

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PROCEEDINGS

before Mr. Gregory Price, Ms. Mandy Chiles, and  
Ms. Megan Addison, Attorney Examiners, and  
Commissioner Asim Haque at the Public Utilities  
Commission of Ohio, 180 East Broad Street, Room 11-A,  
Columbus, Ohio, called at 9:00 a.m. on Tuesday,  
January 19, 2016.

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VOLUME XXXVIII

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                  - - -



8014

## INDEX

- - -

## WITNESSES

## PAGE

Lael Campbell

Direct Examination by Mr. Petricoff 8019

Cross-Examination by Mr. Kutik 8020

Redirect Examination by Mr. Petricoff 8080

Cross-Examination by Mr. Kurtz 8084

James F. Wilson

Direct Examination by Ms. Willis 8103

Cross-Examination by Mr. Kurtz 8113

Cross-Examination by Mr. Kutik 8116

Redirect Examination by Ms. Willis 8138

Recross-Examination by Mr. Kurtz 8148

Karl R. Rábago

Direct Examination by Ms. Fleisher 8165

Cross-Examination by Mr. Lang 8168

Redirect Examination by Ms. Fleisher 8197

Matthew L. Kahal

Direct Examination by Mr. Stinson 8209

Cross-Examination by Mr. Lang 8211

- - -

## COMPANIES EXHIBITS

## IDENTIFIED ADMITTED

157 - Exelon Web Page, Board  
Committees Finance and Risk 8027 --

158 - Finance and Risk  
Committee Charter 8027 --

159 - Attachment A-1, Master  
Standard Service Offer  
Supply Agreement 8032 --

160 - Case No. 11-346-EL-SSO,  
Direct Testimony of  
J. Dominquez 8037 --

161 - Case No. 11-346-EL-SSO,  
Direct Testimony of  
D. Fein 8037 --

8015

## INDEX (Continued)

- - -

## COMPANIES EXHIBITS

## IDENTIFIED ADMITTED

162C - Letter from G. Petrucci,  
1/13/16, with Attached  
E-mail S. Brown to  
L. Campbell 12/21/15  
(Confidential)

8040 --

163C - L. Campbell Workpaper  
(Confidential)

8052 --

164 - PJM In Schedule  
User Guide

8062 --

165 - PJM eRPM Users Guide

8065 --

166 - Annual Energy Outlook 2015

8116 --

167 - USEIA Short-Term Energy  
Outlook, January 2016

8120 8159

168 - PJM Web Page, Capacity  
Market RPM

8122 8160

169 - Chart Scenario Description  
Auction Results

8123 8161

170 - PJM Load Forecast  
January 2015

8128 8161

171 - PJM Load Forecast

January 2016

8128 8162

172 - PJM Manual 19, Load  
Forecasting and Analysis

8133 8162

- - -

## EXELON EXHIBITS

## IDENTIFIED ADMITTED

4 - Second Supplemental  
Testimony of Lael  
Campbell

8018 8095

- - -

8016

## INDEX (Continued)

- - -

## EXELON EXHIBITS

## IDENTIFIED ADMITTED

5 - Second Supplemental  
Testimony of Lael  
Campbell (Confidential)

8018 8095

- - -

## OCC/NOPEC EXHIBITS

## IDENTIFIED ADMITTED

9 - Second Supplemental  
Testimony of James  
F. Wilson

8104 8159

10C - Second Supplemental  
Testimony of James  
L. Wilson (Confidential)

8104 8159

11 - Second Supplemental  
Testimony of Matthew  
I. Kahal

8208 8241

11A - Errata of M. Kahal

8208 8241

- - -

## ELPC EXHIBITS

## IDENTIFIED ADMITTED

28 - Direct Testimony of  
Karl R. Rábago

8164 8207

- - -

8017

1 Tuesday Morning Session,  
2 January 19, 2016.

3 - - -

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

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

13 My name is Gregory Price. Presiding over  
14 today's hearing with me is Meghan Addison, Mandy  
15 Chiles and Commissioner Asim Haque. This is our 38th  
16 day of hearing in this matter.

17 At this time we will dispense with  
18 appearances, and we will take our next witness.

19 Mr. Petricoff.

20 MR. PETRICOFF: Thank you, your Honor.  
21 At this time we would like to call Lael Campbell to  
22 the stand.

23 (Witness sworn.)

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

1 THE WITNESS: Lael Campbell, 101  
2 Constitution Avenue, Washington, D.C.

3 EXAMINER PRICE: Please proceed,  
4 Mr. Petricoff.

5 MR. PETRICOFF: Okay. Your Honor, I  
6 would like to get two documents marked if I could.  
7 The first one is the public version, and I believe we  
8 are up to Exelon No. 4. This is the Second  
9 Supplemental Testimony of Lael Campbell.

10 EXAMINER PRICE: It will be so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. PETRICOFF: And the next would be  
13 Exelon 5, and this would be the confidential version  
14 of the Second Supplemental Testimony of Lael  
15 Campbell.

16 EXAMINER PRICE: It will be marked as  
17 Exelon 5 Confidential.

18 (EXHIBITS MARKED FOR IDENTIFICATION.)

19 MR. PETRICOFF: I will give copies to the  
20 court reporter.

21 Does the Bench need one?

22 EXAMINER PRICE: I do not.

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LAEL CAMPBELL

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

DIRECT EXAMINATION

By Mr. Petricoff:

Q. Mr. Campbell, do you have with you what I  
have just had marked as Exelon Exhibits No. 4 and 5?

A. Yes. I do have copies of both the public  
and confidential testimonies.

Q. And could you identify those documents?

A. Yes.

Q. Are they your direct prepared testimony?

A. Yes.

Q. And were these testimonies done by you or  
under your direction?

A. Yes.

Q. Are there any changes or amendments you  
would like to make to either the confidential or the  
public draft?

A. Not at this time.

Q. And if I asked you the same questions  
today, would your answers be the same?

A. Yes.

MR. PETRICOFF: Your Honor, the witness  
is available for cross-examination.

1 EXAMINER PRICE: Thank you.

2 Mr. Settineri. Oh, that's your witness.

3 Why are you sitting down there separated by

4 Mr. Petricoff?

5 MR. PETRICOFF: Good question, your

6 Honor.

7 MR. KUTIK: He's representing P3 today.

8 MS. BOJKO: I offered to move.

9 Ms. Fleisher?

10 MR. FLEISHER: No questions.

11 EXAMINER PRICE: Ms. Bojko.

12 MS. BOJKO: No questions.

13 EXAMINER PRICE: Mr. Kurtz.

14 MR. KURTZ: No questions.

15 EXAMINER PRICE: Mr. Kutik.

16 MR. KUTIK: Thank you, your Honor. I

17 assume OCC has no questions.

18 EXAMINER PRICE: That's a good point.

19 MS. WILLIS: No questions, your Honor.

20 EXAMINER PRICE: Thank you.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Kutik:

24 Q. Good morning, Mr. Campbell.

25 A. Good morning.

1           Q.    Mr. Campbell, throughout your career at  
2   Constellation and then at Exelon, would it be fair to  
3   say that you have had no decision-making authority  
4   with respect to whether to enter into PPAs?

5           A.    I did have some transaction approval  
6   authority as part of a previous role. My previous  
7   role, but as far as ultimate decision-making  
8   authority, no.

9           Q.    So what I said was correct except for  
10  some approval process relating to commodities and  
11  those type of issues?

12          A.    Correct.

13          Q.    And you have had no role in your career  
14  at Exelon and Constellation in terms of negotiating  
15  PPAs, correct?

16          A.    That would be correct.

17          MR. KUTIK: Your Honor, at this time we  
18  have a motion to strike.

19          EXAMINER PRICE: Okay.

20          MR. KUTIK: And our motion to strike,  
21  your Honor, relates to a good part of Mr. Campbell's  
22  testimony. Essentially, your Honor, we would move to  
23  strike everything beginning on page 2, beginning with  
24  question 5, all the way to page 12, line 11. So we  
25  would not -- we are not moving to strike question 27



1 that follows. The grounds, your Honor, is that it is  
2 beyond the scope of the hearing.

3 As we discussed during Ms. Mikkelsen's  
4 testimony, the issues in this case are properly  
5 framed to be the changes to the companies' proposal  
6 and the stipulation that are brought about by the  
7 third supplemental stipulation and the effects of  
8 those changes and the settlement process that gave  
9 rise to the third supplemental stipulation.

10 The testimony that could have been raised  
11 or should have been raised prior to the third  
12 supplemental stipulation is beyond the scope and  
13 improper. So for those reasons, your Honor, we  
14 believe that the testimony specifically referring to  
15 this "proposal" is testimony that should have been  
16 brought in the principal hearing in this case and has  
17 no place here.

18 EXAMINER PRICE: Mr. Petricoff.

19 MR. PETRICOFF: Thank you, your Honor.  
20 One of the key factors that is different in the third  
21 supplemental stipulation from either the second or  
22 the first amended stipulation or the application is  
23 the term. The term has been moved from 15 years to 8  
24 years.

25 As shown in the testimony between pages 2

1 and 12, this now puts it in a position in which it  
2 can be, from Exelon's perspective, commercially  
3 quantified and a proposal can be made, and the  
4 proposal is important because that really shows you a  
5 market value. That is something new. That is  
6 something that was not possible until the term was  
7 changed to eight years.

8 Furthermore, I think it's very important  
9 that the offer be considered because one of the  
10 factors in any stipulation that the Commission has to  
11 consider under the Supreme Court's three-part test is  
12 whether this is in the best interest of the public,  
13 and certainly if there are offers out there that are  
14 lower, they need to be considered.

15 EXAMINER PRICE: Mr. Kutik.

16 MR. KUTIK: Well, your Honor, there  
17 certainly isn't any testimony in the record,  
18 certainly not in Mr. Campbell's second supplemental  
19 testimony, that says this proposal was impossible  
20 prior to the filing of Mr. Campbell's testimony, and  
21 so Mr. Petricoff presents a proposition to the Bench  
22 which is not supported by the evidence.

23 EXAMINER PRICE: Thank you.

24 We'll deny the motion to strike at this  
25 time. I agree with Mr. Petricoff that whether or not

1 it was possible or impossible, the change in the term  
2 from 15 years to 8 years is significant and it may  
3 not have been Exelon's preference to make an offer  
4 for a 15-year PPA but they might decide an 8-year PPA  
5 would be reasonable.

6 Please continue.

7 Q. (By Mr. Kutik) Now, the position that you  
8 take in your testimony, that was something that was  
9 discussed with Exelon's CEO, Chris Crane, correct?

10 A. Correct.

11 Q. And Mr. Crane was and you were at a  
12 meeting that discussed your testimony, correct?

13 A. Correct.

14 Q. And this meeting -- part of this meeting  
15 there was a presentation given, correct?

16 A. That is correct.

17 Q. And the presentation that was given at  
18 the meeting was principally given by your boss and  
19 Mr. Dominguez, correct?

20 A. That is correct.

21 Q. And that presentation was devoted to the  
22 topic of Exelon's litigation strategy in this case,  
23 correct?

24 A. That is correct.

25 Q. And as part of that discussion your

1 "proposal" was discussed, correct?

2 A. It was discussed to some degree, yes.

3 Q. And that's when Mr. Crane gave his  
4 approval for the position that you were taking in  
5 your testimony today, correct?

6 A. At the conclusion of that meeting after a  
7 broad discussion beyond any presentation by the  
8 way -- yes, Mr. Crane did give his approval to go  
9 forward with the testimony that included the  
10 commitment.

11 Q. Okay. And you don't recall at that  
12 meeting there being a discussion of the proposed  
13 price of any -- of any potential proposal, correct?

14 A. Price ranges were discussed but the  
15 specific price was not, but certainly price and  
16 ranges were definitely discussed.

17 Q. But you don't recall a price being  
18 discussed?

19 A. A specific price, no.

20 Q. Now, the proposal in quotes that you set  
21 forth in your testimony was not approved by Exelon's  
22 board to your knowledge, correct?

23 A. Not to my knowledge, no.

24 Q. Or even reviewed by part of the board,  
25 correct?

1 A. I believe Chris Crane is on the board.

2 Q. More than one individual on the board?

3 A. Not to my knowledge.

4 Q. Now, you are aware of something within  
5 Exelon called the Finance and Risk Committee,  
6 correct?

7 A. I am aware of the committee, yes.

8 Q. And there are nine members of that  
9 committee, seven of which are independent board  
10 members, correct?

11 A. You showed me something in the deposition  
12 with that, but that would be the extent of my  
13 knowledge.

14 Q. So you agree?

15 A. I will -- I will go with the fact that is  
16 correct, yes, based on seeing the document at the  
17 deposition.

18 Q. Okay.

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

20 EXAMINER PRICE: You may.

21 MR. KUTIK: At this time I would like to  
22 have marked as Company Exhibit 157 a page from the  
23 Exelon website entitled "Board Committees, Finance  
24 and Risk Committee."

25 EXAMINER PRICE: It will be so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. (By Mr. Kutik) Mr. Campbell, I have shown  
3 you what has been marked as company Exhibit 157. You  
4 recognize that as some information from Exelon's web  
5 page regarding the Finance and Risk Committee, do you  
6 not?

7 A. Yes.

8 Q. And there is a line about two-thirds of  
9 the way down that says, "Finance and Risk Committee  
10 Charter." Do you see that?

11 A. I do.

12 Q. And that would be something that a viewer  
13 on the web page could click on to review the charter,  
14 correct?

15 A. I would assume so. It looks like an icon  
16 you can click.

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

18 EXAMINER PRICE: You may.

19 MR. KUTIK: Your Honor, we would like to  
20 have marked at this time as Company Exhibit 158 the  
21 Exelon Corporation Board of Director's Finance and  
22 Risk Committee charter.

23 EXAMINER PRICE: It will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. (By Mr. Kutik) Mr. Campbell, I have

1 handed you what has been marked for identification as  
2 Company Exhibit 158. Do you recognize that as the  
3 Finance and Risk Committee charter for Exelon?

4 A. That's what it says on the front, yes.

5 Q. And in this document on page 3 there is  
6 some information about the responsibilities of the  
7 committee with respect to transactions, is there not?

8 A. There is a subheading entitled  
9 "Transactions."

10 Q. Right. And No. 2 under that says,  
11 "Consistent with the Delegation of Authority approved  
12 by the Board, approve transactions involving the sale  
13 of energy, standard load serving transactions, and  
14 other commodities tolling/power purchase agreements,  
15 capacity and weather derivatives, and similar  
16 transactions." Do you see that?

17 MS. WILLIS: Objection.

18 MR. PETRICOFF: Your Honor --

19 EXAMINER PRICE: Ms. Willis.

20 MS. WILLIS: Your Honor, I would object  
21 because I think there has been no foundation laid  
22 that this witness has knowledge of and expertise with  
23 respect to this document. He said it says yes, it is  
24 the Finance and Risk Committee charter, and at this  
25 point we have not -- counsel for FE has not

1 established that the witness has knowledge on this  
2 document so there's no proper foundation.

3 EXAMINER PRICE: Mr. Petricoff.

4 MR. PETRICOFF: Your Honor, that's  
5 exactly where I was going, your Honor. All he said  
6 was he identified that that's what the document said  
7 at the top, and that when he turned to page 3, that's  
8 what it said on page 3. But he has not said that  
9 either he's familiar with it or what role, if any,  
10 this document plays in the operation of Exelon.

11 EXAMINER PRICE: I think with respect to  
12 your second question, Mr. Kutik hasn't had a chance  
13 to ask him that question yet, so we will give  
14 Mr. Kutik some leeway to lay a proper foundation for  
15 this document.

16 Q. (By Mr. Kutik) Do you recognize this as  
17 the charter?

18 A. The first time I saw this document was at  
19 the deposition last week, but, again, it does say  
20 it's the charter on the front so I'm assuming that's  
21 what you've downloaded from the website.

22 Q. You don't dispute this is the charter, do  
23 you not?

24 A. I don't have any grounds to dispute this  
25 is the charter.



1           Q.    Now, with respect to the proposition that  
2   we were looking at, part of the charter of the  
3   Finance and Risk Committee is to approve types of  
4   transactions like the sale of energy, purchase power  
5   agreements, and the sale of capacity, correct?

6           A.    That's what it says on page 3.

7           Q.    And you are not aware that the Finance  
8   and Risk Committee has approved the "proposal" that  
9   was included in your testimony, correct?

10          A.    I am not aware of that, no.

11               EXAMINER PRICE:  Mr. Campbell.

12               THE WITNESS:  Yes.

13               EXAMINER PRICE:  You have no knowledge of  
14   the finance committee charter; is that correct?

15               THE WITNESS:  No.

16               EXAMINER PRICE:  You have no knowledge of  
17   what transactions they are required to approve; is  
18   that correct?

19               THE WITNESS:  I have no knowledge of  
20   that.

21               EXAMINER PRICE:  And you have no  
22   knowledge whether the transaction you offered has  
23   been approved by the finance committee.

24               THE WITNESS:  That is correct.

25               EXAMINER PRICE:  So you don't know

1 whether that transaction has been properly approved.

2 THE WITNESS: I know that the CEO  
3 approved us going forward with our proposal, so.

4 EXAMINER PRICE: That's not what I asked.  
5 I asked do you know -- do you know whether the  
6 transaction has been properly approved?

7 THE WITNESS: I don't know that. That's  
8 a legal question. I don't know the answer to that.  
9 Corporate governance question, I just don't know the  
10 answer to that.

11 EXAMINER PRICE: Thank you.

12 Mr. Kutik.

13 Q. (By Mr. Kutik) Now, you are aware of the  
14 companies' SSO contracts?

15 A. Yes.

16 Q. Exelon provides service under those  
17 contracts, do they not?

18 A. We do. We supply a large amount of load  
19 in the state.

20 Q. There are performance guarantees in that  
21 SSO contract, are there not?

22 A. Yeah. I have some recollection of that.  
23 It sounds right.

24 MR. KUTIK: Your Honor, may I approach?

25 EXAMINER PRICE: You may.

1 MR. KUTIK: Your Honor, I believe this  
2 might already be part of the record but I want to  
3 mark as Company Exhibit 159, Attachment A-1, which is  
4 the Master Standard Service Offer Supply Agreement.

5 EXAMINER PRICE: It will be so marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. (By Mr. Kutik) Mr. Campbell, I have  
8 handed you something identified as Company  
9 Exhibit 159. Do you recognize this as the SSO  
10 contract that was mentioned?

11 A. I recognize this as an SSO contract, yes.

12 Q. And let me refer you to page 31 of the  
13 document, and there we see an article that's entitled  
14 "Creditworthiness; Performance Assurance." Do you  
15 see that?

16 A. Yes.

17 Q. And as we go through the following pages,  
18 there are various references to different types of  
19 definitions around requirements, are there not?

20 A. I would have to review.

21 Q. Let me see if I can shortcut this. Let  
22 me have you refer to page 38, Section 6.5. And  
23 that's the section entitled "Market-to-Market Credit  
24 Exposure Methodology." Do you see that?

25 A. I do.

1           Q.    And do you understand that generally  
2 deals with having to provide collateral to cover the  
3 spread between the contract price and the market  
4 price over the rest of the contract term?

5           A.    I would have to read it.  I'm not  
6 familiar with this particular provision.

7           Q.    All right.  But are you aware of such  
8 provisions?

9           A.    Frankly, no.

10          Q.    Okay.  So you are not aware that there  
11 are -- there is as a common term in power agreements  
12 collateral requirements that deal with  
13 market-to-market credit methodologies?

14               MR. PETRICOFF:  Your Honor, objection.

15               MS. WILLIS:  Objection.

16               MR. PETRICOFF:  The question is based on  
17 a premise that that fact exists, and that fact is not  
18 in existence in this record, the fact being that the  
19 "market to market" is a common term in contracts.

20               EXAMINER PRICE:  Ms. Grady.

21               MS. WILLIS:  Same grounds, your Honor.  
22 By making a statement that's not in the record  
23 doesn't make it so in the record, and this witness  
24 already indicated he had no knowledge of this  
25 particular agreement and was not familiar with it, so

1 I think it's an improper question.

2 MR. KUTIK: Actually, he said he was  
3 familiar with the contract. He wasn't familiar with  
4 these particular terms, but he was familiar with the  
5 contract.

6 EXAMINER PRICE: He can answer if he  
7 knows. Overruled.

8 A. I don't know.

9 Q. Have you ever heard the term "market to  
10 market" before?

11 A. Sure.

12 Q. And you have heard of that in the context  
13 of discussion of collateral requirements and  
14 performance guarantees?

15 A. No. I typically think of it in terms of  
16 our -- we have some credits, internal processes, and  
17 also, you know, the way traders and other people on  
18 the floor mark their book at the end of the day for  
19 accounting purposes.

20 Q. So would it be correct to say you're not  
21 aware that there are credit requirements in energy or  
22 power contracts which require collateral to be  
23 established for the spread between market prices and  
24 contract prices for the rest of the term of the  
25 contract?

1           A.    I am not aware of provisions with that  
2 level of specificity.

3           Q.    So the answer to my question is you are  
4 not aware.

5           A.    Right.

6           Q.    Now, would it be also correct to say that  
7 you had no discussions with anyone about the need for  
8 performance guarantees as part of the "proposal" that  
9 you have in your testimony, correct?

10          A.    Correct.

11          Q.    And you are not aware of any work done to  
12 determine whether Exelon would be able to provide  
13 sufficient credit facilities or performance  
14 guarantees as part of a potential offer?

15          A.    I am not aware of any such work being  
16 done.

17          Q.    Now, as part -- back up.

18                Would it be correct to say that you did  
19 not make the proposal that's put forth in your  
20 testimony directly to the companies prior to the  
21 filing of your second supplemental testimony?

22          A.    That's correct.

23          Q.    Now, you are also aware that Exelon had  
24 made a similar offer as part of its litigation  
25 strategy in another case before the Commission, that

1 case involving AEP Ohio, correct?

2 A. I'm generally aware of that, yes. That  
3 was a topic of discussion.

4 Q. And in that case would it be correct to  
5 say that Exelon had actually made an offer directly  
6 to AEP or one of its affiliates before the filing of  
7 testimony by Exelon witnesses?

8 A. I don't -- I don't know enough of the  
9 procedural details. I wasn't even employed with  
10 Exelon back then I don't think, so no.

11 MR. KUTIK: Your Honor, I would like to  
12 mark now as two documents, Company Exhibit 160 and  
13 Company Exhibit 161. 160 would be the Direct  
14 Testimony of Joseph Dominguez on behalf of Exelon  
15 Generation Company in a case before this Commission,  
16 Case No. 11-346-EL-SSO, et al.

17 EXAMINER PRICE: It will be so marked.

18 MR. KUTIK: And as 161 we would like to  
19 have marked the Direct Testimony of David I. Fein on  
20 behalf of Intervenor Constellation NewEnergy,  
21 Constellation Energy Commodities Group, Inc., Exelon  
22 Energy Company, Exelon Generation Company.

23 EXAMINER PRICE: Is that in the same  
24 case?

25 MR. KUTIK: Yes, in that case, and both

1 are the public versions.

2 EXAMINER PRICE: It will be so marked.

3 (EXHIBITS MARKED FOR IDENTIFICATION.)

4 Q. (By Mr. Kutik) Mr. Campbell, I have  
5 handed you what's been marked for identification as  
6 Company Exhibits 60 and 61 -- 160, and 161, the  
7 testimonies that were filed in the AEP case  
8 11-346-EL-SSO. Have you ever seen those before?

9 A. I have to dig into my memory bank here.  
10 I probably have reviewed at some point in the last  
11 few years the David Fein testimony. I know that at  
12 one point a few years ago I did review past testimony  
13 submitted by Joe Dominguez, but I am not sure if it's  
14 this specific testimony. The 2011 date seems like I  
15 may have read a more recent testimony than that, but  
16 I could be wrong.

17 Q. All right. So you seem to remember  
18 reading Mr. Fein's testimony, but you don't remember  
19 Mr. Dominguez's testimony?

20 A. Yeah. I mean, I believe I have read  
21 Mr. Fein's testimony. I probably did that a few  
22 years ago.

23 Q. Okay.

24 MR. KUTIK: Your Honor, we would ask that  
25 the Bench and the Commission take administrative



1 notice in this proceeding of the Direct Testimony of  
2 Joseph Dominguez in Case No. 11-346.

3 EXAMINER PRICE: Any objections?

4 MR. PETRICOFF: Yes, your Honor. I want  
5 to see what it's used for first. It may not be  
6 relevant.

7 EXAMINER PRICE: We'll defer ruling until  
8 the end of Mr. Campbell's testimony.

9 MR. KUTIK: Well, let me -- let me go to  
10 the document then, your Honor.

11 Q. (By Mr. Kutik) Mr. Campbell, I would like  
12 you to refer to page 6 of Mr. Dominguez's testimony.  
13 And do you see a reference there starting on line 3  
14 of actual offers that were made by Exelon Generation  
15 to American Electric Power Service Corporation?

16 A. I do see that, yes.

17 Q. Now, let me now refer to you Mr. Fein's  
18 testimony.

19 A. Okay.

20 Q. And specifically on page 18, starting at  
21 line 3, it refers to an Exelon offer that was  
22 rejected, correct?

23 A. I'm sorry, which line again?

24 Q. I'm sorry, page 18, line 3, the sentence  
25 that starts there. It talks about an Exelon offer of

1 capacity and that AEPSC rejected this offer.

2 A. I do see that, yes.

3 Q. Now, would it be fair to say that the  
4 real work in developing the "proposal" that appears  
5 in your testimony began after the filing of the third  
6 supplemental stipulation in this case?

7 A. Yes.

8 Q. And you were not involved in determining  
9 what the price would be for that proposal.

10 A. I was not, no.

11 Q. And, in fact, you don't know exactly who  
12 within Exelon actually analyzed the prices that would  
13 be included.

14 A. That's fair to say.

15 Q. Okay. But you saw an analysis of that  
16 price information, correct?

17 A. I saw an analysis, yes.

18 Q. And at your deposition we talked about an  
19 e-mail that you had received from one of your  
20 colleagues, a man by the name of Scott Brown,  
21 correct?

22 A. Correct.

23 Q. And I had asked you during the deposition  
24 and asked your counsel at the deposition to provide  
25 me with that e-mail.

1 A. Correct.

2 Q. And your counsel did do that, correct?

3 A. Yes, we did.

4 MR. KUTIK: Your Honor, at this time I  
5 would like to have marked as Company Exhibit 162  
6 confidential a document which begins as a letter from  
7 Ms. Petrucci to me dated January 13, 2016, and  
8 attaching an e-mail from Scott Brown to Mr. Campbell  
9 dated December 21, 2015.

10 EXAMINER PRICE: It will be so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. KUTIK: May I approach?

13 EXAMINER PRICE: You may.

14 Q. (By Mr. Kutik) Mr. Campbell --

15 MR. PETRICOFF: Your Honor, at this time  
16 I'm a bit concerned about this because it has  
17 confidential information on it, that only people who  
18 have signed the confidentiality agreement receive it  
19 because this does have the price information.

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

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

22 (Discussion off the record.)

23 EXAMINER PRICE: We are going to go back  
24 on the record.

25 We have passed out confidential

1 information to counsel sitting at counsel tables.

2 Mr. Kurtz, do you agree to sign a  
3 confidentiality agreement with Mr. Petricoff's  
4 agreement?

5 MR. KURTZ: Yes, your Honor.

6 EXAMINER PRICE: Ms. Bojko?

7 MS. BOJKO: Yes, Your Honor.

8 EXAMINER PRICE: Mr. Darr?

9 MR. DARR: Yes, your Honor.

10 EXAMINER PRICE: Let's proceed.

11 Q. (By Mr. Kutik) Mr. Campbell, I have  
12 handed you what's been marked as Exhibit 162  
13 Confidential. Did you see the letter Ms. Petrucci  
14 sent me?

15 A. I don't think so.

16 Q. All right. But you recognize what's  
17 attached to the letter, the E-mail from Mr. Brown to  
18 you?

19 A. I do.

20 Q. And this was the price analysis that you  
21 had received?

22 A. This was a pricing update, I guess, is  
23 how I would call it.

24 Q. Okay. But when you were talking about a  
25 price analysis in your deposition, this is what you

1 were referring to, correct?

2 A. This is the analysis, yes, that I was  
3 speaking about in my deposition, yes.

4 Q. And would it be fair to say that this  
5 analysis doesn't include any information about  
6 Exelon's costs?

7 A. I see the term "hedge costs" on the first  
8 page, but, yes. I mean, if you are talking about,  
9 like, costs, unit costs or things of that nature, no.

10 Q. And would it be fair to say this analysis  
11 says nothing about what returns Exelon might make at  
12 certain price levels?

13 A. I don't know one way or another.

14 Q. All right. You don't see it, correct?

15 A. Not that I can confirmatively say, no.

16 Q. And would it be fair to say that the  
17 price shown in your testimony might be very well  
18 below Exelon's costs?

19 A. I don't think so.

20 Q. Well, do you have a copy of your  
21 deposition?

22 A. I do, yes.

23 MR. KUTIK: May I approach, your Honor,  
24 to provide a copy to the Bench?

25 EXAMINER PRICE: You may.

1           Q.    (By Mr. Kutik) Let me refer you to page  
2   97 of your deposition -- first, you recall being  
3   deposed?

4           A.    I do.

5           Q.    On January 12, 2016, correct?

6           A.    Yes.

7           Q.    And you have before you what is the  
8   transcript of that deposition, correct?

9           A.    Yes.

10          Q.    At the deposition you swore to tell the  
11   truth.

12          A.    Yes.

13          Q.    Let me refer you to page 97 of your  
14   deposition. And starting at line 23 did I ask you  
15   the following question and you give the following  
16   answer:

17                   "Question: Okay. So the prices that  
18   would be offered here might very well be below  
19   Exelon's costs?

20                   "Answer. I mean, I guess they could be  
21   but that's frankly irrelevant because they would be  
22   above what we see as market value."

23                   Is that correct?

24          A.    That is what I said, yes.

25                   MS. WILLIS: Your Honor, could I have

1 both his answer and the question preceding that  
2 reread so I can compare that to the --

3 EXAMINER PRICE: We may. Could we have  
4 the preceding question and answer, please?

5 MS. WILLIS: Thank you.

6 (Record read.)

7 MR. KUTIK: May I proceed, your Honor?

8 EXAMINER PRICE: Please proceed,  
9 Mr. Kutik.

10 MR. KUTIK: Thank you.

11 Q. (By Mr. Kutik) Now, the "proposal" you  
12 include in your testimony -- put that in quotes  
13 again -- is not a firm proposal, correct?

14 A. It is a commitment to compete in the  
15 competitive process at a price no greater than the  
16 price set forth in the testimony. It's a firm  
17 commitment.

18 Q. Let me try it a different way. You don't  
19 know whether the companies could accept this offer  
20 and make it binding on Exelon.

21 A. I have been told they would be happy to  
22 accept it if they got it.

23 Q. That's not the answer to my question.  
24 You don't know whether the companies could accept  
25 this offer and make it binding on Exelon, correct?

1           A.    Oh, the companies, I see. I guess that's  
2   a legal question, so, yeah, I don't know legally, you  
3   know, what the companies are or are not allowed to do  
4   as far as binding themselves. But they bind  
5   themselves to SSO contracts, so I'm assuming they  
6   could bind themselves to something like this at some  
7   point.

8           Q.    Let me refer you back to your deposition,  
9   sir, page 61.

10           MR. PETRICOFF: I'm sorry, could we have  
11   the page number?

12           MR. KUTIK: 61.

13           Q.    And starting at line 17 did I not ask you  
14   the following question and did you not give the  
15   following answer:

16           "Question: Right. So if the companies  
17   decided to say to you or Exelon we accept your offer  
18   that would not be binding on Exelon, correct?

19           "Answer: I don't -- I don't know the  
20   answer to that. In other words, I think we -- I  
21   don't know. I mean, if you want to see how firm the  
22   commitment is, I would say go ahead and accept it."

23           That was your answer in your deposition,  
24   correct?

25           MS. WILLIS: Objection.



1 EXAMINER PRICE: Grounds?

2 MS. WILLIS: It's improper impeachment.

3 EXAMINER PRICE: Overruled.

4 Q. Is that correct, that was your deposition  
5 testimony?

6 A. That was my testimony, yes.

7 Q. Now, wouldn't it be correct to term  
8 what's in your testimony as an indicative offer?

9 A. I wouldn't agree with that. I think it's  
10 a commitment to participate in a competitive process  
11 at a particular price in an amount no greater than a  
12 particular price. We could very well make an offer  
13 lower than the SSO price.

14 Q. When you were seeking some information  
15 about what the pricing might be, you set out the  
16 terms that you would include in your testimony,  
17 correct?

18 A. That's correct.

19 Q. And you provided that information to  
20 Mr. Brown, who then provided it to others within the  
21 Exelon organization, correct?

22 A. That's correct.

23 Q. Let's go back to Exhibit 162. And let me  
24 direct your attention to the page that if you turn it  
25 sideways says "Term Sheet."

1 A. Okay.

2 Q. And there are terms that are on that term  
3 sheet, correct?

4 A. Correct.

5 Q. And under the words "term sheet" and  
6 "Constellation" and "Confidential and Proprietary,"  
7 there is a three-word term there. Do you see that?

8 A. I do.

9 Q. You believe those three words are  
10 confidential?

11 MR. PETRICOFF: I'm sorry, could you  
12 direct us to that again?

13 Q. The three words underneath  
14 "Constellation" and "Confidential and Proprietary"  
15 and before the date, do you see those three words?

16 A. Before "Confidential and Proprietary"?

17 Q. No, after.

18 A. Do I believe that those are confidential?

19 Q. Those three words.

20 A. No.

21 Q. Okay. And those three words are  
22 "Indicative Term Sheet," correct?

23 A. That's what it says.

24 Q. Now, would it be fair to say that any  
25 commitment that was made by Exelon here is contingent

1 on there being a competitive bidding process?

2 A. That is how I lay out my testimony, yes.

3 Q. So Exelon is not making an offer or  
4 commitment outside of a competitive bidding process,  
5 correct?

6 A. We are making -- we are making a  
7 commitment to offer into a competitive bidding  
8 process at a certain level, no greater than a certain  
9 level.

10 Q. So let's go back to my question. My  
11 question is Exelon is not making an offer or  
12 commitment outside of a competitive bidding process,  
13 correct?

14 A. I believe there is language in my  
15 testimony that says the Commission is welcome to  
16 accept the offer, and I don't want to weigh out that  
17 we wouldn't transact if someone were to accept the  
18 offer outright. I don't want to weigh that out. I  
19 don't think my testimony 100 percent weighs that out.

20 But, yes, the testimony is laid out in a  
21 structure where we want a competitive process. We  
22 think that's best for Ohio. We think that's best for  
23 our Ohio customers, and we are willing to make a  
24 commitment to participate in that competitive process  
25 at a certain -- with an offer that's no greater than

1     what I have in my testimony.

2             Q.     All right.  So let's go back to my  
3     question again.

4             MR. PETRICOFF:  Objection to the phrase  
5     "let's go back to my question."  He had a question  
6     that was answered.  That should be struck.

7             EXAMINER PRICE:  We will deny the motion  
8     to strike.

9             Go ahead and ask your question,  
10     Mr. Kutik.

11            Q.     (By Mr. Kutik) Isn't it true that Exelon  
12     is not making an offer or a commitment outside of a  
13     competitive bidding process?

14            A.     That is the way the testimony is  
15     structured.

16            Q.     Thank you.  Now, the competitive bidding  
17     process that you would envision would be for the  
18     product that you describe in your testimony, correct?

19            A.     My testimony was one example of a  
20     product.  You know, we scoped something out that we  
21     thought was comparable that could -- that could  
22     attract multiple market participants but it doesn't  
23     have to be that specific product.

24            Q.     But the one you envision would be for the  
25     product that you describe in your testimony, correct?

1           A.    We thought that was a good comparable  
2 product, yes.

3           Q.    Okay.  And the product that you describe  
4 in your testimony, you would agree with me that's  
5 different than what FES has proposed under the  
6 proposed transaction between FES and the companies?

7           A.    I would agree with that, yes.

8           Q.    For example, your proposal provides  
9 round-the-clock energy, correct?

10          A.    Right.  We provide, I think, superior  
11 rate stability through round-the-clock, fixed price,  
12 and fixed quantity, yes.

13               MR. KUTIK:  I move to strike everything  
14 but the word "yes."

15               MR. PETRICOFF:  Your Honor, could we have  
16 the question read back?

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

19               (Record read.)

20               EXAMINER PRICE:  We are going to deny the  
21 motion to strike.

22           Q.    The answer to my question was yes,  
23 correct?

24           A.    Correct.

25           Q.    And under what FES proposes, the energy

1 would be provided through units that could be  
2 economically dispatched.

3 A. FES is providing a unit --  
4 unit-contingent product to FirstEnergy.

5 Q. So is the answer to my question yes?

6 A. The answer would be yes.

7 Q. And you understand that under the  
8 proposed transaction with FES, the companies would  
9 have the right to dispatch units, correct?

10 A. Correct.

11 Q. And they would have the right to dispatch  
12 units at certain times, for example, when -- or not  
13 to dispatch units at certain times, for example, when  
14 variable costs were greater than the LMP?

15 A. I mean, that would deprive revenues, but  
16 yes, I think they could do that. They would have  
17 that option, yes.

18 Q. And they couldn't do that, that is, not  
19 take power, under the around-the-clock scenario if  
20 the LMP were less than the contract price, correct?

21 A. Correct.

22 MR. KUTIK: May I have a moment, your  
23 Honor?

24 EXAMINER PRICE: You may.

25 MR. KUTIK: Your Honor, we would like to

1 have marked at this time as Company Exhibit 163  
2 Mr. Campbell's workpaper.

3 EXAMINER PRICE: It will be so marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MR. KUTIK: May I approach?

6 EXAMINER PRICE: You may.

7 MR. KUTIK: And I neglected to properly  
8 mark this, your Honor. It should be 163  
9 Confidential.

10 EXAMINER PRICE: It will be marked as 163  
11 Confidential.

12 Q. (By Mr. Kutik) So, Mr. Campbell, I have  
13 handed you what has been marked for identification as  
14 Company Exhibit 163 Confidential. Do you recognize  
15 this as your workpaper?

16 A. I do.

17 Q. And one of the things this thing shows is  
18 two different calculations. One calculation  
19 basically shows taking the number of megawatt-hours  
20 and dividing them equally over the number of hours  
21 and numbers of years, correct?

22 A. That's right.

23 Q. And the other calculation shows more in  
24 line with the megawatt-hours that were projected by  
25 the companies, correct?

1           A.    That is correct.

2           Q.    And so there may be times, could be days,  
3    could be months, could be hours, where under the FES  
4    proposal there would be more megawatts provided --  
5    megawatt-hours provided then under the  
6    around-the-clock proposal, correct?

7           A.    FES's -- or FE's numbers are projections,  
8    so yes, the projections may not play out as they  
9    project, correct.

10          Q.    But assuming those projections were  
11    accurate, we understand the caveat with that, if the  
12    companies' projections were accurate compared to the  
13    round-the-clock, there would be times where there  
14    would be more megawatt-hours being sold, bought and  
15    sold, under the FES transaction than under what  
16    you --

17          A.    Oh, I see what you are saying, that hour  
18    to hour, day to day there could be variability, yes.

19          Q.    Sometimes more under FES, sometimes less  
20    under FES.

21          A.    Correct.

22          Q.    Okay.

23          A.    Less stability, yes.

24                MR. KUTIK: May I have a moment, your  
25    Honor?



1 EXAMINER PRICE: You may. Let's go off  
2 the record for a second.

3 (Discussion off the record.)

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

6 Q. (By Mr. Kutik) So let me -- just so we  
7 can see how this might work, let's assume a two-hour  
8 transaction. One is an around-the-clock transaction,  
9 one is a dispatchable transaction, and one  
10 megawatt-hour each hour is being -- is the subject of  
11 the transaction. Are you with me so far?

12 A. I am with you so far.

13 Q. And in the first hour the LMP is a  
14 hundred dollars per megawatt-hour, and the second  
15 hour, the LMP is \$10. Are you with me so far?

16 A. I'm with you.

17 Q. And let's take how the round-the-clock  
18 would work first. Let's take a round number, \$50 a  
19 megawatt-hour --

20 A. Okay.

21 Q. -- as a contract price.

22 A. Okay.

23 Q. Essentially what would happen under that  
24 is that the companies would pay \$100, and they would  
25 get --

1 A. \$50.

2 Q. For the two-hours?

3 A. I thought it was one hour. Sorry.

4 Q. So let me say it again. First hour there  
5 is 1 megawatt-hour being sold round the clock.

6 A. I'm with you.

7 Q. The companies buy, they get \$50. They  
8 get \$100. Second day -- or second hour they buy it  
9 for \$50, sell it for \$10, okay? And the math works  
10 out that the companies, and if we had a rider RRS  
11 transaction, that would be \$10 charge -- or credit,  
12 rather, to customers, correct?

13 A. On the \$110 market revenues, yes.

14 Q. Now, let's come up with the same price,  
15 same potential megawatts available, but rather than  
16 having a contract price, we have a variable cost of  
17 \$50 per megawatt-hour. Are you with me so far?

18 A. Yes.

19 Q. All right. And so in the first hour the  
20 companies would dispatch or ask for the unit to be  
21 dispatched. They get \$100; they pay \$50, correct --  
22 they pay \$50, and they get \$100, correct?

23 A. If the contract price was \$50, then, yes.

24 Q. Because the contract price called for a  
25 variable cost, right?

1           A.    Okay, yes.

2           Q.    And let's say in the second hour they  
3 say, well, gee, the LMP is \$10. My variable cost is  
4 \$50. I am not going -- we are not going to  
5 discharge -- we are not going to dispatch. So under  
6 that scenario, the profit or the charge under rider  
7 RRS would be \$50, correct?

8           A.    I'm sorry, in the second -- in the second  
9 hour they decide not to run?

10          Q.    Right.

11          A.    So the charge to -- there would be no  
12 offsetting revenues, correct.

13          Q.    And no costs.

14          A.    Well, there would be a cost. They have  
15 the PPA costs.

16          Q.    Well, again, if they have no -- if the  
17 dispatch -- the dispatch unit isn't running, they are  
18 not incurring the variable cost, right?

19          A.    My understanding of the cost buildup is  
20 it includes costs that will be collected regardless  
21 of whether a unit runs or not, O&M, maintenance, and  
22 all these things need to be paid over the contract.

23               MR. PETRICOFF: Your Honor --

24          A.    It wouldn't be zero, that's for sure.

25          Q.    Under my scenario they would not be

1 incurring any variable costs because the unit isn't  
2 running, correct?

3 A. Well, I don't know enough about the terms  
4 of your contract, your PPA contract, how that cost is  
5 established. Is it only -- is it only established  
6 when the unit runs?

7 Q. Let's assume that was the case.

8 A. Yes, then that would be, yes.

9 Q. Let's take another -- let's just change  
10 the hypothetical a little bit, again, for the  
11 dispatchable situation. Let's assume that they could  
12 dispatch two hours, two megawatt-hours, in the first  
13 hour and no megawatt-hours in the second hour. That  
14 would be -- they would get \$200 and the profit would  
15 be \$150.

16 A. Right.

17 Q. Correct, that's the way that would look.

18 A. Right.

19 Q. Now, would it be correct to say that  
20 Exelon does not propose that the product include --  
21 the product that you are talking about in your  
22 testimony would not include capacity delivered into  
23 ATSI?

24 A. That is correct. The capacity would be  
25 cleared. The rest of RTO capacity, it would be an

1 auction -- an auction-specific product, not a  
2 unit-specific product, so the capacity would be  
3 delivered. The more general rest of RTO capacity  
4 probably would be delivered into the FE account and  
5 out of the Constellation account, but it would not be  
6 ATSI specific.

7 Q. So, again, the capacity would not be  
8 delivered into ATSI, correct?

9 A. Correct.

10 Q. Okay. Now, that's contrary to your  
11 testimony, is it not?

12 A. Well, the capacity would be delivered to  
13 FirstEnergy. It would be from our portfolio of  
14 capacity that clears in the market, and we don't have  
15 any capacity in ATSI so, therefore, the capacity we  
16 would be delivering into the FE account would be  
17 capacity that's probably somewhere outside of --  
18 outside of ATSI.

19 Now, that said, I don't want to preclude  
20 we could do a bilateral contract with someone in  
21 ATSI, and that would be part of our portfolio and we  
22 could deliver that. But bottom line, I don't think  
23 we envision -- we envision it coming from our Exelon  
24 portfolio of cleared capacity. We would be  
25 transferring those rights to the FE account, and we

1 don't have capacity in ATSI so, yes, it would be  
2 outside ATSI.

3 Q. Well, my question to you was isn't that  
4 contrary to your testimony?

5 A. I don't know.

6 Q. Let me --

7 A. What I said is right, though.

8 Q. But it wasn't responsive to my question.  
9 So let's refer to page 6 of your testimony, your  
10 second supplemental testimony.

11 A. Okay.

12 Q. And at question and answer 13, you  
13 explain your offer, right?

14 A. So sorry. Which page are we on?

15 Q. Page 6.

16 A. Page 6.

17 Q. Question and answer 13. I asked you to  
18 explain your offer.

19 A. I may have an earlier version. It  
20 doesn't have the numbers, the questions aren't  
21 numbered.

22 Q. I'm sorry, sir. I am talking about your  
23 second supplemental testimony.

24 A. I thought you were referring to the  
25 deposition. Sorry.

8060

1 Q. I can impeach you with that, too.

2 EXAMINER PRICE: Let's not jump the gun.

3 Q. Do you have it in front of you, sir?

4 A. Yeah. Let me -- second supplemental  
5 testimony, Q and A 13.

6 Q. And, again, sir, my question to you  
7 there, you explain the offer, correct?

8 A. Yes.

9 Q. And you say, "I requested that ExGen  
10 develop a quote for an eight year bundled fixed price  
11 capacity for energy "-- excuse me, fixed -- say it  
12 again.

13 "I requested that ExGen develop a quote  
14 for an eight year bundled fixed price for energy and  
15 capacity delivered to ATSI," correct?

16 A. Correct.

17 Q. All right. Now, neither the energy nor  
18 the capacity would be unit specific, correct?

19 A. Under your proposed product, that is  
20 correct.

21 Q. And the capacity that Exelon would  
22 include as a product would include a fungible,  
23 unforced capacity rest of RTO product, correct?

24 A. Correct.

25 Q. Now, you would envision the transaction

1 working similar to the SSO supply, correct?

2 A. For energy or capacity are we talking  
3 about?

4 Q. Well, generally.

5 A. For -- on the energy side it would  
6 definitely work the same as SSO supply. We have been  
7 doing it for years. Energy goes into the FE account.

8 Q. How about for capacity?

9 A. Capacity would be a little different than  
10 SSO supply because the -- the way the SSO supply  
11 works, the supplier usually just essentially pays the  
12 capacity on behalf of the load they serve.

13 Q. Right.

14 A. Here we are talking about actually  
15 delivering unforced capacity rest of RTO pricing into  
16 the FE account. And my testimony should have said  
17 "to FE," not "to ATSI." But, yeah, so I just wanted  
18 to clarify that.

19 Q. Would capacity be delivered through  
20 something called In, I-N, schedule?

21 A. PJM InSchedule, e-Schedule and  
22 InSchedule.

23 MR. KUTIK: Let me have this marked, your  
24 Honor, as the next exhibit, Company Exhibit 164, a  
25 document entitled "PJM InSchedule User Guide,



1 Effective Date, June 1, 2015."

2 EXAMINER PRICE: It will be so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. KUTIK: May I approach?

5 EXAMINER PRICE: You may.

6 Q. (By Mr. Kutik) Mr. Campbell, you have  
7 164. Do you recognize this as the PJM InSchedule  
8 User Guide?

9 A. I have not seen this document before, but  
10 that is what it says it is, yes.

11 MR. KUTIK: Your Honor, we ask that the  
12 Bench take administrative notice of this document.

13 EXAMINER PRICE: Objections?

14 MR. PETRICOFF: Your Honor, at this point  
15 if he has not -- if we cannot identify it, then we  
16 would object to it because it's not clear. There  
17 could be series, there could be time differences. If  
18 he doesn't recognize it, we would object.

19 MS. WILLIS: And I would on behalf of OCC  
20 object on grounds of relevancy. I don't see how it's  
21 relevant.

22 EXAMINER PRICE: I imagine Mr. Kutik is  
23 going to make an effort to demonstrate its relevance.  
24 The question is is this a document we all rely upon.  
25 It's got a date. We have been relying upon PJM

1 documents throughout this proceeding, so we are going  
2 to go ahead and take administrative notice of it.

3 Q. (By Mr. Kutik) Let me refer you, sir, to  
4 page 3 of the document.

5 A. Okay.

6 Q. And there is some text there that says  
7 "About This User Guide."

8 A. Yes.

9 Q. Okay. And it says, basically, the second  
10 paragraph there, "PJM InSchedule supports the  
11 Interchange Energy Market and provides the ability to  
12 create PJM internal energy contracts and schedules."  
13 Do you see that?

14 A. Correct.

15 Q. Reading that, do you think that the  
16 InSchedule does not deal with capacity but only deals  
17 with energy?

18 A. Yeah. I believe there's a comparable  
19 version of the InSchedule called, like, IN eRPM, or  
20 something like. I think that's on the capacity side.  
21 My understanding they work very similarly.

22 Q. All right. Let me refer --

23 MR. KUTIK: Let me now at this time, your  
24 Honor, have marked as Company Exhibit 165, "PJM eRPM  
25 Users Guide" dated September 7, 2012.

1 MS. WILLIS: Your Honor, if he's done  
2 with this document, I would renew my objection on  
3 relevancy.

4 EXAMINER PRICE: Mr. Kutik.

5 MR. KUTIK: Well, your Honor, I believe  
6 the witness is indicating that the InSchedule may  
7 have something to do with capacity prices, and I  
8 think we have just established it doesn't. I think  
9 his prior testimony, your Honor, was either the  
10 InSchedule or the e-schedules. Now that we have  
11 eliminated the InSchedule, now we're going to talk  
12 about the e-schedule.

13 MR. PETRICOFF: But now the question  
14 becomes continuing to take administrative notice of  
15 this document, and now that we've seen that this  
16 document is irrelevant, then we shouldn't take  
17 administrative notice of it.

18 EXAMINER PRICE: He quoted from the  
19 document. I mean, Mr. Kutik is correct. He gave a  
20 qualified answer. He says one or the other. We've  
21 just demonstrated it's not this, and Mr. Kutik is  
22 correct that he quoted from this document so we need  
23 this document to explain where the quote came from.

24 MS. WILLIS: Your Honor, if I may.

25 EXAMINER PRICE: You may.

1 MS. WILLIS: It would seem with respect  
2 to this entire document, if we took the sentence,  
3 then that would be sufficient. If that's the only  
4 use of it, this document, is that particular  
5 sentence, I would object to the entire document  
6 coming in. If your Honors rule that one sentence is  
7 relevant, then let's just use -- leave the one  
8 sentence being administratively noticed.

9 EXAMINER PRICE: Well, what's in this  
10 document that's got you so worried?

11 MS. WILLIS: I don't know what they are  
12 going to use it for. They asked one question on one  
13 page as to one sentence, and we will probably find in  
14 the brief many, many references to it, so I don't  
15 know.

16 MR. KUTIK: Should we to that, your  
17 Honor, as you have done in the past, they can make  
18 their argument on brief that that's improper.

19 EXAMINER PRICE: I agree. The objection  
20 is overruled. We have heard enough.

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

22 EXAMINER PRICE: You may.

23 Just in case the record is not clear we  
24 are marking this document Company Exhibit 165.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1           Q.     (By Mr. Kutik) Mr. Campbell, I have  
2 handed you what's been marked for identification as  
3 Company Exhibit 165. Do you recognize this as the  
4 eRPM Users Guide?

5           A.     Again, not a document I have any  
6 familiarity with, but that is what it says on the  
7 front of the cover.

8           MR. KUTIK: Your Honor, I ask that the  
9 Commission take administrative notice of the  
10 document.

11           EXAMINER PRICE: Objections?

12           MR. PETRICOFF: Yes, your Honor. I think  
13 we have to wait to hear the question as to whether  
14 this one is relevant. It could be at the end of the  
15 documents we find out that none of the series is  
16 relevant.

17           EXAMINER PRICE: We will defer ruling on  
18 that.

19           MR. KUTIK: All right.

20           Q.     (By Mr. Kutik) Mr. Campbell, could you  
21 turn to page 42? Now, we talked earlier about the  
22 capacity product would not be unit specific. Do you  
23 remember that?

24           A.     That is correct. It will be auction  
25 specific.

1           Q.    And where it says "Task 5: Create a  
2 Non-Unit Specific Transaction," do you see that?

3           A.    Yes.

4           Q.    And it says under this, "Non-Unit  
5 Specific Transactions will no longer be able to be  
6 reported to PJM after May 31, 2010." Are you aware  
7 of that?

8           A.    That's what it says.

9           Q.    It also says, "Non-Unit Specific  
10 Transactions are used to transfer financial  
11 settlements from one party to another and do not  
12 affect the resource position or load obligation of an  
13 entity." Do you see that?

14          A.    I do see that, yes.

15          Q.    So would it be your understanding that  
16 nonspecific capacity transactions are financial  
17 within PJM under the eRPM Users Guide?

18          A.    They would be transferring the financial  
19 attributes, so my understanding is we -- there are  
20 processes in place at PJM that will allow full  
21 delivery of the capacity attributes or the -- the  
22 capacity price attributes into the FirstEnergy  
23 account. So if you want --

24          Q.    The financial attributes.

25          A.    The financial attributes.

1 EXAMINER PRICE: You need to press the --  
2 put on your microphone again.

3 A. The settlement pricing associated with  
4 rest of RTO capacity, yes.

5 Q. Now, the capacity that would be provided,  
6 that you are proposing would be less than 3,000  
7 megawatts, correct?

8 A. Well, it was -- it would be a bundled --  
9 it's a bundled price that would include both the  
10 energy and the capacity at the -- at a fixed  
11 round-the-clock quantity up to -- up to 3,000  
12 megawatts, so it would be whatever quantity the  
13 Commission or FirstEnergy set in the competitive  
14 process.

15 Q. Okay. Now, in your workpaper you set out  
16 a quantity, correct?

17 A. Right. And that would be a quantity  
18 comparable to the actual projected output, yes.

19 Q. And that was less than 3,000 megawatts,  
20 correct?

21 A. It was, yes.

22 Q. And you understand that under the FES  
23 proposal, the capacity that would be available would  
24 be greater than 3,000 megawatts if all the units  
25 cleared, correct?

1           A.    If all the units cleared all their  
2 capacity, it probably would be greater than 3,000  
3 megawatts, yes.

4           Q.    Now, with regard to capacity performance  
5 requirements, would it be fair to say that you don't  
6 know whether they are associated with performance  
7 within a particular zone within PJM?

8           A.    Well, it's the unit-specific performance,  
9 so it would be specific to a unit.

10          Q.    And that would be specific to that unit  
11 that -- the unit's performance in a zone.

12          A.    Like for the penalty calculation or for  
13 the --

14          Q.    For the bonus calculation.

15          A.    That is -- that is consistent with my  
16 understanding, yes.

17          Q.    So would it be fair to say that a unit  
18 that was not located in ATSI would not be a unit that  
19 would be subject to capacity performance bonuses or  
20 penalties for performance within ATSI?

21          A.    Yes, that's a fair statement.

22          Q.    And none of Exelon's plants are within  
23 ATSI, correct?

24          A.    That is correct.

25          Q.    In fact, essentially all of Exelon's



1 no-carbon facilities are outside Ohio, correct?

2 A. That is correct.

3 Q. Now, the product that you are envisioning  
4 as part of this competitive bidding process, that  
5 would not include ancillary services either, correct?

6 A. That is correct.

7 Q. And would it be correct to say that you  
8 don't know whether Exelon has determined whether its  
9 proposal would support local reliability within ATSI?

10 A. That's correct.

11 Q. And you don't know whether the plants  
12 located outside ATSI could provide voltage support in  
13 ATSI?

14 A. Correct.

15 Q. And you don't know whether plants not  
16 located in ATSI could provide VAR support within  
17 ATSI.

18 A. Correct.

19 Q. Let me change topics and ask you a little  
20 bit about low-carbon portfolio standards, something  
21 you talk about in your testimony. No state that you  
22 are aware of has adopted such a standard, correct?

23 A. Correct.

24 Q. And you don't know if the Public  
25 Utilities Commission of Ohio could adopt such a

1 standard.

2 A. Correct.

3 Q. And the Illinois Commission hasn't  
4 adopted such a standard.

5 A. Correct.

6 Q. And you don't know why Exelon hasn't  
7 asked Illinois -- the Illinois Commission to adopt  
8 such a standard.

9 A. I don't know why, no.

10 Q. Now, under the Illinois proposal, a  
11 low-carbon resource could not both sell a REC and  
12 sell a low-carbon credit, correct, simultaneously?

13 A. Under the proposed legislation?

14 Q. Yes.

15 A. My understanding of the proposed  
16 legislation, yes, if you participate in the LCPS,  
17 then you would not be participating in other REC  
18 markets, no double dipping for megawatts. I guess  
19 you could do both, but certain portions of your --

20 Q. You can't do it simultaneously?

21 A. For the same megawatt output, yes.

22 Q. And under the Illinois proposal, there is  
23 a cap to the credit, correct?

24 A. There is -- there's a proposed cap in the  
25 legislation, yes.

1 Q. And would it be fair to say currently  
2 wind RECs, the price of a wind REC, would be higher  
3 than a proposed low-carbon portfolio standard credit?

4 A. I believe that was correct, yes.

5 Q. Changing topics, you've reviewed the  
6 discovery responses provided by the companies in this  
7 case, correct?

8 A. I did -- did review them, but not very  
9 closely.

10 Q. Right. And you relied on your counsel to  
11 get the information and ask the questions that might  
12 be relevant to understand the companies' proposal and  
13 the stipulations in this case, correct?

14 MS. WILLIS: Objection, relevance.

15 EXAMINER PRICE: Overruled.

16 A. Our counsel did handle the discovery  
17 piece of the stipulation, yes.

18 Q. And you don't recall anything that the  
19 companies were asked about the process of coming up  
20 with the proposed transaction or the negotiations  
21 between FES and the companies that you were not able  
22 to receive, correct?

23 MR. PETRICOFF: Your Honor, objection.  
24 Your Honor, this goes to what kind of information  
25 exchange there was between counsel and the witness.

1 If he wants to ask whether he knows about a specific  
2 document, that's fine, but he can't ask general  
3 questions as to what the preparation was.

4 EXAMINER PRICE: Can you respond,  
5 Mr. Kutik?

6 MR. KUTIK: Yes. He claims this was a  
7 hidden transaction in his testimony.

8 EXAMINER PRICE: Fair enough. Overruled.

9 A. I'm not aware.

10 Q. Okay.

11 A. It doesn't mean that there wasn't such a  
12 question.

13 Q. You are not aware.

14 A. I am not aware.

15 Q. Now, let me refer you to page 6 of your  
16 second supplemental testimony, your prefiled  
17 testimony.

18 A. Okay.

19 Q. And specifically let me refer you to --  
20 may we go off the record?

21 EXAMINER PRICE: You may.

22 (Discussion off the record.)

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

25 Q. (By Mr. Kutik) Let me specifically refer

1     you to line 3 where you have the phrase recapture  
2     "customers." Do you see that?

3             A.     Yes.

4             Q.     And by that you are not attempting to --  
5     you are not saying that rider RRS is attempting to  
6     recapture customers to make them nonshopping -- to  
7     recapture nonshopping customers and making them  
8     shopping customers, correct?

9             A.     That's correct. They would be capped to  
10    the nonbypassable charge.

11            Q.     And you are not saying that these -- that  
12    rider RRS is attempting to recapture customers for  
13    one CRES provider versus another CRES provider,  
14    correct?

15            A.     All customers would be subject to the  
16    nonbypassable charge, so no, yes.

17            Q.     The answer is yes?

18            A.     Yes.

19            Q.     Thank you. Now, you understand that the  
20    proposal that's currently before the Commission  
21    includes a process which would allow the Commission  
22    to review any capacity performance penalties that the  
23    units might be subject to, correct?

24            A.     There is a review process in the  
25    stipulation, yes.

1           Q.    You understand as part of that review  
2 process, the Commission could review any capacity  
3 performance penalties, correct?

4           A.    That is my understanding.

5           Q.    And as part of that review process, you  
6 understand that the Commission could determine that  
7 those costs are unreasonable and preclude their  
8 recovery in the rider, correct?

9           A.    There's some -- there would appear to be  
10 some limitations on that reasonableness review, but  
11 yes, there is some level of authority given to the  
12 Commission.

13          Q.    And you understand that in Ohio and for  
14 companies like the companies in this case, there are  
15 cost recovery riders, correct?

16          A.    I'm generally familiar with cost recovery  
17 riders, yes.

18          Q.    And some of those cost recovery riders  
19 include an audit process.

20          A.    Yes, I am generally familiar with audit  
21 processes.

22          Q.    And as part of that audit process, the  
23 Commission can review the costs for reasonableness,  
24 and if the Commission determines that certain costs  
25 were unreasonable based upon the facts and

1 circumstances at the time of the incurrence of the  
2 cost determine that the costs should not be  
3 incurred -- or recovered, excuse me, correct?

4 A. I'm not sure of the specifics of any  
5 reasonableness provision, whether they have the same  
6 limitations that seem to limit the Commission in this  
7 instance, and my understanding there could also be  
8 just simple financial audit rights that don't  
9 necessarily include reasonableness.

10 Q. All right. But my question to you is you  
11 are aware that there are such audits which part --  
12 part of the consequence of those audits would be that  
13 the Commission could determine certain costs were  
14 unreasonable and preclude recovery of those costs,  
15 correct?

16 A. I have general familiarity with that,  
17 yes.

18 Q. And you don't know whether the  
19 reasonableness audit proposed for rider RRS is  
20 different than the process we have just described?

21 A. Well, it's different in that the PJM  
22 standard for capacity performance penalties is strict  
23 liability. PJM is not going to care whether you are  
24 reasonable or not.

25 Q. My question is with respect to the

1 Commission review.

2 MS. BOJKO: Your Honor, at this time I am  
3 going to object. May the witness finish his  
4 response? He keeps getting cut off.

5 MR. KUTIK: I don't think he keeps  
6 getting cut off, and I think he was finished.

7 EXAMINER PRICE: Were you finished with  
8 your answer?

9 THE WITNESS: I actually was finished  
10 that time, Kim, but thank you.

11 EXAMINER PRICE: Better luck next time,  
12 Ms. Bojko.

13 Q. (By Mr. Kutik) Do you need the question  
14 read?

15 A. I finished my answer.

16 MR. KUTIK: Did I ask a question?

17 EXAMINER PRICE: Yeah. The last question  
18 is, "My question is with respect to the Commission  
19 review."

20 Q. And the question is what's been for rider  
21 -- you don't know whether what's been proposed for  
22 rider RRS and the reasonableness review for rider RRS  
23 is different than the audit review process that we  
24 have just been talking about for other cost recovery  
25 riders, correct?



1           A.    I know their limitations, but I don't  
2 know necessarily that those limitations are different  
3 than another rider.

4           MR. KUTIK: May I have a minute, your  
5 Honor?

6           EXAMINER PRICE: You may.

7           Let's go off the record.

8           (Discussion off the record.)

9           MR. KUTIK: I have no further questions.  
10          Thank you, Mr. Campbell.

11          EXAMINER PRICE: Thank you.

12          Mr. Kurtz?

13          MR. KURTZ: I do not have any  
14 confidential questions.

15          EXAMINER PRICE: The situation resolved  
16 itself.

17                I have a question, and if I am asking for  
18 a confidential -- would require a confidential  
19 answer, I trust Mr. Petricoff will inform me.

20          MR. PETRICOFF: I will listen  
21 attentively.

22          EXAMINER PRICE: Give your counsel a  
23 chance to listen so we don't make a mistake here.

24          THE WITNESS: Okay.

25          EXAMINER PRICE: You value your offer at

1 a certain figure. I am not even going to say what  
2 the figure is. It's in your testimony. Is that  
3 correct?

4 THE WITNESS: That is correct.

5 EXAMINER PRICE: Over eight years?

6 THE WITNESS: Over eight years, yes.

7 EXAMINER PRICE: And this offer is open  
8 for Commission consideration for 180 days?

9 THE WITNESS: Correct.

10 EXAMINER PRICE: That is correct? Has  
11 Exelon taken any steps to hedge the risk created by  
12 this offer in the market?

13 THE WITNESS: That -- well --

14 MR. PETRICOFF: I guess if we could limit  
15 the question first to "do you know," and then if it  
16 gets to the hedging -- what the hedging strategies  
17 are and amounts, then we would have a problem.

18 EXAMINER PRICE: Do you know whether  
19 Exelon has taken any steps to hedge its risk from  
20 this offer being open for 180 days?

21 THE WITNESS: I don't know.

22 EXAMINER PRICE: Okay. Fair enough.

23 THE WITNESS: I do think if the offer --  
24 the offer were accepted, it would likely serve as a  
25 hedge for us, so.

1 EXAMINER PRICE: I am going to strike the  
2 last part because you had already answered my  
3 question. You answered a different question I did  
4 not ask for.

5 THE WITNESS: Okay.

6 EXAMINER PRICE: Mr. Petricoff, redirect?  
7 Wait, I'm sorry.

8 Mr. McNamee, cross?

9 MR. McNAMEE: No. I have reviewed my  
10 notes, and Mr. Kutik has asked everything.

11 EXAMINER PRICE: Mr. Petricoff?

12 MR. PETRICOFF: May we have a minute or  
13 two, your Honor?

14 EXAMINER PRICE: Let's go off the record  
15 for 10 minutes.

16 (Recess taken.)

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

19 Mr. Petricoff.

20 MR. PETRICOFF: Yes, your Honor.

21 - - -

22 REDIRECT EXAMINATION

23 By Mr. Petricoff:

24 Q. Just a couple of questions for you,  
25 Mr. Campbell. Earlier this morning you were asked

1 questions about variable costs and dispatching. Do  
2 you recall those series of questions?

3 A. I do remember the examples that Mr. Kutik  
4 gave, yes.

5 Q. What expenses are in variable costs?

6 A. There are a variety of expenses. Fuel  
7 probably being the largest; O&M, employees, just  
8 various -- various elements.

9 Q. And if a unit didn't run, would it still  
10 have variable costs?

11 A. I would think so. I would think even if  
12 a unit didn't run for an entire year, there would  
13 still be costs associated with this unit, whether  
14 it's maintaining the fuel, employees at the unit,  
15 maintenance of the facility, et cetera. So even if  
16 there were no -- it was never dispatched into the  
17 market and received no revenues, there would still  
18 likely be costs associated with it.

19 Q. On an hourly basis can an operator change  
20 fuels, the amount of fuel its burning?

21 A. I am not aware.

22 Q. And then you were asked a series of  
23 questions about penalties for violation of the CP  
24 program in PJM.

25 A. Yes.

1           Q.    Is there a difference between the  
2 penalties that PJM would charge and the penalties  
3 that you understand would be viewed being passed  
4 through under the stipulation?

5           A.    So there are two standards, and I point  
6 this out in my testimony. The PJM standard for  
7 assessing PC penalties is essentially strict  
8 liability. There is no reasonableness assessment on  
9 PJM's part. So to impose a reasonableness review --  
10 a reasonableness standard on FirstEnergy and  
11 determining whether those penalties are essentially  
12 passed on to customers or not creates a dissonance  
13 between the standard in the market and the way  
14 other -- the rest of the marketplaces -- the rest of  
15 the marketplace has to be held to and the standard to  
16 which FirstEnergy has to be held to, and, ultimately,  
17 that's going to result in more costs being passed on  
18 to Ohio customers compared to how it would be under  
19 the strict reliability standard in PJM.

20           Q.    And the last question I have for you, do  
21 you recall receiving a copy of a master supply  
22 agreement to review while you were on the stand?

23           A.    I do.

24           Q.    Can you tell me the timing, when would a  
25 supplier sign a master supply agreement?

1           A.     Right.  That's a good question.  So  
2 typically those master supply agreements are part of  
3 the SSO procurement process, so it would be, I  
4 believe, after there was a competitive procurement  
5 that was conducted and after the winning bids were  
6 approved by the Commission that the agreement would  
7 then be finalized and entered into.

8           MR. PETRICOFF:  I have no further  
9 questions.

10          Thank you, Mr. Campbell.

11          EXAMINER PRICE:  Mr. Mendoza?

12          MR. MENDOZA:  No questions, your Honor.

13          EXAMINER PRICE:  Mr. Darr?

14          MR. DARR:  No questions.

15          EXAMINER PRICE:  Ms. Fleisher?

16          MS. FLEISHER:  No questions.

17          EXAMINER PRICE:  Ms. Bojko?

18          MS. BOJKO.  No questions.

19          Ms. Willis.

20          MS. WILLIS:  No questions, your Honor.

21          EXAMINER PRICE:  Mr. Kurtz?

22          MR. KURTZ:  I do have questions.  Thank  
23 you.

24                   - - -

## CROSS-EXAMINATION

By Mr. Kurtz

Q. Mr. Campbell, did I hear you right that you said if a unit doesn't run for a year, it would still have variable costs?

A. I would believe there would still be costs associated with that unit.

Q. There would be fixed costs.

A. Fixed costs, yes.

Q. Right, not variable costs.

A. Sorry. Maybe I was -- there would be costs associated with it.

Q. Right. Now, the variable costs are fuel, emission allowance, reagent for the scrubbers, et cetera, correct?

A. General understanding, yes. Fuel is the one that comes to mind first and foremost.

Q. That would be the biggest variable cost, right?

A. That would be right.

Q. Okay. Now, the two-thirds of the PPA here are coal units and about one-third nuclear?

A. Right.

Q. Okay. And the coal units can dispatch down to a minimum operating level during low LMP

1 off-peak hours, correct?

2 A. That's my general understanding. There's  
3 more flexibility in ramping up and down the coal  
4 units.

5 Q. Coal units as opposed to the nuclear.

6 A. Correct.

7 Q. And by the same token, the coal units can  
8 ramp up to full output during the high-energy periods  
9 when there's a greater energy margin, correct?

10 A. I am sure every unit is different, but  
11 there is more flexibility in coal than there is in  
12 nuclear.

13 Q. Right. And you did not calculate the  
14 difference in market revenues by having the  
15 dispatchable flexibility under the PPA offer versus  
16 your around-the-clock offer, correct?

17 A. I compared the costs -- I compared the  
18 costs, FE's costs, with the costs of our proposal if  
19 it were accepted under the same output levels, so,  
20 therefore, it was really a cost comparison, not a  
21 market revenues comparison.

22 Q. Right. So you did not look at the  
23 additional revenues that would be associated with  
24 having dispatch flexibility versus a flat take around  
25 the clock, right?



1           A.    There was -- I did not conduct that type  
2 of analysis, correct.

3           MR. KURTZ:  Thank you, your Honor.

4           EXAMINER PRICE:  Thank you.

5           Mr. Kutik?.

6           MR. KUTIK:  No questions, your Honor.

7           EXAMINER PRICE:  Mr. McNamee?

8           MR. McNAMEE:  No questions.

9           EXAMINER PRICE:  Ms. Addison?

10          EXAMINER ADDISON:  No questions.

11          EXAMINER PRICE:  Ms. Chiles?

12          MS. CHILES:  No questions.

13          EXAMINER PRICE:  Commissioner Haque?

14          COMMISSIONER HAQUE:  Okay.  I will come  
15 out from my cave over here.

16          Mr. Campbell, how are you?

17          THE WITNESS:  I am doing well, thank you.  
18 How are you?

19          COMMISSIONER HAQUE:  Great, thank you.

20                So policy question, staff has executed  
21 the stipulation in this case.  Part of what is in the  
22 stipulation is a provision that says that FE shall  
23 maintain its headquarters in Akron and nexus to the  
24 state, okay?  I am paraphrasing but roughly.

25                And so my question to you is so a

1 policymaker perspective, you work for Exelon, large  
2 utility, located in the state of Illinois. You've  
3 had your own endeavors that you've pursued in  
4 Illinois, okay? So how do policymakers like the  
5 commissioners up there, how do you balance some of  
6 these factors that your company yourself has espoused  
7 in Illinois, and some of these factors are sort of  
8 the home base, home employer, okay? Maintain jobs in  
9 the state, some of the items in the stipulation.

10 So we would not be the first state that  
11 has endeavored to push into a grid modernization,  
12 obviously. The stipulation says we'll deal with the  
13 filing later. We will figure out what all of that is  
14 later. But Volt/VAR improvements, carbon reduction,  
15 balancing that against what is clearly the crux of  
16 your testimony, which is, Commission, if you really  
17 want this hedge, you can do it for cheaper, okay?

18 So what I am asking you is, you know, you  
19 lived in Illinois. What is your guidance for  
20 policymakers in having to balance all of these, you  
21 know, different but important factoids to the state?

22 THE WITNESS: Yeah. Thanks for the  
23 question, and I think it's a good one. And we  
24 certainly recognize that there are many factors for  
25 the Commission and the state of Ohio to consider

1 here.

2           You know, what our testimony does and our  
3 commitment does is it shows that, you know, a  
4 competitive process will yield a better price for  
5 Ohio customers for a product that may not be the same  
6 but, arguably, provides better hedge, better rate  
7 stability in the long run, if that's your primary  
8 aim, right?

9           Now, there's other factors, right?  
10 There's steel in the ground here in Ohio. There's  
11 jobs in Ohio. There's tax revenues, all these  
12 things. We get that. I think the other benefit of  
13 what our -- what my testimony does, and I think it's  
14 important to say right at the outset, is by providing  
15 a commitment to commit to an offer in a process, that  
16 is the best way to know what the market value is of  
17 this deal and how far above market the FirstEnergy  
18 deal is, right?

19           So, you know, it's like if you own a  
20 house, right, you can go on Zillow. You can get an  
21 estimate of what your house is there. You can go on  
22 realtor.com. Maybe your own personal realtor will  
23 tell you what he or she thinks your house is worth.  
24 But at the end of the day, you don't know what your  
25 house is worth until somebody gives you an offer.

1           And so I think -- I think this shows the  
2 Commission what that difference between market value  
3 is or gives them, I think, a pretty good reference  
4 point for difference between market value and, you  
5 know, the value in the PPA, and take that number,  
6 look at these other factors, the jobs, the taxes, the  
7 steel in the ground in Ohio, and, you know, weigh the  
8 two. Is it worth that extra 2-plus billion dollars?

9           COMMISSIONER HAQUE: Okay. Let me  
10 then -- let me then follow-up with a hypothetical,  
11 okay? And based upon where Exelon is situated in  
12 Illinois and the endeavors you have undertaken there,  
13 okay, so let's say then that the Commission takes the  
14 numbers that you have provided in your testimony and  
15 says that, okay, companies, here are the numbers we  
16 want you to work with, FirstEnergy. Okay? Because  
17 now, this balances the jobs, the tax base, also,  
18 again, some of the endeavors that the Commission  
19 is -- the staff of the Commission has sought through  
20 this ESP, like the SmartGrid deployment, grid  
21 modernization, some of these other items, okay?

22           Takes all of that, which potentially has  
23 a positive benefit to the state, and then adopts the  
24 numbers so when we are talking about, you know,  
25 what's the least price you would pay for your house,

1 you know, so, assumedly, if Exelon's numbers are the  
2 best numbers, okay, so then takes those numbers and  
3 says, okay, here is what you want to work with. This  
4 is the best offer that came in through witness  
5 testimony, would Exelon be okay with that?

6 THE WITNESS: I think so. And I think  
7 there's freedom for the Commission to frame the  
8 competitive procurement however they want. If they  
9 value certain things in a competitive procurement,  
10 like a certain amount of capacity has to be within  
11 the state, that would make some sense. So there's  
12 flexibility here, but I think from the outset we've  
13 always advocated for a competitive process being the  
14 best for, frankly, at the end of the day, our  
15 customers here in Ohio.

16 COMMISSIONER HAQUE: But you would want a  
17 competitive process. We wouldn't just take your  
18 numbers and say, look, we want to work with FE here.  
19 We are not looking to work with out-of-state gen. We  
20 want to work with FE here. So when you say  
21 "competitive process," you would still ask for there  
22 to be a competitive bidding process, or you would  
23 say, look, in Ohio if you are going to work with  
24 those numbers, we think those are the most  
25 competitive numbers out there. If you are going to

8091

1 work with the numbers in our testimony, then rock and  
2 roll.

3 THE WITNESS: Yeah. I mean, it's out  
4 there as a reference point. We think it's a good  
5 reference point. We think a broader competitive  
6 process would get you even a better reference point  
7 for the value.

8 COMMISSIONER HAQUE: Okay. All right.  
9 Thank you.

10 THE WITNESS: Yep.

11 EXAMINER PRICE: I just have a couple of  
12 questions. Page 12, line 19 of your testimony, you  
13 indicate, "The Commission may order FirstEnergy as a  
14 monopoly to implement these initiatives without tying  
15 them to the PPA." And you are talking about grid  
16 modernization, renewable procurement; is that right?

17 THE WITNESS: That is it, yes.

18 EXAMINER PRICE: You are aware that under  
19 4928.143 FirstEnergy retains the right to veto any  
20 Electric Security Plan that the Commission approves  
21 but modifies.

22 THE WITNESS: I am vaguely familiar with  
23 the ability for the utility to essentially reject the  
24 recommendation, yes.

25 EXAMINER PRICE: So do you know where we

1 would get statutory authority to order FE to do  
2 renewable procurement? I am not asking you as a  
3 lawyer. I am asking you as a regulatory expert.

4 THE WITNESS: Yes. I don't know the  
5 answer to that. That's a legal question.

6 EXAMINER PRICE: How about grid  
7 modernization?

8 THE WITNESS: Not sure, again, Ohio legal  
9 question.

10 EXAMINER PRICE: Okay. Mr. Kutik points  
11 out in your testimony that capacity is only  
12 deliverable to -- is not deliverable to the ATSI  
13 zone; is that correct?

14 THE WITNESS: That's correct. It would  
15 be capacity that clears in our account where that  
16 capacity is located, and then the capacity, after  
17 it's cleared, essentially the economic attributes of  
18 it would be transferred into the FirstEnergy account.

19 EXAMINER PRICE: If ATSI separates from  
20 the rest of PJM West, as it has done in the past, who  
21 would be responsible for recovering that shortfall or  
22 the difference in capacity prices between ATSI when  
23 it separates and what you have purchased?

24 THE WITNESS: Really good question, and I  
25 am surprised it didn't come up until now. But, you

1 know, yes, we are offering a rest of RTO capacity  
2 product, so for the first three years of the PPA  
3 proposal, the FirstEnergy units have cleared in the  
4 market and ATSI cleared at the rest of RTO price. So  
5 for the first three years, it's, you know, apples and  
6 apples essentially. You are not getting a different  
7 value.

8 EXAMINER PRICE: Right.

9 THE WITNESS: If it separates, and, you  
10 know, we do think it's unlikely that happens, but  
11 that's a different question. We don't need to go  
12 there.

13 If it does separate, you know, I think  
14 that's something the Commission can consider in  
15 framing the procurement, whether there be some type  
16 of additional who bears that risk, whether people  
17 offering into the -- whether people offering into the  
18 procurement would have to price that into their bids  
19 or not.

20 EXAMINER PRICE: But under your  
21 commitment, ratepayers would be liable for any  
22 increased capacity costs.

23 THE WITNESS: They are liable now because  
24 they are only -- I mean, there is like, what, 12,000  
25 megawatts of capacity in ATSI, and FirstEnergy is



1 only going to be covering them for three. So if ATSI  
2 separates, they still -- they are still going to be  
3 on the hook.

4 EXAMINER PRICE: I want to be clear.  
5 Constellation Exelon will not cover that. Ratepayers  
6 will be responsible for covering any separation.

7 THE WITNESS: Under the scoped-out  
8 product that we have in the testimony, that is  
9 correct. It would be different than ATSI capacity  
10 price, yes.

11 EXAMINER PRICE: If there are any changes  
12 from your indicative term sheet, does that mean your  
13 commitment to bid in a competitive process is gone?

14 THE WITNESS: No, not at all. Not at  
15 all.

16 EXAMINER PRICE: So you are committed to  
17 bid into a future competitive process even if we make  
18 the change we just discussed in terms of capacity or  
19 if we made a change from round the clock to some  
20 other product?

21 THE WITNESS: I see what you are saying.  
22 I think our commitment is based on a product that  
23 would be substantially similar to the one we offered  
24 into --

25 EXAMINER PRICE: Any terms changes that

1 the Commission might make in your indicative term  
2 sheet would void your commitment?

3 THE WITNESS: The maximum price  
4 commitment, I think that it would be hard to say we  
5 wouldn't have to reevaluate.

6 EXAMINER PRICE: Thank you. You are  
7 excused.

8 THE WITNESS: Thank you. Great.

9 EXAMINER PRICE: Mr. Petricoff.

10 MR. PETRICOFF: Yes, your Honor. At this  
11 point we would move to admit into evidence Exelon  
12 Exhibits 4 and 5.

13 EXAMINER PRICE: Any objection?

14 Seeing none, it will be admitted.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 EXAMINER PRICE: Mr. Kutik.

17 MR. KUTIK: Your Honor, we would move for  
18 the admission of Company Exhibit 158. We've asked  
19 for the Bench to take administrative notice of 160  
20 and 161. We've also asked the Bench to take  
21 administrative notice of 164 and 165.

22 EXAMINER PRICE: Okay, two steps. At  
23 this time any objection to the Bench taking  
24 administrative notice of Company Exhibits 160, 161,  
25 164, or 165?

1 MS. WILLIS: Yes, your Honor.

2 EXAMINER PRICE: Grounds?

3 MS. WILLIS: Let's start with, I think,  
4 160. That's the direct testimony of Joseph  
5 Dominguez. We object on the basis of relevance.  
6 Mr. Kutik pointed to the testimony as an instance of  
7 where Exelon's offer was rejected. I think that is a  
8 different time frame, different amount, different  
9 price, different company. I don't believe it's  
10 relevant, so on the grounds of relevance, we would  
11 object to administrative notice being taken.

12 MR. PETRICOFF: We would join.

13 EXAMINER PRICE: How about the other  
14 exhibits?

15 MR. PETRICOFF: 161 and 162.

16 MS. WILLIS: And the same goes with 161,  
17 your Honor. That is another instance of another  
18 testimony, David Fein's testimony, of Exelon's offer  
19 being rejected; again, different time period,  
20 different company, different amount, different price,  
21 not relevant.

22 EXAMINER PRICE: Mr. Kutik's point was  
23 the company actually made the offer company to  
24 company and used the testimony to support that.

25 Isn't that correct?

1 MS. WILLIS: I'm not sure what his point  
2 was, your Honor.

3 EXAMINER PRICE: Well, Mr. Kutik, why  
4 don't you explain your point.

5 MR. KUTIK: You said it exactly right,  
6 your Honor. It goes to the validity, the firmness of  
7 the offer, and certainly the things that Ms. Willis  
8 is talking about are more appropriate for brief than  
9 for ruling on admissibility.

10 MR. PETRICOFF: Your Honor, I think it is  
11 back to relevance. This is -- it's a different case.  
12 It's a different matter, and they were turned down,  
13 so hard to see how it has anything to do with this --  
14 with the matter at hand.

15 MS. BOJKO: Your Honor, OMAEG would join  
16 in the objection. I would also note it's a different  
17 product, so we are not comparing apples to apples, so  
18 it's even more irrelevant.

19 EXAMINER PRICE: The point is still  
20 whether an actual offer would be conveyed to the  
21 operating companies versus made in a regulatory  
22 filing. Your objections are noted, but we are going  
23 to take administrative notice of 160 and 161.

24 How about 164 and 165?

25 MS. WILLIS: Your Honor, on 164 and 165

1 we would object. Again, I don't think there's -- I  
2 don't think there is a -- let me go back. We would  
3 object to the entire document going in. I think that  
4 the PJM documents, just because it's from PJM,  
5 doesn't mean it is authoritative and it is something  
6 that should be admitted in this record.

7 In fact, Mr. Kutik made arguments when we  
8 had a PJM Renewable Integration Study, and  
9 Mr. Kutik -- let me quote Mr. Kutik. "The problem,  
10 your Honor, is that with all these type of documents  
11 we have no ability to cross-examine whatever the  
12 assumptions and other analysis that were done, so  
13 it's just a document floating in space, and just  
14 because it was submitted to PJM, doesn't mean it's  
15 right or it doesn't mean you should take  
16 administrative notice of it."

17 EXAMINER PRICE: You don't think that  
18 PJM's User Guide on its processes are -- is  
19 authoritative?

20 MS. WILLIS: I don't think -- I don't  
21 think it's -- I don't think it's necessary. I don't  
22 think it is necessarily relevant, and I would also  
23 object to the entire document being admitted, your  
24 Honor, because we had a ruling or there was a ruling  
25 with respect to OCC's administrative notice, and we

1 were instructed to give excerpts because there was a  
2 problem with the length of the documents or there was  
3 a concern that we didn't want to put too much  
4 information in the record. So I would ask that even  
5 if you admit it, that we limit it to the exact page  
6 that the cross-examination occurred on.

7 EXAMINER PRICE: You don't think there is  
8 a difference between a user guide as to how a  
9 specific PJM process works and a wide-ranging  
10 Commission investigation into regional markets?

11 MS. WILLIS: Your Honor, we would -- I  
12 think there is a difference, yes. I mean, I think  
13 that -- I think with respect to the user guide, there  
14 was one question asked on it. With respect to --  
15 and, again, we are talking about PJM document versus  
16 a document that was filed before the PUCO; that is,  
17 you know, a PUCO verified document, so I think there  
18 is a difference.

19 I think we should be talking about  
20 excerpts. We should not be talking about a 52-page  
21 document which contains all kinds of information that  
22 could be used by a party in their brief when it had  
23 nothing whatsoever to do with cross.

24 EXAMINER PRICE: Mr. Petricoff.

25 MR. PETRICOFF: Yes. Your Honor, our

1 objection still centers on 164. At the end of the  
2 day, we were down to -- we were doing it for the one  
3 sentence that led you into 165. I think the  
4 questioning on 165, FE 165, was sufficient, that  
5 there was no need for 164 and, therefore, no need to  
6 take administrative notice of it. 165 comes in.

7 EXAMINER PRICE: We are going to overrule  
8 the objections. We will take administrative notices  
9 of 164 and 165 at this time.

10 If FirstEnergy strays in its brief to use  
11 it for some irrelevant purpose, you will have the  
12 opportunity to file motions to strike at that time.

13 MS. WILLIS: Thank you, your Honor.

14 MR. PETRICOFF: Your Honor, did I miss  
15 the ruling?

16 MR. KUTIK: The remaining motion, your  
17 Honor, is with respect to our motion to admit 158.

18 EXAMINER PRICE: That's the only document  
19 you are moving to admit?

20 MR. KUTIK: That's correct, your Honor.

21 MS. WILLIS: If we may have a moment,  
22 your Honor.

23 MR. PETRICOFF: We will --

24 MS. WILLIS: 158 has been moved for  
25 admission; is that correct?

1 EXAMINER PRICE: Yes.

2 MS. WILLIS: Yes, your Honor. We would  
3 object to that. There was no foundation established  
4 for it. The witness did not have personal knowledge  
5 of it, and it is hearsay.

6 MR. PETRICOFF: Your Honor, we would --  
7 we would join. Basically, the witness said he didn't  
8 recognize it. There was no indication that it should  
9 come in for the truth that's alleged in the document  
10 without a foundation showing what it is and how it  
11 applies.

12 EXAMINER PRICE: Mr. Kutik.

13 MR. KUTIK: Your Honor, the witness  
14 indicated that he understood this was the document.  
15 He had no reason to doubt that that's what it was.

16 And in the alternative, we would move for  
17 administrative notice of the document. It is a  
18 document that is available on their website, and as  
19 the Bench did with respect to the OVEC annual report,  
20 and the Bench ruled that information was readily  
21 available and verifiable, we would ask if admission  
22 of the document would not be granted, that we have  
23 administrative notice of the document.

24 MR. PETRICOFF: Your Honor, if I could,  
25 the -- the witness testified that he had no doubt



1 that they pulled it off the internet. There are a  
2 lot of things on the internet. How they are supposed  
3 to be used and relative value, you would have to have  
4 knowledge about how the board works, and he indicated  
5 he didn't.

6 EXAMINER PRICE: I agree. We are not  
7 going to admit -- we are going to deny the admission  
8 of Company Exhibit 158. There was not a proper  
9 foundation as to the witness, and the witness had no  
10 idea what the board's processes were or were not or  
11 whether or not the offer had been properly authorized  
12 by the board.

13 MR. KUTIK: And is that your ruling also  
14 on my motion for administrative notice?

15 EXAMINER PRICE: Yes.

16 Anything else?

17 Ms. Willis, you may call your next  
18 witness.

19 MS. BOJKO: Are we not moving 162 or 163  
20 either?

21 EXAMINER PRICE: You are not moving 162  
22 or 163?

23 MR. KUTIK: I am not.

24 EXAMINER PRICE: Ms. Willis, you may call  
25 your next witness.

1 MS. WILLIS: On behalf of OCC and NOPEC,  
2 we call James F. Wilson to the stand.

3 (Witness sworn.)

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

6 THE WITNESS: James F. Wilson, 4800  
7 Hampton, H-A-M-P-T-O-N, Lane, Suite 200, Bethesda  
8 Maryland 20814.

9 EXAMINER PRICE: Please proceed,  
10 Ms. Willis.

11 MS. WILLIS: Thank you, your Honors.

12 - - -

13 JAMES F. WILSON

14 being first duly sworn, as prescribed by law, was  
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Ms. Willis:

18 Q. Good morning, Mr. Wilson.

19 A. Good morning.

20 Q. Could you tell me for the purposes of  
21 this proceeding who you are employed by?

22 A. I am an independent consultant doing  
23 business as Wilson Energy Economics.

24 Q. And who have you been retained by,  
25 Mr. Wilson?

1           A.    In this case by the Office of the  
2 Consumers' Counsel and Northern Ohio Public Energy  
3 Council.

4           Q.    Thank you.

5           MS. WILLIS: Your Honor, at this time I  
6 would ask to mark for identification purposes as OCC  
7 NOPEC Joint Exhibit No -- if you could give me a  
8 moment -- 9, the Public Version, Second Supplemental  
9 Direct Testimony of James F. Wilson.

10           EXAMINER PRICE: It will be so marked.

11           (EXHIBIT MARKED FOR IDENTIFICATION.)

12           MS. WILLIS: And with respect to -- we  
13 would also ask, your Honor, that the Confidential  
14 Version of the Second Supplemental Direct Testimony  
15 of James F. Wilson be marked for identification  
16 purposes as 10C, joint exhibit.

17           EXAMINER PRICE: It will be so marked.

18           (EXHIBIT MARKED FOR IDENTIFICATION.)

19           Q.    (By Ms. Willis) Mr. Wilson, do you have  
20 what has been marked as Joint Exhibit No. 9 in front  
21 of you?

22           A.    I have 9 -- I have 10C, actually, yes.

23           Q.    And do you also have 9?

24           A.    No, I don't.

25           Q.    Let me give you a copy of that, please.

1           Mr. Wilson, can you identify what has  
2       been marked for identification purposes as Joint  
3       Exhibit No. 9.

4           A.    Yes.  This is my second supplemental  
5       direct testimony, public version.

6           Q.    And was that document prepared by you or  
7       under your direct supervision and control?

8           A.    Yes, it was.

9           Q.    And do you have any additions,  
10      corrections or deletions to that document?

11          A.    Yes, I do have a few.  The first is on  
12      page 7, line 1, the word "credit" should be "cost,"  
13      so the "\$0.05 billion total cost," not "credit."

14                And similarly on page 12, line 4, again  
15      "credit" should be "cost."

16                And, finally --

17           EXAMINER PRICE:  Wait.  I did the wrong  
18      one on the first one.  I'm sorry.  It's page 7, it's  
19      the first instance of "credit" on line 1?

20           THE WITNESS:  Yes.

21           EXAMINER PRICE:  Okay.  Sorry.

22          A.    And then also on page 7, again, line 2,  
23      the "0.76" should be "0.56."  That's all.

24          Q.    So, Mr. Wilson, if I were to ask you the  
25      questions contained in Joint Exhibit No. 9 today,

1 would your answers be the same?

2 A. Yes.

3 Q. Now, let's move on to Joint Exhibit 10C.  
4 Was that document prepared by you or under your  
5 direct supervision and control?

6 A. Yes, it was.

7 Q. And do you have any additions,  
8 corrections or deletions to that document?

9 A. I have the same changes to that document.

10 Q. Are there any additional changes to that  
11 document?

12 A. No.

13 Q. If I were to ask you the questions that  
14 are posed to you in Joint Exhibit 10C today, would  
15 your answers be the same?

16 A. Yes.

17 MS. WILLIS: Your Honor, at this time I  
18 would tender Mr. Wilson for cross-examination and  
19 move for the admission, subject to cross-examination,  
20 of Joint Exhibits 9 and 10C.

21 EXAMINER PRICE: Thank you. We will  
22 defer ruling on admission of Exhibits 9 and 10C until  
23 after cross-examination.

24 Do we have any motions to strike?

25 MR. KUTIK: Yes, we do, your Honor.

1 EXAMINER PRICE: Please proceed.

2 MR. KUTIK: Our first motion to strike,  
3 your Honor, and I'll -- there are two parts, and I  
4 will argue them together, if I could. One starts on  
5 page 2, particularly line 15 to 17, the sentence that  
6 begins "I will also" on 15 and ends with the word  
7 "analysis" on 17.

8 And then starting on page 14, the  
9 question that starts at the top of the page and going  
10 through page 18, so the answer that ends on line 5 on  
11 that page, and the basis for our motion, your Honor,  
12 that this is improper surrebuttal testimony.

13 As indicated on page 2, as Mr. Wilson  
14 indicates, that the purpose of this testimony or this  
15 part of the testimony is specifically stated to  
16 "respond to some of the rebuttal testimony of the FE  
17 Companies' witness Judah Rose."

18 And with respect to 6 of the question and  
19 answers that we seek to strike starting on page 14,  
20 5, specifically refer to or quote to Mr. Rose's  
21 rebuttal, and the other references -- differences  
22 between -- the alleged difference between Mr. Rose's  
23 testimony previously in this case and another case.

24 Nothing here in this deals with the  
25 issues specifically presented by the third

1 supplemental testimony, so it is also outside the  
2 scope of the hearing.

3 EXAMINER PRICE: Ms. Willis, care to  
4 respond?

5 MS. WILLIS: Yes, your Honor. The -- I  
6 would believe it's within -- well within the scope of  
7 this part of the proceeding because the company,  
8 despite the fact that a long period of time has  
9 passed since Mr. Rose's projections have been done,  
10 the companies still relies upon and did not update  
11 any of their forecasts and projections and are still  
12 relying on Mr. Rose, which makes it even more so  
13 inappropriate and unreasonable to have those  
14 projections and rely on those projections.

15 So they continue to rely on those  
16 projections, and so here we are with an eight-year  
17 PPA instead of a 15-year PPA, and we still are  
18 relying on Mr. Rose's projections, which were  
19 provided prior to August of 2014. So I believe  
20 because there is that continued reliance, that it is  
21 appropriate and is within the scope of the proceeding  
22 at this point.

23 MS. BOJKO: Your Honor, may I add? I  
24 would like to add that Ms. Mikkelsen's fifth  
25 supplemental testimony as well as the supplemental

1 stipulation -- third supplemental stipulation relies  
2 and produces costs based on the information that was  
3 embedded in Mr. Rose's forecasts and then used by  
4 other witnesses, so Ms. Mikkelsen uses it.

5 The company chose to update portions of  
6 the rider RRS costs to take into consideration some  
7 changes that were made in the supplemental  
8 stipulation, but they did not choose to update other  
9 provisions. So their choice to unilaterally pick and  
10 choose which provisions were updated and then rely on  
11 that same information to produce costs for the  
12 Commission's consideration under the stipulated ESP  
13 IV is improper and also subject to additional  
14 testimony as prescribed by the attorney examiners in  
15 this proceeding.

16 Thank you.

17 EXAMINER PRICE: Mr. Kutik, final word?

18 MR. KUTIK: Yes, your Honor. I guess I  
19 heard nothing that this wasn't surrebuttal testimony.  
20 And with respect to what the company changed or  
21 didn't change, the company changed the things that  
22 were in the third supplemental stipulation. Those  
23 are the items that are the proper subject of  
24 testimony. Everything else is not.

25 EXAMINER PRICE: It is obviously,



1 clearly, nakedly, whatever adjective you want to use,  
2 surrebuttal testimony, and throughout the questions:  
3 Mr. Rose disagrees. Do you have a response?  
4 Mr. Rose had taken a different position. Mr. Rose  
5 criticizes. This is all obviously surrebuttal. OCC  
6 never asked for surrebuttal. The Bench certainly  
7 never granted surrebuttal, and the testimony will be  
8 stricken.

9 MR. KUTIK: Your Honor, our next motion  
10 deals with page 3, line 3, to page 5, line 8. This  
11 is simply a restatement of Mr. Wilson's prior  
12 testimony and is wholly cumulative and repetitive and  
13 is not properly part of our discussions in this case,  
14 so I move to strike.

15 EXAMINER PRICE: Ms. Willis?

16 MS. WILLIS: Yes, your Honor. I think  
17 that just provides context and background for his  
18 testimony. I think if we started trying to remove  
19 from the record any time that the witness referred to  
20 their earlier position, then we would have probably  
21 half the record that we have in this proceeding.

22 So it is contextual. I think it would be  
23 a departure from the way the rest of the witnesses'  
24 testimonies have been allowed and has been -- stand  
25 in the record today.

8111

1 EXAMINER PRICE: I was going to rule in  
2 your favor until you said the record might be smaller  
3 and more manageable if we grant the motion.

4 But, no, we will deny the motion to  
5 strike. It is probably cumulative, but it's also  
6 harmless and it does help set the stage for his  
7 following -- the remainder of his testimony.

8 MR. KUTIK: And our final motion to  
9 strike, your Honor, basically does deal with the rest  
10 of his testimony. And let me specifically delineate  
11 the lines: Page 2, lines 13 to 15; page 6, line 8 to  
12 page 8, line 1, including Table 1.

13 EXAMINER PRICE: Can I have that one  
14 again. Page 8?

15 MR. KUTIK: Yes, to page 8, line 1,  
16 including Table 1.

17 EXAMINER PRICE: Okay. Grounds?

18 MR. KUTIK: And then page 12, line 1 to  
19 page 13, line 15.

20 And, Your Honor, this is the issue about  
21 the so-called updates. To be sure there are changes  
22 that Mr. Wilson makes that reflect the third  
23 supplemental stipulation and the conditions in the  
24 third supplemental stipulation and how that affects  
25 his calculations. But, unfortunately, there are also

1 other things that Mr. Wilson does on this general  
2 issue of updating and providing, you know, new gas  
3 price or energy price information.

4 That ground, your Honor, has been well  
5 trod in this case. The issue about whether Rose's  
6 forecasts are a proper basis has been litigated ad  
7 nauseam and does not need further explanation at this  
8 point, and it doesn't relate to the third  
9 supplemental stipulation's terms and conditions, and  
10 for that reason we move to strike.

11 EXAMINER PRICE: We are going to deny the  
12 motion to strike. The company may have chosen not to  
13 update its estimates, but there is certainly nothing  
14 improper about OCC updating its estimates.

15 MR. KUTIK: That's all I have, your  
16 Honor. Thank you very much.

17 EXAMINER PRICE: Mr. Mendoza, cross?

18 MR. MENDOZA: No questions. Thank you,  
19 your Honor.

20 EXAMINER PRICE: Mr. Darr?

21 MR. DARR: No questions.

22 EXAMINER PRICE: Mr. Settineri?

23 MR. SETTINERI: No questions, your Honor.

24 EXAMINER PRICE: Ms. Fleisher?

25 MS. FLEISHER: No questions, your Honor.

1 EXAMINER PRICE: Ms. Bojko.

2 MS. BOJKO: No questions.

3 EXAMINER PRICE: Mr. Kurtz?

4 MR. KURTZ: I do.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Kurtz:

8 Q. Good morning, Mr. Wilson.

9 A. Good morning.

10 Q. You updated your numbers for new natural  
11 gas prices and the zero effect on energy prices; is  
12 that correct?

13 A. That's correct.

14 Q. Okay. Did you reflect in your updated  
15 analysis the reduction in coal costs that have  
16 occurred during the same time period?

17 A. I hadn't made any change to Mr. Rose's  
18 coal assumptions originally. I didn't make any  
19 change to them now.

20 Q. Well, you understand that two-thirds of  
21 the PPA units are run by coal, right?

22 A. Yes.

23 Q. By the way, do you know the blend of coal  
24 that the Sammis and OVEC units use?

25 A. I don't recall, no.

1           Q.    So you don't know if it's Powder River  
2 base, Central App, a blend of the two?

3           A.    I think it's probably Appalachian, yes.

4           Q.    You don't know if there was a blend of  
5 Powder River also?

6           A.    I don't recall, no.

7           Q.    If the fuel prices declined since  
8 Mr. Rose's testimony, coal prices, the fuel cost to  
9 operate the PPA units, wouldn't that move in the  
10 opposite direction of your lower gas forecasts and  
11 lower energy prices?

12          A.    I don't know. I haven't checked how coal  
13 prices may have changed.

14          Q.    Well, conceptually, if the cost of  
15 running the PPA units has gone down, wouldn't that  
16 move in the opposite direction making the PPA  
17 rider -- the RRS rider more economic for consumers?

18          A.    It could, yes.

19          Q.    And you haven't looked at the coal  
20 prices.

21          A.    No.

22                Mr. KURTZ; Okay.

23                Thank you, your Honor.

24                EXAMINER PRICE: It's the case,  
25 Mr. Wilson, that the Energy Information agencies or

8115

1 the 2015 energy outlook, Annual Energy Outlook, does  
2 provide projected coal prices; isn't that correct?

3 THE WITNESS: Yes, it does.

4 EXAMINER PRICE: And they provide a  
5 reference set of coal prices and a set of coal prices  
6 for high oil and gas resources; is that correct?

7 THE WITNESS: That's correct.

8 EXAMINER PRICE: In the reference case  
9 coal prices are higher?

10 THE WITNESS: I don't recall, actually.

11 EXAMINER PRICE: Okay. You did not use  
12 either set of those projections in establishing your  
13 projections; is that right?

14 THE WITNESS: I didn't use any coal  
15 prices. All I did in my projections were to adjust  
16 the energy prices. My goal was to keep my -- my  
17 analysis as identical to the companies' as possible  
18 and only change the one assumption about energy  
19 prices.

20 EXAMINER PRICE: So you used the natural  
21 gas price from the 2015 Annual Energy Outlook but you  
22 did not use the comparable coal price from that 2015  
23 Annual Energy Outlook; is that correct?

24 THE WITNESS: That's correct.

25 EXAMINER PRICE: Thank you.

1 Mr. Kutik.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Kutik:

5 Q. Good morning, Mr. Wilson.

6 A. Good morning.

7 MR. KUTIK: Your Honor, at this time I  
8 would like to have marked as Company Exhibit 166 the  
9 Annual Energy Outlook for 2015.

10 EXAMINER PRICE: It will be so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. KUTIK: May I approach?

13 EXAMINER PRICE: You may.

14 Q. (By Mr. Kutik) Mr. Wilson, I have handed  
15 you what's been marked for identification as Company  
16 Exhibit 166. This is the Annual Energy Outlook for  
17 2015 that you were talking with Attorney Examiner  
18 Price about, correct?

19 A. Correct.

20 Q. Now, you don't do forecasting, correct?

21 A. Correct.

22 Q. And your calculations that are shown on  
23 Table 1 on page 8 use the same methodology that we  
24 have previously discussed in this case, correct?

25 A. Yes.

1           Q.   And you did not use a model to produce  
2   that forecast, correct?

3           A.   No.   I used the modeling results that  
4   were the basis of the rider RRS estimate and changed  
5   one assumption.

6           Q.   All right.   So, again, you did not use  
7   your own model.

8           A.   Correct.

9           Q.   And you did not try to replicate ICF's  
10   model to determine whether changing output would  
11   cause other outputs to react or change, correct?

12          A.   No.   I didn't need to because as I show  
13   in my exhibit, there is a very, very stable  
14   relationship between gas and energy prices.

15          MR. KUTIK:   Your Honor, I move to strike  
16   everything after the word "no."

17          EXAMINER PRICE:   We will deny the motion  
18   to strike at this time.

19          But, Mr. Wilson, that is your one bite at  
20   the apple.   Could you please listen to counsel's  
21   question and answer the question and only the  
22   question.   It will help in getting you up and down  
23   all the more quickly.

24          Q.   You didn't use any model to determine  
25   whether a lower gas price would affect any other



1 parameter in any year -- in any particular year,  
2 correct?

3 A. Correct.

4 Q. Now, this calculation that we have been  
5 talking about that you did was the same calculation  
6 that you did before in this case, just changing,  
7 among other things, first the term from eight years  
8 -- from 15 years to 8 years, correct?

9 A. Correct.

10 Q. And then a different ROE from 11.15 to  
11 10.38 for the companies' costs, correct?

12 A. Correct.

13 Q. And it also reflected potential credits  
14 that could be offered by the companies for rider RRS  
15 under the third supplemental stipulation, correct?

16 A. Yes.

17 Q. And it included different energy prices  
18 as a result of your use of different gas prices,  
19 correct.

20 A. Yes.

21 Q. Now, the gas prices you used are based  
22 upon more recent forwards from your last testimony as  
23 well as the 2015 AEO, correct?

24 A. Correct.

25 Q. And forward prices were accessed as of

1 December 22.

2 A. Yes.

3 Q. And the spot prices in December for Henry  
4 Hub reached a 16-year low; is that correct?

5 A. I don't know.

6 Q. Well, would you agree with me, sir, that  
7 natural gas prices are affected by natural gas  
8 demand?

9 A. Yes.

10 Q. And would you agree with me that natural  
11 gas demand is affected by the weather and  
12 particularly temperature?

13 A. Yes.

14 Q. And would you agree with me that December  
15 of 2015 was very mild?

16 A. Yes, it was.

17 Q. Would you also agree with me that  
18 December was the warmest December on record?

19 A. I think I recall reading that, yes, some  
20 place.

21 Q. Would it also be true that in December,  
22 natural gas storage was very full?

23 A. Yes, it was.

24 Q. In fact, they were at record levels.

25 A. I'm not sure on that one.

1 Q. Record levels being high record levels.

2 A. I'm not sure on that one.

3 Q. Okay. Are you familiar with short term  
4 energy outlook that's put out by the EIA?

5 A. Yes.

6 Q. I think in your last visit we discussed  
7 that, at least one of those, correct?

8 A. Yes.

9 Q. Have you read the STEO for January of  
10 this year?

11 A. I have seen it, yes. I am not sure -- I  
12 didn't read the whole thing, but I've seen it.

13 MR. KUTIK: Your Honor, I would like to  
14 have marked at this time as Company Exhibit 167 U.S.  
15 Energy Information Administration Short Term Energy  
16 Outlook, January, 2016.

17 EXAMINER PRICE: It will be so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. KUTIK: May I approach?

20 EXAMINER PRICE: You may.

21 Q. (By Mr. Kutik) Mr. Wilson, I have handed  
22 you what has been marked for identification as  
23 Company Exhibit 167. Do you recognize this as the  
24 Short Term Energy Outlook for the EIA dated January,  
25 2016?

1 A. Yes.

2 Q. And let me have you refer to page 10 of  
3 that document? Are you there?

4 A. Uh-huh.

5 Q. And there is -- in the discussion under  
6 the paragraph that starts with the bold heading  
7 "Natural Gas Prices," third line there we see a  
8 reference to "record inventory levels," correct?

9 A. Where are we again?

10 Q. The paragraph that begins with the bold  
11 words "Natural Gas Prices." Are you there?

12 A. Prices.

13 Q. And the third line talks about "record  
14 inventory levels," correct?

15 A. Yes.

16 Q. Now, would it be fair to say that in  
17 December the market was vulnerable -- the natural gas  
18 market was vulnerable under very weak demand  
19 conditions to low prices?

20 A. Yes.

21 Q. And the low prices experienced in  
22 December should be considered to be a very short-term  
23 condition?

24 A. Yes.

25 Q. Now, you've seen work by PJM --

1           A.    Let me clarify my last answer, please.

2           Q.    I think -- well, it was a "yes" or "no"  
3 answer, sir.

4           A.    Well, it was an ambiguous question  
5 because it said "price."

6                   EXAMINER PRICE:  If you need to clarify  
7 because you thought the question was ambiguous, you  
8 need to -- you should ask for clarification of the  
9 question at the beginning, but it's a proper subject  
10 for redirect.

11          Q.    You've seen work by PJM on what the  
12 results of the recent base residual auctions would be  
13 using 100 percent capacity performance requirements,  
14 correct?

15          A.    I've seen the scenario analysis that they  
16 presented.

17                   MR. KUTIK:  Your Honor, at this time we  
18 would like to have marked for identification as  
19 Company Exhibit 168, a page from the PJM website  
20 entitled "Capacity Market."

21                   EXAMINER PRICE:  It will be so marked.

22                   (EXHIBIT MARKED FOR IDENTIFICATION.)

23                   MR. KUTIK:  And as Company Exhibit 169, a  
24 multi-page table which includes various "Scenario  
25 Description, Auction Results" for various regions

1 within PJM.

2 EXAMINER PRICE: It will also be so  
3 marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MR. KUTIK: May I approach?

6 EXAMINER PRICE: You may.

7 Q. (By Mr. Kutik) Mr. Wilson, I've shown you  
8 what's been marked for identification as Companies  
9 Exhibit 168 and 169. Let's turn to Exhibit 168. You  
10 recognize this as a page from the PJM website about  
11 capacity markets?

12 A. Yes.

13 Q. And one of the things that you could do,  
14 as we see in the left-hand column under "Delivery  
15 Years," they show "Scenario Analysis for Base  
16 Residual Auction." Do you see that?

17 A. Yes.

18 Q. And you can click on that and you can get  
19 a scenario analysis, right?

20 A. Yes.

21 Q. And turning to Company Exhibit 169,  
22 that's the scenario analysis you get if you clicked  
23 on that page or that portion of the website, correct?

24 A. Yes.

25 Q. And if we go to the last page of

1 Exhibit 169, that shows a scenario analysis for using  
2 "100% CP Requirements," correct?

3 A. Well, it's not clear exactly what it is.  
4 The description is "100% CP Requirements," but there  
5 is no documentation here that I can see of exactly  
6 what was done.

7 Q. It says "100% CP Requirements," correct?

8 MS. WILLIS: Your Honor, I would ask that  
9 Mr. Kutik allow the witness to complete his response  
10 before questioning him.

11 MR. KUTIK: I believe I did.

12 EXAMINER PRICE: Counsel will make an  
13 extra effort to make sure the witness has completed  
14 his answers before proceeding to your next question.

15 Q. The question on the table, Mr. Wilson, it  
16 says "100% CP Requirements," do you see that?

17 A. That's the scenario description, yes.

18 Q. And this is looking at or doing a  
19 scenario analysis of the results from the 2018-2019  
20 BRA, right?

21 MS. WILLIS: Objection.

22 EXAMINER PRICE: Grounds?

23 MS. WILLIS: Your Honor, I don't think  
24 there has been any foundation laid that this  
25 witness -- this witness testified that, yes, he has

1     been on the PJM website. Yes, he's clicked on the --  
2     clicked on the link on the page Exhibit 168. There's  
3     been no foundation that he is familiar with this. In  
4     fact, he indicated he wasn't sure what that meant.  
5     So I think there's been no foundation laid. It is  
6     hearsay, and we would object.

7                 EXAMINER PRICE: Mr. Kutik.

8                 MR. KUTIK: Your Honor, this is an  
9     analysis that's done by PJM. It's an analysis that  
10    the witness has seen.

11                MS. WILLIS: Your Honor, the fact that  
12    the witness has seen it, I've seen it as well, but  
13    I'm not qualified to testify or identify that  
14    document. So I think the fact that he's seen it can  
15    be like anybody else that's seen it. They clicked on  
16    it. They've seen it. It doesn't make them -- it  
17    doesn't make them qualified to identify and  
18    authenticate it.

19                EXAMINER PRICE: You are saying that your  
20    witness is not an expert in capacity prices?

21                MS. WILLIS: He is an expert, your Honor,  
22    but he has not -- he had indicated in earlier  
23    responses that he did not know what this, in  
24    particular, meant, so he's cross-examining him on a  
25    PJM document that he may have seen but does not know



1 exactly what the study is and what it meant.

2 EXAMINER PRICE: I'm satisfied that he is  
3 sufficiently an expert to answer questions regarding  
4 the study. Overruled.

5 MR. KUTIK: I think there is a question  
6 pending.

7 EXAMINER PRICE: There is.  
8 Can we have the last question back,  
9 please.

10 (Record read.)

11 A. Correct.

12 Q. And scenario 13 is the scenario that  
13 shows what the base residual auction results might  
14 have been if there were 100 percent CP requirements,  
15 correct?

16 A. Again, I don't know what analysis was  
17 performed. All I know is that the scenario  
18 description is "100% CP Requirements."

19 Q. Do you have your deposition transcript,  
20 Mr. Wilson?

21 A. I believe I do.

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

23 EXAMINER PRICE: You may.

24 Q. (By Mr. Kutik) Mr. Wilson, you recall  
25 that I took your deposition on January 8, 2016?

1 A. Yes.

2 Q. And you took an oath to tell the truth in  
3 that deposition?

4 A. Yes.

5 Q. And the deposition was transcribed and  
6 you had an opportunity to review the transcript,  
7 correct?

8 A. Yes.

9 Q. And you have a copy of that transcript  
10 before you?

11 A. I do.

12 Q. Let me now have you turn to page 35 of  
13 your deposition transcript.

14 A. Yes.

15 Q. And did I not ask you the following  
16 questions and did you not give the following answers  
17 starting on line 7:

18 "Question: And I think Scenario 13 is  
19 the scenario that shows what the base residual  
20 auction results might have been if they were  
21 100 percent CP requirements?

22 "Answer: Yes.

23 "Question: And this is for the base  
24 residual auction for '18-'19, correct?

25 "Answer. Correct."

1                   You did give that testimony, correct?

2           A.     Yes.

3                   MR. KUTIK: Your Honor, at this time I  
4 would like to have marked two documents. As Company  
5 Exhibit 170 I would like to have marked the "PJM Load  
6 Forecast Report January 2015." And for Company  
7 Exhibit 171 I would like to have marked the "PJM Load  
8 Forecast Report January 2016."

9                   EXAMINER PRICE: They will be so marked.

10                   (EXHIBITS MARKED FOR IDENTIFICATION.)

11           Q.     (By Mr. Kutik) Mr. Wilson, I have handed  
12 you what's been marked for identification as Company  
13 Exhibits 170 and 171. Have you seen those documents  
14 before?

15           A.     Yes.

16           Q.     And you recognize what's been marked as  
17 Company Exhibit 170 as the PJM Load Forecast Report  
18 published January, 2015?

19           A.     Yes.

20           Q.     And Company Exhibit 171 is the PJM Load  
21 Forecast Report for January, 2016, correct?

22           A.     Yes.

23           Q.     Now, I would like to direct your  
24 attention on Company Exhibit 170, the 2015 report,  
25 the summary table that appears at page 3. Are you

1       there?

2               A.     Yes.

3               Q.     And what we see -- we'll take one set of  
4       Rose under PJM RTO, we see an unrestricted peak load  
5       forecast, correct? For example, we see two PJM --  
6       RPM years for 2018 and 2020, for 2018 showing  
7       161,128. Do you see that?

8               A.     Yes.

9               Q.     And that is the unrestricted load  
10       forecast?

11              A.     Well, it doesn't say that, but I believe  
12       that it is.

13              Q.     Okay. And then there are certain values  
14       that are subtracted from that, and those are values  
15       for demand and energy efficiency, correct?

16              A.     I see where you are indicating, yes.

17              Q.     And then it shows a restricted number,  
18       correct?

19              A.     Yes.

20              Q.     Okay. Now, we can find the values that  
21       are used for the demand resources at Table B-7 of  
22       this document, which begins on page 65 -- excuse me,  
23       page 61; is that correct?

24              A.     I'm not sure they are the same numbers,  
25       but they may be.

1 Q. Okay. Well, would it be correct to say  
2 that -- well, let's look at it. If we look on page  
3 67, we see a number for Total Load Management for PJM  
4 RTO, correct?

5 A. Page 67 --

6 Q. Excuse me, 64, the last page of Table 7.

7 A. Okay.

8 Q. Do you see a total load management for  
9 PJM RTO of 15,000, correct?

10 A. For 2015.

11 Q. For 2015. Now, Table B-8 shows energy  
12 efficiency and load management, correct?

13 A. Yes.

14 Q. And if we go to page 68, we can see again  
15 for 2015 numbers for energy efficiency and load  
16 management, correct?

17 A. Right.

18 Q. And the load management figure we see on  
19 page 8 -- excuse me. B-8 matches the figure that we  
20 saw for the same year, the same region on Table B-7,  
21 correct?

22 A. Yes, it does.

23 Q. And then there is an additional energy  
24 efficiency number, correct?

25 A. The bottom line is the same number.

1           Q.   Well, I'm having you look at page 68,  
2   last page of B-8, which is PJM RTO, and there is an  
3   energy efficiency number, right?

4           A.   Yes.

5           Q.   And that's 763, correct?

6           A.   Yes.

7           Q.   So they take the 763, add the 15,000  
8   which comes from B-7, and we come up with 15,763,  
9   correct?

10          A.   Yes.

11          Q.   And that's the number we see being  
12   subtracted on the summary table?

13          A.   Yes.

14          Q.   Now, would it be also correct to say with  
15   respect to B-7, the load management, that's also  
16   known as demand response, correct?

17          A.   I believe what they show in this table is  
18   just the demand response cleared in RPM, yes.

19          Q.   And this is a forecast, is it not?

20          A.   No.

21          Q.   Okay. Well, let me have you look down at  
22   the notes. It says, "Forecast Represents the Amount  
23   of Demand Resources Committed to the PJM Reliability  
24   Pricing Model via RPM Auctions (included the  
25   incremental auctions) and FRR Capacity Plans."

1 A. What page are you on?

2 Q. I'm on B-7, the note.

3 A. B7, page 64?

4 Q. How about page 61?

5 A. Page 61.

6 Q. The beginning of B-7 there are notes.

7 And one note says, "Forecast Represents the Amount of  
8 Demand Resources Committed to the PJM Reliability  
9 Pricing Model via RPM Auctions (included the  
10 incremental auctions) and FRR Capacity Plans,"  
11 correct?

12 A. The amount they put in the table is  
13 exactly that number, the amount committed in RPM and  
14 in FRR. They don't prepare a forecast. They simply  
15 put those numbers in this table.

16 Q. Sure. Did I read the notes correctly?

17 A. Yes.

18 Q. All right. And it refers to a forecast,  
19 does it not?

20 A. It's not a forecast.

21 Q. Does it refer to a forecast?

22 A. The word "forecast" is in that sentence,  
23 but what they do is they simply put those numbers  
24 into this table.

25 MR. KUTIK: Your Honor, at this point I

8133

1 would like to have marked as Company Exhibit 171 --  
2 2?

3 EXAMINER PRICE: 2.

4 MR. KUTIK: The "PJM Manual 19, Load  
5 Forecasting and Analysis."

6 EXAMINER PRICE: It will be so marked.

7 MR. KUTIK: May I approach?

8 EXAMINER PRICE: You may.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. (By Mr. Kutik) Mr. Wilson, I have handed  
11 you what's been marked for identification as Company  
12 Exhibit 172. Do you recognize that as "PJM Manual  
13 19, Load Forecasting and Analysis"?

14 A. Yes.

15 Q. And this goes through the methodology  
16 that PJM uses with respect to its load forecasting,  
17 correct?

18 A. Yes.

19 Q. And let me now have you refer to page 12,  
20 and that's the beginning of the section at the bottom  
21 of the page that refers to "Load Management,"  
22 correct?

23 A. I see that.

24 Q. And then at the top of page 13, it goes  
25 through the methodology, correct?



1           A.   Well, again, it's not really a  
2 methodology. They just take the cleared amount.

3           Q.   It goes through the methodology, does it  
4 not?

5           A.   You can call it a methodology, but they  
6 take the cleared quantity and they put it in their  
7 table. They do not --

8           Q.   And this starts out with "For Demand  
9 Resources, forecasted values." That's how it starts  
10 out, right?

11          A.   The amount they put in their forecast  
12 table is simply the cleared quantity. I mean, most  
13 people when they --

14               MR. KUTIK: Move to strike, your Honor.

15               MS. WILLIS: Your Honor, I would  
16 appreciate the witness being given the courtesy that  
17 the other witnesses have been given and the ability  
18 to complete their answer before counsel objects.

19               EXAMINER PRICE: The counsel will allow  
20 the witness to finish his answer.

21               But the witness is directed to be  
22 responsive to counsel's questions.

23               Motion to strike is granted.

24           Q.   (By Mr. Kutik) So the question is, this  
25 discussion of the methodology starts out with the

1 words "For Demand Resources (DR) forecasted values."

2 MS. WILLIS: Objection, asked and  
3 answered.

4 EXAMINER PRICE: He hasn't answered it  
5 yet. Overruled.

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

7 Q. Now, let's look at Exhibit 170. And we  
8 would see on the summary table a similar calculation  
9 to what we saw with respect to the 2015 report,  
10 correct?

11 EXAMINER PRICE: Are we on 170 or 171?

12 MR. KUTIK: We are on 171, your Honor. I  
13 apologize.

14 A. Yes.

15 Q. So just to be clear if I misspoke, with  
16 respect to the summary table that appears at Company  
17 Exhibit 170, which is the 2016 report, we see a  
18 summary table that was similar to the summary table  
19 we saw in the 2015 report?

20 MS. WILLIS: Your Honor, for the record,  
21 I think he may have misspoken. I think --

22 MR. KUTIK: Let me try it again.

23 MS. WILLIS: Thank you.

24 Q. With respect to Company Exhibit 171,  
25 which is the January, '16, report, there is a summary

1 table, correct?

2 A. Page 3?

3 Q. Yes.

4 A. Yes.

5 Q. And that table has a calculation similar  
6 to the summary table that we were just discussing  
7 with respect to the January report that we marked as  
8 Company Exhibit 170.

9 A. Similar but different, yes.

10 Q. Different in terms of years and values,  
11 correct?

12 A. Well, they've also dropped energy  
13 efficiency.

14 Q. Okay. And so would it be fair to say  
15 that as we did with respect to the 2015 report, for  
16 the 2016 report, when we would want to look for the  
17 demand resource values, we would go to Table B-7?

18 A. The numbering changes sometimes.

19 Q. It starts on page 65.

20 A. Yes.

21 Q. And would it be correct to say that if we  
22 looked at the values for RTM -- excuse me, PJM RTO  
23 for total load management in this 2016 report, if we  
24 looked at the same years in 2015, the values in 2015  
25 would be higher for load management.

1           A.    I haven't made that comparison.  Do you  
2   want me to pull it out?

3           Q.    Yes.

4           A.    From B-7 or Table 3?

5           Q.    B-7.

6           A.    Okay.

7           Q.    PJM RTO.

8           A.    Yes.

9           Q.    Okay.  Now, I want to move to a slightly  
10   different topic -- actually, a much different topic,  
11   and that's your understanding of the companies'  
12   proposal.  It's true, is it not, that under the  
13   proposal the companies have the ability to refuse to  
14   pay certain costs, correct?

15          A.    The companies can refuse to pay costs  
16   under the PPA?

17          Q.    Under the proposed term sheet, yes.

18          A.    I don't recall.

19          Q.    Okay.  And would it be correct to say  
20   that the companies bear the risk of nonrecovery of  
21   any costs that might be sought to be passed through  
22   rider RRS?

23          A.    You mean as a result of the Commission  
24   review for -- of the costs?

25          Q.    Yes.

1           A.     Potentially, yes.

2           MR. KUTIK:   May I have a moment, your  
3 Honor?

4           EXAMINER PRICE:   You may.

5           MR. KUTIK:   Your Honor, I have no further  
6 questions.

7           Thank you, Mr. Wilson.

8           EXAMINER PRICE:   Thank you.

9           Mr. McNamee.

10          MR. McNAMEE:   No questions.

11          EXAMINER PRICE:   Redirect?

12          MS. WILLIS:   Your Honor, if we may have a  
13 slight break, 10 minutes?

14          EXAMINER PRICE:   Yes.   Take 10 minutes.  
15 Let's go off the record.

16          (Recess taken.)

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

19          Ms. Willis, you may proceed.

20          MS. WILLIS:   Thank you, your Honor.

21                           - - -

22                           REDIRECT EXAMINATION

23          By Ms. Willis:

24           Q.     Mr. Wilson, I want to direct your  
25 attention to what was marked as -- as Company

1 Exhibit 169. It is a scenario analysis that PJM ran.  
2 Do you recall that document?

3 A. Yes.

4 Q. And do you recall the questions by  
5 counsel with respect to item No. 13, which was the  
6 100 percent CP requirements?

7 A. Yes.

8 Q. Do you know, was it PJM's choice to  
9 include this particular scenario in its analysis?

10 A. It was their choice, but the scenario  
11 analyses are typically suggested by stakeholders so  
12 they may not have initiated it. They may just have  
13 done it in request to response by stakeholders.

14 Q. But do you know what stakeholders would  
15 have requested that?

16 MR. KUTIK: Objection.

17 EXAMINER PRICE: Grounds?

18 MR. KUTIK: Relevance.

19 EXAMINER PRICE: Overruled. He can  
20 answer if he knows.

21 A. I don't.

22 Q. Is it -- do you know what -- whether PJM  
23 has a position on whether or not this scenario is  
24 meaningful?

25 A. Well, as I said, because it may have been

1 requested by a stakeholder, they may have simply  
2 performed it because it was requested. They haven't  
3 documented what methodology it was, so I don't know  
4 whether PJM considers this meaningful or not.

5 Q. Do you know, Mr. Wilson, from looking at  
6 this document what PJM actually did to produce this  
7 scenario?

8 A. Again, it's not documented. My best  
9 guess is that they simply removed all noncapacity  
10 performance capacity from the auction and then reran  
11 the auction to see what the result would be.

12 So, you know, they didn't -- the reason  
13 we are having a transition to capacity performance is  
14 to give resources time to adjust to capacity  
15 performance, to make investments, if necessary, to do  
16 what they need to do to be compliant with capacity  
17 performance.

18 And these auctions, and the particular  
19 auction we are dealing with here, resources were free  
20 to not offer as capacity performance or to offer as  
21 base capacity in addition or instead, and that only  
22 goes away over two years.

23 So my guess is they made the simple  
24 assumption of just removing capacity that wasn't  
25 offered as capacity performance and, in fact, we

1 probably expect a lot of that capacity to offer as  
2 capacity performance in the future.

3 Q. Do you know, Mr. Wilson, what PJM assumed  
4 about the capacity that chose not to offer as CP in  
5 the auction?

6 A. Again, it's not -- it's not clear. My  
7 guess is they just simply removed it. And as a  
8 result, if some of that capacity in the future does  
9 offer CP, the price impact would be much less than  
10 what's indicated here.

11 Q. And, Mr. Wilson, is it -- if you know, is  
12 this a forecast of future RPM outcomes when CP is  
13 fully implemented?

14 A. Again, it's not a forecast because they  
15 have probably done something very simple, as just  
16 remove capacity. To prepare a forecast you would try  
17 to forecast what additional capacity would be  
18 available in the future when we actually go to  
19 100 percent CP, which is two years away.

20 What existing capacity would further  
21 adapt to capacity performance, make additional  
22 investments to be able to offer a capacity  
23 performance forecast would take into account all the  
24 ways the market would be expected to adapt, and the  
25 impact on price would undoubtedly be much -- much



1 less than what's shown here.

2 Q. Now, you have -- there were a number of  
3 questions, Mr. Wilson, about the 2015 and the 2016  
4 PJM load forecasts report. Do you have those  
5 documents before you?

6 A. Yes.

7 Q. Okay. Can you tell me, there was some  
8 discussion -- well, let me strike that. There was  
9 some discussion about demand resources and the number  
10 being lower in 2016 versus 2015 as shown on Table  
11 B-7. Do you recall those questions?

12 A. Yes.

13 Q. Can you tell me why -- what your  
14 understanding is as to why the demand resource number  
15 is lower in 2016?

16 A. Well, there is a bunch of footnotes about  
17 what PJM did to come up with these numbers in light  
18 of capacity performance. Those footnotes are in the  
19 2016 report. They are not in the 2015 report because  
20 we didn't have capacity performance then, so they had  
21 to make assumptions about base capacity, whether it  
22 would still offer, whether it would be compliant.  
23 And that essentially caused a lot of demand response  
24 to pretty much fall out of the 2016 report, demand  
25 response, which may again be, you know, compliant

1 with capacity performance.

2           So, again, this isn't a forecast. They  
3 apply simple rules to dis-- to determine what to put  
4 in here, and the numbers are much smaller related to  
5 the transition to capacity performance and also the  
6 change in energy efficiency. But I don't think PJM  
7 would call this a forecast of those values. Instead  
8 PJM, you know, believes demand response is an  
9 important part of their market and one that's going  
10 to be there over the long term.

11           Q. Now, Mr. Wilson, you also had -- there  
12 were a number of questions on the spot gas prices in  
13 December of 2015 and the inventory levels of gas. Do  
14 you recall those questions?

15           A. Yes.

16           Q. Can you tell me for purposes of your  
17 analysis you prepared in your testimony what gas  
18 prices you used in determining the effect of rider  
19 RRS?

20           A. Yeah. My analysis used forward prices  
21 from the month of June, 2016, through May of 2024.

22           Q. And can you tell me how spot prices that  
23 actually occurred in December of 2015 are relevant to  
24 your analysis?

25           A. Well, they are really not. Prices were

1 very low on the spot market in December of 2016, and  
2 they will be for 2015 [verbatim] and they probably  
3 will be for the winter, unless we have substantial  
4 cold stretches, like the one we are in right now.  
5 And that reflects the very short-term inventory  
6 demand and supply circumstances that we are in the  
7 midst of now.

8 The forward prices from June, 2016,  
9 through May of 2024, by contrast reflect market  
10 participants' expectations of supply and demand  
11 conditions in those future delivery months.

12 Now, whereas summer of 2016 may be  
13 somewhat influenced by the conditions we have right  
14 now of a glut, by next winter we will be back to, you  
15 know, conditions where that short-term supply and  
16 demand imbalance will have been largely forgotten.  
17 So the relevance of, you know, short-term spot  
18 circumstances in December 2015 to my analysis that  
19 uses long-term prices, it's just not relevant.

20 EXAMINER PRICE: Mr. Wilson, on your --  
21 in your testimony at page 6 you refer to these  
22 forward prices, don't you, and say that these market  
23 conditions show that the reference case is no longer  
24 relevant or no longer consistent with market  
25 conditions; is that correct?

1 THE WITNESS: Yes.

2 EXAMINER PRICE: So they're relevant in  
3 some circumstances but not others?

4 THE WITNESS: No. What I am saying is  
5 that the forward market, if you compare current  
6 forward prices to the AEO long term, they are very  
7 different now. So AEO's forecast, long-term  
8 forecast, prepared a year ago is no longer consistent  
9 with market conditions as reflected by the forward  
10 curve.

11 EXAMINER PRICE: So the January spot  
12 prices are relevant?

13 THE WITNESS: No. I think we  
14 misunderstood each other.

15 EXAMINER PRICE: I think we are  
16 misunderstanding each other because I am not  
17 following you.

18 THE WITNESS: I'm sorry. Ask your  
19 question again, please.

20 EXAMINER PRICE: You just seemed a second  
21 ago to be discounting the forward prices, and the  
22 evidence that Mr. Kutik elicited on cross-examination  
23 says that's not relevant. I wasn't dealing with  
24 forwards until June, 2016. But then in your  
25 testimony it's come back and say, well, the reference

1 case is not consistent with current market  
2 conditions. That's the disconnect I am having with  
3 your testimony.

4 THE WITNESS: Okay.

5 EXAMINER PRICE: It's probably me.

6 THE WITNESS: The discussion we had was  
7 of spot prices in December of 2015. Spot prices  
8 refer to prices in the month of December, 2015.

9 EXAMINER PRICE: Okay.

10 THE WITNESS: In my analysis I  
11 accessed -- in December, 2015, I accessed forward  
12 prices for June of 2016 through May of 2024 forward  
13 prices. So we had a long discussion about spot  
14 prices in December, 2015, and in January, 2016, that  
15 would reflect storage being full, reflect mild  
16 weather and such. Those are circumstances that  
17 influence December of 2015, January, 16, May  
18 February, March, April, but they really will have  
19 very little influence on June, 2016, which is the  
20 first forward prices that I use.

21 So I argued that the current spot  
22 conditions in the winter of '15-16 don't really tell  
23 us anything about gas circumstances during the period  
24 of my analysis, 2016 to 2024, okay? And AEO's -- the  
25 Energy Information Administration's long-term

8147

1 forecast, AEO 2015, reflected market conditions from  
2 2016 to 2024. And that reflection in my opinion, is  
3 now quite out of date. If you compare it to forward  
4 prices, the forward prices are much lower. If you  
5 look at EIA's short-term energy outlook, which now  
6 has a forecast for 2016 and 2017, it is much, much,  
7 lower than the AEO. So the AEO 2015 forecast, in my  
8 opinion, is out of date and not consistent with  
9 market conditions at this time.

10 EXAMINER PRICE: Notwithstanding the jump  
11 up in the spot market from January -- December to  
12 January?

13 THE WITNESS: I don't recall us  
14 discussing a jump in the spot market from December to  
15 January.

16 EXAMINER PRICE: I thought that's what  
17 you were saying. Sorry, my mistake. Okay.

18 Thank you, Mr. Wilson.

19 MS. WILLIS: That's all the questions I  
20 have, your Honor.

21 Thank you, Mr. Wilson.

22 EXAMINER PRICE: Redirect, Mr. Mendoza?

23 MR. MENDOZA: No questions, your Honor

24 EXAMINER PRICE: Okay. Mr Darr?

25 MR. DARR: No questions.

1 EXAMINER PRICE: Mr. Settineri?

2 MR. SETTINERI: No questions.

3 EXAMINER PRICE: Ms. Fleisher?

4 MS. FLEISHER: No questions.

5 Mr. Stinson?

6 MR. STINSON: My witness.

7 EXAMINER PRICE: That's your witness,

8 sorry.

9 Mr. Kurtz?

10 MR. KURTZ: No questions.

11 EXAMINER PRICE: Mr. Kutik?

12 - - -

13 RECROSS-EXAMINATION

14 By Mr. Kutik:

15 Q. Just following up on the Attorney  
16 Examiner's question, it's true, is it not, that spot  
17 prices have jumped up from mid December to early  
18 January?

19 MR. MENDOZA: Objection. He could have  
20 asked this question in the cross if he was interested  
21 in it.

22 MS. WILLIS: And, your Honor, I would  
23 also object. I don't believe it's proper or  
24 appropriate to follow-up on an Attorney Examiner  
25 questions that were asked on redirect.

1 EXAMINER PRICE: He is just clarifying my  
2 misunderstanding. Overruled.

3 A. I can believe that occurred. I haven't  
4 checked. December was a very unusual circumstance of  
5 full storage and very, very warm conditions. Now we  
6 are getting some cold weather, so I wouldn't be at  
7 all surprised that spot prices have risen again, and,  
8 again, it's not relevant to my analysis.

9 Q. Well, I didn't ask you whether it was  
10 relevant to your analysis. But prices have gone up  
11 pretty steeply since mid December, correct?

12 A. I don't know. I haven't checked.

13 Q. Would it be fair to say that the forward  
14 prices, the futures prices as for January -- June,  
15 2016, were different in April of 2015 than they are  
16 in December?

17 A. Undoubtedly.

18 Q. And would you believe that in March of  
19 2016, the forward prices for January -- it should be  
20 June, 2016, would be different than they were in  
21 December?

22 A. Different, yes.

23 Q. And that would, in part, reflect  
24 conditions in the marketplace at the time those  
25 forwards are being quoted?



1           A.    No.  It would reflect market  
2 participants' expectations at the time they were  
3 quoted.

4           Q.    And those expectations would include,  
5 among other things, current conditions of the  
6 marketplace, correct?

7           A.    Well, as I have testified before, if we  
8 are talking about June of 2016, we should expect the  
9 forward price for June of 2016 to reflect market  
10 participants' expectations of supply, demand, and  
11 storage, in June of 2016, and the connection between  
12 that and what happens -- what's happening at the time  
13 of the quote is, in my opinion, very weak, especially  
14 if we are talking not a few months but most of a year  
15 or more than a year away.

16          Q.    Let me get back to my question.  One of  
17 the things that people's expectation about futures  
18 markets that they may take into consideration is our  
19 current market conditions, correct?

20          A.    If we interpret current market conditions  
21 as conditions now over years and months into the  
22 future, yes.  If you are talking about whether they  
23 are -- they are willing to pay in June, 2016 has to  
24 do with whether it was cold yesterday or not, I don't  
25 think that's something they would consider very

1 heavily.

2 Q. Okay. Now, in the 2018-2019 BRA, are you  
3 familiar with the fact that generators were allowed  
4 to offer two-part offers into the BRA contingent on  
5 price such that a unit can clear as CP or as base  
6 capacity?

7 MS. WILLIS: Objection.

8 EXAMINER PRICE: Grounds?

9 MS. WILLIS: Beyond the scope of  
10 redirect.

11 EXAMINER PRICE: Mr. Kutik.

12 MR. KUTIK: Well, your Honor, I believe  
13 he talked about what the rules were for what he  
14 thought the scenario was for 2018-2019 to those  
15 scenarios now, so I am exploring what he understands  
16 about that auction.

17 EXAMINER PRICE: Overruled.

18 A. We typically call them a coupled or  
19 linked offer rather than two-part. But yes, you  
20 could offer one price for base capacity and a  
21 different price for capacity performance.

22 Q. So that even though some units cleared as  
23 base capacity, they might have been submitted as a  
24 capacity performance offer?

25 A. Yes. And the report on the auction

1 identifies that amount.

2 Q. And with respect to demand response, the  
3 rules with respect to what could qualify as capacity  
4 performance are different than what demand -- the  
5 rules relate to demand response qualifying as a base  
6 resource, correct?

7 A. The current rules that would become fully  
8 in play in 2020 are different, yes, and there's also  
9 the possibility that they may change again before  
10 that time.

11 Q. Right. And one of the differences is,  
12 for example, that a demand response resource would  
13 have to be available perhaps all year round as  
14 opposed to just in the summertime?

15 A. Yes.

16 MR. KUTIK: May I have a minute, your  
17 Honor.

18 A. The current tariff rules have that  
19 feature, although there is some discussion of change  
20 that go to better accommodate seasonal resources.

21 MR. KUTIK: No further questions. Thank  
22 you.

23 EXAMINER PRICE: Mr. McNamee?

24 MR. McNAMEE: No, thank you.

25 EXAMINER PRICE: Ms. Addison?

1 EXAMINER ADDISON: No questions.

2 EXAMINER PRICE: Ms. Chiles?

3 EXAMINER CHILES: No questions.

4 EXAMINER PRICE: Commissioner Haque?

5 COMMISSIONER HAQUE: No questions. Thank  
6 you.

7 EXAMINER PRICE: I just have a few more  
8 questions about the -- your choice on the 2015 Annual  
9 Energy Outlook to use the high oil and gas case  
10 comparison versus the reference case. Would you  
11 agree with me that notwithstanding the PPA and rider  
12 RRS the high oil and gas resource scenario is the  
13 best case scenario for consumers of the scenarios  
14 laid out by EIA?

15 THE WITNESS: Best for consumers, are  
16 you -- do you have in mind with respect to the  
17 calculation it results in or the rider RRS or the  
18 American consumers?

19 EXAMINER PRICE: I think with respect to  
20 their forecasts and prices they will pay for energy.

21 THE WITNESS: You mean American natural  
22 gas consumers?

23 EXAMINER PRICE: I mean, consumers in  
24 general, consumers of natural gas, consumers of oil,  
25 consumers of electricity, consumers of energy.

1 THE WITNESS: I don't know if it's the  
2 best. I mean, there were other scenarios that were  
3 also included. I don't know if it was the best.

4 EXAMINER PRICE: Okay. That's fair.  
5 Would you turn to page --

6 THE WITNESS: I would like to add with  
7 respect to the oil and -- high oil and gas scenario,  
8 for many years now it has been a leading indicator of  
9 the reference case. It has been by far the most  
10 accurate of all the scenarios.

11 EXAMINER PRICE: Could you turn to page  
12 6, please, Figure 6. 2015 Advanced Energy Outlook.

13 THE WITNESS: Oh.

14 MS. WILLIS: If I may have a moment, your  
15 Honor, I don't think I quite got that, where you are  
16 looking at.

17 EXAMINER PRICE: Page 6.

18 MS. WILLIS: Of?

19 MR. KUTIK: AEO.

20 EXAMINER PRICE: AEO.

21 MS. WILLIS: Okay. Thank you.

22 EXAMINER PRICE: Figure 6, does that show  
23 that in terms of natural gas prices projected, the  
24 high oil and gas resource is the lowest of the  
25 projections?

1 THE WITNESS: The lowest and most  
2 accurate, yes.

3 EXAMINER PRICE: I'll let that slide. In  
4 fact, it shows it below I want to say \$4 throughout  
5 2040; is that correct?

6 THE WITNESS: Appears to get above 4 but  
7 stays below 5, yes.

8 EXAMINER PRICE: Well, let me rephrase  
9 that. Through 2025, it's clearly below 4.

10 THE WITNESS: Yes.

11 EXAMINER PRICE: 2025 is the end date for  
12 our little proposed PPA; is that correct?

13 THE WITNESS: Yes.

14 EXAMINER PRICE: Okay. So then if you  
15 look at coal prices on page 8, the high oil and gas  
16 resource may not be the lowest of the coal prices,  
17 but it is certainly the next lowest; is that correct?

18 THE WITNESS: Yes.

19 EXAMINER PRICE: If we turn to  
20 electricity prices, the -- through 2025, the high oil  
21 and gas and -- oil and gas resource is the lowest of  
22 all the electricity prices; is that right?

23 THE WITNESS: Yes. Of course, I didn't  
24 use that, right.

25 EXAMINER PRICE: I understand that. I am

1 just saying that's the lowest projection.

2 THE WITNESS: Yes.

3 EXAMINER PRICE: That is the best case  
4 scenario, right? Customers, if they want to pay the  
5 least, these are the lowest prices of natural gas,  
6 coal, and electricity; is that correct?

7 THE WITNESS: Of the -- of the ones  
8 depicted here, yes.

9 EXAMINER PRICE: Of the ones depicted  
10 here. Now, if you were advising one of Mr. Kurtz's  
11 clients who is putting in an arc furnace, would you  
12 consider it prudent to tell him you should rely upon  
13 the best case projections for energy prices and  
14 without hedging in case the energy prices go a  
15 different direction?

16 THE WITNESS: My guess is his clients  
17 rely on the forward curve, and the forward curve is  
18 the scenario of mine that I most recommend.

19 EXAMINER PRICE: That's very nice but  
20 that's not answering my question.

21 THE WITNESS: Otherwise, I would suggest  
22 that you look at the history, the recent history of  
23 these various scenarios; and, again, you'll see that  
24 the high oil and gas scenario has year after year  
25 been a leading indicator of what the reference case

1 will be next year. It has by far been the most  
2 accurate scenario.

3 EXAMINER PRICE: So you would use the  
4 best case scenario.

5 THE WITNESS: At this time I would use  
6 the most accurate scenario which has been the high  
7 oil and gas case.

8 EXAMINER PRICE: Okay. One more  
9 question. Could you turn to page 1, please.

10 THE WITNESS: Of?

11 EXAMINER PRICE: Of the Alternative  
12 Energy Outlook -- Annual Energy Outlook page 1. And  
13 there is a description of the tight oil and gas  
14 resources; is that correct?

15 THE WITNESS: Yes.

16 EXAMINER PRICE: And this description  
17 is based -- or assumptions they based the resource  
18 projections on; is that correct?

19 THE WITNESS: Yes.

20 EXAMINER PRICE: Okay. The first  
21 assumption is "Estimated ultimate recovery per shale  
22 gas, tight gas, and tight oil gas is 50% higher, and  
23 well spacing is 50% closer than in the Reference  
24 case"; is that correct?

25 THE WITNESS: That's what it says, yes.



1 EXAMINER PRICE: Do you provide any  
2 testimony in your testimony -- any evidence in your  
3 testimony that "Estimated ultimate recovery per shale  
4 gas, tight gas, and tight oil well is 50% higher and  
5 well spacing is 50% closer."

6 THE WITNESS: No.

7 EXAMINER PRICE: Okay. It also indicates  
8 "In addition, tight oil resources are added to  
9 reflect new plays or the expansion of known tight oil  
10 plays, and the EUR for tight oil and shale wells  
11 increases by 1% or more per year than the annual  
12 increase in the Reference case to reflect additional  
13 technology improvements." Do you provide any  
14 evidence of additional technology improvements that  
15 would result in that?

16 THE WITNESS: No.

17 EXAMINER PRICE: Okay. "This case also  
18 includes kerogen development; undiscovered resources  
19 in the offshore Lower 48 states and Alaska; and  
20 coalbed methane and shale gas resources in Canada  
21 that are 50% higher than the Reference Case."

22 Do you provide any evidence with respect  
23 to that factor?

24 THE WITNESS: No.

25 EXAMINER PRICE: Okay. Thank you. You

1 are excused.

2 Ms. Willis.

3 MS. WILLIS: Your Honor, at this time we  
4 would move for admission of OCC/NOPEC Joint Exhibit 9  
5 and 10C.

6 EXAMINER PRICE: Any objections?

7 MR. KUTIK: No, your Honor, subject to  
8 our motions to strike.

9 EXAMINER PRICE: They will be admitted,  
10 subject to the motions to strike.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 EXAMINER PRICE: Mr. Kutik.

13 MR. KUTIK: Your Honor, at this time I  
14 will move -- I will take them one by one. I will  
15 move for the admission of Company Exhibit 166, the  
16 2015 AEO.

17 EXAMINER PRICE: Objections?

18 MS. WILLIS: No objection.

19 EXAMINER PRICE: It will be admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 MR. KUTIK: We move for the admission of  
22 167, the short-term energy outlook from January,  
23 2016.

24 EXAMINER PRICE: Any objections?

25 MS. WILLIS: I am trying to find that,

1 your Honor.

2 No objection, your Honor.

3 EXAMINER PRICE: It will be admitted.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 MR. KUTIK: Your Honor, we move for the  
6 admission of Exhibit 168, the PJM website capacity  
7 market web page.

8 EXAMINER PRICE: Let's take this up with  
9 169 also.

10 MR. KUTIK: And we move for the admission  
11 of that as well.

12 EXAMINER PRICE: Objection?

13 MS. WILLIS: Yes, we do have objection to  
14 both of those coming in, your Honor. Again, I think  
15 there is a lack of foundation. The witness did  
16 not -- or testified that he was not -- that he had  
17 clicked on the website and clicked on the link, but  
18 he was not familiar with all the assumptions made in  
19 the scenario 13 which was the -- the subject of  
20 Mr. Kutik's cross. In fact, testified at length in  
21 the redirect that he was not aware of what  
22 assumptions were made by PJM with respect to that.

23 I also would object on the grounds of  
24 relevancy because I think it is -- 100 percent CP is  
25 clearly a hypothetical. And so for those purposes I

1 would also indicate that this is hearsay and there is  
2 no -- it doesn't fit within an exception to hearsay.

3 So I think on all those grounds it should  
4 not be admitted.

5 EXAMINER PRICE: Mr. Kutik.

6 MR. KUTIK: Your Honor, this is an  
7 analysis that this witness has indicated was  
8 performed by PJM with respect to a scenario of 100  
9 percent capacity performance for the 2018-19 BRA. He  
10 went -- he then commented at length on redirect with  
11 respect to his understanding on however good or bad  
12 that may be but his understanding as to what the  
13 scenario represented. And so they have had fair  
14 comment with respect to the scenario and how it was  
15 developed.

16 EXAMINER PRICE: I agree. The objection  
17 is overruled. Those two exhibits will be admitted.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 MR. KUTIK: Your Honor, I understand that  
20 170 has been previously marked and admitted in this  
21 case as a Sierra Club exhibit. And so we are -- we  
22 would now move on to Company Exhibit 171, the PJM  
23 load forecast report for January, 2016, which we  
24 would move for admission.

25 EXAMINER PRICE: Objections?

1 MS. WILLIS: No, your Honor.

2 EXAMINER PRICE: It will be admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 MR. KUTIK: Lastly, your Honor, we move  
5 for the admission of Company Exhibit 172, "PJM Manual  
6 19, Load Forecasting and Analysis."

7 EXAMINER PRICE: Objections?

8 MS. WILLIS: Your Honor, yes, our  
9 objections were noted earlier, and we believe that if  
10 that is to come in, it should only come in with  
11 respect to the specific portion of the manual that  
12 Mr. Kutik crossed on.

13 MR. KUTIK: Your Honor, there is -- there  
14 has been an extensive discussion in this case already  
15 and there will be extensive discussion as we move on  
16 with respect to witnesses with respect to how PJM  
17 came up with its forecast. This document is very  
18 relevant with respect to that issue.

19 EXAMINER PRICE: I agree. We'll admit  
20 it.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 EXAMINER PRICE: Anything else?

23 At this time we will take a break until  
24 2 o'clock, at which point we will take ELPC's  
25 witness. And then what's your next witness?

8163

1 MS. WILLIS: Mr. Kahal --

2 EXAMINER PRICE: Mr. Kahal.

3 MS. WILLIS: -- the joint witness.

4 EXAMINER PRICE: Thank you. We are off  
5 the record.

6 (Thereupon, at 12:53 p.m., a lunch recess  
7 was taken until 2:00 p.m.)

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8164

1 Tuesday Afternoon Session,  
2 January 19, 2016.

3 - - -

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

6 Ms. Fleisher, you may call your witness.

7 MS. FLEISHER: Thank you, your Honor. I  
8 would like to call Mr. Karl Rábago.

9 (Witness sworn.)

10 EXAMINER ADDISON: Thank you. You may be  
11 seated. Please proceed, Ms. Fleisher.

12 MS. FLEISHER: Thank you, your Honor.  
13 May I approach?

14 EXAMINER ADDISON: You may.

15 MS. FLEISHER: And at this time I would  
16 like to mark -- I think we are on ELPC 28 -- I am not  
17 100 percent sure I kept track correctly -- which is  
18 the Direct Testimony of Karl R. Rábago, filed in this  
19 case on December 30, 2015.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

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KARL R. RÁBAGO

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

DIRECT EXAMINATION

By Ms. Fleisher:

Q. Mr. Rábago, do you have a copy of your  
testimony marked ELPC Exhibit 28?

A. Yes, I do.

Q. And did you prepare this testimony or  
have it prepared at your direction?

A. Yes, I did.

Q. Do you have any additions or changes to  
this testimony?

A. I do not.

Q. So if I asked you the same questions at  
this time, would you provide the same answers?

A. I would.

MS. FLEISHER: At this time I would offer  
the witness for cross-examination.

EXAMINER ADDISON: Thank you,  
Ms. Fleisher. And just so the record is clear, we  
will be marking the testimony of Mr. Rábago as ELPC  
Exhibit 28.

MS. FLEISHER: Thank you, your Honor.

EXAMINER ADDISON: Are there any motions



1 to strike before we begin cross-examinations?

2 MR. LANG: Your Honor, I have one.

3 EXAMINER ADDISON: Go ahead, Mr. Lang.

4 MR. LANG: Thank you. Motion to strike  
5 is on page 8 of his testimony, starting at line 19,  
6 the sentence that starts, "The trade media" and then  
7 through line 20, including footnote 2.

8 The basis for the motion is hearsay. The  
9 statement is based on, as it says, trade media. It's  
10 actually a reference to a website called utilitydive.  
11 Utilitydive itself is an aggregator of news stories.  
12 This particular news story is a summary of, I  
13 believe, a Cleveland Business First news article, so  
14 it's multiple layers of hearsay. Move that it be  
15 stricken.

16 EXAMINER ADDISON: Thank you, Mr. Lang.

17 Ms. Fleisher, response?

18 MS. FLEISHER: Your Honor, very simply,  
19 it's not hearsay because he is not offering this for  
20 the truth of the matter. He is saying how the trade  
21 media has described the case. He is not saying  
22 that's necessarily what he believes to be the truth  
23 or what is the truth. And there is no dispute as to  
24 the -- that is what this article says. It is not  
25 incorporating the article into his testimony. It's

1 clearly cited to, and so I don't think there is any  
2 misleading the Commission or creating a misleading  
3 record here.

4 EXAMINER ADDISON: At this time I am  
5 going to grant the motion to strike to be consistent  
6 with our prior rulings in this proceeding. So just  
7 to be clear, lines 19 on page 8 starting with "The  
8 trade media" and ending on line 20 ending "for  
9 re-regulation," including footnote No. 2, will be  
10 stricken.

11 Are there any other motions to strike,  
12 Mr. Lang?

13 MR. LANG: No, your Honor. Thank you.

14 EXAMINER ADDISON: Thank you.

15 Mr. Mendoza?

16 MR. MENDOZA: No questions, your Honor.

17 EXAMINER ADDISON: Thank you.

18 Ms. Spinosi?

19 MS. SPINOSI: No questions, your Honor.

20 EXAMINER ADDISON: Thank you.

21 Ms. Ghiloni?

22 MS. GHILONI: No questions, your Honor

23 EXAMINER ADDISON: Thank you.

24 Ms. Willis.

25 MS. WILLIS: No questions, your Honor.

8168

1 EXAMINER ADDISON: Thank you.

2 Mr. Oliker?

3 MR. OLIKER: No, thank you, your Honor.

4 EXAMINER ADDISON: Thank you.

5 Mr. Kurtz?

6 MR. KURTZ: No questions, your Honor.

7 EXAMINER ADDISON: Mr. Lang.

8 MR. LANG: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Lang:

12 Q. Good afternoon, Mr. Rábago.

13 A. Good afternoon.

14 Q. You are currently executive director of  
15 the Pace Energy and Climate Center; is that correct?

16 A. I am, yes, sir.

17 Q. And in that role, you are an advocate for  
18 advancing clean energy through regulatory and market  
19 processes, correct?

20 A. That would be a fair description, yes.

21 Q. And also in that role you advocate in  
22 favor of renewable energy resource, energy  
23 efficiency, SmartGrid, and a number of related  
24 concepts and technologies, correct?

25 EXAMINER ADDISON: Mr. Lang, I apologize

1 to interrupt.

2 Mr. Rábago, would you mind turning your  
3 microphone on. Thank you.

4 A. Okay. Yes, I do.

5 Q. And you also refer to yourself as a free  
6 market green, correct?

7 A. That's a short appellation I applied to  
8 my Twitter account.

9 Q. Great. And you also describe yourself as  
10 a national leader in developing and implementing what  
11 you call the value of solar alternative to  
12 traditional net metering, correct?

13 A. Yes.

14 Q. Now, you are a lawyer, correct?

15 A. Yes.

16 Q. You are licensed to practice in Texas,  
17 correct?

18 A. That is correct.

19 Q. But not in Ohio.

20 A. No, sir.

21 Q. Now, you recently testified in AEP Ohio's  
22 PPA rider proceeding; is that correct?

23 A. Yes, sir.

24 Q. And you were retained by ELPC to testify  
25 in this proceeding and in the AEP's PPA rider

1 proceeding around the same time; is that correct?

2 A. Yes, sir.

3 Q. And you drafted your testimony first for  
4 the AEP Ohio PPA rider case because that testimony  
5 was due first, correct?

6 A. Not exactly. I submitted the AEP Ohio  
7 testimony first. The drafting process was somewhat  
8 simultaneous since both hearings were relatively  
9 approximate.

10 Q. Do you have your deposition transcript?

11 A. I do.

12 MR. LANG: Your Honors, if I may  
13 approach?

14 EXAMINER ADDISON: You may.

15 Q. (By Mr. Lang) And, Mr. Rábago, you  
16 remember being deposed on January 7 of this year by  
17 me, correct?

18 A. Yes.

19 Q. And in that deposition you were sworn in,  
20 correct?

21 A. Yes.

22 Q. And agreed to tell the truth, correct?

23 A. Yes.

24 Q. If I could have you turn to page 10 of  
25 your deposition transcript, please.

1 A. Yes.

2 Q. And is it correct on page 10, starting on  
3 line 8, I asked you the question: "Did you draft  
4 your testimony before the AEP PPA rider proceeding  
5 first?"

6 And your answer was: "Yes, I did."  
7 Did I read that correctly?

8 A. You are correct.

9 EXAMINER ADDISON: Ms. Fleisher.

10 MS. FLEISHER: Never mind.

11 EXAMINER ADDISON: Thank you.

12 Q. (By Mr. Lang) Now, after preparing your  
13 AEP testimony, you then finalized your testimony in  
14 this case, correct?

15 A. That is correct.

16 Q. And you used similar language in both  
17 sets of testimony, correct?

18 A. In several places, yes.

19 Q. And you used similar language because you  
20 believe the posture of the two cases is similar,  
21 correct?

22 A. Yes, I believe there are -- yes.

23 Q. And both testimonies have a common theme,  
24 which is that the stipulations in both cases include  
25 noncore provisions that you view as separate from the

1 stabilization proposal that's supported by the PPA,  
2 correct?

3 A. Yes. As I explained to you, I created --  
4 just used the term "noncore" in order to  
5 differentiate between some provisions and others.

6 Q. Now, this proceeding, the FirstEnergy  
7 electric utilities proceeding that you are testifying  
8 in today, this proceeding is an Electric Security  
9 Plan proceeding or what's known as an ESP proceeding,  
10 correct?

11 A. That's my understanding.

12 Q. And you agree that an ESP in Ohio can  
13 include as one of several components provisions  
14 relating to the supply and pricing of retail electric  
15 service, correct?

16 A. Yes.

17 Q. And an ESP in Ohio also can include  
18 provisions relating to transmission service,  
19 distribution service, economic development, and  
20 energy efficiency, among other things, correct?

21 A. I am not an expert on ESP proceedings but  
22 I do understand they have a wide scope.

23 Q. Now, you understand that the companies'  
24 Economic Stability Program that's proposed in this  
25 proceeding is one component of the companies'

1 proposed ESP IV, correct?

2 A. That is my understanding.

3 Q. You did not analyze whether any of the  
4 provisions in the third supplemental stipulation fall  
5 outside of the scope of Ohio's ESP statute, correct?

6 A. I did not look for that.

7 Q. And you are not offering an opinion  
8 regarding whether the proposed Economic Stability  
9 Program including rider RRS is prudent or has merit,  
10 correct?

11 A. That is correct on the particular PPA and  
12 rider -- associated rider, I am not offering that  
13 opinion.

14 Q. And you are not offering an opinion about  
15 the merits of the companies' ESP application,  
16 correct?

17 A. Only insofar as it is being moved for  
18 approval through this process of the stipulation and  
19 settlement agreement, but not on the -- I am not  
20 evaluating the merits of the ESP, per se. I am  
21 talking about -- my testimony talks about where we  
22 are and the evidence that has been included in the  
23 settlement.

24 Q. Now, on page 7 of your testimony --

25 A. Yes, sir.



1           Q.    -- if I could, at lines 8 through 11, you  
2 recommend that the Commission in this case test the  
3 testimony and the evidence with regard to the third  
4 supplemental stipulation using a standard that you  
5 describe there. So I wanted to ask you about that  
6 standard.

7           A.    Yes.

8           Q.    And with regard to that standard, you do  
9 not view that standard as a separate step in the  
10 Commission's three-part test; is that correct?

11          A.    This is the approach that I recommend the  
12 Commission adopt in order to satisfy the so-called  
13 three-part test that I testified about earlier on.

14          Q.    So --

15          A.    This is my suggestion as to how.

16          Q.    Okay. So the answer to my question is  
17 you do not view it as a separate step, correct?

18          A.    Perhaps -- it's not the same, so perhaps  
19 you could rephrase what you mean by "separate step."  
20 I'm -- I was trying to explain that I think that  
21 addressing these questions that I provide on page 7  
22 would be a good way to make sure that the three-part  
23 test is satisfied, so it's supportive of, I suppose.  
24 I'm getting hung up on your word "separate."

25          Q.    Are you aware that -- are you aware that

1 today is the 38th day of hearing testimony on the  
2 companies' proposed ESP IV?

3 A. I don't have it on a calendar. I'll  
4 accept that assertion, subject to check.

5 Q. And is it fair to say you have not  
6 reviewed the earlier hearing record in this case?

7 A. That is fair to say.

8 Q. Now, you have some experience with  
9 financial hedges in the utility world, correct?

10 A. I do have some.

11 Q. And you agree that hedges have an  
12 appropriate role in the energy markets, correct?

13 A. Yes, I do.

14 Q. And you also agree that hedges can be  
15 appropriate to protect utility customers against  
16 energy price volatility, correct?

17 A. Well-designed, well-constructed hedges  
18 procured in the marketplace can help manage price  
19 volatility, yes.

20 Q. Yes. And you have not done an analysis  
21 of how rider RRS will work over the next eight years  
22 in terms of providing charges and credits to the  
23 companies' customers, correct?

24 A. No, sir.

25 Q. Now, and whether the PPA that is

1 supporting rider RRS will be above market or below  
2 market over its eight-year term is not something  
3 you've analyzed, correct?

4 A. I have not -- I have not analyzed that.

5 Q. Now, at the top of page 9 of your  
6 testimony.

7 A. Yes.

8 Q. In the first bullet point you describe  
9 uneconomic generating facilities as not earning  
10 sufficient revenues to be profitable for  
11 shareholders. Do you see that reference?

12 A. Yes, sir.

13 Q. So you agree that a generating facility  
14 that cannot make enough revenue to cover its costs  
15 including the return that shareholders expect from it  
16 is at risk of retirement, correct?

17 A. That is one option.

18 Q. Now, you have some testimony about fuel  
19 diversification. Do you agree it is reasonable to  
20 believe that the companies' strategy regarding  
21 promoting -- regarding promoting fuel diversification  
22 would be different on November 1, 2016, than it is  
23 now?

24 A. I don't know how the company develops its  
25 fuel diversification strategy, if that's what you are

1 asking.

2 Q. Sorry. We're having some microphone  
3 trouble this afternoon. My question, sir, is, is it  
4 reasonable to believe that the companies' strategy  
5 for fuel diversification would be different on  
6 November 1, 2016, as compared to now?

7 MS. FLEISHER: Objection, asked and  
8 answered. He explained he didn't have a basis for  
9 determining what would be reasonable.

10 MR. LANG: And, your Honor, I believe he  
11 answered a different question so I would like to get  
12 an answer to this question.

13 A. Say it again and I will listen very  
14 carefully.

15 EXAMINER ADDISON: Mr. Rábago, there is a  
16 pending objection.

17 THE WITNESS: Oh, sorry.

18 EXAMINER ADDISON: I am not sure how your  
19 second question was any different, Mr. Lang. Perhaps  
20 you would like to rephrase and ask a different  
21 question.

22 MR. LANG: And, your Honor, my question  
23 was the same. His answer was not an answer to my  
24 question. His answer was about what the companies'  
25 current strategy is, and he says he doesn't know what

1 the companies' current strategy is.

2 My question is, is it reasonable to  
3 assume that their strategy in November will be  
4 different than it is today, and that's the question I  
5 would like answered.

6 EXAMINER ADDISON: You may answer the  
7 question.

8 A. I think the microphone kind of undid us  
9 there. What I meant to answer before, I thought I  
10 answered before, is that I can't answer that question  
11 definitively because I don't know how the company  
12 devises its fuel diversification strategy.

13 If you are asking me do I think facts and  
14 circumstances could be different a year from now?  
15 Yes. And would those weigh in how the company  
16 defines or develops its fuel diversification  
17 strategy? That's the part I can't answer because I  
18 don't know how the company uses facts and data that  
19 most certainly would be different in November than it  
20 is today.

21 Q. Could I have you turn to your deposition  
22 transcript page 55, please.

23 A. I'm there.

24 Q. And did I ask on page 55, starting at  
25 line 1: "Is it reasonable to believe that the

1 companies' strategy regarding promoting fuel  
2 diversification might be different on November 1,  
3 2016 as compared to now?"

4 And you answered, "Is it reasonable to  
5 believe that the companies' strategy would be  
6 different than it is now?"

7 "Yes, it's reasonable because any number  
8 of things might happen."

9 Did I read that correctly?

10 A. Yes. And -- yes, you did. That is what  
11 I remember saying in response to your question about  
12 whether the companies' strategy might be different in  
13 November.

14 MS. FLEISHER: And at this point, your  
15 Honor, I will object as improper impeachment because  
16 there was a word difference in Mr. Lang's question.  
17 I believe here he asked is it reasonable to believe  
18 that the companies' strategy, to paraphrase, will be  
19 different versus in the deposition asking whether it  
20 might be different. I just want that to be clear for  
21 the record.

22 EXAMINER ADDISON: Thank you,  
23 Ms. Fleisher.

24 Please proceed, Mr. Lang.

25 MR. LANG: Thank you, your Honor.

1           Q.     (By Mr. Lang) Mr. Rábago, you believe  
2     that the companies' having a fuel diversification  
3     strategy and then updating that strategy regularly is  
4     a good business practice for the companies to adopt?

5           A.     Generally speaking, I think that's true,  
6     yes.

7           Q.     And you agree that the companies  
8     following that business practice could have benefits  
9     for their customers over time, correct?

10          A.     Again, base -- generally speaking, yes.  
11     If the strategy is a good one, then it should yield  
12     benefits.

13          Q.     And at a high level, you also support  
14     grid modernization efforts, correct?

15          A.     Yes, I do.

16          Q.     And you believe there are many  
17     technological service opportunities to be taken  
18     advantage of that would benefit the companies and  
19     their customers that are related to grid  
20     modernization, correct?

21          A.     They could, yes, properly implemented and  
22     acquired.

23          Q.     And you also believe there's a lot of  
24     opportunity in advanced metering infrastructure,  
25     correct?

1           A.    Yes, I do.

2           Q.    Now, with regard to the grid modern --  
3   modernization initiatives that are in the  
4   stipulation, you believe it would advance Ohio  
5   utility policy to have a proceeding in which all  
6   interested parties can address the costs and benefits  
7   of grid modernization in the companies' service  
8   territories, correct?

9           MS. WILLIS:  Objection.

10          EXAMINER ADDISON:  Grounds?

11          MS. WILLIS:  Friendly cross.

12          MR. LANG:  And, your Honor, I don't  
13   believe the witness is being presented as a friendly  
14   witness.  The witness is being presented in  
15   opposition, to some extent, to the third supplemental  
16   stipulation, so I'm certainly entitled to ask him  
17   questions about what he disagree with and what he  
18   agrees with.

19          MS. WILLIS:  And we now have established  
20   he has no disagreement, so I think we are now beyond  
21   and now we are into very friendly cross.

22          EXAMINER ADDISON:  I tend to agree with  
23   Ms. Willis.  At this point you've made your point,  
24   Mr. Lang.

25          Q.    (By Mr. Lang) Well, sir, we will move on



1 to energy efficiency.

2 A. All right, sir.

3 Q. At a general level you support advancing  
4 energy efficiency efforts in Ohio and elsewhere,  
5 correct?

6 A. Yes, sir.

7 Q. And you agree it will be beneficial for  
8 customers to have a proceeding in which interested  
9 parties can address the cost and benefits of energy  
10 efficiency and peak-demand reduction in this -- in  
11 the companies' service territory, correct?

12 A. Generally, yes, I do.

13 Q. You are aware that Ohio has statutory  
14 benchmarks for energy efficiency and peak-demand  
15 reduction, correct?

16 A. Yes, I am.

17 Q. However, with regard to the specifics of  
18 what those benchmarks -- what those benchmarks are or  
19 how they work, that's not something you know; is that  
20 fair?

21 A. That would be correct. I am not an  
22 expert on the mechanics of the energy efficiency  
23 goals and benchmarks.

24 Q. And you do not know whether those  
25 benchmarks are an enforceable commitment to

1 quantitative savings, correct?

2 A. I do not, no. I do not, no.

3 Q. Thank you.

4 A. Period.

5 Q. Thank you. The punctuation was throwing  
6 me off.

7 A. Yes, yes. My fault.

8 Q. Is it fair to say you do not know the  
9 details of the companies' EE/PDR plans?

10 A. No, sir, I do not.

11 Q. And you do not know how the Commission  
12 reviews the costs of the EE/PDR portfolio plans?

13 A. No, I do not.

14 Q. And, in particular, you do not know  
15 whether the Commission reviews the costs of each plan  
16 on a portfolio-wide basis; is that correct?

17 A. I don't know whether it's a  
18 measured-by-measured portfolio.

19 Q. However, you do believe the Commission  
20 currently examines the impact of each plan on the  
21 companies' customers --

22 A. Yes.

23 Q. -- correct? Now, a couple of questions  
24 about shared savings that you mention in your  
25 testimony. You are aware that shared savings are --

1 a commonly used tool in energy efficiency programs,  
2 correct?

3 A. I am familiar with the concept, the tool  
4 as you say.

5 Q. And you agree that shared savings is one  
6 component of energy efficiency programs that can have  
7 value, correct?

8 A. There is a lot in that, but yes, properly  
9 designed, et cetera.

10 Q. Now, with regard to renewable resources,  
11 you also believe that Ohio has abundant untapped  
12 potential for renewable energy development.

13 A. It's my understanding, yes.

14 Q. Now, you support, in the first instance,  
15 market-based-development of renewable resources,  
16 correct?

17 A. That's my personal belief, that we should  
18 try to use market-based approaches where possible.

19 Q. Do you also agree that where there are  
20 market failures, you would support the application of  
21 targeted state incentives?

22 A. That is one mechanism that has proven to  
23 be effective in overcoming market failures.

24 Q. And do you recognize that with regard to  
25 renewable resources in different parts of the

1 country, at different times there have been market  
2 failures, correct?

3 A. Yes, there have been market failures in  
4 renewable energy development.

5 Q. So your belief is that the free market is  
6 a good way to achieve the goal of developing  
7 renewable resources, but not to the exclusion of  
8 everything else, correct?

9 A. I would phrase it as the aspiration.

10 Q. Now, I asked you at the start about your  
11 value of solar work, and with regard to that work,  
12 you believe that the market is not properly  
13 recognizing the value of solar resources, correct?

14 MS. WILLIS: Objection.

15 EXAMINER ADDISON: Grounds?

16 MS. WILLIS: Friendly cross.

17 EXAMINER ADDISON: I am going to allow a  
18 little bit of leeway for Mr. Lang on this one.

19 You may answer the question.

20 A. The market-failure issue and the  
21 value-of-solar issue are not related directly. Value  
22 solar is about ratemaking. Market failure is about  
23 designing incentives, as we were discussing a minute  
24 ago. So it -- I will focus on whichever one you  
25 want, but you will have to be clear.

1           Q.    So it's not clear to me.  Are you  
2   disagreeing that the market is not properly  
3   recognizing the value of solar?

4           A.    No.  I think there are market failures in  
5   distributed solar and, actually, utility solar, in  
6   solar development in general, there are market  
7   failures.

8           Q.    And so what you advocate is having  
9   utilities pay a price for solar that reflects the  
10  true value of solar to the grid, correct?

11          A.    The value of solar is about setting the  
12  compensation level which is separate from the market  
13  failure and incentive discussion.  The compensation  
14  level for customer-generated distributed energy from  
15  solar facilities, setting that compensation level in  
16  accordance with good ratemaking practices and full  
17  recognition of costs that are avoided by that  
18  generation.

19          Q.    Don't you agree that the existing  
20  locational marginal price, the LMP, grossly  
21  undercompensates solar resources?

22          A.    Distributed solar resources are very --  
23  are grossly undercompensated if they are only  
24  compensated at the wholesale LMP rate, yes.

25          Q.    And one added value of solar resources

1 that you've talked about in your advocacy for this  
2 value-of-solar product is that the market does not  
3 recognize the added value of reducing congestion by  
4 having your generation resources located close to  
5 load, correct?

6 A. My point would be that traditional  
7 approaches to setting the compensation rate for  
8 distributed generation do not separately try to  
9 quantify the transmission and distribution benefits,  
10 otherwise known as costs that are avoided or avoided  
11 costs associated with distributed generation.

12 Again, market failures is another  
13 discussion. In terms of the regulatory ratemaking  
14 practice of setting the compensation rate, the value  
15 of solar concept says do a careful and thorough  
16 analysis of all the costs that are avoided by having  
17 generation sited in the distribution system and close  
18 to load.

19 Q. So with regard to what I asked you about,  
20 having the generation resources located close to  
21 load, putting the market to the side, that is an  
22 added value that you think of with regard to solar  
23 resources, correct?

24 A. It is a value that is frequently not  
25 quantified in setting the compensation rate for

1 customer-generated electricity and should be included  
2 in fully appraising the value of distributed solar.

3 Q. Now, with regard to distributed  
4 generation in Ohio, you have not done a study of the  
5 market conditions for distributed generation in Ohio,  
6 correct?

7 A. No, I have not.

8 Q. And as a result of that, you are not  
9 aware of any barriers to distributed generation in  
10 the companies' service territories, correct?

11 A. I have no personal knowledge based on  
12 personal research of such barriers. I don't know  
13 whether they exist or not.

14 Q. If there are barriers, you would support  
15 having them identified and remedied, correct?

16 MS. WILLIS: Objection.

17 EXAMINER ADDISON: Grounds?

18 MS. WILLIS: This is friendly cross. The  
19 stipulation calls for that specifically, your Honor.

20 MR. LANG: Your Honors.

21 EXAMINER ADDISON: Mr. Lang.

22 MR. LANG: We're the companies. We are  
23 opposed by ELPC. I cannot ask friendly cross. The  
24 parties that are opposed to the stipulation can ask  
25 Mr. Rábago friendly cross. I cannot ask friendly

1 cross.

2 I can ask Mr. Rábago if there are any  
3 opinions he has on behalf of his client that would  
4 tend to support the stipulation. That, however, is  
5 not friendly cross because he is offered as a witness  
6 in opposition to the stipulation by ELPC.

7 EXAMINER ADDISON: Thank you, Mr. Lang.

8 We are going to overrule the objection.

9 MR. LANG: Thank you, your Honor.

10 THE WITNESS: Can you repeat the  
11 question?

12 EXAMINER ADDISON: Yes, please. Can we  
13 have the question read? Thank you, Karen.

14 (Record read.)

15 A. As a general proposition, yes.

16 Q. Now, you have not reviewed the companies'  
17 net metering tariffs, correct?

18 A. I can't recall if I have or not. I don't  
19 recall anything specifically about them, so I will  
20 say no right now.

21 Q. And generally your advocacy across the  
22 United States, part of that relates to existing net  
23 metering tariffs; is that correct?

24 A. The value of solar and net metering are  
25 frequently discussed together, and I frequently am



1 one of those people discussing both of them.

2 Q. And as a result, you would support a  
3 review of the companies' existing net metering  
4 tariffs, correct?

5 A. I don't know if that would be  
6 administratively efficient unless I had a look at  
7 them or I talked to an expert who is familiar with  
8 them. If there were flaws in them, yes, along the  
9 lines of your earlier questions.

10 Q. Do you support having the Commission, the  
11 Public Utilities Commission of Ohio, review the  
12 companies' existing net metering tariffs?

13 A. In an appropriate proceeding, yes.

14 Q. Now, on page 14 of your testimony, lines  
15 5 and 6, you make reference to the return on equity  
16 for the grid modernization improvements. So I wanted  
17 to ask you, is it fair to say that you have no  
18 opinion as to whether the ROE is at the right or  
19 wrong level?

20 A. To be very precise, I can't tell you  
21 whether the ROE proposed would end up being the right  
22 or the wrong level, so in that regard, I agree with  
23 you. However, my point in my testimony is that  
24 setting it in isolation with all the other  
25 uncertainties associated with the plans and the

1 execution and all those other factors at the same  
2 time makes it per-se wrong because we don't have the  
3 evidence that tells us whether it's right.

4 You know, it's -- I can't tell you  
5 whether it's right or wrong because nobody can.  
6 That's the point of my objection to its inclusion in  
7 the testimony -- I mean in the stipulation, I'm  
8 sorry.

9 MR. LANG: And, your Honor, I would move  
10 to strike after his initial response was he -- he  
11 was, I believe, agreeing with my statement that he  
12 can't say whether it's right or wrong. The narrative  
13 after that I would move to strike.

14 MS. FLEISHER: And, your Honors, he asked  
15 a broad question, and Mr. Rábago explained that it's  
16 his opinion that if you can't have the facts to know  
17 if it's right or wrong, then it's per-se wrong.  
18 That's directly responsive to Mr. Lang's question.

19 EXAMINER ADDISON: Mr. Lang, anything to  
20 add?

21 MR. LANG: No, your Honor, other than,  
22 again, the question was does he have an opinion as to  
23 whether it's right or wrong. If -- if counsel is  
24 saying the answer was, I do have an opinion that it's  
25 wrong, then actually we'd -- we can accept that and

1 then move to the deposition.

2 EXAMINER ADDISON: I am going to allow  
3 Mr. Rábago's statement to remain in the record.  
4 We'll count this as his one bite of the apple.

5 But, Mr. Rábago, please listen to  
6 Mr. Lang's questions and answer his question and only  
7 his question, and we can get you down off the stand a  
8 lot sooner.

9 THE WITNESS: Yes, ma'am.

10 EXAMINER ADDISON: Thank you.

11 Please proceed, Mr. Lang.

12 Q. (By Mr. Lang) And, Mr. Rábago, if I can  
13 take you to page 74 of your deposition transcript.

14 A. I'm there.

15 Q. Starting at line 4, my question was, "So  
16 your concern is that the setting of the ROE in this  
17 part of the stipulation that we're talking about is  
18 premature, not that the ROE is at the wrong level?"

19 And your answer was: "Right. I have no  
20 opinion as to whether it is at the right or wrong  
21 level. It is just not right to set it now. That  
22 would be a summarization of my position."

23 Did I read that correctly?

24 A. Yes, sir.

25 MR. FLEISHER: Your Honor, objection,

1 improper impeachment. I think it's clear from both  
2 Mr. Rábago's original answer and both the answer in  
3 the deposition that there are different kinds of  
4 right and wrong, and so he's offering a full and  
5 complete response as to the difference between saying  
6 whether it's a right or wrong level, whether it is  
7 right to set it now, and he is simply trying to offer  
8 a complete answer to Mr. Lang's question in both  
9 contexts.

10 EXAMINER ADDISON: Well, seeing as I  
11 allowed his previous statement to remain, I don't  
12 feel as if the -- I feel as if the record reflects  
13 both his opinion as to Mr. Lang's questions, so  
14 objection overruled.

15 MS. FLEISHER: Thank you, your Honor.

16 Q. (By Mr. Lang) Mr. Rábago, you have  
17 discussion on page 22 of your testimony related to  
18 potential market impact, so I wanted to ask you a  
19 couple of questions along those lines now with  
20 respect to the energy and capacity being sold to the  
21 companies under the proposed PPA.

22 What is your understanding of who offers  
23 that capacity or bids that energy into the PJM  
24 markets?

25 A. I am recalling that it's the companies

1     that offer that.

2             Q.     Okay.  And would you agree or would you  
3     expect -- would you expect the companies would have a  
4     bidding strategy that would maximize revenues?

5             MS. FLEISHER:  Objection, your Honor.  
6     Relevance.

7             EXAMINER ADDISON:  Mr. Lang.

8             MR. LANG:  Your Honor, it goes  
9     specifically to page 22 of his testimony where he's  
10    theorizing about potential impacts on other resource  
11    types as a result of rider RRS.  And so I'm asking  
12    him about that strategy and what his expectations are  
13    as to what the companies are going to do, which he's  
14    theorizing may have some impact.

15            MS. FLEISHER:  I actually think Mr. Lang  
16    has it backwards.  I believe this portion of Mr.  
17    Rábago's testimony relates to how provisions, such as  
18    the energy efficiency provision of the stipulation,  
19    could affect the market which could affect rider --  
20    which could affect the PPA prices and rider RRS.

21            MR. LANG:  And, your Honors, if ELPC is  
22    willing to stipulate that Mr. Rábago is not providing  
23    the opinion that the rider will have an impact on the  
24    markets, I can accept that and I can move on.

25            EXAMINER ADDISON:  Ms. Fleisher?

1 MS. FLEISHER: I mean, I think that's an  
2 incredibly broad stipulation. If Mr. Lang can  
3 explain how it connects specifically to his  
4 testimony, then I'm -- maybe we can narrow it down to  
5 exactly what we are disagreeing about.

6 EXAMINER ADDISON: Why don't we allow him  
7 a little leeway to ask a few more questions and see  
8 where this is going.

9 Mr. Lang.

10 Q. (By Mr. Lang) And my question was  
11 pending. I'll just repeat it, for the interest of  
12 time.

13 You expect the companies would have a  
14 bidding strategy that would maximize revenues,  
15 correct?

16 A. Generally I would expect that, yes.

17 Q. And you have not analyzed how the  
18 incentives or the expectations work out when the  
19 companies control the energy and capacity as compared  
20 to the plant owner, correct?

21 A. I have not done that analysis.

22 Q. And you do not know whether there --  
23 whether there will be a disadvantage for large scale  
24 renewable energy generation if the Commission  
25 approves rider RRS, correct?

1           A.    I cannot say that I know.

2           Q.    And you do recognize that large scale  
3 renewable resources, including with the production  
4 tax credit, are putting baseload nuclear plants at a  
5 disadvantage by displacing round-the-clock energy  
6 revenue, correct?

7           A.    I personally don't know of anything I  
8 have ever read credibly that renewable energy is  
9 disadvantaging -- competitively disadvantaging income  
10 and baseload generators. I know that renewable  
11 energy enjoys some competitive market advantages.  
12 PTC is allowed different -- PTC allows different  
13 bidding strategies for PTC-funded facilities.

14                   I'm sticking on the word "disadvantaged"  
15 as if renewables can go in there and, for example,  
16 exercise market power or something like that, if  
17 that's what you mean.

18           MS. FLEISHER: Could I actually have the  
19 question reread?

20           EXAMINER ADDISON: You may.

21                   (Record read.)

22           MR. LANG: Thank you, Mr. Rábago.

23                   Thank you, your Honors.

24           EXAMINER ADDISON: Thank you, Mr. Lang.

25                   Mr. Stinson, did you have any questions?

1 MR. STINSON: No questions, your Honor.

2 EXAMINER ADDISON: Mr. McNamee, any  
3 questions?

4 MR. McNAMEE: No questions, your Honor.  
5 Thank you.

6 EXAMINER ADDISON: Ms. Fleisher, any  
7 redirect?

8 MS. FLEISHER: May I have one minute?

9 EXAMINER ADDISON: You may.

10 Let's go off the record.

11 (Discussion off the record.)

12 EXAMINER ADDISON: Let's go ahead and go  
13 back on the record.

14 Ms. Fleisher, redirect?

15 MS. FLEISHER: Yes, just a few quick  
16 questions, your Honor.

17 - - -

18 REDIRECT EXAMINATION

19 By Ms. Fleisher:

20 Q. Mr. Rábago, Mr. Lang was asking you about  
21 whether you believed a hedge could have value, and  
22 you said that you thought a well-designed hedge could  
23 have value. Can you explain what you mean by a  
24 well-designed hedge?

25 A. In my experience, hedges are a financial



1 instrument or product that you can purchase, and when  
2 they are well-designed or well-constructed, they are  
3 procured from an independent third party who uses,  
4 you know, their own assessment of the market to offer  
5 a market-based price for -- for the hedging benefit,  
6 the hedging product. So it can give you a risk  
7 diversification benefit by using a third party who  
8 can -- who has separate lines into the market, and  
9 that spreads out your risk.

10 Q. And Mr. Lang also asked you about the  
11 potential utility of shared savings. Can you explain  
12 in what context or under what circumstances you think  
13 shared savings can be a useful incentive?

14 A. I think it was John Rowe that once said  
15 the rat has to be able to smell the cheese. So  
16 incentives of every kind for utilities to do energy  
17 efficiency, something they are not prone to do or to  
18 do well because it's just not in your DNA in many  
19 cases, the incentives can help overcome that.

20 But there's a bit of a Goldilocks issue.  
21 You don't want to give away money for doing little or  
22 nothing. That just makes the utility a free rider  
23 and makes the customer a free driver. But you don't  
24 also want to just offer up impossible standards.

25 We can't tell whether the specific

1 proposals in this stipulation to increase the shared  
2 savings cap are actually necessary or even  
3 appropriate to take advantage of greater energy  
4 efficiency performance.

5 Q. And then, in general, Mr. Lang asked you  
6 about various topics, including grid modernization,  
7 renewables, energy efficiency, and the potential  
8 benefits to customers from pursuing opportunities in  
9 those areas. Do you think this stipulation has value  
10 in those areas?

11 A. We just can't tell. That's the core of  
12 my testimony on this. We just can't tell. The  
13 evidence isn't there as to whether these potential  
14 benefits will accrue, whether the plans will reach  
15 for benefits, whether they will be executed well,  
16 whether there will be performance oversight that  
17 ensures that.

18 So that all leads me to say that while  
19 there is potential by definition, it doesn't tell us  
20 anything about the merits of the stipulation. It  
21 doesn't tell us anything about whether this is a good  
22 deal. It's just a list of things that could be done  
23 in the future in many cases.

24 MS. FLEISHER: That's all I have, your  
25 Honors.

8200

1 EXAMINER ADDISON: Mr. Mendoza.

2 MR. MENDOZA: No questions, your Honor

3 EXAMINER ADDISON: Mr. Settineri.

4 MR. SETTINERI: No questions, your Honor.

5 EXAMINER ADDISON: Ms. Ghiloni.

6 MS. GHILONI: No questions, your Honor.

7 EXAMINER ADDISON: Mr. Stinson.

8 MR. STINSON: No questions, your Honor.

9 EXAMINER ADDISON: Ms. Willis?

10 MS. WILLIS: No questions, your Honor.

11 EXAMINER ADDISON: Mr. Olikier?

12 MR. OLIKER: No, thank you.

13 EXAMINER ADDISON: Mr. Pritchard.

14 MR. PRITCHARD: No questions, your Honor.

15 EXAMINER ADDISON: Mr. Kurtz? Apologies.

16 Mr. Lang?

17 MR. LANG: Thank you, your Honor. Could

18 I have one minute, please? Can I have one minute,

19 please?

20 EXAMINER ADDISON: You may.

21 (Discussion off the record.)

22 MR. LANG: Thank you, your Honors. No

23 questions.

24 EXAMINER ADDISON: Thank you, Mr. Lang.

25 Mr. McNamee.

1 MR. McNAMEE: No questions.

2 EXAMINER ADDISON: Any questions?

3 EXAMINER CHILES: No questions.

4 EXAMINER ADDISON: Examiner Price?

5 EXAMINER PRICE: No questions.

6 EXAMINER ADDISON: Commissioner Haque?

7 COMMISSIONER HAQUE: I do have one.

8 Mr. Rábago, how are you? Good to see you  
9 again.

10 THE WITNESS: I'm fine, thank you.

11 COMMISSIONER HAGUE: My question is about  
12 the third prong of the stipulation test and  
13 specifically about whether the stipulation is in the  
14 public interest. You say in your testimony that it's  
15 not in the public interest because there are items in  
16 the stipulation that are unrelated to the core PPA, A  
17 and B, that what you espoused on redirect is that  
18 they would need to be flushed out further to figure  
19 out if they are.

20 So what I want to ask you is, so those  
21 both are part of your argument as to why the  
22 stipulation is not in the public interest, or is it  
23 only the latter, that these items that are part of  
24 what you believe to be the noncore elements related  
25 to the PPA just need to be flushed out further to

1 develop and figure out whether or not they would be  
2 in the public interest?

3 THE WITNESS: I think -- I think the  
4 danger of the stipulation and settlement agreement is  
5 that there is this long list of the noncore issues  
6 that could be misread as actually contributing actual  
7 weight in evaluating the PPAs so there is -- and that  
8 the -- and that the consequences and impacts of  
9 those -- and, remember, I stretch it on two sides,  
10 areas where I thought decisions were being made too  
11 early and could prejudice the future, and whether  
12 there are decisions being left for too late.

13 So I bundle a lot of this up in the  
14 general ratemaking policy problem of piecemeal  
15 ratemaking, which is that you shouldn't address  
16 issues in isolation where there is a significant  
17 issue -- risk of discriminatory impacts that haven't  
18 been fully evaluated.

19 I won't quite go as far as to say this  
20 bundle could not be settled by settlement, you know,  
21 could not be settled and arranged by stipulation.  
22 The evidence, the record is so weak, and there is so  
23 many places where, you know, this was done by product  
24 of negotiation, this was done by agreement of the  
25 parties, this was -- where the kind of record you

1 would normally see to address such important issues  
2 like grid modernization and shared savings caps and  
3 things like that is not there. So I think I'm saying  
4 both, sir.

5 COMMISSIONER HAQUE: Yeah, okay. And  
6 your opinion on this is important as a former  
7 commissioner. So are you saying that the Commission  
8 should not take some of these sort of non-PPA related  
9 items that could very well prove to be beneficial to  
10 consumers in the end, which you acknowledge, grid  
11 modernization, some of the other items that are  
12 nonrelated to or -- I'm using your verbiage --  
13 nonrelated to the PPA, are you saying that those  
14 items should not be taken into the calculus of  
15 whether or not the stipulation as a whole is in the  
16 public interest because there is not enough  
17 information in the record, or is it the very  
18 existence of them without a developed record  
19 indicative of the stipulation not being in the public  
20 interest?

21 THE WITNESS: What I tried to do in my  
22 testimony is take the position that if you don't get  
23 a record on those issues, then I recommend you give  
24 them no weight.

25 COMMISSIONER HAQUE: Okay.

1           THE WITNESS: Practical procedural  
2 effect, if I was king for a day, I would bifurcate  
3 the heck out of this proceeding. I would say, we are  
4 not going -- we are going to start another proceeding  
5 to address all these important issues and give  
6 everybody a chance to do these noncore issues, and we  
7 are going to rule on the PPA issues on the merits  
8 standing alone without the influence of the unproven  
9 successes or failures of all the other promises. I  
10 am not king for the day.

11           COMMISSIONER HAQUE: Okay. So last  
12 question about this, and we are getting more and more  
13 nuance with this, what about if as a Commission the  
14 Commission believes that something, like grid  
15 modernization as a whole, will be good for consumers  
16 at the end of the day, the trouble is that right now  
17 we don't know specifically what those -- we don't  
18 know definitively what those endeavors involved in  
19 the broader grid modernization will be and how much  
20 they'll cost, okay?

21           Would you take the social utility of grid  
22 modernization, despite not being able to affix a cost  
23 to it yet, and add that to the basket of whether or  
24 not it's in the public interest? If you understand  
25 what I'm saying.

1           THE WITNESS: There is a public interest  
2 determination to be made as to whether ratepayer  
3 funds should be spent on these things, like grid  
4 modernization. Stick with that. But it's not -- I  
5 don't see it being germane to the PPAs.

6           My best analogy is this. In regulation  
7 we -- we are constantly struggling between the rate  
8 cases where is the money spent and the rulemakings  
9 where the policy is sort of being fleshed out. With  
10 due deference to the legislature, who, of course, we  
11 all know sets all the policy. But when you are in a  
12 rate case, sometimes these issues come up, and this  
13 feels a little like that.

14          And what you -- where you deal with some  
15 of these noncore issues is in what I call the  
16 ordering paragraph section at the very end. You  
17 know, here is the rate. Here's the rate of return.  
18 Here's the approved revenue requirement. And we are  
19 going to spin out a docket to study to come up with a  
20 grid modernization plan. We are going to spin out a  
21 docket to look at the low-income programs. We are  
22 going to take this up. We're going to compel a  
23 report on this.

24          All those ordering paragraphs kind of  
25 come at the end of the rate case, so you use the



1 momentum of the rate case, which the utility -- which  
2 is very important to the utility and everybody to  
3 propel forward these other issues into proceedings in  
4 which they can be addressed better, so that's --  
5 that's kind of how I'm seeing it here.

6 COMMISSIONER HAQUE: The Honorable Greg  
7 Price wants me to ask you, why is this different? So  
8 why is what we are doing here different than what you  
9 just described?

10 THE WITNESS: There is no -- well, in  
11 some ways it's not, but I'm just cautioning you that  
12 these issues are not material. They don't add any  
13 material weight to the evaluation of the PPA, and  
14 so -- I'm so astounded by the significant weight of  
15 the affiliate transaction PPA agreements that are at  
16 the core of this case to believe that your work on  
17 those should not be obscured by a whole lot of  
18 speculative discussion and quasi-commitment about  
19 unrelated issues.

20 I think they have the potential to  
21 adversely inform your assessment of the public  
22 interest associated with the PPAs, and that's why I  
23 am cautioning you that if you don't -- if you are not  
24 given enough record on those issues, then you should  
25 just give them no weight at all.

1 COMMISSIONER HAQUE: Okay. Thanks a lot  
2 for your time.

3 THE WITNESS: Yes, sir.

4 EXAMINER ADDISON: Thank you,  
5 Commissioner Haque.

6 I have no other questions. You are  
7 excused, Mr. Rábago.

8 THE WITNESS: Thank you very much.

9 EXAMINER ADDISON: Thank you very much.  
10 Ms. Fleisher.

11 MS. FLEISHER: Thank you, your Honor. At  
12 this time I would like to offer ELPC Exhibit 28 for  
13 admission.

14 EXAMINER ADDISON: Any objections to the  
15 admission of ELPC Exhibit No. 28?

16 MR. LANG: None, your Honor.

17 EXAMINER ADDISON: Hearing none, it will  
18 be admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 MR. LANG: Subject to the motion to  
21 strike.

22 EXAMINER ADDISON: Subject to the motion  
23 to strike, thank you.

24 Let's go ahead and go off the record.

25 (Discussion off the record.)

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

3 Mr. Stinson.

4 MR. STINSON: Yes, your Honor. At this  
5 point OCC and NOPEC would call Mr. Kahal.

6 If I may approach, your Honor.

7 EXAMINER CHILES: You may.

8 MR. STINSON: I think we are at OCC NOPEC  
9 Exhibit 11.

10 EXAMINER CHILES: Yes, that's correct.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 (Witness sworn.)

13 EXAMINER CHILES: Thank you. You may be  
14 seated.

15 And just to make sure the record is  
16 clear, we have marked as OCC/NOPEC Exhibit 11  
17 the Second Supplemental Direct Testimony of  
18 Mr. Kahal.

19 MR. STINSON: And, your Honor, we have  
20 also marked Exhibit 11A, which is the errata to that  
21 testimony.

22 EXAMINER CHILES: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 - - -

25

1 MATTHEW I. KAHAL

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

4 DIRECT EXAMINATION

5 By Mr. Stinson:

6 Q. Mr. Kahal, would you please state your  
7 full name and your address for the report.

8 A. Yes. My name is Matthew I. Kahal, last  
9 name is spelled K-A-H-A-L. My address is 1108  
10 Pheasant Crossing, Charlottesville, Virginia 22901.

11 Q. Now, Mr. Kahal, I have placed before you  
12 what has been marked as OCC/NOPEC Exhibit No. 11.  
13 Can you identify that for me, please?

14 A. Yes. This is the second supplemental  
15 direct testimony that I prepared which was submitted  
16 by the OCC and NOPEC on December 30, 2015.

17 Q. And that was prepared by you or your  
18 direct supervision?

19 A. Yes, it was.

20 Q. I have also placed before you what's been  
21 marked as OCC/NOPEC Exhibit No. 11A. Could you  
22 identify that as well?

23 A. Yes. 11A is the errata to my second  
24 supplemental direct testimony, and all of the  
25 corrections are reflections of changes in the numbers

1 that I obtained from OCC/NOPEC witness James Wilson.

2 Q. And was that errata prepared by you?

3 A. It was.

4 Q. If I were to ask you the questions  
5 contained in OCC/NOPEC Exhibit No. 11 and revised by  
6 your errata Exhibit 11A, would your answers be the  
7 same today?

8 A. They would.

9 Q. Do you have any other additions or  
10 corrections to those exhibits?

11 A. I do not.

12 Q. And are those answers correct and true to  
13 the best of your knowledge?

14 A. Yes.

15 MR. STINSON: At this time I would move  
16 the admission of OCC/NOPEC Exhibit 11 and 11A,  
17 subject to cross-examination.

18 EXAMINER CHILES: Thank you, Mr. Stinson.  
19 We will reserve ruling on the motion until  
20 cross-examination is completed.

21 Mr. Mendoza?

22 MR. MENDOZA: No questions, your Honor.

23 EXAMINER CHILES: Mr. Settineri?

24 MR. SETTINERI: No questions, your Honor.

25 EXAMINER CHILES: Ms. Fleisher?

1 MS. FLEISHER: No questions, your Honor.

2 EXAMINER CHILES: Ms. Willis?

3 No questions, your Honor.

4 EXAMINER CHILES: Mr. Olikier?

5 MR. OLIKER: No questions, your Honor.

6 EXAMINER CHILES: Mr. Pritchard?

7 Mr. PRITCHARD: No questions, your Honor.

8 EXAMINER CHILES: Mr. Kurtz?

9 MR. KURTZ: No questions, your Honor.

10 EXAMINER CHILES: Mr. Lang.

11 MR. LANG: Thank you, your Honor.

12 And, your Honors, if I could ask

13 Mr. Stinson what's been marked as 11A, is that what  
14 was filed on January 6?

15 MR. STINSON: It was. I will give you a  
16 copy.

17 MR. LANG: Thank you.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Lang:

21 Q. Good afternoon Mr. Kahal.

22 A. Good afternoon, Mr. Lang.

23 Q. In the interest of clarity, just to start  
24 can we go to your errata, the sixth listing that is  
25 your second change on page 27. Can you take me

1 through how that should work?

2 A. Yes. On page 26, this was a correction  
3 to Mr. Wilson's -- excuse me. On page 27 there was a  
4 correction to Mr. Wilson's middle case scenario or  
5 middle case in which the number declined from 2,969  
6 to 2,713. And then the rest of the math just  
7 followed from that.

8 Q. So your errata says page 27, line 5, so  
9 what are you changing on line 5, page 27?

10 A. No. On line 5 -- it's actually line 6 on  
11 page 27.

12 Q. Okay. So line 6, and then what numbers  
13 are changed on line 6?

14 A. The original says 3 -- these are in  
15 million but 3 million -- excuse me. Yeah. 3,260,  
16 the numbers are in million, to 3,350, that becomes  
17 2,902 to 2,992.

18 Q. Okay.

19 A. So, in other words, the numbers fall by  
20 roughly 200 million.

21 Q. Thank you.

22 A. Sorry for any confusion.

23 Q. Now, at pages 6 and 7 of your testimony,  
24 you are stating here the opinion that bargaining over  
25 an ESP is not serious because bargaining is tilted in

1 favor of the utilities, is the term you used. It's  
2 not your opinion -- or it's not your position that a  
3 stipulation filed in an ESP proceeding cannot ever  
4 satisfy the serious bargaining provision of the  
5 three-part test, correct?

6 A. That's correct, that's not my position.

7 Q. And so you do agree that a stipulation  
8 filed in an ESP case can satisfy the serious  
9 bargaining part or prong of that three-part test,  
10 correct?

11 A. That's right. In other words, I am not  
12 ruling it out by definition.

13 Q. So if OCC or NOPEC were to sign on to an  
14 ESP proceeding, it's not your position that OCC or  
15 NOPEC would have lacked the ability to bargain in  
16 that case, correct?

17 A. Right. I think in your question you are  
18 referring to a settlement or stipulation, and, yes,  
19 that's -- it's not my position that the OCC or NOPEC  
20 could not enter into serious bargaining. I'm merely  
21 saying that they may not have the same bargaining  
22 leverage as the utilities do due to the utility's  
23 ability to reject the ESP.

24 Q. And are you aware of whether your clients  
25 here, OCC or NOPEC, have entered into stipulations



1 previously in ESP cases?

2 A. Previously in ESP cases? I know they  
3 have previously entered into stipulations. I am not  
4 sure about ESP cases specifically, whether they have  
5 or not.

6 Q. So that's not something you did in  
7 preparing your testimony, is review the parties two  
8 previous ESP cases in either the companies' cases or,  
9 for example, Duke's ESPs or AEP's ESPs, correct?

10 MR. STINSON: Objection as to relevance.

11 EXAMINER CHILES: Mr. Lang, do you have a  
12 response?

13 MR. LANG: Relevance is with regard to  
14 his testimony here again on pages 6 and 7 and the  
15 weight to be given those three-part tests, whether in  
16 reviewing that he has determined whether his own  
17 clients were willing to enter into ESPs in the past.

18 EXAMINER CHILES: Overruled.

19 A. Yeah. I was a little confused by the  
20 question because I thought you asked me whether I had  
21 reviewed cases in which ESP cases in which -- there  
22 are previous ESP cases in which there had been  
23 stipulations, and the answer to that is yes. I  
24 believe that it was either the last or the one before  
25 that for FirstEnergy that was resolved by a

1 stipulation that was accepted by the Commission.

2 But if -- now it sounds like, perhaps,  
3 you are revising that to refer to cases in which the  
4 OCC and NOPEC have been part of those stipulations.  
5 I don't recall seeing that. But I have reviewed  
6 cases -- ESP cases in which there have been  
7 stipulations.

8 Q. You would agree that in this testimony  
9 you are not proposing that the Commission use a new  
10 test to review ESP stipulation, correct?

11 A. No, I am not. I am not proposing a new  
12 test and scrapping the existing three-part test. It  
13 goes more to how the test should be applied.

14 Q. And with regard to the third supplemental  
15 stipulation, you do agree bargaining took place?

16 A. I presume it took place. I wasn't part  
17 of the negotiations in any way so I couldn't give you  
18 a firsthand answer to that. But since the results of  
19 the stipulation are different than what was  
20 previously on the table and what was previously  
21 proposed, I have to infer that there was some form of  
22 bargaining that took place.

23 Q. And to that point you would also infer  
24 there were compromises that took place?

25 A. The same inference, yes.

1           Q.    Now, with regard to the Commission staff,  
2    you would agree that the Commission staff is a  
3    capable and knowledgeable party.

4           A.    Agreed.

5           Q.    And you have no opinion as to whether the  
6    stipulating parties, other than staff or companies,  
7    are capable, knowledgeable parties, correct?

8           A.    That's right, yes.

9           Q.    And you do agree that there is a  
10   diversity of interest as between the companies on the  
11   one hand and staff on the other, correct?

12          A.    To some degree, not on all issues.  On  
13   some issues -- and I base this on my review of the  
14   staff testimony that was filed.  I am trying to  
15   remember when it was filed, but it was a number of  
16   months ago that the staff took different positions on  
17   some issues than the companies did.

18          Q.    Now, with regard to the third  
19   supplemental stipulation, you were not involved in  
20   negotiations concerning that stipulation; is that  
21   correct?

22          A.    That's correct.

23          Q.    Now, is it true that you had an  
24   opportunity to review a draft of the stipulation?

25          A.    Yes, I had an opportunity to review a

1 draft, and very briefly provide some comments on it,  
2 and that was kind of the last I heard of things  
3 until -- until this third stipulation was filed.

4 Q. And given your involvement or lack  
5 thereof, you do not know if any party was precluded  
6 from having an opportunity to participate in the  
7 settlement process with regard to the third  
8 supplemental stipulation, correct?

9 A. I agree with your question, yes.

10 Q. Now, your recommendation to the  
11 Commission is that it should reject the companies'  
12 proposed ESP and instead adopt an MRO or a market  
13 rate offer, correct?

14 A. Well, specifically in this testimony I am  
15 recommending that the -- that the third supplemental  
16 stipulation or the stipulations combined be rejected.  
17 It really was my original December of 2014 testimony  
18 that addressed the file -- as-filed ESP.

19 Q. Okay. So on page 38 of your testimony,  
20 lines 1 and 2, it doesn't say, "OCC recommends that  
21 an MRO be adopted"?

22 A. Yes, it does.

23 Q. It does.

24 A. That would be the practical effect of the  
25 stipulation being rejected.

1           Q.    So if the Commission were to reject the  
2 companies' proposed ESP IV, you believe an MRO would  
3 then go into effect?

4           A.    Would go into effect, you mean  
5 automatically go into effect? Is that what you mean?

6           Q.    If you can answer my question.

7           A.    If this third supplemental stipulation is  
8 rejected, my understanding is that -- is that the  
9 company then would -- would need to file a -- make a  
10 new filing for an MRO. And in the interim the  
11 existing standard service offer would continue.  
12 That's what my understanding is.

13          Q.    You don't know whether the Commission has  
14 ever approved an MRO, correct?

15          A.    I don't know. It's my understanding that  
16 all Ohio electric distribution utilities have ESPs.  
17 But, you know, my history doesn't go back, obviously,  
18 as far as yours.

19          Q.    So what you are proposing is at some  
20 point later this winter or sometime in the spring the  
21 Commission rejects the proposed ESP, and then there  
22 is a new filing for an MRO which the Commission would  
23 then review; is that correct?

24          A.    Yes.

25          Q.    All right. And in order to have a new

1 approved MRO in place by June 1, 2016, you believe  
2 that all that can happen before June 1, 2016; is that  
3 right?

4 A. Oh, I don't know whether it can or not.  
5 My understanding is -- well, I don't know. I can't  
6 say how fast the company would move, how fast the  
7 Commission would move, so it may or may not. As I  
8 testified a few minutes ago, my understanding is that  
9 until that whole process works out, the existing SSO  
10 continues.

11 Q. And have you reviewed the dockets of any  
12 previous MRO proceedings that have been filed in Ohio  
13 to determine how long those cases took to be  
14 processed even, if not approved?

15 A. No.

16 Q. Now, so your position is even if an MRO  
17 can't be approved by June 1, 2016, the Commission  
18 would simply authorize the next auction for the next  
19 SSO starting June 1, 2016, while that MRO was being  
20 processed?

21 MR. STINSON: Objection. Misstates his  
22 testimony.

23 MR. LANG: I am asking if that is his  
24 testimony.

25 EXAMINER CHILES: Could we have the

1 question reread, please.

2 (Record read.)

3 EXAMINER CHILES: I'll allow the  
4 question. Objection overruled.

5 A. I think my answer is I can't -- I can't  
6 speak for the Commission. I don't know what the  
7 Commission would do. That strikes me as one  
8 possibility.

9 Q. Now, you understand that the proceeding  
10 we are in today is an electric security plan  
11 proceeding, correct?

12 A. Yes.

13 Q. And any ESP proceeding in Ohio is  
14 authorized by what we refer to as the ESP statute  
15 4928.143, correct?

16 A. Yes.

17 Q. That is the statute you reviewed at some  
18 time in the past, correct?

19 A. Yes.

20 Q. And you agree an ESP may include  
21 provisions relating to the supply and pricing of  
22 retail electric service, correct?

23 A. Yes.

24 MR. STINSON: Objection, just to the  
25 extent Mr. Kahal is not an attorney, as long as

1       that's understood.

2                   EXAMINER CHILES:   Mr. kahal, you are not  
3       an attorney, are you?

4                   THE WITNESS:       No, ma'am, I am not.

5                   EXAMINER CHILES:   That is noted for the  
6       record.

7                   Q.    And you also understand an ESP may  
8       include provisions relating to transmission service,  
9       distribution service, energy efficiency, economic  
10      development, among other things, correct?

11                  A.    Yes.

12                  Q.    And you have not identified any  
13      provisions in the third supplemental stipulation that  
14      fall outside of the categories listed in the ESP  
15      statute, correct?

16                  A.    That's correct.   I haven't identified  
17      anything that specifically falls outside the  
18      boundaries.   That doesn't mean that that's not  
19      possible.   It means I haven't tried to go provision  
20      by provision to see if there is anything that falls  
21      outside those boundaries.

22                  Q.    So the answer is yes, you have not  
23      identified any, correct?

24                  A.    That's correct.

25                  Q.    And you also understand that in reviewing



1 an ESP application, the Commission reviews what I  
2 refer to as qualitative factors or benefits of an  
3 ESP, correct?

4 A. Yes.

5 Q. Now, on page 8 of your testimony you  
6 reference a Commission order. It's actually an order  
7 on remand in Case No. 05-376, and that remand  
8 proceeding involved AEP's refunding of costs related  
9 to an IGCC plant that was not built, correct?

10 A. That's correct.

11 Q. And, now, you were not involved in that  
12 case.

13 A. I was not involved in that case.

14 Q. However, you do know there was a  
15 stipulation in that case.

16 A. Yes.

17 Q. And OCC was one of the stipulating  
18 parties, correct?

19 A. Yes. They were parties supporting the  
20 stipulation, yes.

21 Q. Thanks for that clarification. And then  
22 under the stipulation that the Commission approved in  
23 that case, AEP made payments to stipulating parties,  
24 such as OMAEG and some others, correct?

25 A. Yes.

1 Q. And --

2 A. I think they are in the form of refunds,  
3 but yes.

4 Q. And in supporting that stipulation, OCC  
5 was not objecting to those payments being made,  
6 correct?

7 MR. STINSON: Objection, your Honor.  
8 Again, as to relevance as to what that case has to do  
9 with that stipulation, OCC's position. In addition,  
10 Mr. Lang is mischaracterizing OCC's position in that  
11 stipulation inasmuch as OCC did not stipulate to  
12 every provision.

13 EXAMINER CHILES: Mr. Lang?

14 MR. LANG: Your Honors, again, relevance  
15 is he is holding out this case and these payments as  
16 a warning to be given to this Commission with regard  
17 to the provisions that are in the stipulation in this  
18 case. I am simply exploring that and, again, if  
19 Mr. Kahal believes that I am mischaracterizing his --  
20 mischaracterizing the stipulation or his -- my  
21 statement is contrary to his understanding, I can  
22 certainly expect him to tell me.

23 MR. STINSON: Your Honor, that was  
24 prospective in nature, had nothing do with the IGCC  
25 case reference.

1 MS. GHILONI. Your Honor, OMAEG will join  
2 in the objection, mischaracterizing the settlement.

3 EXAMINER CHILES: Do you have anything  
4 additional to add?

5 MS. GHILONI: No, your Honor.

6 EXAMINER CHILES: Could I have the  
7 question read back, please, Karen.

8 (Record read.)

9 EXAMINER CHILES: I am going to allow the  
10 question. The objections are overruled.

11 A. OCC was a -- my understanding was a  
12 signatory to the stipulation, and those payments were  
13 part of the stipulation. If the OCC objected to  
14 those payments outside of being a signatory to the  
15 stipulation, I am simply not aware of it.

16 Q. Now, you mentioned in your testimony the  
17 auto -- the automaker credits. Is it fair that you  
18 do not believe those automaker credits that are in  
19 the stipulation in this case are the equivalent of  
20 the cash refunds in the IGCC case?

21 A. I didn't say that they were equivalent,  
22 no. I don't think that's stated anywhere in my  
23 testimony. This is an indication that they are  
24 analogous. Analogous doesn't necessarily mean  
25 identical or equivalent.

1           Q.    Now, the cash payments in the IGCC case  
2 were not being made as any kind of an AEP economic  
3 development and job retention plan, correct?

4           A.    No.    They were refunds.

5           MS. GHILONI:  I apologize.  We object to  
6 the term "cash payments."  It mischaracterizes the  
7 settlement terms.

8           MR. LANG:  Your Honor, just to avoid an  
9 issue, instead of cash payments, think of the  
10 question as saying refunds, I'm fine.

11          EXAMINER CHILES:  With that  
12 clarification.

13          A.    My understanding that these were refunds  
14 of past payments made by customers.  I don't know  
15 whether these were in the form of bill credits or  
16 exactly what form they took.  But my understanding,  
17 just from reading the order and reading the  
18 stipulation or reading a summary of the stipulation,  
19 is that they were refunds of past ratepayer payments.

20          Q.    Let me ask you a couple of questions  
21 about your testimony regarding rider RRS.  Would you  
22 agree that rider RRS as shortened to eight years in  
23 the third supplemental stipulation is intended by the  
24 companies to be a hedge product?

25          A.    The companies intend rider RRS to be a

1 hedged product, yes, to provide hedging benefits.

2 That's the companies' stated purpose of it.

3 Q. And is it fair to say you have not done  
4 any forecasting with regard to your testimony  
5 addressing the third supplemental stipulation?

6 A. No, I have not prepared a forecast.

7 Q. And you have not modeled the impact of  
8 rider RRS as modified by the third supplemental  
9 stipulation?

10 A. I have done the ESP versus MRO statutory  
11 test, but I don't consider that modeling. I wouldn't  
12 characterize it that way.

13 Q. So the answer to my question was yes, you  
14 have not done modeling?

15 A. That's correct.

16 Q. Now, with regard to your ESP versus MRO  
17 quantitative analysis that you summarize on page 27  
18 of your testimony, you assume a \$2.713 billion cost  
19 of rider RRS, correct?

20 A. I think it's more accurate to call that  
21 adopting Mr. Wilson's middle case rather than me  
22 assuming it.

23 Q. And --

24 A. It's not really my assumption. It's  
25 importing his result.

1           Q.    And thank you for that clarification.    So  
2   you are relying on Mr. Wilson's number, correct?

3           A.    That's right.

4           Q.    And that, in particular, is his number  
5   for what he refers to as his middle case, correct?

6           A.    I think that's how he refers to it.  
7   That's what I refer to it as.

8           Q.    Now, the testimony that you filed on  
9   December 30 used a slightly higher number, \$2.969  
10   billion, which you are addressing in your errata  
11   here.   Why the difference in the numbers?

12          A.    At the time that I prepared my testimony,  
13   I had been given figures from the OCC on Mr. Wilson's  
14   results that I think that were prepared in early  
15   December, and Mr. Wilson later revised and updated  
16   those figures.   I can't speak to what went into --  
17   what changed between early December and the end of  
18   December, but I didn't actually receive his final  
19   numbers until after his testimony was -- until after  
20   his testimony was filed.

21                   I hope that wasn't me.

22          Q.    I think it might have been me.

23                   All right.   So you did not get  
24   Mr. Wilson's final numbers until after he filed his  
25   testimony on December 30.

1           A.    Yes.

2           Q.    Right.  And then a week after that filing  
3 you provided the errata, correct?

4           A.    That's correct.

5           Q.    Now, you have not personally verified  
6 Mr. Wilson's middle case estimate, correct?

7           A.    In terms of checking his math and  
8 whatnot, no.  I've reviewed Mr. Wilson's testimony  
9 and, obviously, the logic and arguments behind his  
10 results.

11          Q.    I understand you reviewed his testimony.  
12 However, with regard to his calculation of this  
13 projected cost, that's -- you haven't verified that  
14 in any way, whether it was checking his math or  
15 otherwise, correct?

16               MR. STINSON:  Objection, asked and  
17 answered.

18               EXAMINER CHILES:  I'll allow the  
19 question.  Objection overruled.

20          A.    Well, the latter half of your question is  
21 correct.  I didn't check his math.  I certainly  
22 validated it in terms of understanding where his  
23 numbers came from and the logic behind the scenarios  
24 that he -- that he selected and how he got to them.

25               So there's -- in that sense I have an

1 understanding as to what he did, and I have certain  
2 amount of agreement with what he did, but it is his  
3 work and not my work.

4 Q. And whether the -- whether the number is  
5 2.7 billion or 2.9 billion, your role here is to take  
6 his testimony and incorporate it into your ESP versus  
7 MRO test, correct?

8 A. I agree with that, yes.

9 Q. Now, on page 14 of your testimony, line  
10 5, here you state that the new stipulation, the third  
11 supplemental stipulation, "will likely saddle  
12 customers with over \$2.9 billion of above-market  
13 costs," and for that number you are relying on  
14 Mr. Wilson's testimony, correct?

15 A. I am. That's the -- that 2.9, 2.7 is  
16 from Mr. Wilson.

17 Q. You do not personally have an opinion  
18 regarding how much energy prices will increase over  
19 the next eight years, correct?

20 A. I don't have my own forecast, no.

21 Q. You do agree there is risk that energy  
22 prices will increase over the next eight years,  
23 correct?

24 A. Yes, of course.

25 Q. And, in fact, you assume that energy



1 prices will increase, correct?

2 A. I assume that. I believe that. I can't  
3 know it for sure. But I believe that there -- that  
4 it's likely that there will be some sort of an upward  
5 trend. I think that every witness in this case does.

6 Q. And you have not done any analysis of the  
7 level of risk that energy prices will increase,  
8 correct?

9 A. Correct.

10 Q. So when you use the word "likely" here in  
11 your testimony, you cannot assign a probability to  
12 that, correct?

13 A. I can't assign a numerical probability,  
14 no.

15 Q. And one possible outcome if energy prices  
16 increase as forecast by Company Witness Rose is that  
17 the rider RRS could result in credits to the  
18 companies' customers totaling approximately  
19 \$600 million, correct?

20 A. Yes.

21 Q. And --

22 A. I don't question his math or the math  
23 of -- I guess it's Mr. Ruberto who actually  
24 calculated those numbers.

25 Q. Now, a couple of questions about rider

1 DCR. And related to this same statement here on page  
2 14 about the \$2.9 billion, that \$2.9 billion figure  
3 of above-market costs includes your estimate of rider  
4 DCR costs, correct?

5 A. Yes.

6 Q. However, you agree that estimated DCR  
7 costs are not above-market costs, correct?

8 A. No. They are above costs of service, is  
9 what they are.

10 Q. And you are aware from previous testimony  
11 in this case that the companies' historical net  
12 distribution investment has increased by  
13 approximately \$30 million annually, correct?

14 A. I can't tell you that firsthand. I do  
15 recall Mr. Fanelli testifying to that, at least in  
16 deposition. I am not sure if he testified to that in  
17 hearing.

18 Q. You certainly don't have any basis for  
19 challenging that number or what Mr. Fanelli testified  
20 to, correct?

21 A. I am not challenging Mr. Fanelli's  
22 number.

23 Q. And you do agree that the companies over  
24 the next eight years will need to make investments in  
25 their distribution system, correct?

1           A.    I would certainly expect that to be the  
2 case.

3           Q.    And you agree that continued investment  
4 over the next eight years is necessary to ensure  
5 reliability for customers, correct?

6           A.    At some level.  Some appropriate level of  
7 investment probably is needed to ensure reliability.

8           Q.    And you do not know what level of  
9 investment is appropriate, correct?

10          A.    No.  I don't know what the optimal level  
11 of investment in the companies' distribution system  
12 is.

13          Q.    Now, I want to ask you on page 17 of your  
14 testimony, lines 18 through 20 --

15          A.    I'm sorry, did you say 17?

16          Q.    Page 17, it's the sentence that starts on  
17 line 18, goes through line 21.  You talk here about  
18 with regard to some of these new initiatives, they  
19 are clearly intended to benefit shareholders.  So I  
20 wanted to ask you, do you believe it is the clear  
21 intent of all the signatory parties, including staff,  
22 that rider GDR and DCR benefit the companies'  
23 shareholders?

24          A.    I don't know what their intent is.  This  
25 was -- this was a negotiated settlement.  I'm not --

1 they may be -- they may or may not be cognizant that  
2 this benefits the utility's shareholders. Clearly  
3 the extension and the terms of the extension under  
4 this third supplemental stipulation I know is quite  
5 different than the staff's filed case. So I would  
6 have to believe that the staff believes that the  
7 provisions in this third supplemental stipulation  
8 regarding riders DCR is something that's beneficial  
9 to shareholders.

10 Q. The --

11 A. I can't speak for, you know, every party  
12 that's a signatory to the stipulation and what they  
13 believe.

14 MR. LANG: Your Honors, may I approach?

15 EXAMINER CHILES: You may.

16 Q. (By Mr. Lang) And, Mr. Kahal, you were  
17 deposed on January 7 of this year; is that correct?

18 Do you have a copy of your transcript?

19 A. I think I do.

20 MR. STINSON: In the meantime, your  
21 Honor, could I have the question reread, please?

22 (Record read.)

23 Q. (By Mr. Lang) Mr. Kahal, with regard to  
24 your deposition on January 7, you were under oath in  
25 that deposition, agreed to tell the truth, correct?

1           A.    Yes.

2           Q.    And there was a -- there was a court  
3 reporter with you in Charlottesville, Virginia; is  
4 that correct?

5           A.    Yes.

6           Q.    If I could have you turn to page 37 of  
7 the deposition transcript, and starting on line 1,  
8 did I ask you, "So you believe it is the intent of  
9 the other signatory parties that Rider GDR and Rider  
10 DCR will benefit the companies' shareholders?"

11                   And you answered, "Yes. I believe that  
12 those are provisions that benefit Company  
13 shareholders. They don't benefit the nonutility  
14 signatories." Did I read that correctly?

15           A.    Yes.

16           Q.    Now, you also believe it is the clear  
17 intent of all signatory parties, including staff, to  
18 increase the cap on shared savings in order to  
19 benefit the companies' shareholders, correct?

20           A.    Yes.

21           Q.    And switching to a slightly different  
22 topic, on pages 20 to 21 of your testimony, and in  
23 particular on line 3 of page 21, you refer to what  
24 you call the "inadequate market price scenario."  
25 Just so it's clear, when you refer to that inadequate

1 market price scenario, you do not believe that that  
2 scenario appears in the companies' testimony,  
3 correct?

4 A. That's right. By the -- what's in the  
5 companies' testimony is based on Mr. Judah Rose's  
6 forecast, and that's not an inadequate market price  
7 scenario in the context that's being discussed here.

8 Q. Right. Now, with regard to rider EDR(b),  
9 as in boy --

10 A. Yeah.

11 Q. -- you do not know which customers pay  
12 the costs of rider EDR(b), correct?

13 A. I don't. I don't recall. I think I saw  
14 it much earlier in this case, but I don't recall what  
15 the exact allocation of that -- of that rate credit  
16 or discount is to the rest of the body of FirstEnergy  
17 customers.

18 Q. And you do not know which customers pay  
19 the costs in rider EDR(h)?

20 A. That's correct. Again, I think I saw  
21 that much earlier in the case, and I just don't  
22 recall what the customer class allocation is.

23 Q. You'll agree that rider EDR is revenue  
24 neutral to the companies, correct?

25 A. I agree with that.

1           Q.    You do not know which customers pay the  
2 cost of rider ELR, correct?

3           A.    I don't remember the exact allocation to  
4 customer classes. I can't remember whether it's an  
5 energy allocation or exactly how -- what the formula  
6 is. I don't have that at my fingertips.

7           Q.    Again, you will agree that rider ELR is  
8 revenue neutral to the companies?

9           A.    I agree with that.

10          Q.    Now, with regard to the distribution rate  
11 decoupling section that's in the third supplemental  
12 testimony -- sorry, the third supplemental  
13 stipulation, if the Commission were to state in its  
14 order that it was not prejudging whether the  
15 percentages were appropriate or whether the SFV rate  
16 design itself was appropriate, and reserved those  
17 questions for a future proceeding that the companies  
18 are going to file, is that something that you would  
19 find -- I'd say you would welcome and find helpful?

20               MR. STINSON: Objection, your Honor.  
21 Calls for speculation as to what the Commission will  
22 be doing or what the Commission would do.

23               EXAMINER CHILES: Could I have the  
24 question read back, please.

25               (Record read.)

1 EXAMINER CHILES: I will allow the  
2 question. The witness can answer if he knows.

3 A. Right. I assume that in asking that  
4 question that part of the assumption is that the --  
5 is that the stipulation itself is approved by the  
6 Commission because I think we have to start with that  
7 or else the rest of the question doesn't make sense.

8 So with that assumption if the Commission  
9 is to approve the stipulation, it would certainly be  
10 better if it -- if it made the kind of statement that  
11 you just indicated, and that would be very helpful as  
12 opposed to simply approving it silently.

13 Q. And did you have the opportunity in  
14 preparation to appear here today to review the  
15 hearing transcript of -- from last week involving  
16 Ms. Mikkelsen and questions that she answered about  
17 the SFV rate provision?

18 A. No. Last week? I didn't even know the  
19 transcript was available. But the short answer is  
20 no.

21 Q. Just asking if you did. So, again, I am  
22 looking at -- still looking at page 13 of your  
23 testimony, you have a reference to a paragraph of the  
24 stipulation increasing the shared savings cap from 10  
25 million to 25 million dollars per year.



1                   So I wanted to ask you -- I wanted to ask  
2                   you whether you are aware that the companies have  
3                   statutory benchmarks they are required to achieve  
4                   with regard to energy efficiency and peak-demand  
5                   reduction?

6                   A.     That's my understanding.

7                   Q.     And is it also your understanding that  
8                   shared savings currently are a component of the  
9                   companies' EEP or portfolio plants?

10                  A.     I assume that's the case because the  
11                  language refers to an increase, so that implies that  
12                  the 10 million is already there.

13                  Q.     Fair enough. And, however, you do not  
14                  know whether shared savings apply only when a company  
15                  achieves more reductions than are mandated in a given  
16                  year?

17                  A.     That's correct.

18                  Q.     And you do not know the methodology of  
19                  how the companies' shared savings are calculated,  
20                  correct?

21                  A.     Right. I don't know the calculation  
22                  methodology that's used to determine that.

23                  Q.     And you don't know what triggers the  
24                  shared savings, correct?

25                  A.     That's correct.

1 Q. And you do not know what amount of shared  
2 savings was earned by the companies in 2014 or any  
3 other year, correct?

4 A. Correct.

5 Q. Now, on page 13, lines 17 and 18, you  
6 state that the companies could potentially earn up to  
7 \$120 million in shared savings over the eight years  
8 of the ESP IV. If that were to happen as stated in  
9 your testimony, you do not know what amount of  
10 savings the companies' customers would receive over  
11 the same time period, correct?

12 A. That's correct. But just as a  
13 clarification, the 120 million that's referred to  
14 here is the increase, not the total, and it refers to  
15 a cap.

16 MR. LANG: And if I could have one  
17 minute, please.

18 EXAMINER CHILES: You may.

19 MR. LANG: Thank you, Mr. Kahal. Those  
20 are the questions I have.

21 Thank you, your Honors.

22 EXAMINER CHILES: Thank you, Mr. Lang.  
23 Mr. McNamee?

24 MR. McNAMEE: No questions, your Honor.

25 EXAMINER CHILES: Examiner Addison?

8240

1 EXAMINER ADDISON: No questions.

2 EXAMINER CHILES: Examiner Price?

3 EXAMINER PRICE: No questions.

4 EXAMINER CHILES: Commission Haque?

5 COMMISSIONER HAQUE: Nope.

6 EXAMINER CHILES: Mr. Stinson?

7 MR. STINSON: If we could have a few  
8 moments, your Honor.

9 EXAMINER CHILES: You may.

10 We're off the record.

11 (Discussion off the record.)

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

14 Mr. Stinson.

15 MR. STINSON: No further questions, your  
16 Honor.

17 EXAMINER CHILES: All right. Thank you  
18 very much. You're excused. Mr. Stinson, you  
19 previously moved for the admission of OCC/NOPEC  
20 Exhibits 11 and 11A?

21 MR. STINSON: Yes, your Honor.

22 EXAMINER CHILES: Are there any  
23 objections to 11 and 11A?

24 MR. LANG: No, your Honor.

25 EXAMINER CHILES: Hearing none, they will

8241

1 be admitted.

2 (EXHIBITS ADMITTED INTO EVIDENCE.)

3 EXAMINER CHILES: Let's go off the record  
4 for a moment.

5 (Discussion off the record.)

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

8 At this time we will adjourn for the day.  
9 We will reconvene at 9 o'clock tomorrow.

10 Off the record

11 (Thereupon, at 3:57 p.m., the hearing was  
12 adjourned.)

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8242

## 1 CERTIFICATE

2 I do hereby certify that the foregoing is  
3 a true and correct transcript of the proceedings  
4 taken by me in this matter on Tuesday, January 19,  
5 2016, and carefully compared with my original  
6 stenographic notes.

7  
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10  
11 Karen Sue Gibson, Registered  
Merit Reporter.

12 (KSG-80066)

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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 01/19/16 - Volume XXXVIII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.