that evidence in this proceeding, if you
6 know?

7 A. The updated typical bills that were
8 provided in discovery have not been introduced into
9 the record in the case. The results of the typical
10 bill analysis demonstrated across all companies and
11 all rate schedules that the impacts --

12 MS. WILLIS: Your Honor --

13 MR. KUTIK: If she may be allowed to
14 finish.

15 EXAMINER PRICE: If she can finish her
16 question, please.

17 A. That the impacts were less than the rate
18 impacts that were reflected in OCC Exhibit 16, which
19 were typical bills which were entered into the record
20 in this case.

21 MS. WILLIS: May I have the question and
22 answer reread, please.

23 EXAMINER PRICE: You may.

24 (Record read.)

25 MS. WILLIS: Your Honor, I move to strike

1 the sentence beginning with "The results." I think
2 it's nonresponsive. I asked specifically whether it
3 had been put into the record. She provided -- she
4 stated it had not, and then she went on to -- to
5 characterize what the nonrecord evidence would show.

6 EXAMINER PRICE: Okay. The motion to
7 strike will be granted.

8 Ms. Mikkelsen, what did the results of
9 the updated analysis demonstrate?

10 MS. WILLIS: Your Honor, I am going to
11 note for the record an objection.

12 EXAMINER PRICE: Grounds? Don't you
13 think the Commissioners would like to know the
14 updated bill analysis?

15 MS. WILLIS: Well, your Honor, I would
16 like to have the updated bill analysis as part of the
17 record and be able to cross-examine on that, but
18 that's not going to happen.

19 MR. KUTIK: Well, your Honor, that
20 information was provided in discovery, as the witness
21 has indicated.

22 EXAMINER PRICE: Why can't you
23 cross-examine if it was provided to you in discovery?
24 The only person that doesn't have the information is,
25 apparently, the Commissioners, who would really like

1 to have this information.

2 MS. WILLIS: Your Honor, we were not
3 provided this information within a reasonable period
4 of time to do an analysis and determine whether or
5 not the information was reliable and, in fact, what
6 the information, in fact, represented. So I think it
7 would be prejudicial to us to put the information in
8 the record and not be able -- and be able to require
9 us to address it or cross-examine at this point in
10 the proceeding, so I -- so I do object to that
11 information coming in.

12 MR. KUTIK: Frankly, your Honor, she
13 opened the door by asking that question, so if you
14 didn't ask it, I would.

15 EXAMINER PRICE: Well, your objection to
16 my question is overruled.

17 Ms. Mikkelsen, you can go ahead and
18 answer my question.

19 THE WITNESS: The typical bill analysis
20 that we conducted to incorporate all the effects of
21 the stipulated ESP as well as the change in the ROE
22 and the term sheet showed across all companies and
23 all rate schedules that the typical bill rate impacts
24 were less than the typical bill rate impacts that
25 were included in the typical bills that were

1 introduced into the record as OCC Exhibit 16.

2 The vast majority of the rate impacts
3 that were reflected in the typical bill analysis are
4 moderate in nature. The residential class, which is
5 by far our largest population of customers, showed on
6 average across the company typical bill-expected
7 impacts of 3 percent or less as a result of the
8 stipulation.

9 There were, due to a confluence of rate
10 impacts that are scheduled to occur on June 1st of
11 2016, a few rate schedules, in particular, in
12 customers that would have had more significant
13 impacts. So, more specifically, the lighting
14 customers showed more significant increases as a
15 result of the elimination of the Rider EDR(c) street
16 lighting credit.

17 And also a select handful -- I don't want
18 to say handful, but a small population of very
19 low-load-factor, low-hours-used customers also showed
20 more significant impacts than I would expect to be
21 the norm, and in thinking about those impacts in
22 terms of what might be done to perhaps mitigate this
23 confluence of all these rate changes that are
24 scheduled to occur on June 1st of 2016, I think those
25 impacts could be mitigated by a determination on

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1 behalf of the Commission that for the calendar year
2 2016, the summer billing periods would be considered
3 to be July, August, and September, that the
4 Commission could suggest that the companies phase out
5 EDR(c) such that maybe two-thirds of the credit is
6 implemented in year one of the ESP, one-third in year
7 two, going to zero in year three, and then I think
8 the companies could work with the staff in order to
9 come up with a mutually agreeable phase-in plan for
10 this very select group of low-hours-use,
11 low-load-factor customers who are seeing the more
12 significant increases as a result of the typical bill
13 analysis.

14 EXAMINER PRICE: And these low hours, low
15 load factor, are any of them residential customers?

16 THE WITNESS: No, sir.

17 EXAMINER PRICE: So they are all
18 commercial customers?

19 THE WITNESS: They would be customers on
20 our GP schedule, our primary. You know, it would be
21 commercial and industrial customers.

22 EXAMINER PRICE: Thank you. And just for
23 the record, when did you give this information to OCC
24 in discovery?

25 THE WITNESS: Seven days after they asked

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1 for it but I know that's not what you are asking for,
2 but it would have been in December of 2015, so, you
3 know, pursuant to a request from the OCC.

4 EXAMINER PRICE: Mr. Kutik, if you could
5 verify the record on that.

6 MR. KUTIK: Your Honor, December 14.

7 EXAMINER PRICE: December 14?

8 MR. KUTIK: Yes.

9 EXAMINER PRICE: Ms. Willis, you may
10 proceed.

11 MS. WILLIS: Yes, thank you, your Honor.

12 Q. (By Ms. Willis) Ms. Mikkelsen, you
13 testified as to the bill impact, bill impact analysis
14 that you did but did not produce as an exhibit. Let
15 me ask you, did you -- you indicated you modeled the
16 impact of the ESP IV case, correct?

17 A. What I indicated was we modeled the
18 stipulated ESP as well as the change in the ROE that
19 was included in the term sheet.

20 Q. And can you tell me what specific
21 stipulation provisions were modeled in the bill
22 impact, which ones were modeled and which ones were
23 not modeled?

24 A. In the latest round of the typical bills
25 that we provided in response to discovery, the

1 impacts that we picked up were the change in the ROE
2 from 11.15 percent to 10.38 percent pursuant to the
3 change in the term sheet, and we also picked up the
4 incremental 61,250 kW of ELR load that was agreed to
5 in a prior stipulation but hadn't been included
6 because it was agreed to after the last round of
7 typical bills were provided.

8 The other provisions of the stipulation
9 didn't have sufficient information, nor has there
10 been a Commission determination that we were going to
11 move forward with those so there was no typical bill
12 impact to include at this time.

13 Q. So when you modeled the typical bill
14 impacts of rider RRS, you took -- would you have
15 modeled the -- would your model have reflected the
16 \$561 million benefit that you have calculated for
17 purposes of rider RRS?

18 A. The typical bills that we provided in
19 discovery were for the first three years of the term
20 of the ESP, consistent with the typical bills that we
21 initially included in our application and
22 subsequently updated and were made part of this
23 record, so they would not have reflected the full
24 \$561 million in credit. Rather, they would have
25 reflected the projected charges that are expected to

1 occur in the first three years of the ESP.

2 Q. And do you know what those charges are?

3 Let me strike that. Let me withdraw that.

4 You indicated that the typical -- or the
5 typical bill impact model that you ran could not
6 account for certain charges because there was no
7 Commission approval of those charges; is that a fair
8 characterization of what you said?

9 A. It may be half of what I said. I think
10 that in some measure they haven't been quantified
11 yet. They are under development. Then they would be
12 put forth for the Commission to review, interested
13 parties to participate, and only if there is a
14 determination by the Commission at that point that
15 some or all of the recommendation is beneficial to
16 the customers, then we would move forward. But we
17 don't have any granular numbers that I could include
18 in an analysis at this time.

19 Q. Would the typical bill analysis that
20 you -- we have been discussing, would that have
21 included the effects of rider DCR?

22 A. The impact of DCR in the first three
23 years at \$30 million was included in the typical
24 bills that we filed in the initial application in the
25 case that continued to be included in the typical

1 bills that were included in the record in OCC Exhibit
2 16, and it continued to be included in the typical
3 bills that we're discussing this afternoon that were
4 provided in discovery.

5 Q. And with respect to grid modernization
6 charges that are part of -- that are part of the
7 stipulation, would those potential charges be
8 included in your bill impact analysis?

9 A. No, because they haven't been quantified
10 at this time. There is no data to include in the
11 typical bill analysis.

12 Q. And can you tell me what other costs that
13 have not been quantified as part of the -- that are
14 imposed as part of the stipulation that would not
15 have been included in the bill analysis?

16 A. I would say that there are no costs that
17 are "imposed" as a result of the stipulation that
18 haven't been included in the typical bill analysis.
19 I would agree that there are other provisions which
20 the companies and interested parties will bring
21 additional information to the Commission to review
22 and make a determination on in subsequent
23 proceedings.

24 Q. The other provisions that -- that the
25 stipulation -- let me strike that.

1 One of the issues that we were -- we
2 talked about was the Community Connections program.
3 Would the Community Connections program, the revenues
4 to be collected under that program, would that be
5 contained in the bill analysis that you conducted?

6 A. There are DSE charges that are included
7 in the typical bill analysis that we provided. We
8 did not adjust those associated with Community
9 Connections because the Community Connections dollars
10 at \$5 million were included in the original
11 application in the case, and they weren't adjusted
12 subsequently.

13 Q. Are there any other DSE charges that go
14 through rider DSE that were -- were recommended under
15 the stipulation that were not provided as -- that
16 were not -- were not figured into the bill impact
17 analysis that we have been discussing?

18 MR. KUTIK: Asked and answered, your
19 Honor. I object.

20 EXAMINER PRICE: Overruled.

21 THE WITNESS: May I have that question
22 reread, please?

23 EXAMINER PRICE: You may.

24 (Record read.)

25 A. As I said, the typical bill analysis

1 includes DSE charges. There were no adjustments made
2 to the DSE charges in the last round of the typical
3 bill analysis.

4 Q. So the DSE charges would reflect the
5 current DSE charges that customers are paying; is
6 that correct?

7 MR. KUTIK: Objection, mischaracterizes
8 her testimony.

9 EXAMINER PRICE: Can you rephrase,
10 Ms. Willis? I don't think that's what she testified.

11 MS. WILLIS: Can I have the answer reread
12 then?

13 EXAMINER PRICE: You may.

14 (Record read.)

15 EXAMINER PRICE: Ms. Mikkelsen, is what
16 you are saying in your answer that there were no
17 changes in the latest bill analysis from the previous
18 one that was provided in the record and updated with
19 respect to DSE charges?

20 THE WITNESS: That's correct.

21 Q. (By Ms. Willis) Ms. Mikkelsen, would you
22 agree that the energy -- let me strike that.

23 To your knowledge there's been no update
24 of rider RRS benefits and costs that have been
25 prepared by the utilities using more current

1 projections than were presented in August of 2014?

2 MR. KUTIK: Objection, asked and
3 answered.

4 EXAMINER PRICE: Sustained.

5 Q. Would you agree, Ms. Mikkelsen, the
6 energy market prices and projections have softened,
7 meaning declined, as compared to the prevailing
8 prices and projections in existence in mid 2014?

9 A. I recall that Mr. Rose testified that at
10 the time he was testifying if he were to look at the
11 energy forwards at that time, it would serve to
12 modestly reduce his forecast. I also recall that
13 Mr. Lisowski testified that as a result of transition
14 auctions associated with the capacity performance
15 product, there would be additional capacity revenues
16 that would be included in rider RRS that aren't
17 included in the \$561 million that we've talked about.
18 I think there's a few factors like that that I am
19 aware of.

20 MS. WILLIS: May I have the question and
21 answer reread, please.

22 EXAMINER PRICE: You may.

23 (Record read.)

24 MS. WILLIS: Your Honors, I would move to
25 strike beginning where she said -- where she began

1 testify as to Mr. Lisowski and what he testified to
2 with respect to capacity. My question was energy
3 market prices and projection, not capacity.

4 EXAMINER PRICE: Fair enough. Motion to
5 strike will be granted.

6 MS. WILLIS: Thank you.

7 Q. (By Ms. Willis) Would it have been
8 feasible, Ms. Mikkelsen, to prepare a new updated
9 analysis of rider RRS that used an update of energy
10 market price projections?

11 A. By -- if by feasible you mean could the
12 companies have chosen to perform that analysis, the
13 companies didn't perform that analysis.

14 Q. I am asking, could the companies have
15 done an analysis, not chosen to do. Could they have
16 done an analysis that -- a new updated analysis of
17 rider RRS that used an update of the energy market
18 price projections?

19 A. I think that would have been a very
20 involved analysis. It would have required the
21 companies to have someone provide them an updated
22 estimate.

23 Q. Did Mr. Rose or someone from his firm
24 inform you that it was not feasible to prepare such
25 an update?

1 A. No.

2 Q. Can you tell me why the companies chose
3 not to do the update?

4 A. The companies are relying upon the
5 information that they have presented in this case and
6 supported by the witnesses in this case throughout
7 this proceeding and did not make a determination that
8 it was necessary to create a new set of calculations.

9 MS. WILLIS: Thank you, Ms. Mikkelsen.

10 That's all the questions I have. Thank
11 you, your Honors.

12 THE WITNESS: Thank you.

13 EXAMINER PRICE: Thank you.

14 Ms. Bojko.

15 MS. BOJKO: Your Honor, when I was not
16 here, I asked Mr. Settineri to go before me, and I
17 think he is planning on that, so if --

18 MR. SETTINERI: Fine with me.

19 EXAMINER PRICE: I'm sorry.

20 MS. BOJKO: That's okay. I didn't know
21 when I was going to return so I asked him to do that.

22 EXAMINER PRICE: We weren't sure when he
23 was going to return from Power Siting, too. He's
24 here.

25 MR. SETTINERI: I can leave and come back

1 if you want.

2 EXAMINER PRICE: Mr. Settineri.

3 MR. SETTINERI: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 Mr. Settineri:

7 Q. Good afternoon, Ms. Mikkelsen.

8 A. Good afternoon, sir.

9 EXAMINER PRICE: Let's go off the record
10 real fast.

11 (Discussion off the record.)

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

14 Mr. Settineri.

15 MR. SETTINERI: Thank you.

16 Q. (By Mr. Settineri) Ms. Mikkelsen, you are
17 familiar with the companies' application filed on
18 August 14, 2015, correct?

19 A. Yes.

20 Q. And you are familiar with all of the
21 stipulations that have been filed in this proceeding,
22 correct?

23 A. Yes.

24 Q. And at this stage in the proceeding the
25 companies are seeking approval of the application as

1 amended and modified by the terms and conditions of
2 all the stipulations filed in this proceeding,
3 correct?

4 A. Yes.

5 Q. Let's turn to your workpaper, which has
6 been marked as an exhibit, I believe. That would be
7 Sierra Club Exhibit 89. Do you have that in front of
8 you?

9 A. Yes.

10 Q. Just curious, you said that workpaper was
11 prepared at your direction, correct?

12 A. Yes.

13 Q. Okay. Who helped you prepare that
14 workpaper?

15 A. Members of my staff.

16 Q. How many people are on your staff?

17 A. Nine.

18 Q. And how many of your staff worked on the
19 workpaper?

20 MR. KUTIK: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. KUTIK: Relevance.

23 MR. SETTINERI: I am just trying to see
24 if Mr. Lisowski worked on the workpaper.

25 MR. KUTIK: Why don't you ask that

1 question?

2 EXAMINER PRICE: We will sustain the
3 objection.

4 Go ahead, Mr. Settineri

5 Q. Did Mr. Lisowski assist you with your
6 workpaper?

7 A. No, sir.

8 Q. Now, you're familiar with Mr. Ruberto's
9 aggregate summary that was previously introduced with
10 his testimony in this proceeding?

11 A. If you are referring to JAR-1 Revised,
12 then the answer is yes.

13 Q. And your workpaper doesn't include any
14 capacity performance revenues, correct?

15 A. Correct.

16 Q. And, likewise, your workpaper doesn't
17 account for any capacity performance charges,
18 correct?

19 A. Correct.

20 MR. SETTINERI: If I may have a moment,
21 your Honors.

22 EXAMINER PRICE: You may.

23 Q. And, Ms. Mikkelsen, if you could look at
24 your workpaper at line 12.

25 A. Yes.

1 Q. Am I correct that your workpaper projects
2 calendar year credits under rider RRS for years 2019
3 through year 2023?

4 A. No.

5 Q. And why not?

6 A. It projects credits for the years 2019
7 through May of 2024.

8 Q. That was my next question. It also --
9 okay. Thank you very much for that clarification.
10 And the companies stand by your projections for years
11 2019 through May 31, 2024, correct?

12 A. Yes.

13 Q. Earlier today we established under the
14 stipulation there is no cap under the rider RRS
15 charges, correct?

16 A. We established there is no cap on the
17 credits or charges associated with rider RRS.

18 Q. And the stipulation doesn't require the
19 companies to provide at least \$561 million in credits
20 to the ratepayers over the eight-year term of the
21 proposed ESP IV, correct?

22 A. Correct.

23 Q. If the Commission modified the
24 stipulation to require a minimum total credit of
25 \$100 million for rider RRS over the eight-year term,

1 would the companies be agreeable to such a
2 modification?

3 MR. KUTIK: Well, I'll object, your
4 Honor. That's not the companies' proposal, so we are
5 talking about something that's not in evidence.

6 MR. SETTINERI: Your Honor, at your
7 convenience.

8 EXAMINER PRICE: He is asking a
9 hypothetical. She can answer if she knows.

10 THE WITNESS: May I ask to have the
11 question reread, please, sir.

12 EXAMINER PRICE: You may.

13 (Record read.)

14 A. I believe the stipulation in the risk
15 sharing provision provides for a minimum credit of
16 \$100 million over the term of the ESP.

17 Q. Now, let's be clear. Let's -- strike
18 that.

19 In the risk sharing section, those
20 credits are payable to offset charges at certain
21 levels in certain years, correct?

22 A. To the extent that credits don't exist
23 naturally through the rider RRS provision, then
24 this -- pardon me, through the rider RRS calculation,
25 then this provision calls for the company to provide

1 up to \$1 million -- \$100 million in additional -- in
2 credits.

3 Q. But that doesn't guarantee that at the
4 end of the eight years, the aggregate of the charges
5 could exceed a hundred million, correct?

6 A. It does not.

7 Q. Okay. So now that we have clarified
8 that, let me go back to my question. If the
9 Commission modified the stipulation to require a
10 minimum total credit of \$100 million for rider RRS
11 over the eight-year term, would the companies be
12 agreeable to such a modification?

13 A. Sir, I am not sure I am entirely
14 understanding the hypothetical that you're putting to
15 me. If your question is related to the cumulative
16 credit, I am not understanding the question, sir.

17 Q. Let me help you. If we look at your
18 worksheet, I think you had projected a total credit
19 of \$561 million over the term, over the eight-year
20 term, correct?

21 A. Correct.

22 Q. And we established that the companies
23 stand by those projections, correct?

24 A. Yes.

25 Q. Okay. Given that, if the Commission

1 modified the stipulation to require that the
2 companies guarantee your projection at \$561 million
3 over the eight-year period, would the companies be
4 agreeable to such a modification?

5 MR. KUTIK: Objection, asked and
6 answered.

7 EXAMINER PRICE: This is a new one. Now
8 he is asking about 561 million. I don't think he --
9 I don't think he's asked this question before.
10 Overruled.

11 A. That is not the companies' proposal.

12 Q. And, likewise, if the Commission modified
13 the stipulation to require a zero net sum for credits
14 and charges over the eight-year term, would the
15 companies be agreeable to such a modification?

16 A. That is not the proposal of the companies
17 and the signatory parties.

18 Q. May I take that answer as a no then?

19 A. You can take that answer as that's not
20 the companies' and the signatory parties' proposal.

21 Q. That's not what I asked, though. It's a
22 "yes" or "no" question. And I'm trying to --

23 MR. KUTIK: Well, that's --

24 MR. SETTINERI: Can I finish my question?

25 MR. KUTIK: He is arguing with the

1 witness so I would ask he not argue with the witness.

2 MR. SETTINERI: I didn't finish my
3 question.

4 EXAMINER PRICE: Finish your question,
5 and then we will deal with the objections.

6 MR. SETTINERI: Thank you. Mr. Kutik is
7 effective. I forgot my question.

8 MR. KUTIK: That was not my intent.

9 Q. (By Mr. Settineri) You stated it's not
10 the companies' proposal to both my questions about
11 the modification, correct?

12 A. Correct.

13 Q. Okay. What I am asking you is that a no
14 answer to my questions?

15 MR. KUTIK: At this point -- may we have
16 what the question is at this point?

17 EXAMINER PRICE: If the Commission made
18 certain modifications to the stipulation 4, would the
19 company agree to these hypothetical modifications?

20 A. Yeah. I am not in a position to
21 negotiate the signatory parties' proposal as I sit
22 here on the stand. The signatories' and the
23 companies' proposal is what's enumerated in the
24 stipulations and the application before the
25 Commission.

1 Q. The Bench's question --

2 EXAMINER PRICE: It wasn't my question.
3 It wasn't my question. I was just summarizing yours.

4 MR. SETTINERI: Thank you.

5 Q. Well, the question is directed to whether
6 the companies agree to. We are not asking about the
7 signatory parties. So, again, going back to your
8 answer, you said this is not the companies' proposal
9 to both of those modifications. Is that a no in that
10 the companies would not agree to those hypothetical
11 modifications if they were to occur in the future?

12 MR. KUTIK: Your Honor, now we are in
13 argument. The witness has indicated -- well, it's
14 obvious what this is. We are talking here about the
15 stipulation. The stipulation is a product of
16 negotiation among a variety of parties, signatory
17 parties. This is their proposal.

18 MR. SETTINERI: Your Honor, if I may,
19 what this goes to is actually the guarantee or the
20 confidence that the companies have in the \$561
21 million. If the companies are willing to step up to
22 the plate and guarantee at least at some level, the
23 Commission can take note of that.

24 EXAMINER PRICE: They have guaranteed
25 some level. They have guaranteed some level in the

1 risk-sharing provisions.

2 The witness can answer the question as to
3 her state of knowledge sitting here today whether she
4 knows whether the company would or would not agree to
5 certain stipulations. It is not a "yes" or "no"
6 question. It's a "yes," "no," or "I don't know."

7 THE WITNESS: I don't know.

8 Q. Ms. Mikkelsen, as a general principle, do
9 you believe that if the Commission approves the
10 stipulation, that the Commission would be accepting
11 the language within the stipulation?

12 MR. KUTIK: Well, I'll object.

13 EXAMINER PRICE: Grounds?

14 MR. KUTIK: Legal conclusion.

15 EXAMINER PRICE: Sustained.

16 Q. (By Mr. Settineri) Ms. Mikkelsen, do you
17 have an expectation that if the Commission approves
18 the stipulation, that it would be accepting the
19 language within the stipulation?

20 A. Yes.

21 Q. Okay. So let's look at page 9 of the
22 stipulation, please. When you're there, it's part
23 C-3.

24 A. I'm there.

25 Q. Thank you. C-3 states that, "In the

1 event that PJM has not obtained approval for a longer
2 term capacity product to address State resource
3 adequacy needs by September 1, 2017, the Commission
4 will solicit comments from interested parties no
5 later than October 30 of 2017, addressing the State's
6 long term resource adequacy needs." Do you see that
7 sentence, Ms. Mikkelsen?

8 A. Yes.

9 Q. Okay. Would that be an example of
10 language that you would have an expectation that the
11 Commission would be accepting if the stipulation was
12 approved as presented?

13 A. No more or less than any of the other
14 language in the entire third stipulation and
15 recommendation, but yes.

16 Q. Thank you. Let's turn to page 20 of the
17 stipulation, please. Are you there?

18 A. Yes.

19 Q. Okay. At the top of the page do you see
20 the -- it's the middle of the sentence, but you see
21 the top line, "the Companies have the right to
22 withdraw and terminate the Application and the
23 Stipulated ESP IV if the Commission or any court of
24 competent jurisdiction rejects all or any part of the
25 Stipulated ESP IV or otherwise modifies its terms or

1 provisions." Do you see that?

2 A. I think it may be helpful to focus on the
3 sentence in its totality.

4 Q. I would be glad to. Which reads?

5 A. "Notwithstanding anything herein to the
6 contrary, except the Severability Provisions set
7 forth in section B.3.c, the Companies have the right
8 to withdraw and terminate the Application and the
9 Stipulated ESP IV if the Commission or any court of
10 competent jurisdiction rejects all or any part of the
11 Stipulated ESP IV or otherwise modifies its terms or
12 provisions."

13 Q. And the rider RRS is considered -- would
14 be considered part of the stipulated ESP IV, correct?

15 A. Yes.

16 Q. If a reviewing court determines that the
17 Commission erred in approving rider RRS, and assume
18 that happens two years after the stipulation has been
19 approved and rider RRS has been in effect, would the
20 companies require customers to return any credits
21 paid to the customers through rider RRS?

22 MR. KUTIK: Objection.

23 EXAMINER PRICE: Grounds?

24 MR. KUTIK: Beyond the scope, your Honor.
25 This provision of this third supplemental stipulation

1 is unchanged from the previous stipulation language.

2 EXAMINER PRICE: Sustained. You could
3 have asked the question before, Mr. Settineri. You
4 can't ask it now.

5 MR. SETTINERI: I understand, your Honor.
6 Thank you.

7 Q. (By Mr. Settineri) Does the third
8 supplemental -- strike that. Does the Third
9 Supplemental Stipulation and Recommendation prohibit
10 the companies from recovering credits that had been
11 previously paid to customers under rider RRS if a
12 subsequent review is held by a court and that court
13 finds that the Commission erred in implementing rider
14 RRS?

15 THE WITNESS: May I ask to have the
16 question reread, please?

17 EXAMINER PRICE: You may.

18 (Record read.)

19 MR. KUTIK: I am going to object, your
20 Honor. Again, that's still beyond the scope.
21 Although the question admittedly refers to the third
22 supplemental stipulation, the provision is a
23 provision that's unchanged, and that's just a
24 backdoor way of getting at information that he should
25 have asked before.

1 MR. SETTINERI: I will just note I am
2 happy to hear Mr. Kutik. I finally heard him say
3 "admittedly."

4 EXAMINER PRICE: You are not going to be
5 so happy with the ruling. He's sustained.

6 MR. SETTINERI: We will note some
7 laughter on the transcript.

8 Q. (By Mr. Settineri) Ms. Mikkelsen, earlier
9 you looked at the revised term sheet that's been
10 marked as an exhibit. Just for the record, am I
11 correct that that term sheet was executed on November
12 18, 2015?

13 A. Yes.

14 Q. Thank you. Now, Ms. Mikkelsen, the
15 stipulation doesn't prohibit the companies from
16 selling output from the PPA units under a bilateral
17 contract to a willing buyer, correct?

18 A. The intent of the Economic Stability
19 Program is that the companies will sell the energy
20 and the capacity and the ancillary and the
21 environmental attributes into the PJM markets.
22 Having said that, nothing in the stipulation or the
23 application prohibits the companies from entering
24 into a bilateral arrangement, but any such action
25 taken by the companies would, of course, be subject

1 to review by the Commission as part of their review
2 of rider RRS for reasonableness.

3 Q. Let me ask you. I had a question on
4 that. If we look at paragraph 3-a, page 8 of the
5 stipulation, the second full sentence of paragraph
6 3-a states, "Specifically, the Companies agree to
7 participate in annual compliance reviews before the
8 Commission to ensure that actions taken by the
9 Companies when selling the output from generation
10 units included in Rider RRS into the PJM market were
11 not unreasonable." Now, am I correct that that
12 sentence does not reference bilateral contracts?

13 A. I think bilateral contracts executed in
14 the PJM market would be included. Regardless, I know
15 the intent was that the Commission would be able to
16 review all of the revenue included in rider RRS for
17 reasonableness.

18 Q. So it's your understanding that the
19 Commission oversight over the actions of the
20 companies would include any actions taken to enter
21 into bilateral contracts, correct?

22 A. Yeah. Again, it's not the intent of the
23 provision because the rider RRS provision is intended
24 to perform as a hedge to market prices for our
25 customers to provide a stabilizing benefit to those

1 customers. So the intention is that the power would
2 be sold into the energy and capacity markets.

3 All I am saying is I agree with you there
4 is nothing explicit in the document that precludes
5 the company from entering into a bilateral agreement.

6 Q. Thank you.

7 MR. SETTINERI: Your Honors, at this time
8 I would move to strike the answer as unresponsive to
9 the question, and I am hoping you will find the
10 question was not broad.

11 MR. KUTIK: Your Honor, I think her
12 answer has been, and she explained what it was, why
13 that Mr. Settineri's proposition to her was
14 incorrect.

15 EXAMINER PRICE: I am not sure what you
16 are objecting to, Mr. Settineri. As I read her
17 answer, she says -- you say it's not your intent, and
18 she says, yes, it's not our -- you asked what her
19 understanding is. She says, yes, and then she goes
20 on and explains what the intent is. I am not sure
21 what you are objecting to.

22 MR. SETTINERI: I think I am just going
23 to move on, your Honor, at this point.

24 EXAMINER PRICE: That will work, too.

25 Let me follow-up just briefly because I

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1 think you raised an interesting point regarding the
2 PJM market.

3 The companies do not intend and would not
4 argue that if you entered into a bilateral contract
5 with some other RTO whether it's MISO or New York,
6 that that -- that that transaction would evade
7 Commission review; is that correct?

8 THE WITNESS: Correct. In all revenue
9 associated --

10 EXAMINER PRICE: All transactions.

11 THE WITNESS: All transactions associated
12 with the disposition of the output from the plants
13 would be proposed for inclusion in rider RRS.

14 EXAMINER PRICE: Whether technically in
15 the PJM market or any other market.

16 THE WITNESS: That's correct.

17 EXAMINER PRICE: Whether it's a bilateral
18 contract or it's just entering into the capacity
19 market or the day-ahead.

20 THE WITNESS: That's correct. But the
21 intention, again, is to offer it into the PJM
22 markets.

23 Q. (By Mr. Settineri) Ms. Mikkelsen, any
24 revenues or costs that result from a bilateral
25 contract, those would net under rider RRS, correct?

1 MR. KUTIK: Your Honor, at this point
2 this has been a very interesting discussion, but we
3 are beyond the scope at this point, your Honor,
4 nothing in the review provision, nothing in how rider
5 RRS works has changed in this regard.

6 EXAMINER PRICE: I am hoping this is just
7 a foundational question. He is going to follow-up
8 with something.

9 MR. KUTIK: That's why I let it go. I
10 figured this was all foundational, but now we are
11 beyond foundational.

12 EXAMINER PRICE: One last foundational.

13 You can go ahead and answer.

14 THE WITNESS: May I ask that the question
15 be reread, please, sir?

16 EXAMINER PRICE: You may.

17 (Record read.)

18 A. I am not aware of any costs that would
19 arise from a bilateral contract, sir.

20 Q. And my question, though, I know you said
21 you're not aware of any, but in the event there are
22 any costs, just like from the sales into the PJM
23 markets, but if you have revenues or costs, for
24 instance, a liquidation fee on a bilateral contract,
25 can those be netted under rider RRS?

1 MR. KUTIK: At this point, your Honor, I
2 think we are beyond foundation.

3 MR. SETTINERI: Your Honor, if I may, the
4 reason I am asking these questions is the language in
5 the rigorous review section of the stipulation is
6 somewhat vague. For instance, I focused on the fact
7 that the rigorous review is limited to selling output
8 into the PJM market, so we had to clarify that.

9 We also have a last sentence, "In
10 addition, the calculation of Rider RRS will be based
11 on the sale of power into the PJM." So these
12 questions are important to understand that the
13 netting of bilateral contracts also falls under the
14 RRS stipulation.

15 EXAMINER PRICE: I thought Mr. Soules
16 established earlier today in Section 3-a on page 8,
17 it was only the third sentence of 3-a that had
18 changed.

19 Mr. Soules, isn't that correct?

20 MR. SOULES: Ms. Mikkelsen did testify
21 there were two changes between the review process
22 described in her direct testimony and the review
23 process referenced here.

24 MR. SETTINERI: But, your Honor,
25 testimony is different in a stipulation in that

1 sense, and if this stipulation is approved by the
2 Commission, we have heard Ms. Mikkelsen say she has
3 an expectation that the Commission will follow this
4 language. So just like a contract, it's important to
5 understand what the language means, and that's what I
6 am trying to get to.

7 EXAMINER PRICE: I understand. But my
8 point is this is a section that hasn't changed.

9 MR. SETTINERI: I don't think it was in
10 the prior stipulation. That's my point.

11 MS. BOJKO: Your Honor, I am going to
12 jump in here. This is new language. It was hotly
13 debated after it was found.

14 EXAMINER PRICE: That's why I asked
15 Mr. Soules the question. If I misunderstood the
16 testimony he elicited, that's fine. That's why I
17 asked Mr. Soules a question. In 3a, was it only the
18 third sentence that had changed. If I'm wrong, I'm
19 wrong. I am just asking the question.

20 MR. SOULES: Your Honor, I was asking
21 about the review process, sort of, generally
22 speaking. I mean, the language that's in the third
23 supplemental stipulation I don't believe -- I believe
24 that's new in the third supplemental stipulation.

25 EXAMINER PRICE: Okay. Then I

1 misunderstood what you elicited.

2 MR. SETTINERI: Your Honor, my point
3 is -- testimony is testimony, but a stipulation to me
4 is almost like a contract to get her testimony, and
5 that's why I want to focus on this question of
6 bilateral contracts.

7 MR. KUTIK: Your Honor, again, the point
8 is that this subject, how this would work, is all
9 discussed, and the only things that changed were the
10 items that were elicited in Mr. Soules's testimony,
11 Mr. Soules's cross-examination.

12 MR. SETTINERI: Your Honor, my concern is
13 two years from now there is a bilateral contract and
14 we have liquidated damages. What's going to matter
15 is looking at this stipulation and what it says, and
16 it says it -- well, paraphrasing, selling output into
17 the PJM markets, calculating rider RRS based on the
18 sale of power to PJM. So I just want to clarify for
19 the record, bilateral contracts, charges, or revenues
20 will be netted under rider RRS.

21 EXAMINER PRICE: We did address the
22 question of bilateral contracts. That's what I am
23 struggling with.

24 MR. SETTINERI: Now, the stipulation,
25 though, appears to change that. That's what I am

1 concerned about.

2 EXAMINER PRICE: How does it change it?

3 MR. SETTINERI: Calculation of rider RRS
4 will be based on the sale of power into PJM.

5 MS. BOJKO: Your Honor, if I may add, I
6 think it does change it significantly and, the
7 question is even if it is under a buy-last allocation
8 contract, how is the price calculated for the
9 universal number put into rider RRS's calculation, so
10 we have a concern of whether it includes bilateral
11 contracts because it doesn't say so in the
12 stipulation and then how that ultimate revenue,
13 whatever it may be, is passed on to customers through
14 rider RRS.

15 EXAMINER PRICE: She has testified in
16 response to my question all transactions, bilateral
17 contracts or offer into capacity, in the capacity
18 market, or offering energy into the day-ahead is
19 covered by the review process.

20 MS. BOJKO: Covered by the review
21 process, your Honor, but not the revenues associated
22 with that, and at what price those revenues
23 associated with that sale will be used in the
24 calculation of rider RRS.

25 MR. KUTIK: Your Honor, the fact that the

1 companies retained the discretion to engage in
2 bilateral contracts is not new. Mr. Ruberto
3 testified about it. And to the extent they had
4 questions as to how that should have been treated
5 under rider RRS, they could have asked Ms. Mikkelsen
6 or anyone else that we put up on the stand that was
7 on that subject in the prior hearings.

8 We are here today to talk about the
9 changes to -- that were brought by the third
10 supplemental stipulation, the effects therein, the
11 settlement process that -- that produced that
12 stipulation.

13 MS. BOJKO: Your Honor, I would offer
14 this language did not exist prior, so the
15 cross-examination may have been one way, but now we
16 have a written commitment contract, so to speak, in a
17 stipulation that would change or modify
18 Ms. Mikkelsen's previous testimony, and that's the
19 exact questioning that's going on.

20 EXAMINER PRICE: I think Mr. Kutik is
21 correct, but I will give Mr. Settineri some leeway on
22 this just to be on the safe side in case there is
23 some dispute about this. We will just get it on the
24 record and we'll be done so.

25 Why don't you rephrase your last question

1 because I am sure in the course of all these
2 arguments, we have lost the last question.

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

5 EXAMINER PRICE: You've lost it, too.

6 MR. SETTINERI: Certainly have.

7 (Record read.)

8 EXAMINER PRICE: You can go ahead and
9 answer that question.

10 A. Yes. And then those revenues and costs
11 would be subject to the Commission's review for
12 reasonableness for ultimate inclusion in rider RRS.

13 Q. Thank you. Ms. Mikkelsen, the
14 stipulation does not prohibit the companies from
15 selling the output from the PPA units under a
16 buy-last allocation contract to a CRES provider,
17 correct?

18 MR. KUTIK: Again, your Honor, I object.

19 EXAMINER PRICE: The objection is noted,
20 but we'll give Mr. Settineri some leeway on this so
21 he can wrap this topic up.

22 A. The purpose of the retail rate stability
23 rider is to perform as a hedge for the companies'
24 customers, and very integral to that is the intent of
25 the companies to sell the power into the PJM energy

1 and capacity markets and any subsequent environmental
2 market so that it would work as a hedge, as
3 described, on a going-forward basis for the
4 companies' customers.

5 Having said that, there is nothing
6 written in the stipulation that prohibits the
7 companies from entering into a bilateral arrangement
8 with a CRES. To the extent that the companies did
9 enter into such a bilateral contract, the Commission
10 would review that action for reasonableness, and it
11 would be under their authority to make any
12 adjustments that they deem necessary arising from
13 that decision to rider RRS.

14 MR. SETTINERI: And, your Honor, I would
15 just simply ask that the phrase "having said that"
16 and everything before it be struck as unresponsive
17 but the remaining answer can remain in the record.

18 EXAMINER PRICE: Having given you a
19 little bit of leeway, we are going to go ahead and
20 give the witness a little bit of leeway to make sure
21 the record is clear.

22 MR. SETTINERI: Fair trade.

23 Q. Staying on page 8 of the stipulation,
24 under this third supplemental stipulation the
25 Commission will have no oversight of the actions of

1 FES, correct?

2 MR. KUTIK: Objection.

3 EXAMINER PRICE: Grounds?

4 MR. KUTIK: Beyond the scope, your Honor.

5 EXAMINER PRICE: She can answer if she
6 knows.

7 A. Under the review process, the Commission
8 has the ability to review for reasonableness all the
9 costs and all the revenues that are proposed for
10 inclusion in rider RRS.

11 Q. Okay. Let's look at the language of the
12 stipulation at 3-a. You see the second sentence
13 again back there? "Specifically, the Companies agree
14 to participate in annual compliance reviews before
15 the Commission to ensure that actions taken by the
16 Companies..." Am I correct that that annual
17 compliance review will not include Commission review
18 of actions taken by FES?

19 MR. KUTIK: Well, your Honor, I object.
20 He's taken the phrase out of context, "when selling
21 the output."

22 MR. SETTINERI: I can rephrase.

23 EXAMINER PRICE: Okay.

24 MR. SETTINERI: I may have read a little
25 too far.

1 EXAMINER PRICE: Okay.

2 Q. (By Mr. Settineri) You see the second
3 sentence in paragraph 3-a, Ms. Mikkelsen, correct?

4 A. Yes.

5 Q. And you see that second sentence relates
6 to actions taken by the companies, correct?

7 A. The second sentence very specifically
8 relates to actions taken by the companies when
9 selling the output from generation units included in
10 rider RRS into the PJM market.

11 Q. Well, let me try it a different way then.
12 The Commission as part of that annual compliance
13 review will not have oversight over the actions taken
14 by FES under the PPA, correct?

15 MR. KUTIK: Well, again, your Honor, I
16 object.

17 EXAMINER PRICE: I don't know -- FES,
18 what actions will FES take under the PPA,
19 Mr. Settineri?

20 MR. SETTINERI: They are selling the
21 output.

22 EXAMINER PRICE: FES is not going to sell
23 the output. The companies are selling the output.

24 MR. SETTINERI: They are selling the
25 output to the companies.

1 EXAMINER PRICE: That's not under the
2 PPA. That's under the proposed transaction.

3 MR. KUTIK: Well, to be correct, your
4 Honor, it's not rider RRS. It's under the proposed
5 transaction.

6 EXAMINER PRICE: Okay.

7 MR. KUTIK: I think that's what you
8 meant.

9 EXAMINER PRICE: I interpreted the PPA as
10 rider RRS. My mistake.

11 MR. SETTINERI: Oh, no, I meant the
12 proposed transaction, the code word.

13 EXAMINER PRICE: Let's try to use our
14 established dictionary.

15 MR. SETTINERI: I have a little bit of
16 AEP in me still, across the hall.

17 Q. (By Mr. Settineri) Ms. Mikkelsen, FES or
18 an affiliate of FES, meaning a subsidiary of FES,
19 will be operating the units that are under the
20 proposed transaction, correct?

21 MR. KUTIK: Objection.

22 MR. SETTINERI: Foundational.

23 EXAMINER PRICE: Foundational, overruled.

24 A. Yes.

25 Q. Okay. And through those actions in

1 operating the units, FES will generate costs,
2 correct?

3 MR. KUTIK: Objection.

4 EXAMINER PRICE: You're continuing
5 objection is noted. Overruled.

6 A. Yes.

7 Q. Okay. And so what I am getting at, I'm
8 wondering will the Commission have oversight over
9 FES's actions under this rigorous review that's
10 stated in the stipulation --

11 A. And, again, sir --

12 MR. KUTIK: Objection. I was waiting for
13 Mr. Settineri to be done. Objection, your Honor.
14 This is ground that was trod in the prior hearings.
15 Nothing is new presented on this issue with respect
16 to the third supplemental stipulation.

17 MR. SETTINERI: Your Honor, at your
18 convenience, I can add something or not.

19 EXAMINER PRICE: Sure.

20 MR. SETTINERI: I got to go back to what
21 the stipulation is versus just testimony, and this
22 is -- as far as I know, subject to check, I don't
23 believe -- I am not aware of the other stipulations
24 containing this rigorous review language in the
25 stipulation. And what I am hearing from

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1 Ms. Mikkelsen is that the Commission will -- and it's
2 written here -- will have oversight over the
3 companies.

4 What I want to get on the record is
5 whether the Commission will actually have oversight
6 over the actions of FES, because if you recall, it's
7 the actions -- the Commission has to look back at the
8 time what was known, and that's what I am getting at.

9 EXAMINER PRICE: I think the answer, the
10 witness is probably going to give, is they
11 have jurisdictional -- the Commission will have
12 oversight over what costs, not necessarily the
13 actions, but they will have oversight over what costs
14 FES has incurred.

15 And I am going to let the witness answer
16 your question, but I do want to direct your attention
17 because I think you are misrepresenting somewhat the
18 stipulation. It specifically says The rigorous
19 review process set forth in the ESP filing and the
20 testimony of Company Witness Mikkelsen supporting the
21 Application shall be adopted. So they are already
22 adopting everything she's already said.

23 Do you have something to add?

24 MR. KUTIK: No, your Honor. And my point
25 is why are we talking about this now? We should have

1 talked about it and we did talk about it before.

2 It's time to move on.

3 EXAMINER PRICE: I agree. Mr. Settineri
4 just needs to get -- the witness can answer his
5 question. Mr. Settineri needs to get to the point.
6 Has anything changed from what we have previously
7 heard, and I think he is going the long way around
8 it, but we will get to that point.

9 So you can go ahead and answer his
10 question after the court reporter rereads it because
11 I'm sure we all need refreshed.

12 (Record read.)

13 EXAMINER PRICE: Care to rephrase,
14 Mr. Settineri?

15 Q. (By Mr. Settineri) Ms. Mikkelsen, is it
16 your expectation under the third stipulation that as
17 adopted and incorporated in your testimony on the
18 rigorous review process that the Commission would
19 have oversight over the actions taken by FES in
20 operating the units that are proposed to be in the
21 proposed transaction?

22 MR. KUTIK: Objection.

23 EXAMINER PRICE: Overruled.

24 A. The Commission does not have, in my mind,
25 oversight authority over FES, but the Commission has

1 full authority to review the costs and the underlying
2 basis for the incurring of those costs for
3 reasonableness such that they can ultimately make a
4 determination in its judgment whether the costs
5 incurred were reasonable based on the facts and
6 circumstances known at the time that the costs were
7 incurred, and, if not, they can make an adjustment to
8 rider RRS. And, again, as we've discussed the
9 exception to that, of course, is the legacy costs.

10 Q. Okay. Thank you. I think maybe
11 Ms. Willis asked you some questions previously about
12 the planning years. You would agree with me that the
13 BRA auction and the capacity auctions are complete
14 for planning years 2016 and 2017, correct?

15 THE WITNESS: May I ask to have that
16 question reread, please?

17 (Record read.)

18 A. I am having trouble with your question,
19 sir, because the planning years aren't 2016 and 2017,
20 so perhaps if you could do a better --

21 Q. Let me do it better.

22 A. -- better job.

23 Q. The FirstEnergy Solutions has -- let me
24 strike that.

25 You would agree with me that the capacity

1 auctions for PJM planning year 2016, which starts
2 June 1, 2016, and ends May 31, 2017, have closed?

3 A. I agree that the base residual auction
4 for the delivery year 2016 to 2017 has already
5 occurred.

6 Q. Okay. And let's just -- because the
7 reason I backed off in terms of FES, but in terms of
8 bidding units into the capacity auction, let's just
9 assume that -- well, let me ask it this way.

10 FES would have bid units under the
11 proposed transaction into the capacity auctions for
12 that planning year, correct?

13 MR. KUTIK: Objection.

14 EXAMINER PRICE: Foundational, go ahead.
15 I know it's coming.

16 A. Yes. And that information would have
17 been provided in the companies' application filed on
18 August 14, 2014.

19 Q. Okay. And then delivery -- well,
20 delivery will occur starting in the planning -- in
21 the delivery year, correct, which would be June 1,
22 2016 through May 31, 2016 -- '17, correct?

23 A. The capacity revenues associated with
24 participation in the capacity markets leading up to
25 the delivery year of 2016 and 2017 will be remitted

1 during that delivery year.

2 Q. Okay. So if rider RRS and the
3 stipulation is approved and it starts before the
4 delivery year that we are discussing, would the
5 Commission have oversight over the actions of FES in
6 bidding those units for that planning year?

7 MR. KUTIK: Objection.

8 EXAMINER PRICE: Grounds?

9 MR. KUTIK: Beyond the scope, your Honor.

10 EXAMINER PRICE: Sustained. This is
11 clearly a question you could have asked in our
12 previous seven weeks of hearing.

13 MR. SETTINERI: Okay. Thank you.

14 Q. (By Mr. Settineri) Just a general
15 question, Ms. Mikkelsen. The third supplemental
16 stipulation makes no changes to what costs and
17 revenues can be netted under rider RRS, correct?

18 MR. KUTIK: Well, I'll object, your
19 Honor, in that -- does that mean if the -- we are
20 talking about a shorter term. We are talking about
21 slightly different costs, so the answer, yes or no,
22 which one is right under those conditions? So what
23 seems to be a fair question actually is an unfair
24 question.

25 EXAMINER PRICE: Well, it might be overly

1 broad, but why don't you narrow it down.

2 MR. SETTINERI: Let me just rephrase. I
3 think it might help.

4 Q. (By Mr. Settineri) The third supplemental
5 stipulation makes no changes to the types of costs
6 and revenues that can be netted under rider RRS,
7 correct?

8 A. Correct. However, I think it does make
9 more clear that the companies, not the customers,
10 would be responsible for adjustments made to rider
11 RRS associated with the performance requirement in
12 the PJM markets because those requirements didn't
13 exist at the time we outlined the initial re -- the
14 review process in the original application. So it
15 doesn't change any of the costs or revenues, just
16 makes more clear, I think.

17 Q. Can you point me to a term in the
18 stipulation that states that the companies will be
19 responsible for performance penalties in the PJM
20 markets?

21 A. Sir, I am looking specifically at page 8
22 3-a, which reads, "The Companies, not their
23 customers, would be responsible for the adjustments
24 made to Rider RRS based on actions deemed
25 unreasonable by the Commission, including any costs

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1 (after proper consideration of such costs and netting
2 of any bonus payments) associated with performance
3 requirements in PJM's markets."

4 Q. And it's possible for a unit to incur a
5 capacity performance penalty under circumstances that
6 could be reasonable, correct?

7 A. I would assume so.

8 Q. For example, an actuator. Let me strike
9 that. Do you know what an actuator is?

10 A. No.

11 Q. Okay. So, for instance, a valve failure
12 at a plant that was unforeseen, if it resulted in an
13 outage during an hour that fell into the capacity
14 performance program and a penalty was assessed, could
15 that be viewed as a reasonable circumstance that
16 would not disallow a cost due to the Commission's
17 annual compliance review?

18 A. I think that would depend on the facts
19 and circumstances at the time. But it could be
20 viewed as reasonable or unreasonable based on the
21 Commission's determination.

22 Q. And you would agree with me that the PJM
23 penalty capacity -- PJM's capacity performance
24 penalties can be significant?

25 A. Yes.

1 Q. And in the event there is a PJM penalty
2 assessed, would the Commission or its staff have the
3 ability to do a site visit to the unit to investigate
4 the outage, if that was the result, if that's what
5 resulted in the penalty being assessed?

6 A. I would think so if the Commission
7 determines that that's a necessary step in order to
8 conduct its reasonableness review.

9 Q. One thing I was wondering about on that,
10 again, 3-a, there is a phrase in parens in the
11 middle. It states, "(after proper consideration of
12 such costs after netting of any bonus payments.)"
13 And just to be fair, I will read the whole sentence.

14 "The Companies, not their customers,
15 would be responsible for the adjustments made to
16 Rider RRS based on actions deemed unreasonable by the
17 Commission, including any costs (after proper
18 consideration of such costs and netting of any bonus
19 payments) associated with performance requirements in
20 PJM's markets."

21 Do you see that language?

22 A. I do.

23 Q. What is meant by "after proper
24 consideration of such costs and netting of any bonus
25 payments"?

1 A. What is meant by that is that the
2 Commission needs to properly review the costs for
3 reasonableness based on the facts and circumstances
4 that were known at the time that the decisions were
5 made. And, further then, to the extent that there is
6 any bonus payments made, those would need to be -- to
7 the extent this was a determination that the
8 penalties were the result of unreasonable action,
9 those penalties would have to be offset by any bonus
10 payments received as part of the adjustment.

11 Q. And I want to try to understand that. So
12 we have \$100, make it simple, capacity performance
13 penalty that's assessed in one year. We have \$100
14 bonus payment paid. The Commission finds that the
15 100 -- that the companies' actions in regards to the
16 penalty should be -- were unreasonable and that that
17 cost cannot be passed on to rider RRS.

18 Am I correct, then, that that \$100 bonus
19 will still be credited to the customers through rider
20 RRS?

21 A. I think that the \$100 bonus payment would
22 be netted against the adjustment associated with the
23 unreasonable action.

24 Q. So the customers in that scenario don't
25 get the \$100, correct?

1 A. It's a couple of hundred dollars going on
2 here, sir.

3 Q. That's why I am confused here. Maybe I
4 am the only one in the room confused. But what I am
5 trying to understand is how this disallowance is
6 working here, especially with your language in the
7 stipulation about the netting.

8 MR. KUTIK: Your Honor, may we have a
9 question, please?

10 MR. SETTINERI: I'm sorry, I couldn't
11 hear.

12 MR. KUTIK: May we have a question? We
13 are hearing a lot of discussion and explanation
14 around prefaces, but it would be nice to have
15 questions, your Honor.

16 EXAMINER PRICE: He is trying to explain
17 his question to the witness to make it clear so she
18 can understand what he is asking.

19 MR. SETTINERI: I am just trying to move
20 us along, your Honor.

21 Q. (By Mr. Settineri) Ms. Mikkelsen, what I
22 am confused on if I have -- let's just make it
23 simple. In one year no bonuses through the capacity
24 performance program, but you get one penalty, \$100
25 assessed against the companies. All right? In that

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1 instance -- and the Commission finds that the
2 companies' actions were unreasonable, and it says
3 that \$100 must be disallowed. Am I correct then that
4 that \$100 will not be netted under rider RRS that
5 year?

6 A. To the extent that the Commission
7 determines that the \$100 in penalty was the result of
8 an unreasonable action, it would not -- those costs
9 would not be included in rider RRS in that year.

10 Q. The companies would bear -- the companies
11 would have to absorb the hundred-dollar penalty,
12 correct, in that instance, in that hypothetical?

13 A. Yes.

14 Q. So now let's add one more thing to it.
15 There is a \$100 bonus payment in that same year. We
16 just established that if the penalty is disallowed,
17 that doesn't go through rider RRS. I just want to
18 make sure I understand this. If we have a \$100
19 penalty assessed in one year and a \$100 bonus, that
20 at the end of the year if the \$100 penalty is
21 disallowed, the costs related to that penalty are
22 disallowed, that the \$100 in revenue, in bonus
23 payments, will still go into rider RRS to the benefit
24 of the customers.

25 A. And as I answered you earlier, sir, no,

1 that \$100 bonus would be netted against the \$100
2 penalty in your example.

3 EXAMINER PRICE: Even if the Commission
4 found the \$100 penalty was a result of unreasonable
5 actions?

6 THE WITNESS: That's right. That's
7 right.

8 Q. So, in other words, so long as revenues
9 are positive for the PJM markets, the Commission
10 can't disallow those costs from flowing -- from being
11 netted under the rider.

12 A. No. I mean, the expectation is there is
13 going to be a significant amount of revenue arising
14 from the PJM markets. This provision doesn't address
15 all of the PJM revenues, sir. As your question would
16 suggest, it addresses only the revenue, if any, or
17 penalties, if any, associated with the capacity
18 performance product.

19 MR. SETTINERI: Your Honor, you can tell
20 me to move on if you want me to, because I don't
21 think it's clear on the record. I think this is a
22 very significant point.

23 Q. Ms. Mikkelsen, so what I am hearing you
24 say then is that the revenues and charges from the
25 PJM markets will be netted, correct?

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1 A. I'm sorry, sir, that's what I was just
2 trying to make clear to you. I'm not -- we are
3 talking specifically about capacity performance
4 penalties and capacity performance benefits or bonus
5 payments. And then you switched the question to PJM
6 revenue in total.

7 Q. Good idea.

8 A. So I'm --

9 Q. I'm sorry if I interrupted you. Let's
10 just stick with capacity performance penalties and
11 revenues -- sorry, bonuses. So what I am hearing you
12 say is that any penalties from PJM related to the
13 capacity performance program and bonuses related to
14 capacity performance programs will be netted.

15 MR. KUTIK: Objection, asked and
16 answered.

17 EXAMINER PRICE: He is just trying to get
18 a clear record on this issue. Overruled.

19 A. No. What I have said is to the extent
20 that the Commission determines that a capacity
21 performance penalty is the result of an unreasonable
22 action, at that time that penalty would be netted
23 against any bonus payments -- bonus payments, if any,
24 that exist, and then to the extent that the bonus
25 payments were greater, the residual amount would be

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1 included. To the extent that the bonus payments are
2 less than the penalty, then the companies would
3 absorb that penalty.

4 Q. So, example, so if we have a \$100 penalty
5 and would have \$80 in bonuses, the Commission finds
6 that the actions that led to that penalty being
7 assessed were unreasonable and disallows the \$100 in
8 penalty, am I correct then that I would take 100
9 minus 80 as the bonus. That would give me \$20 that
10 the companies would be absorbing.

11 A. Correct.

12 Q. Okay. And then the customers, because
13 they are not going to get the \$80 bonus to the rider
14 will be making up the difference, correct?

15 EXAMINER PRICE: Making up which
16 difference? Making up which difference?

17 MR. SETTINERI: Would be making -- would
18 be paying the \$80.

19 MR. KUTIK: Objection. It's netted.

20 EXAMINER PRICE: I don't understand
21 paying the \$80, Mr. Settineri.

22 MR. SETTINERI: I can expand if you would
23 like or I can try again with the witness.

24 EXAMINER PRICE: Why don't you try again
25 with the witness.

1 MR. SETTINERI: Yeah.

2 Q. (By Mr. Settineri) Again, Ms. Mikkelsen,
3 I believe you said in that example I gave you a \$100
4 penalty, \$80 bonus. The Commission disallows the
5 \$100 penalty. You subtract the \$80 bonus, and that
6 leaves you with \$20 that the Commission -- that the
7 companies have to absorb, correct?

8 A. Yes.

9 Q. And in that example what that means is
10 that the customers would have \$80 less than they
11 would have otherwise had, correct, because of that
12 penalty?

13 A. Yes.

14 Q. Turning to page 7 of the stipulation,
15 please, and focus your attention on Section V, V-B,
16 please.

17 MR. KUTIK: May we have go off the record
18 for a second, please?

19 EXAMINER PRICE: You may.

20 (Discussion off the record.)

21 (Recess taken.)

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

24 Mr. Settineri, please proceed.

25 MR. SETTINERI: Thank you, your Honor.

1 Q. (By Mr. Settineri) Ms. Mikkelsen, I think
2 earlier today we established that one change to the
3 term sheet that's been marked as an exhibit in this
4 proceeding between the companies and FES was to
5 reduce the term of the proposed transaction from 15
6 years to 8 years, correct?

7 A. Yes.

8 Q. And that change was made to match the
9 term of the proposed transaction, with the term of
10 the proposed ESP IV and the stipulation, correct?

11 MR. KUTIK: May I have the question read,
12 please.

13 EXAMINER PRICE: You may.

14 (Record read.)

15 MR. KUTIK: I think we have one too many
16 references to the transaction, your Honor.

17 EXAMINER PRICE: Can you please rephrase,
18 Mr. Settineri.

19 MR. SETTINERI: Sure.

20 Q. (By Mr. Settineri) And the --
21 Ms. Mikkelsen, the reduction in term under the
22 proposed transaction from 15 years to 8 years was
23 done to match the term of the proposed ESP IV and the
24 stipulation, correct?

25 A. No.

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1 MR. SETTINERI: Your Honor, at this time
2 I would like to mark an exhibit, and I need to ask
3 for your leeway because I don't have my exhibit
4 number with me.

5 EXAMINER PRICE: Who are you representing
6 at this point in time 3P or RES-A or?

7 MR. SETTINERI: You would have an exhibit
8 that would include P3 and/or EPSA.

9 EXAMINER PRICE: Okay. You will be at 8.
10 This will be Exhibit 8. Let me rephrase that. This
11 will be marked as P3/EPSA Exhibit 8.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MR. SETTINERI: If I may approach, your
14 Honor?

15 EXAMINER PRICE: You may.

16 Q. We have marked as P3/EPSA 8 a Request for
17 Production, Sierra Club Set 11-RPD-149.

18 Ms. Mikkelsen, are you familiar with
19 what's been marked as P3/EPSA 8?

20 A. Yes.

21 Q. And can you identify that for the record,
22 please?

23 A. This is Sierra Club Set 11-RPD-149
24 request to the company and the companies' response.

25 Q. All right. And the exhibit is

1 double-sided, but you see it contains pages that have
2 e-mails?

3 A. Yes.

4 Q. And are you familiar with the e-mails
5 that are attached to the response?

6 A. Yes.

7 Q. If you could -- am I correct that these
8 e-mails represent the communications between
9 representatives of the companies and FES regarding
10 changes to the proposed transaction term sheet?

11 MR. KUTIK: Was the question "the
12 communications"?

13 EXAMINER PRICE: Yes, "the
14 communications."

15 THE WITNESS: I'm sorry, may I have the
16 question reread, please?

17 EXAMINER PRICE: You may.

18 (Record read.)

19 A. Yes.

20 Q. So let's start with the first e-mail, the
21 e-mail dated Wednesday, November 18, 2015, 1:15 p.m.
22 from Jay Ruberto to Kevin Warvell. Do you see that?

23 A. I do.

24 Q. And do you see the -- after the -- you
25 see the second paragraph, two sentences, "First, my

1 understanding is that the term of the Ohio ESP may be
2 8 years. Based on this understanding, we now request
3 a PPA term that aligns with the term of the ESP
4 Retail Rate Plan." Do you see that reference there?

5 A. I do.

6 Q. Okay. And this was a communication from
7 Jay Ruberto, who was the lead negotiator for the
8 companies, correct?

9 A. Correct.

10 Q. And this was to Kevin Warvell, and Kevin
11 was the negotiator for FES, correct?

12 A. Yes.

13 Q. So the companies proposed modifying the
14 proposed transaction term, not FES, correct?

15 A. Correct.

16 Q. And do you believe the remaining pages to
17 this document are true and accurate representations
18 of the e-mails sent to and from Mr. Ruberto to
19 Mr. Warvell and vice versa from Mr. Warvell back to
20 Mr. Ruberto?

21 A. Yes.

22 Q. It's also the companies' that -- well,
23 strike that question.

24 Now, the stipulation, third supplemental
25 stipulation, does not require that the term of the

1 proposed transaction be eight years, correct?

2 A. Correct. The third supplemental
3 stipulation sets the term for rider RRS at eight
4 years.

5 Q. And are you aware of any prohibition that
6 would prevent FES and the companies from keeping the
7 proposed transaction term at a 15-year term?

8 MR. KUTIK: Can I have the question read,
9 please?

10 EXAMINER PRICE: You may.

11 (Record read.)

12 A. I think the prohibition would be sound
13 business judgment insomuch as the companies would not
14 want to commit to a 15-year proposed transaction when
15 they are agreeing in the third supplemental
16 stipulation to only have a rider RRS term of eight
17 years.

18 Q. Okay. And to shortcut questions, that's
19 because the companies aren't willing to take the risk
20 of -- the companies aren't willing to take on the
21 risk of the PPA without the cost recovery that's
22 provided by rider RRS, correct?

23 MR. KUTIK: I'll object, your Honor.
24 This is irrelevant at this point. The proposal isn't
25 for 15 years. The proposal is for eight years. So

1 what might happen for a hypothetical proposal or
2 hypothetical transaction at 15 years is irrelevant
3 because it is not 15 years.

4 MR. SETTINERI: Your Honor, I can add in
5 if you would like.

6 EXAMINER PRICE: You can respond.

7 MR. SETTINERI: Sure. The third
8 supplemental stipulation has changed the rider RRS
9 term to an eight-year term. We've established from
10 the witness that reducing the PPA from 15 years to an
11 8-year term, I believe she used the term "sound
12 business judgment." So I think it's a fair question
13 then to inquire as to that sound business judgment.
14 And my question -- and I am assuming and the question
15 was about taking on that PPA without a guaranteed
16 recovery from the customers. It's a clunky response.

17 EXAMINER PRICE: I think she already
18 answered your question, though, didn't she?

19 MR. SETTINERI: Well, no, she didn't.

20 MR. KUTIK: For the record, there is no
21 "guaranteed" end recovery from customers either.

22 EXAMINER PRICE: Fair enough. We are
23 going to sustain the objection.

24 MR. SETTINERI: Your Honor, if I may
25 approach?

1 EXAMINER PRICE: You may.

2 MR. SETTINERI: I would like to mark as
3 Exhibit P3/EP SA 9. This is Jay Ruberto's errata
4 sheet. My understanding this has already been
5 admitted into evidence, but for today's purposes, I
6 thought it best to mark it and use it.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. (By Mr. Settineri) Ms. Mikkelsen, are you
9 familiar with what's been marked as P3/EP SA 9?

10 MR. KUTIK: Just to be clear, your Honor,
11 I believe this has previously been marked as Company
12 Exhibit 34.

13 MR. SETTINERI: Your Honor, I am not
14 planning to admit it.

15 MR. KUTIK: Just for purposes of clarity
16 for the record.

17 EXAMINER PRICE: Thank you.

18 MR. SETTINERI: Mr. Kutik, what was that
19 reference that you previously gave?

20 MR. KUTIK: I believe it's Company
21 Exhibit 34, which has been admitted.

22 MR. SETTINERI: Thank you.

23 Q. (By Mr. Settineri) You're familiar with
24 this document, Ms. Mikkelsen?

25 A. Yes.

1 Q. Okay. If you could turn to JAR-1.

2 A. Sir, do you mean JAR-1 Revised?

3 Q. That is correct. Thank you for the
4 clarification. Tell me when you're there.

5 A. I'm there.

6 Q. Okay. The term of the proposed
7 transaction has been reduced to end May 31, 2024,
8 correct?

9 A. Yes.

10 Q. Okay. So if I look at the line that says
11 "Under (Over) Recovery," am I correct that the --
12 Mr. Ruberto's JAR-1 Revised projects overrecoveries
13 through 2031; is that correct?

14 MR. KUTIK: Your Honor, I object. I
15 mean, we are now talking about a calculation that has
16 been superseded by Ms. Mikkelsen's calculations with
17 respect to the revised term and revised costs that go
18 into that calculation, including the revised ROE. So
19 what's the relevance of this?

20 EXAMINER PRICE: I assume if this is a
21 foundational question, it's just the set-up for his
22 next question, so we will overrule your objection.

23 Q. Ms. Mikkelsen, I will repeat the
24 question. But am I correct that Mr. Ruburto's JAR-1
25 Revised shows an overrecovery from 2024 all the way

1 through 2031, correct?

2 A. Yes.

3 Q. And earlier I believe we established that
4 the company stands by its projections in its current
5 worksheet, that's your worksheet, that's already been
6 admitted today, correct?

7 A. Yes.

8 Q. Okay. And at the time prior to revising
9 the term of the PPA down from 15 to 8 years, is it
10 fair to say the companies also stood by their
11 projections as listed under JAR-1 for the under- and
12 overrecovery row?

13 A. Yes.

14 Q. Okay. And do you believe it's sound
15 business judgment for the companies to give up those
16 credits, overrecoveries in the out years?

17 MR. KUTIK: Objection.

18 EXAMINER PRICE: Grounds?

19 MR. KUTIK: Relevance. What out years
20 are we talking about?

21 EXAMINER PRICE: He is clearly talking
22 about the part, the time period after the -- between
23 the eighth year of the proposed RRS and the 15 years
24 of the previous proposed RRS.

25 She can answer the question if she knows.

1 A. Sir, the companies are entering into the
2 proposed transaction in order to provide a retail
3 rate stability mechanism for their customers in order
4 to provide them a hedge against future market prices.
5 To the extent that that retail rate stability
6 mechanism no longer exists, what I was referring to
7 earlier is there would be no need for the company to
8 enter into the transaction in those subsequent years
9 because it wouldn't accomplish the very reason that
10 the company was entering into the proposed
11 transaction in the first place.

12 Q. And fair to say that if the companies
13 were to have not modified the 15-year PPA, because
14 FES and the companies are affiliates, that in terms
15 of dollars it, wouldn't really have mattered,
16 correct?

17 MR. KUTIK: Objection, your Honor.

18 EXAMINER PRICE: Grounds?

19 MR. KUTIK: Again, relevance.

20 EXAMINER PRICE: I certainly think it's
21 outside the scope if you are asking a hypothetical as
22 if they had not changed their original proposal.
23 That's something you could have asked the company the
24 question previously in hearing.

25 MR. KUTIK: So my objection is sustained,

1 your Honor?

2 EXAMINER PRICE: Yes.

3 Q. (By Mr. Settineri) Ms. Mikkelsen, under
4 the third supplemental stipulation, am I correct that
5 the companies continue to bear a risk that revenues
6 will not exceed costs under rider RRS?

7 A. Under the risk-sharing mechanism in the
8 third supplemental stipulation, the companies bear
9 the risk in years five through eight. To the extent
10 that credits don't naturally occur in rider RRS, then
11 the company would be obligated to provide credits
12 pursuant to the terms of that provision.

13 Q. What I am trying to establish, I think
14 there was a key phrase in my sentence that I maybe
15 didn't say loud enough, but under the stipulation,
16 the companies' customers continue to bear a risk that
17 revenues will not exceed costs under rider RRS,
18 correct?

19 MR. KUTIK: Actually, I think your prior
20 question was "companies."

21 EXAMINER PRICE: It was.

22 MR. SETTINERI: Oh, I missed the
23 customers. Let me just do it again.

24 MR. KUTIK: Key phrase.

25 Q. Ms. Mikkelsen, under the stipulation, the

1 companies' customers continue to bear a risk that
2 revenues will not exceed costs under rider RRS,
3 correct?

4 A. Yes. And to the extent that revenues
5 don't exceed costs, that would suggest then that the
6 market prices are low and the customers would be
7 enjoying the benefit of those low market prices.

8 MR. SETTINERI: Your Honor, I would move
9 to strike everything after the word "yes." It was a
10 tight question.

11 EXAMINER PRICE: Granted.

12 Q. Ms. Mikkelsen, if you could turn to --
13 let's see. We are at page 7 of the stipulation, V-B,
14 paragraph B-1. Would you agree with me that
15 paragraph B-1 at page 7 of the third supplemental
16 stipulation was intended to address the risk-sharing
17 factor that was raised by the Commission in the AEP
18 case, correct?

19 A. I apologize. It may be getting late.
20 I'm not sure. Are you -- I thought you referred to
21 V-B-1.

22 EXAMINER PRICE: He did.

23 THE WITNESS: May I ask you to rephrase
24 your question.

25 MR. KUTIK: It is getting late.

1 Q. Thank you. Thank you, Ms. Mikkelsen.
2 Thank you for your patience today. I know it's been
3 a long day.

4 Turning to V-B-2, would you agree
5 paragraph B-2 was intended to address the
6 risk-sharing factor that was raised by the Commission
7 in the AEP case?

8 A. In part the companies's initial
9 application included the review process for the
10 Commission, which is also a risk-sharing mechanism
11 that addresses the AEP -- the issue raised in the AEP
12 case.

13 Q. In regards to the credits that are shown
14 on page 8, these credits are -- this is the first
15 time these credits have been proposed in the case,
16 correct?

17 A. This is the first time credits of this
18 nature have been included in a stipulation in the
19 case, yes.

20 Q. Okay. In year five if the companies
21 anticipate that the companies would have to pay --
22 let me strike that.

23 At the beginning of year five if the
24 companies anticipate that they will have to pay part
25 or all of that \$10 million credit, at the next annual

1 true-up, would the companies adjust rider RRS to
2 provide that credit during that year?

3 THE WITNESS: May I ask to have the
4 question reread?

5 Q. I can help if you would like. Let me
6 just rephrase it. Ms. Mikkelsen, how will rider RRS
7 be adjusted to account for any \$10 million credit
8 that the companies may pay under the term of the
9 proposed ESP?

10 A. The credit would be included in the
11 reconciliation at such time as there was a
12 determination of what the actual costs and revenues
13 are so a judgment could be made about what the actual
14 credits were available to the customers during that
15 year.

16 Q. And would that analysis take place at the
17 end of the year?

18 A. It would take place when the actual costs
19 and revenues for the year are available, so it would
20 be at the end of the year.

21 Q. And then would that -- let's say it was
22 the entire \$10 million credit had to be paid. Would
23 that be in the form -- would it be -- how would that
24 \$10 million credit go into rider RRS?

25 A. It would be included as a reconciliation

1 adjustment for the next rider RRS.

2 Q. When you said "the next rider RRS," so if
3 a reconciliation takes place in January and the
4 companies have to put in a \$10 million credit, would
5 the rider RRS -- when would be the next time that
6 rider RRS would be adjusted to show that credit?

7 A. As proposed, there would not be a rider
8 RRS adjustment in January. Again, with the initial
9 application in the case, in August of 2014 the
10 company proposed that rider RRS would be updated
11 annually, coincident with the change in SSO
12 generation rates for the companies' nonshopping
13 customers of June 1 of each year. And we said we
14 would make that filing 60 days in advance of June 1.
15 For Commission review.

16 So to the extent that we are preparing
17 our filing, this is 60 days in advance. I guess to
18 the extent it was clear in some circumstance that the
19 companies would be obligated to include a credit
20 pursuant to this provision, we would include it at
21 that time for the rates that would go into effect
22 June 1.

23 Q. So you may do it on a forecast basis or
24 on the back end on an actual basis depending on what
25 the market -- what the over- or underrecovery looks

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1 like at the time it is projected to be for that
2 following year, correct?

3 A. Yes, I think that's correct.

4 Q. Thank you very much.

5 EXAMINER PRICE: Now you have lost me.
6 Sorry. If you forecasted at the beginning of a year
7 that in -- for year five that hypothetically it was
8 going to net out as a \$10 million loss, \$10 million
9 charge to customers, you would not credit it at the
10 beginning of year five. You would wait until the end
11 of the year and the actual results came true and
12 credit it at that point; is that right?

13 THE WITNESS: With one caveat, that we
14 would file 60 days in advance of the end of the year.
15 So if it was clear at that time, you know, that we
16 were going to trigger this provision, I think we
17 would include the credit at that time. If it was
18 so -- too close to call, I think we would probably
19 wait until the actuals were in to make the adjustment
20 at that time.

21 EXAMINER PRICE: Thank you.

22 MR. SETTINERI: Now you confused me.

23 Q. (By Mr. Settineri) Bear with me. I'm
24 confused. I heard you say it could be done on a
25 forecasted basis or a back-end basis, my own phrase

1 there. I guess let's just slowly walk through an
2 example. When will rider RRS be set every year?

3 A. New rider RRS rates will go into effect
4 June 1 of each year.

5 Q. Okay. And if it's June 1, and let's say
6 going into -- going into the fifth year, and let me
7 ask, when you reference years, it's the fifth year of
8 the term, so that would start June 1, correct? That
9 would be on June 1?

10 A. Correct.

11 Q. Okay. And the forecast or the
12 projections by the companies of the under- or
13 overrecovery for rider RRS show -- indicate that the
14 companies will be paying a \$10 million credit for
15 that year five. Would the companies instead of
16 waiting until the actuals were done for that year
17 five simply adjust rider RRS at the beginning of year
18 five to put in the \$10 million credit?

19 A. No.

20 Q. Okay. It would be at the end of the year
21 then, that the adjustment would take place, at the
22 beginning of the following year.

23 A. Correct.

24 Q. Thank you for clarifying that for me.
25 Just to be clear, like year eight, \$40 million,

1 that's nominal dollars as of year eight, correct?

2 A. Yes.

3 Q. The credits shown at the top of page 8
4 that are part of the risk sharing, those aren't
5 intended to provide an incentive to FES, correct?

6 MR. KUTIK: I'm sorry, may I have the
7 question read, please?

8 EXAMINER PRICE: You may.

9 (Record read.)

10 MR. KUTIK: I'm sorry, was the question
11 "are" or "are not"?

12 (Record read.)

13 A. They are not intended to provide an
14 incentive to FES.

15 Q. If you could turn to your testimony at
16 page 12, please, line 10, you state, "Overall, the
17 Stipulated ESP IV is estimated to be more favorable
18 than the expected results of an MRO by 612.1 million
19 on a nominal basis and \$296 million on a net present
20 value basis," and I've paraphrased. Do you see that
21 language there in your testimony, Ms. Mikkelsen?

22 A. Yes.

23 Q. Okay. And you conducted -- did you
24 conduct that analysis?

25 A. I think as we discussed earlier, that

1 analysis was conducted under my direction by my
2 staff, as documented in the workpaper. It has been
3 numbered Sierra Club Exhibit 89.

4 Q. Okay. And on a quantitative basis, the
5 difference between the stipulated ESP IV quantitative
6 number and the MRO quantitative number would be the
7 dollars listed in the table at the bottom of page 12
8 of your testimony, correct?

9 A. Yes.

10 Q. Okay. And that table shows four
11 payments, correct, or I -- strike that. Has
12 references -- strike that.

13 The table at the bottom of page 12
14 references \$24 million for economic development
15 funding, correct?

16 A. Yes.

17 Q. And those monies would be paid by the
18 customers and not recovered from the customers,
19 correct?

20 A. Sir, you are going to have to restate
21 your question. I think you used "customers" twice.

22 Q. I think I am hitting the end of the day
23 here, unfortunately. I apologize to everyone.

24 Ms. Mikkelsen, the \$24 million, if you go
25 in table -- the table at the bottom of page 12, those

1 monies will be paid by the companies and not
2 recovered from the companies' customers, correct?

3 A. Correct.

4 Q. And the same with the low-income funding
5 monies of 19.1 million?

6 A. The low income funding would be paid for
7 by the companies and not recovered from the
8 customers.

9 Q. And the Customer Advisory Agency funding
10 8 million would also be paid by the companies and not
11 recovered from the customers, correct?

12 A. Yes.

13 Q. The companies can make those payments --
14 strike that.

15 You are not aware of any prohibition that
16 would prevent the companies from making those
17 payments that we just went through, the \$24 million
18 figure, the \$19.1 million figure, and the \$8 million
19 figure -- let me start over. Excuse me.

20 Ms. Mikkelsen, you are not aware of any
21 prohibition that would prevent the companies from
22 making the economic development funding payment,
23 low-income funding payment, and Customer Advisory
24 Agency funding payment through an MRO, correct?

25 A. The companies are making the economic

1 development funding, the low-income funding, and the
2 Customer Advisory Agency funding commitment strictly
3 pursuant to this ESP, and they would not make this
4 commitment pursuant to an MRO.

5 Q. I asked you if you were aware of any
6 prohibition that would preclude the companies from
7 making these payments through an MRO.

8 A. And I am responding that the company
9 would not make these commitments pursuant to an MRO.

10 Q. Okay. And that's -- is there any other
11 prohibition in your mind besides the fact the
12 companies would not do so?

13 A. That is the -- that is what comes to
14 mind.

15 Q. Let me ask you this. If rider RRS was
16 forecasted to result in a charge of \$561 million over
17 the eight-year term, would you still believe that the
18 ESP would be more favorable than an MRO?

19 A. I haven't thought about that question,
20 but certainly there would still be significant
21 qualitative benefits that we have discussed
22 throughout this proceeding associated with the ESP
23 versus the MRO. More specifically, what I would be
24 referring to is the reliability enhancement; the
25 benefit of having baseload generating units that are

1 fuel diverse with on-site fuel storage capabilities
2 located in the ATSI zone; the job retention benefits;
3 the avoidance of transmission investment; the tax
4 dollars generated associated with these plants; as
5 well as the economic development benefits; coupled
6 with the provisions associated with economic
7 development funding, low-income funding, Customer
8 Advisory Agency funding, and many of the other
9 qualitative commitments made in the stipulation, such
10 as the contemplation of a base rate freeze throughout
11 the eight-year period, so I think as I sit here
12 today, yes.

13 Q. Turning back to the stipulation, page 8,
14 under part 3-b, the "Full Information Sharing"
15 section, you had some questions earlier today
16 regarding that section. Do you recall the general
17 questions about this section?

18 A. I recall looking at the section earlier
19 today.

20 Q. Thank you. Regarding a reasonable staff
21 request as referenced in that paragraph, what happens
22 if FES believes a request is unreasonable but the
23 companies believe it is reasonable?

24 A. FES has no role in the determination of
25 whether a staff request is reasonable. That

1 discussion would occur between the companies and the
2 staff, and to the extent that the companies and the
3 staff couldn't resolve the question of whether it was
4 reasonable or not, and, frankly, that seems
5 farfetched to me based on my experience in working
6 with the staff, but in the event that situation
7 existed, then it would be subject to Commission
8 determination.

9 Q. And the revised term sheet does not
10 contain language to address that circumstance where
11 FES would deem a request unreasonable and the
12 companies would deem it reasonable, correct?

13 A. As I mentioned earlier today, sir, the
14 companies have committed to full information sharing
15 with respect to the FirstEnergy Solutions' fleet, and
16 they are making that representation based on a
17 commitment that the business unit leaders at
18 FirstEnergy Solutions made to the company.

19 Q. Ms. Mikkelsen, the third supplemental
20 stipulation does not prohibit the companies from
21 seeking recovery of any costs that are disallowed by
22 the Commission, correct?

23 A. I'm not sure I understand the question,
24 sir, because if the costs are disallowed, they aren't
25 being recovered in rider RRS.

1 Q. Let me ask a better question. The third
2 supplemental stipulation does not prohibit the
3 companies from seeking recovery of
4 Commission-disallowed costs in any future
5 proceeding, correct?

6 A. I am not sure I understand the question
7 or how the question would be implemented in practice,
8 but the intent of the stipulation is to the extent
9 that the Commission determines that costs are
10 unreasonable or there were -- there were unreasonable
11 revenues included, the companies would absorb those
12 costs, and they would not seek recovery of those
13 costs in any subsequent proceeding.

14 Q. If the Commission disallows a cost, is it
15 your expectation that the companies could appeal any
16 decision by the Commission to disallow a cost through
17 the Commission's own administrative appeal process
18 and then consequently to the Ohio Supreme Court?

19 A. Again, I am not an attorney, but yes.

20 Q. Thank you. Now, the stipulation allows
21 the Commission to disallow costs in certain
22 circumstances, but the stipulation does not allow the
23 Commission to increase the credits under rider RRS,
24 correct?

25 MR. KUTIK: I'll object, your Honor. I

1 am not sure what it means to increase credits. Are
2 we talking about the credits that appear in the
3 stipulation on page 8, or are we talking about
4 something else?

5 EXAMINER PRICE: If you can clarify,
6 Mr. Settineri.

7 MR. SETTINERI: Sure.

8 Q. Ms. Mikkelsen, the stipulation allows the
9 Commission to disallow certain costs under certain
10 circumstances, correct?

11 A. Yes.

12 Q. Okay. But the stipulation does not allow
13 the Commission to provide additional credit amounts
14 to customers through rider RRS, correct?

15 MR. KUTIK: Same question, same
16 objection, your Honor.

17 EXAMINER PRICE: Mr. Settineri,
18 hypothetically -- I am trying to understand your
19 question. Hypothetically, if the Commission found
20 that power should have been sold for \$100 a
21 megawatt-hour and it was sold for \$80 a
22 megawatt-hour, you are asking the witness can the
23 Commission require that to be included in the
24 reconciliation, that \$20 missing credit?

25 MR. SETTINERI: Yes, your Honor.

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1 EXAMINER PRICE: Okay.

2 THE WITNESS: Yes.

3 EXAMINER PRICE: So you're saying the
4 stipulation does not allow the Commission --

5 THE WITNESS: I was not. I was saying
6 the opposite.

7 EXAMINER PRICE: Okay.

8 THE WITNESS: That the Commission, as we
9 have said over and over again, has full authority to
10 review for reasonableness the revenue included as
11 well as the costs. So if they make a judgment that
12 the revenue included was not reasonable, for whatever
13 reason, I think they could recommend a corresponding
14 adjustment to reflect that judgment.

15 EXAMINER PRICE: Okay.

16 THE WITNESS: Thank you.

17 Q. (By Mr. Settineri) Going back to page 7
18 on the credits again, nothing in the third
19 supplemental stipulation guarantees that rider RRS
20 will provide a net credit to customers in any one
21 year over the eight-year proposed ESP term, correct?

22 A. Correct.

23 Q. Ms. Mikkelsen, earlier today your
24 counsel -- the companies marked Company Exhibit 156,
25 which was the revised term sheet, correct?

1 A. Yes.

2 Q. Do you recall that? And that was
3 marked -- it was produced through discovery as IEU
4 Set 1-INT-25, Attachment 1 Revised. Do you recall
5 when that term sheet was produced through discovery
6 to the parties?

7 And if it helps, I have the actual
8 discovery response to refresh your memory if you
9 would like.

10 A. That would be very helpful, sir.

11 MR. SETTINERI: May I approach, your
12 Honor.

13 EXAMINER PRICE: You may.

14 MR. KUTIK: Can you just ask her about
15 the date and ask her if it refreshes her
16 recollection?

17 Q. Would it refresh your recollection if I
18 told you that revised term sheet was produced on
19 December 1, 2015?

20 A. I'm sorry, I couldn't hear you, sir.

21 Q. Would it refresh your recollection if I
22 told you that the revised term sheet was produced on
23 December 1, 2015?

24 A. I'll accept that.

25 EXAMINER PRICE: No. Does that mean that

1 does not refresh your recollection, but you will
2 take --

3 MR. SETTINERI: Your Honor, at this time
4 let's go ahead and mark it.

5 MR. KUTIK: Your Honor, I think at this
6 point for purposes of this we will just stipulate
7 that was the production date.

8 EXAMINER PRICE: Okay. Perfect.

9 MR. KUTIK: It sounds about right to me.

10 EXAMINER PRICE: The record will reflect
11 it was produced on December 1, 2015.

12 MR. SETTINERI: Your Honor, if I may just
13 have a moment, please.

14 EXAMINER PRICE: You may.

15 MR. SETTINERI: Thank you. Your Honor, I
16 do have one more area to go into. That is the
17 subject of the pending motion for protective order.
18 We can talk about this off the record if you would
19 like and how I would propose handling it.

20 EXAMINER PRICE: Let's go off the record.

21 (Discussion off the record.)

22 EXAMINER PRICE: Let's go back on the
23 record. Let's go into confidential session.

24 (CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

EXAMINER PRICE: Let's go back on the
public session at this time.

Mr. Settineri.

MR. SETTINERI: I have no further
questions, your Honor, at this time, subject to the
pending motion for protective order resolution and
being able to transfer certain information back to
the public session.

EXAMINER PRICE: We will address that
later.

Mr. Soules.

MR. SOULES: Yeah, your Honor. Just to
clarify, are the attachments to P3/EPSA 10
confidential or noncompany confidential at this

1 point?

2 EXAMINER PRICE: I believe --

3 MR. KUTIK: There are no attachments.

4 MS. FLEISHER: I think, your Honor, there
5 is confusion about what is 10 and what is 11.

6 MR. SETTINERI: Can we go off the record?

7 EXAMINER PRICE: One second. P3/EPISA 10
8 is entitled P3/RFA Set 1.

9 MR. SOULES: I'm sorry, your Honor. We
10 mismarked the exhibits. My apologies.

11 EXAMINER PRICE: With that clarification,
12 anything further -- Mr. Settineri, then your
13 cross-examination is completed; is that right?

14 Okay. At this time we will adjourn for
15 the evening. We will take up Ms. Bojko's
16 cross-examination tomorrow morning at 9 o'clock.

17 We are off the record.

18 (Thereupon, the hearing was adjourned at
19 6:38 p.m.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is
3 a true and correct transcript of the proceedings
4 taken by me in this matter on Thursday, January 14,
5 2016, and carefully compared with my original
6 stenographic notes.

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10
11 Karen Sue Gibson, Registered
Merit Reporter.

12 (KSG-6140)

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Case No(s). 14-1297-EL-SSO

Summary: Transcript in the matter of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company hearing held on 01/14/16 - Volume XXXVI electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.