

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. :

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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 Friday,
January 15, 2016.

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VOLUME XXXVII

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1 Friday Morning Session,
2 January 15, 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 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 My name is Gregory Price. With me are
14 Megan Addison, Mandy Chiles, and Commissioner Asim
15 Haque. We are presiding on today's hearing.

16 Before we continue with the testimony of
17 Ms. Mikkelsen, do we have any issues for the Bench?

18 Seeing none, Ms. Mikkelsen, I will remind
19 you you are still under oath.

20 THE WITNESS: Yes, sir.

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

22 (Discussion off the record.)

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

25 Ms. Mikkelsen, I have reminded you are

1 you are still under oath. Your microphone is now
2 working.

3 Ms. Bojko.

4 MS. BOJKO: Thank you, your Honor.

5 - - -

6 EILEEN M. MIKKELSEN

7 being previously duly sworn, as prescribed by law,
8 was examined and testified as follows:

9 CROSS-EXAMINATION

10 By Ms. Bojko:

11 Q. Good morning, Ms. Mikkelsen.

12 A. Good morning.

13 Q. I have some follow-up questions regarding
14 the credit provisions on pages 7 and 8 of the
15 stipulation. I believe you agreed with Ms. Willis
16 yesterday that the credits listed on page 8 are not a
17 guaranteed credit for customers; is that correct?

18 A. What this provision does is guarantee
19 that customers will receive credits of at least
20 \$100 million in rider RRS.

21 Q. Well, it's not a guaranteed credit to
22 flow through to customers; is that correct?

23 A. What this provision does is guarantee
24 that if credits are not produced at a certain level
25 in years five, six, seven, and eight, the companies

1 will make a credit pursuant to this provision in
2 order to ensure that whether it's by the company
3 funded credit or the credit that occurs naturally
4 through rider RRS, that there will be at least
5 \$100 million of credits to the customers in rider
6 RRS.

7 Q. Well, isn't it true customers may still
8 pay a charge in any given year under these credit
9 provisions?

10 A. Yes.

11 Q. And in a response to a question from
12 Ms. Willis, you said the company didn't conduct an
13 analysis because the projected credits exceed --
14 projected credits of rider RRS in your workpaper
15 marked as Sierra Club Exhibit 89 exceed the credits
16 listed on page 8; is that correct?

17 A. I think what I said was the companies'
18 forecast that the credits that occur naturally
19 through rider RRS in years five through eight will be
20 large enough to ensure that the company is not
21 obligated to fund the credits in this risk-sharing
22 provision on page 7 and 8.

23 Q. So if the companies' projections are
24 correct in this proceeding that you've put forward,
25 FirstEnergy would never have to pay \$1 of the credits

1 listed on page 8; is that correct?

2 A. That's correct. The customers would see
3 credits that occur naturally through rider RRS in
4 excess of the amounts listed here.

5 Q. And you had some discussion yesterday
6 about the timing of the credits, and I would like to
7 follow-up on that. If we focus on the \$10 million
8 credit, potential credit, listed for year five, and
9 year five is June 1, 2020 to May 31, 2021; is that
10 correct?

11 A. Yes.

12 Q. So if in year five the credits equaled
13 less than the 10 million, say that the customers
14 received -- the natural production of rider RRS was
15 zero in year five, so the \$10 million credit would be
16 invoked under that scenario; is that correct?

17 A. Yes.

18 Q. When would the customers receive that
19 credit? Would they receive it in year six under your
20 scenario?

21 A. Yes.

22 Q. If a customer receives a credit in one
23 year, will that credit be figured into the
24 calculation of whether the customer received a credit
25 in a subsequent year?

1 A. If by credit you are referring to
2 company-funded credits as opposed to credits that
3 would naturally occur --

4 Q. Yes.

5 A. -- in rider RRS, then the company-funded
6 credits would be excluded from that calculation to
7 see if this provision would be triggered in a
8 subsequent year.

9 Q. So if the company under my first scenario
10 did, in fact, give a credit of \$10 million in year
11 six for the results of year five, that \$20 million
12 would not be calculated in the calculation of whether
13 credits -- customers were eligible to receive
14 company-funded credits in year six.

15 A. I apologize. I am going to have to have
16 you take one more run at that for me.

17 Q. Sure. We established that if customers
18 were eligible for credit in year five, they wouldn't
19 receive that credit until year six; is that correct?

20 A. Yes.

21 Q. So if the customers did receive the year
22 five credit in year six of \$10 million from the
23 company, then when calculating whether customers are
24 eligible for a credit in year six, the companies
25 would exclude the \$10 million in that calculation?

1 A. Correct.

2 Q. Let's turn to page 10 of your -- or of
3 the stipulation, please, the third supplemental
4 stipulation. And when I say "stipulation," I am only
5 referring to the third supplemental stipulation
6 today.

7 You discussed yesterday a business plan
8 for grid modernization. Do you recall that?

9 A. Yes.

10 Q. And you stated yesterday that the
11 business plan would be filed and fully vetted in a
12 separate proceeding; is that correct?

13 A. Yes.

14 Q. But isn't it true that the stipulation
15 sets forth items that won't be fully vetted in that
16 future filing?

17 A. If you are referring to paragraph D-3 on
18 page 10, yes.

19 Q. And one of those items that will not be
20 vetted in the future cost is the ROE; is that
21 correct?

22 A. Yes.

23 Q. And isn't it true that the ROE
24 established by the stipulation for grid modernization
25 is higher than the current ROE approved by the

1 Commission for the current SmartGrid modernization
2 initiative?

3 A. The current ROE approved for our
4 SmartGrid pilot is 10.5 percent, and the initial ROE
5 for any grid modernization pursuant to the third
6 stipulation is 10.88 percent, and I believe that
7 10.88 percent ROE was designed to incent the
8 investment in grid modernization vis-a-vis other
9 potential investments.

10 Q. So the answer is yes, it's higher than
11 the currently established ROE for grid modernization?

12 A. Yes.

13 Q. And there's also potential for the ROE
14 established by the stipulation to increase; is that
15 correct?

16 A. There is potential for the ROE for grid
17 modernization to increase or to decrease.

18 Q. On page 11 of the stipulation you --
19 there is a provision for battery resources, battery
20 technology. Do you see that?

21 A. Yes.

22 Q. What will the companies do to evaluate
23 potential battery resource investments?

24 A. I'm not sure what the specifics of that
25 evaluation will entail, but I do know that the

1 company has -- pardon me, that FirstEnergy has a
2 group of folks in an area called FirstEnergy
3 Technologies, who have been following battery
4 resources, and I believe those folks, along with the
5 employees of the companies, our energy delivery
6 employees, would work together to evaluate whether
7 there is a benefit to the companies' distribution
8 system for installing battery resources.

9 Q. Is it fair to say that the companies have
10 not yet identified exactly what those investments
11 will be at this time?

12 A. Yes.

13 Q. And the companies are not seeking
14 approval to recover any costs associated with those
15 battery resource investments in this case, but they
16 will in a future case; is that correct?

17 A. I would characterize it as they may in a
18 future case. They are not in this case. And to the
19 extent that the evaluation proves fruitful, then they
20 would. If it doesn't, then they likely would not.

21 Q. Is your understanding that the companies
22 intend to own the battery resources?

23 A. Yes.

24 Q. Let's turn to page 12 of the stipulation,
25 please, regarding renewable resource provision. Are

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1 you there?

2 A. Yes.

3 Q. The companies are asking the Commission
4 to approve the establishment of a new rider in this
5 proceeding for the renewable resource provision; is
6 that correct?

7 A. Yes.

8 Q. And that would be rider ORR?

9 A. Yes.

10 Q. Is there any time period associated with
11 wind or solar under the provision in the stipulation?

12 A. The stipulation makes clear that the
13 period of procurement will not exceed the remaining
14 term of the ESP.

15 Q. The initiation of the procurement or the
16 actual procurement?

17 A. The actual procurement would only occur
18 after the companies -- pardon me. After the staff
19 makes a determination that it fulfills the provisions
20 here, requests the company to make the filing, the
21 companies would then make the filing. Assuming the
22 Commission approves the filing, then the timing, at
23 that point the procurement would occur, and the term
24 of the procurement would be through whatever the
25 remaining term is of the ESP.

1 Q. So sitting here today, you don't know
2 when or if the company will actually procure these
3 resources?

4 A. That's correct.

5 Q. And isn't it true that the stipulation
6 does not require the procurement process to be
7 competitive?

8 A. The stipulation does not include the
9 requirement that the process be competitive. I would
10 expect it would be, but I agree with you, the words
11 are not in the stipulation.

12 Q. Well, isn't it true that the companies
13 have stated that they have not yet determined whether
14 it would be or not be competitive?

15 A. In discovery, but, again, I would expect
16 it would be, but I think we haven't made the
17 determination.

18 Q. Page 13 of the third supplemental
19 stipulation, G-1 talks about a "Distribution Rate
20 Freeze." Do you see that?

21 A. Yes.

22 Q. And isn't it true that the stipulation
23 provides for two exceptions to the rate freeze?

24 A. Yes.

25 Q. And one exception is if there's an

1 emergency under 4909.16; is that correct?

2 A. Yes.

3 Q. And the second exception is with staff's
4 agreement; is that correct?

5 A. Yes.

6 Q. So under the stipulation, the companies
7 may file a base distribution rate case that would go
8 into effect prior to June, 1, 2024, if staff agrees;
9 is that correct?

10 A. The company would make a filing with
11 staff's agreement for rates to go into effect prior
12 to June 1, 2024. Again, actual implementation would
13 be subject to Commission approval.

14 Q. Fair enough. And what nonemergency
15 circumstance would you envision or do you believe
16 would cause the staff to agree to an exception to the
17 rate freeze?

18 A. The companies contemplate there will be a
19 base rate freeze through the entirety of the ESP IV
20 period. In terms of an example, one that comes to
21 mind is potentially if the companies and the staff
22 see that the companies are in a situation where
23 they're headed for a, quote-unquote, emergency
24 filing, they may make a determination in advance of
25 that, that for a more orderly review that it may make

1 sense to make the filing earlier. But, again, the
2 contemplation is that there will be no base rate
3 increases throughout this time period.

4 Q. And sitting here today, you can't explain
5 for us or state what staff would or would not agree
6 with; is that fair?

7 MR. KUTIK: Objection.

8 A. Yes.

9 Q. Yesterday with Ms. Willis you talked
10 about the caps for G-2, the rider DCR. Do you recall
11 that discussion?

12 THE WITNESS: May I have that question
13 reread, please?

14 EXAMINER PRICE: You may.

15 Q. I'll rephrase. Yesterday Ms. Willis
16 discussed the level of caps that customers received,
17 the revenue caps, for rider DCR; do you recall that?

18 A. I recall discussing DCR revenue caps,
19 yes.

20 Q. Does the third supplemental stipulation
21 adopt all other provisions contained in rider DCR as
22 it was proposed by the companies in the application?

23 A. Yes, with the exception of the caps and
24 then the modification to the audit schedule, which is
25 documented on page 13 of the stipulation.

1 Q. Thank you. Does the third supplemental
2 stipulation adopt the government directives recovery
3 rider as proposed in the original application?

4 A. Yes.

5 Q. Does the third supplemental stipulation
6 allow the companies to count toward the \$360 million
7 legacy transmission expansion commitment, MISO
8 transmission expansion costs that are not eligible
9 for inclusion in the ATSI formula rate as proposed in
10 the application?

11 A. Yes.

12 Q. Does the third supplemental stipulation
13 allow rider NMB to be expanded to collect costs
14 associated with uplift charges and balancing
15 operating reserve charges as proposed in the
16 application?

17 A. I don't recall with specific detail what
18 the changes are in terms of PJM line items for what's
19 included in NMB going forward in ESP IV versus ESP
20 III. But I would agree with you that the stipulation
21 allows for the companies' proposal with respect to
22 those line items to be implemented.

23 Q. Thank you. Let's turn to page 14 of your
24 testimony, please.

25 MR. KUTIK: Testimony or stipulation?

1 MS. BOJKO: I'm sorry, the stipulation,
2 thank you.

3 Q. Page 14, Section 4-a-1, rider ELR, do you
4 see that?

5 A. Yes.

6 Q. The actual credits and charges regarding
7 the ELR program did not change from the prior
8 stipulation; is that correct?

9 A. That's correct.

10 Q. So the third supplemental stipulation
11 just extends the two \$5 per kW per month of
12 curtailment load interruptible credits for the
13 eight-year term of the stipulated ESP IV; is that
14 correct?

15 A. It extends all of the provisions
16 associated with ELR that existed prior to the third
17 stipulation through the eight-year term of the ESP.

18 Q. Thank you. And what is the estimated
19 costs that will be collected from ratepayers
20 associated with providing the incremental rider ELR
21 curtailable load interruptible credits under the
22 third supplemental stipulation?

23 A. It's the same amount that we discussed in
24 the past, approximately \$35 million per year.

25 Q. For the incremental ELR or for the total

1 ELR?

2 A. Total ELR. Total ELR.

3 MS. BOJKO: Your Honor, at this time I
4 would like to -- at this time I would like to mark as
5 OMAEG Exhibit -- I think we're on 23.

6 EXAMINER PRICE: It will be so marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 EXAMINER PRICE: Let's go off the record
9 for one moment.

10 (Discussion off the record.)

11 EXAMINER PRICE: Back on the record. It
12 is marked as OMAEG Exhibit 23.

13 Q. Ms. Mikkelsen, do you have in front of
14 you what has been marked as OMAEG Exhibit 23?

15 A. Yes.

16 Q. And the first page of OMAEG Exhibit 23 is
17 the companies' responses to a data request, ELPC Set
18 7, Interrogatory 17; is that correct?

19 A. Yes.

20 Q. And you are the responsible witness for
21 this discovery response?

22 A. Yes.

23 Q. And do you see under the question -- the
24 first question (a), it says, What are the projected
25 annual costs of Rider ELR and Rider EDR(b) to be

1 recovered under Rider DSC and Rider EDR(e) as
2 proposed in this provision in each year of the ESP?

3 A. Yes.

4 Q. And do you see in the companies'
5 response, after objections, that they refer the
6 parties to the companies' responses to OMAEG Set 5,
7 Interrogatory 119 and OCC Set 15, Interrogatory 578?

8 A. Yes.

9 Q. And if you look at the second two pages
10 of the OMAEG Exhibit 23, do you find those two
11 referenced discovery responses?

12 A. Yes.

13 Q. And in each of these discovery responses
14 does the companies state that assuming full
15 participation in the expanded interruptible program,
16 that the estimated annual credits that would be given
17 to the interruptible customers would be up to
18 8.175 million for each of the \$5 credits?

19 A. It does. The \$35 million number that I
20 provided you earlier was for rider ELR alone, and it
21 represented the existing customers that are taking
22 ELR service today, plus the incremental 8.175 for a
23 total of 35 million for ELR, and that same number
24 would be the projected total for the EDR number as
25 well.

1 Q. So the responses to the discovery
2 requests are merely the incremental; is that what
3 your explanation just was?

4 A. The responses to OMAEG Set 5, 119 and OCC
5 Set 15, Interrogatory 578, referred to the
6 incremental ELR credits, so the additional
7 incremental ELR load beyond the load that's currently
8 taking ELR service, those would be the ELR credits
9 associated with that.

10 Q. So the result of the stipulated ESP IV
11 with regards to these credits that will be passed on
12 to ratepayers is an additional \$130.8 million; is
13 that correct?

14 A. May I ask you to, perhaps, describe to me
15 how you got to that number? I'm not familiar with
16 that number.

17 Q. Sure. I took 8.175 million for each
18 credit, added those together to get 6.35 million,
19 times it by the eight years to get 130.8 million.

20 A. I haven't done that math. I will accept
21 it, subject to check. So you are saying the
22 130.8 million is the total over the ESP term "up to"
23 amount because we don't know what the actual credits
24 will be. Those will be dependent upon each
25 customer's billing characteristics over the term of

1 the ESP, so that is an "up to" amount for the
2 incremental ELR load in ESP IV that doesn't exist in
3 ESP III.

4 Q. Thank you for that clarification. And so
5 using your 35 million number per year for the total
6 credits and charges that will be either given or
7 collected from customers, it's \$280 million for the
8 ELR program.

9 A. I think we need to be clear in our
10 discussion that these are the values of the credits.
11 What's actually charged to the customers would be
12 offset by revenues received by the company by
13 offering these resources into the PJM market. So the
14 numbers we discussed in my prior answer and the
15 numbers we discussed in this answer don't reflect an
16 offset of the PJM revenue which has and would
17 continue to occur throughout that ESP IV period.

18 Q. Understood. So with that clarification,
19 the \$280 million will be the credits given to ELR
20 customers; is that correct?

21 A. Again, I would characterize it as that is
22 the upper limit of the credits. The credits would
23 not exceed that amount. But the actual credits very
24 well could be lower than that amount, depending upon
25 customers' unique load characteristics throughout the

1 term of the ESP IV.

2 Q. Thank you for the "up to" clarification.

3 EXAMINER PRICE: Have you performed --
4 I'm sorry. One quick question.

5 Have you performed any projections as to
6 how much the offset from bidding the interruptible
7 credit into PJM would be received annually or over
8 the course of eight years?

9 THE WITNESS: Not prospectively, no,
10 because we don't know what the credits -- I mean,
11 what the demand response resources will be
12 compensated through the PJM markets. We haven't
13 offered any of these resources into the markets yet.
14 We don't have ownership rights, so no, I have not.

15 EXAMINER PRICE: All right. Thank you.

16 THE WITNESS: You are welcome.

17 Q. (By Mr. Bojko) Under the third
18 supplemental stipulation did the rate design change
19 for the collection of the ELR credits?

20 A. No.

21 Q. Would you turn to page 15, please, of the
22 stipulation, third supplemental stipulation. The
23 third supplemental stipulation extends the offering
24 of the high load factor time-of-use tariff for the
25 eight-year term of the stipulated ESP IV; is that

1 correct?

2 A. Yes.

3 Q. And do you have an estimated cost that
4 will be collected from ratepayers associated with
5 extending the provision over the eight-year term?

6 A. I don't know whether there will be a cost
7 or a credit or no impact to the nonshopping customers
8 as a result of the commercial high load factor
9 experimental time-of-use rate. To date, no one has
10 expressed an interest in participating in that rate.

11 Q. So you don't know how many customers will
12 or will not participate in the high load factor TOU
13 tariff over the eight-year term; is that correct?

14 A. Correct.

15 Q. But the cost if customers do, in fact,
16 participate, those costs for their participation will
17 be passed through to ratepayers through the GCR; is
18 that correct?

19 A. What is correct is there may be a cost.
20 There may be a credit, or there may be no impact.
21 And whatever the impact is, that would be included in
22 rider GCR.

23 Q. Page 15, b-i, are the additional funds
24 for COSE listed here also for the purpose of
25 encouraging the advancement of energy efficiency for

1 members of COSE, which was a requirement in the
2 previous stipulation filed in this case?

3 A. Yes.

4 Q. And is COSE or its members required to
5 complete energy efficiency projects or achieve energy
6 savings in years 2020 through 2024 in exchange for
7 the additional \$300,000 that they receive under the
8 third supplemental stipulation?

9 A. COSE has agreed to work in good faith
10 with the companies to track the benefits to the
11 ratepayers, which could include jobs created,
12 retained, impacted; and energy efficiency and/or
13 demand response savings associated with this program.
14 But they are not required to demonstrate the savings.

15 Q. And the total unrestricted payment under
16 the third supplemental stipulation is \$540,000 to
17 COSE; is that correct?

18 A. Subject to check. I haven't added those
19 numbers up.

20 Q. And the \$540,000 will be collected
21 through rider DSE through May 31, 2019; is that
22 correct?

23 A. No. Because I thought the number I
24 accepted, subject to check, was an eight-year, and
25 now you are suggesting that the total for eight years

1 be collected in three years, so, no.

2 Q. Fair enough. Thank you for that
3 clarification. So is the \$240,000 collected through
4 rider DSE through May 31, 2019?

5 A. May I ask to have that question reread,
6 please.

7 Q. I'll try again. So my 540 number was
8 based on \$240,000 from the previous stipulation and
9 300,000 from this stipulation. Was that your
10 understanding of the dollars that are provided to
11 COSE under the unrestricted payments in the two
12 stipulations?

13 A. Yes.

14 Q. So as I understand the third supplemental
15 stipulation, the \$240,000 will be collected through
16 rider DSE through May 31, 2019; is that correct?

17 A. I think the \$240,000 will be collected
18 through the end of 2019.

19 EXAMINER PRICE: Is there a mistake in
20 the stipulation in the time period?

21 A. I think -- I am going to correct my last
22 answer, and, no, I don't think so. There is a
23 mistake in the stipulation. I think that the 240
24 will be collected through May 31st of 2019 and any
25 subsequent dollars may or may not be recovered

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1 subject to Commission approval and demonstration of
2 savings.

3 EXAMINER PRICE: Because that's your next
4 three-year portfolio plan.

5 THE WITNESS: Correct.

6 EXAMINER PRICE: Thank you.

7 Q. (By Ms. Bojko) So for period of May 31,
8 2019 through 2024, the companies may seek approval
9 form the Commission to recover the additional
10 \$300,000 that's provided for under the third
11 supplemental stipulation; is that correct?

12 A. Correct. The companies may seek approval
13 to recover the costs associated with the demonstrated
14 savings.

15 Q. And the stipulation specifically --

16 MR. KUTIK: I'm sorry, had you finished
17 your answer?

18 THE WITNESS: Yes.

19 MR. KUTIK: Can we hear the answer read,
20 because I am not sure that it was audible at the end.

21 EXAMINER PRICE: Let's have the answer
22 back again, please.

23 (Record read.)

24 A. Achieved through the COSE and the AICUO
25 programs.

1 Q. My apologies. Thank you.

2 A. Thank you.

3 Q. And the stipulation states that the
4 Commission cannot unreasonably withhold such
5 approval; is that correct?

6 A. Yes.

7 Q. If we go to page 15 of the
8 supplemental -- the third supplemental stipulation
9 B3, are the additional funds for AICUO also for the
10 purpose of encouraging the advancement of energy
11 efficiency for purposes of AICUO, which was a
12 requirement in the previous stipulation filed in this
13 case?

14 A. Nothing in the third stipulation modifies
15 what the commitment is that was identified in the
16 original stipulation. I am happy to go back and
17 check the language to see that it agrees with what
18 you said if you would like me to do that.

19 Q. That's fine. If nothing has changed, I
20 think that's good. Thank you. Is AICUO or its
21 members required to complete energy efficiency
22 projects or achieve energy savings in years 2020
23 through 2024 in exchange for the additional \$250,000
24 provided in the third supplemental stipulation?

25 A. No.

1 Q. And the total unrestricted payment under
2 the third stipulation under the stipulated ESP IV, so
3 all of the stipulations, is \$450,000 to the members
4 of AICUO; 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. May I ask you to describe the source of
10 the 450,000, please?

11 Q. Maybe my math was incorrect. I thought
12 the -- it was 200 in the last stipulation and 250 in
13 this stipulation, but it appears it's just 50,000 per
14 year, so 50 times 8 would be 400,000; is, that
15 correct?

16 A. I agree.

17 Q. Thank you. So 200,000 of the AICUO
18 unrestricted payment will be collected from
19 ratepayers through rider DSE through May, 31, 2019;
20 is that correct?

21 A. Yes.

22 Q. And then the additional \$200,000, the
23 company may seek approval from the Commission to
24 recover those monies from May 31, 2019, through 2024;
25 is that correct?

1 A. Correct.

2 Q. I'm sorry, let's clarify that. It would
3 be June 1, 2019, through May 31, 2024; is that
4 correct?

5 A. Yes.

6 Q. And under this provision the stipulation
7 explicitly states that the Commission cannot
8 unreasonably withhold the approval of the collection
9 of that \$200,000; is that correct?

10 A. I think more fully what the stipulation
11 says is that the companies may seek approval to
12 recover the costs associated with demonstrated
13 savings achieved through these programs, and such
14 approval should not be unreasonably withheld.

15 Q. On page 15, provision b-ii, what is the
16 estimated costs of the ASHRAE Level II EE audits?
17 And that's capital A-S-H-R-A-E Level II audits.

18 A. I don't know.

19 Q. And under the third supplemental
20 stipulation the company is committing to provide
21 additional ASHRAE Level II audits; is that correct?

22 A. Yes.

23 Q. Ms. Mikkelsen, do you still have your
24 workpaper up there that was marked as Sierra Club 89?

25 A. Yes.

1 Q. You were discussing some bill impacts
2 with Ms. Willis yesterday. Do you recall that?

3 A. Yes.

4 Q. As I understood your explanation
5 yesterday, none of the extension provisions, none of
6 the provisions in the third supplemental stipulation
7 that extends the riders or the programs from three
8 years to eight years, are included in the typical
9 bill calculation; is that correct?

10 A. No. We included, for example, ELR, and
11 the impacts of ELR are included in what I think I
12 said yesterday was we did, the typical bill impacts
13 for the first three years of the ESP, but, again,
14 with the assumption that the annual impacts would be
15 the same throughout the period.

16 Q. Right. So given that the typical bills
17 are only three years, you didn't -- the typical bills
18 would not account for or recognize any of the
19 provisions that are extended by the third
20 supplemental stipulation.

21 MR. KUTIK: Objection, asked and
22 answered.

23 EXAMINER PRICE: Overruled.

24 A. I guess I'm thinking about it, perhaps, a
25 bit differently than you. I'm thinking that the

1 provisions that exist in the first three years have
2 been extended for the additional five years of the
3 ESP term, but the impact of those provisions in the
4 first three years were incorporated in the typical
5 bill analysis.

6 Q. Well, but if some of those provisions
7 increased their costs in years four, five, six, seven
8 and eight, those wouldn't be accounted for in the
9 typical bill impacts, correct?

10 A. Could you point me to a provision where
11 that circumstance occurs, please?

12 Q. Well, the energy efficiency provisions
13 that we just talked about; for instance, the 300,000
14 that will be collected from June 1, 2020, through
15 May 31, 2024, will not be reflected in those billing
16 impacts, correct?

17 A. The 300,000 is back to COSE? I'm sorry,
18 I am trying to follow those numbers. Is that the
19 COSE numbers?

20 Q. Yes.

21 A. That's right, correct.

22 EXAMINER PRICE: But how many digits past
23 zero would you have to go to show an additional
24 \$300,000 of bill impact?

25 THE WITNESS: Well, you wouldn't show the

1 300. I think what we're talking about here is the
2 difference between 60,000 and the --

3 EXAMINER PRICE: I was being generous.

4 THE WITNESS: -- and the 25,000 that is
5 modeled, so, you know, you're talking about, you
6 know, 30, 40 thousand a year. You wouldn't see --

7 EXAMINER PRICE: Spread over 1 point
8 something million or so.

9 THE WITNESS: You wouldn't see the
10 numbers, right.

11 Q. (By Ms. Bojko) What about the increases
12 in rider DCR that occur in the years after year
13 three, would those be included in your bill impact?

14 A. We modeled for years one through three a
15 \$30 million a year increase. After that, pursuant to
16 the stipulation, those increases drop off to 20 for
17 three years and 15, and we did not model the out
18 years.

19 Q. And you didn't include any costs
20 associated with the HLF TOU experimental tariff; is
21 that correct?

22 A. Yes.

23 Q. And you didn't include any costs
24 associated with the new battery or renewable
25 provisions in the third supplemental stipulation,

1 correct?

2 A. Yes.

3 Q. If we look at your workpaper, Sierra Club
4 Exhibit 89, the third box is titled "Retail Rate
5 Stability Rider" and it has lines 10 through 13; is
6 that correct?

7 A. Yes.

8 Q. And these are the quantitative benefits
9 of the stipulated ESP IV that you describe in your
10 fifth supplemental testimony on page 12; is that
11 correct?

12 A. The numbers contained in the third box
13 entitled "Retail Rate Stability Rider," specifically
14 lines 10 through 13, reflect a portion of the
15 quantitative benefits that are enumerated on page 12
16 of my fifth supplemental testimony.

17 Q. Thank you. It reflects the retail rate
18 stability rider quantitative benefit on page 12 of
19 your testimony; is that correct?

20 A. Yes.

21 Q. And in your testimony on page 12, isn't
22 it true that you don't provide any costs associated
23 with the stipulated benefits of ESP IV, so all four
24 stipulations?

25 MR. KUTIK: May I have the question read,

1 please?

2 EXAMINER PRICE: You may.

3 (Record read.)

4 A. I'm not sure I understand fully the
5 question.

6 Q. Well, you explain on page 12 the
7 quantitative benefit of ESP IV to ratepayers. Isn't
8 it true you don't show in your testimony the cost of
9 the stipulated ESP IV to ratepayers?

10 A. No.

11 Q. In your testimony do you explain the
12 costs associated with the grid modernization
13 provisions?

14 A. No. Because as I sit here today, I am
15 not certain there will be costs associated with that.

16 Q. Do you show the \$1 million in COSE and
17 AICUO funding for just the unrestricted payments?

18 A. Those costs were considered in the
19 quantitative analysis but not reflected separately
20 because those costs or potentially greater costs
21 would need to be incurred in order for the company to
22 meet the state benchmarks associated with energy
23 efficiency.

24 Q. And in your testimony on -- describing
25 the quantitative benefits, you don't list out the

1 costs for the ELR or the automaker or the HLF
2 tariffs; is that correct?

3 A. Those provisions are revenue neutral to
4 the company, and, in fact, potentially accretive to
5 the customers, particularly when you look at ELR when
6 you consider the PJM revenue offset, so for that
7 reason they were viewed as qualitative benefits
8 rather than quantitative benefits in the MRO versus
9 ESP test.

10 Q. Certainly you're not sitting here
11 suggesting that the PJM revenues that you may receive
12 are going to exceed the \$280 million that we
13 discussed as the cost of the ELR credits?

14 A. I don't know what the PJM revenue is
15 going to be, so it potentially could exceed that
16 amount. I don't know what it will be over the
17 eight-year term. But what I was saying is it's
18 revenue neutral by design to the company. The
19 dollars that are paid will -- to customers are
20 collected from customers. And if you introduce
21 additional PJM revenue, then it's no longer revenue
22 neutral to the customers as a whole. It's actually
23 accretive to the customers from a revenue basis.

24 Q. And historically the PJM revenue for
25 bidding in the ELR demand response has not exceeded

1 the costs of the credits; is that true?

2 A. I think -- and we discussed this quite a
3 bit earlier in my testimony in this proceeding, but
4 in the '15-'16 delivery year, I believe that the
5 compensation is, in fact, greater than the credits
6 that we're providing under ELR to our customers.

7 I think we also talked about prior to
8 this in this proceeding that the clearing price from
9 the base residual auction for '18-'19 was, in fact,
10 about spot-on equal to the ELR credit provided to
11 customers.

12 Q. And the automaker credit is not reflected
13 as a cost to customers in your testimony either, is
14 it?

15 A. Again, to customers in total, it's
16 revenue neutral.

17 Q. And the DCR caps, the money for rider
18 DCR, is not reflected in your testimony; is that
19 correct?

20 THE WITNESS: May I ask to have that
21 question reread?

22 MS. BOJKO: We'll strike that question.

23 Q. Do you recall yesterday a discussion with
24 Mr. Settineri regarding the netting of disallowed
25 capacity performance penalties against the capacity

1 performance bonuses?

2 A. Yes.

3 Q. If there are no capacity performance
4 bonuses paid in a year but there is a disallowed
5 capacity performance penalty, would the disallowed
6 capacity performance penalty be netted against the
7 PJM market revenues?

8 MR. KUTIK: Objection, incomplete
9 hypothetical. Are we talking about something that's
10 been allowed, disallowed?

11 EXAMINER PRICE: She said disallowed.

12 MR. KUTIK: Okay. Thank you.

13 A. No.

14 EXAMINER PRICE: Let's just talk process
15 for one second because I just want to be clear in my
16 own head. In all likelihood if there were a PJM
17 penalty, according to Ms. Bojko's hypothetical, you
18 would probably have already included that in the
19 rider. Wouldn't you be taking it back out in a
20 reconciliation because there is going to be some
21 process where the Commission is going to go through
22 and look retrospectively at a year, and at that point
23 if there is a disallowance, you will have to
24 reconcile that in the next annual reconciliation;
25 isn't that right?

1 THE WITNESS: That's correct.

2 Q. (By Ms. Bojko) Well, but didn't you say
3 yesterday that even if there's a capacity performance
4 penalty that is disallowed, that penalty will be
5 netted against bonuses reducing the amount of bonus
6 revenue flowing through rider RRS?

7 A. Yes. And when I think about it, as we
8 forecast rider RRS going into the year, we would
9 forecast -- I would expect we would not forecast that
10 we would have a penalty, nor would we forecast that
11 we would have a bonus. We would forecast that we met
12 our obligations with respect to commitments made in
13 the capacity market.

14 So only subsequent to the year in the
15 event as we have discussed there would be a penalty
16 or a bonus. In the absence of a penalty, the bonus
17 dollars would flow through to the customers. With a
18 penalty found reasonable, those would be included in
19 the reconciliation.

20 Only in the event that the penalty is
21 deemed unreasonable, then we would offset that by the
22 bonus payments and the difference would be included
23 in the reconciliation. We try to create the balance
24 between the penalties and the benefits throughout the
25 process.

1 EXAMINER PRICE: In that sense, bonus
2 revenues are treated somewhat differently than any
3 other PJM type revenue; is that correct?

4 THE WITNESS: In the -- only in the event
5 that there is a determination that a penalty is
6 unreasonable. Then it is treated differently;
7 otherwise, it flows right through the rider, like all
8 other revenue.

9 EXAMINER PRICE: Thank you.

10 THE WITNESS: You're welcome.

11 Q. (By Ms. Bojko) Ms. Mikkelsen, you were
12 involved in negotiation with the settlement -- with
13 the various settlements of this proceeding with
14 various parties; is that correct?

15 A. Yes.

16 Q. And isn't it true that FirstEnergy and
17 IGS arrived at a settlement of the PPA issues and
18 other issues and executed a separate agreement on
19 January 14, 2016?

20 A. No. I believe the companies entered into
21 an agreement independent of the stipulation and the
22 application in this proceeding. The companies agreed
23 to on a going-forward basis to make certain filings
24 relative to that IGS agreement. Those are separate
25 from this proceeding.

1 MS. BOJKO: Your Honor, at this time I
2 would like to mark as OMAEG 24 a document that has
3 been identified as companies' response to OCC Set 17,
4 Interrogatory 005.

5 EXAMINER PRICE: It will be so marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MS. BOJKO: May I approach?

8 EXAMINER PRICE: You may.

9 MR. KUTIK: May I approach, your Honor?

10 EXAMINER PRICE: You may.

11 MS. BOJKO: May we go off the record for
12 a minute?

13 EXAMINER PRICE: You may.

14 (Discussion off the record.)

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

17 Please proceed, Ms. Bojko.

18 MS. BOJKO: Thank you.

19 Q. (By Ms. Bojko) Do you have marked -- or
20 in front of you what's been marked as OMAEG
21 Exhibit 24?

22 A. Yes.

23 Q. And is this an OCC -- a company response
24 to OCC Set 17-RPD-004 and OCC Set 17, interrogatory
25 005?

1 A. Yes, as well as OCC Set 17, Interrogatory
2 5, Attachment 1.

3 Q. And the Attachment 1 that you just
4 referred to is titled "Competitive Market Enhancement
5 Agreement"; is that correct?

6 A. Yes.

7 Q. And is this agreement the agreement that
8 I asked you about that is between FirstEnergy and
9 IGS?

10 A. This is an agreement between the
11 companies and IGS.

12 Q. And this agreement was filed -- or was
13 executed on January 14, 2016; is that correct?

14 A. Yes.

15 Q. And this agreement was not filed in the
16 proceeding 14-1297; is that correct?

17 MR. KUTIK: Objection.

18 EXAMINER PRICE: Grounds?

19 MR. KUTIK: Relevance.

20 EXAMINER PRICE: Ms. Bojko, why is it
21 relevant?

22 MS. BOJKO: It's relevant -- this is a
23 foundational question. But it's relevant as to the
24 explanation that Ms. Mikkelsen provided in a previous
25 response, as well as the reference in the document to

1 the case docket.

2 MS. FLEISHER: Your Honor --

3 MR. KUTIK: May I ask what response she
4 is referring to that Ms. Mikkelsen supposedly gave?

5 EXAMINER PRICE: Which response?

6 MS. BOJKO: She said that it wasn't a
7 resolution of the PPA issues, and the document itself
8 contradicts that statement.

9 MR. KUTIK: I don't think that's her
10 testimony.

11 MS. FLEISHER: Your Honor, I'll just add
12 I think there's an entirely separate ground for
13 relevance, which when it gets to my turn, I am going
14 to ask questions regarding the extent to which this
15 side agreement may affect the commitments that
16 FirstEnergy has made in the stipulation filed in this
17 case, particularly regarding energy efficiency, which
18 is one of the subjects of that document.

19 EXAMINER PRICE: The question is whether
20 it's relevant -- whether it's relevant that it's been
21 filed in the docket, but we will overrule the
22 objection and move on.

23 MS. BOJKO: I think there is a question
24 pending. Was this filed in the 14-1297-EL-SSO
25 proceeding?

1 A. No.

2 Q. And this agreement came subsequent to the
3 stipulation, the third supplemental stipulation, that
4 was filed on December 1, 2015, correct?

5 A. Yes.

6 Q. So it's fair to say that the Competitive
7 Market Enhancement Agreement was not referenced in
8 the third supplemental stipulation?

9 A. Correct.

10 Q. And is it fair to say that given that the
11 agreement was executed on January 14, 2016, it was
12 not provided to the signatory parties prior to those
13 signatory parties executing the third supplemental
14 stipulation?

15 MR. KUTIK: Objection.

16 EXAMINER PRICE: Grounds?

17 MR. KUTIK: Relevance.

18 MS. BOJKO: Your Honor, this is very
19 relevant. It goes to the stipulated testimony that
20 you explained previously -- or the stipulation, I'm
21 sorry. It goes to the three-prong test.

22 MR. KUTIK: What exactly does it go to,
23 may I ask, your Honor?

24 MS. BOJKO: Whether the parties that
25 signed the settlement were knowledgeable of all of

1 the terms of the settlement.

2 MR. KUTIK: This is not a part of the
3 settlement.

4 Q. (By Ms. Bojko) We disagree, your Honor.
5 This specifically requires IGS to withdraw its
6 testimony in this case in exchange for something. It
7 is part of the settlement package.

8 MR. KUTIK: It is not.

9 EXAMINER PRICE: It is not part of the
10 settlement package.

11 MS. WILLIS: Your Honor --

12 EXAMINER PRICE: One second.

13 It is not part of the settlement package,
14 and if you were a signatory party, you might have a
15 case to make, but since you're not a signatory party,
16 I am going to sustain the objection.

17 MS. WILLIS: Your Honor, may I be heard?

18 EXAMINER PRICE: Sure.

19 MS. WILLIS: I believe this goes to the
20 first prong of the stipulation standard as to whether
21 there was serious bargaining and knowledgeable
22 parties. As the court has held, side agreements
23 that --

24 EXAMINER PRICE: That's not the argument
25 she made.

1 MS. WILLIS: I am making a different
2 argument.

3 EXAMINER PRICE: Why don't you wait.
4 When you ask your questions, you can make the
5 argument at that point if you have questions.

6 MS. WILLIS: I just want to avoid an
7 adverse ruling that will be applied to me later on,
8 your Honor.

9 EXAMINER PRICE: I understand. I
10 understand the distinction between first and second
11 prongs and what the courts ruled. But she is saying
12 it's part of the package, and that's not what the
13 court has ruled. That's why his objection was
14 sustained.

15 MS. BOJKO: Your Honor, I also said it
16 goes to the knowledge of the parties that entered
17 into the Settlement Agreement, which is the exact
18 thing that Ms. Willis just mentioned. It goes to the
19 prongs test.

20 EXAMINER PRICE: And if you were a
21 signatory party, that would be relevant. You are not
22 a signatory party. They're not objecting. If a
23 signatory party objects to this, that might be
24 something to keep in mind.

25 MS. BOJKO: Maybe -- I know you weren't

1 on the record when you made previous comments, but as
 2 Ms. Willis pointed out, that is not what the court
 3 has held. The court has said that these documents
 4 are discoverable and they should be considered in the
 5 context of deciding whether a stipulation is
 6 reasonable or not.

7 MR. KUTIK: They could tell how they're
 8 discoverable. With respect to how they are
 9 considered, I would disagree.

10 EXAMINER PRICE: I agree with Mr. Kutik.
 11 Objection sustained.

12 Q. (By Ms. Bojko) Ms. Mikkelsen, the
 13 agreement states that it was executed in
 14 consideration for Interstate Gas Supply Inc. agreeing
 15 to withdraw its testimony in Case No. 14-1297-EL-SSO,
 16 except for testimony supporting the issues in this
 17 agreement, and to sign in support of the third
 18 supplemental stipulation; is that correct?

19 A. Yes.

20 Q. And in exchange for that, the companies
 21 agreed to file in a separate docket for review and
 22 approval the programs that are set forth in this
 23 document; is that correct?

24 MR. KUTIK: Objection.

25 EXAMINER PRICE: Grounds?

1 MR. KUTIK: Relevance.

2 EXAMINER PRICE: She can answer this one.

3 Overruled.

4 A. Correct.

5 Q. And simultaneously with the filing or the
6 execution of this agreement as noted in the
7 agreement, IGS did, in fact, execute a signature page
8 for the third supplemental stipulation; is that
9 correct?

10 THE WITNESS: May I ask to have the
11 question reread, please?

12 EXAMINER PRICE: You may.

13 (Record read.)

14 A. IGS did sign on in support of the third
15 supplemental stipulation and recommendation. As to
16 whether it was simultaneous with the execution of
17 this document, that I don't know.

18 Q. Well, the signature page was filed in the
19 docket on -- it would have had to be today,
20 January 15, 2016; is that correct?

21 MR. KUTIK: Today is the 15th?

22 MS. BOJKO: Yes.

23 EXAMINER PRICE: Yes, not the 16th.

24 MS. BOJKO: I'm sorry.

25 MR. KUTIK: Your Honor, if it was filed

1 on the 15th or the 14th, what does it matter? It's
2 in the record.

3 Q. I apologize if I misstated the date. Was
4 the signature page filed on January 15, 2016?

5 A. I don't know whether it was filed on
6 the 14th or the 15th.

7 Q. And on the signature page does IGS put a
8 footnote on the signature page that states its
9 support of the stipulation as a package?

10 A. I don't have a copy of the signature page
11 with me, so perhaps if you could share that with me,
12 I could confirm what you are asking, but I don't have
13 it with me.

14 Q. Do you know that IGS put a footnote on
15 the signature page?

16 A. Yes.

17 Q. And do you know that IGS specifically
18 said that it does not oppose the PPA-related
19 provisions but that its support of this particular
20 stipulation is not precedential in any other
21 proceeding?

22 MR. KUTIK: Your Honor, I ask that the
23 witness be shown the document that the -- that the
24 counsel is reading from.

25 EXAMINER PRICE: The witness has already

1 indicated she is not totally familiar with every
2 aspect of the document. Why don't you give it to her
3 and get it in the record.

4 MS. BOJKO: Given the lateness of the
5 filing, your Honor, I now have it in front of me.

6 EXAMINER PRICE: I gave you an extra
7 hour.

8 MR. KUTIK: I'm glad that's on the
9 record, your Honor.

10 MS. BOJKO: It's not my printer, your
11 Honor. Your Honor, at this time could we have marked
12 as OMAEG Exhibit 25 --

13 EXAMINER PRICE: It will be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MS. BOJKO: -- a letter from FirstEnergy
16 companies to the docket as well as the signature
17 page. May I approach?

18 EXAMINER PRICE: You may.

19 Q. (By Ms. Bojko) Ms. Mikkelsen, do you have
20 in front of you what's been marked as OMAEG Exhibit
21 25?

22 A. Yes.

23 Q. Does this appear to be the docket filing
24 as well as the signature page that we've been
25 referencing?

1 MR. KUTIK: We'll stipulate to that, your
2 Honor.

3 MS. BOJKO: Thank you.

4 Q. Now having the document in front of you,
5 do you see that IGS footnoted its signature?

6 A. Yes.

7 Q. And does IGS's footnote state that they
8 support the stipulation as a package?

9 A. Yes.

10 Q. And also states that IGS does not oppose
11 the PPA-related provisions as part of the package but
12 IGS's support may not be used as precedent in any
13 other proceeding?

14 A. Yes.

15 Q. So pursuant to the Competitive Market
16 Enhancement Agreement that's been identified as OMAEG
17 Exhibit 24, IGS has now signed in support as provided
18 for in this competitive agreement; is that true?

19 THE WITNESS: May I ask to have that
20 question reread, please?

21 EXAMINER PRICE: You may.

22 MS. BOJKO: Strike that.

23 Q. I think I said that IGS has now signed in
24 support of the Third Supplemental Stipulation and
25 Recommendation as required in the Competitive Market

1 Enhancement Agreement; is that correct?

2 A. I would agree that IGS has signed on in
3 support of the stipulation as demonstrated in OMAEG
4 Exhibit 25.

5 Q. And that was one of the considerations
6 set forth in the Competitive Market Enhancement
7 Agreement in the first paragraph; is that correct?

8 THE WITNESS: May I have that question
9 reread, please?

10 EXAMINER PRICE: You may.

11 THE WITNESS: I apologize.

12 (Record read.)

13 A. I don't read the first paragraph that
14 way.

15 Q. Well, doesn't it say that in
16 consideration for IGS agreeing to withdraw its
17 testimony and sign in support of the third
18 supplemental stipulation, that the companies then
19 agree to file a separate docket with regard to
20 approval of the programs listed below?

21 MR. KUTIK: Objection.

22 EXAMINER PRICE: Grounds?

23 MR. KUTIK: Relevance.

24 EXAMINER PRICE: Overruled. She can
25 answer if she knows.

1 A. The document reads that in consideration
2 for Interstate Gas Supply agreeing to withdraw its
3 testimony in Case No. 14-1297-EL-SSO, that the
4 companies hereby agree to file in a separate docket
5 for review and approval of the programs set forth
6 below.

7 I think in your initial question to me it
8 just pointed to for approval.

9 Q. And one of the items that the companies
10 have agreed to through this agreement, they have
11 agreed to make a filing to establish a retail
12 competition incentive mechanism; is that correct?

13 A. Yes.

14 MR. KUTIK: Objection.

15 EXAMINER PRICE: Grounds?

16 MR. KUTIK: The witness answered.

17 Q. And that retail competitive incentive
18 mechanism would be bypassable; is that correct?

19 MR. KUTIK: Objection.

20 EXAMINER PRICE: Grounds?

21 MR. KUTIK: Relevance. Now, we are into
22 the content. The process is one thing, your Honor.
23 The content is another. What may be filed in the
24 future or this document is not part of the
25 stipulation in this case, is not part of the

Commission's consideration of what's being proposed in this case. The content of the agreement, other than an agreement was reached, nothing else is relevant.

EXAMINER PRICE: I think the Commission is going to have to make that decision so we will allow Ms. Bojko to briefly explore the substantive provisions of the agreement so that she can make her record and bring this up in whatever arguments she chooses to bring up to the Commission.

MS. BOJKO: Thank you, your Honor.

Q. (By Ms. Bojko) And under the agreement the establishment of a retail competition incentive mechanism and implementation of that, that -- I don't think you answered this question. It establishes a mechanism that would be a non -- would be a bypassable rider; is that correct?

A. The companies agree to make a filing that requests that the Commission establish a bypassable retail competition incentive mechanism.

Q. And any revenues that may be collected through the retail competitive incentive mechanism would be credited to all non-Rate GT customers in rider RRS; is that correct?

A. Yes.

1 Q. And the mechanism will be revenue neutral
2 to the utilities; is that correct?

3 A. Subject to Commission approval after the
4 filing and the vetting and discussion of the issue,
5 but, yes.

6 Q. You said after the filing. Is the
7 company requesting that the Commission approve the
8 retail competitive incentive rider in its ESP in this
9 proceeding?

10 A. No.

11 Q. So one of the requirements is that IGS
12 does not have to advocate in its brief in this
13 proceeding for the Commission to include in the
14 companies' ESP a retail incentive rider set at zero?

15 MR. OLIKER: Objection.

16 MR. KUTIK: May I have the question read?

17 EXAMINER PRICE: Let's have the question
18 back and then take up Mr. Oliker's objection.

19 MS. BOJKO: I'll strike the question.
20 I'll try again, your Honor.

21 EXAMINER PRICE: Okay.

22 Q. Does the agreement require IGS to
23 advocate in its brief in this proceeding for the
24 establishment of a retail incentive rider set at
25 zero?

1 A. The agreement states that IGS agrees to
2 advocate in its brief for the Commission to include
3 in the companies' ESP a retail incentive rider set at
4 zero.

5 Q. And the companies agree to not oppose
6 IGS's request for an establishment of a retail
7 incentive rider in this proceeding; is that correct?

8 A. Yes.

9 Q. Is it the companies' position that a
10 rider would have to be approved in its ESP proceeding
11 in order to move forward with the retail competition
12 incentive mechanism?

13 MR. OLIKER: Objection.

14 EXAMINER PRICE: Grounds?

15 MR. OLIKER: Calls for a legal
16 conclusion, and this witness is not an attorney.

17 EXAMINER PRICE: Sustained.

18 Q. In your regulatory opinion and your many
19 years of experience in front of the Commission, in
20 participation in numerous ESP proceedings, is it your
21 understanding that the Commission would have to
22 establish a retail competition incentive mechanism
23 rider in this -- in an ESP proceeding?

24 MR. OLIKER: Same objection, unless she's
25 not answering as an attorney.

1 EXAMINER PRICE: She's not answering as
2 an attorney.

3 You can answer if you know.

4 A. No.

5 Q. The "Customer Referral Program" listed in
6 Item 2, is this program for residential customers
7 only?

8 MR. KUTIK: Note my objection, your
9 Honor.

10 EXAMINER PRICE: Noted.

11 A. Yes. It is actually for residential
12 nongovernment aggregation customers.

13 Q. On page 2 of the agreement it states that
14 the "referred customers shall be allocated based upon
15 non-governmental aggregation supplier market share."
16 Do you see that?

17 A. Yes.

18 Q. Will the customers be allocated to all
19 suppliers?

20 A. The customers will be allocated to all
21 participating suppliers.

22 Q. So participating suppliers, meaning in
23 the companies' service territories?

24 A. No.

25 Q. Participating suppliers in the state of

1 Ohio?

2 A. No.

3 Q. Participating in what respect?

4 A. Participating in the customer referral
5 program.

6 Q. So only suppliers that affirmatively
7 participate in the customer referral program will be
8 allocated a share of the referred customers?

9 A. Correct.

10 Q. Which suppliers are eligible to
11 participate in the customer referral program?

12 A. All suppliers who would otherwise be
13 certified and eligible to serve residential customers
14 in the companies' service territory.

15 EXAMINER PRICE: Suppliers in this
16 program would have to offer a specific set of terms
17 and conditions; isn't that true?

18 THE WITNESS: Yeah. I think collectively
19 all participants would have to agree to offer the
20 same priced product and terms and conditions.

21 Q. (By Ms. Bojko) And let's go back to the
22 retail enhancement program, a couple more questions
23 on that. You stated that the company is committing
24 to making a filing; is that correct?

25 A. Yes.

1 Q. Is there a commitment as to the timing of
2 that filing in this agreement?

3 A. Yes.

4 Q. And what do you believe the filing timing
5 is, the timing of a filing?

6 A. The filing advocating the establishment
7 of the mechanism shall occur no later than six months
8 after the date of the first meeting between IGS and
9 the companies, and the first meeting shall occur no
10 later than 60 days after the final opinion and order.

11 Q. At this time do you know what the
12 companies will request as the level of the rider to
13 be set with regard to the establishment of a retail
14 competition incentive mechanism?

15 MR. KUTIK: Objection.

16 EXAMINER PRICE: Grounds?

17 MR. KUTIK: Relevance, speculation. It's
18 not part -- it's not part of the proposal in this
19 case. It's a filing to be done sometime months away.

20 EXAMINER PRICE: Your continuing
21 objection is noted. Overruled.

22 You can answer if you know.

23 A. No.

24 Q. And just so the record is clear, the
25 Competitive Market Enhancement Agreement makes

1 certain commitments on behalf of IGS and the
2 companies with regard to Case No. 14-1297-EL-SSO,
3 correct?

4 A. The Competitive Market Enhancement
5 Agreement is independent of any of the agreements
6 that have been made in Case 14-1297-EL-SSO, and the
7 filings and the determinations that would be made
8 pursuant to the Competitive Market Enhancement
9 Agreement will be made outside of Case
10 14-1297-EL-SSO.

11 Q. But through this agreement the company
12 has -- is committing to do certain things in Case
13 14-1297, correct? For instance, the company is
14 agreeing to not oppose IGS's request to include a
15 retail incentive rider set at zero in its brief in
16 Case 14-1297?

17 A. I agree that the companies agree not to
18 oppose IGS's position with respect to a retail
19 incentive rider.

20 Q. And, similarly, IGS is making certain
21 commitments in this agreement with regard to 14-1297.
22 They are making agreements such as withdrawing
23 testimony -- a portion of the testimony, signing in
24 support of the third supplemental stipulation, and
25 including certain advocacies in its brief filed in

1 14-1297-EL-SSO, correct?

2 A. I think we saw in OMAEG 25 where IGS
3 filed in support of the stipulation in the 14-1297
4 docket, but any of the commitments associated to
5 competitive market enhancement will be handled
6 outside and beyond the bounds of the current ESP
7 proceeding.

8 Q. Well, through this agreement IGS is
9 agreeing to withdraw its testimony, or at least a
10 portion thereof, in Case No. 14-1297-EL-SSO, correct?

11 MR. KUTIK: Objection.

12 MR. OLIKER: Objection.

13 MR. KUTIK: Asked and answered.

14 MS. BOJKO: She actually didn't answer.

15 EXAMINER PRICE: I don't think she
16 answered.

17 MR. KUTIK: She said this before, not
18 just in this line but previously she said it.

19 EXAMINER PRICE: Just to be clear, you
20 can answer the question.

21 A. Yes.

22 Q. And they are also agreeing to make
23 certain advocacy positions in its brief -- IGS has
24 agreed to make certain advocacy positions in its
25 brief filed in Case No. 14-1297-EL-SSO, correct?

1 MR. KUTIK: Objection. Asked and
2 answered. This is the third time this question has
3 been asked.

4 EXAMINER PRICE: Sustained.

5 MS. BOJKO: Your Honor, if I may have
6 just 2 minutes actually -- I just need 2 minutes to
7 check my notes to make sure I have everything.

8 EXAMINER PRICE: That's fine. Let's go
9 off the record.

10 (Discussion off the record.)

11 EXAMINER PRICE: At this time we will
12 break for lunch until 12:45. Thank you, all.

13 Off the record.

14 (Thereupon, at 11:39 a.m., a lunch recess
15 was taken until 12:45 p.m.)

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1 Friday Afternoon Session,
2 January 15, 2016.

3 - - -

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

6 Ms. Bojko, any further questions?

7 MS. BOJKO: No further questions. Thank
8 you, your Honor.

9 EXAMINER PRICE: Thank you.

10 Ms. Fleisher?

11 MS. FLEISHER: If it's okay your Honor,
12 Mr. Hays is going to go first.

13 EXAMINER PRICE: Mr. Hays has reappeared,
14 and he will go next.

15 MR. HAYS: Thank you, your Honor and
16 Commissioner.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Hays:

20 Q. Ms. Mikkelsen, I am Tom Hays, the
21 attorney representing the City of Perrysburg, Lake
22 Township, Northwood, all of the northern tier of Wood
23 County, and the City of Toledo, Lucas County, Maumee,
24 Waterville, Sylvania, Holland, and Ottawa Hills, all
25 inside of Lucas County, as well as the Northwest

1 Aggregation Coalition.

2 Nice to see you on the stand again, but I
3 believe this is the first time I have asked any
4 questions. You're familiar with all of these cities,
5 are you not?

6 A. I am aware they are located in northwest
7 Ohio around Toledo.

8 Q. Okay. I have to be honest, the mayors
9 and the trustees and councilmen really don't
10 understand all this complex stuff, and I am not sure
11 some days do I entirely. But I think they have one
12 big, simple question they would like to ask.

13 Are the companies willing to match the
14 \$2.5 billion benefits guaranteed by -- I hope I say
15 this right -- Dynegy or Exelon, ExGen in their
16 proposed PPAs?

17 MR. KUTIK: Objection.

18 EXAMINER PRICE: Grounds?

19 MR. KUTIK: First, there is nothing in
20 this record and will be nothing in this record with
21 respect to anything with respect to Dynegy.

22 With respect to Exelon, that is also a
23 matter of conjecture and not part of the evidence in
24 this case, so it assumes facts not in evidence.

25 EXAMINER PRICE: Well, Mr. Campbell is

1 scheduled to testify on Monday -- Tuesday, sorry, in
2 which he is going to introduce, I believe, this
3 offer.

4 So we'll sustain the objection as to
5 Dynegy, and we will overrule the objection as to
6 Exelon.

7 You can answer the question as to Exelon.

8 THE WITNESS: May I have the question
9 reread, please?

10 EXAMINER PRICE: You may.

11 (Record read.)

12 MR. KUTIK: Your Honor, I would also
13 object as it mischaracterizes Exelon's testimony.
14 There is no "offer" from Exelon.

15 EXAMINER PRICE: Noted. Thank you.

16 You can answer.

17 A. I haven't studied the Exelon testimony in
18 any detail, but I did provide or I did do a cursory
19 reading of the document, and in my reading of the
20 document, it did not appear to be an offer in any
21 way, shape, or form, and by that I mean there were no
22 specific terms and conditions included.

23 The description in the testimony that
24 talked about delivering capacity to ATSI ran counter
25 to my understanding of how the capacity markets in

1 PJM work and suggested to me that what was written
2 there didn't really represent an offer.

3 And, further, probably more importantly,
4 it didn't -- it missed the mark on the benefits that
5 the companies were looking for on behalf of the
6 customers in the state of Ohio with respect to our
7 proposed Economic Stability Program.

8 And by that I mean, of course, the hedge
9 protection that we've talked about with respect to
10 selling the power into the PJM markets, but also the
11 continued operation of fuel diverse baseload
12 generating units in the state of Ohio that are
13 electrically connected to our load that have
14 on-site -- on-site fuel storage capabilities, the
15 avoidance of additional transmission investment which
16 would be necessitated should those plants cease to
17 operate, the economic development benefits, which
18 certainly the mayors and the councilmen you spoke of
19 should be interested in northwest Ohio because, of
20 course, that's where the Davis-Besse plant is
21 located, the tax dollars that arise from it, the
22 continued employment of people across the State of
23 Ohio.

24 So, again, having not studied it in any
25 detail, it didn't strike me as an offer, and it

1 didn't seem the least bit comparable to what the
2 company has before the Commission today.

3 Q. Let me reask the question in case it
4 wasn't clear. Would the company be willing to match
5 a guaranteed \$2.5 billion in benefits to customers
6 over the life of an Exelon PPA, assuming that they
7 make that offer?

8 MR. KUTIK: Well, your Honor, there is no
9 such offer.

10 EXAMINER PRICE: Mr. Hays, when you say
11 "the company," are you referring to FirstEnergy
12 Solutions, or are you referring to the three
13 operating utilities?

14 MR. HAYS: I believe rider RRS is with
15 the companies, your Honor.

16 EXAMINER PRICE: Okay.

17 MR. HAYS: But, frankly, I would make it
18 for any of the FirstEnergy entities, any portion of
19 the company.

20 EXAMINER PRICE: This witness is here for
21 the three operating utilities, so Mr. Kutik's
22 objection is noted. I believe this witness has
23 explained why she does not believe it is an offer, so
24 she can go ahead and answer the question.

25 THE WITNESS: May I ask that the question

1 please be reread.

2 EXAMINER PRICE: You may.

3 MR. KUTIK: Well, may I be heard?

4 EXAMINER PRICE: Yes.

5 MR. KUTIK: The point of my objection,
6 perhaps not appropriately stated before, is that the
7 question mischaracterizes the witness's testimony.
8 The witness has indicated what she thinks of the
9 testimony and the question asked her to assume
10 something contrary to what she thinks is in that
11 testimony.

12 EXAMINER PRICE: Mr. Hays, I will let you
13 respond.

14 MR. HAYS: I asked her a question that I
15 asked her to assume. I believe she is capable of
16 assuming this.

17 EXAMINER PRICE: Treat this as a
18 hypothetical, Ms. Mikkelsen. You can answer.

19 THE WITNESS: May I ask that the question
20 be reread, please?

21 EXAMINER PRICE: Yes. Listen to it as a
22 hypothetical.

23 THE WITNESS: Thank you, sir.

24 (Record read.)

25 A. The companies have demonstrated on this

1 record that should the Davis-Besse and Sammis plants
2 cease to operate, there would be required
3 transmission investments in excess of the \$2.5
4 billion that you referred to in your hypothetical
5 question. So in my mind, I believe the proposal, as
6 it exists today, has avoided costs in excess of the
7 guarantee that you were looking for, sir.

8 MR. HAYS: Your Honor, I would ask to
9 have that answer stricken and respectfully request
10 the Bench to order the witness to answer the
11 question.

12 EXAMINER PRICE: Your motion is denied.
13 The response was -- her answer was fully responsive
14 to your question.

15 Q. (By Mr. Hays) So is the answer you are
16 not willing -- your companies are not willing to
17 match the \$2.5 billion guarantee?

18 MR. KUTIK: Objection.

19 EXAMINER PRICE: Grounds?

20 MR. KUTIK: Same objection as before.

21 EXAMINER PRICE: I will give you the
22 asked and answered. Sustained.

23 Q. (By Mr. Hays) Assuming the Commission
24 made it a condition to guarantee a \$2.5 billion
25 benefit to ratepayers over the course of rider RRS,

1 would the companies, in your opinion, agree?

2 A. I don't know.

3 Q. Would you agree with me that there is a
4 very large difference of about \$2 billion between
5 what Exelon has set forth in its testimony and the
6 \$561 million projected by you as the benefits?

7 A. Again, I don't think that's looking at
8 the -- that's not looking at the appropriate numbers
9 to make a determination. The analysis you just
10 suggested ignores any of the transmission-related
11 reliability investment that would be required and
12 ignores all the other benefits that accrue to the
13 state and the customers associated with the proposed
14 Economic Stability Program.

15 Q. If in my hypothetical the Commission made
16 it a condition to guarantee 2.5 billion to the
17 ratepayers over the course of rider RRS with \$200
18 million directed to be distributed to economic -- the
19 economic development agencies of each county, would
20 you agree with me in this hypothetical that that \$200
21 million would be more than FirstEnergy is putting
22 forward in its economic development proposal?

23 MR. KUTIK: Your Honor, I know this is
24 asked as a hypothetical, but a hypothetical should
25 have some relationship somehow to the record in this

1 case. So I object.

2 EXAMINER PRICE: Mr. Hays, where are you
3 getting the \$200 million figure?

4 MR. HAYS: Ms. Mikkelsen just said that
5 it would outweigh the benefits of other portions of
6 the ESP. One of those portions that she has touted
7 quite heavily has been, I think it's roughly, the 48
8 or 50 million dollars in economic benefits that the
9 companies would put forward.

10 And I'm suggesting, and the reason I am
11 asking this is, look, if someone is offering 2-1/2
12 billion dollars guaranteed, and we take 200 million
13 of that for economic development and place it -- and
14 place it in the hands, not of the company who may
15 have its things, but in the proper channels in Ohio
16 that guarantee jobs, that make people perform, that
17 keep records, that do all the things that Ohio
18 jobs -- the Ohio Jobs Program does or the
19 Lucas-Toledo County Port Authority does.

20 So what I am asking is -- what I am
21 getting at is would that not do more for economic
22 development than the proposed -- than the proposed
23 economic development of the company?

24 MR. KUTIK: Your Honor.

25 EXAMINER PRICE: Objection sustained.

1 You are assuming facts not in evidence. There is no
2 basis in the record at all for the \$200 million
3 figure.

4 MR. HAYS: That's the big question that
5 we had, and I have no other questions. Thank you.

6 THE WITNESS: Thank you, sir.

7 EXAMINER PRICE: Ms. Fleisher.

8 MS. FLEISHER: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Ms. Fleisher:

12 Q. Ms. Mikkelsen.

13 A. Good afternoon.

14 Q. Good afternoon. Can we turn to page 11
15 of the stipulation, please. Sorry, actually, the top
16 of page 12. And yesterday you discussed with
17 Ms. Willis the increase in shared savings from 10
18 million to 25 million provided for at the top of page
19 12, correct?

20 A. Yesterday we discussed the increase in
21 the shared savings cap, not the increase in shared
22 savings.

23 Q. Point taken. And in the course of the
24 discussion, you referenced some comparisons between
25 FirstEnergy's current shared savings cap and the caps

1 for the other Ohio utilities, correct?

2 A. No.

3 Q. Do you recall discussing how
4 FirstEnergy's shared -- current shared savings cap
5 compares with respect to the FirstEnergy companies'
6 total load as opposed to other Ohio utilities?

7 A. No.

8 Q. Do you recall discussing how that \$25
9 million shared savings cap would compare to other
10 Ohio utilities?

11 A. I do.

12 Q. Okay. Glad we are talking about the same
13 thing.

14 A. I am as well.

15 Q. And it appears, or seemed to me, that
16 that testimony rested on some calculations; is that
17 correct?

18 A. Yes.

19 Q. Who made those calculations?

20 A. My staff.

21 Q. When did they do that?

22 A. I'm not sure of the exact date. I would
23 say probably within the last week or 10 days.

24 Q. And those calculations have not been
25 provided to the parties in this proceeding in

1 discovery, correct?

2 A. No. But the information, I believe, to
3 make the calculations is available in the public
4 domain.

5 Q. Okay.

6 MS. FLEISHER: May I approach, your
7 Honor?

8 EXAMINER PRICE: You may.

9 MS. FLEISHER: I believe we are on ELPC
10 Exhibit 27, I believe.

11 EXAMINER PRICE: It will be so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MS. FLEISHER: And, for the record, this
14 is the companies' response to ELPC Set 7,
15 Interrogatory 7.

16 Q. (By Ms. Fleisher) And, Ms. Mikkelsen, you
17 are the responding witness on this discovery request,
18 correct?

19 A. Yes.

20 Q. Okay. And do you know when this
21 discovery response was provided?

22 A. I don't remember.

23 Q. Okay. Would you -- would the companies
24 be willing to stipulate that this was provided on
25 December 21?

1 MR. KUTIK: I don't have that date. I
2 would be happy to discuss it with you at a break.

3 MS. FLEISHER: That's fine. Give me one
4 second. I have the e-mail providing it if that would
5 facilitate.

6 MR. KUTIK: Your Honor, to move things
7 along, we'll be happy to look at it at break. I
8 don't think we have to waste time looking at the
9 document now.

10 EXAMINER PRICE: Thank you.

11 MS. FLEISHER: Okay.

12 Q. (By Ms. Fleisher) Ms. Mikkelsen, do you
13 know whether the discovery request to which this is
14 responding included a request to supplement any
15 response?

16 A. I don't remember.

17 Q. Okay. And if you look at question (e) --
18 or part (e) of the request, that says, "Explain why
19 the Companies believe that it is appropriate to
20 increase their shared savings cap from \$10 million to
21 \$25 million"; is that correct?

22 A. Yes.

23 Q. And your response was, "The increase in
24 the cap was a result of settlement negotiations"; is
25 that correct?

1 A. Yes.

2 Q. And you provided no supplement to that
3 response?

4 A. That's correct.

5 MS. FLEISHER: Your Honor, at this point
6 I would like to renew -- I believe Miss Willis had
7 moved to strike that portion of Ms. Mikkelsen's
8 testimony. ELPC requested this sort of information
9 in discovery along with a request to supplement that
10 response, and the companies apparently performed new
11 calculations in the interim and never provided them
12 until Ms. Mikkelsen testified to them on the stand,
13 providing us no opportunity to assess her
14 calculations to rebut them in our -- our witness's
15 testimony.

16 And so I believe it would be potentially
17 extremely prejudicial and misleading to the
18 Commission to have that in the record with no -- with
19 it not having been tested through the adversarial
20 process that we tried to follow.

21 EXAMINER PRICE: Mr. Kutik.

22 MR. KUTIK: Your Honor, assuming that
23 there is a duty to supplement, the answer stands as
24 written. The fact of the matter remains that the
25 increase in the cap and the reason for its inclusion

1 in the stipulation, the third supplemental
2 stipulation, is that it was the subject of
3 negotiation.

4 That fairly and squarely answers the
5 question. As Ms. Mikkelsen just previously
6 indicated, all the information that she testified to
7 about yesterday, the subject of a motion to strike,
8 is all subject to -- is all part of the public
9 record, and this information that's publicly
10 available to them.

11 If they want to challenge that, they have
12 the perfect right to do so. They don't need a motion
13 to strike. It was fair comment at the time, and to
14 use this answer which answers the question and
15 doesn't need supplementation is improper.

16 MS. FLEISHER: With all due respect, your
17 Honor, I just want to -- I believe that Mr. Kutik is
18 mischaracterizing the discover request. I just want
19 it to be clear. We did not request why that increase
20 in cap was in the stipulation. We broadly requested
21 response as to why the companies believe it is
22 appropriate to increase the shared savings cap. It
23 wasn't limited to, and specifically did not seek any
24 settlement discussions, as I am sure that would have
25 drawn an objection from the companies. So I just

1 want to be sure that's clear.

2 EXAMINER PRICE: Ms. Willis.

3 MS. WILLIS: Thank you, your Honor. I
4 want to join that motion. I think what we have here
5 is like sandbagging, if you really want to know the
6 truth. It is sandbagging where you ask them a
7 specific question in discovery or at a deposition,
8 and they disavow any knowledge, state an answer. You
9 try to pin them down to that answer, and then all of
10 a sudden at the hearing, they come up with all kinds
11 of information that was available at the time the
12 questions were asked and they did not provide.

13 So I think it's an important thing that
14 if questions are asked in discovery, that they be
15 held to the answers and not subsequently come up with
16 50 different reasons as to answers that are different
17 from the discovery requests.

18 MR. KUTIK: Your Honor.

19 EXAMINER PRICE: I will come back to you
20 in just one minute.

21 Ms. Fleisher, why do you believe the
22 companies have a duty to supplement this particular
23 discovery response?

24 MS. FLEISHER: Certainly, your Honor. I
25 guess our discovery request did include a request to

1 supplement with any subsequently discovered
 2 information, and, I'm sorry, I did previously have --
 3 and under the Commission's Rule 4901-1-16, Section D,
 4 provides that discovery responses which are --
 5 provides for a request for supplementation, by saying
 6 that supplementation can be required in the
 7 situations including where the response indicated
 8 that the information sought was unknown or not in
 9 existence, and such information subsequently became
 10 known or existent. I believe that would apply here.

11 Separately, if a request for the
 12 supplementation of responses is submitted prior to
 13 the commencement of the hearing, that was included in
 14 our initial discovery request to the companies. I
 15 think that either/or both of those would cover this.
 16 And I think it's, you know, it's important precedent
 17 to set under the Commission's rules that, as
 18 Ms. Willis said, you can't make a response, go out
 19 and do something new, and come up with it at hearing.

20 It's just, you know, not how I would like
 21 to do things, and I would like the Commission to be
 22 clear that's not how things should be done.

23 EXAMINER PRICE: Mr. Kutik.

24 MR. KUTIK: Your Honor, with due respect
 25 to counsel, the duty to supplement is subject to this

1 Commission's other orders, and there has been orders
2 with respect to discovery in this case.

3 But I don't need to debate that issue
4 because I don't think there was a duty to supplement
5 in terms of the information. The question was
6 answered fairly and squarely. It was the issue of
7 the cap and the relationship of the cap to other
8 companies, was the subject that was discussed in
9 deposition. One or two questions were asked on it.
10 And they moved on. And Ms. Fleisher asked no
11 questions in deposition.

12 So there was an opportunity to explore
13 this. They didn't pursue it. This information, as
14 Ms. Mikkelsen indicated, was publicly available, and
15 there is no prejudice here.

16 EXAMINER PRICE: Okay. The Bench will
17 take this under advisement. Let's move on.

18 MS. FLEISHER: Certainly, your Honor.
19 Thank you.

20 Q. (By Ms. Fleisher) Ms. Mikkelsen, with
21 respect to the company-funded credits under Section
22 V-B-2 of the stipulation -- you are welcome to take a
23 second to flip through it.

24 MR. KUTIK: I'm sorry, counsel, I didn't
25 hear your reference.

1 MS. FLEISHER: V-B-2, the company-funded
2 credit section on pages 7 to 8.

3 Q. Could the need to pay credits under this
4 provision of the stipulation affect the companies'
5 projected profits?

6 A. Yes.

7 Q. Could that result in an increase in the
8 companies' cost of debt?

9 A. I don't know. I don't think so.

10 Q. And assuming that it did hypothetically
11 result in an increase in FirstEnergy's cost of debt,
12 would increased costs of borrowing be recovered from
13 customers for capital expenditures by the companies
14 that are financed, at least in part, by debt?

15 MR. KUTIK: Objection.

16 EXAMINER PRICE: Grounds?

17 MR. KUTIK: Incomplete hypothetical. Are
18 we talking about the companies? Are we talking about
19 the utilities? Are we talking about hypothetical
20 companies? Are we talking about recovery, recovery
21 under what?

22 EXAMINER PRICE: Please be more specific,
23 Ms. Fleisher.

24 MS. FLEISHER: Certainly.

25 Q. (By Ms. Fleisher) Let's take the DCR

1 rider for distribution investments. Are any of those
2 distribution investments financed in part by debt?

3 A. The calculation of the revenue
4 requirement for DCR holds static the cost of debt
5 based on the companies' last approved rate case.

6 Q. Do the companies have any riders or
7 riders pending approval in which the cost of debt is
8 not held static and is part of calculation of the
9 revenue requirement?

10 A. If you look at page 16 of the Third
11 Supplemental Stipulation and Recommendation, you will
12 see in the Third Supplemental Stipulation and
13 Recommendation that going forward the companies agree
14 to use the long-term cost of debt approved in Case
15 No. 07-551 as the carrying charge rate for all riders
16 that rely on a debt-based carrying charge.

17 Q. Okay. And so that's a static cost of
18 debt.

19 A. That's correct.

20 Q. Okay. And moving to page 9, the grid
21 modernization provision, and I believe you've
22 answered this before, but just as foundation,
23 FirstEnergy does not provide any cost estimate for
24 the contemplated grid modernization business plan,
25 correct?

1 A. That's correct.

2 Q. Okay. And FirstEnergy also has not
3 provided any description of benefits, potential
4 benefits, to customers from a grid modernization
5 business plan pursuant to this provision, correct?

6 A. That's correct. That work is currently
7 underway and doesn't exist today.

8 Q. Okay. And same answer with respect to
9 any quantitative estimate of potential monetary
10 savings?

11 A. That's correct.

12 Q. Okay. And FirstEnergy also has not
13 provided the parties in discovery any documents
14 regarding potential contents of the grid
15 modernization business plan, correct?

16 A. That's correct.

17 Q. And FirstEnergy also has not provided any
18 documents in this proceeding regarding the results of
19 its ongoing deployment of Volt/VAR technology,
20 correct?

21 MR. KUTIK: Objection.

22 EXAMINER PRICE: Grounds?

23 MR. KUTIK: Relevance.

24 MS. FLEISHER: Your Honor, I think to the
25 extent that FirstEnergy is putting forward this

1 provision as part of a package that benefits
2 ratepayers and the public under the second
3 stipulation prong, I think it's important to know
4 what the -- whether the substantive contents of the
5 grid modernization plan could benefit the public or
6 ratepayers and whether we are able to discern that
7 now.

8 MR. KUTIK: The specific question is was
9 it provided in discovery. She's already said there
10 is no plan.

11 EXAMINER PRICE: Actually, she asked
12 whether there's documents regarding their ongoing
13 Volt/Var deployment and their pilot program.
14 Overruled.

15 MR. KUTIK: Your Honor, this is all
16 subject to the motion to compel.

17 EXAMINER PRICE: She can answer the
18 question whether they provided it.

19 A. No.

20 EXAMINER PRICE: Ms. Mikkelsen, do any
21 ongoing -- do any studies regarding your ongoing
22 Volt/Var deployment exist?

23 THE WITNESS: Struggling a little bit
24 with the word "study" because the purpose of the
25 ongoing Volt/Var was a five-year period of

1 performance. At the culmination of the five years,
2 that's the completion of the study. There was very
3 clear representation on the part of the company,
4 accepted by the Commission, that it would take a full
5 five-year period's performance in order to complete
6 the study.

7 So if you are talking about the study in
8 the main, no. We were directed by the Commission to
9 file reports annually with numeric information that
10 we had captured, and we have, I believe, made one
11 such filing, but that's not a report on the study.
12 It's a report of metrics.

13 EXAMINER PRICE: And what year study --
14 of the five year study, what year are we in?

15 THE WITNESS: Two.

16 EXAMINER PRICE: Thank you.

17 Q. (By Ms. Fleisher) Ms. Mikkelsen, I am
18 glad you mentioned that study. I was just getting to
19 it. Do you remember that in the initial phase of the
20 case, Staff Witness Benedict filed testimony
21 representing that the Commission require the
22 companies to file a business case soon after approval
23 of its ESP for implementation of cost-effective
24 SmartGrid technologies?

25 A. Yes.

1 Q. And do you recall that in response to
2 Witness Benedict's testimony, you testified you
3 thought that the Commission should wait for
4 completion of that ongoing five-year study before
5 requiring filing of such a business case?

6 MR. KUTIK: Objection.

7 EXAMINER PRICE: Grounds?

8 MR. KUTIK: Relevance. We have a
9 proposal. People make all kinds of compromises in
10 discussions.

11 EXAMINER PRICE: I am not understanding
12 your question, Ms. Fleisher. What is the relevance
13 to this question? Obviously, the staff had a
14 litigation position. The company had a litigation
15 position. They compromised.

16 MS. FLEISHER: If you give me one more
17 question, I will get to it. It goes to when we might
18 expect to be in the grid modernization that's filed.

19 EXAMINER PRICE: I will give you one more
20 question.

21 MR. KUTIK: Your Honor, may I ask that
22 question be asked. The one that's before us is not
23 proper.

24 EXAMINER PRICE: Why don't you ask that
25 question, Ms. Fleisher.

1 MS. FLEISHER: Well, the pending question
2 was foundational. I can tell you what the next
3 question is, but it's hard to make sense of it
4 without the answer to this question. I was going to
5 ask Ms. Mikkelsen whether the same recommendation
6 could be included in the grid modernization business
7 plan to be filed, that no implementation of SmartGrid
8 technologies take place until the completion of this
9 five-year study.

10 EXAMINER PRICE: You can ask her that
11 question without asking the previous one.

12 MS. FLEISHER: Okay. Certainly, your
13 Honor, if that's how you would prefer to do it.

14 Q. (By Ms. Fleisher) Ms. Mikkelsen, is it
15 possible that the grid modernization business plan to
16 be filed under the stipulation could include a
17 recommendation that no -- that cost-effective
18 SmartGrid technology is not analyzed or implemented
19 until the companies have completed their ongoing
20 study that you referenced in your prior testimony?

21 A. No, I would not view that as an option
22 for the commitment that the companies have made here
23 with respect to the filing of a business case within
24 90 days.

25 Q. Okay. Have the companies committed in

1 this -- under the stipulation to file a business plan
2 proposing implementation of all cost-effective
3 SmartGrid technologies?

4 MR. KUTIK: Well, I'll object, your
5 Honor. I am not sure what "all SmartGrid
6 technologies" means.

7 MS. FLEISHER: Certainly.

8 Q. (By Ms. Fleisher) All, to clarify,
9 SmartGrid technologies as described in the
10 stipulation, the examples in V-D-1.

11 MR. KUTIK: Object. The question was
12 all. What is "all," your Honor?

13 EXAMINER PRICE: What is "all," Miss
14 Fleisher?

15 MS. FLEISHER: Okay. All would include
16 and be limited to advanced metering infrastructures,
17 distribution automation circuit reconfiguration, and
18 Volt/Var.

19 A. I believe the plan which we will file 90
20 days from the date of the stipulation will address
21 those examples.

22 Q. Will it seek approval to implement all
23 cost-effective technologies in those categories?

24 MR. KUTIK: Objection, your Honor.

25 EXAMINER PRICE: Grounds?

1 MR. KUTIK: The plan is incomplete. The
2 substance of the plan is the subject potentially of
3 another proceeding.

4 MS. FLEISHER: Your Honor, Ms. Mikkelsen
5 is now testifying to certain things that won't be in
6 the plan, and so I'm trying to discern if she is able
7 to make commitments now as to what will be in the
8 plan.

9 MR. KUTIK: Well, I think she's testified
10 to what the commitments from the companies were, not
11 what will or won't be in the plan, your Honor.

12 EXAMINER PRICE: We are going to sustain
13 the objection.

14 Q. (By Ms. Fleisher) Ms. Mikkelsen, what
15 does -- in looking at on page 9, V-F-2, does the
16 phrase "highlighting future initiatives for
17 Commission consideration and approval" commit the
18 companies to any substantive content for its grid
19 modernization business plan?

20 A. I'm not sure of the phrase highlighting
21 "future initiatives," but I know the companies have
22 committed in this stipulation to file a business plan
23 for the Commission's consideration and approval of
24 SmartGrid modernization-related items including
25 advance metering infrastructure, which we've

1 committed to include a timeline to achieve full smart
2 meter implementation with data capabilities and
3 capable of transferability, as well as Volt/Var and
4 distribution automated circuit reconfiguration, and I
5 would expect that would be substantive.

6 What we provide -- the balance of the
7 plan, I'm not sure because it's still under
8 development what will be in there, but those are the
9 things, and they will be substantive in nature for
10 the Commission's consideration.

11 Q. Okay. And the companies are not making
12 any commitments beyond the items you just described
13 as they are included in the stipulation?

14 A. If your question to me is will there be
15 any other items included in the grid modernization
16 plan, I don't know. That plan is still under
17 development. I do know we've committed to include in
18 the 90-day filing information with respect to
19 decoupling. That will be there.

20 Q. Apologies. To clarify, I meant to ask
21 whether the companies are making any commitments with
22 respect to implementation of SmartGrid technologies
23 beyond the ones you described in your prior answer.

24 A. The -- I believe the companies will
25 implement whatever direction comes from the

1 Commission out of the proceeding that arises from the
2 90-day filing.

3 Q. I guess I'm not sure that answered my
4 question as to -- maybe the question wasn't clear. I
5 will try it one more time, and then I will move on if
6 I can't get it right.

7 Are the companies making any commitments
8 as respect to the contents of its filing under this
9 provision beyond the ones you described as listed in
10 the stipulation?

11 A. If your question is are the commitments
12 that the companies made in the stipulation included
13 in the stipulation, yes, those are the commitments
14 that the company made.

15 Q. Okay. But you also just said in your
16 testimony that the companies will not file a grid
17 modernization business plan that proposes delaying
18 SmartGrid technologies until the completion of this
19 five-year study, correct?

20 A. Maybe we are getting turned around here.
21 I thought you were asking me, hey, in 90 days can I
22 expect to see the company come in and say, here is
23 your SmartGrid modernization plan. We don't have
24 one. We have to wait for five years.

25 And I answered that question no, that is

1 not what our intention is with respect to this
 2 finding or this filing. So if I misunderstood your
 3 question, perhaps, I apologize. That would not be
 4 our intent as part of this. Our intent is to file a
 5 business plan that will allow the Commission and
 6 other parties to participate fully in the discussion
 7 of what makes sense on a going-forward basis with the
 8 information we have today with respect to grid
 9 modernization.

10 EXAMINER PRICE: Let's go off the record
 11 for a minute.

12 (Discussion off the record.)

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

15 Q. Ms. Mikkelsen, moving to pages 12 and 13,
 16 the straight fixed variable or what you call
 17 decoupling provision.

18 A. I will note the section is entitled
 19 decoupling rates.

20 Q. Yeah. Would the companies plan to
 21 include information supporting the proposed
 22 75 percent fixed cost/25 percent variable cost
 23 allocation when it makes the tariff filing
 24 contemplated here?

25 A. Yeah. I don't know what will be included

1 in the tariff filed and made on April 3rd of 2017.

2 Q. And your testimony here contains no
3 analysis of how a change in fixed customer charges
4 might affect customer incentives to invest in energy
5 efficiency, correct?

6 A. Correct.

7 Q. Can we go to page 15 for Section V-G-4-B.

8 A. Yes.

9 Q. So this section contemplates certain
10 payments to the Council of Smaller Enterprises and
11 the Association of Independent Colleges and
12 Universities of Ohio, correct?

13 A. Yes.

14 Q. And would these payments be made absent
15 those parties' support for the stipulation?

16 A. I don't know. The companies have made
17 payments to administrators of their energy efficiency
18 programs in the past, and I believe continue to do
19 so. So I don't know what would have been done in
20 order to assist the company in achieving its State
21 benchmarks with respect to energy efficiency in the
22 absence of these commitments.

23 Q. Okay. And prior administrator payments
24 under FirstEnergy's efficiency programs have been
25 proposed and approved as part of the companies'

1 portfolio plan filings, correct?

2 A. No, not entirely.

3 Q. Sorry, I was just asking in general.

4 Okay. And the stipulation doesn't include any
5 requirement for any particular amount of energy
6 savings, correct?

7 A. No. But earlier in the proceeding in
8 this case, the companies did put forth information
9 with respect to energy efficiency contributions made
10 by COSE, who has been a very effective partner with
11 our energy efficiency team in order to harness the
12 small business community, which, as I recall, is very
13 consistent with state policy, which I think
14 enumerates a specific provision about assuring access
15 for energy efficiency.

16 It may use the word demand-side
17 management for small customers in the state of Ohio.
18 And I think COSE has done an extremely effective job
19 as a partner with the companies in that respect.

20 And also earlier in this proceeding the
21 companies did provide information with respect to
22 AICUO members who have participated and contributed
23 energy savings and peak-demand reductions to the
24 companies for inclusion in their successful
25 achievement of state benchmarks.

1 MS. FLEISHER: Your Honor, I move to
2 strike everything after "no." I just asked as to
3 what the stipulation requires.

4 EXAMINER PRICE: Granted. Her additional
5 information is proper subject for redirect.

6 Q. And can you look on page 15, very last
7 sentence on that page where it says -- and I am not
8 going to read the whole thing, but: The companies
9 may seek approval to recover costs associated with
10 the demonstrated savings achieved through section
11 G.4.b.i and iii, such approval shall not be
12 unreasonably withheld.

13 In terms of approval of cost recovery not
14 being unreasonable withheld -- unreasonably withheld,
15 does that mean -- does it matter for purposes of that
16 if the savings have proven to be cost effective?

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

19 EXAMINER PRICE: You may.

20 (Record read.)

21 MR. KUTIK: Well, I will just note that I
22 think -- what I heard was an incorrect reading of the
23 provision of the stipulation. The question corrected
24 that error so perhaps we could have the question put
25 to the witness with a proper reading of the section,

1 your Honor. I think when it was read to her, the
2 word "reasonably" was used, but the question
3 corrected it.

4 EXAMINER PRICE: The transcript does say
5 "unreasonably withheld."

6 MR. KUTIK: I heard reasonably.

7 EXAMINER PRICE: The transcript does say
8 "unreasonably."

9 You can go ahead and answer the question.

10 MS. FLEISHER: Certainly, my voice is not
11 what it always is so. I will try to speak up. Do I
12 need to repeat the question?

13 EXAMINER PRICE: No.

14 THE WITNESS: I'm afraid I need the
15 question again.

16 EXAMINER PRICE: Could we have the
17 question back again, please.

18 (Record read.)

19 A. I think the Commission will ultimately
20 make the determination about whether the companies
21 can recover the costs should the companies seek
22 recovery of those costs. One thing the Commission
23 may consider is whether or not those programs are
24 cost effective.

25 Q. Could the Commission also deny cost

1 recovery if the savings were less cost effective than
2 energy savings available from other potential
3 programs?

4 A. I can't speak for what the Commission can
5 and can't do, certainly, but I think we have a range
6 of programs and measures that we offer, typically as
7 part of our portfolio plan, and that range of
8 programs and measures have different cost
9 effectiveness.

10 I think as we know the green rules
11 require that from a portfolio basis in total, the
12 portfolio has to be cost effective. I think there is
13 a preference for cost effectiveness at a program
14 level, perhaps, less of a necessity at a measure
15 level.

16 So I don't think there is any requirement
17 in the green rules or otherwise that would require
18 all programs to be conducted in the most
19 cost-effective program. In fact, I think that's
20 counter to the policy, which suggests that they
21 should be broadly available to all classes of
22 customers.

23 Q. All right. Turning to page 11, the
24 provisions regarding energy efficiency, FirstEnergy
25 currently runs what's called the Customer Action

1 Program as part of its portfolio plan, correct?

2 A. The companies have an approved Customer
3 Action Plan as part of its amended portfolio plan.

4 Q. Now, are you familiar with that program?

5 A. Yes.

6 Q. And am I describing it correctly to say
7 that program counts energy savings resulting from
8 customer actions independent of any utility energy
9 efficiency program to be used towards compliance with
10 FirstEnergy's efficiency targets under state law?

11 A. That's correct. SB 310 allows the
12 companies to capture and count those savings taken by
13 customers outside of utility programs and score those
14 against their benchmarks.

15 Q. And FirstEnergy is -- is -- is measuring
16 those savings through techniques such as market
17 surveys to determine lightbulb purchase and purchases
18 of appliances, correct?

19 MR. KUTIK: Your Honor, I object.

20 EXAMINER PRICE: Grounds?

21 MR. KUTIK: Scope.

22 MS. FLEISHER: Your Honor, this provision
23 of the stipulation makes commitments to a particular
24 energy target that the companies will strive to
25 reach, and I just want to explore how they might --

1 what they might count towards reaching that target.

2 MR. KUTIK: Your Honor, that might be a
3 fair question to ask, but that's not the question
4 before us.

5 EXAMINER PRICE: All right. I think it
6 was a more specific question of the general question
7 she wants, so we will allow this -- Ms. Fleisher some
8 leeway on this as long as we can get this topic up
9 and down quickly.

10 MS. FLEISHER: Certainly. I will do my
11 best to be quick, your Honor, but since this is a new
12 topic in the stipulation, there is not much in the
13 record to explain this context.

14 EXAMINER PRICE: I understand.

15 MS. FLEISHER: I want to be sure it's
16 clear.

17 EXAMINER PRICE: You can answer the
18 question if you know.

19 A. The companies will employ evaluation
20 measurement and verification techniques in order to
21 capture and quantify savings associated with customer
22 actions.

23 Q. Not quite got to my question. So the
24 customer action --

25 MR. KUTIK: Could you turn your

1 microphone on, please.

2 MS. FLEISHER: Sorry.

3 Q. There we go. So those customer actions
4 could include things like buying a CFL lightbulb or
5 buying a new dishwasher or washing machine, correct?

6 A. Only insomuch as the lightbulb or the
7 dishwasher qualifies as technologies that give rise
8 to energy savings, and, further, only insomuch as
9 those purchases were not made pursuant to a
10 utility-sponsored program.

11 Q. And what do you mean by "qualifies as
12 technologies that give rise to energy savings?"

13 A. I think that there are requirements with
14 respect to technologies and the efficiency levels
15 associated with those technologies that create
16 thresholds that have -- you have to purchase
17 appliances that exceed those thresholds in order to
18 be able to calculate savings arising from those
19 appliances.

20 Q. Okay. And are those -- the thresholds
21 set forth in Ohio's technical resource manual?

22 A. Yes. I would say as augmented by Senate
23 Bill 310.

24 Q. And FirstEnergy may include the customer
25 action program in its next portfolio plan, correct?

1 A. I don't know what FirstEnergy will
2 include in its next portfolio plan that's currently
3 under development.

4 Q. Okay. So it's possible that the customer
5 action plan would be included?

6 A. Yes.

7 Q. And it's possible that the customer
8 action program would be included in future portfolio
9 plans within the term of the ESP, correct?

10 A. Yes.

11 Q. And would FirstEnergy count savings from
12 the customer action program toward the 800,000
13 megawatt-hour goal in this section?

14 A. Yes.

15 Q. And in 2014 and prior years, FirstEnergy
16 has not had such a program, correct?

17 A. Correct.

18 Q. Okay. And so in those years the savings
19 counted by FirstEnergy towards compliance with Ohio's
20 state standards were solely energy savings resulting
21 from its utility-run programs, correct?

22 A. Correct. But in years prior to that,
23 Senate Bill 310 did not exist, which created by way
24 of the Ohio Revised Code the ability for the
25 companies to count those savings towards their

1 benchmarks.

2 Q. And do you know how many megawatt-hours
3 of savings FirstEnergy expects to be produced to be
4 counted through the customer action program in 2015?

5 A. No.

6 Q. And have the companies done any such
7 estimate?

8 A. I don't know.

9 Q. And it's FirstEnergy's position that
10 savings from the customer action program are cost
11 effective, correct?

12 A. Yes.

13 Q. And so for the sentence starting at the
14 bottom of page 11 going on to page 12, the customer
15 action program would be encompassed in
16 cost-effective, energy efficiency programs that would
17 be eligible for shared savings, correct?

18 A. Yes.

19 Q. And is it correct that in -- sorry -- in
20 obtaining approval of the customer action program,
21 FirstEnergy committed not to seek shared savings for
22 2015 and 2016 in Case No. 12-2190-EL-POR?

23 A. Not entirely correct. I believe what the
24 companies committed to in that proceeding was to not
25 seek shared savings on actions initiated in '15 and

1 '16, but that the companies would be eligible in '15
2 for shared savings on actions that were initiated in
3 2014 but were not complete until 2015.

4 Q. Certainly. Thank you for clarifying.

5 And going back to the 800,000
6 megawatt-hour goal, would the companies count energy
7 savings resulting from Volt/Var implementation or
8 other grid modernization efforts towards that goal?

9 A. Yes.

10 Q. And as I think we established before, you
11 don't have any projection available in this
12 proceeding of those -- the amount of those potential
13 savings, correct?

14 A. Correct.

15 Q. And those energy savings from Volt/Var or
16 other grid modernization efforts could also be
17 eligible for shared savings under this provision; is
18 that correct?

19 A. Assuming they're cost effective, yes.

20 Q. And the shared savings amount is
21 calculated based on savings achieved above the
22 statutory benchmark, correct?

23 A. Yes.

24 Q. If the General Assembly lowered the
25 statutory benchmarks for future years, would the

1 Commission be able to revisit the shared savings cap
2 and calculation methodology that would apply under
3 the stipulation?

4 A. I'm not aware of a provision in the
5 stipulation that would prohibit that.

6 Q. Okay. So to the -- I just wanted to make
7 sure this is absolutely clear. So if the stipulation
8 is approved, and let's say later this year the
9 legislature lowered the statutory benchmarks, the
10 Commission could in a future proceeding change the
11 shared savings calculation methodology and the shared
12 savings cap.

13 MR. KUTIK: Asked and answered.

14 MS. FLEISHER: Just want to be clear.

15 MR. KUTIK: The record is clear.

16 EXAMINER PRICE: When you say "just want
17 to be clear," you are signaling to the Bench it has
18 been asked and answered.

19 MS. FLEISHER: Well, I guess I --

20 EXAMINER PRICE: Sustained.

21 MS. FLEISHER: I certainly understand
22 that. I believe my prior question asked if they
23 could -- the Commission could revisit it, and I just
24 want to be clear that means they could change it.

25 EXAMINER PRICE: Sustained.

1 MS. FLEISHER: Okay.

2 Q. (By Ms. Fleisher) And according to the
3 stipulation, the 800,000 megawatt-hour goal would be
4 subject to customer opt-outs, correct?

5 A. That's correct.

6 Q. Okay. And how would customer opt-outs
7 change the 800,000 megawatt-hour goal, if you could
8 just generally describe that?

9 A. To the extent that customers opt out from
10 participating in the companies' energy efficiency
11 programs, it reduces the pool of megawatts available
12 in order to achieve savings. So as that baseline
13 pool of participants is reduced, we would make a
14 corresponding reduction to the 800,000 megawatt-hour
15 commitment.

16 Q. And would the reduction in the commitment
17 be made based on opt-outs that have occurred before
18 the stipulation is approved?

19 A. Yes.

20 Q. And to date, do you know how many
21 megawatt-hours of customer load has opted out of
22 FirstEnergy's energy efficiency rider?

23 EXAMINER PRICE: Let's go off the record
24 for a second.

25 (Discussion off the record.)

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

3 Ms. Mikkelsen, you can answer the
4 question.

5 A. I don't remember.

6 Q. Okay. And has FirstEnergy done any
7 projections or estimates of how many megawatt-hours
8 of customer -- customer load may opt out through
9 2024?

10 A. No, not that I'm aware of.

11 Q. And with respect to the energy efficiency
12 programs that were suspended in Case No. 12-2190, why
13 did FirstEnergy suspend those programs?

14 MR. KUTIK: Objection.

15 EXAMINER PRICE: Grounds?

16 MR. KUTIK: Relevance.

17 EXAMINER PRICE: Sustained.

18 MS. FLEISHER: Your Honor, if I can just
19 make a brief case.

20 EXAMINER PRICE: Sure.

21 MS. FLEISHER: This provision only
22 provides any benefit if it's something that the
23 companies would not have done anyway. And so I just
24 wanted to see whether the rationale for suspending
25 the programs would apply in 2017.

1 EXAMINER PRICE: I am not following what
2 you just said.

3 MS. FLEISHER: Okay. I guess if I can
4 ask -- can I ask if they suspended the programs due
5 to the SB 310 freeze?

6 EXAMINER PRICE: Yes, you can ask that.

7 MS. FLEISHER: Okay.

8 Q. (By Ms. Fleisher) Ms. Mikkelsen, did
9 FirstEnergy suspend the energy efficiency programs
10 referenced in Section 3-a of the stipulation due to
11 the freeze of the energy efficiency targets under SB
12 310?

13 A. I don't agree with your characterization
14 that they did it in response to the freeze. I think
15 the companies filed to amend their portfolio plan as
16 they were allowed to do pursuant to Senate Bill 310.

17 Q. Okay. But -- and I hate to reask the
18 question that got me in trouble before. But what was
19 the actual affirmative rationale besides being
20 allowed to do it under SB 310?

21 MR. KUTIK: Objection.

22 EXAMINER PRICE: Grounds?

23 MR. KUTIK: Relevance.

24 EXAMINER PRICE: Sustained.

25 Q. Ms. Mikkelsen, the freeze of the Ohio

1 energy efficiency standards, is that freeze scheduled
2 to "thaw " in 2017? In other words, will they --
3 will the efficiency standards start going up again
4 requiring FirstEnergy to produce annual energy
5 savings through its programs?

6 MR. KUTIK: Well, I'll object, your
7 Honor. The law is what the law is.

8 EXAMINER PRICE: The witness has been
9 testifying throughout her testimony on regulatory
10 matters within her knowledge. She can testify if she
11 knows. Answer if she knows.

12 A. The energy efficiency and peak demand
13 reduction benchmarks in the state of Ohio are going
14 to increase in 2017, absent any additional
15 legislative action.

16 Q. And they did not increase in 2015 and
17 2016, correct?

18 A. Correct.

19 Q. And so FirstEnergy believes it would
20 benefit customers to reactivate its suspended
21 programs, correct?

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

24 EXAMINER PRICE: You may.

25 (Record read.)

1 A. Yes.

2 Q. Okay. And how would it benefit
3 customers?

4 A. FirstEnergy has a long history of
5 supporting energy efficiency in its service
6 territories. The reactivation of these programs in
7 the companies' service territory would assist
8 customers in using their energy efficiency more
9 wisely and assist the companies in achieving the
10 state-mandated benchmarks.

11 Q. And on the -- on page 12 -- or, I'm
12 sorry, still on page 11, subsection b at the energy
13 efficiency provision refers to the Commission
14 examining the aggregate cost of energy efficiency and
15 its impact on customers. What costs would be
16 included as part of the examination of aggregate
17 costs of energy efficiency?

18 A. The costs included in the portfolio plan
19 budget that would be included as part of the energy
20 efficiency and peak demand reduction portfolio plan
21 filing in April of 2016.

22 Q. Okay. And what would be included in --
23 within the phrase "impact on customers"?

24 A. I apologize. I'm not sure I understand
25 your question, ma'am.

1 Q. I guess the question is, to the extent
2 this -- under this provision the Commission would
3 examine the portfolio plan's impact on customers,
4 what does FirstEnergy intend to be encompassed within
5 the impact on customers?

6 A. Again, I will remind you this is a
7 recommendation on behalf of all the signatory
8 parties. Having said that, I think a couple of
9 things come to my mind, and that would be, one, I
10 know when the companies file their portfolio plans,
11 they include budgets for the programs, and they
12 include those budgets by sector, which provides
13 insight with respect to what the costs will be for
14 the various customer classes.

15 And also, as you know, the Commission
16 reviews the TRC and the results of the TRC, which is
17 a measure of the costs and benefit on customers
18 associated with the proposed programs.

19 Q. Okay. Can we turn to the revised term
20 sheet for one minute, if you have that? Can you turn
21 to page 2, paragraph 7, Section 7.

22 A. Yes, I can.

23 Q. Okay. And this provision states that
24 the -- let me just read it. "Seller agrees to sell
25 and deliver, and Buyers agree to purchase, receive,

1 and pay for... all Environment Attributes associated
2 with the Facilities; provided that at termination of
3 the Agreement Buyers will assign to Seller and Seller
4 will accept without recourse, all Environmental
5 Attributes for the Facilities and that are owned or
6 controlled by Buyer that are effective or in effect
7 for time periods after the termination date."

8 Did I read that correctly?

9 A. You did. I would note this is a
10 provision of the term sheet that did not change.

11 Q. Certainly. And my questions go to how
12 the change in time period of the PPA may affect the
13 operation of this provision. So the environmental
14 attributes referenced here, could that include carbon
15 allowances or emission reduction credits under the
16 Clean Power Plan?

17 A. To the extent that they exist, yes.

18 Q. And to the extent that they exist at the
19 time, is it possible that through the -- through
20 rider RRS, customers could pay for the acquisition of
21 carbon allowances or emission reduction credits for
22 the plants?

23 MR. KUTIK: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. KUTIK: May I have a minute, your

1 Honor.

2 EXAMINER PRICE: You may.

3 MR. KUTIK: Your Honor, that's not a
4 changed provision of the term sheet. These questions
5 could have been asked earlier, so we object.

6 MS. FLEISHER: Your Honor, the prior
7 version of the PPA had it lasting through the entire
8 span of the now final Clean Power Plan. And so that
9 basically obviated any issues with respect to
10 ownership or cost of allowances, whereas cutting it
11 off in 2024 raises the question of how that transfer
12 of ownership might operate.

13 MR. KUTIK: The change in the term, your
14 Honor, doesn't effect how the provision operates.

15 EXAMINER PRICE: I am not following -- I
16 am not following how this changes it.

17 MS. FLEISHER: Certainly, your Honor.

18 EXAMINER PRICE: If anything, based on
19 your question, it would mean the customers would have
20 to buy allowances for fewer years.

21 MS. FLEISHER: Well, my question -- I
22 wanted to see Ms. Mikkelsen's understanding as to
23 whether there could be allowances acquired during the
24 term of the PPA that then would be utilized after the
25 term of the PPA.

1 EXAMINER PRICE: If you ask that
2 question, I will allow it.

3 MS. FLEISHER: Okay. I was trying to get
4 there, but I will get there more quickly, your Honor.
5 I don't know if there was a pending question, but I
6 can start over.

7 Q. (By Ms. Fleisher) Ms. Mikkelsen, could
8 there be allowances acquired for purposes of
9 compliance with the Clean Power Plan during the term
10 of the PPA whose costs would be passed through rider
11 RRS?

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

14 EXAMINER PRICE: You may.

15 (Record read.)

16 A. I suppose so. And any such costs would
17 be subject to Commission review for reasonableness
18 for inclusion in rider RRS.

19 Q. Okay. And do you know whether allowances
20 or potential emission reduction credits for which
21 costs were incurred during the term of the PPA would
22 necessarily be utilized during the term of the PPA?

23 A. Well, if they weren't, I would think then
24 the Commission would review that expenditure for
25 reasonableness under that set of facts and

1 circumstances and draw whatever conclusions they
2 would draw with respect to the reasonableness of that
3 purchase.

4 Q. Okay. Let's say there were allowances
5 acquired in 2021 with the intention of using them in
6 the compliance period 2022 through 2024. When would
7 those costs be reviewed?

8 THE WITNESS: May I ask to have the
9 question reread, please?

10 EXAMINER PRICE: You may.

11 (Record read.)

12 MR. KUTIK: Your Honor, none of these
13 features of rider RRS are new and are -- remain
14 unchanged in terms of their operation, and the third
15 supplemental stipulation doesn't change any of these
16 things.

17 EXAMINER PRICE: What's the difference
18 you asking this question for 2024 and 2025 versus
19 2029 and 2031, which you could have asked earlier?

20 MS. FLEISHER: Certainly, your Honor. I
21 guess the change in time relates to the question --
22 I'll just foreshadow the question and ask what if you
23 acquire allowances in 2021, you intend to use them
24 before 2024, but you don't. Is it potentially they
25 could go back --

1 EXAMINER PRICE: But you could have asked
2 that question. It was always a limited PPA. You
3 could have always used that in the 15-year time
4 period and said -- Mr. Kutik's point is just change
5 the dates. You could have asked 2029, if they were
6 purchased in 2029 and intended to be used but were
7 unused. The PPA always had an end date.

8 MS. FLEISHER: But the Clean Power Plan
9 compliance final deadline is in 2030, and so the PPA
10 previously went past the end of the Clean Power Plan
11 compliance deadline and so there was no prospect that
12 you would be holding on to allowances that could be
13 used for future compliance with the Clean Power Plan.

14 MR. KURTZ: That's just wrong. It
15 continues beyond 2030.

16 MR. KUTIK: They could still be "not
17 used."

18 EXAMINER PRICE: 2030 I don't think it's
19 all going away and we are going back to 1980 again.
20 I've heard enough. Objection sustained.

21 Q. (By Ms. Fleisher) Can we go to page 12 of
22 the stipulation.

23 EXAMINER PRICE: Since we are changing
24 topics, we have been going for an hour and a half.
25 We will go -- it is time for a break. We will take a

1 10-minute break until 2:25.

2 (Recess taken.)

3 EXAMINER ADDISION: Let's go ahead and go
4 back on the record.

5 Ms. Fleisher.

6 MS. FLEISHER: Certainly, your Honors.

7 Q. (By Ms. Fleisher) Ms. Mikkelsen, I think
8 we were just getting to page 12 of the stipulation.
9 And for the renewables provision I believe you
10 testified earlier that a state implementation plan
11 under the Clean Power Plan could be a future law
12 triggering this provision.

13 A. I think what I testified to is the state
14 implementation plan may include a law or a rule that
15 would or could trigger this provision.

16 Q. Okay. And you're aware that the final
17 deadline for submission of a state implementation
18 plan to comply with the Clean Power Plan is
19 September, 2018?

20 A. No, I'm not aware of that date.

21 Q. Do you know -- do you have any sense of
22 the timing of when Ohio might submit a state
23 implementation plan under the Clean Power Plan?

24 A. No.

25 Q. And if and when Ohio does submit a state

1 implementation plan, do you have any opinion as to
2 how long it would take to know if that plan or any
3 rules or laws that were part of that plan would be
4 fostering development of renewable resources?

5 A. I don't know.

6 Q. Okay. So do you know, have any sense of
7 the timing of when this provision would be triggered
8 under the Clean Power -- through laws designed to
9 comply with the Clean Power Plan?

10 A. No.

11 Q. Okay. Let's say, hypothetically, that a
12 state implementation plan did not go into effect
13 until 2019. The longest a PPA under this provision
14 could last would be 2019 through 2024, correct?

15 A. I don't think the date of the state
16 implementation plan is relevant to the triggering of
17 this provision. This provision is, at least to
18 start, triggered by a future federal or state law or
19 rule.

20 Q. Okay. So you agree that one of the
21 triggers of this provision is that a federal or state
22 law or rule has not fostered the development of new
23 renewable energy resources, correct?

24 A. I think what this provision says is that
25 to the extent the staff deems it helpful to comply

1 with the future federal or state law or rule and to
2 the extent that such federal or state law or rule has
3 not fostered the development of new renewable energy
4 resources, then the company could be directed at the
5 staff's request to make a filing before the
6 Commission demonstrating the need and seeking
7 Commission approval to begin the procurement process.

8 Q. Okay. And do you think staff could
9 direct a filing, as provided here, if there is not
10 yet any state law or rule in effect that would be
11 intended to foster the development of new renewable
12 energy resources?

13 A. I'm not sure I understand the question,
14 ma'am.

15 Q. Okay. In making -- so the staff has to
16 make a determination that a federal or state law or
17 rule has not fostered the development of new
18 renewable energy resources in order to direct the
19 companies to make a filing under this provision,
20 correct?

21 A. Yes.

22 Q. And to make that determination, does
23 there have to be some federal or state law or rule in
24 effect regarding which the staff makes a
25 determination?

1 A. The provision does not dictate that the
2 rule has to be in effect, just simply has to be to
3 the extent that staff deems it helpful to comply with
4 the future federal or state law or rule.

5 Q. Okay. So could staff in 2017 say that
6 we're concerned that Ohio laws or rules will not
7 foster new renewables for compliance with the Clean
8 Power Plan and require the companies to make a filing
9 under this provision?

10 A. No.

11 Q. Why not?

12 A. Maybe I misunderstood your question. I
13 thought your question said could the staff be
14 concerned that there weren't rules that would
15 allow -- you know, would allow compliance, and this
16 requires that the staff has to deem it helpful to
17 comply with the future state or federal law or rule.

18 Q. Right. So let's suppose there were --
19 was a proposal on the table for the Ohio state
20 implementation plan, and it's what could get passed
21 by the General Assembly, but PUCO staff was concerned
22 that it would -- or believed that it would not, in
23 fact, foster development of new renewable resources.

24 Could staff then direct the company to --
25 companies to make a filing under this provision?

1 A. I guess I don't have enough fundamental
2 knowledge. Are you suggesting that the legislature
3 has to pass a law approving the state implementation
4 plan?

5 Q. I guess --

6 A. I thought that's what your question
7 implied. I apologize.

8 Q. Sorry to interrupt. I am trying to
9 discern if the state -- if the staff could direct a
10 filing under this provision in the absence of some
11 effective rule or law intended to foster the
12 development of new renewables.

13 A. Perhaps I misunderstood your use of the
14 word "effective." I thought you meant suppose there
15 was a rule and it had an effective date in the
16 future. The law or rule existed. It just was not
17 effective yet. Is that what you're trying to ask me
18 about?

19 Q. Yeah. I guess I am happy to clarify
20 that. If there were a law -- does there need to be a
21 law on the books, not necessarily with any deadlines
22 in effect at the moment, but a law that has been
23 codified in order for the staff to make a
24 determination that that law or rule has not fostered
25 the development of new renewable energy resources?

1 A. Your late inclusion of the word "or rule"
2 in your question, yes.

3 Q. Okay. And there's not currently any such
4 law or rule on the books that would trigger this
5 provision, correct?

6 MR. KUTIK: Objection, your Honor.

7 EXAMINER ADDISON: Grounds?

8 MR. KUTIK: The document itself refers to
9 future laws, so what's -- what's the point? It's
10 irrelevant.

11 MS. FLEISHER: Well, I think, your
12 Honors, we have now established it's not entirely
13 clear, necessarily, what future means.

14 MR. KUTIK: What's not clear are the
15 questions, your Honor. The provisions are clear, and
16 the witness's testimony has been clear.

17 EXAMINER ADDISON: Ms. Fleisher,
18 response?

19 MS. FLEISHER: I am happy to rephrase to
20 get past this.

21 EXAMINER ADDISON: Thank you.

22 Q. (By Ms. Fleisher) Does the term "future"
23 in the stipulation exclude any law or rule that is
24 currently codified into law?

25 A. Yes.

1 Q. And let's say that a law triggering a
2 staff determination is codified in 2019. The staff
3 makes a determination under this provision and direct
4 the companies to conduct a procurement for 100
5 megawatts, the PPA to procure those 100 megawatts.
6 Could only last, at most, from 2019 through 2024,
7 correct?

8 A. I would add there's a necessary step
9 between the staff's request, and that's the company
10 filing and Commission approval. But if you insert
11 that, then the answer to your question is yes.

12 Q. Okay. And do you know whether a PPA of
13 that length is sufficient to economically justify the
14 construction of a new renewable project?

15 A. I think it could be.

16 Q. And what's the basis for that statement?

17 A. What the agreed upon price is.

18 Q. So effectively you're saying as long as
19 you are willing to pay enough, you could come to a
20 PPA agreement within that length of time -- with that
21 length of time?

22 A. I'm not sure what you mean by "enough."
23 Perhaps you could help me with that.

24 Q. Okay. So am I correct that you're saying
25 that a PPA of that term would need to have a price

1 sufficient to make that term economic?

2 A. To make that project economic
3 potentially, yes.

4 Q. And you don't know what that price would
5 be?

6 A. No.

7 Q. Now, yesterday Examiner Price asked you a
8 question, and I am not going to get this exactly
9 right, but as to whether the Volt/VAR provisions or
10 other efficiency provisions of the stipulation could
11 help FirstEnergy Corp. meet its carbon reduction
12 goal; is that correct? Or do you recall that?

13 A. I recall the discussion, yes.

14 Q. Okay. And is it correct that energy
15 savings produced through the stipulation would reduce
16 FirstEnergy Corp.'s carbon emissions only if it
17 reduced generation from FirstEnergy Solutions's
18 plants?

19 A. I think what I said yesterday in that
20 discussion was I hadn't thought about it that way,
21 but to the extent it did reduce the CO-2 emission,
22 then we would be able to count those towards the
23 attainment of the goal. I haven't thought about it
24 any further in this context, so I'm not sure I can
25 answer your question at this time.

1 Q. Okay. Fair enough. Going to page 8 of
2 the stipulation, the rigorous review section, this
3 provides for the Commission to deem actions
4 unreasonable that are associated with performance
5 requirements in PJM's markets, correct?

6 MR. KUTIK: May I have the question read,
7 please?

8 EXAMINER ADDISON: You may.
9 (Record read.)

10 MR. KUTIK: Objection, mischaracterizes
11 the testimony and the provision.

12 EXAMINER ADDISON: Ms. Fleisher, could
13 you rephrase?

14 MS. FLEISHER: Certainly, your Honor.

15 Q. (By Ms. Fleisher) Okay. Under this
16 provision when the Commission is reviewing actions,
17 are those the actions of the companies or of
18 FirstEnergy Solutions?

19 A. Both.

20 Q. Both? Sorry. Did I hear it correctly?

21 A. You did.

22 EXAMINER ADDISON: Ms. Fleisher, could we
23 go off the record for a moment?

24 (Discussion off the record.)

25 EXAMINER ADDISON: Let's go ahead and go

1 back on the record.

2 Let's proceed, Ms. Fleisher.

3 MS. FLEISHER: Certainly.

4 Q. So if a FirstEnergy Solutions employee
5 took some unreasonable action that resulted in the
6 occurrence of a capacity performance charge, the
7 Commission could disallow that charge under this
8 provision?

9 A. This provision allows the Commission to
10 make a determination if the actions taken were
11 unreasonable associated with all costs and revenues
12 included and make an adjustment accordingly.

13 Q. So is the answer yes?

14 MR. KUTIK: Objection, asked and
15 answered.

16 EXAMINER ADDISON: Overruled.

17 THE WITNESS: May I have the question
18 reread, please?

19 EXAMINER ADDISON: You may. Let's have
20 the last two questions read, please.

21 (Record read.)

22 A. Yes, the Commission can make a
23 determination that the costs were unreasonable.

24 Q. And to turn a minute to the ELR tariff,
25 you testified earlier that the tariff credit amount

1 would be offset by PJM revenues, correct?

2 A. I think what I testified is the charges
3 or the credits paid to the customers associated with
4 rider ELR would be offset by PJM revenues. I wasn't
5 sure from your question if it implied I meant 100
6 percent. I just meant the revenues used to offset in
7 some fashion the charges.

8 Q. Okay. And under the current regime,
9 FirstEnergy retains a portion of the PJM revenues
10 from selling those interruptible resources to the
11 capacity market, correct?

12 A. If by "under the current regime" you mean
13 pursuant to a Commission order the customers receive
14 80 percent of the revenues and the companies retain
15 20 percent, then the answer is yes.

16 Q. And are you aware that there's an
17 incremental auction upcoming for the 2016-2017
18 delivery year?

19 A. Yes.

20 Q. And does FirstEnergy intend to offer
21 interruptible resources from the ELR tariff into that
22 auction?

23 MR. KUTIK: Now, at this point, your
24 Honor, I'll object.

25 EXAMINER ADDISION: Grounds?

1 MR. KUTIK: We are beyond the scope of
2 the changes that have been submitted by the third
3 supplemental stipulation that were before the
4 Commission at the last hearing. All -- the last
5 couple of questions have all been questions that
6 should have been asked before.

7 EXAMINER ADDISON: Ms. Fleisher?

8 MS. FLEISHER: Your Honor, she has
9 testified today about certain aspects of the ELR
10 tariff, and I just wanted to be sure the record is
11 clear about her testimony today.

12 MR. KUTIK: Those questions related to
13 the extension of the ELR, not with respect to this
14 particular issue.

15 MS. FLEISHER: Ms. Mikkelsen made
16 statements generally about the ELR tariff, not
17 limited to the extension.

18 EXAMINER ADDISON: Although Ms. Mikkelsen
19 may have made statements generally about the ELR
20 tariff earlier, I think they were more foundational
21 to get to the changes that have been made during this
22 stipulation, so I am going to sustain the objection.

23 Q. (By Ms. Fleisher) Ms. Mikkelsen, has any
24 of your prior testimony from the previous hearing
25 about the ELR tariff changed except with respect to

1 the extension?

2 MR. KUTIK: Well, I'll object, your
3 Honor. I mean, this witness was on the stand for
4 quite a while, and to have her try to remember
5 everything she testified about, particularly
6 everything she testified on a particular subject,
7 maybe that's unchanged. The fact of the matter is
8 this witness has indicated in her testimony in this
9 case in this hearing what is new and what isn't new,
10 and that's the fact. For her to try to recollect at
11 this point is unfair.

12 EXAMINER ADDISON: Care to narrow it down
13 a little bit, Ms. Fleisher?

14 Q. (By Ms. Fleisher) I feel like Mr. Kutik
15 almost answered that question, but I'm just trying to
16 establish the only thing new about the ELR tariff is
17 the extension, correct?

18 A. Yes.

19 Q. Okay. And so your prior testimony still
20 stands, correct?

21 A. Yes.

22 Q. And this is foundational, I will say. Is
23 it still true that interruptible resources under the
24 ELR tariff do not qualify as capacity performance
25 resources under PJM's new capacity performance rules?

1 A. I think what I testified to before in the
2 proceeding is that for delivery years '16 and '17,
3 '17 and '18, those resources would be bid in at base
4 capacity, and then we would need to modify our rider
5 ELR tariff in order to -- I am just trying to
6 recollect if I have the years right, but I think I
7 do. We would have to modify our ELR tariff in order
8 to allow those resources to be bid into the PJM
9 markets as capacity performance requirements, which
10 would be required thereafter.

11 Q. And do you know when base capacity is
12 phased out of the PJM capacity auctions?

13 A. Well, as I just said, I am trying to be
14 sure I have the years straight because we talked
15 about this some time ago. But I believe the '16-'17
16 base capacity is allowed. '17-'18 base capacity is
17 allowed. I'm unclear whether it's '18-'19 or
18 '19-'20.

19 But I know there are changes in '18-'19
20 to participation in the market that would need to be
21 reflected in our tariffs, and I believe then in
22 '19-'20 it goes strictly to a capacity product.

23 Q. Okay.

24 A. But, again, I think I testified to that
25 before, so I would stand by my earlier numbers, but I

1 think those dates are correct.

2 Q. All right. And could we quickly go to
3 page 16 of the stipulation. Earlier in your
4 testimony you referenced Section H-3 regarding the
5 companies' use of long-term cost of debt; is that
6 correct?

7 A. Yes.

8 Q. Is it correct that this provision applies
9 only to riders that solely have a debt-based carrying
10 charge rate?

11 A. That's correct. But I would add that our
12 other riders that are calculated in a weighted
13 average cost of capital, including debt and equity,
14 only use the long term cost of debt that was approved
15 in Case No. 07-551 so this rounds out the complement.

16 Q. Can you grab OMAEG Exhibit 24, the IGS
17 agreement, please?

18 A. I have that.

19 Q. And this agreement provides that
20 FirstEnergy will propose that IGS be the exclusive
21 provider of smart thermostats under the companies'
22 energy efficiency portfolio plan, correct?

23 MR. KUTIK: Objection, your Honor.

24 EXAMINER ADDISON: Grounds?

25 MR. KUTIK: I think it mischaracterizes

1 the document. Also, I will object on the grounds
 2 that the content of the document itself, your Honor,
 3 goes beyond the standard of relevance and the issues
 4 of relevance that were described by the Supreme Court
 5 in this case. It's talking about side agreements.
 6 The court talked about side agreements being relevant
 7 to the first prong of the three-prong stipulation of
 8 the due process test that had to do more specifically
 9 with the balance of bargaining power.

10 Whether IGS is an exclusive whatever it
 11 might be under this provision has nothing to do with
 12 that issue, and any of the contents have nothing to
 13 do with that issue as discussed so far in this case.
 14 So I would object on the relevance grounds as well.

15 EXAMINER ADDISON: Ms. Fleisher?

16 MS. FLEISHER: Certainly, your Honors, I
 17 think there are two separate grounds for relevance.
 18 One is, I stated before, to the extent this smart
 19 thermostat section of the side agreement relates to
 20 the potential FirstEnergy energy efficiency programs,
 21 there's -- the potential for it to effect
 22 FirstEnergy's implementation of its commitments in
 23 the stipulation regarding energy efficiency.
 24 Second -- and I should say that could go to the
 25 stipulation prong as to whether the stipulation

1 itself will benefit ratepayers and the public
2 interest.

3 Second, the Commission has on various
4 occasions, and I am happy to rattle off some cases,
5 with respect to the first prong considered, in part,
6 whether the stipulation is the result of negotiations
7 among diverse interests. This stipulation itself on
8 pages 2 and 4 represents that it is the product of
9 negotiation among diverse parties. I think on page 4
10 it says "signatory parties representing a wide range
11 of interests."

12 So to the extent this may affect the
13 Commission's evaluation of whether the stipulation is
14 representing -- representing a broad range of
15 interests, and to the extent that IGS is a signatory
16 because of this side agreement, I think it's
17 important to explore the question of whether IGS is
18 in becoming a signatory of the stipulation
19 representing the broad interests of retail electric
20 suppliers, or representing its own parochial
21 interests.

22 If it's the latter, I would think that
23 would be something the Commission would need to give
24 less weight, and I would plan to argue so in our
25 brief.

1 MS. WILLIS: Your Honor, may I add?

2 EXAMINER ADDISON: You may.

3 MS. WILLIS: Your Honor, in terms of the
4 argument that was made by Mr. Kutik, I believe that
5 he may have accurately stated that the point is
6 though, your Honor, that this side agreement does
7 affect some of the signatory parties to the agreement
8 and does call into question the integrity of the
9 bargaining process.

10 For instance, the thermostats are
11 being -- the thermostat program is being funded by
12 residential customers. There were -- they are
13 purportedly representative. They represent
14 residential customers, including OPAE and the
15 Cleveland Housing Network and others, so I think this
16 bears directly upon the integrity of the bargaining
17 process because these provisions do affect some of
18 the other signatory parties to the stipulation.

19 MR. KUTIK: Your Honor, first, this deals
20 with a proposal to be made in the future and a filing
21 to be made in the future, not in this case.

22 Ms. Fleisher's suggestion it may affect the EE/PDR
23 program, well, again, that is a filing also to be
24 made in the future, all subject to the potential
25 Commission determination.

1 With regard to what IGS is, I don't think
2 there is much dispute that IGS is what it is, a
3 retail electric service provider, among other things.
4 And so that is the interest, and it represents its
5 own interest.

6 With respect to Ms. Willis' contention
7 that it somehow affects other parties, well, as
8 Attorney Examiner Price noted this morning, that's
9 for other parties to suggest, not for someone who is
10 dissatisfied, like Ms. Willis's representation, is
11 with respect to what the deal was among all the
12 parties.

13 The deal before the Commission is the
14 third supplemental stipulation. That's the deal.
15 The deal not before this Commission is what is in
16 OMAEG 24.

17 MS. FLEISHER: Your Honor, I'll just add,
18 as Examiner Price said this morning, this is really
19 something the Commission needs to determine if it's
20 going to give weight to the various arguments about
21 the side agreement, but in the meantime to prevent us
22 from building a record on it is extremely
23 prejudicial.

24 MS. WILLIS: And, your Honors, if I might
25 finally add, I have got a quote from the Supreme

1 Court opinion which I think is very clear. It says
 2 "The Commission cannot rely merely on the terms of
 3 the stipulation but rather must determine whether
 4 there exists sufficient evidence that the stipulation
 5 was a product of serious bargaining. If there were
 6 special considerations in the form of side agreements
 7 among the signatory parties, one or more party may
 8 have gained an unfair advantage in the bargaining
 9 process. Therefore, we hold that the Commission
 10 erred in denying discovery on this information based
 11 on lack of relevancy."

12 MR. KUTIK: There certainly has been
 13 discovery of this and that's why we provided it. The
 14 question with respect to bargaining power and begs
 15 the timeline which has been established in this case
 16 which is that there was a third supplemental
 17 stipulation that was filed in this case on
 18 December 1, 2014, which is before the Commission.
 19 The -- what was ultimately agreed to between IGS and
 20 the companies was something that was established
 21 after that and IGS then came into the deal.

22 That does not affect the bargaining and
 23 certainly can be credibly argued to have affected the
 24 bargaining that took place that led to the December 1
 25 agreement which is before the Commission now.

1 MS. WILLIS: Your Honor, I might add
2 there is no evidence in the record as to when this
3 side deal was arranged or how long this side deal had
4 been under discussion. I don't think we can take
5 Mr. Kutik's representations about the timeline, so I
6 do believe it does call into question the integrity
7 of the stipulation process.

8 EXAMINER ADDISON: All right. Thank you.
9 I think we've heard enough from everyone.

10 Because we are going to be providing
11 parties that conducted their cross-examination
12 yesterday before we were aware of this agreement, and
13 I feel as if this issue will arise again, we are
14 going to go ahead and take a brief recess. We'll
15 come back at 3:10, and we will rule on the pending
16 objection. Thank you.

17 Let's go off the record.

18 (Recess taken.)

19 EXAMINER ADDISON: Let's go ahead and go
20 back on the record.

21 Thank you, all. As to the second
22 objection regarding relevance, we are going to allow
23 questions as to the actual language contained within
24 the agreement, but anything that pertains to future
25 proceedings, future plans, clearly falls outside the

1 scope of this proceeding, and we will not allow those
2 questions to be asked.

3 As to your first objection, Mr. Kutik,
4 how did you feel that Ms. Fleisher's question
5 mischaracterized the agreement?

6 MR. KUTIK: By characterizing IGS as an
7 exclusive provider of thermostats.

8 EXAMINER ADDISON: Isn't that the actual
9 language used within the agreement?

10 MR. KUTIK: No. Although the words
11 "exclusive provider" are used, that doesn't mean that
12 all programs that the companies may have with respect
13 to thermostats are going to offer, for lack of a
14 better term, IGS thermostats, assuming that's
15 approved by the Commission.

16 MS. FLEISHER: Your Honor, just to move
17 things along, I am happy to rephrase it.

18 EXAMINER ADDISON: Thank you,
19 Ms. Fleisher.

20 Q. (By Ms. Fleisher) Ms. Mikkelsen, in the
21 smart thermostat program paragraph, what does it
22 mean, IGS will be the "exclusive provider" of the
23 residential smart thermostat program?

24 A. What this sentence says is that the
25 companies agree to include in their next EE/PDR

1 portfolio plan a residential smart thermostat program
2 that will be jointly developed with and implemented
3 by IGS, and for that specific residential smart
4 thermostat program, IGS will be the exclusive
5 provider. It does not preclude any additional
6 thermostat programs from being included in the
7 portfolio plan.

8 Q. So there may be programs in the portfolio
9 plan offering an incentive for smart thermostats
10 outside of this IGS program?

11 MR. KUTIK: Well, that I think, your
12 Honor, goes to the type of subjects that you had
13 indicated were outside the proper scope in terms of
14 what would be in the future plans.

15 MS. FLEISHER: I am just trying to
16 clarify the meaning of the actual agreement. I am
17 not sure her answer made clear as to whether that
18 would be prohibited by the term "exclusive provider."

19 EXAMINER ADDISON: I'll allow the
20 question.

21 THE WITNESS: May I have the question
22 reread, please?

23 EXAMINER ADDISON: You may.

24 (Record read.)

25 A. The programs to be included in the

1 portfolio plan filing haven't been finalized. They
2 are under development. But nothing in this document
3 precludes the inclusion of additional residential
4 smart thermostat programs beyond the one listed here.

5 Q. Do you have any estimate of the IGS
6 implementation costs referenced in this provision?

7 MR. KUTIK: Objection.

8 EXAMINER PRICE: Grounds?

9 MR. KUTIK: Relevance, beyond the scope.

10 EXAMINER PRICE: I understand your
11 continuing objection, but she can answer this
12 question. Overruled.

13 A. I know that the combination of the
14 rebates and the IGS implementation costs will not
15 exceed \$1 million annually. I think the details of
16 the program, once its jointly developed, would be
17 included in the companies' EE/PDR portfolio plan
18 filing, which would be available for review by all
19 interested parties.

20 Q. So the companies don't currently have an
21 estimate of IGS's implementation costs?

22 A. That's correct?

23 Q. And does this provision preclude the
24 companies from budgeting more than \$1 million
25 annually towards smart thermostat incentives?

1 A. Well, I think we've already answered that
2 this provision does not preclude the companies from
3 including other residential smart thermostat programs
4 in their EE/PDR portfolio plan.

5 Q. Would FirstEnergy consider a smart
6 thermostat incentives program a best-practice idea
7 within the meaning of the stipulation provision on
8 page 11?

9 MR. OLIKER: Could I have the question
10 read back, please?

11 EXAMINER PRICE: You may.

12 (Record read.)

13 MR. KUTIK: Well, I'll object, your
14 Honor, again, beyond the scope. What's going to
15 happen in future proceedings is for future
16 proceedings.

17 MS. FLEISHER: Well, this is, your Honor,
18 a question about the stipulation itself, so I think
19 it's within the scope.

20 EXAMINER PRICE: How much longer are you
21 going to go down this path, Ms. Fleisher?

22 MS. FLEISHER: Not much longer, your
23 Honor. I just have a few questions.

24 EXAMINER PRICE: We will allow this one.

25 A. The companies are agreeing to include the

1 jointly developed residential smart thermostat
2 program in its next EE/PDR portfolio plan pursuant to
3 the Competitive Market Enhancement Agreement, not to
4 satisfy the criteria spelled out about including best
5 practice ideas from utility peers in Ohio and
6 nationally from the third supplemental stipulation
7 and recommendation.

8 Q. Okay. And are you aware of a program
9 recently started by ComEd in Illinois to incentivize
10 the installation of one million thermostats over the
11 next five years?

12 MR. KUTIK: Objection.

13 EXAMINER PRICE: Sustained.

14 Q. Would the IGS implementation of a smart
15 thermostat program under this agreement preclude the
16 implementation of a separate smart thermostat program
17 as a best practice idea under the stipulation?

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

20 EXAMINER PRICE: Sustained. She already
21 indicated it could consider -- there's nothing in
22 this that precludes the addition of a smart
23 thermostat program in their new energy efficiency
24 programs.

25 Q. And in the agreement what does the term

1 "targeted customers" mean?

2 A. I think that would be customers with HVAC
3 equipment as opposed to customers generally, so I
4 think you would be looking for customers with air
5 conditioning equipment to target for this program.

6 Q. But it doesn't mean that any FirstEnergy
7 customers would be excluded from participating in the
8 program; is that correct?

9 MR. KUTIK: Well, your Honor, I am not
10 sure what that means. She said "the testimony is."
11 It's directed towards at least customers with HVAC,
12 so I guess that would exclude customers that don't
13 have HVAC.

14 EXAMINER PRICE: I am trying to envision
15 who doesn't have HVAC.

16 MR. KUTIK: Well, I didn't, more than
17 five years ago.

18 EXAMINER PRICE: Geothermal or what?

19 MR. KUTIK: She said air conditioning, I
20 believe.

21 EXAMINER PRICE: Okay.

22 MS. FLEISHER: I am just trying to make
23 sure that was a complete answer as to the constraints
24 on customer participation.

25 EXAMINER PRICE: You can answer the

1 question.

2 A. Just to be clear, I don't know that this
3 reads that it is a constraint. It really is, you
4 know, to -- it will be targeted towards certain
5 customers, again, who have HVAC, which I take to be
6 the central air conditioning equipment as well as the
7 heating and ventilation.

8 Q. So that would be the only criterion for
9 targeting; is that correct?

10 A. Well, again, I think you are asking me a
11 question I can't answer because as we read here what
12 the agreement says, that they will jointly develop
13 the program. So you are asking me to speak with
14 specificity as though the program has already been
15 developed, and this document suggests that it will be
16 jointly developed and then included in the EE/PDR
17 plan for review and discussion by interested parties
18 and ultimate disposition with respect to the going
19 forward of the program or not by the Commission.

20 Q. Does this provision constrain what that
21 program might look at in any way?

22 A. Certainly it does with respect to budget.
23 It does with respect to the "up to" amount for the
24 thermostat rebates. Other than that, I think the
25 balance of the details associated with the program

1 would be jointly developed between IGS and the
2 companies.

3 Q. And how do you -- what's your
4 understanding of what a smart thermostat is?

5 A. Well, I guess I am not sure how relevant
6 my knowledge of a smart thermostat is to the
7 discussion.

8 MR. KUTIK: I join in that, your Honor.

9 Q. Certainly. What is your understanding of
10 what the term "smart thermostat" means in this
11 agreement?

12 A. I think the specifics of what a smart
13 thermostat means with respect to the program will be
14 made clear in the companies' EE/PDR portfolio plan
15 that they file once the plan is developed.

16 Q. Would this program include only learning
17 thermostats?

18 A. Again, I think the details of the
19 programs are yet to be developed.

20 Q. And are you aware that other CRES
21 providers in FirstEnergy's service territory offer a
22 free Nest thermostat to customers upon signing up for
23 service in some circumstances?

24 MR. KUTIK: Objection.

25 EXAMINER PRICE: Grounds?

1 MR. KUTIK: Relevance.

2 MS. FLEISHER: Your Honor, I think
3 previously I mentioned that I thought one of the
4 grounds for relevance is whether IGS is
5 representing -- can be said to be representing the
6 diverse interests of retail electric suppliers. So I
7 just want to explore the extent to which this
8 agreement might give IGS a competitive advantage over
9 other retail electric suppliers.

10 EXAMINER PRICE: I don't think it's an
11 issue of whether they are representing the interest
12 of all electric retail service providers. I assume
13 that's RESA. I assume that IGS is representing its
14 own interest, and it is, in fact a competitive
15 electric supplier. Sustained.

16 Q. (By Ms. Fleisher) The provision where it
17 says -- the sentence says, "All costs incurred
18 associated with this program shall be recovered
19 through Rider DSE2 and the Companies shall recover
20 lost distribution revenues and earn shared savings
21 related to such program." Do you see that?

22 A. I do.

23 Q. Okay. The section of that relating to
24 lost distribution revenues and shared savings would
25 require Commission approval, correct?

1 A. The entire program requires Commission
2 approval prior to it being implemented.

3 Q. Okay. So does this sentence simply
4 indicate that the companies and IGS will propose that
5 the companies will recover lost distribution revenues
6 and EE/PDR shared savings?

7 MR. KUTIK: Your Honor, I don't know how
8 many more times we have to go through this. This is
9 an agreement for proposals that are only vaguely
10 outlined in this document, and we have been through
11 this and so I would object.

12 MS. FLEISHER: There's a specific
13 sentence on it. I am just trying to figure out what
14 this sentence means.

15 MR. KUTIK: This whole thing is a
16 proposal to happen in another case or cases.

17 EXAMINER PRICE: I understand, but she
18 can answer this specific question that does, in
19 fact -- does the fact that the document says that the
20 parties will propose that it will be recovered
21 through DSE mean that the parties will propose it
22 will be recovered through DSE.

23 You can answer the question.

24 A. Yes. In the companies' next EE/PDR
25 portfolio plan, this program will be included along

1 with all the other programs. And all of the programs
2 approved for -- approved for inclusion in the
3 companies' portfolio plan for the '17 through '19
4 period will be proposed to be recovered through DSE2,
5 and to the extent that there is lost revenue
6 associated with those approved programs or those
7 approved programs are eligible for shared savings,
8 this program would be no different than the others.

9 MS. FLEISHER: That's all I have, your
10 Honor. Thank you.

11 EXAMINER PRICE: Thank you.

12 Mr. Stinson, do you have any questions
13 today?

14 MR. STINSON: Yes, your Honor. I just
15 have a couple.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Stinson:

19 Q. Good afternoon, Ms. Mikkelsen.

20 A. Good afternoon, sir.

21 Q. And my questions are going to be directed
22 to OMAEG Exhibit No. 24, which is the Competitive
23 Market Enhancement Agreement. Do you have that?

24 A. I do.

25 Q. Thanks. Let's start with the paragraph

No. 1, Retail Enhancement, the third sentence from the bottom of that paragraph, and it reads, "The retail competition incentive mechanism would be bypassable, and any revenues that may be collected through the retail competition incentive mechanism would be credited to all non-Rate GT customers in Rider RRS over the duration of Rider RRS, subject to final reconciliation."

Now, my first question is are non-Rate GT customers, do those include the residential and small commercial customers?

A. Yes.

Q. And under the retail enhancement mechanism, only non-Rate GT customers would pay -- let me rephrase that. Non-Rate GT customers on the SSO would pay the charge for the retail enhancement mechanism, correct?

A. Again, recognizing "as proposed," right. I mean, this is not definitive. This is a proposal that the companies will file for consideration by the Commission.

Q. Right. I understand. My only question, under the proposal, then, is that the SSO non-GT customers will be paying for the charge, correct?

A. Nonshopping non-GT customers would be

1 assessed the charge, assuming it was approved by the
2 Commission, yes.

3 Q. Thank you. And then with respect to the
4 credit, the credit would be given both to non-GT SSO
5 customers, and non-GT shopping customers; is that
6 correct?

7 A. Yes.

8 Q. Pardon me?

9 A. Yes.

10 Q. Thank you. I want to ask a few questions
11 then about the second paragraph, the customer
12 referral program. And that first sentence reads,
13 "Within six months of implementation of Rider RRS,
14 the Companies agree to make a filing to implement a
15 customer referral program for areas of their
16 respective service territories not served by a
17 governmental aggregation program and in those areas
18 where governmental aggregation programs are suspended
19 or terminated in the future."

20 Is my understanding correct that the
21 customer -- customer referral program will not be
22 implemented in areas currently served by a
23 governmental aggregation?

24 A. Again, recognizing that all of this is
25 subject to future Commission approval, but under the

1 construct laid out here and assuming Commission
2 approval, yes.

3 Q. And under the proposal as well, the
4 customer referral program could be -- would be
5 implemented in areas where aggregation programs had
6 existed but then are suspended or terminated,
7 correct?

8 A. No.

9 Q. Why do you say no?

10 A. I think the proposal would be that the
11 customer referral program would exclude areas that
12 are served by governmental aggregation and those
13 areas where governmental aggregation programs are
14 suspended or terminated.

15 Q. Just to clarify, then, the proposal would
16 be that the customer referral program would not be
17 implemented in areas where there is a current
18 governmental aggregation program in effect and also
19 would not be implemented in those areas where a
20 governmental aggregation program is suspended or
21 terminated, correct?

22 A. I am not agreeing with you. I could read
23 this sentence either way as I sit here today.

24 Q. That's why I am asking questions.

25 A. No, I agree. I agree.

1 EXAMINER PRICE: Perhaps it will be more
2 clear in the subsequent Commission filing.

3 THE WITNESS: It will certainly be more
4 clear in the subsequent Commission filing. But as I
5 reread this sentence, I think I am going to reverse
6 my answer.

7 EXAMINER PRICE: So you are now saying
8 that the program will be offered in areas where in
9 the future government aggregation programs are
10 suspended or terminated?

11 THE WITNESS: Correct.

12 Q. And under the proposal, if there is a
13 customer referral program implemented in an area not
14 served by a governmental aggregation and then that
15 area becomes served by a governmental aggregation,
16 will the customer referral program be terminated?

17 A. Yeah. I mean, a customer referral
18 program will not be in operation in an area where
19 there is an active governmental aggregation program.

20 Q. So under my question the answer was yes?

21 A. Yes.

22 MR. STINSON: Thank you.

23 I have nothing further, your Honor.

24 EXAMINER PRICE: Thank you.

25 Mr. Dougherty?

1 MR. DOUGHERTY: I believe my questions
2 have already been asked. No questions.

3 EXAMINER PRICE: Direct Energy?

4 MS. SPINOSI: No questions, your Honor.

5 EXAMINER PRICE: Am I missing any
6 nonsignatory party?

7 I don't think so.

8 Mr. McNamee.

9 MR. McNAMEE: All -- any question I would
10 have would be friendly. No, thank you, your Honor.

11 EXAMINER PRICE: Let's go off the record.

12 (Discussion off the record.)

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

15 In light of the fact that the filing of
16 the competitive market agreement was made after
17 Consumers' Counsel and P3/EPSC and Sierra Club had
18 conducted their cross-examination, we'll briefly go
19 back to each of those parties in case they have
20 questions regarding this topic and only this topic.

21 Mr. Soules.

22 MR. SOULES: Your Honor, we have no
23 questions on this topic.

24 EXAMINER PRICE: Thank you.

25 Mr. Settineri.

1 MR. SETTINERI: Yeah, thank you, your
2 Honor.

3 - - -

4 FURTHER CROSS-EXAMINATION

5 By Mr. Settineri:

6 Q. Good after, Ms. Mikkelsen.

7 A. Good afternoon, sir.

8 Q. Other than IGS, did the companies share
9 what has been marked -- let me strike that.

10 Other than IGS, did the company share the
11 Competitive Market Enhancement Agreement with any
12 other party in this proceeding before that document
13 was produced through discovery last night?

14 MS. WILLIS: May I have that question
15 reread, please.

16 EXAMINER PRICE: You may.

17 (Record read.)

18 MS. WILLIS: Thank you.

19 A. No.

20 MR. SETTINERI: No further questions,
21 your Honor.

22 EXAMINER PRICE: Thank you.

23 Consumers's Counsel.

24 MS. WILLIS: Thank you, your Honor. Your
25 Honor, at this time OCC would ask for administrative

1 notice of three documents, specifically, the PUCO
2 order in Case No. 12-3151-EL-COI issued by the
3 Commission on March 26 of 2014.

4 EXAMINER PRICE: We will not take
5 administrative notice of that document. It is a
6 Commission order. It speaks for itself.

7 MS. WILLIS: We would ask, secondly, that
8 the Commission take administrative notice of IGS's
9 comments filed in Docket No. 12-3151-EL-COI dated
10 March 1, 2013.

11 EXAMINER PRICE: Any objections?

12 MR. OLIKER: I haven't had time to review
13 it, your Honor. I don't know the relevance of why
14 they would be noted.

15 EXAMINER PRICE: We will defer ruling
16 on -- one second. We will defer ruling on taking
17 administrative notice of that document until IGS has
18 an opportunity and the companies have had an
19 opportunity to review it.

20 MS. WILLIS: And, your Honor --

21 MR. KUTIK: I'm sorry. The comments in
22 what case?

23 MS. WILLIS: 12-3151-EL-COI.

24 MR. KUTIK: Thank you.

25 MS. WILLIS: And, your Honor --

1 MR. OLIKER: March 1?

2 MS. WILLIS: March 1, 2013.

3 And, Your Honor, at that time may
4 arguments be heard about the propriety of taking
5 administrative notice, or would you prefer to hear
6 those now?

7 EXAMINER PRICE: Everybody might agree to
8 it so let's hope for the best.

9 MS. WILLIS: That would be great.

10 And the third document, your Honor, would
11 be the Ohio Edison, Toledo Edison, and CEI reply
12 comments filed in Case No. 12-3151-EL-COI filed
13 April 5, 2013.

14 EXAMINER PRICE: We will defer ruling on
15 that request for administrative notice until the
16 parties have had an opportunity to address those --
17 review those comments and make a decision as to
18 whether they will oppose administrative notice.

19 MS. WILLIS: And, your Honor, I would
20 appreciate to the extent that a ruling is made, and
21 if that ruling denies the opportunity or denies OCC
22 the route to take administrative notice, OCC will
23 then have cross-examination that it will conduct on
24 those areas.

25 MR. KUTIK: Well, no. I object, your

1 Honor.

2 MS. WILLIS: I mean, I could go forward
3 and do the cross-examination assuming that I am not
4 going to get that, but I am trying to keep the record
5 tight, and I thought that was the most expedient way
6 to handle it.

7 EXAMINER PRICE: Let's go off the record
8 real fast.

9 (Discussion off the record.)

10 EXAMINER PRICE: Let's go back on the
11 record. Please proceed.

12 - - -

13 FURTHER CROSS-EXAMINATION

14 By Ms. Willis:

15 Q. Good afternoon, Ms. Mikkelsen.

16 A. Good afternoon.

17 Q. Now, I want to direct your attention --
18 my questions are limited to the OMAEG -- OMAEG
19 Exhibit No. 24 and, specifically, I am going to go to
20 page 1 of 3. And I want to direct your attention to
21 the very first sentence there where you indicate that
22 "In consideration for IGS agreeing to withdraw its
23 testimony... except for testimony supporting the
24 issues in this agreement." Do you see that?

25 A. I do.

1 Q. Can you tell me, first of all, what
2 testimony are you referring to that IGS is agreeing
3 to withdraw?

4 A. Mr. White's testimony.

5 Q. Are you speaking of Mr. White's direct
6 testimony or his supplemental testimony or his second
7 supplemental testimony, if you know?

8 A. I am referring to all of Mr. White's
9 testimony with the exception of the testimony that
10 supports the issues in this agreement.

11 Q. And can you specifically identify which
12 portions of Mr. White's testimony supports the
13 testimony -- or the issues in this agreement?

14 A. I believe that would be pages 16 to 21 in
15 his direct testimony and possibly pages 1 through 7
16 in the direct testimony in support of the testimony
17 in 16 to 21.

18 Q. Do you understand Mr. White -- there are
19 three pieces of testimony that have been marked in
20 this proceeding and admitted into evidence related to
21 Mr. White?

22 A. I do.

23 Q. So I guess I misunderstood, you know, the
24 reference. I understood that the direct testimony,
25 IGS Exhibit No. 11, that you consider 16 to 21 to be

1 testimony that is in support -- in support of the
2 issues in this agreement. Can you walk me through
3 IGS 12 what pages would support this agreement, in
4 your opinion?

5 A. A couple of things here. One, I don't
6 have in my head the numbers of the exhibits that
7 correspond to the testimony, so it would be helpful
8 if you would just refer to it as the direct
9 testimony, the supplemental testimony.

10 But, number two, I thought I heard in
11 your question that we agreed, supported, so maybe I
12 misunderstood and maybe we could have it read back.

13 All we're agreeing here is that the
14 testimony will be withdrawn with the exception of
15 testimony supporting the issues in this agreement,
16 and that would be from IGS's perspective.

17 Q. So you would expect IGS to take action
18 there; is that correct?

19 A. Yes.

20 Q. Now, when we talked about Mr. White's
21 testimony, we specifically talked about the direct
22 testimony. There was also, Ms. Mikkelsen,
23 supplemental testimony and second supplemental
24 testimony, so I guess I am trying to determine of the
25 supplemental testimony that was Exhibit No. 12 and

1 admitted into the record, what portions of that
2 testimony would not be withdrawn, if you know?

3 A. All of that testimony would be withdrawn.

4 Q. Okay. And with respect to the second
5 supplemental testimony of Mr. White that was admitted
6 into the record in this proceeding, what pages of
7 that would be withdrawn, if you know?

8 MR. OLIKER: At this point I would like
9 to object and just note for clarifying and streamling
10 cross, IGS does plan to file a letter in the docket.
11 It will explain exactly what is being cross-examined
12 right now regarding IGS's obligations through the
13 agreement. That is probably a much easier way to
14 deal with this.

15 EXAMINER PRICE: Ms. Willis.

16 MS. WILLIS: Well, your Honor, this is
17 the witness that has been presented to sponsor this
18 document. I would like to ask the witness.

19 MR. OLIKER: No, that is not true.

20 EXAMINER PRICE: That is not true.

21 MS. WILLIS: She is the witness appearing
22 that is answering questions on this.

23 EXAMINER PRICE: She is the witness
24 involuntarily being cross-examined on this document.

25 MR. KUTIK: You said "involuntarily"?

1 EXAMINER PRICE: I said that. I
2 understand. Why -- what do you need from this
3 witness that Mr. Oliker's letter can't give you?

4 MS. WILLIS: I just want to understand
5 how -- how three pieces of testimony that's starting
6 out with three, there's three more because there is
7 another IGS witness with two pieces of testimony, how
8 testimony marked and admitted into evidence is now
9 going to be withdrawn.

10 EXAMINER PRICE: And I think that's a
11 really great question, but this is not a lawyer, so
12 if that's the direction you are going, then we might
13 as well move on.

14 With Mr. Oliker's letter we will be
15 clear, and we can take up arguments as to what his
16 letter means and doesn't mean. But they are legal
17 arguments and they are not even regulatory. That's a
18 legal process question that's well beyond this
19 witness.

20 MS. WILLIS: Understood, your Honor. But
21 I would like the opportunity to address the Bench on
22 the impropriety of taking -- of withdrawing, and I am
23 not sure you can withdraw evidence from a record.

24 EXAMINER PRICE: I said we would -- once
25 he gets his letter -- which I assume you are going to

1 file before the end of this hearing proceeding.

2 MR. OLIKER: Absolutely, your Honor.

3 EXAMINER PRICE: Then we will take up the
4 letter.

5 MS. WILLIS: As long as we have an
6 opportunity to address the propriety of the letter
7 and the propriety of withdrawing testimony that's
8 been admitted into evidence.

9 EXAMINER PRICE: I enjoy taking oral
10 arguments, and even if I don't, you will have a
11 chance on your brief, but it's clearly not a topic
12 for this witness, if that's where you are going.

13 MS. WILLIS: Thank you, your Honor.

14 Q. (By Ms. Willis) Now, Ms. Mikkelsen, let's
15 look at the retail enhancement provision of this side
16 agreement. Can you tell me which customers this
17 would apply to?

18 A. Again, with the caveat it won't apply to
19 any customers until after a filing and --

20 Q. Understood.

21 A. -- until the Commission approves it, so
22 what form it ultimately takes would be subject to
23 that whole process. But as contemplated here with
24 respect to the filing, the filing would propose that
25 it apply as a bypassable charge to all non-GT

1 customers served by the companies.

2 Q. So would that include residential and
3 nonresidential customers, if you know?

4 MR. KUTIK: Objection, asked and
5 answered.

6 EXAMINER PRICE: Sustained. Mr. Stinson
7 asked that question five minutes ago.

8 MS. WILLIS: I apologize, your Honor.

9 Q. Would this provision apply to low-income
10 residential customers, if you know?

11 A. The retail -- as proposed, the retail
12 competition incentive mechanism would not apply to
13 PIPP customers.

14 Q. My question, Ms. Mikkelsen, was to
15 low-income customers, not necessarily the subset of
16 low income that PIPP represents.

17 A. And I am responding to you that to the
18 extent that PIPP customers are low income, it would
19 not apply to them. Beyond the PIPP customers and the
20 GT customers, it would apply to all other customers
21 of the companies as proposed here.

22 Q. So if you are a low-income customer and
23 you are not on PIPP, it would apply to you?

24 A. If you are a low-income customer and you
25 are not on PIPP and you are not shopping, then, yes,

1 as proposed.

2 Q. Thank you. Now, can you tell me how this
3 retail -- or this nonbypassable charge to nonshopping
4 customers will incent shopping?

5 A. Well, I think all parties --

6 MR. KUTIK: Well, your Honor, I
7 understood the Bench's ruling to be discussions about
8 what the auto agreement meant. Now, we are talking
9 about the motivation of the parties and whether it's
10 a good deal or a bad deal. That's beyond the scope
11 of proper cross-examination given that it's in a
12 proposal before the Commission.

13 MS. WILLIS: Your Honor, if I may briefly
14 respond?

15 EXAMINER PRICE: Uh-huh.

16 MS. WILLIS: It says right in here that
17 this is for the purpose of incenting shopping, so my
18 question is directly related to the words how will
19 this incent shopping.

20 EXAMINER PRICE: Ms. Mikkelsen, you can
21 answer the question of how an additional charge on
22 nonshopping customers will incent shopping.

23 A. To the extent that the price to compare
24 is higher than it would otherwise be, that would
25 potentially create greater supplier interest in

1 participating in the competitive market for the
2 companies and, in turn, provide, I guess, a more
3 robust competitive environment for the customers of
4 the companies.

5 MS. WILLIS: May I have that answer
6 reread, please.

7 EXAMINER PRICE: You may.

8 (Record read.)

9 MS. WILLIS: Thank you.

10 Q. (By Ms. Willis) Ms. Mikkelsen, do you
11 know what the -- how many customers -- what
12 percentage of shopping is in the, let's say, the
13 service territory of Ohio Edison?

14 MR. KUTIK: Objection.

15 EXAMINER PRICE: Grounds?

16 MR. KUTIK: Relevance, your Honor.

17 EXAMINER PRICE: She can answer this one.
18 Overruled.

19 MR. OLIKER: Your Honor, there has also
20 been testimony on this issue in a prior phase in this
21 hearing.

22 EXAMINER PRICE: That's a fair point.

23 Why don't you rephrase the question and
24 say percentage of non-GT customers shopping because
25 I'll bet that's not in the record.

1 MS. WILLIS: Thank you, your Honor.

2 EXAMINER PRICE: It would also be more
3 relevant.

4 MS. WILLIS: Thank you, your Honor.

5 Q. (By Ms. Willis) Ms. Mikkelsen, can you
6 tell me the percentage of non-GT -- non-rate GT
7 customers that are shopping in, for instance, the
8 Ohio Edison territory?

9 MR. KUTIK: May I have a moment, your
10 Honor? I need to inquire whether that's proprietary
11 or not.

12 (Discussion off the record.)

13 MR. KUTIK: I do have a concern, your
14 Honor, that is proprietary, at least be subject to
15 the confidentiality rules of the Commission.

16 MS. WILLIS: There are reports that are
17 filed with the Commission, I would think, your Honor,
18 on this showing the percentage of shopping. I am
19 just asking her if she is aware.

20 MR. KUTIK: We are talking about a
21 rate-by-rate schedule, your Honor.

22 EXAMINER PRICE: That's the difficulty.
23 I think the probative value of this question is
24 outweighed by the danger of disclosing confidential
25 information, so we will move on to a different

1 question.

2 As Mr. Olikier pointed out, generally --
 3 there is generally lots of evidence in this record at
 4 this point about percentage of shopping, and if you
 5 feel harmed by this and you would like us to take
 6 administrative notice of the most recent shopping
 7 statistics on the Commission's website, we would be
 8 happy to.

9 MS. WILLIS: As your Honor has pointed
 10 out, these are for non-GT rate customers, and there
 11 has not been evidence of the shopping levels of
 12 non-GT rate customers, and I am not certain that the
 13 information, although I could be wrong, I am not
 14 certain that the information on the website would
 15 provide that information.

16 EXAMINER PRICE: I understand that. But
 17 I already determined the probative value of that
 18 question is outweighed by the danger of disclosing
 19 confidential information.

20 MS. WILLIS: We would be happy to go on
 21 to the confidential record, your Honor, if that would
 22 take care of this.

23 EXAMINER PRICE: Save this for last.

24 MS. WILLIS: Thank you.

25 MR. KUTIK: Well, your Honor, may we go

1 off the record for a minute.

2 EXAMINER PRICE: We may.

3 (Discussion off the record.)

4 EXAMINER PRICE: Okay. Back on the
5 record.

6 Please proceed.

7 MR. KUTIK: Well, your Honor, we should
8 indicate that I asked the witness a question off the
9 record that now will be posed to the witness. We are
10 not waiving our concerns about confidentiality, but
11 given the witness's knowledge about this, I will
12 permit her to answer the question.

13 EXAMINER PRICE: I will pose the question
14 to the witness.

15 Could you have answered that question,
16 irrespective of the confidentiality of the question?

17 THE WITNESS: No.

18 EXAMINER PRICE: Thank you.

19 Q. (By Ms. Willis) Ms. Mikkelsen, do you
20 know how much supplier interest there is currently in
21 the service territory for participating in the
22 competitive market?

23 MR. KUTIK: Again, your Honor, I object.
24 Now we are talking about the merits of the deal and
25 the rationale for the deal. That's beyond the scope.

1 MS. WILLIS: I am not talking about -- we
2 are talking about the merits of the deal and whether
3 the deal is -- makes sense for customers and makes
4 sense for customers who have to pay for the deal.

5 EXAMINER PRICE: You will have an
6 opportunity to make that case when the filing comes
7 in. Sustained.

8 MS. WILLIS: Your Honor, I would object.

9 EXAMINER PRICE: Noted. Thank you.

10 Q. (By Ms. Willis) Under the proposal that
11 you lay out in this document, how long will the
12 charge be collected from customers?

13 A. The -- assuming the retail competition
14 incentive mechanism is approved by the Commission,
15 the -- it is contemplated that it would be in effect
16 through the term of rider RRS.

17 Q. And the term of rider RRS is eight years,
18 right?

19 A. From June 1st of 2016, through May 31st
20 of 2024.

21 Q. Can you tell me how IGS and the companies
22 will determine how much to charge nonshopping
23 customers under this provision?

24 A. I think ultimately that determination
25 rests in the hands of the Commission, not IGS and the

1 companies.

2 Q. Can you tell me why the revenues
3 collected through this mechanism are going to be
4 returned to all customers; that is, all non-Rate GT
5 customers?

6 MR. KUTIK: I'll object. Again, your
7 Honor, we are talking about the rationale and the
8 relative merits of the deal, not what the deal is.

9 EXAMINER PRICE: I think she is asking
10 about -- I am going to overrule your objection. I
11 understand your point, but I am going to allow
12 Ms. Willis to make her record, as we allowed
13 Ms. Bojko to make her record, for however she chooses
14 to use this on appeal -- not on appeal, before the
15 Commission.

16 MS. WILLIS: Thank you, your Honor.

17 EXAMINER PRICE: Or on appeal.

18 MS. WILLIS: I do appreciate that.

19 EXAMINER PRICE: Overruled.

20 You can answer the question.

21 THE WITNESS: May I ask to have the
22 question reread, please, sir?

23 EXAMINER PRICE: You may.

24 (Record read.)

25 A. Well, the mechanism was designed to be

1 revenue neutral to the companies, and the credit back
2 to the customers excluded the Rate GT customers
3 because the Rate GT customers were excluded from the
4 charge.

5 Q. Well, weren't the shopping customers also
6 excluded from the charge?

7 A. In a different fashion. Shopping
8 customers -- I mean, it's a bypassable charge so --

9 Q. Correct.

10 A. By def -- bypassable charges don't apply
11 to shopping customers. The GT provision excludes all
12 GT customers whether they are shopping or
13 nonshopping.

14 MS. WILLIS: May I have her prior answer
15 reread?

16 EXAMINER PRICE: You may.

17 (Record read.)

18 Q. Are there going to be costs to the
19 companies to implement this program, if you know?

20 A. I would expect there would be costs
21 associated with setting up the billing mechanism.

22 Q. And what would you expect those -- do you
23 have an idea what those costs -- what you would
24 expect those costs to be, the nature or the level of
25 those costs?

1 A. No.

2 Q. Okay. And is it -- under this provision
3 where would those costs be collected from?

4 A. I think that's a determination that would
5 be made in the future filing with the Commission.

6 Q. So under this agreement, there is no plan
7 to charge customers for the cost of implementing the
8 retail enhancement provision; is that correct?

9 A. I guess I would say this -- this does not
10 address that. I expect it would be addressed in the
11 filings made before the Commission.

12 Q. And you have not made the determination
13 that those costs will be collected from customers, is
14 that correct, at this point?

15 A. I would expect to the extent that the
16 companies incur costs associated with implementing
17 this program and the Commission determines that the
18 program is to the benefit of the companies' customers
19 as well as the competitive marketplace in Ohio, that
20 the companies would expect to recover the costs
21 associated with implementing that program from their
22 customers.

23 Q. Has the company considered collecting
24 those costs from IGS --

25 MR. OLIKER: Objection.

1 Q. -- as part of their proposal at this
2 time?

3 EXAMINER PRICE: Grounds?

4 MR. OLIKER: This is a future filing,
5 your Honor, and merely calling for speculation for
6 something that's not in the document and asking
7 Ms. Mikkelsen to testify to something that's going to
8 be a product of a joint decision between IGS and the
9 companies.

10 MR. KUTIK: I would agree with that
11 objection, your Honor, and join.

12 EXAMINER PRICE: Sustained.

13 Q. Would you agree with me that this
14 provision assumes, Ms. Mikkelsen, that there is a
15 need to create greater supply or interest in the
16 market, in the competitive market, for -- for the
17 territories of the companies, the service
18 territories?

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

21 EXAMINER PRICE: You may.

22 (Record read.)

23 MR. KUTIK: Objection.

24 EXAMINER PRICE: Grounds.

25 MR. KUTIK: Relevance, again, going to

1 the merits of the future proposal, not to the
2 stipulation itself at issue here in this case.

3 EXAMINER PRICE: Sustained.

4 Q. (By Ms. Willis) Would you agree with me,
5 Ms. Mikkelsen, that under this charge there will be a
6 redistribution of money from shoppers to nonshoppers
7 if your proposal is adopted by the Commission?

8 EXAMINER PRICE: I think you have it
9 backwards, Ms. Willis.

10 THE WITNESS: So, no.

11 EXAMINER PRICE: I think she intended to
12 phrase that the opposite.

13 Q. Would you agree me under this there would
14 be a redistribution of money from nonshoppers to
15 shoppers?

16 A. I would agree with you that charges
17 collected under this competitive incentive mechanism
18 from nonshopping customers would be returned to all
19 customers shopping and nonshopping customers,
20 excluding customers who take service under our GT
21 schedule.

22 Q. Now, let's move on to the customer
23 referral program. Can you describe for me the -- you
24 make reference there to a referral program that's
25 offered to customers of the companies' affiliated

1 electric distribution companies in Pennsylvania. Do
2 you see that reference?

3 A. Yes.

4 Q. Can you describe for me the companies'
5 programs in Pennsylvania what those -- what those
6 consist of, if you would?

7 MR. KUTIK: Did you say programs?

8 Q. I'm sorry, referral program offered to
9 customers of the companies' affiliated electric
10 distribution companies in Pennsylvania.

11 A. I am not sure I can do it in any great
12 level of detail, but I know that there are referral
13 programs for the FirstEnergy utilities in
14 Pennsylvania where suppliers agree to participate in
15 the program and agree to offer consistent terms --
16 you know, terms and conditions and prices for a set
17 period of time, and then to the extent that customers
18 contact the utilities and affirmatively agree they
19 would like to participate in that program, they are
20 assigned, you know, to the suppliers that are
21 participating in the program.

22 Q. Thank you. Now, you mentioned that
23 customers affirmatively agree to the program in the
24 Pennsylvania programs. Is that the way this program
25 is structured or is intended to be structured?

1 A. I think the details around how this
2 customer referral program will work will be included
3 in the companies' filing.

4 Q. And, Ms. Mikkelsen, what gives me that
5 question is that I am looking at page 2 of 3, the
6 phrase that says "but absent customer affirmative
7 election of a specific supplier, referred customers
8 shall be allocated," so I guess I'm questioning is
9 that different than you understand the Pennsylvania
10 program is, if you know?

11 A. I guess the distinction I'm making here
12 from what you -- this says "the referred customers,"
13 only those -- I would expect we would only refer
14 customers who agree to be referred. But, again, the
15 details of the program will be included. I thought
16 your question went to they are automatically going to
17 be assigned to a supplier, and I wouldn't expect that
18 to be the case, but, again, the details will be laid
19 out in the program when it's filed.

20 Q. Now, can you tell me -- I assume there
21 are costs for setting up this referral program,
22 correct? There would be? You would expect them?

23 A. Yes.

24 Q. Do you -- and with respect to those
25 costs, do you -- would you expect that those costs

1 would be collected from some party other than
2 yourself?

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

5 EXAMINER PRICE: You may.

6 (Record read.)

7 A. Yes.

8 Q. And at this time have you made a
9 determination as part of this proposal as to who will
10 pay those costs?

11 MR. OLIKER: Objection.

12 EXAMINER PRICE: Grounds?

13 MR. OLIKER: Same objection as earlier as
14 this is going to be a future filing involving several
15 parties -- well, two parties, at least, will need to
16 discuss it, and all the details are not necessarily
17 hammered out at this point, and Ms. Mikkelsen cannot
18 necessarily testify to that.

19 EXAMINER PRICE: We are trying to give
20 the parties an opportunity to understand how these
21 provisions -- whatever, at least, has been agreed to
22 are supposed to work. But I would direct counsel's
23 attention to the next-to-last sentence in the case,
24 it is going to be recovered through a rider, so maybe
25 you should ask her about that rider.

1 MS. WILLIS: Sure.

2 MR. OLIKER: My only point is this record
3 does not look to limit my company in any way in that
4 filing.

5 EXAMINER PRICE: I understand.

6 MR. OLIKER: Thank you, your Honor.

7 Q. (By Ms. Willis) When we look at the last
8 sentence in that paragraph where it says, "All costs
9 incurred and revenues received as a result of this
10 program shall be recovered through a rider," would
11 those be the costs -- would those include the costs
12 of setting up the referral program?

13 A. I think that we, perhaps, need to look at
14 that sentence in conjunction with the sentence that
15 precedes it that says, "The appropriate discount rate
16 and the cost to participating suppliers will be
17 established in the separate filing."

18 So, again, the exact nature of the cost
19 recovery has to be determined in the future filing,
20 but I didn't want to leave with the impression that
21 the costs would all be recovered through the rider.
22 I think this contemplates that the details would need
23 to be worked out in a separate filing. The
24 participating suppliers would also contribute in some
25 fashion to the cost of the program.

1 Q. Now, when you refer to the phrase "the
2 appropriate discount rate," are you saying that the
3 appropriate discount rate -- let me strike that.

4 In the following sentence you have "All
5 costs incurred and revenues received as a result of
6 this program shall be recovered through a rider."
7 Can you tell me what you mean by "revenues received
8 as a result of this program"?

9 A. I think that would be referring to
10 payments made by participating suppliers.

11 Q. So you anticipate that there will be
12 payments by participating suppliers for what?

13 A. For the privilege of participating in the
14 program.

15 Q. And the participating suppliers you are
16 referring to are the CRES suppliers?

17 A. The CRES suppliers who elect to
18 participate in the program.

19 Q. So the CRES suppliers who elect to
20 participate in the program would be charged to
21 participate in the program. And who would pay those
22 charges -- or where would that revenue go for those
23 charges under your proposal as you know it today?

24 A. Again, the details will be laid out in
25 the separate filing, but as it says here, all

1 revenues received, which would include revenues
2 received from the suppliers, would be included to
3 offset the costs that would be recovered through a
4 rider.

5 Q. So will the Commission be in charge of
6 determining whether the -- what the appropriate
7 revenues are that will offset the costs of this
8 rider? Is that your understanding of what would
9 happen?

10 A. Yes. I mean, that will be as it says
11 here, part of the separate filing that will be made
12 before the Commission to their ultimate disposition.

13 Q. Now, there is a reference in here to a
14 standard discount rate offer. Do you see that? It's
15 in the middle of the paragraph on the second page, 2
16 of 3, "consumers seeking to establish distribution
17 service shall be asked if they want to be referred to
18 a competitive retail electric service provider's
19 standard discount rate offer." Do you see that?

20 A. I do.

21 Q. Can you tell me what you mean there by "a
22 standard discount rate offer"?

23 A. I think it's explained parenthetically
24 thereafter where it says, "which shall provide a
25 guaranteed discount off the price to compare without

1 early termination fees." There may be other details
2 included in the subsequent filing, but that's the
3 information that we have here before us.

4 Q. With respect to the standard discount
5 rate, can you tell me if this provision contemplates
6 a -- what period of time this provision contemplates,
7 whether it's a month, a year or longer, or that's
8 not -- or that's a detail you do not know now?

9 A. That is a detail I don't know now, but
10 would be included in the filing.

11 Q. Now, with respect to this program, can
12 you tell me what customers this would specifically
13 apply to? Let me strike that.

14 Earlier you said that there were --
15 the -- that this program would not apply to customers
16 who are not -- who are served by a government
17 aggregation program, in part, correct?

18 A. I think, just to be clear, the customer
19 referral program is for only residential customers,
20 and it will only apply to customers located in
21 communities where there are not government
22 aggregation programs. So I just want to be clear
23 because I thought I heard in your question if you're
24 in a community but you're not part of the government
25 aggregation, you would be included. So I want to be

1 clear that it is the entire community that is -- has
2 a government aggregation program that would not be
3 included in the program.

4 Q. And can you tell me how many community --
5 or can you tell me how many communities in the
6 service territories of the companies have a
7 government aggregation program?

8 A. No.

9 Q. Can you tell me any percentage of what
10 communities are -- what communities in the service
11 territory have a government aggregation program?

12 A. No.

13 Q. And you also indicate that the program
14 may be offered where governmental aggregation
15 programs are suspended or terminated in the future.
16 Do you see that?

17 A. I do.

18 Q. Can you tell me what areas of the
19 companies' service territory there are where
20 government aggregation programs are currently
21 suspended?

22 A. No.

23 Q. Can you tell me, Ms. Mikkelsen, how many
24 customers of the company would be affected by this
25 provision, as you sit here today, residential

1 customers?

2 A. May I ask you what you mean by
3 "affected"?

4 Q. How many customers would be part of the
5 customer referral program?

6 EXAMINER PRICE: Aren't you just asking
7 her to speculate? You are asking her how many
8 customers are going to seek to establish service in
9 the future.

10 MS. WILLIS: No, your Honor. I am asking
11 her specifically with respect to customers that are
12 not in a community that aggregation has occurred. I
13 really would like to know, as a representative of
14 residential customers, how many of our clients are
15 going to be affected by this provision, and it's very
16 difficult to tell.

17 EXAMINER PRICE: No current ones because
18 it's limited to customers who are seeking service.

19 MS. WILLIS: I'm not sure that it is, and
20 that is a point.

21 EXAMINER PRICE: Well, ask her that
22 question.

23 Q. (By Ms. Willis) With respect to this
24 program, is this limited to customers that are
25 seeking new service or are switching service?

1 A. This program is for customers seeking to
2 establish distribution service in the companies'
3 service territory.

4 Q. It doesn't relate to customers who are
5 switching service, is that correct, who move from one
6 portion of the companies' service territory to
7 another?

8 A. I think to the extent in the move it
9 requires them to establish service, then, yes.

10 Q. And we would -- let me strike that.
11 Would you -- let me strike that.

12 Is it your understanding that customers
13 that are seeking to -- or that are seeking new
14 service or are moving within the service territories
15 of the companies that included low-income customers
16 would be part of the referral program?

17 A. I'll answer your question this way. If
18 low-income customers are seeking to establish
19 distribution service, then they will be asked if they
20 want to be referred to a competitive retail electric
21 service provider under this proposal.

22 Q. Do you know, generally, Ms. Mikkelsen, in
23 the past year how many customers have sought new
24 distribution -- new distribution service or have
25 moved and established new distribution service within

1 the service territory of the companies?

2 MR. KUTIK: Objection.

3 EXAMINER PRICE: Grounds?

4 MR. KUTIK: It goes to the merits of the
5 potential proposal and not to any proposal before
6 this Commission.

7 EXAMINER PRICE: Sustained.

8 Q. If PIPP customers are among the customers
9 that move and establish new -- let me strike that.

10 If PIPP customers are new distribution
11 customers under this provision, would they be subject
12 to the customer referral program?

13 A. Again, the details will be included in
14 the filing. I wouldn't think so, since PIPP
15 customers are precluded from shopping on an
16 individual basis, and rather, that shopping decision,
17 I think, is managed by the Ohio Department of
18 Administrative Services, whatever the right name is.

19 EXAMINER PRICE: I don't know either.

20 THE WITNESS: Okay. Thank you.

21 Q. Under this program, Ms. Mikkelsen, if
22 customers that are seeking new distribution service
23 do not select a supplier by a date certain, would one
24 be assigned to them?

25 A. No.

1 Q. So that is not part of this proposal?

2 A. Correct.

3 Q. Does this customer referral program apply
4 to customers who are disconnected from service and
5 then reestablish service?

6 MR. OLIKER: Can I have the question read
7 back? I'm sorry.

8 EXAMINER PRICE: Please.

9 (Record read.)

10 A. I don't know. I expect that would be a
11 detail that would be included in the filing.

12 EXAMINER PRICE: I just want to make one
13 question to clarify the record. Nobody will be in
14 this program unless they affirmatively agree to be in
15 this program; is that correct?

16 THE WITNESS: That's correct.

17 EXAMINER PRICE: Thank you.

18 Q. (By Ms. Willis) And that's how the
19 Pennsylvania program works; is that correct?

20 A. That is my understanding of the
21 Pennsylvania program. There are others who could
22 speak more substantively about those programs.

23 Q. Can you tell me, then, what the sentence
24 means where at the very top of the page -- and this
25 is where it's a little confusing, Ms. Mikkelsen, to

1 me. And we'll start with the prior page. It says,
2 "The terms of the referral program shall be
3 substantially similar to the referral program offered
4 to customers" -- let me withdraw that.

5 Let me ask this again, and I am going
6 read the sentence, and this is where I've got my
7 questions. "The terms of the referral shall be
8 substantially similar to the referral program offered
9 to customers of the Companies affiliated electric
10 distribution companies in Pennsylvania, but absent
11 customer affirmative election of a specific supplier,
12 referred customers shall be allocated based upon
13 non-governmental aggregation supplier market share."

14 So I look at those words, and I see the
15 term "but absent customer affirmative election of a
16 specific supplier referred, customers shall be
17 allocated." So am I reading that wrong, or are you
18 saying that customers do have to affirmatively elect
19 a specific supplier?

20 A. Let me say this and see if this is
21 helpful. I think customers will be asked when they
22 go to connect for service, you know, Do you have a
23 supplier that you would like -- have you already
24 selected a generation supplier? To the extent they
25 say yes, they are sort of off the chart with respect

1 -- removed from the customer referral program.

2 To the extent that they say no, I think
3 then they would be asked, Would you be interested in
4 participating in a competitive retail electric
5 service provider standard discount rate offer? And I
6 expect the information, at least at some high level
7 with respect to the offer, would be communicated.
8 And then if they say yes, they become a referred
9 customer, and at that point those customers who are
10 referred would be allocated to the, you know,
11 participating suppliers.

12 Q. And if the customer says no, that's it?

13 A. Correct.

14 EXAMINER PRICE: And then just to
15 follow-up, mechanically, according to the terms of
16 the document, a customer that affirmatively elects to
17 be referred will be pay less than they otherwise
18 would be under the standard service offer and will be
19 free to leave at any time without a termination
20 penalty; is that correct?

21 THE WITNESS: As proposed here, subject
22 to Commission approval, yes.

23 EXAMINER PRICE: Thank you.

24 Q. (By Ms. Willis) And with respect to the
25 guaranteed discount off the price to compare, is it

1 the -- is it the intention to adjust that price to
2 compare as the -- as the standard service offer
3 changes throughout the term of the ESP?

4 A. If you'll -- I think, perhaps, what you
5 meant to ask is would the guaranteed discount change.

6 Q. Yes.

7 A. Not the standard service offer. So I
8 think what's contemplated is there will be a price to
9 compare. Every customer has a price to compare.
10 There will be a standard discount rate offer, so
11 let's pick a number, 5 percent, right? And that will
12 be offered to any customer who elects to participate
13 over a certain set term that they'll know, and
14 periodically the companies will reset with
15 participating -- suppliers who want to participate,
16 you know, retest that interest, reset the discount
17 rate, and then that would be used going forward.

18 Q. So the discount rate would follow -- it's
19 your understanding that the proposal -- under your --
20 under the proposal that the discount rate will follow
21 the SSO price as the SSO price is adjusted during the
22 ESP term?

23 MR. KUTIK: I guess there is a
24 difference, your Honor, between the discount rate and
25 the discounted rate. I assumed the question means

1 the latter, although she said the former.

2 Q. I am speaking of the guaranteed discount
3 off the price to compare, as the language is used
4 here in this document.

5 A. That -- that language is modifying the
6 standard discount rate offer, so you will have a
7 discount rate, pick a number, 5 percent, and that
8 will be applied to whatever the price to compare is
9 for whatever the agreed to term is as part of this
10 program.

11 Q. I am just saying as -- the price to
12 compare is going to change throughout the term of the
13 ESP, correct, Ms. Mikkelsen?

14 A. Yes.

15 Q. And so I'm saying if you set a standard
16 discount, does the discount apply as the price to
17 compare changes?

18 A. I don't know how frequently the discount
19 rate will apply. But if your question is, for
20 example, in a hypothetical situation if the discount
21 rate is 5 percent for a 12-month term, and during
22 that 12-month term, the PTC changes, the 5 percent
23 will not change. The customers will be guaranteed
24 5 percent off their PTC. The nominal value of the
25 discount, which is a variable PTC times a fixed

1 5 percent, would potentially change over the term.

2 Q. Do you understand that IGS would be one
3 of the competitive suppliers that's willing to serve
4 assigned customers on a variable rate?

5 A. I don't know that today because we don't
6 have participating customers who have -- you know,
7 pardon me -- suppliers who have agreed to that.

8 Q. Have you had discussions with any other
9 suppliers who would be one of the competitor
10 suppliers that would be willing to serve assigned
11 customers on a variable rate?

12 MR. KUTIK: Objection.

13 EXAMINER PRICE: Grounds?

14 MR. KUTIK: Same grounds I have been
15 arguing before, your Honor.

16 EXAMINER PRICE: You can answer. This
17 one is overruled.

18 A. I am not aware of discussions with any
19 other competitive suppliers.

20 Q. Would FirstEnergy Solutions be one of the
21 competitive suppliers that would be willing to serve
22 assigned customers on a variable rate under this
23 program?

24 A. I don't know.

25 Q. And under this program there would be a

1 pool of suppliers; is that correct?

2 A. I think the depth and the breadth of the
3 pool remains to be seen.

4 Q. And the assignment to the suppliers who
5 are in that pool, no matter how shallow or wide it
6 is, would be -- would receive or would get the
7 customer referrals based upon their market share; is
8 that correct?

9 A. Not completely. They would get -- the
10 referrals would be allocated to them based upon their
11 nongovernmental aggregation market share.

12 Q. Okay. And do you know how much of a
13 nongovernmental aggregation market share IGS has
14 today?

15 MR. KUTIK: Objection.

16 MR. OLIKER: Objection.

17 EXAMINER PRICE: Sustained.

18 Q. (By Ms. Willis) Let's move on to the
19 smart thermostat. Can you tell me -- and you
20 answered questions earlier and you weren't quite sure
21 what the smart thermostat meant in this document.
22 But can you tell me if you -- if there is a
23 difference between smart thermostats versus
24 programmable thermostats?

25 MR. KUTIK: Well, I will just note that

1 mischaracterizes her prior testimony. She can answer
2 the question part of that comment.

3 EXAMINER PRICE: You can go ahead and
4 answer the question.

5 A. I think there is a difference.

6 Q. And can you tell me what that difference
7 is?

8 A. The programmable thermostat is a
9 thermostat that a customer can potentially program
10 from their home. When I think of a smart thermostat,
11 I think of that as a thermostat that can be managed
12 remotely, either through a mobile phone application
13 or through the internet or some other means. I guess
14 that's one way I distinguish those two.

15 Q. And when the term -- if you know, when
16 the term is used in this document, the "smart
17 thermostat" term is used, does it exclude
18 programmable thermostats, if you know?

19 A. I don't know.

20 Q. Do you know the retail cost of a smart
21 thermostat?

22 A. No.

23 Q. Do you know the retail cost of a
24 programmable thermostat?

25 A. No.

1 Q. Can you tell me how smart thermostats
2 reduce demand, if you can?

3 MR. KUTIK: Objection.

4 EXAMINER PRICE: Goes to the merits?

5 MR. KUTIK: Yes, your Honor.

6 EXAMINER PRICE: Sustained.

7 Q. Well, in this document, Ms. Mikkelsen, I
8 will refer you to the energy -- the sentence that
9 says, "The energy savings and peak demand reductions
10 from this program..." Can you tell me what energy
11 savings come from a program with smart thermostats?

12 A. I think that those are the details that
13 will come after the program is jointly developed and
14 as part of its inclusion in the companies' EE/PDR
15 portfolio plan. Until the program is developed, it
16 would be impossible to assess what the energy savings
17 and peak demand reduction opportunities would be
18 attendant to the program.

19 Q. So you have no understanding -- no
20 general understanding of energy savings and peak
21 demand reductions from smart thermostats; is that
22 correct?

23 A. Yes.

24 Q. And rider DSE2 that's referred to in this
25 document -- let me strike that.

1 In this paragraph under smart
2 thermostats, you have, "All costs incurred associated
3 with this program shall be recovered through Rider
4 DSE2." And that's the rider that is charged to
5 residential customers; is that correct?

6 A. Rider DSE2 is charged to all companies --
7 all classes of customers.

8 Q. So the -- this program -- let me -- this
9 program is a residential program, correct?

10 A. Yes.

11 Q. And so as part of the allocation in rider
12 DSE2, would the costs of this program be solely
13 allocated to residential customers?

14 MR. OLIKER: Objection. Your Honor, the
15 terms of the future portfolio plans have not been
16 determined, and the issue of rate design will be
17 addressed in that program. The witness cannot
18 testify to that today.

19 MS. WILLIS: Your Honor, there is a
20 sentence in here that says, "All costs incurred
21 associated with this program shall be recovered
22 through DSE2." I think I am entitled to understand
23 whether it's going to affect my clients and my
24 clients are going to be asked to pay for it.

25 MR. OLIKER: That's a different question.

1 EXAMINER PRICE: She can answer the
2 question as it stands, as the allocations stand under
3 DSE2, understanding that the next portfolio they
4 might change.

5 A. Currently all residential -- all costs
6 incurred for residential energy efficiency, peak
7 demand reduction programs are recovered through rider
8 DSE2 from the residential customers of the companies'
9 where the costs were incurred.

10 Q. Thank you. Now, if I look to the last
11 sentence of this paragraph, it says, "The residential
12 smart thermostat program is contingent upon
13 Commission approval of the program and Rider RRS
14 being approved and remaining in effect." Do you see
15 that reference?

16 A. I do.

17 Q. And by that reference -- by that
18 sentence, are you intending that the smart thermostat
19 program is to be consistent with the length of the
20 rider RRS?

21 A. No. I think it's contingent upon the
22 Commission approval of the program, which as we've
23 discussed, the EE/PDR programs are three-year
24 programs, so I think it would be proposed for
25 inclusion in our next plan, and that's a three-year

1 plan.

2 Q. Now, you indicate there that the amount
3 of the thermostat rebate shall be up to \$100 per
4 thermostat. Do you see that?

5 A. Yes.

6 Q. And can you tell me whether at this time
7 it is contemplated that households will be able to
8 receive more than one thermostat per household?

9 A. That's a detail that would be included
10 once the program is developed.

11 MS. WILLIS: If I may have a moment, your
12 Honor?

13 EXAMINER PRICE: You may. Let's go off
14 the record.

15 (Discussion off the record.)

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

18 Ms. Willis.

19 MS. WILLIS: Your Honor, I have no
20 further questions, subject to my reservation of
21 cross-examination based upon the administrative
22 notice issue.

23 EXAMINER PRICE: Okay. Mr. Kutik?

24 MR. KUTIK: Your Honor, I'm not sure
25 what's on the record at this point. Are the

1 additional documents that Ms. Willis had indicated
2 off the record she wanted administrative notice in?

3 EXAMINER PRICE: Why don't you put those
4 on the record now.

5 MS. WILLIS: I appreciate that. We would
6 ask that administrative notice be taken of the IGS
7 comments filed on January 6, 2016, in Case No.
8 12-3151, and we would also ask for administrative
9 notice to be taken of the staff report filed by the
10 PUCO staff on July 16, 2015, in Case No.
11 14-2074-EL-EDI.

12 And if I might note, your Honor, I have
13 spoken with staff counsel, and staff counsel has no
14 objection to administrative notice being taken of the
15 staff report.

16 EXAMINER PRICE: Thank you.

17 Mr. Kutik?

18 MR. KUTIK: Your Honor, we do object, and
19 we would propose the following: Basically it's
20 either up or down. Either you admit or take
21 administrative notice of certain provisions or you
22 don't. If you don't, that's the end of it.

23 And the reason is because our objection
24 is really more of a relevance objection, so the
25 evidence would either be probative or appropriate or

1 not.

2 And specifically our objection is with
3 respect to administrative notice is to basically to
4 what end and for what purpose? As you are aware,
5 this was a docket where the Commission asked various
6 questions with respect to various issues that came up
7 with respect to the retail electric service market,
8 and the parties -- all the participants had the
9 opportunity to make comments and replies.

10 If the purpose of the administrative
11 notice is to prove a fact that was asserted in the
12 document, that is inappropriate because basically
13 these are positions of the parties, and nothing in
14 those documents is necessarily an assertion of fact
15 and, certainly, I think, would otherwise be more
16 appropriate as a matter proven, and it really wasn't
17 being offered in proof in that case, so it would be
18 inappropriate for that purpose.

19 If the purpose is to have administrative
20 notice of a party's position that, too, is
21 inappropriate for the very reasons that I think you
22 noted earlier, that parties do take positions,
23 litigation positions or otherwise, and those
24 positions may change and be compromised as a result
25 of an agreement, either as part of a stipulation or

1 as part of a so-called side deal.

2 The other issue is that this really goes
3 to, as I have briefly read these comments or these
4 reply comments, of course, I have not read the two
5 other documents that Ms. Willis referred to, but it
6 appears to deal with issues of default -- the only
7 thing I can see would be even remotely on point with
8 our discussion with respect to OMAEG Exhibit 24 are
9 the merits of continued default service and what that
10 would look like.

11 At best, any commentary in there would
12 go, again, to the merits of whether the agreement
13 between IGS and the companies and what is potentially
14 proposed to be put forward to the Commission is a
15 good idea or a bad idea because of, you know, what
16 default service might look like or how it would be
17 structured. That's for another time, another day.

18 So our objection overall is to relevance.
19 It is not some -- none of this has to go to the
20 position or the merit of the stipulated -- third
21 supplemental stipulation. None of it has to go to
22 the bargaining process and the reasonableness of the
23 stipulation. Those are the issues for the Commission
24 to consider, and nothing with respect to what is
25 proposed to be administrative notice goes to that.

1 EXAMINER PRICE: Ms. Willis.

2 MR. OLIKER: Your Honor, I would also
3 join that objection and note the timeliness of these
4 comments. Two sets of these comments are almost
5 three years old. You've quickly identified things in
6 the document that my company doesn't necessarily
7 agree with anymore that would be misleading to this
8 record to hold that out as IGS's position today.

9 Regarding the second set of documents
10 that was identified, I believe that pertains to the
11 warm transfer process. Don't know how that is
12 possibly relevant to this side deal or why the merits
13 of the side deal should be considered. It's
14 something we are going to deal with in a future
15 proceeding, and if it's relevant, then OCC can cite
16 to them.

17 EXAMINER PRICE: Ms. Willis.

18 MS. WILLIS: Thank you, your Honor. Your
19 Honor, to address the relevance issue, the PUCO in
20 its order in 12-3151 confirmed that the standard
21 service offer should remain as default service. And
22 in doing so, your Honors, they rejected a number of
23 proposals, including IGS's proposal, which included
24 concepts very similar to the retail enhancement rider
25 and the customer referral program.

1 So this is a matter with respect to the
2 third prong of the stipulation, whether the side
3 agreement, the referral program -- the referral
4 program and the smart -- the referral program and the
5 retail enhancement program are consistent with
6 Commission policy and practice.

7 We would advocate they are not because
8 the Commission rejected these proposals or very
9 similar proposals in the order in 3151. So we would
10 believe that this is really essentially a collateral
11 attack on the Commission's order.

12 With respect to the -- we are not
13 presenting these documents to prove a fact. We are
14 presenting these documents to show that the
15 Commission has ruled on these proposals, rejected the
16 proposals, and in doing so, if we were to adopt or we
17 were to allow a stipulation that contains this
18 proposal, it would violate the third prong of the
19 stipulation test.

20 With respect to --

21 EXAMINER PRICE: Ms. Willis, just one
22 minute on that point. There, again, they have not --
23 they are not proposing to submit this document for
24 Commission review and approval.

25 MS. WILLIS: That is correct.

1 EXAMINER PRICE: They are not asking the
2 Commission to approve it. They are not asking the
3 Commission to enforce it, why would that violate the
4 third prong?

5 MS. WILLIS: Your Honor, they are asking
6 for this to be essentially enforced.

7 EXAMINER PRICE: I have not heard them
8 once saying they are asking us to enforce this
9 agreement or approve the agreement.

10 MS. WILLIS: Then I am at a loss why you
11 would have an agreement that you are not asking to
12 enforce.

13 EXAMINER PRICE: They are parties that
14 have amicably resolved an issue.

15 MS. WILLIS: And I do think, again, it
16 does go to the -- it also goes to the first prong,
17 your Honor, which is that was there -- was there
18 integrity in the process, in the bargaining positions
19 and in the process?

20 If the companies at the time that they
21 were negotiating with the other parties were at the
22 same time negotiating with IGS, that to enact
23 provisions that affected the representatives of the
24 signatory parties, including low-income customers and
25 low-income weatherization providers, then I think it

1 reflects on the integrity of the process as well.

2 EXAMINER PRICE: Isn't that for them to
3 bring up? If Mr. Kurtz, who is a signatory -- are
4 you a signatory party?

5 MR. KURTZ: Yes.

6 EXAMINER PRICE: He is a signatory party,
7 and if he has an objection to this, then he would
8 stand up and say, This is terrible.

9 MS. WILLIS: Residential customers, I
10 don't see any other representatives of residential
11 customers that are present in this proceeding that
12 signed this stipulation.

13 EXAMINER PRICE: They are all represented
14 by distinguished counsel who, I assume, followed this
15 docket.

16 MS. WILLIS: They are not here, and they
17 have not been present, your Honor, for the past
18 several days.

19 MR. KUTIK: That speaks volumes.

20 EXAMINER PRICE: That would indicate
21 their lack of interest.

22 MS. WILLIS: Or if they didn't look at
23 the e-mail that came yesterday evening at 8 p.m. at
24 night, yeah, they're probably not aware of it.

25 EXAMINER PRICE: It's been almost 24

1 hours. They have had all day to come down here or
2 register an objection. I am going -- stop while
3 you're ahead.

4 I am going to grant your motion to take
5 administrative notice. With respect to the relevancy
6 arguments, the Commission will give the weight to
7 those documents the Commission believes they deserve.

8 I am going to direct parties to only
9 submit -- to agree upon what the relevant excerpts
10 are, and only the relevant excerpts. These
11 proceedings, 3151, in particular, is a wide-ranging
12 proceeding, so if you can submit -- and if you can't
13 agree as to what the relevant excerpts are, the Bench
14 will decide.

15 MS. WILLIS: Thank you, your Honor. I
16 appreciate that.

17 EXAMINER PRICE: Okay.

18 MS. WILLIS: Your Honor, your directive
19 is then to work it out between the parties, if we,
20 can and then on Tuesday we will have a proposal,
21 hopefully, that all of us can agree to?

22 EXAMINER PRICE: Yes. If you can't agree
23 to it, you will be subject to my whims, as well as
24 the other examiners.

25 MS. WILLIS: Very good.

1 MR. KUTIK: And, your Honor, at this time
2 the examination is completed?

3 EXAMINER PRICE: At this time the
4 examination is complete because I have granted her
5 motion for administrative notice.

6 MS. WILLIS: I appreciate that, your
7 Honor.

8 Thank you, Ms. Mikkelsen.

9 THE WITNESS: Thank you, ma'am.

10 EXAMINER PRICE: Mr. Kutik, redirect?

11 MR. SETTINERI: Your Honor, just if we
12 can go off the record for a second.

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

15 (Discussion off the record.)

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

18 Mr. Kutik, redirect?

19 MR. KUTIK: Can I have 30 seconds to
20 confer with the witness?

21 EXAMINER PRICE: You may. Let's go back
22 off the record.

23 (Discussion off the record.)

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

1 Mr. Kutik.

2 MR. KUTIK: No questions.

3 EXAMINER PRICE: Thank you.

4 Ms. Addison, any questions?

5 EXAMINER ADDISON: No questions.

6 EXAMINER PRICE: Ms. Chiles?

7 EXAMINER CHILES: No questions.

8 EXAMINER PRICE: Commissioner Haque?

9 COMMISSIONER HAQUE: Yes, sir. I am
10 going to scoot over here so you can see me,
11 Ms. Mikkelsen.

12 THE WITNESS: Thank you.

13 COMMISSIONER HAQUE: How are you?

14 THE WITNESS: Fine, thank you.

15 COMMISSIONER HAQUE: All right, great.

16 So, again, as I said at the start of the proceedings,
17 these questions are just meant to educate me, and so
18 I have no doubt that I am going to ask some questions
19 that have already been covered in a previous
20 proceeding. I will not take longer than five to ten
21 minutes, but if you just humor me, I would really
22 appreciate it.

23 Again, these are more anbauen style
24 questions. That's are not meant to be "got you"
25 questions or corner you into something, so you will

1 understand what I am talking about as we proceed
2 through the questioning.

3 Okay. So my first questions surround the
4 term of the RRS and a Commission sort of purview over
5 the existence of the RRS. So the rider would beset
6 to expire in the normal course of the end of the ESP
7 which is May of 2024.

8 THE WITNESS: Correct.

9 COMMISSIONER HAQUE: Correct, okay. So I
10 read that the Commission has discretion over rider
11 RRS upon the sale or transfer of any of the units in
12 the RRS rider; is that correct?

13 THE WITNESS: The Commission has the
14 opportunity to proceed to terminate the specific
15 charge or credit in rider RRS for any generation unit
16 upon its sale or transfer.

17 COMMISSIONER HAQUE: So what does that
18 mean, that the Commission can -- the Commission can
19 remove the unit from rider RRS upon sale or transfer?

20 THE WITNESS: Yes.

21 COMMISSIONER HAQUE: Okay. And that's --
22 and that's sale or transfer to -- that's sale or
23 transfer to an entity that's not affiliated with the
24 companies, right?

25 So if you sold or transferred Calpine,

1 that's when the Commission could come in and say,
2 okay, we're done with this unit, rider RRS? But if
3 you sold or transferred to some new entity created by
4 the companies, that's a different story.

5 MR. KUTIK: I assume when you say "the
6 companies," you mean FirstEnergy Corp. as opposed to
7 the utilities?

8 EXAMINER PRICE: Yes, yes.

9 COMMISSIONER HAQUE: Yes.

10 MR. KUTIK: Thank you.

11 EXAMINER PRICE: I'm sorry. Commissioner
12 Haque we have a certain dictionary we've established
13 in the proceeding.

14 COMMISSIONER HAQUE: Please, whatever you
15 feel like you need to do to better articulate my
16 thoughts, I am just fine with it.

17 THE WITNESS: I don't think there is a
18 limitation. I believe the third stipulation allows
19 the Commission to proceed to terminate the charge or
20 credit in RRS associated with the generating unit
21 upon its sale or transfer, and it doesn't provide a
22 limitation with respect to who the sale or transfer
23 is to.

24 COMMISSIONER HAQUE: Okay. I didn't hear
25 us talk about -- I am sure you talked about it in

1 prior proceedings, the concept of retirements of
2 either Sammis or Davis-Besse or the OVEC units.

3 So -- so my first question is, could you seek
4 retirement of any of the units in rider RRS?

5 THE WITNESS: The proposed transaction
6 between the companies and FES is a unit-contingent
7 transaction that calls for delivery of all the energy
8 capacity and ancillary services out of the units that
9 are included in the proposed transaction.

10 COMMISSIONER HAQUE: Okay.

11 THE WITNESS: So in my mind, those units
12 would need to continue to deliver throughout the
13 delivery period unless there are certain provisions
14 in the term sheet. You know, if there was a capital
15 expenditure required that might render it uneconomic,
16 but, otherwise, it is a unit-contingent sale, and if
17 FES fails to deliver power, there's provisions that
18 talk about what happens at certain points in time
19 associated with that.

20 COMMISSIONER HAQUE: Okay. So okay, I
21 get that. Now, let's just say -- let's just say
22 during the term of the ESP with rider RRS had, in
23 effect, that -- let's say it's universally agreed
24 that Davis-Besse or Sammis should retire. I mean,
25 universally agreed, okay? So.

1 What happens then to -- what happens then
2 to -- let's say it -- let's say it's Davis-Besse,
3 okay? So what happens then if Davis-Besse -- if it's
4 universally agreed by everyone that Davis-Besse
5 should retire in 2020, okay? Would then FES need to
6 go and procure energy from another generating unit to
7 fulfill the obligations in the term sheet? Or what
8 would -- I mean, what would happen in that scenario?
9 Would you come back to the Commission and say, I
10 probably need to adjust rider RRS now based on what's
11 going on here?

12 MR. KUTIK: Commissioner Haque, in your
13 questions when you say it's universally, is that,
14 like, the Commission's view as well?

15 COMMISSIONER HAQUE: So it's, like, the
16 ultimate everyone hold hands hypothetical, right, so
17 PJM --

18 MR. KUTIK: So yes.

19 COMMISSIONER HAQUE: PJM, the companies,
20 everyone around the table, so, you know, says, okay,
21 it makes total sense for Davis-Besse to retire in
22 2020.

23 MR. KUTIK: Thank you.

24 MS. WILLIS: Clearly a hypothetical.

25 COMMISSIONER HAQUE: Clearly.

1 THE WITNESS: So the question then, would
2 the companies come to -- I'm sorry, I have lost track
3 of the question. I apologize.

4 COMMISSIONER HAQUE: I guess the first
5 question is with respect to rider RRS and the terms
6 between FES and the companies, would FES need to go
7 and procure energy from -- the entire output, right?
8 So would they need to go procure energy to replace
9 the Davis-Besse energy and then sell that in order to
10 fulfill the obligations of the term sheet and then go
11 and sell that to the FE companies?

12 THE WITNESS: Recognizing I am not an
13 attorney, and I feel like this is kind of deep in the
14 legal interpretation of the term sheet.

15 COMMISSIONER HAQUE: Frankly, if you
16 don't know, you don't know.

17 THE WITNESS: Then I don't know.

18 COMMISSIONER HAQUE: I am not forcing you
19 to answer the question. I mean, if you know, I would
20 appreciate it. Like I said, these are all supposed
21 to educate me.

22 MR. KUTIK: The term sheet does in some
23 way address some of these issues, and that was the
24 subject of testimony with Mr. Ruberto.

25 COMMISSIONER HAQUE: Okay. We will take

1 a look at that then. I appreciate that.

2 Okay. Let me ask you this. So if in the
3 event a unit retired during the term of the ESP, what
4 happens to costs associated with retirement? Would
5 that get pushed down through rider RRS?

6 THE WITNESS: No.

7 COMMISSIONER HAQUE: Okay. All right.
8 So can we talk about just briefly this concept of
9 good utility practice, and really what I am curious
10 about is if -- so I'm really curious about if -- if
11 the units in the rider RRS just continuously fail to
12 deliver power to the companies. Okay, I know that I
13 read the good utility practice piece. There's the
14 180-day reprieve. If it was good utility practice,
15 there is a 180-day reprieve.

16 So during that reprieve, there would be
17 costs associated with the units but no energy revenue
18 coming in, and so the costs then that would be pushed
19 through rider -- pushed down through rider RRS would
20 be larger than usual.

21 And so, I guess, I am asking you how do
22 we reconcile this issue of -- and then, you know, I
23 don't know if the unit can go back online for 10 more
24 days and then go off for another 180. I am just
25 trying to reconcile this issue if the units failed to

1 deliver energy to the companies and then the units
2 continued to experience costs but aren't getting that
3 energy revenue, how do we -- how do we sort of
4 reconcile this failure with not, you know, taxing the
5 folks at the other end of the RRS with those costs?

6 I mean, can you comment on that or help
7 explain it to me?

8 THE WITNESS: Sure. I think what is of
9 importance with respect to that question is the
10 review process that the companies have agreed to
11 participate in and include full information sharing
12 with respect to that review process. So the
13 Commission has -- will have the opportunity annually
14 to look at all of the costs that are proposed for
15 inclusion in rider RRS, and the companies have
16 committed to provide full information around those
17 costs to help inform the Commission's determination
18 about whether those costs are reasonable or
19 unreasonable. But I think that's --

20 COMMISSIONER HAQUE: So then the
21 Commission -- the Commission would get the
22 opportunity, essentially, to review, you know, why
23 you weren't delivering power, and if we believe that
24 the re -- well, I don't want to pose a hypothetical
25 here. But then the Commission could go back and say

1 that all of these costs associated with your failure
2 to deliver power is really on you, at the end of the
3 day, and that's how you can -- it's through the
4 review that you reconcile this potential issue.

5 THE WITNESS: Yes.

6 COMMISSIONER HAQUE: Okay. The timeline
7 for review, so I had this disconnect in the AEP --
8 the lawyers around the room know I had this
9 disconnect in the AEP hearing, too.

10 So capacity auction '16, so capacity
11 auction in May of '16 -- let's say rider RRS is in
12 effect by May of '16, okay? So the -- I understand
13 when we say the actual dollars cannot be -- so
14 capacity auction '16, delivered '19-'20, and so the
15 actual math reconciliation for what happened in the
16 auction in '16 would not occur until that -- post
17 that delivery year, so I get that. But the bidding
18 behavior component of what happened in '16, what is
19 the expectation of when that gets reviewed?

20 THE WITNESS: That behavior would be
21 reviewed in the period of time where the revenue was
22 delivered so in that '19-'20.

23 COMMISSIONER HAQUE: So not until
24 '19-'20.

25 THE WITNESS: Yes. And just to provide a

1 more full answer around that, here is why I think it
 2 makes sense to do it that way. As you're aware, you
 3 have your base residual auction, but you also have
 4 incremental auctions that occur prior to the delivery
 5 year, and it is the culmination of the actions that
 6 occur across all of those proceedings that will give
 7 rise to the capacity revenue that you receive in the
 8 delivery year.

9 Admittedly, the document says you should
 10 make your judgment with respect to reasonableness
 11 depending on, you know, the facts and circumstances
 12 that were known at the time the decision was made,
 13 but it may be a series of decisions.

14 COMMISSIONER HAQUE: Okay. So then the
 15 thought is then that until all of the incremental
 16 auctions happen associated with the delivery year,
 17 you know, '19-'20 in this case, that the Commission
 18 will not be able to really determine the
 19 reasonableness of the actions of -- of the bidding
 20 company.

21 THE WITNESS: That's right because the
 22 reasonableness review would occur when the revenues
 23 are proposed -- you know, after the revenues are
 24 proposed for inclusion in rider RRS. That wouldn't
 25 happen until that delivery year.

1 COMMISSIONER HAQUE: Okay. So
2 allowances, so we discussed allowances today. And so
3 one -- the one piece of this that I'm missing is so
4 my -- I do not have experience with previous
5 environmental rules, so I am strictly dealing with
6 the Clean Power Plan, how the contemplated mechanism
7 whereby the Clean Power Plan allowance market would
8 operate, okay?

9 And so, obviously, the objective of the
10 Clean Power Plan is to reduce CO-2 burn at the end of
11 the day, okay? And so how the market is supposed to
12 operate conceptually is that a generator would have
13 to make a decision as to whether or not it would be,
14 for lack of a better word, prudent to acquire
15 allowances to run.

16 I mean, that's sort of the point. So one
17 thing I'm not clear about is so for Sammis
18 specifically, would -- is it contemplated that Sammis
19 is just going to run, run, run, run, and the company
20 is just going to keep purchasing allowances and run
21 run, run, run, run, run, or is it -- or will there
22 be -- will there be sort of a separate deliberation
23 about whether or not allowances should be purchased?

24 I guess my concern is that the -- if you
25 are just going to constantly be purchasing allowances

1 to run, that skews what is supposed to be this --
2 this allowance -- interstate trading allowance
3 marketplace.

4 And so I don't know if you have gotten
5 that far in your thinking about the allowance piece,
6 but if you have, I mean, can you provide some
7 guidance or some thoughts surrounding that?

8 THE WITNESS: I'm certainly not in any
9 way, shape, or form an environmental expert for the
10 company. So the best I can provide you that I can
11 speak in confidence about is that, again, to the
12 extent that the Commission -- well, let me back up
13 one.

14 I think throughout the proceeding, the
15 notion is the plants would be economically dispatched
16 so if that -- just to be clear, so they are only
17 going to be economically dispatched with respect to
18 Sammis, one.

19 But two, to the extent that the companies
20 through the proposed transaction have costs
21 associated with purchasing these allowances, again,
22 the Commission has the opportunity to review those
23 costs for reasonableness and make a judgment as to
24 whether or not those costs should be included in
25 rider RRS.

1 COMMISSIONER HAQUE: Okay, okay. We
2 discussed bilateral contracts a little bit the past
3 few days. Okay. So does anything limit -- in the
4 terms of the stip or the term sheet, does anything
5 limit AEP Ohio -- AEP Ohio, does anything limit the
6 companies from selling the -- from selling energy to
7 its retail arm? So you've got the -- the -- you've
8 got FES that sells to the companies, and then can the
9 companies then enter into a bilateral contract with
10 its retail arm?

11 THE WITNESS: I guess I am a little
12 uncomfortable characterizing FES's company's retail
13 arm, but so that is a retail unit of FirstEnergy, but
14 not an arm, I guess in my thinking of the companies.

15 COMMISSIONER HAQUE: That's fine. That's
16 fine. Yep.

17 THE WITNESS: So setting that aside,
18 again, the intention of this transaction is that the
19 companies will sell the energy, capacity, ancillaries
20 and environmental attributes into the PJM markets.
21 That said, there is nothing in any of the documents
22 that precludes a bilateral transaction with any
23 party, and, again, the Commission's ultimate review
24 on this process is to look at the revenues
25 included -- proposed for inclusion in rider RRS, and

1 they have the ability to make a determination at that
2 time whether those are reasonable or not.

3 COMMISSIONER HAQUE: Okay. Last
4 question, and this surrounds costs, and this is the,
5 you know, typical policymaker's broad question, but I
6 am going to ask it.

7 So there are conceivably a lot of costs
8 associated with the stip and the ESP. So can you
9 tell me, just in your own words, if you can, you
10 know, what are the cost controls associated with the
11 various costs that would arise out of the ESP and the
12 stip?

13 THE WITNESS: So may I ask you a
14 question? Are we now setting aside rider RRS and
15 talking about the other provisions, sir?

16 COMMISSIONER HAQUE: Correct.

17 THE WITNESS: Thank you.

18 COMMISSIONER HAQUE: So I understand -- I
19 understand the mechanics of rider RRS.

20 THE WITNESS: I think many of the
21 provisions of the stipulation throughout the
22 proceeding, and now I am thinking about rider ELR and
23 the interruptible provision or the automaker
24 provision, we've already identified the annual costs
25 or an estimate with respect to those.

1 With respect to the provisions included
2 in ESP III where we haven't included an estimate,
3 that's because there's been no determination that
4 costs will be incurred. So in those provisions the
5 companies will come forward with a filing before the
6 Commission. All interested parties can participate.
7 The costs and benefits I am sure will be discussed at
8 great length, and then at that time the Commission
9 will make a determination whether or not, for
10 example, the companies should move forward with grid
11 modernization and how much and in what fashion. And
12 I would expect that decision at that time would be
13 decided by the impact of the costs on the companies.

14 Now, having said that, once the companies
15 move forward in any of these respects, if the costs
16 are recovered through riders, it is the practice of
17 the PUCO staff to audit the companies' riders on an
18 annual basis, and so that is a separate matter. Once
19 a determination is made to move forward, I think that
20 that may provide you the check and balance you are
21 looking for, that are the costs being incurred
22 reasonable on behalf of the customers.

23 COMMISSIONER HAQUE: Okay. Thanks for
24 humoring.

25 THE WITNESS: Thank you, sir.

1 COMMISSIONER HAQUE: I don't have any
2 other questions. Thanks.

3 EXAMINER PRICE: Before you go, I just
4 have one follow-up based on what Commissioner Haque
5 asked that occurred to me. The companies, not FES,
6 would be bidding capacity into the PJM market; is
7 that correct?

8 THE WITNESS: Yes.

9 EXAMINER PRICE: Will people in the
10 companies who will be responsible for bidding be
11 walled off for bidding these assets, be walled off
12 from the FES employees who will be responsible for
13 bidding the other FES assets into the market?

14 THE WITNESS: Yes.

15 EXAMINER PRICE: Yes.

16 THE WITNESS: Yes.

17 EXAMINER PRICE: Care to expand on that?
18 How will they be walled off?

19 MR. KUTIK: Mr. Ruburto talked about
20 this, I believe.

21 EXAMINER PRICE: I will go back.

22 MR. KUTIK: I may be wrong. He is the
23 guy that would do that.

24 EXAMINER PRICE: I will go back and
25 refresh my recollection. It probably is in there. I

1 just wanted to make sure.

2 Okay. Thank you. You are excused.

3 THE WITNESS: Thank you, sir, and ma'ams.

4 MR. KUTIK: Your Honor, at this time the
5 companies would move for the admission of Company
6 Exhibits 154, 155 and 156.

7 EXAMINER PRICE: Any objections to the
8 admission of Company Exhibits 154, 155, 156?

9 Seeing none, they will be admitted.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 EXAMINER PRICE: Mr. Soules.

12 MR. SOULES: Thank you, your Honor.

13 Sierra Club moves for the admission of
14 Sierra Club Exhibits 89; Sierra Club Exhibit 90,
15 competitively sensitive, confidential; Sierra Club
16 Exhibit 91; Sierra Club Exhibit 92; Sierra Club
17 Exhibit 93; and Sierra Club Exhibit 94.

18 EXAMINER PRICE: Any objection to the
19 admission of those exhibits?

20 MR. KUTIK: No objection.

21 EXAMINER PRICE: Those exhibits will be
22 admitted.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 EXAMINER PRICE: Ms. Willis.

25 MS. WILLIS: Thank you, your Honor. OCC

1 moves for the admission of Exhibit 34.

2 EXAMINER PRICE: Any objection to
3 admission of Exhibit 34?

4 MR. KUTIK: Yes.

5 EXAMINER PRICE: Yes. Grounds, please?

6 MR. KUTIK: Your Honor, these are the
7 comments of the companies in case 10-3126. As we had
8 talked or discussed previously, the positions,
9 whatever they may have been with respect to the
10 companies, are irrelevant with respect to the merits
11 of the proposal for the Commission now.

12 This is a stipulated matter. Parties
13 compromise positions, and it is inappropriate to
14 attempt to take a prior position that the companies
15 have made and somehow contrast that to the
16 stipulation.

17 EXAMINER PRICE: Ms. Willis.

18 MS. WILLIS: Thank you, your Honor. I
19 think they are highly relevant. They are -- they
20 represent the companies' filed -- filed statements on
21 the merits of straight fixed variable rate design,
22 which is an issue that is part of the stipulation,
23 and I believe they're clearly relevant, reasonable,
24 and we think that they are proper.

25 MR. KUTIK: And with respect to whatever

1 the SFV proposal might be under the stipulation,
2 that's a subject for another proceeding, your Honor.

3 MS. FLEISHER: Your Honor -- sorry, if I
4 can jump in for a second.

5 EXAMINER PRICE: You may.

6 MS. FLEISHER: The question is -- if I am
7 physically capable. The stipulation does provide
8 what the proposal will be, and it's a specific rate
9 design. I know Ms. Mikkelsen testified she wasn't
10 sure if the companies would provide any material
11 supporting that design, but the fact is that there
12 may be some in the record.

13 And so to the extent that design is part
14 of the package that the Commission has to consider if
15 it benefits ratepayers and the public interest, it's
16 important to have some -- to have the companies'
17 prior position on record.

18 EXAMINER PRICE: Honestly, I think the
19 company's prior position simply bolsters their
20 argument there was serious bargaining because,
21 obviously, there was give and take between the
22 parties. We are going to deny admission of the
23 comments, but we will take administrative notice of
24 them.

25 MS. WILLIS: Thank you, your Honor.

1 EXAMINER PRICE: Mr. Settineri.

2 MR. SETTINERI: Thank you, your Honor.

3 At this time we would move for admission of P3/EP
4 10, which although marked confidential is now a
5 public document.

6 And also P3/EP 11, which is a
7 confidential exhibit with certain information in that
8 document subject to the resolution of the pending
9 motion for protective order.

10 EXAMINER PRICE: Any objection?

11 MR. KUTIK: No, your Honors. Again,
12 though, we would note that we would ask, as we have
13 in our motion for protective order, that the
14 information in Exhibit 11 be protected.

15 EXAMINER PRICE: We will admit EP
16 P3/EP Exhibits 10 and 11 Confidential subject to
17 our future ruling on the motion for protective order.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 EXAMINER PRICE: Ms. Bojko.

20 MS. BOJKO: Thank you, your Honor. OMAEG
21 moves the admission of Exhibits 23, 24, and 25.

22 EXAMINER PRICE: Any objection?

23 MR. KUTIK: Just one minute, your Honor.
24 May we go off the record?

25 EXAMINER PRICE: Let's go off the record.

1 (Discussion off the record.)

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

4 MR. KUTIK: We have no objection, your
5 Honor, to OMAEG Exhibit 24. With respect to Exhibit
6 25 -- excuse me. With respect to Exhibit 23, no
7 objection. With respect to Exhibits 24 and 25, we
8 have no objection to 25.

9 We do object to 24 for the reasons that
10 we noted earlier and that you've already ruled upon.

11 EXAMINER PRICE: Okay. We will admit
12 OMAEG 23 and 25. And we will admit OMAEG 24 over the
13 companies' objections.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 MS. BOJKO: Thank you, your Honor.

16 EXAMINER PRICE: Ms. Fleisher.

17 MS. FLEISHER: Your Honor, at this point
18 I would move the admission of ELPC Exhibit 27.

19 EXAMINER PRICE: Any objections?

20 MR. KUTIK: No.

21 EXAMINER PRICE: ELPC Exhibit 27 will be
22 admitted.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 MS. FLEISHER: Can we go off the record?

25 EXAMINER PRICE: Let's go off the record.

1 (Discussion off the record.)

2 EXAMINER PRICE: Back on the record.

3 Anything else we need to address before
4 we take our weekend break?

5 MR. SETTINERI: Your Honor, we had spoken
6 previously about the ability of parties to file
7 supplemental testimony based on the late production
8 and signatory page in the stipulation. At this time
9 we would request the ability of the parties to be
10 able to file supplemental testimony, and it can be
11 written specifically on that late -- on the OMAEG
12 Exhibit 24 and the signatory page. And we are fine
13 with having a deadline -- although the Commission's
14 offices are not open, I believe, on Monday, making
15 that testimony available to parties by the close
16 of -- by the Commission's docketing hours for Monday,
17 January 18.

18 EXAMINER PRICE: By the opening of
19 business Tuesday then.

20 MR. SETTINERI: I'll take that instead of
21 5:30 on Monday, sure.

22 MS. WILLIS: Your Honor, for
23 clarification you are saying that we are --

24 EXAMINER PRICE: I didn't say anything.
25 He said it, not me.

1 MS. WILLIS: And I need to talk to him
2 about that. Are you saying that the -- the testimony
3 that would address the OMAEG exhibit would be due at
4 docketing at 8:30 in the morning; is that your
5 ruling?

6 EXAMINER PRICE: Well, he said 5:30 on
7 Monday.

8 MS. WILLIS: Well, the Commission is
9 closed.

10 EXAMINER PRICE: I understand but I would
11 probably make it 9. So let me throw it out there and
12 then the companies can object if they choose to. Do
13 the companies object or do the parties object to the
14 filing of supplemental testimony with respect to
15 OMAEG Exhibit 24? The deadline would have to be --
16 in writing. The deadline for filing would be 9
17 o'clock Tuesday morning.

18 MR. KUTIK: Yes, your Honor, we do
19 object.

20 EXAMINER PRICE: Grounds, please.

21 MR. KUTIK: Sure. Your Honor, the
22 substance of the side deal, so-called, has now been
23 fully explored. The companies have -- the parties
24 have had an opportunity to discuss that with
25 Ms. Mikkelsen. They've also had the opportunity to

1 discuss with Ms. Mikkelsen the process by which the
2 settlement -- the settlement with IGS came to be.
3 That's relevant.

4 With respect to their commentary, at this
5 point that's not relevant. If they want to make
6 commentary, that's the subject for briefs. But the
7 facts with respect to the nature of the deal and with
8 respect to the nature of the discussions have now
9 been elicited. There is nothing further that could
10 be added. Anything that could be added at this point
11 would be their opinions as to the wisdom of the deal
12 which is, as we've noted previously, improper or with
13 respect to the propriety of the settlement process
14 which, again, is a matter of briefs.

15 I would also note that with respect to
16 any filing or any submission of that supplemental
17 testimony should -- should the Bench have a different
18 view than we do, that we would ask that that
19 information be provided to the companies by 9 o'clock
20 on Monday and can be filed whenever, but I think we
21 should at least, especially given the fact that
22 perhaps witnesses will be starting on Tuesday at 9
23 o'clock, be given the opportunity to have a
24 sufficient time to look at it if we are not going to
25 be given anything further on that.

1 MR. OLIKER: Your Honor, I would also add
2 to the extent that the Bench does permit testimony,
3 that new testimony filed by parties be limited to the
4 first prong of the settlement criteria and not
5 address the merits of the proposal that IGS and the
6 companies will be submitting in the future. I think
7 that would lead to unnecessary and duplicative
8 litigation.

9 EXAMINER PRICE: Let's take up this
10 question of whether the testimony should be -- if at
11 all should be limited to the first prong.

12 Ms. Willis, do you care to respond to
13 that?

14 MS. WILLIS: Your Honor, I think that the
15 testimony should include the first prong, but I don't
16 think it should be limited to the first prong.

17 EXAMINER PRICE: Care to explain why?

18 MS. WILLIS: I think parties should have
19 the opportunity to address the merits of the side
20 deal.

21 EXAMINER PRICE: Hasn't the Supreme Court
22 already ruled -- it's not a recent decision -- that
23 you couldn't even discover side deals for purposes of
24 the second prong? I mean, if you couldn't discover
25 it, you certainly can't admit the evidence. Isn't

1 that still -- isn't that still a -- the applicable
2 Supreme Court guidance?

3 MS. WILLIS: There is a holding, your
4 Honor, that is that I would -- I would agree that is
5 generally what they've held. I am not specifically
6 familiar with it. I would like to reread that before
7 I answer your question, but I believe that is the
8 holding. However, I -- I think it's -- it's almost
9 preposterous to have proposals that affect customers
10 and not be able to put on evidence against that
11 proposal, whether it's a side agreement or whether
12 it's a part of the stipulation.

13 MR. KUTIK: But it's not a proposal in
14 this case.

15 EXAMINER PRICE: You will have your due
16 process right to oppose it when the filings -- when
17 the filings are actually made. Everybody will have a
18 chance to put on witnesses, file briefs on the merits
19 of those proposals at that time. They are not asking
20 the Commission to approve this document, or this
21 agreement.

22 MR. KUTIK: That's correct.

23 EXAMINER PRICE: They are not asking and,
24 frankly, there is Commission case out there if you
25 don't ask our approval, don't ask us to enforce it

1 and we won't enforce it so.

2 MS. WILLIS: Your Honor, it really also
3 has to do with the MRO versus ESP test. We are in an
4 MRO -- or ESP proceeding, and as part of the MRO
5 versus ESP test, we are trying to determine the value
6 of all the benefits and determine whether or not it
7 meets the statute. And I think side agreements that
8 bear upon what costs may be coming or what costs are
9 would bear upon the MRO versus ESP.

10 That's the problem with the perversion of
11 agreeing to zero riders and agreeing that you are
12 going to have future filings because you have a
13 future filing and your ESP is already approved and
14 then what are you supposed to do? How do you go back
15 and reopen up the ESP versus MRO test? It's a
16 perversion of the process.

17 MR. KUTIK: Well, the problem with that
18 argument ESP versus MRO test is to test the ESP. The
19 agreement with IGS is not part of the ESP.

20 EXAMINER PRICE: Anybody else care to
21 join Ms. Willis?

22 Ms. Bojko.

23 MS. BOJKO: Your Honor, when you take a
24 side agreement that specifically requires actions in
25 the proceeding, it requires them to -- required IGS

1 to sign the stipulation which changed the signatory
2 parties to the stipulation, that is subject to the
3 three-prong test, and it also changed testimony.
4 They are requesting certain testimony to be
5 withdrawn. I know we haven't ruled upon that but
6 that's a condition of this side agreement.

7 And it also instructed IGS to make
8 certain arguments in the brief and then is going to
9 affect the companies' counterarguments in the brief.
10 So I think that to say that this side agreement has
11 nothing to do with the current ESP proceeding and
12 considering that ESP, and it's called a stipulated
13 ESP IV, considering whether that stipulated ESP IV is
14 in the public interest and whether the signatory
15 parties that signed that can justify that public
16 interest is very much in front of this Commission and
17 should be decided.

18 So I think it's different than the
19 Constellation case and I think for the reasons I just
20 stated. I mean, it directly relates and has actions
21 that need to be done in the case that we are
22 litigating.

23 MR. KUTIK: Your Honor, the fact that IGS
24 is a signatory party is not a proposal that the
25 Commission has to approve or disapprove.

1 EXAMINER PRICE: I understand.

2 Mr. Settineri.

3 MR. SETTINERI: Nothing to add, your
4 Honor.

5 EXAMINER PRICE: Mr. Kutik, last word.

6 MR. KUTIK: I think I've said my peace.

7 EXAMINER PRICE: I'm -- I think this is a
8 very interesting situation, and so I am going to have
9 an interesting ruling. You can file -- testimony
10 needs to be in writing, needs to be filed by 9
11 o'clock on Tuesday, but it needs to be served upon
12 the companies by noon on Monday. And I want the
13 parties to be aware we will revisit this decision
14 based upon what's filed if the companies have a
15 motion to strike based upon what's filed.

16 MS. BOJKO: Your Honor.

17 MS. WILLIS: Your Honor.

18 MS. BOJKO: I didn't say anything about
19 the time before because I was waiting for your ruling
20 to see if it was necessary, but it's 6 o'clock on
21 Friday. I haven't been able to get ahold of my
22 witness to try to discuss this and the impact on
23 their testimony. And I think that --

24 EXAMINER PRICE: You are lucky you have
25 got a Wednesday witness.

1 MS. BOJKO: No. I'm fine with the
2 Wednesday witness, but if you said I have to file and
3 serve the parties by Monday, I actually think that
4 the witness that I am thinking of would do this is
5 out of town, and he hasn't responded to e-mails
6 today, so I'm a little concerned about the Monday
7 noon filing.

8 EXAMINER PRICE: You all have out-of-town
9 witnesses. I mean --

10 MS. BOJKO: It's getting ahold.

11 EXAMINER PRICE: No, I understand that,
12 but if we bounce the witness, it will be at your
13 expense. The company needs to have some opportunity.
14 I am offering them less than 24 hours to look at
15 this.

16 Yes, Ms. Willis.

17 MS. WILLIS: Your Honor, I would be --
18 Monday is a holiday for state employees. We are
19 contemplating a state employee who would be filing
20 this testimony, and I think it's -- you know, we are
21 happy to bring that employee on after they have a
22 reasonable opportunity. We will give them all the
23 time they want before our testimony comes on. So I
24 think the fact that we're talking about them having
25 to cross-examine, they don't have to cross-examine

1 Tuesday. They can cross-examine later on in the
 2 proceeding. And it's a very narrow issue, so I would
 3 think that their cross, if it is even -- if we even
 4 are permitted will be very narrow. So I don't think
 5 that a -- you know, the testimony that we are talking
 6 about that's very structured, very narrow will take
 7 much review. So I object to the -- you know, it is
 8 Friday night. We are -- we have been working very
 9 diligently. We try to meet demands, but I think the
 10 12 -- the 12 o'clock on Monday serving the company is
 11 not something that is reasonable in our opinion.

12 MR. KUTIK: Your Honor.

13 EXAMINER PRICE: Mr. Kutik.

14 MR. KUTIK: All I am hearing are excuses
 15 to delay and things shouldn't -- and this case has
 16 gone on long enough. Last time I heard it wasn't
 17 outside the realm of likelihood that state employees
 18 can work on the weekend. We are all going to be
 19 working this weekend. We are all going to be working
 20 on Monday, holiday or no.

21 I did have another question, your Honor,
 22 though. Will the -- should the testimony be limited
 23 to the first prong?

24 EXAMINER PRICE: Would you like to
 25 address that, or are you asking if I have addressed

1 that?

2 MR. KUTIK: Have you -- I am asking you
3 if you have addressed it.

4 EXAMINER PRICE: No. That was my caveat
5 about I hate you to work the weekend and we might
6 come back and strike it, but as Ms. Willis noted, I
7 have not looked at that CG&E decision in a while, and
8 so I am telling parties they are kind of at risk.
9 You might file something, and we might -- the
10 examiners might get together and decide though it's
11 outside the first prong.

12 MR. KUTIK: If you and I are thinking the
13 same thing, that's the OCC case. I am more than glad
14 to give you a copy.

15 EXAMINER PRICE: I have got a copy. I am
16 going to read it Monday when I am working along with
17 all of the other state employees. So, again, I am
18 willing to let you file testimony, and we are willing
19 to take a look at it. But I have some reservations
20 as to whether it should be going beyond the first
21 prong, and you are going to set -- it may be subject
22 to a motion to strike.

23 MS. WILLIS: Your Honor, that's always a
24 possibility and it has been in this case, so it's not
25 anything new.

1 EXAMINER PRICE: You are particularly on
2 notice on this one.

3 MS. BOJKO: Your Honor, and I just want
4 to clarify, nobody is saying we don't want to work on
5 the weekends or wouldn't work on the holidays. My
6 only problem it's 6 o'clock, so we have no -- I mean,
7 some people have not been notified and whether
8 they've left the jurisdiction, whether they are able
9 to be accessed, it's a different thing. If you say,
10 okay, 5 o'clock or noon on Friday you have to have
11 this document produced and you are going to have to
12 work over the weekend, it's another thing entirely to
13 not tell people anything until after the close of
14 business on the Friday of a holiday weekend.

15 They are two different scenarios. And
16 that's my concern is just being able to reach
17 somebody. And I am not even saying I will or it's
18 necessary. It's just we haven't been able to yet.

19 MR. KUTIK: And, your Honor, I assume
20 also though we can get some guidance that any
21 supplemental testimony would be related only to OMAEG
22 Exhibit 24.

23 EXAMINER PRICE: Absolutely.

24 MR. KUTIK: It's good to get that
25 guidance on the record.

8003

1 EXAMINER PRICE: It definitely will be
2 within the confines of OMAEG 24. Has this all been
3 on the record?

4 THE NOTARY: Yes.

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

7 (Discussion off the record.)

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

10 After extensive discussions, OCC will
11 file its testimony no later than 9 o'clock on
12 Wednesday. OMAEG will file its testimony no later
13 than 9 o'clock on Wednesday, unless it is Mr. Hill,
14 in which case they will file no later than 9 o'clock
15 on Tuesday. If P3/EPISA puts on a witness on Tuesday,
16 they will file -- they will serve the company by noon
17 on Monday. Otherwise they will file at 9 o'clock the
18 day before the witness is scheduled to testify.

19 MR. SETTINERI: And that would also apply
20 to RESA as well.

21 EXAMINER PRICE: Yes, all of your various
22 clients.

23 MR. SETTINERI: Thank you.

24 EXAMINER PRICE: Is anybody else going to
25 put on a witness? Sierra Club?

8004

1 Okay. With that we are adjourned. We
2 will commence again 9 o'clock on Tuesday, at which
3 time we will take Mr. Campbell.

4 (Thereupon, at 6:01 p.m., the hearing was
5 adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Friday, January 15,
2016, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-80016)

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Summary: Transcript in the matter of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company hearing held on 01/15/16 - Volume XXXVII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.