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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PROCEEDINGS

before Mr. Gregory Price, Ms. Mandy Chiles, and
Ms. Megan Addison, Attorney Examiners, and
Commissioner Asim Z. Haque at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 9:00 a.m. on Thursday,
January 21, 2016.

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VOLUME XL

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1 Thursday Morning Session,
2 January 21, 2016.

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4 EXAMINER CHILES: Let's go ahead and go
5 on the record.

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

14 My name is Mandy Chiles, and with me are
15 Megan Addison and Commissioner Asim Haque. We will
16 waive appearances this morning.

17 At this time we have some pending
18 exhibits with OMAEG.

19 Ms. Bojko, I believe you had moved for
20 admission of Exhibit No. OMAEG 27, and we deferred
21 ruling on that exhibit. The companies did object to
22 the admission of that exhibit. At this time the
23 objection is overruled. The companies' objection is
24 noted, but we will admit OMAEG Exhibit 27, and it
25 will be afforded the appropriate amount of weight.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER CHILES: As to Exhibit 26, I
3 believe we still need to move for admission of that
4 exhibit.

5 MS. BOJKO: Yes. Actually, your Honor,
6 we are not going to move admission of OMAEG Exhibit
7 26 at this time. Instead we would like to move for
8 admission of OMAEG Exhibit 26A, which is a copy of
9 the filed version of the Corrected Third Supplemental
10 Testimony of Edward W. Hill with the attachments,
11 Attachment EWH-1 and EWH-2. This version is
12 consistent with the version that counsel for
13 FirstEnergy utilized yesterday in its
14 cross-examination.

15 May I approach?

16 EXAMINER CHILES: You may.

17 Do the parties need time to compare the
18 exhibit?

19 MR. ALEXANDER: Your Honor, I would take
20 counsel's representation it matches my version.
21 There is no objection.

22 EXAMINER CHILES: Are there any other
23 objections to OMAEG Exhibit 26A?

24 Hearing none, it will be admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 EXAMINER CHILES: Thank you Ms. Bojko.

2 MS. BOJKO: Thank you, your Honor.

3 EXAMINER ADDISON: With that, Ms. Bojko,
4 you may call your next witness.

5 MS. BOJKO: Thank you, your Honor. At
6 this time OMAEG would like to call Mr. John Seryak to
7 the stand.

8 (Witness sworn.)

9 EXAMINER ADDISON: Thank you.

10 Please proceed, Ms. Bojko.

11 MS. BOJKO: Thank you, your Honor.

12 - - -

13 JOHN A. SERYAK

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

16 DIRECT EXAMINATION

17 By Ms. Bojko:

18 Q. Good morning, Mr. Seryak. Could you
19 please state your name and address for the record.

20 A. John A. Seryak, and my business address
21 is 3709 North High Street, Columbus, Ohio 43214.

22 Q. Are you the same John Seryak that
23 previously testified and provided written testimony,
24 direct testimony in this proceeding, on March 2,
25 2015?

1 A. Yes.

2 Q. Did you file or cause to be filed
3 additional testimony opposing the stipulated ESP IV
4 that was filed in this case?

5 A. Yes.

6 MS. BOJKO: Your Honors, at this time I
7 would like to mark as OMAEG Exhibit 28 the
8 Supplemental Testimony of John Seryak on behalf of
9 the Ohio Manufacturers' Association Energy Group that
10 was filed on December 30, 2015, in this proceeding.

11 EXAMINER ADDISON: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MS. BOJKO: Your Honor, at this time I
14 would also mark as OMAEG Exhibit 29, a copy of Figure
15 1 from page 9 of Mr. Seryak's supplemental testimony
16 titled Attachment JAS-2. This is just a blown up
17 version of the table that's included in his testimony
18 because it was not very legible in the testimony so
19 we expanded it, but it's the exact same exhibit, and
20 counsel for FirstEnergy has seen the exhibit prior to
21 today as well.

22 EXAMINER ADDISON: Thank you. It will be
23 so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. (By Ms. Bojko) Mr. Seryak, do you have in

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1 front of you what has been marked as OMAEG Exhibit 28
2 and 29?

3 A. Yes.

4 Q. And is OMAEG Exhibit 28 your supplemental
5 testimony that was filed on December 30, 2015?

6 A. Yes.

7 Q. And is OMAEG Exhibit 29, Figure 1, from
8 page 9 of your supplemental testimony in an expanded,
9 blown-up version?

10 A. Yes.

11 Q. And, sir, was the supplemental testimony
12 prepared by you or under your direction?

13 A. Yes.

14 Q. And on whose behalf are you testifying
15 today?

16 A. The OMA Energy Group.

17 Q. Since the filing of your supplemental
18 testimony on December 30, 2015, do you have any
19 changes today?

20 A. No, not at this time.

21 Q. And if I were ask you the same questions
22 today as they appear in your supplemental testimony,
23 would your answer be the same?

24 A. Yes.

25 MS. BOJKO: Your Honor, at this time I

1 would like to move OMAEG Exhibits 28 and 29, subject
2 to cross-examination, and I tender the witness for
3 cross.

4 EXAMINER ADDISON: Thank you, Ms. Bojko.
5 We will defer ruling on the admission of OMAEG
6 Exhibits 28 and 29 until the completion of
7 cross-examination.

8 Are there any motions to strike?

9 MS. DUNN: Yes, your Honor, there are
10 two.

11 EXAMINER ADDISON: Please proceed,
12 Ms. Dunn.

13 MS. DUNN: Turning to page 12 of
14 Mr. Seryak's supplemental testimony, lines 5 through
15 8, starting on line 5 with "Similarly" and ending on
16 line 8 with "plants," and also footnote 28.

17 Your Honor, this portion of his testimony
18 refers to unknown multiple studies and one specific
19 study done by a group or company Lazard, which
20 according to its website is a financial advisory and
21 asset management firm. This is a study that
22 Mr. Seryak did not participate in and is not one of
23 its authors. A representative of Lazard is not here
24 to cross-examine. Likewise, the multiple studies,
25 the authors are unknown. Mr. Seryak doesn't assert

1 that he is one of those authors.

2 Therefore, these documents, the multiple
3 studies and the specific Lazard study, are hearsay,
4 and consistent with this Bench's previous rulings on
5 studies such as this, it should be stricken, as well
6 as the text referring to the study and multiple
7 studies.

8 EXAMINER ADDISON: Thank you, Ms. Dunn.

9 Would you like to respond, Ms. Bojko?

10 MS. BOJKO: Yes, your Honor. Thank you.

11 First of all, Mr. Seryak is testifying as
12 an expert witness in this case, and he may rely on
13 multiple studies market data in the industry in order
14 to compile and make his recommendations. It's common
15 for every expert to build their knowledge base with a
16 variety of market data as well as information in the
17 industry.

18 Specifically to the Lazard document --
19 Lazard report referenced in footnote 28, this is an
20 exception to the hearsay rule per Rule 803.17 as it
21 is a market compilation of market information, and
22 this is generally relied on in the renewable and
23 advanced energy industry as well as by the investment
24 community. These reports are periodically done, and
25 they are publicized, and they are widely used by

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1 experts such as Mr. Seryak in these two industries.
2 So it is an investment-type document, and it is
3 commercially available and used as -- on behalf of
4 many consultants in the advanced energy realm, as
5 well as the investment community.

6 EXAMINER ADDISON: Thank you, Ms. Bojko.

7 Ms. Dunn, would you like to respond?

8 MS. DUNN: Yes, your Honor. May I
9 approach?

10 EXAMINER ADDISON: You may.

11 MS. DUNN: Your Honor, I am handing you a
12 copy of the study. Your Honor, if you will see as
13 you look at the study that it is not a market
14 compilation relied upon on the industry. In the
15 upper right-hand corner the document is actually
16 marked "Confidential."

17 We don't know who the study was done for,
18 on whose behalf. It's certainly nothing something
19 relied upon by the general investment community.
20 There's been no foundation laid by this witness that
21 it is, in fact, what Ms. Bojko says it is. For that
22 reason, it's hearsay and should be stricken.

23 EXAMINER ADDISON: Thank you.

24 Ms. Bojko, last word.

25 MS. BOJKO: Sure. The document is not

1 confidential as Ms. Dunn has been able to obtain it
2 from a public website. It's publicly available, so
3 that's -- I am not sure why they have that indication
4 on it, but it is -- the website that's provided to
5 you in the footnote is publicly available. We are
6 not trying to admit the report into evidence. The
7 point is that this is used as a basis for the experts
8 regarding the amount of renewable products and the
9 prices in the market. It is a market compilation.

10 If you look at page 2, that's exactly
11 what it is. It is a comparison of different energy
12 resources and what those prices are for varying
13 points in time as opposed to the conventional. If
14 you look at it, it has energy comparison. This is
15 the exact type of data that renewable experts look at
16 to see what the cost currently is of solar PV-rooftop
17 residential mount, C&I mount, utility-scale; thermal;
18 fuel cells; microturbines.

19 This is the exact type of information of
20 comparison. If we were trying to admit the report
21 itself, then, you know, maybe Ms. Dunn has an
22 argument, but that's not the case, it's still an
23 exception to the hearsay, and it is a reference of
24 how this expert has built his knowledge and built
25 upon for the assertions that he has. He understands

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1 these assertions. He makes them irrespective of the
2 report or study that is referenced in the footnote.

3 EXAMINER ADDISON: Thank you, Ms. Bojko.

4 At this time I am going to grant in part
5 and deny in part the motion to strike. I am going to
6 take out the references to the multiple studies and
7 the Lazard, in particular. We are not convinced this
8 is a market compilation that's heavily relied upon.
9 However, we do believe that Mr. Seryak in his
10 capacity as a regulatory expert could testify to
11 these statements.

12 And, Ms. Dunn, you can certainly
13 cross-examine his independent knowledge of those
14 statements.

15 So just to clarify, we are going to
16 strike the phrase on line 5 "Similarly, multiple
17 studies have shown that" and we are going to
18 capitalize the "E" in "Energy."

19 And then next on line 6 we will be
20 striking "According to Lazard's 2015 Levelized Cost
21 of Energy Study" including footnote 28, and
22 capitalizing the "A" in "All" in that line.

23 MS. BOJKO: Thank you, your Honor.

24 EXAMINER ADDISON: Thank you.

25 Ms. Dunn, you had a second motion to

1 strike?

2 MS. DUNN: Yes, your Honor. Turning to
3 page 15, footnote 35, I'll add that I am only seeking
4 to strike the footnote, not the text. The reason to
5 strike footnote 35 is because they refer to newspaper
6 articles. Newspaper articles, as this Bench has held
7 several times in this hearing, are clearly hearsay.
8 They are being added for the truth of the matter
9 asserted. Mr. Seryak is not the author, and,
10 therefore, consistent with the Bench's previous
11 rulings, we request that this footnote be stricken.

12 EXAMINER ADDISON: Thank you, Ms. Dunn.
13 Ms. Bojko.

14 MS. BOJKO: Actually, consistent with
15 prior rulings, these are mere examples. They are
16 illustrative. It actually says "Public examples
17 include." Mr. Seryak does have personal experience,
18 but instead of putting things in the record and
19 providing them to the Bench through newspaper
20 articles or such that would also be objectionable,
21 Mr. Seryak just provided the Bench public examples.

22 Again, we are not trying to get the
23 newspaper articles admitted. This Bench has allowed
24 footnotes that provide examples with references such
25 as this, including the links to the actual articles.

1 These, again, are just public examples. We could
2 strike the links, but I think that the public example
3 of Amazon and Ohio State University and GM should
4 stand in the record. I's just providing examples of
5 projects that have already been completed and he has
6 personal knowledge of that.

7 EXAMINER ADDISON: Ms. Dunn.

8 MS. DUNN: Your Honor, they are being
9 offered for the truth of the matter asserted, namely,
10 that businesses are integrating renewable energy
11 purchases. Mr. Seryak's knowledge is based on the
12 newspaper articles. It's based off of hearsay, and
13 for that reason the entire footnote should be
14 stricken.

15 MS. BOJKO: Your Honor, if I may respond,
16 his knowledge is not based off of the newspaper
17 articles, and we are not offering the newspaper
18 articles here today as for the truth of the matter
19 assert. They are examples of public renewable
20 projects that have, in fact, occurred.

21 EXAMINER ADDISON: Thank you, Ms. Bojko.

22 I tend to agree with Ms. Dunn. I will be
23 granting the motion to strike in order to be
24 consistent with prior rulings during this proceeding.

25 MS. BOJKO: Just the footnote, your

1 Honor?

2 EXAMINER ADDISON: Just the footnote,
3 yes, the footnote 35. Thank you, Ms. Bojko.

4 And that concludes your motion to strike;
5 is that correct, Ms. Dunn.

6 MS. DUNN: Yes, your Honor. Thank you.

7 EXAMINER ADDISON: Thank you.

8 Ms. Fleisher, any questions?

9 MS. FLEISHER: No questions, your Honor.

10 EXAMINER ADDISON: Mr. Mendoza?

11 MR. MENDOZA: No questions, your Honor

12 EXAMINER ADDISON: Mr. Darr?

13 MR. DARR: No questions.

14 EXAMINER ADDISON: Mr. Olikar?

15 MR. OLIKER: No questions, your Honor.

16 EXAMINER ADDISON: Ms. Petrucci?

17 MS. PETRUCCI: No questions.

18 EXAMINER ADDISON: Ms. Willis?

19 MS. WILLIS: No questions, your Honor.

20 EXAMINER ADDISON: Mr. Kurtz?

21 MR. KURTZ: No questions, your Honor.

22 EXAMINER ADDISON: Ms. Dunn?

23 MS. DUNN: Thank you, your Honor.

24 - - -

25

CROSS-EXAMINATION

By Ms. Dunn:

Q. Good morning, Mr. Seryak.

A. Good morning.

Q. Mr. Seryak, if you could turn to Attachment JAS-1 of your testimony, please.

A. Yes.

Q. And Attachment JAS-1 is not a workpaper that you created, correct?

A. That's correct.

Q. And it is a copy of Ms. Mikkelsen's workpaper that was filed on November 30, 2015, correct?

A. Yes.

Q. And you did not make any changes to Ms. Mikkelsen's workpaper, correct?

A. No, I did not.

Q. And looking at Attachment JAS-1, line 11, you see that it references as the source attachments JJL-1, JJL-2 and JJL-3 Revised. Do you see that?

A. I see that.

Q. And you did not review those attachments, correct?

A. I did not.

Q. And if you look down on the same JAS-1,

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1 you see columns A, B, C, and D. Do you see that?

2 A. Rows A, B, C, and D, yes.

3 Q. Rows, thank you. Next to A it says
4 "Supplemental response to IEU Set 1-INT-25 Attachment
5 1-revised." Do you see that?

6 A. I see that.

7 Q. You did not review that attachment
8 either, correct?

9 A. That's correct.

10 MS. DUNN: Your Honor, may I approach?

11 EXAMINER ADDISON: You may.

12 MS. DUNN: Your Honor, I would like to
13 mark as Company Exhibit 177 the "PJM Load Forecast
14 Report January 2016, Draft."

15 EXAMINER ADDISON: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. (By Ms. Dunn) Mr. Seryak, I have handed
18 you what's been marked as Company Exhibit 177, PJM
19 2016 Load Forecast, Draft. Do you see that?

20 A. Yes.

21 Q. And you have seen this document before,
22 correct?

23 A. I have.

24 Q. And on page 8 of your testimony, footnote
25 17, this is the document that you are referencing in

1 footnote 17, correct?

2 A. That's right.

3 Q. And on page 1, line 1 -- I'm sorry,
4 pardon me. Page 8, line 1, you refer to a 3.5 to
5 5 percent figure, correct?

6 A. That's correct.

7 Q. And if you look at page 2 of the draft
8 report, the fifth bullet point down.

9 A. Yes.

10 Q. That -- the 3.5 to 5 percent figure is
11 derived from that fifth bullet point, correct?

12 A. That's right.

13 Q. And you are not intimately familiar with
14 the entire PJM 2016 Draft Load Forecast Report,
15 correct?

16 A. Well, "intimate" is a qualitative term.
17 It's pretty subjective, so I mean, I'm -- I'm -- I
18 don't know every single number in the report. I have
19 a pretty good understanding of the report so I don't
20 know. I guess you would need to be more specific.

21 MS. DUNN: Ms. Bojko, do you need a copy
22 of Mr. Seryak's deposition?

23 MS. BOJKO: I do not.

24 MS. DUNN: Your Honor, may I approach?

25 EXAMINER ADDISON: You may.

1 Q. (By Ms. Dunn) Mr. Seryak, could you turn
2 to page 17 of your deposition.

3 A. Yes.

4 Q. And line 7.

5 A. Yes.

6 Q. "Question: Okay. Did you review the
7 entire 2016 Load Forecast Draft Report?

8 "Answer: I looked through it all. PJM's
9 Load Forecast Report and any other documents are
10 extremely detailed, so I wouldn't say I'm intimately
11 familiar with the entire report."

12 Did I read that correctly?

13 A. You did.

14 MS. BOJKO: Objection, your Honor.
15 That's improper impeachment. That's exactly what he
16 said. He looked through the entire report but he
17 didn't know what she meant by the use of
18 "intimately," and I'm not sure her question was to
19 the entire report, but that's exactly how he
20 responded so that's improper impeachment.

21 EXAMINER ADDISON: Thank you. We will
22 just let the transcript speak for itself.

23 And let's move on, Ms. Dunn.

24 MS. BOJKO: Thank you.

25 Q. (By Ms. Dunn) And turning to page 1 and 2

1 of the 2016 PJM Draft Load Forecast Report, that's an
2 Executive Summary, correct?

3 A. It is.

4 Q. And in drafting your testimony, you
5 utilized the executive summary from the PJM draft
6 2016 load forecast, correct?

7 A. That's right.

8 Q. And you can't give a detailed explanation
9 or breakdown of the methodology PJM uses to forecast
10 load, correct?

11 A. Well, as we are asking questions here, I
12 want to clarify about when in time I know something
13 or not, okay? So when I drafted the testimony, when
14 I was deposed and today, those are different times.
15 So if I've reviewed literature between last Monday
16 and today, then I answered that I am more familiar
17 with a document than several weeks ago. You know, I
18 was -- if I am answering something in the present day
19 today, I want to make sure we are talking about my
20 knowledge today, not my knowledge two weeks ago
21 because as a professional, I read documents over
22 time. So could you ask your question again?

23 Q. At the time I took your deposition, you
24 could not give a detailed explanation or breakdown of
25 the methodology PJM uses to forecast load, correct?

1 MS. BOJKO: Objection, your Honor. The
2 deposition is not in evidence. He is here testifying
3 today. This is his direct testimony and
4 cross-examination. He just explained that there are
5 different periods of time. He has different
6 knowledge. I think the question of what he knew or
7 didn't know today is relevant. What he knew or
8 didn't know at the deposition or even what he knew
9 when he drafted his testimony is relevant. But not
10 necessarily going through the deposition, and what he
11 did or didn't know at that point in time is a waste
12 of the court's time. I mean, I would also note that
13 a lot of times he said he would have to go back and
14 review, and Ms. Dunn did not provide him that
15 opportunity.

16 MS. DUNN: Your Honor, I would request
17 that the Bench allow objections to be kept to an
18 objection and not a speaking objection; and,
19 secondly, I was actually trying to respond to the
20 witness's request for clarification.

21 EXAMINER ADDISON: Ms. Dunn was
22 responding to his request. Let's let him answer the
23 question. I think it's a perfectly proper question
24 to ask him.

25 So, Mr. Seryak, do you need that last

1 question read back?

2 THE WITNESS: I do.

3 EXAMINER ADDISON: Can you please read
4 the last question back, Karen. Thank you.

5 (Record read.)

6 A. I would say it's fair to say I couldn't
7 give a detailed explanation.

8 Q. And if you look on page 2 of the 2016 PJM
9 draft report, the last bullet on that page 2 is
10 incomplete, correct?

11 A. That's right.

12 Q. And it's fair to say you did not take
13 that bullet point into consideration in preparing
14 your testimony, correct?

15 A. Yeah. I mean, what I would do is wait
16 until the final report is released to look at that
17 information and I would have time to do that
18 analysis, so right.

19 MS. DUNN: Your Honor, may I approach?

20 EXAMINER ADDISON: You may.

21 MS. DUNN: Your Honor, I am handing
22 Mr. Seryak what's been marked previously as Company
23 Exhibit 171, which is the PJM Load Forecast 2016
24 Report.

25 Q. (By Ms. Dunn) Mr. Seryak, you have seen

1 this document before, correct?

2 A. I have.

3 Q. And this is the final PJM 2016 Load
4 Forecast Report, correct?

5 A. It appears to be so.

6 Q. Turning to page 3 of the final report,
7 you see on page 3 a column labeled "Unrestricted."

8 A. I see that.

9 Q. At the time you drafted your testimony,
10 you did not know what PJM meant by unrestricted,
11 correct?

12 A. I've since looked into that.

13 Q. But at the time of drafting your
14 testimony, you did not know what that meant, correct?

15 A. At the time of drafting my testimony, no,
16 I wasn't studying the unrestricted estimates.

17 MS. BOJKO: Your Honor, I am going to
18 object.

19 EXAMINER ADDISON: On when grounds?

20 MS. BOJKO: Relevancy. At the time he
21 drafted his testimony this document didn't exist, so
22 I don't know how we can ask him questions on this
23 document at the time he drafted his testimony.

24 EXAMINER ADDISON: Ms. Dunn?

25 Q. (By Ms. Dunn) Okay, turning to the draft

1 document 2016 --

2 EXAMINER ADDISON: Did you want to
3 respond?

4 MS. DUNN: Well, he had already answered
5 the question so I am not sure what the response would
6 be, so I can ask him on the draft report as well.

7 EXAMINER ADDISON: Thank you, Ms. Dunn.

8 Q. If you turn to page 35 of the draft
9 report.

10 A. I'm there.

11 Q. On Table B-10, do you see the label
12 "Unrestricted 2015"?

13 A. I see that.

14 Q. And I know I just asked you about the
15 final report, but would your answer be the same, you
16 also did not study unrestricted load from the draft
17 report?

18 MS. BOJKO: Objection.

19 EXAMINER ADDISON: Grounds?

20 MS. BOJKO: Mischaracterizes the record.
21 They are not the same tables, and she's referencing
22 both the final report and the draft report in her
23 question.

24 MS. DUNN: Your Honor, it's a different
25 question.

1 MS. BOJKO: She said, "as I just asked
2 you in the," with regard to the final report.

3 MS. DUNN: I can ask it cleaner without
4 the reference to the final report.

5 EXAMINER ADDISON: Please do so so the
6 record is clear. Thank you.

7 Q. (By Ms. Dunn) Page 35 of the draft
8 report, Mr. Seryak, you see the column labeled
9 "Unrestricted 2015"?

10 A. Yes.

11 Q. Is it fair to say did you not study
12 unrestricted load from 2015 or unrestricted load from
13 the draft report?

14 A. At the time of my testimony and given the
15 time constraints allowed to actually draft testimony,
16 no, I did not get down to the unrestricted growth
17 estimates on page 35.

18 Q. And turning to page 2 of the draft, the
19 fifth bullet point down, when you drafted your
20 testimony you also did not consider whether the
21 bullet point, the fifth bullet point down, was
22 unrestricted load or restricted load, correct?

23 A. I mean, consider for what?

24 Q. Did you consider it? Let me back up.
25 Did you know if bullet point 5 at the time of

1 drafting your testimony was restricted load or
2 unrestricted load?

3 A. It is a summer peak-load forecast so I
4 did not go down into the differences between
5 restricted and unrestricted.

6 Q. You were not present in the hearing room
7 for the entire hearing in this case, correct?

8 A. That's correct.

9 Q. And you were only present on the days you
10 were scheduled to testify or did actually testify,
11 correct?

12 A. That's correct.

13 Q. You signed a nondisclosure certificate
14 for confidential materials in this case, correct?

15 A. Yes.

16 Q. And you believe you only signed one
17 nondisclosure certificate for confidential materials,
18 not one for competitively sensitive materials,
19 correct?

20 A. If I -- if I understand the distinction,
21 yes, I only signed one.

22 MS. DUNN: Your Honor, may I approach?

23 EXAMINER ADDISON: You may.

24 MS. DUNN: Your Honor, I would like to
25 mark as Company Exhibit 178 a "Non-disclosure

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1 Certificate for Confidential, Protected Materials."

2 EXAMINER ADDISON: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. (By Ms. Dunn) Mr. Seryak, I have handed
5 you what's been marked as Company Exhibit 178, a
6 Nondisclosure Certificate for Confidential Protected
7 Materials. Is that the nondisclosure certificate
8 that you signed?

9 A. Yes.

10 Q. And to your knowledge, you cannot review
11 any competitively sensitive information in
12 preparation of your testimony, correct?

13 A. Not to my knowledge.

14 Q. You were employed by the University of
15 Dayton working in the Industrial Assessment Center,
16 correct?

17 A. Yes.

18 Q. And during your time there, you did not
19 perform any energy pricing forecasts, correct?

20 A. That's correct.

21 Q. You were also an engineer with a
22 consulting firm in Boston, correct?

23 A. That's correct.

24 Q. And when you were an engineer with a
25 consulting firm in Boston, you did not perform any

1 work on energy load forecasts, correct?

2 A. That's right.

3 Q. And you also did not perform energy
4 pricing forecasts, correct?

5 A. That's correct.

6 Q. And you have not personally conducted an
7 energy load forecast for summer peak load in the PJM
8 RTO, correct?

9 A. That's right.

10 Q. And at RunnerStone, LLC, you do not
11 provide energy price forecasts to clients, correct?

12 A. I do not.

13 Q. And you have never designed energy load
14 forecasts for public utilities, correct?

15 A. I haven't.

16 Q. Turning to your testimony on page 3, line
17 12, you state, "The Third Supplemental Stipulation
18 provides wholesale electric market revenues,"
19 correct."

20 A. Yes.

21 Q. You have not conducted an analysis of by
22 how much the third supplemental stipulation
23 provisions will reduce wholesale electric market
24 revenues, correct?

25 A. My testimony is that no one has done an

1 analysis on that, and never have -- nor have I been
2 able to review one the companies have done.

3 MS. DUNN: Your Honor, I would move to
4 strike everything starting with "my" to the portion
5 where he said "neither did I," and then after the
6 "neither did I."

7 EXAMINER ADDISON: Ms. Bojko.

8 MS. BOJKO: Your Honor, it was a complete
9 answer. She asked if he conducted one, and he
10 explained that is a concern he has raised in his
11 testimony. He referred to his testimony and said he
12 has not done one nor has anybody else, and he's
13 suggesting that that be done.

14 EXAMINER ADDISON: Certainly sounds like
15 it would be a more appropriate topic for redirect, so
16 I am going to grant the motion to strike.

17 Q. (By Ms. Dunn) And in the third
18 supplemental stipulation, there is a provision
19 relating to a potential of 100 megawatts of renewable
20 generation to be procured by the companies, correct?

21 A. Yes.

22 Q. And regarding the potential 100 megawatts
23 of renewable generation provision in the third
24 supplemental stipulation, you do not know when that
25 generation would actually come online, correct?

1 A. It's not specified in the stipulation
2 when it would come online.

3 Q. So the answer to my question is no, you
4 do not know?

5 A. I can only infer from what the
6 stipulation says. It doesn't say anything, so how
7 could I know if there is not a date specified in the
8 stipulation?

9 MS. DUNN: Your Honor, I would move to
10 strike his answer as nonresponsive. It was a simple
11 "yes" or "no" question.

12 MS. BOJKO: Your Honor, it's not a "yes"
13 or "no" question because the stipulation does not
14 state one way or the other, and that's what -- he
15 answered the way he could answer. He can't answer
16 definitively because the stipulation doesn't allow
17 for that.

18 EXAMINER ADDISON: I am going to deny the
19 motion to strike.

20 Mr. Seryak, if you could answer the
21 question "yes," "no," or explain why you cannot
22 answer "yes" or "no," just so the record is clear.

23 THE WITNESS: Okay.

24 EXAMINER ADDISON: I would very much
25 appreciate it.

1 THE WITNESS: I will do my best.

2 EXAMINER ADDISON: Thank you.

3 Q. (By Ms. Dunn) And you also do not know if
4 the potential 100 megawatts of renewable generation
5 will come online, correct?

6 MS. BOJKO: Your Honor, I'm sorry, may I
7 have that question reread?

8 EXAMINER ADDISON: You may.

9 (Record read.)

10 A. Can I clarify? You are distinguishing
11 between when it's -- will be starting to be built and
12 when it will come online, like producing electricity.
13 Is that what you are referring to?

14 Q. No. My question is, you do not know
15 whether the potential 100 megawatts of generation
16 will be built at all.

17 MS. BOJKO: Objection, your Honor. I
18 think, as we discussed yesterday, that
19 mischaracterizes the stipulation. There is nothing
20 in the stipulation about building renewable
21 resources, so I had that same objection yesterday
22 that I believe was granted.

23 MS. DUNN: Your Honor, I would request
24 that the Bench allow objections to only be legal
25 objections, not reiterating. If the witness wanted

1 to say something about the stipulation, he can
2 certainly do so himself.

3 MS. BOJKO: That is a legal objection.
4 It's called mischaracterizing the record. Assuming
5 facts not in evidence.

6 EXAMINER ADDISON: Okay. Thank you,
7 Ms. Bojko.

8 I Am going to allow the question,
9 Mr. Seryak. If you need to clarify your answer, you
10 can certainly do so.

11 Can we have that last question read back,
12 please, Karen. Thank you.

13 (Record read.)

14 A. Will be -- sorry. Will be built at all,
15 okay. So I know from the stipulation that it's new
16 generation that would be procured, so presumably
17 built one way or the other. So it's either required
18 to by some other law or staff would have the
19 companies do that. That's my understanding of the
20 provision.

21 Q. And you would agree that the potential
22 100 megawatts of renewable generation would have to
23 come online or be operational in order for it to
24 reduce wholesale electric market revenues, correct?

25 MS. BOJKO: Objection, your Honor.

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1 Objection No. 4, assumes facts not in evidence; Ohio
2 Evidentiary Objection No. 22, misstating evidence.

3 EXAMINER ADDISON: What did she misstate?

4 MS. BOJKO: Again, the stipulation, which
5 is a piece of evidence in this record, it's been
6 marked and is a piece of evidence, does not state
7 that it will be built or that it will come online,
8 which means that it will be built. It purely says,
9 the stipulation says, "procurement." So that is
10 misstating evidence, and that is an Ohio evidentiary
11 objection.

12 EXAMINER ADDISON: Ms. Dunn, care to
13 respond?

14 MS. DUNN: I actually, your Honor, don't
15 really understand the objection. I was just
16 asking -- we've talked about there being a potential
17 100 megawatts under the stip. I was getting him to
18 agree -- or to respond to a hypothetical that it
19 would actually have to come online or be operational
20 in order to reduce electric market price. I don't
21 know how that mischaracterizes anything.

22 EXAMINER ADDISON: Thank you, Ms. Dunn.
23 Even if it was mischaracterizing the stipulation, I
24 believe I've provided Mr. Seryak plenty of latitude
25 to clarify if he thinks his understanding differs

1 from what Ms. Dunn is asking, so I am going to
2 overrule the objection. I believe we have a pending
3 question.

4 MS. DUNN: Yes.

5 Karen, would you please read the
6 question.

7 EXAMINER ADDISON: Thank you.

8 (Record read.)

9 A. Yes.

10 Q. And, likewise, you are aware in the -- in
11 the stipulation that there is a provision relating to
12 battery storage, correct?

13 A. I'm aware.

14 Q. And, likewise, for the -- for the battery
15 storage provision of the third supplemental
16 stipulation, in order to reduce wholesale electric
17 market prices, it would have to be designed,
18 constructed, and used, correct?

19 A. Yes.

20 Q. Turning to page 3 of your testimony, line
21 13, you state, "and thus would increase costs to
22 customers under Rider RRS." Do you see that?

23 A. I see that.

24 Q. You have not conducted a quantitative
25 analysis of how a reduction of wholesale market

1 revenues would increase cost to customers under rider
2 RRS, correct?

3 A. Well, I have conducted analyses -- enough
4 analyses to know that there's a -- there's always a
5 directional effect. That's true to that. But so
6 many unclear terms, especially the battery storage,
7 no, I haven't done an analysis.

8 MS. DUNN: Your Honor, I would move to
9 strike everything after "No, I have not done an
10 analysis."

11 EXAMINER ADDISON: Ms. Bojko.

12 MS. BOJKO: Your Honor, you say if he
13 can't answer "yes" or "no," he can explain why he
14 can't answer "yes" or "no." I think that's what he
15 explained. He has conducted some analysis, but he
16 hasn't done another analysis. I mean, he explained
17 exactly what he did and didn't do.

18 MS. DUNN: Your Honor, that's different
19 than explaining that he can't answer my question. He
20 did answer my question.

21 EXAMINER ADDISON: I am going to deny the
22 motion to strike.

23 But I will instruct, Mr. Seryak, if you
24 could just listen to Ms. Dunn's question and answer
25 only her question from this point forward. We just

1 want to make sure we have a clear record. If there
2 is anything else you would like to raise following
3 up, Ms. Bojko can certainly raise that during
4 redirect.

5 THE WITNESS: I am answering these to the
6 best of my ability.

7 EXAMINER ADDISON: Thank you.

8 Q. (By Ms. Dunn) In the PJM 2016 Load
9 Forecast, PJM changed the method of how it creates a
10 load forecast compared to how it created a load
11 forecast for 2015, correct?

12 A. That's my understanding.

13 Q. And one change was that PJM changed how
14 it accommodated or accounted for energy efficiency
15 and other customer-sited resources in its forecast,
16 correct?

17 A. Yes.

18 Q. And you did not mention these changes in
19 your testimony, correct?

20 A. I did not.

21 Q. And page 13, line 17, starting with "in
22 contrast," you say, "In contrast, PJM
23 Interconnection, LLC, the Regional Transmission
24 Organization, is downward revising its load forecast,
25 which would result in lower wholesale electric market

1 prices." Do you see that?

2 A. I'm sorry, you said page 13?

3 Q. I'm sorry. I will start again. Page 3,
4 line 17.

5 A. Yes.

6 Q. Through page 4, line 1.

7 A. Right.

8 Q. You have not quantified how PJM's
9 downward revision of its load forecast would result
10 in lower wholesale electric market prices, correct?

11 A. Correct.

12 Q. And on page 4, line 2, you go on to
13 state, "and increased Rider RRS costs compared to the
14 Companies' current estimates." Do you see that?

15 A. I see that.

16 Q. And you have not quantified how PJM's
17 downward revision of its load forecast would increase
18 rider RRS to customers, correct?

19 A. I haven't quantified how much exactly,
20 no.

21 Q. And turning to page 9 of your testimony,
22 and I am also going to refer to the blown-up version
23 of OMAEG Exhibit 29 --

24 MS. DUNN: Your Honor, may I approach?

25 EXAMINER ADDISON: You may.

1 MS. DUNN: Your Honor, I would like to
2 have marked as Company Exhibit 179, Table 15, "Total
3 Electricity Sales, Projected vs. Actual," which is a
4 table from the EIA.

5 EXAMINER ADDISON: Thank you, Ms. Dunn.
6 It will be so marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. OLIKER: Clarification, which EIA
9 table, which EIA report is it from?

10 MS. DUNN: I'm getting there.

11 Q. (By Ms. Dunn) Mr. Seryak, I have handed
12 you what's been marked as Company Exhibit 179. And
13 is this the table referenced in your footnote 19 on
14 page 9?

15 MS. BOJKO: Objection.

16 EXAMINER ADDISON: Grounds?

17 MS. BOJKO: As to form. I don't know
18 which table she is referencing. This clearly is not
19 the same document.

20 EXAMINER ADDISON: I'll let the witness
21 answer that question.

22 A. The bottom half of the table you handed
23 me appears to be the same table in my testimony.

24 Q. Is this the Table 15 referenced in your
25 footnote?

1 A. Yes, I believe so.

2 Q. So the document that I have handed you as
3 179 is the document referenced in footnote 19?

4 A. It appears to be so.

5 Q. Thank you. And as you just stated, the
6 bottom table on Exhibit 17 is what you reproduced on
7 page 9 or in OMAEG Exhibit 29, correct?

8 A. Yes.

9 Q. And did you not reproduce the top table,
10 correct?

11 A. That's correct.

12 Q. And the top chart states that this is --
13 that has projected amounts in billion kilowatt-hours.
14 Do you see that?

15 A. Yes.

16 Q. And the table is titled "Total
17 Electricity Sales, Projected vs. Actual," correct?

18 A. Yes.

19 Q. Would you agree that the bottom chart
20 represents the percent difference projected versus
21 actual of electricity sales?

22 A. Yes.

23 Q. In billion kilowatt-hours.

24 A. Well, the percent is a percent, but it's
25 of the projected sales in billion kilowatt-hours.

1 Q. And the PJM 2016 load forecast that you
2 reference in your testimony measures load in
3 megawatts, correct?

4 A. That load forecast does peak load in
5 megawatts. It also does consumption in megawatt- or
6 gigawatt-hours.

7 Q. In looking at the draft report --

8 A. Yes.

9 Q. -- the fifth bullet down that has the 3.5
10 to 5 percent, that would be in megawatts, correct?

11 A. Correct.

12 Q. And would you agree that megawatts is a
13 different metric than kilowatt-hour sales?

14 A. Yes, they are different.

15 Q. And the EIA forecast is a national
16 forecast, correct?

17 A. Yes.

18 Q. And you do not know if the EIA forecast
19 is normalized for weather, correct?

20 A. My assumption is that it's normalized for
21 weather, but I don't know for certain how they do
22 that normalization.

23 Q. And to your knowledge, the companies did
24 not utilize EIA load forecasts in calculating
25 wholesale energy price forecasts for this case,

1 correct?

2 A. That's my understanding.

3 Q. Turning to page 6 of your testimony, line
4 1 to 4, you state, "However, the Third Supplemental
5 Stipulation undermines this consideration by
6 introducing renewable energy and storage provisions,
7 and purporting to introduce additional energy
8 efficiency, all of which suppress wholesale electric
9 prices, increasing the costs of Rider RRS to
10 customers." Do you see that?

11 A. I see that.

12 Q. You have not quantified the price
13 suppression effect of those items, correct?

14 A. I have not.

15 Q. And I just read also that you state on
16 line 4 to 5 that it would -- that that would increase
17 the costs of rider RRS to customers, correct?

18 A. Yes.

19 Q. And you have not quantified this increase
20 in costs to customers under rider RRS, correct?

21 A. No, I haven't.

22 Q. You did not review in preparation for
23 your testimony any bill impacts from the companies,
24 correct?

25 A. I did not.

1 Q. And you also did not review specific
2 plant level costs and revenues, correct?

3 A. That's correct.

4 Q. On page 10 of your testimony, line 12 to
5 13, you state, "PJM's revisions mark a major
6 development, and will result in less generating
7 capacity resources clearing in the PJM capacity
8 auctions." Did I read that correctly?

9 A. Yes.

10 Q. You have not quantified how the PJM
11 revisions to load forecast will result in less
12 generation -- generating capacity resources cleared
13 in PJM auctions, correct?

14 A. I have not.

15 Q. PJM derates wind and solar for capacity
16 purposes, correct?

17 A. Yes.

18 Q. And the value that PJM assigns for
19 capacity purposes to wind is 13 percent, correct?

20 A. Well, it's -- how PJM assigns a value for
21 capacity depends on how that resource is bid in and
22 if it's part of an aggregate bid, so I would look at
23 if, say, wind resources coupled with storage, battery
24 storage, it might come out with a different -- a
25 different capacity factor. If it's bid in on its

1 own, there's a default value. Subject to the check,
2 I think 13 percent sounds about right.

3 Q. And do you know what the default value is
4 for solar?

5 A. Not -- not from memory.

6 Q. And referring back to the potential
7 100 megawatts of renewable energy mentioned in the
8 third supplemental stipulation, you do not know what
9 portion of the PJM market for renewables that
10 represents, correct?

11 A. Not from -- not from the top of my head,
12 not from memory, no.

13 Q. And if the companies aggregated the --
14 well, let me back up.

15 In the stipulation there is also a
16 provision relating to 800,000 megawatt-hours of
17 energy efficiency, correct?

18 A. Yes.

19 Q. So if the companies aggregated the
20 100 megawatts of renewable energy, the battery
21 storage, and the 800,000 megawatt-hours of energy
22 efficiency, you do not know what portion of the PJM
23 installed capacity that would represent, correct?

24 A. I would have to do an analysis.

25 Q. So your answer is today you do not know,

1 correct?

2 A. Today I haven't done that analysis. I
3 don't know.

4 Q. And for purposes of your testimony, you
5 did not analyze how those aggregated resources would
6 cause price suppression, correct?

7 A. I didn't quantify.

8 MS. DUNN: Your Honor, I'm sorry, may I
9 approach?

10 EXAMINER ADDISON: You may.

11 MS. DUNN: Your Honor, I would like
12 marked as Company Exhibit 8, "Renewable Resources and
13 Wholesale Price Suppression, August 2013," and it
14 appears to be a document from the Public Utilities
15 Commission of Ohio.

16 EXAMINER ADDISON: Did you mean to say
17 you would like the document marked Company Exhibit
18 180?

19 MS. DUNN: Yes. Yes, thank you.

20 EXAMINER ADDISON: It will be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. (By Ms. Dunn) Mr. Seryak, I have handed
23 you what's been marked as Company Exhibit 180, a
24 document entitled "Renewable Resources and Wholesale
25 Price Suppression," dated August, 2013. Do you see

1 that?

2 A. I see it.

3 Q. And is this the study you are referencing
4 in footnote 25 and also in your testimony on page 11?

5 A. Yes.

6 Q. And if you turn to page 5 of the study,
7 can you see the section labeled "Results-Price
8 Suppression"?

9 A. Yes.

10 Q. And staff discusses in this section the
11 two scenarios that it modeled, correct?

12 A. They do.

13 Q. And the first scenario staff
14 considered -- and also looking at page 4 of the
15 study, is it -- you would agree that staff in
16 modeling for this study considered wind projects,
17 correct?

18 A. Yes, that appears to be the case.

19 Q. And on page 5, the first scenario, staff
20 considered wind projects that are already
21 operational, correct?

22 A. I'm sorry. Are you reading from this?

23 Q. Sure. Page 5.

24 A. Yeah.

25 Q. In the middle, "In the first scenario,

1 which considers only those projects that are already
2 operational." Do you see that?

3 A. I see that.

4 Q. And staff found in that scenario that
5 wholesale prices are reduced by approximately
6 .15 percent, correct?

7 A. Depending on -- sorry, for FirstEnergy in
8 Ohio, yes.

9 Q. And if you see in FirstEnergy, the chart
10 below that, that .15 percent equates to a nickel,
11 correct?

12 A. I'm sorry. Where are you seeing the
13 nickel?

14 Q. Sure. "Load Weighted LMPs," price per
15 megawatt chart.

16 A. Yes.

17 Q. FirstEnergy.

18 A. Yeah.

19 Q. Scenario 1, Base Case \$32.42.
20 Operational facilities, \$32.37. If you subtract the
21 two, it's 5 cents, correct?

22 A. Yes.

23 Q. And on page 4 of the study, you see the
24 wind projects that staff considered in its model,
25 correct?

1 A. Yes.

2 Q. And in green it shows the operational
3 wind projects that the staff considered, correct?

4 A. Yes.

5 Q. And one of those projects is Timber Road
6 II wind farm, 100 megawatts. Do you see that?

7 A. I see that.

8 Q. And the other is Blue Creek,
9 350 megawatts. Do you see that?

10 A. Yes.

11 Q. And we agree that 100 megawatts plus
12 350 megawatts is 450 megawatts, correct?

13 A. Yes.

14 Q. Can we also agree that, at least under
15 staff's modeling, then, that the 450 megawatts of
16 wind they considered in the first scenario, staff
17 found a .15 percent reduction or 5-cent reduction in
18 the LMP price?

19 A. Yes.

20 Q. And you did not include in your testimony
21 the percentage reduction in LMP price that the staff
22 found in its study, correct?

23 A. I did not.

24 Q. And as we discussed before, the
25 stipulation provides for the potential of

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1 100 megawatts of renewable energy, correct?

2 A. Yes.

3 Q. Would you agree 100 megawatts is slightly
4 under a quarter of 450 megawatts?

5 A. I can agree to that, yeah.

6 Q. And would you also agree that a quarter
7 of 5 cents is approximately 1.25 cents, correct?

8 A. Yes.

9 Q. And on page 12 of your testimony, the
10 first bullet point, you are quoting from page 7 of
11 staff's study, correct?

12 MS. BOJKO: I'm sorry, may I have that
13 question reread?

14 EXAMINER ADDISON: You may.

15 (Record read.)

16 MS. BOJKO: Thank you.

17 A. That's right.

18 Q. And in your quote you have an ellipsis on
19 line 2, correct?

20 A. Yes.

21 Q. And you left out a portion of staff's
22 study when you quoted, correct?

23 A. Yes.

24 Q. And the portion you left out is, "to
25 assess the extent to which the outcomes persist"; is

1 that correct?

2 A. That's what it says, yep.

3 Q. Do you know how much battery storage is
4 in the companies' territories?

5 A. I don't know off the top of my head.

6 Q. And do you know how much battery storage
7 is in Ohio?

8 A. I know there is storage. I am not sure
9 how much.

10 Q. And do you know nationally how much
11 battery storage there is?

12 A. No.

13 MS. DUNN: Your Honor, may I approach?

14 EXAMINER ADDISON: You may.

15 MS. DUNN: Your Honor, I would like to
16 mark as Company Exhibit 181 a document titled "Grid
17 Energy Storage, U.S. Department of Energy, December
18 2013."

19 EXAMINER ADDISON: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MS. DUNN: And I realize I don't have
22 copies for everyone. If you would like one, I can
23 e-mail you one pretty quickly.

24 Q. (By Ms. Dunn) Mr. Seryak, have you seen
25 this document before?

1 A. No, I have not.

2 MR. SETTINERI: Ms. Dunn, for those who
3 did not get a copy, could you just read what the
4 title of the document is.

5 MS. DUNN: Sure. "Grid Energy Storage,
6 U.S. Department of Energy, December 2013."

7 MR. SETTINERI: Thank you.

8 MS. DUNN: Your Honor, at this time I
9 would like to take administrative notice of a fact
10 contained in the United States Department of Energy
11 document. Specifically on page 11, there is a Figure
12 1. In purple you can see it states "Battery 304
13 Megawatts." I would like then to take administrative
14 notice of this specific fact, namely, that in
15 December of 2013, the United States had 304 megawatts
16 of rated power of battery projects.

17 EXAMINER ADDISON: Ms. Bojko.

18 MS. BOJKO: She asked to take
19 administrative notice of the fact, and then she read
20 into the record. I'm not sure -- I would object.
21 There's been no foundation. The witness said he
22 doesn't know this document. This doesn't have any
23 kind of citation. It says "U.S. Department of
24 Energy," but we have no URL link.

25 If he can't speak to this, and, you know,

1 we can't have the opportunity to verify or
2 cross-examine or redirect on it, I'm not sure the
3 value, except for what Ms. Dunn did, which was read
4 it into the record.

5 MS. WILLIS: Your Honor, I would also add
6 that if administrative notice is to be taken, we
7 would object on the basis of relevancy. I don't
8 think there's any connection to a figure quoted by a
9 government agency in 2013 as to what happened or what
10 the -- what happened in 2013 and how we -- how that's
11 relevant to, as we sit here today, 2015 and looking
12 at future commitments that the company may or may not
13 make per the stipulation with respect to battery
14 storage.

15 MS. BOJKO: Your Honor, my objection, my
16 concern to 2013 as well, what's happened in two years
17 with regard to technology, particularly in the
18 battery arena, three years almost.

19 MS. FLEISHER: Your Honors, just one
20 other point, which is without saying that your Honors
21 should take administrative notice of that fact, if
22 you do, I believe it would be appropriate to take
23 administrative notice of the document to provide
24 context for, as Ms. Bojko said, that's a two-year-old
25 plus number for, you know, what conditions that

1 reflects.

2 EXAMINER ADDISON: Thank you,
3 Ms. Fleisher.

4 Ms. Dunn?

5 MR. OLIKER: One comment, your Honor. I
6 believe it's -- without weighing in either way, I
7 think the date is August, 2013, according to the
8 footnote.

9 MS. BOJKO: Well, the --

10 MS. FLEISHER: To clarify, the document
11 is dated December, 2013. I did not read the
12 footnote.

13 EXAMINER ADDISON: Thank you, all.

14 Ms. Dunn, would you like to respond to
15 all those objections?

16 MS. DUNN: Sure, your Honor. As it
17 relates to relevance, Mr. Seryak opines in his
18 testimony that battery storage, in part, will reduce
19 or suppress prices. I think it's very relevant to,
20 at least how in the point of time that we have data,
21 how many -- how much battery storage there was in the
22 United States.

23 As it relates to the staleness, if you
24 will, of the information, I will note that Mr. Seryak
25 himself sites to an August, 2013, report, and if this

1 isn't relevant, maybe that report should be stricken
2 as well in his testimony related thereto.

3 As it relates to administrative notice,
4 the Bench has recognized facts from government
5 agencies, EIA, and the Department of Energy, and the
6 EPA that are readily verifiable and ascertainable.
7 So this is definitely appropriate for administrative
8 notice.

9 I would say that the limited fact that I
10 am requesting is relevant and that the remainder of
11 the document that discusses different types of
12 storage technology internationally, nationally is not
13 relevant, which is why I have not asked for the
14 entire document to be moved as administrative notice.

15 EXAMINER ADDISON: Thank you, Ms. Dunn.

16 Ms. Bojko.

17 MS. BOJKO: Thank you, your Honor.

18 Although I don't think this should be referenced or
19 referred to at all, I would like to address the
20 comment of not taking the whole document into
21 consideration. I think taking the whole document
22 into consideration is exactly Mr. Seryak's point in
23 his testimony, is the overall effect that everything
24 discussed in this report would have on prices in the
25 wholesale market. So picking and choosing one fact

1 out of a pretty lengthy document that we don't have
2 the opportunity to review on the spot and to
3 challenge or to support is inappropriate.

4 So if you are going to take
5 administrative notice, I think it's only fair, as we
6 have done with other documents, to take the entirety
7 so it can be put in a context of 2013, and then we
8 can have the opportunity to argue that that has
9 changed over time if we choose to do so.

10 EXAMINER ADDISON: Thank you, Ms. Bojko.

11 Ms. Dunn, would you be against the Bench
12 taking administrative notice of the entire document?

13 MS. DUNN: No, your Honor, that's fine.

14 EXAMINER ADDISON: Are there any
15 objections, apart from Ms. Willis's objection, as to
16 relevance for taking administrative notice of the
17 entire document?

18 MS. BOJKO: Well, I mean, I would concur
19 in that we haven't had an opportunity to review the
20 document, to make any kind of judgments about whether
21 we would or would not oppose, your Honor. I am not
22 saying we would oppose. I just haven't had the
23 opportunity to review.

24 EXAMINER ADDISON: The problem I'm
25 finding, Ms. Bojko, is you don't want the excerpt

1 administratively noticed, but you don't want the
2 entire document in because you haven't had time to
3 review. I feel like you are kind of wanting it both
4 ways here, so...

5 MS. BOJKO: Did you want me to respond?

6 EXAMINER ADDISON: Yes, of course.

7 MS. BOJKO: I was making an alternative
8 argument, your Honor. I thought I said -- and I
9 apologize if I wasn't clear. I thought I said that I
10 didn't think that it was relevant and it was unfair
11 to put an excerpt in and, I thought I said if you are
12 going to do anything, that I would preference -- the
13 preference is to have the entire document so that
14 there is context and so we could rely upon it.

15 But then when we were specifically
16 talking about admitting or taking administrative
17 notice of the document or not, that I was arguing
18 that I haven't had the opportunity to review this
19 lengthy document, so I didn't feel comfortable saying
20 whether I opposed or supported. I apologize if I
21 wasn't clear in my arguments.

22 EXAMINER ADDISON: Thank you, Ms. Bojko.

23 Okay. At this time we are going to take
24 administrative notice of the entire Company Exhibit
25 181. We do find that the reference on page 11 is

1 relevant to Mr. Seryak's testimony. Parties are more
2 than welcome to cite to other portions of this report
3 as they see fit. And we've taken administrative
4 notice of reports such as these throughout this
5 proceeding, so I believe that's consistent with what
6 we have been doing.

7 MS. DUNN: Thank you, your Honor.

8 EXAMINER ADDISON: Thank you.

9 Q. (By Ms. Dunn) Mr. Seryak, referring to
10 the commitment in the stipulation regarding 800,000
11 megawatt-hours of energy efficiency, you do not know
12 whether the entire 800,000 megawatt-hours would
13 qualify as a resource in the PJM capacity markets,
14 correct?

15 A. Well, the capacity markets aren't -- they
16 are not in terms of megawatt-hours in the first
17 place. They are in terms of megawatts, so rate of
18 electric use, not amount consumed. So with that
19 800,000 megawatt-hours, depending on the types of
20 projects that are done, the types of efficiency
21 projects, that will determine how many megawatts
22 corresponds with that megawatt-hours.

23 Q. And you don't know what that megawatt
24 number is, correct?

25 A. We don't know and I don't know.

1 Q. On page 13 of your testimony, you state,
2 "That is, the Companies' plants could possibly sell
3 less energy."

4 A. You are on line 6?

5 Q. Yeah, line 6. "That is, the Companies'
6 plants could possibly sell less energy, less
7 capacity." Do you see that?

8 A. Yes.

9 Q. You have not quantified how much less
10 energy or capacity the plants could sell, correct?

11 A. Well, energy you can express in terms of
12 megawatt-hours, and the stipulation has 800,000
13 megawatt-hours quantified. I've testified that
14 I'm -- you know, I have questions as to the merit and
15 the validity of what the company is promising, so,
16 no, I can't -- it has been quantified in a way. I
17 wouldn't necessarily trust that the 800,000
18 megawatt-hours the companies has put forth is -- is
19 really efficiency, so that makes it difficult for me
20 to quantify it.

21 MS. DUNN: Your Honor, I think he may
22 have misunderstood my question so I'm not going to
23 move to strike his answer, but I would like to go
24 back and reask my question, if that's okay, and
25 clarify.

1 EXAMINER ADDISON: Please proceed,
2 Ms. Dunn.

3 Q. (By Ms. Dunn) Mr. Seryak, on page 13, on
4 line 3 of your testimony, you are discussing on line
5 3 the price suppression benefits for renewable energy
6 and energy efficiency resources. Do you see that?

7 A. Yes.

8 Q. And then you say on line 6, "That is, the
9 Companies' plants could possibly sell less energy."
10 Do you see that?

11 A. Correct.

12 Q. And were you referring -- you were
13 referring to the -- you have not quantified as a
14 result of the third supplemental stipulation how much
15 less energy the companies' plants could possibly
16 sell, correct?

17 MS. BOJKO: Objection. I think she is
18 mischaracterizing the testimony. If she would read
19 the whole sentence, I think his prior answer was
20 responsive, so I would say it's been asked and
21 answered and mischaracterizing evidence.

22 EXAMINER ADDISON: Ms. Dunn, could you
23 rephrase and just include the entire sentence?

24 MS. DUNN: Sure.

25 EXAMINER ADDISON: Thank you.

1 Q. (By Ms. Dunn) Mr. Seryak, you have not
2 quantified how much less energy, less capacity, and
3 less -- back up.

4 You have not quantified how much less
5 energy or less capacity the plants could sell,
6 correct?

7 A. So I've reviewed the stipulation which
8 does have a quantified number in it and I am
9 questioning -- I am actively in my testimony
10 questioning the legitimacy of that number, and I
11 haven't quantified what a revised number should be.
12 I think that would be difficult to do with the
13 information at hand.

14 Q. On page 13, line 14 to 15, you state
15 "First, while the Companies offer to reactivate
16 energy efficiency program offerings in 2017, they are
17 already required to do so by law." Do you see that?

18 A. I see that.

19 Q. And by law you are referring to both
20 Senate Bills 221 and the revisions in Senate Bill
21 310?

22 A. Yes.

23 Q. And as a nonlawyer, neither Senate Bill
24 221 nor Senate Bill 310 require the companies to
25 utilize certain types of programs in meeting its

1 energy efficiency mandates, correct?

2 A. Correct, they are not proscriptive.

3 MS. DUNN: Your Honor, if I may have just
4 a moment to check my notes?

5 EXAMINER ADDISON: Certainly.

6 MS. DUNN: Your Honor, I have no further
7 questions on cross.

8 EXAMINER ADDISON: Thank you, Ms. Dunn.

9 Mr. McNamee?

10 MR. MCNAMEE: No questions, your Honor.

11 EXAMINER ADDISON: Thank you. Any
12 redirect, Ms. Bojko?

13 MS. BOJKO: Likely. May we have a few
14 minutes, your Honor?

15 EXAMINER ADDISON: You may.

16 Let's go off the record.

17 (Recess taken.)

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

20 Ms. Bojko, redirect?

21 MS. BOJKO: Yes, your Honor. Thank you.

22 - - -

23 REDIRECT EXAMINATION

24 By Ms. Bojko:

25 Q. Mr. Seryak, do you recall being asked

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1 some questions about the staff report and the wind
2 projects listed in the staff report that are
3 operational?

4 A. Yes.

5 Q. If a plant is constructed and installed
6 in Ohio, what effect would it have on Ohio as a
7 whole?

8 MS. DUNN: Objection, outside the scope
9 of my cross.

10 EXAMINER ADDISON: Ms. Bojko?

11 MS. BOJKO: It's exactly based on the
12 staff report that she was talking about as well as
13 the nickel that she referred to as the effect, so I
14 think it's important to ask the witness additional
15 questions regarding the -- both the page 4 and 5 of
16 the staff report which Ms. Dunn referenced.

17 EXAMINER ADDISON: Ms. Dunn?

18 MS. DUNN: Your Honor, I just asked that
19 he add up the amount of megawatt-hours the staff used
20 in their model and what the model results were. I
21 did not ask any questions about the effect of wind
22 power on Ohio.

23 MS. BOJKO: It goes to the results she
24 just referenced, your Honor.

25 EXAMINER ADDISON: I will allow this

1 question.

2 You may answer, Mr. Seryak.

3 A. Yeah. So the effect of a -- you can see
4 on page 5 there is an effect on prices all throughout
5 Ohio if a renewable energy project is installed and
6 operational in Ohio, so -- and so that would be
7 within and outside the distribution utilities'
8 territory.

9 Q. So you were also asked about price
10 suppression benefits from page 13 of your testimony
11 as well as the staff report. Does price suppression
12 have a regional effect?

13 MS. DUNN: Objection, outside the scope
14 of my cross.

15 EXAMINER ADDISON: Ms. Bojko?

16 MS. BOJKO: Your Honor, it's the results.
17 It's the same -- it's an extension of the same
18 question on page 4 and 5, and then Ms. Dunn also
19 asked specifically on page 13, the sentence on 3 and
20 the following sentence. She asked a couple of
21 questions about that and the price suppression
22 benefits and the effect of renewable energy, and this
23 is a follow-up to that, your Honor.

24 EXAMINER ADDISON: Ms. Dunn, care to
25 respond?

1 MS. DUNN: Your Honor, I asked whether he
2 quantified it. I didn't ask any other questions
3 relating to price suppression benefits. And the
4 testimony only applies to the companies, your Honor.

5 EXAMINER ADDISON: Yeah. I allowed the
6 last question, but I believe this is going a little
7 too far, so I am going to sustain the objection.

8 Q. (By Ms. Bojko) Could you -- do you have
9 the staff report in front of you, Mr. Seryak? It was
10 labeled Companies' Exhibit 180?

11 A. Yes.

12 Q. Do you recall questions being asked by
13 Ms. Dunn on page 5, and it's titled "Results-Price
14 Suppression"?

15 A. Yes.

16 Q. The staff did a report and provided
17 numeric values regarding the effect on a per-megawatt
18 basis; is that correct?

19 A. Yes.

20 Q. And what impact is staff's report -- what
21 impact does that have either on Ohio or outside Ohio?

22 MS. DUNN: Objection, your Honor, outside
23 the scope of my cross.

24 EXAMINER ADDISON: Sustained.

25 Q. (By Ms. Bojko) Do you recall being asked

1 questions about if you quantified the price
2 suppression effects of renewable energy?

3 A. Yes.

4 Q. Why could you not quantify the effects of
5 renewable energy?

6 A. I couldn't quantify it for several
7 reasons. First, the starting point is using the
8 starting point from where you would quantify. With
9 the stipulation we're using dated information, so the
10 2014 load forecast, and there's a 2016 available.

11 The other reason, which I put in my
12 testimony and is the basis of my testimony, is that
13 all these things are interactive. I'll be specific.
14 Renewable energy, batteries, energy efficiency,
15 there's regional effects which have been brought
16 forward so you would want to consider those.

17 That takes a considerable amount of time.
18 That analysis should be done, but in the length of
19 time I had to prepare testimony I didn't have the
20 time to start with more reasonable assumptions. For
21 a load forecast and then work in all these
22 interactive effects but my recommendation is that an
23 analysis should be done.

24 Q. And would your response -- do you recall
25 being asked why you have not quantified very --

1 various other components of your testimony?

2 A. Yes.

3 Q. And would your response be the same with
4 regard to why you did not quantify those?

5 A. Yes.

6 Q. On page 13 of your testimony, you were
7 asked a question regarding -- on line 14 and 15,
8 regarding the companies' offer to reactivate energy
9 efficiency program offerings in 2017 because they are
10 already required to do so by law. Do you recall
11 those questions?

12 A. Yes.

13 Q. First of all, in the third supplemental
14 stipulation are the companies committing to provide
15 the energy efficiency program that you were
16 questioned about?

17 MS. DUNN: Objection, outside the scope
18 of my cross.

19 EXAMINER ADDISON: Ms. Bojko.

20 MS. BOJKO: This is not outside. This is
21 directly referencing. I didn't use the 800
22 megawatt-hours, but this is directly referencing
23 800,000 megawatt-hours of energy savings on page 11
24 of the stipulation, and her questions related to
25 lines 14 and 15 of his testimony.

1 MS. DUNN: Your Honor, if I may?

2 EXAMINER ADDISON: You may.

3 MS. DUNN: My question specifically was
4 whether that -- that neither Senate Bill 221 nor
5 Senate Bill 310 required the companies to utilize
6 certain types of programs in meeting its energy
7 efficiency mandates. That was my specific question
8 relating to that testimony.

9 MS. BOJKO: And this is -- this is a
10 foundational, but I'm -- I am going to ask what they
11 will be required to do based on Ms. Dunn's question
12 about the types of programs.

13 EXAMINER ADDISON: I'll allow the
14 question.

15 You may answer, Mr. Seryak. Did you need
16 that question reread?

17 THE WITNESS: I think I can answer it,
18 and I can clarify if needed.

19 A. So the commitment to provide energy
20 savings for the term of this agreement, to meet that
21 the companies would -- the companies would need to at
22 some point restart their energy efficiency programs.
23 You know, there is some discretion in how those
24 programs are designed, but they would need to restart
25 that for law and for their commitment here.

1 Q. So even though the programs are not
2 prescriptive, as questioned by Ms. Dunn, what will
3 the companies be required to do under the law?

4 MS. DUNN: Objection, outside the scope
5 of my cross, and also calls for a legal conclusion.

6 EXAMINER ADDISON: I think we've
7 established that Mr. Seryak is not an attorney so I
8 will allow the question.

9 A. I mean, in practice what will happen is
10 they are required to meet an annual benchmark, which
11 the companies can do so either with banked savings or
12 new savings they've established with efficiency
13 programs. And for the annual benchmarks going
14 forward, they would restart programs at some time.
15 But there could be a mix of banked savings that they
16 could also use to meet that requirement.

17 Q. So over the eight-year term, what will
18 the companies have to do? Will they use the
19 prescriptive programs, or what will they do over the
20 eight-year term of the ESP?

21 MS. DUNN: Objection, outside the scope
22 of my cross.

23 EXAMINER ADDISON: Ms. Bojko.

24 MS. BOJKO: Your Honor, it's a follow-up
25 in her questions about that they -- that the law

1 doesn't specify the nonprescriptive -- or that the
2 law doesn't specify what kind of programs they have
3 to do. I am asking what the law does require the
4 companies to do over the term of this third
5 supplemental stipulation.

6 EXAMINER ADDISON: Ms. Dunn?

7 MS. DUNN: Your Honor, I didn't get even
8 close to that question that Ms. Bojko is attempting
9 now to follow-up on. She is following up on her own
10 redirect, not any questions that I may have asked
11 during cross.

12 MS. BOJKO: Your Honor, she opened the
13 door when she asked about what the law requires.

14 EXAMINER ADDISON: Well, I allowed the
15 last question because it was responsive to her
16 cross-examination, but I believe this is too far so
17 objection sustained.

18 MS. BOJKO: Thank you, your Honor.

19 EXAMINER ADDISON: Thank you.

20 Q. (By Ms. Bojko) Ms. Dunn asserted there
21 was a commitment for the companies to do 800,000
22 megawatts of energy savings on page 11 of the third
23 supplemental stipulation. Do you agree that it is an
24 actual commitment for the companies to provide
25 800,000 megawatts of energy savings annually?

1 MS. DUNN: Objection. Mischaracterizes
2 my cross question and it's leading.

3 EXAMINER ADDISON: Ms. Bojko, would you
4 care to rephrase?

5 MS. BOJKO: Sure. Thank you, your Honor.

6 Q. (By Ms. Bojko) On page 11 of the third
7 supplemental stipulation, you were questioned about
8 what types of programs, whether the law specifies the
9 types of programs, and then you were also asked if
10 you quantified what the 800,000 megawatt-hours of
11 energy savings would do. Do you recall that
12 discussion?

13 A. Yes.

14 Q. Does the supplemental stipulation
15 actually require or have a commitment on behalf of
16 the companies to do those energy efficiency programs?

17 MS. DUNN: Objection. I believe I
18 never -- never mind. I will withdraw the objection.

19 EXAMINER ADDISON: Thank you, Ms. Dunn.

20 A. So the stipulation says that the
21 companies would strive to achieve these savings
22 subject to customer opt-outs. So -- and in my
23 testimony I mentioned that the -- that the law is
24 already in place to provide those same savings. I'm
25 questioning the meaningfulness of those savings. If

1 the law weren't in place, then, you know, I would
2 interpret this as a commitment to provide energy
3 savings from the company.

4 Q. You were asked whether you recalled the
5 derating factor for solar. Do you recall that?

6 A. Yes.

7 Q. Do you know -- you didn't -- you said you
8 didn't know the exact factor. Do you know a range?

9 A. Yes. I know it's higher than -- sorry,
10 the mic keeps going out here. I believe it's in the
11 30 to 40 percent range, so higher than the wind
12 factor.

13 MS. BOJKO: Thank you. I have no further
14 questions, your Honor.

15 EXAMINER ADDISON: Thank you, Ms. Bojko.
16 Ms. Fleisher?

17 MS. FLEISHER: No questions, your Honor.

18 EXAMINER ADDISON: Mr. Mendoza?

19 MR. MENDOZA: No questions, your Honor.

20 EXAMINER ADDISON: Mr. Darr?

21 MR. DARR: No questions.

22 EXAMINER ADDISON: Ms. Spinosi?

23 MS. SPINOSI: No questions, your Honor.

24 EXAMINER ADDISON: Mr. Olikar?

25 MR. OLICKER: No questions, your Honor.

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1 EXAMINER ADDISON: Mr. Settineri?

2 MR. SETTINERI: No questions, your Honor.

3 EXAMINER ADDISON: Mr. Kurtz?

4 MR. KURTZ: No questions.

5 EXAMINER ADDISON: Thank you.

6 Ms. Willis?

7 MS. WILLIS: No questions, your Honor.

8 EXAMINER ADDISON: Ms. Dunn?

9 - - -

10 RECROSS-EXAMINATION

11 By Ms. Dunn:

12 Q. Mr. Seryak, you don't know what the
13 companies' energy efficiency and peak-demand
14 reduction benchmarks will be for 2017 and beyond,
15 correct?

16 A. Can you be specific? Percentage?
17 Megawatt-hours?

18 Q. In megawatt-hours.

19 A. No. It's -- it's based on a percentage,
20 so the law is a percentage. It should be about 1
21 percent, and so you have to look at the three years
22 preceding the average of the three-year preceding
23 sales.

24 Q. So you don't know what that number is,
25 correct?

1 A. Well, 2016 is not over yet so I don't
2 know.

3 MS. DUNN: No further questions, your
4 Honor.

5 EXAMINER ADDISON: Thank you, Ms. Dunn.
6 Mr. McNamee?

7 MR. McNAMEE: Nothing, thank you.

8 EXAMINER ADDISON: Any questions?
9 Do you have questions, Examiner Price?
10 Commissioner Haque?

11 I have no questions.

12 You are excused, Mr. Seryak. Thank you
13 very much.

14 MS. DUNN: Your Honor, if I may have 5
15 minutes to switch gears.

16 EXAMINER ADDISON: Oh, did you want to
17 handle admission of exhibits?

18 MS. DUNN: I'm sorry, your Honor.

19 EXAMINER ADDISON: You're fine. I
20 believe Ms. Bojko previously moved for the admission
21 of OMAEG Exhibit Nos. 28 and 29. Are there any
22 objections to the admission of these exhibits?

23 Hearing none, they will be admitted.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 EXAMINER ADDISON: Ms. Dunn?

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1 MS. DUNN: I'm sorry, your Honor. Your
2 admission of the -- Mr. Seryak's testimony was
3 subject to the motions to strike, correct?

4 EXAMINER ADDISON: Of course. Thank you
5 for making that clarification.

6 MS. DUNN: Thank you. The companies
7 would move to admit Exhibit 177, 179, and 180.

8 EXAMINER ADDISON: Are there any
9 objections to Company Exhibits 177, 179, and 180?
10 Is that correct, Ms. Dunn?

11 MS. DUNN: Yes.

12 EXAMINER ADDISON: Any objections?
13 Hearing none, they will --

14 MS. BOJKO: Hold on.

15 EXAMINER ADDISON: Ms. Bojko, I
16 apologize.

17 MS. BOJKO: I am trying to see what the
18 numbers are. Thank you.

19 No objections to those. I'm sorry. I
20 had objection to one, but she didn't move it, so
21 thank you.

22 EXAMINER ADDISON: Thank you, Ms. Bojko.
23 Companies' Exhibits 177, 179, and 180
24 will be admitted.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

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1 EXAMINER ADDISON: Let's go ahead and go
2 off the record.

3 (Discussion off the record.)

4 EXAMINER CHILES: Let's go ahead and go
5 back on the record.

6 Mr. Settineri.

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

11 EXAMINER CHILES: Mr. Bennett, please
12 raise your right hand.

13 (sworn.)

14 EXAMINER CHILES: Thank you. You may be
15 seated.

16 THE WITNESS: Thank you.

17 MR. SETTINERI: Your Honor, at this time
18 we would like to mark as I believe it's RESA Exhibit
19 6, the Stipulation Direct Testimony of Stephen E.
20 Bennett on behalf of the Retail Energy Supply
21 Association.

22 EXAMINER CHILES: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MR. SETTINERI: If I may approach, your
25 Honor?

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1 EXAMINER CHILES: You may.

2 - - -

3 STEPHEN E. BENNETT

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

6 DIRECT EXAMINATION

7 By Mr. Settineri:

8 Q. Good morning, Mr. Bennett.

9 A. Good morning.

10 Q. Could you please state your name and
11 business address for the record, please?

12 A. Yes. My name is Stephen Bennett, and my
13 corrected business address is 402 Valley Drive in
14 Lincoln University, Pennsylvania 19352.

15 Q. Okay. And do you have before you what's
16 been marked as RESA Exhibit 6, sir?

17 A. Yes, I do.

18 Q. And can you identify that for me.

19 A. It is the Stipulation Direct Testimony of
20 Stephen E. Bennett on behalf of the Retail Energy
21 Supply Association.

22 Q. And was that testimony prepared by you or
23 under your direction?

24 A. Yes, it was.

25 Q. Do you have any changes or corrections to

1 your testimony today, sir?

2 A. Yes, I do.

3 Q. And if you could slowly walk us through
4 any corrections, please.

5 A. Yes. So starting on page 1 on line 3 as
6 I indicated my business address has changed, and it
7 should now read "402 Valley Drive." The city is
8 Lincoln University, the state is Pennsylvania. The
9 zip code remains the same.

10 Q. Mr. Bennett, to be clear for the record
11 then, would that sentence read -- that starts on line
12 3 running to line 4 on page 1 then read, "My business
13 address is 402 Valley Drive, Lincoln University,
14 Pennsylvania 19352?

15 A. That is correct.

16 Q. Do you have any other changes to your
17 testimony today, sir?

18 A. Yes, I do. Going to page 2, line 6, at
19 the end of line 6 the words "the FirstEnergy
20 utilities" as well as the parenthetical ("FE"), in
21 quotes, should be stricken and replaced with just the
22 letters "F" and "E."

23 On line 7 of that same page the first
24 word "Ohio" should have an "'s."

25 Remaining on page 2, line 16, where it

1 says "the associated PPAs," the "S" should be taken
2 out. It should just read "PPA" with no "S."

3 Remaining on page 2, line 30, at the end
4 of line 30 where it says "In the Application," the
5 words "as modified" -- excuse me, "as modified by the
6 Stipulation" should be added after the word
7 "Application."

8 Turning to page 3, line 18, the word
9 "subsidies" should -- should be replaced by the word
10 "subsidized."

11 Page 3, line 21, at the end "FE" should
12 be changed to "FE Ohio."

13 Also on page 3, line 29, "FE" should be
14 changed to "FE Ohio."

15 Turning to page 4, line 1, at the end
16 "FE" should be changed to "FE Ohio."

17 Turning to page 5, line 29, "FE" should
18 be changed to "FE Ohio." That's at the end of the
19 line.

20 Remaining on page 5, line 30, the first
21 word "form" should be replaced with the word "from."

22 Turning to page 6, line 26, in the middle
23 where it says "nor FE," the "FE" should be replaced
24 with "FE Ohio."

25 Turning to page 7 -- I promise we are

1 coming to the end. Page 7, line 7, at the very end
2 "FE" should be changed to "FE Ohio."

3 Page 7, line 11, "FE" should be changed
4 to "FE Ohio."

5 Page 7, line 18, "FE" should be changed
6 to "FE Ohio."

7 Remaining on page 7, line 27, there are
8 two instances of the moniker "FE" that should be
9 changed to "FE Ohio." They are both towards the end
10 of the line.

11 And then remaining on page 7, line 29,
12 there is, once again, an "FE" that should be changed
13 to "FE Ohio" at the end of that line.

14 Thus ends the corrections that I have to
15 my testimony.

16 Q. Okay. And Mr., Bennett, if I were to ask
17 you the questions in your testimony today, would your
18 answers be the same as modified by your corrections?

19 A. Yes, they would.

20 MR. SETTINERI: Your Honor, at this time
21 the witness is available for cross-examination.

22 EXAMINER CHILES: Thank you,
23 Mr. Settineri.

24 Ms. Fleisher.

25 MS. FLEISHER: No questions, your Honor.

1 EXAMINER CHILES: Mr. Mendoza?

2 MR. MENDOZA: No questions, your Honor.

3 EXAMINER CHILES: Mr. Darr?

4 MR. DARR: No questions.

5 EXAMINER CHILES: Ms. Spinosi?

6 MS. SPINOSI: No questions, your Honor

7 EXAMINER CHILES: Mr. Oliker?

8 MR. OLIKER: No questions, your Honor.

9 EXAMINER CHILES: Ms. Bojko?

10 MS. BOJKO: No questions, your Honor.

11 EXAMINER CHILES: Ms. Willis.

12 MS. WILLIS: No questions, your Honor.

13 EXAMINER CHILES: Mr. Kurtz.

14 MR. KURTZ: No.

15 EXAMINER CHILES: Ms. Dunn?

16 MS. DUNN: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Ms. Dunn:

20 Q. Good morning, Stephen Bennett.

21 A. Good morning.

22 Q. Mr. Bennett, Stephen Bennett. Good
23 morning. Since you last testified here, you have
24 left your employment with Talen Energy; is that
25 correct?

1 A. That's correct.

2 Q. And you are currently self-employed,
3 correct?

4 A. Yes.

5 Q. And when you last testified, you had not
6 signed a nondisclosure certificate to receive
7 confidential and competitively sensitive material in
8 this case, correct?

9 A. That is correct.

10 Q. And since then -- and since you have last
11 testified, you have not signed a nondisclosure
12 certificate to receive confidential or competitively
13 sensitive material, correct?

14 A. That is correct, that I have not signed
15 an NDC.

16 MS. DUNN: Your Honor, may I approach?

17 EXAMINER CHILES: You may.

18 MS. DUNN: Your Honor, I am handing
19 Mr. Bennett what has previously been marked as
20 Companies Exhibit 28. It's the Supplemental
21 Testimony of Donald Moul, Public Version.

22 EXAMINER CHILES: Thank you.

23 Q. (By Ms. Dunn) Mr. Bennett, you have seen
24 this exhibit before, correct?

25 A. Correct.

1 Q. And you did not use this document in
2 preparation of your stipulation direct testimony,
3 correct?

4 A. That's correct.

5 Q. And if you see on the document there are
6 certain items that are redacted.

7 A. Yes, I see the redactions.

8 Q. And you did not have access to the
9 information that's redacted, correct?

10 A. That's also correct.

11 MS. DUNN: Your Honor, may I approach?

12 EXAMINER CHILES: You may.

13 MS. DUNN: Your Honor, I am handing
14 Mr. Bennett what's been previously marked as
15 Companies Exhibit 141. It's the Rebuttal Testimony
16 of Donald Moul, Public Version.

17 EXAMINER CHILES: Thank you.

18 Q. (By Ms. Dunn) Mr. Bennett, other than at
19 your deposition, you have not seen this document,
20 correct?

21 A. Correct.

22 Q. And since you have not seen this document
23 before, is it fair to say that you did not utilize
24 this document in preparation of your testimony?

25 A. That is correct.

1 MS. DUNN: Your Honor, may I approach?

2 EXAMINER CHILES: You may.

3 MS. DUNN: Your Honor, I am handing
4 Mr. Bennett what's been previously marked as
5 Companies Exhibit 17, the Direct Testimony of Judah
6 Rose, Public Version.

7 EXAMINER CHILES: Thank you.

8 Q. (By Ms. Dunn) Mr. Bennett, you have seen
9 this document before, correct?

10 A. Yes.

11 Q. You did not utilize this document in
12 preparation of your stipulation direct testimony,
13 correct?

14 A. That's correct.

15 Q. And you will also notice in this document
16 certain information is redacted.

17 A. I do notice the redaction, yes.

18 Q. And you did not have access to the
19 information that is redacted, correct.

20 A. That is also correct.

21 MS. DUNN: Your Honor, may I approach?

22 EXAMINER CHILES: You may.

23 MS. DUNN: Your Honor, I am handing
24 Mr. Bennett what's been previously marked as Company
25 Exhibit 21, the public version of Jason Lisowski's

1 Direct Testimony, as well as Company Exhibit 23, the
2 errata thereto.

3 EXAMINER CHILES: Thank you.

4 Q. (By Ms. Dunn) And, Mr. Bennett, you have
5 seen these documents before, correct?

6 A. Yes, I have.

7 Q. And you did not utilize the Direct
8 Testimony of Jason Lisowski or any errata thereto in
9 preparation of your stipulation direct testimony,
10 correct?

11 A. That's correct.

12 Q. And you will also see redacted portions
13 on both of those documents, correct?

14 A. Yes.

15 Q. And you also did not have access to those
16 redacted portion, correct?

17 A. Correct.

18 MR. SETTINERI: Late objection, but
19 Exhibit 23 does not have redactions.

20 MS. DUNN: Oh, I apologize. That should
21 have been a two-sided document, so.

22 MR. SETTINERI: Thank you.

23 MS. DUNN: The record can be clear on
24 that.

25 EXAMINER CHILES: Thank you.

1 Q. (By Ms. Dunn) Mr. Bennett, your
2 stipulation direct testimony should not be viewed by
3 the Commission to represent the position of all
4 members of RESA, correct?

5 A. Not -- correct, my testimony does not
6 represent each individual member of RESA.

7 Q. And turning to page 3, line 12 of your
8 testimony, you're referencing rider RRS, correct?

9 A. I'm sorry, which line?

10 Q. Page 3, line 12.

11 A. Yes.

12 Q. Other than the term of rider RRS going
13 from 15 years to 8 years, how the companies
14 calculated rider RRS change -- did not change as a
15 result of the third supplemental stipulation,
16 correct?

17 A. Well, there certainly was the reduction
18 in term. There was actually a change in the return
19 on equity, and I believe that there was the addition
20 of additional credits -- potential credits, which I
21 think would change the outcome and calculations of
22 rider RRS.

23 Q. The costs that will be used for the
24 purposes of calculating rider RRS did not change as a
25 result of the third supplemental stipulation,

1 correct?

2 A. Yes, I believe that to be correct.

3 Q. When I use the term "plants" today, I am
4 referring to Sammis, Davis-Besse, and FES's portion
5 of the OVEC units, okay?

6 A. Okay.

7 Q. You have not seen any discovery or data
8 on the cost of running the plants, correct?

9 A. That's correct.

10 Q. And you have not seen any discovery or
11 data on historical revenues that the plants have
12 earned, correct?

13 A. Also correct.

14 Q. And you have not seen any data or
15 discovery on the reliability of the plants, correct?

16 A. That's correct.

17 Q. On page 2 of your testimony, line 28, you
18 use the term "most efficient." Do you see that?

19 A. Yes, I do.

20 Q. You cannot empirically say whether the
21 plants are or are not efficient, correct?

22 A. And when you say empirically efficient --

23 THE WITNESS: I'm sorry. Can I have the
24 question repeated, please.

25 EXAMINER CHILES: Please, Karen. Thank

1 you.

2 (Record read.)

3 A. That's correct.

4 Q. You have not seen any discovery on the
5 efficiency of the plants, correct?

6 A. And by "efficiency," would you be
7 referring to capacity factor utilization?

8 Q. I am referring -- when I say
9 "efficiency," I am referring to your term on page 2,
10 "most efficient," so when I say "efficiency," I am
11 referring to as you use it.

12 A. That's correct, I have seen no -- no data
13 around the efficiency of the plants.

14 Q. Talking about wind generation now, in
15 certain jurisdictions or areas, wind generation
16 receives some financial incentives, correct?

17 A. Yes.

18 Q. And those financial incentives can
19 increase the revenue that a wind generation unit may
20 receive, correct?

21 A. Yes.

22 Q. And also in certain jurisdictions or
23 areas, solar generation receives some financial
24 incentives, correct?

25 A. That's correct.

1 Q. And those financial incentives can also
2 increase the revenues that a solar generation unit
3 may receive, correct?

4 A. Yes.

5 Q. Ohio has renewable portfolio standards,
6 correct?

7 A. Yes, it does.

8 Q. And we can call that RPS?

9 A. Yes.

10 Q. RPS can create revenue streams for wind
11 or solar generation units, correct?

12 A. Yes, it can.

13 Q. And there are also federal tax credits
14 available for wind and solar generation, correct?

15 A. Yes.

16 Q. And those federal tax credits can provide
17 revenue streams to wind and solar generation,
18 correct?

19 A. Yes.

20 Q. And you would characterize Ohio RPS
21 standards and the revenue stream that derive out of
22 those standards to be a subsidy, correct?

23 A. Yes.

24 Q. And you would also characterize the
25 revenue stream that may arise out of the federal tax

1 credits for wind and solar developments as a subsidy,
2 correct?

3 A. Yes.

4 Q. On page 3, lines 13 to 14 --

5 MR. SETTINERI: May I have that reference
6 one more time?

7 MS. DUNN: Sure. Page 3, lines 13 to 14.

8 MR. SETTINERI: Thank you.

9 Q. You use the term "least cost option." Do
10 you see that?

11 A. Yes.

12 Q. When dispatching generation units, PJM
13 does not always use the least-cost option, correct?

14 A. PJM uses an economic -- least-cost,
15 economic-constrained model, so they will always use
16 the least-cost option in regards to the system
17 constraints. So in an unconstrained system they will
18 use the absolute least-cost option. In the event
19 that there are PJM system constraints, they will use
20 the least-cost option that relieves those constraints
21 or maintains reliability under those constraints.

22 Q. When I use the term "proposed
23 transaction," I am referring to the proposed
24 transaction whereby the companies will purchase --

25 EXAMINER CHILES: I think your microphone

1 went off.

2 MS. DUNN: Yeah. It's blinking.

3 Q. Mr. Bennett, when I'm referring to the
4 proposed transaction, I'm referring to the proposed
5 transaction whereby the companies will purchase all
6 of the energy, capacity, ancillary services, and
7 environmental attributes from Sammis, Davis-Besse,
8 and FES's portion of OVEC, okay?

9 A. Okay.

10 Q. You recognize that under the proposed
11 transaction that the companies do bear some risk,
12 correct?

13 A. Under the proposed transaction, as I
14 understand it, that there is the potential for a
15 disallowance of company costs based on
16 reasonableness. My understanding is that those are
17 based on backward-looking audits that can be, in the
18 case of capacity, sometimes four to five years after
19 the actual costs are -- or the bids and the actions
20 on the companies' part are made.

21 Q. My question was, though, you recognize
22 under the proposed transaction that the companies do
23 bear the risk that you just described, correct?

24 A. They do have the risk of disallowance for
25 unreasonable actions, cost disallowance for

1 unreasonable actions.

2 Q. And the third supplemental stipulation
3 has a provision, I believe you mentioned it earlier,
4 about a potential \$100 million credit for rider RRS,
5 correct?

6 A. Yes.

7 Q. And you would agree that the potential
8 \$100 million credit does mitigate some of the risk to
9 the customers under rider RRS., correct?

10 A. I think the way I would characterize it
11 is it can reduce the amount of costs to the customers
12 but the risk of that cost still remains. It's -- it
13 ameliorates the amount of the costs, but it certainly
14 doesn't take away the risk of the cost.

15 Q. You have not performed your own
16 projection on what the costs versus the credits of
17 rider RRS would be over eight years, correct?

18 A. That's correct.

19 Q. On page 3 of your testimony, line 17 to
20 18, you use the term "higher prices." Do you see
21 that?

22 A. Yes.

23 Q. And you have not quantified the higher
24 prices that you referred to in your testimony,
25 correct?

1 A. That's correct.

2 Q. And on line 17, you also -- sorry.

3 Excuse me. On page 3, line 18, you use the term
4 "more efficient generation." Do you see that?

5 A. Yes.

6 Q. And you were not referring to specific
7 generation units in that sentence, correct?

8 A. No. There I was just talking about units
9 that would have otherwise cleared either the capacity
10 or the energy auction but for the impact of the
11 subsidized plants.

12 MS. DUNN: Your Honor, I would move to
13 strike everything after "no."

14 EXAMINER CHILES: Can we have the
15 question and answer reread, please.

16 (record read.)

17 EXAMINER CHILES: Mr. Settineri.

18 MR. SETTINERI: You are, I think the
19 question was broad enough to allow the clarification
20 and it certainly helps the record.

21 EXAMINER CHILES: The motion to strike is
22 denied. Thank you.

23 Q. (By Ms. Dunn) In your testimony you
24 discuss the capacity performance product, correct?

25 A. I do.

1 Q. And the capacity performance product is
2 designed to provide higher-than-historical capacity
3 payments to generators who are willing to take the
4 risk that they will not be able to run when
5 requested, correct?

6 A. Yes. It's generally recognized that the
7 capacity performance product has a potential for a
8 higher compensation as well as the potential for a
9 much higher penalty for nonperformance.

10 Q. On page 3, line 23, of your testimony,
11 you discuss the penalties associated with the
12 capacity performance product, correct?

13 A. Yes.

14 Q. And, now, under the capacity performance
15 product, the penalties do not arise whenever at any
16 time a generator is unable to perform, correct?

17 A. That's correct. They arise over a period
18 of an emergency event.

19 Q. And during the emergency events, those
20 would generally be a period of high system stressor
21 constraint, correct?

22 A. Yes, generally.

23 Q. And in order for a penalty to accrue
24 during the emergency event, first PJM would have to
25 call on that generator to perform, correct?

1 A. That's correct.

2 Q. And then the generator would have to not
3 perform, correct?

4 A. Also correct.

5 Q. On page 3, line 32, you state FES cannot
6 guarantee that they will avoid capacity performance
7 penalties." Do you see that?

8 A. I do.

9 Q. There are no generation units that can
10 guarantee that they will avoid capacity performance
11 penalties, correct?

12 THE WITNESS: I'm sorry. Can you please
13 read the question again.

14 EXAMINER CHILES: Thank you, Karen.

15 (Record read.)

16 A. That's generally why proper market
17 structure puts that risk with shareholders and
18 investors is that you are correct, nobody can
19 guarantee that their plant won't fail during an
20 emergency event.

21 MS. DUNN: Your Honor, I move to strike
22 everything before you are correct.

23 EXAMINER CHILES: Mr. Settineri, a
24 response?

25 MR. SETTINERI: Your Honor, again I think

1 it was a question that begged to be clarified and
2 again it helps the record when we are dealing with a
3 very complicated topic like capacity performance.

4 EXAMINER CHILES: I am going to grant the
5 motion to strike this time as we'll strike everything
6 before you are correct.

7 Q. And a merchant generator associated with
8 the capacity performance penalty is outweighed by the
9 potential for higher capacity performance payments,
10 correct?

11 A. They could. The Commonwealth of Virginia
12 has remained in a vertically integrated model,
13 correct.

14 Q. There are certain utility-owned
15 generation that is bid into the PJM market, correct?

16 A. Yes.

17 Q. And Virginia generation does bid into the
18 PJM market, correct?

19 A. Yes.

20 Q. And for PJM market purposes, generation
21 from a vertically integrated utility is treated the
22 same as generation from a restructured state like
23 Ohio, correct?

24 THE WITNESS: I'm sorry, could you read
25 that. I missed the first part of that question.

1 (record read.)

2 A. Yes. For PJM purposes we are talking
3 about whether it's the capacity market or energy
4 market or ancillary services market, PJM doesn't
5 differentiate or discriminate whether the generation
6 is from a vertically integrated state or a
7 competitive restructured state.

8 Q. And vertically integrated generation
9 receives its cost of service from ratepayers,
10 correct?

11 A. That's my understanding.

12 Q. And that cost of service, more likely
13 than not, does contain a rate of return, correct?

14 A. Almost certainly.

15 Q. And you would consider the fact that
16 vertically integrated, utility-owned generation
17 receiving a rate of return and its cost of service
18 from ratepayers to be a subsidy, correct?

19 A. Yes. Any time that the government or a
20 nonmarket entity guarantees a profit or a return,
21 that to me is a subsidy.

22 Q. And you would agree that the example I
23 gave is a subsidy, correct?

24 A. Yes.

25 Q. And on page 4, line 25, to 26, you

1 mention the potential for existing merchant plants in
2 Ohio to close, correct?

3 A. Yes.

4 Q. You do not have personal knowledge of
5 merchant generators in Ohio threatening to close if
6 the proposed transaction is approved, correct?

7 A. That's correct.

8 Q. And also on those lines 24 to 25, you
9 discuss the deterring and chilling of investment in
10 new Ohio merchant generation plants, correct?

11 A. That's correct.

12 Q. And you do not have personal knowledge of
13 new Ohio merchant plants not opening or building in
14 Ohio if the proposed transaction is approved,
15 correct?

16 A. That's correct.

17 Q. And there is a code of conduct that
18 pertains to FES and the companies that is designed to
19 bar abuse of the wholesale electric market, correct?

20 A. Yes.

21 Q. Regarding the testimony that was filed in
22 this case, you've read portions of the testimony but
23 not all of it, correct?

24 A. That -- I'm sorry. Are you talking about
25 the entire volume of the testimony across the entire

1 proceeding?

2 Q. Yes.

3 A. Yeah, I have not read all of it.

4 Q. You do not know if RESA participated in
5 settlement negotiations that relates to the third
6 supplemental stipulation, correct?

7 A. That's correct.

8 Q. And you personally did not participate in
9 settlement negotiations as it relates to the third
10 supplemental stipulation, correct?

11 A. That is also correct.

12 Q. And you also would not know why any of
13 the signatory parties entered into the third
14 supplemental stipulation, correct?

15 A. That's correct.

16 Q. As a nonlawyer, you are aware that there
17 is a portion of the Ohio -- of Ohio law that does
18 allow utilities to own generation under certain
19 scenarios, correct?

20 A. Yes. My understanding is under certain
21 qualifying conditions that the law does allow for it.

22 Q. And as a nonlawyer, it's your
23 understanding that the Commission would determine
24 whether or not a utility has met those qualifying
25 scenarios in order to own -- build generation,

1 correct?

2 MR. SETTINERI: Just object to the lack
3 of foundation as to what those qualifying scenarios
4 are. The witness doesn't have a copy of the statute
5 or anything in front of him.

6 EXAMINER CHILES: Ms. Dunn?

7 Q. (By Ms. Dunn) I am referring to the
8 qualifying scenarios you just referred to,
9 Mr. Bennett, in your testimony.

10 EXAMINER CHILES: I am going to overrule
11 the objection. If the witness doesn't understand or
12 needs clarification, he can ask for it.

13 A. My nonlawyer understanding of the statute
14 is that it is the Commission's role to determine if
15 those qualifying conditions are met.

16 MS. DUNN: If I could just have a moment,
17 your Honor?

18 EXAMINER CHILES: You may.

19 MS. DUNN: No further questions, your
20 Honor.

21 Thank you, Mr. Bennett.

22 EXAMINER CHILES: Thank you, Ms. Dunn.
23 Mr. McNamee?

24 MR. MCNAMEE: No questions. Thank you.

25 EXAMINER CHILES: Examiner Addison?

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1 Mr. Settineri, redirect?

2 MR. SETTINERI: Yeah. If we may have
3 just a few minutes?

4 EXAMINER CHILES: Absolutely. Let's go
5 off the record.

6 (Discussion off the record.)

7 EXAMINER CHILES: Let's go ahead and go
8 back on the record.

9 Mr. Settineri are you all set?

10 MR. SETTINERI: We have just a few
11 questions.

12 EXAMINER CHILES: Go back on the record.
13 Mr Settineri.

14 MR. SETTINERI: Yes.

15 - - -

16 REDIRECT EXAMINATION

17 By Mr. Settineri:

18 Q. Mr. Bennett, do you recall some questions
19 from the companies' counsel regarding the proposed
20 transaction and the risk on the companies under --

21 A. Yes.

22 Q. Okay. And do you recall discussing the
23 risk of cost disallowance by the Commission?

24 A. Yes.

25 Q. Okay. Does the risk of cost disallowance

1 rise under the stipulation?

2 A. Yes. That's my understanding. It's part
3 of the review process.

4 MR. SETTINERI: Okay. No further
5 questions. Your Honor.

6 EXAMINER CHILES: Thank you.

7 Recross, Ms. Fleisher?

8 MS. FLEISHER: No questions, your Honor.

9 EXAMINER CHILES: Mr. Mendoza?

10 MR. MENDOZA: No questions, your Honor.

11 EXAMINER CHILES: Mr. Darr?

12 MR. DARR: No questions.

13 EXAMINER CHILES: Ms. Spinosi?

14 MS. SPINOSI: No questions, your Honor.

15 EXAMINER CHILES: Mr. Olikar?

16 MR. OLIKER: No, thank you.

17 EXAMINER CHILES: Ms. Bojko?

18 MS. BOJKO: No questions, your Honor

19 EXAMINER CHILES: Ms. Willis?

20 MS. WILLIS: No questions, your Honor.

21 EXAMINER CHILES: Mr. Kurtz?

22 MR. KURTZ: No questions.

23 EXAMINER CHILES: Ms. Dunn?

24 MS. DUNN: No questions, your Honor.

25 EXAMINER CHILES: Mr. McNamee?

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1 MR. McNAMEE: It's a sweep, no questions.

2 EXAMINER CHILES: Attorney Examiner

3 Price?

4 EXAMINER PRICE: No questions.

5 EXAMINER CHILES: Commissioner Haque?

6 COMMISSIONER HAQUE: No questions.

7 EXAMINER CHILES: Thank you, very much.

8 You are excused.

9 THE WITNESS: Thank you.

10 MR. SETTINERI: Your Honor, at this time
11 on behalf of RESA we would move for the admission of
12 RESA Exhibit 6 into the record.

13 EXAMINER CHILES: Are there any
14 objections to the admission of RESA Exhibit 6?

15 MS. DUNN: No objections, your Honor.

16 EXAMINER CHILES: Hearing none, it will
17 be admitted. Thank you.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 EXAMINER CHILES: We will adjourn for
20 lunch. We will return at 12:45. Thank you.

21 Off the record.

22 (Thereupon, at 11:44 a.m., a lunch recess
23 was taken until 12:45 p.m.)

24 - - -

25

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Thursday Afternoon Session,
January 21, 2016.

- - -

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

Mr. Settineri.

MR. SETTINERI: Thank you, your Honor.
At this time we call on behalf of Dynegy, Inc., Dean
Ellis to the stand, please.

(Witness sworn.)

EXAMINER ADDISON: Thank you. You may be
seated.

MR. SETTINERI: Thank you. At this time
we would like to have marked as Dynegy Exhibit 1 the
Direct Testimony of Dean Ellis, vice president,
regulatory affairs, Dynegy, Inc., in Opposition to
the Third Supplemental Stipulation.

EXAMINER ADDISON: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. SETTINERI: May I approach, your
Honor?

EXAMINER ADDISON: You may.

- - -

1 DEAN ELLIS

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

4 DIRECT EXAMINATION

5 By Mr. Settineri:

6 Q. Good afternoon, Mr. Ellis.

7 A. Good afternoon.

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

10 A. Yes. Dean Ellis, 601 Travis Street,
11 Houston, Texas 77002.

12 Q. Do you have before you what's been marked
13 as Dynegy Exhibit No. 1?

14 A. Yes, I do.

15 Q. And could you please identify that for
16 the record?

17 A. Dynegy Exhibit 1, yes, it's the direct
18 testimony as prepared by myself.

19 Q. Okay. And do you have any changes or
20 corrections to that testimony today?

21 A. Yes, I do I have three corrections,
22 please. Beginning first on page 5, line 5, where I
23 state "return" -- excuse me, where I state "rate of
24 return," that should be "return on equity."

25 Q. And do you have any other corrections in

1 addition to that correction, Mr. Ellis?

2 A. Yes. On page 7, line 19, where I state
3 "rate of return" that should also be "return on
4 equity."

5 Q. And, Mr. Ellis, any other corrections to
6 your testimony?

7 A. Yes. On page 8, line 6, the word
8 "believes" should be "believe."

9 Q. And do you have any other corrections to
10 your testimony at this time, Mr. Ellis?

11 A. No, I do not.

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

15 A. Yes, they would.

16 MR. SETTINERI: Your Honor, at this time
17 Mr. Ellis is available for cross-examination.

18 EXAMINER ADDISON: Thank you very much.

19 Mr. Mendoza?

20 MR. MENDOZA: No questions, your Honor.

21 EXAMINER ADDISON: Mr. Pritchard?

22 MR. PRITCHARD: No questions, your Honor.

23 EXAMINER ADDISON: Ms. Spinosi?

24 MS. SPINOSI: No questions, your Honor.

25 EXAMINER ADDISON: Ms. Bojko?

1 MS. BOJKO: No questions, your Honor.

2 EXAMINER ADDISON: Mr. Kurtz.

3 MR. KURTZ: I think so. Thank you, your
4 Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Kurtz:

8 Q. Good afternoon Mr. Ellis.

9 A. Good afternoon.

10 Q. At page 6 of your testimony you were
11 asked a question in line 1, "Does the stipulation
12 harm the public?" Do you see that?

13 A. Yes.

14 Q. Okay. And you use the word "subsidy" or
15 "subsidized" in the next six or so sentence five
16 times.

17 A. Yes.

18 Q. Okay. My question is this. If the RRS
19 rider is a credit to consumers, is that an
20 anti-subsidy?

21 A. I believe even if the rider RRS provides
22 a credit to customers as projected by FirstEnergy in
23 its testimony, the construct is still a subsidy in
24 that the costs are guaranteed to be recovered plus a
25 return.

1 Q. You are aware that this is a common
2 industry practice in many states throughout PJM
3 including Kentucky, West Virginia, Virginia, are you
4 not?

5 A. I --

6 MR. MENDOZA: Object.

7 EXAMINER ADDISON: Grounds?

8 MR. MENDOZA: I think it would be helpful
9 if he described the practices he was talking about
10 with a little more detail.

11 Q. (By Mr. Kurtz) Did you understand my
12 question?

13 A. I will answer it generally. I would say
14 actually find it to be more common in the PJM
15 footprint, that it's a competitive environment, not a
16 regulated environment.

17 Q. That's definitely more common, but there
18 is also the regulated paradigm within PJM, correct?

19 A. There are certain states that still have
20 regulated entities in PJM.

21 Q. West Virginia, Virginia, Kentucky?

22 A. Yes.

23 Q. Indiana.

24 A. I don't recall if Indiana is in PJM,
25 but --

1 Q. IMM and AEP affiliates in PJM, do you
2 know that to be true or not?

3 A. With regard to that specific affiliate, I
4 don't know off the top of my head.

5 Q. North Carolina also?

6 A. And off the top of my head, I don't
7 recall if North Carolina is in PJM.

8 EXAMINER ADDISON: Mr. Kurtz, would you
9 mind just turning on your microphone.

10 MR. KURTZ: Oh, I'm sorry.

11 MS. BOJKO: That's exactly what I was
12 going to ask. Thank you.

13 Q. (By Mr. Kurtz) The 10.38 percent return
14 on equity, that is both a floor and a cap, isn't it?

15 A. Yes, as I understand the construct.

16 Q. So to the extent that interest rates
17 increase over the eight-year term or the market turns
18 around, these units are -- cannot earn anything
19 greater than a 10.38 percent rate of return; is that
20 your understanding?

21 A. That's my understanding.

22 Q. Okay.

23 MR. KURTZ: Thank you, Mr. Ellis.

24 EXAMINER ADDISON: Thank you, Mr. Kurtz.

25 Mr. Alexander.

1 MR. ALEXANDER: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Alexander:

5 Q. Good afternoon, Mr. Ellis.

6 A. Good afternoon.

7 Q. Please turn to page 6, line 4, where you
8 claim the companies do not have an incentive to
9 control costs at the plants, and just let me know
10 when you are there.

11 A. Yes, I'm there.

12 Q. Now, large capital projects are amortized
13 over the life of the project, correct?

14 A. Yes.

15 Q. So if there was a large capital project
16 in year six, only a small portion of that project
17 cost would be paid through rider RRS, correct?

18 A. It would appear so.

19 Q. And assume no future changes to the
20 regulatory construct, any costs not amortized during
21 the term of rider RRS would be the responsibility of
22 FirstEnergy Solution, correct?

23 A. Correct, assuming that the rider were not
24 extended or another regulatory construct was
25 implemented, correct.

1 Q. And if costs would be FES's
2 responsibility after the end of rider RRS, then FES
3 would have an incentive to control those costs,
4 correct?

5 MR. MENDOZA: Objection.

6 EXAMINER ADDISON: Did you finish your
7 question, Mr. Alexander?

8 MR. ALEXANDER: Did you get it all?
9 Then, yes.

10 EXAMINER ADDISON: Grounds?

11 MR. MENDOZA: Relevance. I don't see why
12 costs that might occur after the RRS period are
13 relevant to anything in this case.

14 MR. SETTINERI: I would just object
15 separately. The way the question was phrased, it
16 calls for speculation.

17 EXAMINER ADDISON: Would you mind
18 rephrasing your question, Mr. Alexander?

19 MR. ALEXANDER: Certainly.

20 Q. (By Mr. Alexander) Okay. So, Mr. Ellis,
21 just to make sure we're on the same page, I believe
22 you previously just testified any costs for a large
23 capital project which were not included in rider RRS
24 would remain FES's responsibility at the conclusion
25 of the term of rider RRS, correct?

1 MR. SETTINERI: Just object to
2 mischaracterizing the testimony.

3 EXAMINER ADDISON: In what way was he
4 mischaracterizing the testimony, Mr. Settineri?

5 MR. SETTINERI: Mr. Ellis clarified his
6 answer regarding the regulatory possibility of the
7 regulatory construct changing. I believe the
8 question provided a very broad sweeping statement
9 that I don't believe matched Mr. Ellis's testimony.
10 If it could be rephrased to be more targeted.

11 EXAMINER ADDISON: Mr. Alexander.

12 MR. ALEXANDER: Your Honor, the first
13 time I asked the question, I asked strictly about the
14 regulatory construct change. I included that in my
15 original question because the witness raised that
16 point in his deposition.

17 Mr. Mendoza, apparently I don't think he
18 missed that clarification or not, but when he
19 included it in his objection, I thought I would go
20 back, hit the issue again with the witness so we were
21 all on the same page and the record was clear moving
22 forward.

23 EXAMINER ADDISON: Thank you.

24 I am going to overrule the objection. If
25 the witness needs to clarify any misunderstanding in

1 the question, he certainly can do so in his answer.

2 Q. (By Mr. Alexander) So, Mr. Ellis, under
3 the hypothetical, if there is a large capital project
4 in year six and only a portion of that project's
5 costs are recovered through rider RRS, then you would
6 agree that FES would have an incentive to minimize
7 the cost of that project since it would be
8 responsible for those costs after the end of the term
9 of the rider?

10 A. I don't know if I would necessarily agree
11 with that statement. I would agree that there could
12 be an incentive if FES viewed that as an exposure
13 after the conclusion of rider RRS. But at the same
14 time I would imagine that FES would look at it in the
15 context in that at least the first couple of years,
16 the costs of that project would be covered under
17 rider RRS.

18 MR. ALEXANDER: Could I have that
19 question and answer reread, please?

20 EXAMINER ADDISON: You may.

21 (Record read.)

22 MR. ALEXANDER: Your Honor, I move to
23 strike everything after the word "but."

24 EXAMINER ADDISON: Mr. Settineri?

25 MR. SETTINERI: I believe it was a very

1 broad question and he provided his answer, and it was
2 right on point to the question, your Honor.

3 MR. MENDOZA: Your Honor, may I just -- I
4 think there is a vague -- there is an issue with the
5 question because what would be relevant is whether
6 FES has incentives during the term of the rider to
7 act a certain way and to, you know, minimize costs.

8 And it's unclear -- it's unclear from the
9 question if Mr. Alexander is trying to understand if
10 they are going to act a certain way during the term
11 of the rider or after the rider expires when they no
12 longer have cost recovery, and so I think the full
13 answer should stand because it helps clarify what --
14 you know, what the witness is actually testifying
15 about.

16 MR. KURTZ: Your Honor, may I be heard on
17 this point?

18 EXAMINER ADDISON: Of course.

19 MR. KURTZ: A capital investment has a
20 20-year useful life, and in the sense of the PPA,
21 extends well beyond the eight-year term, obviously.
22 And so the point is that in making capital decisions
23 that extend -- during the PPA that extend beyond the
24 PPA, there is an incentive to control costs because
25 after the eight years they still have the bulk of the

1 capital investment yet to be recovered --

2 MR. SETTINERI: And since you're
3 testifying --

4 MR. KURTZ: -- as opposed to an
5 extension.

6 MR. SETTINERI: Since we are testifying
7 now, Mr. Ellis made a very good point, that the short
8 term -- that also picks up the short term, which he
9 addressed, so the motion to strike should be denied.

10 EXAMINER PRICE: I don't think Mr. Kurtz
11 was testifying. I think he was responding to
12 Mr. Mendoza's comment which he didn't support at all,
13 that it was irrelevant what would happen at the end
14 of the term. Mr. Kurtz was simply explaining why
15 Mr. Mendoza was wrong.

16 MR. SETTINERI: I respectfully disagree.

17 EXAMINER PRICE: You can disagree, but --

18 MR. SETTINERI: I understand.

19 EXAMINER PRICE: -- Mr. Kurtz was not
20 testifying.

21 MR. ALEXANDER: And as to, your Honor,
22 the objection, the question was does FES have an
23 incentive to control costs, not are there other
24 factors which may go into FES's decision. The
25 witness answered my question on whether FES has an

1 incentive. Everything after the word "but," does FES
2 have other factors which go into its decision-making,
3 while it may be appropriate for redirect, it was not
4 what I asked.

5 EXAMINER ADDISON: Thank you,
6 Mr. Alexander.

7 At this time I would deny the motion to
8 strike. We have had a pretty consistent rule to
9 allow witnesses one bite of the apple, so to speak,
10 and since this is Mr. Ellis's first time on the stand
11 before us, I am going to give him that same courtesy.
12 Thank you.

13 Q. (By Mr. Alexander) Mr. Ellis, the
14 companies have the ability to review costs of the
15 plants prior to their inclusion in rider RRS,
16 correct?

17 A. Yes. I believe that's how I understand
18 that the stipulation is written.

19 Q. And the Commission staff has the ability
20 to review costs at the plants prior to their
21 inclusion in rider RRS, correct?

22 A. I don't recall if it's prior to. I would
23 have to refresh my memory, but I do recall a two-step
24 process, one where the Commission checks the
25 companies' math, among other things, and then a

1 second process by which there is an audit paid for by
2 ratepayers.

3 But I don't recall to your specific point
4 on whether or not that's prior to whether the costs
5 are included. I would have to refresh my memory in
6 the testimony.

7 MR. ALEXANDER: Well, your Honor, may I
8 approach?

9 EXAMINER ADDISON: You may.

10 Q. (By Mr. Alexander) Mr. Ellis, do you
11 recall being deposed in this proceeding on
12 January 11, 2016?

13 A. Yes, I do.

14 Q. Do you recall a court reporter was
15 present at that deposition?

16 A. Yes.

17 Q. Do you recall swearing an oath to tell
18 the truth in that deposition?

19 A. Yes, I do.

20 Q. And were you represented by counsel in
21 that deposition?

22 A. Yes, I was.

23 Q. Could you please turn to page 29, line
24 18, of your deposition. Let me know when you are
25 there.

1 A. Yes, I'm there.

2 Q. Did I ask you the question: "Because
3 staff does have the ability to review the costs
4 before they are included in rider RRS, correct?"

5 "Answer: I believe so."

6 Have I read that correctly?

7 A. Just point me to which question.

8 Q. It's page 29 starting at line 18.

9 A. Yes. Could you just ask the question
10 again for me?

11 Q. Certainly. Did I ask you the question:
12 "Because staff does have the ability to review the
13 costs before they are included in rider RRS,
14 correct?"

15 A. Correct.

16 Q. Answer, "I believe so."

17 A. Yes.

18 Q. And I would agree a review by both the
19 companies and Commission staff provides incentive for
20 FES to control costs at the plants, correct?

21 A. I believe it provides some incentive for
22 FES and the companies to control costs.

23 Q. And with regard to the offer, you believe
24 FES is the entity responsible for bidding the units
25 into the market?

1 A. At the time of deposition, I believe I
2 understood that FES was the entity that was going to
3 be doing the bidding and scheduling of the units, and
4 subsequent to the deposition, I refreshed my memory
5 on the testimony, and I believe the companies are
6 actually doing the bidding and scheduling.

7 Q. If you could turn to page --

8 MR. ALEXANDER: If we could both turn off
9 our microphones.

10 EXAMINER ADDISON: Let's go off the
11 record for a minute, Karen.

12 (Discussion off the record.)

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

15 Q. (By Mr. Alexander) Mr. Ellis, if you
16 could turn your attention to page 8, line 12, of your
17 testimony, let me know when you are there.

18 A. Yes, I'm there.

19 Q. So you have had no specific training in
20 the PJM energy market, correct?

21 A. As head of regulatory affairs for Dynegy,
22 I have had multiple work functions reporting up to
23 me, one of which is the market policy staff that
24 works at Dynegy and is responsible for directly
25 participating in the PJM stakeholder process. So I

1 do actually have -- I would say I do have that
2 experience.

3 Q. Okay. Please turn to page 4, starting at
4 line 11 of your deposition.

5 A. Yes.

6 Q. Let me know when you are there.

7 A. Yes.

8 Q. Did I ask you the question: "I would
9 like to talk to you about your experience in the PJM
10 energy market. Have you had any educational courses
11 or training in the PJM energy market?

12 "Answer: I have not taken any specific
13 training on the PJM capacity energy market."

14 Did I read at that correctly?

15 A. You did.

16 MR. SETTINERI: Just object at this time,
17 improper impeachment. This question relates to
18 education courses or training, and the answer is, "I
19 have not taken any specific training," so it's
20 improper impeachment. It does not relate to the
21 question that was asked previously.

22 MR. ALEXANDER: Your Honor, the question
23 I asked previously was you have had no specific
24 training in the PJM energy market, which I believe
25 quotes the witness's response in deposition.

1 EXAMINER ADDISON: Thank you. Objection
2 overruled.

3 Q. (By Mr. Alexander) Now, Mr. Ellis, you
4 have had no work experience in bidding the units into
5 the PJM energy market, correct?

6 A. That's correct. I am not responsible for
7 bidding and scheduling units directly.

8 Q. And you have never sold energy in either
9 the day-ahead or real-time PJM energy market,
10 correct?

11 A. I have not personally sold energy.

12 Q. Now, let's talk about the PJM capacity
13 market. You have no specific education or training
14 in the PJM capacity market, correct?

15 A. I have not had specific education or
16 training. I have an understanding and a knowledge of
17 it through my role as head of regulatory affairs.

18 Q. And other than your supervision over
19 regulatory policy, you have no work experience
20 related to the PJM capacity market, correct?

21 A. I have no direct experience bidding and
22 scheduling units in the PJM capacity market.

23 Q. And you agree the PJM capacity market has
24 rules regarding bids into the base residual auction?

25 A. Yes, it does.

1 Q. And I don't know whether the base
2 residual auction participants have ever bid units in
3 at zero, correct?

4 A. I personally don't know specifically
5 whether participants have offered in at zero.

6 Q. And you don't know whether it's common
7 for participants to bid in at zero, correct?

8 A. No. I haven't seen any data that would
9 suggest it's common or uncommon.

10 Q. But you are aware that FERC regulates
11 bidding practices in the PJM capacity market,
12 correct?

13 A. Yes, it does.

14 Q. And the independent market monitor also
15 oversees bidding practices in the PJM capacity
16 market.

17 A. Yes, it does.

18 Q. And there are rules regarding the manner
19 in which units may be bid in the PJM capacity market.

20 A. Yes, there are.

21 Q. Now, FERC also regulates bidding
22 practices in the PJM energy market, correct?

23 A. Yes.

24 Q. And the independent market monitor
25 oversees bidding practices in the PJM energy market.

1 A. Yes.

2 Q. And there are also rules regarding the
3 manner in which units may be bid into the PJM energy
4 market?

5 A. Yes.

6 Q. For example, both the -- strike that.
7 Both the energy and capacity market have
8 rules prohibiting market manipulation, correct?

9 A. Yes.

10 Q. And you are aware that regulated
11 generation currently participates in both the
12 capacity and energy markets.

13 A. Yes.

14 Q. Please turn to page 8, line 14, where you
15 use the phrase "actual cost of operations." Let me
16 know when you are there.

17 A. Yes.

18 Q. By "actual cost of operations," you mean
19 both short-run and impeded operating costs?

20 A. That's correct.

21 Q. And you agree that PJM market rules do
22 not contain any rule requiring existing units to bid
23 in at their actual cost of operation.

24 A. That's correct. I am not aware of any
25 current rule around offer requirements for existing

1 units.

2 Q. And focusing now on energy markets, isn't
3 it true that in the PJM energy markets generators
4 submit both a cost- and price-based bid?

5 A. Yes.

6 Q. And you don't know whether any generation
7 asset, such as a wind asset, has ever bid into the
8 PJM energy market at zero.

9 A. I don't have any direct information to
10 confirm that.

11 Q. Dynegy has generation in the PJM market,
12 correct?

13 A. Yes, we do.

14 Q. And turning your attention specifically
15 to the capacity performance product in the PJM
16 capacity market, Dynegy has commented publicly in
17 favor of the capacity performance product at PJM,
18 correct?

19 A. That's correct.

20 Q. And Dynegy has bid its generation into
21 PJM into the capacity market as capacity performance
22 products, correct?

23 A. Yes.

24 Q. And Dynegy has issued press releases
25 which state how many megawatts cleared as capacity

1 performance, correct?

2 A. That's correct.

3 MR. ALEXANDER: Your Honor, may I
4 approach the witness?

5 EXAMINER ADDISON: You may.

6 Did you want to mark this, Mr. Alexander?

7 MR. ALEXANDER: Please. I was just going
8 to go back. And, your Honor, I would like to have
9 marked for identification as Companies' Exhibit 182 a
10 press release dated September 8, 2015.

11 EXAMINER ADDISON: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. (By Mr. Alexander) Mr. Ellis, have you
14 ever seen this document before?

15 A. Yes, I believe I have.

16 Q. Is this a true and accurate copy of a
17 press release issued by Dynegy on September 8, 2015,
18 regarding recent PJM capacity auctions?

19 A. It appears to be so.

20 Q. And does this press release provide the
21 number of megawatts of capacity performance product
22 which Dynegy cleared in those auctions?

23 A. Yes, it does.

24 Q. And do you believe the numbers on this
25 press release are true and accurate?

1 A. I believe they are.

2 Q. So for the '16-'17 transition auction,
3 Dynergy publicly disclosed that it cleared and
4 converted 6,542 megawatts from the existing base
5 product to capacity performance product, right?

6 MS. WILLIS: Objection.

7 EXAMINER ADDISON: Grounds?

8 MS. WILLIS: Your Honor, I would object
9 if that question is related to this exhibit. This is
10 hearsay. It's a professional press release. It is
11 not the type of information that belongs in the
12 record. There is no exception to hearsay that would
13 allow a press release in evidence.

14 EXAMINER ADDISON: Mr. Alexander.

15 MR. ALEXANDER: The witness, I think,
16 indicated both the document and the information in it
17 and testified to his personal knowledge about the
18 numbers in the document, and I am asking the witness
19 whether the numbers in the document are correct right
20 now. That was actually the purpose of my question.
21 So I am not offering just the press release. I am
22 asking the witness about his knowledge about the
23 document as well.

24 EXAMINER ADDISON: Ms. Willis.

25 MS. WILLIS: Your Honor, he is using the

1 document to bring numbers into evidence. If he wants
2 to ask independent of that document, I think that
3 would be an appropriate question, but he is relying
4 upon the document. The document is hearsay. There
5 is no exception to hearsay for this.

6 EXAMINER ADDISON: Mr. Alexander.

7 MR. ALEXANDER: I am not offering the
8 document. I am offering the witness, your Honor. I
9 am asking the witness about these numbers, and the
10 witness, who has personal knowledge of the issue, is
11 the one authenticating the numbers in the document.

12 So this is not hearsay. There is no
13 out-of-court statement that I am offering for the
14 truth of the matter asserted. It is an in-court
15 statement as to the number of megawatts cleared.

16 EXAMINER ADDISON: Thank you.

17 Objection overruled.

18 MR. ALEXANDER: Could we have the
19 question reread, please, your Honor.

20 EXAMINER ADDISON: Yes.

21 Thank you, Karen.

22 (Record read.)

23 A. Yes, correct.

24 Q. And Dynegy imported 730 megawatts into
25 PJM from MISO?

1 A. We imported that amount from assets that
2 are geographically and physically located within the
3 MISO footprint.

4 Q. Let me rephrase that. Dynergy imported
5 730 megawatts into PJM from capacity assets located
6 in the state of Illinois?

7 A. That's correct.

8 Q. And the state of Illinois is
9 geographically located within the MISO territory?

10 A. That's incorrect. Southern Illinois is
11 located geographically within the MISO footprint.
12 Northern Illinois is located within the PJM
13 footprint.

14 Q. Okay. And this 730 megawatts comes from
15 southern Illinois, correct?

16 A. Correct.

17 Q. And so as a result of the
18 recategorization for the '16-'17 planning year,
19 Dynergy's PJM capacity revenues increase by
20 \$176 million?

21 A. That's correct.

22 MR. ALEXANDER: Your Honor, I would like
23 to have marked for identification as Company
24 Exhibit 183 a press release from Dynergy dated
25 September 10, 2015.

1 EXAMINER ADDISON: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. (By Mr. Alexander) Mr. Ellis, have you
4 ever seen this document before?

5 A. Yes, I believe I have.

6 Q. And is this a press release issued by
7 Dynegy on September 10, 2015?

8 A. It appears to be so, yes.

9 Q. And does this press release disclose the
10 results of the '17-'18 PJM planning year?

11 A. The '16 -- I'm sorry. The '17-'18
12 planning year capacity performance results, yes.

13 Q. And do you believe the figures included
14 on this press release are true and accurate to the
15 best of your knowledge?

16 A. Yes, I do.

17 Q. So the Dynegy -- strike that.

18 Dynegy cleared and converted 6,508
19 megawatts from existing base products to the capacity
20 performance product for the '17-'18 PJM planning
21 year, correct?

22 MS. WILLIS: Objection.

23 EXAMINER ADDISON: Grounds?

24 MS. WILLIS: Your Honor, this is --
25 again, this is hearsay. He is saying that Dynegy

1 publicly disclosed, and a public disclosure -- and
2 the fact there is a public disclosure is hearsay, and
3 this is -- there is no exception to hearsay for a
4 press release.

5 EXAMINER ADDISON: Overruled.

6 MR. ALEXANDER: Could we have the
7 question reread, please?

8 EXAMINER ADDISON: Yes.

9 Thank you, Karen.

10 (Record read.)

11 A. Yes, we did.

12 Q. And for the '17-'18 planning year, Dynegy
13 imported 471 megawatts into PJM from the state of
14 Illinois, southern portion, located in MISO?

15 A. That's correct.

16 Q. And those 471 megawatts were also
17 converted into capacity performance product?

18 A. Yes.

19 Q. And the conversion to capacity
20 performance product in the '17-'18 planning year
21 increased energy revenue by \$75 million over the
22 previously cleared volumes?

23 A. Yes.

24 Q. Turning your attention back to Companies'
25 Exhibit 182, Companies' Exhibit 182 also discloses

1 the results for the '18-'19 PJM planning year; is
2 that correct?

3 A. Yes, that's correct.

4 Q. And for the '18-'19 planning year, Dynegy
5 cleared 9,891 megawatts as capacity performance
6 product?

7 MS. WILLIS: Your Honor, if you could
8 note my continuing objection to this
9 cross-examination based on hearsay documents, I would
10 appreciate it.

11 EXAMINER ADDISON: Your objection is
12 noted. Thank you, Ms. Willis.

13 THE WITNESS: I'm sorry, just read it
14 again, please.

15 EXAMINER ADDISON: Yes. Let's have the
16 question back. Thank you, Karen.

17 (Record read.)

18 A. Yes, that's correct.

19 Q. And so the record is clear, for the
20 '16-'17 and '17-'18 planning years, Dynegy had
21 originally cleared some or all of those units as base
22 generation in PJM, correct?

23 A. That's correct.

24 Q. And Dynegy then in transition auctions
25 converted that generation to capacity performance

1 product, correct?

2 A. Yes.

3 Q. And by converting to capacity performance
4 product, Dynegy increased its revenues?

5 A. That's correct.

6 Q. And that conversion also exposed Dynegy
7 to the performance risks associated with capacity
8 performance products.

9 A. The bonuses and penalties, yes.

10 Q. And if you could turn to page 9, line 7
11 of your testimony where you discuss the ability of
12 the companies to pass through costs to customers, do
13 you see that?

14 A. Yes.

15 Q. You agree that the revenues associated
16 with the capacity performance product also would flow
17 through to customers.

18 A. Under rider RRS, yes.

19 Q. And FirstEnergy Solutions has given up
20 its right to the revenues from the capacity
21 performance product under rider RRS, correct?

22 MS. BOJKO: Objection.

23 MR. SETTINERI: Just object. I believe
24 it's under the proposed transaction, not Rider RRS.

25 MR. ALEXANDER: I'll rephrase, your

1 Honor.

2 EXAMINER ADDISON: Thank you.

3 Q. (By Mr. Alexander) FirstEnergy Solutions
4 has given up its right to those capacity performance
5 revenues under the proposed transaction, correct?

6 A. I believe so, yes.

7 Q. I would like to return to your discussion
8 about the efficient operations of markets. You
9 started this on page 4.

10 MR. ALEXANDER: Your Honor, I would like
11 to have marked for identification as Company
12 Exhibit 184 a June 25, 2015, Dynegy Investor Day
13 presentation.

14 EXAMINER ADDISON: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. (By Mr. Alexander) Mr. Ellis, have you
17 ever seen this document before?

18 A. Yes, I believe I have.

19 Q. Okay. And do you believe this is a true
20 and accurate copy of the presentation given to
21 investors on June 25, 2015?

22 A. Without checking each page and reviewing
23 the presentation in any level of detail, it appears
24 to be our Investor Day presentation from June 2015,
25 yes.

1 Q. And do you believe that statements made
2 by Dynegy to its investors are accurate?

3 A. Yes, I do.

4 Q. Could you please turn to page 7, and
5 specifically the subheading labeled "The New Normal"
6 on the bottom right-hand side of the page.

7 A. Yes.

8 Q. Here Dynegy predicts a less stable power
9 system with higher power prices and increased market
10 volatility; is that correct?

11 MS. WILLIS: Objection.

12 EXAMINER ADDISON: Grounds?

13 MS. WILLIS: This is hearsay. Now we are
14 talking about a document that there is no exception
15 to hearsay, and we are reading statements from the
16 document. We are not asking the witness
17 independently whether he has knowledge of numbers or
18 what bids cleared and what didn't clear. We are now
19 going directly to a document that is hearsay, and
20 cross-examination, this should not be allowed.

21 EXAMINER ADDISON: Mr. Alexander.

22 MR. ALEXANDER: Your Honor, I
23 authenticated the document itself and statements in
24 the document are party-opponent admissions.

25 EXAMINER ADDISON: Ms. Willis, do you

1 care to respond to that?

2 MS. WILLIS: Your Honor, an admission,
3 it's an admission against interest, I believe is what
4 Mr. Alexander is referring to, and I don't think he
5 has established that this would be an admission
6 against interest.

7 MR. KURTZ: Your Honor, isn't this a
8 business record?

9 EXAMINER ADDISON: Well, regardless of
10 what it is, I am going to overrule the objection.
11 Thank you.

12 MR. ALEXANDER: Could we have the
13 question reread, please, your Honor.

14 EXAMINER ADDISON: Thank you, Karen.
15 (Record read.)

16 A. The statement in reference to the
17 previous one to two years of stable power pricing,
18 yes, we were predicting more volatility in the
19 market.

20 Q. If you could please turn to page 8, and
21 particularly the table at the bottom of the page
22 labeled "Lasting Repercussions." Do you see that?

23 A. Yes.

24 Q. So Dynegy is predicting higher capacity
25 prices; is that correct?

1 A. That's correct.

2 Q. Dynegy is also predicting volatile power
3 prices?

4 A. Correct.

5 Q. Dynegy does not have 100 percent
6 ownership of any Ohio coal plant; is that correct?

7 A. That is correct.

8 Q. And Dynegy's Ohio fleet is 100 percent
9 fossil fuel; is that correct?

10 A. That is correct.

11 Q. And, finally, Dynegy Holding declared for
12 bankruptcy on November -- in November of 2011; is
13 that correct?

14 MR. SETTINERI: Just object, relevancy.

15 EXAMINER ADDISON: Mr. Alexander?

16 MR. ALEXANDER: Well, your Honor, the
17 witness's testimony includes quite a bit of
18 background on Dynegy and its -- I think he says
19 26,000 megawatts at page 4, line 16, and a little
20 more background I think would be helpful for the
21 Commission.

22 MS. BOJKO: I am going to join in the
23 objection, particularly based on the response of
24 counsel for the justification, that it's not
25 relevant, and the information or the reason, the

1 rationale for what Mr. Alexander just provided does
2 not make it relevant, and also on many of the
3 questions that have occurred on this document have
4 not specified a geographic region for the question so
5 I would also object to that as well.

6 MS. WILLIS: OCC would join.

7 EXAMINER ADDISON: Thank you.

8 Mr. Alexander.

9 EXAMINER PRICE: Are you moving back in
10 time objecting to questions he has already answered?

11 MS. BOJKO: I think these are cumulative,
12 if I am understanding his questions correctly, your
13 Honor. The location and that of the plants is part
14 of my objection to relevancy.

15 EXAMINER ADDISON: Thank you.

16 Mr. Alexander?

17 MR. ALEXANDER: Yes, your Honor. The
18 financial viability of a generator, which is what
19 Dynegy is purporting to be in its testimony, I think
20 is relevant to the Commission's determination.

21 EXAMINER ADDISON: Mr. Settineri, care to
22 respond to that?

23 MR. SETTINERI: Well, I think the --
24 number one, it's prejudicial. The fact that Dynegy
25 is testifying to the stipulation, I don't think they

1 put the financial viability of the company at play,
2 perhaps, unlike the companies.

3 EXAMINER ADDISON: Ms. Bojko, did you
4 have anything else to add?

5 MS. BOJKO: No, nothing. I'm sorry.

6 EXAMINER ADDISON: Ms. Willis, anything
7 to add?

8 MS. WILLIS: No, your Honor.

9 EXAMINER ADDISON: Thank you.

10 Mr. Alexander, last word?

11 MR. ALEXANDER: I think I've covered the
12 ground, your Honor.

13 EXAMINER ADDISON: Thank you.

14 At this point I think we are going to
15 sustain the objection. I think it's just reaching a
16 little too far, Mr. Alexander. Thank you.

17 MR. ALEXANDER: Thank you, Mr. Ellis.

18 Nothing further, your Honor.

19 EXAMINER ADDISON: Thank you.

20 Mr. McNamee, any questions?

21 MR. McNAMEE: No, thank you.

22 EXAMINER ADDISON: Mr. Settineri,
23 redirect?

24 MR. SETTINERI: If we may have a few
25 minutes, I would appreciate it.

1 EXAMINER ADDISON: You may.

2 Let's go off the record.

3 (Recess taken.)

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

6 Redirect, Mr. Settineri.

7 MR. SETTINERI: Yes, your Honor.

8 - - -

9 REDIRECT EXAMINATION

10 By Mr. Settineri:

11 Q. Mr. Ellis, do you recall a question from
12 the companies' counsel regarding Dynegy's Ohio coal
13 fleet?

14 A. Yes, I do.

15 Q. Okay. Does Dynegy also have a gas fleet
16 in Ohio?

17 A. Yes, we do. We have several natural
18 gas-fired generation plants in Ohio.

19 Q. And are those units owned by -- solely
20 owned by Dynegy?

21 A. Yes. The natural-gas-fired
22 combined-cycle plants are 100 percent owned by
23 Dynegy.

24 Q. Okay. How many employees does Dynegy
25 have in Ohio for both its gas fleet and coal fleet

1 that you are aware of?

2 MR. ALEXANDER: Objection.

3 EXAMINER ADDISON: Grounds?

4 MR. ALEXANDER: Beyond the scope of the
5 cross, particularly they are offering evidence of
6 Dynergy's number of employees, which I think goes to
7 my financial viability point earlier where my
8 question was sustained on the bankruptcy issue.

9 EXAMINER ADDISON: Mr. Settineri.

10 MR. SETTINERI: I was trying to make a
11 point on his direct that Dynergy has very little
12 impact in Ohio regarding its coal fleet not being
13 100 percent owned. So we've established that Dynergy
14 actually has steel in the ground here for its gas
15 fleet as well as its coal fleet, and I think Dynergy's
16 impact in Ohio and actions in Ohio are certainly
17 related to that line of questioning and fall
18 completely under the cross-examination and are proper
19 grounds -- proper scope for redirect.

20 EXAMINER ADDISON: I think it's one step
21 too far so I am going to sustain the objection.

22 Q. (By Mr. Settineri) Mr. Ellis, do you
23 recall a discussion with Mr. Kurtz regarding that the
24 competitive environment is more common in PJM?

25 A. Yes.

1 Q. Do you believe the stipulation, as
2 presented, supports a competitive environment in PJM?

3 A. As I provided in my direct testimony, I
4 don't believe that the stipulation and rider RRS
5 themselves support competition in Ohio. In fact,
6 Dynegy has offered via press release a market-based
7 counteroffer to the FirstEnergy proposal, including
8 an offer to build generation here in the State of
9 Ohio.

10 MR. ALEXANDER: Motion to strike, your
11 Honor.

12 EXAMINER ADDISON: Grounds?

13 MR. ALEXANDER: First of all, that's well
14 beyond the scope of anything that was covered in
15 either cross-examination. Mr. Kurtz's
16 cross-examination was discussing regulated generation
17 and competitive generation in PJM. It did not
18 discuss offers which may or may not have been made
19 via press release at this late date.

20 Secondly, your Honor, this purported
21 offer was not made in Mr. Ellis's direct testimony.
22 It could have been. There have been multiple rounds
23 of testimony in this proceeding going back to
24 Dynegy's intervention in September of 2014. They
25 chose not to make this purported offer in any one of

1 those various testimonies, and it would be extremely
2 prejudicial to the companies to allow this to come
3 in now when they chose not to make it at a time when
4 we would do discovery on the point, do
5 cross-examination on the point, so now in redirect in
6 response to a question from Mr. Kurtz, which had
7 nothing to do with the point that the witness just
8 raised.

9 MR. KURTZ: Your Honor, I specifically
10 stayed away from this. This is really just
11 sandbagging the company.

12 EXAMINER ADDISON: Thank you. At this
13 point I am going to grant the motion to strike.

14 Q. (By Mr. Settineri) Mr. Ellis, what do you
15 believe can be done to the stipulation to make it
16 more competitive in the PJM markets?

17 MR. ALEXANDER: Objection, beyond the
18 scope of the cross.

19 MR. SETTINERI: Again, Mr. Kurtz opened
20 the door. He asked about is the competitive
21 environment more common in PJM. That completely
22 opened the door to the stipulation and how it relates
23 to the competitive markets in PJM. That door was --
24 Mr. Kurtz made -- opened the door wide for us.

25 MR. ALEXANDER: Mr. Kurtz asked about

1 which states are competitive and which are not and
2 went through a list of those states. The question
3 just asked by counsel was what can be done to make
4 the stipulation more competitive. It's a completely
5 different issue. The only similarity is the word
6 "competitive."

7 MR. SETTINERI: In PJM, which matches up
8 with Mr. Kurtz's initial questions.

9 EXAMINER ADDISON: Mr. Kurtz, do you have
10 anything to add?

11 MR. KURTZ: I agree that the only
12 similarity is the word "competitive." Asking the
13 witness on redirect how the Commission should change
14 the stipulation is not addressed in the
15 cross-examination.

16 EXAMINER ADDISON: Thank you. I agree.
17 Objection sustained.

18 MR. SETTINERI: Thank you, your Honor.

19 Q. (By Mr. Settineri) Mr. Ellis, again, you
20 recall being asked questions about Dynegy's Ohio coal
21 fleet, correct?

22 A. Yes.

23 Q. And those units are not a hundred percent
24 owned by Dynegy; is that correct?

25 A. That's correct. The Dynegy coal fleets

1 or Dynegy's ownership in the coal fleets, is not a
2 hundred percent, Dynegy, unlike the other units that
3 we do own in Ohio.

4 Q. And as a co-owner, does Dynegy pay taxes
5 related to those units?

6 A. Yes.

7 MR. ALEXANDER: Objection, beyond the
8 scope of the cross.

9 EXAMINER ADDISON: Sustained.

10 MR. SETTINERI: With that, I have no
11 further questions, your Honor.

12 EXAMINER ADDISON: Thank you,
13 Mr. Settineri.

14 Mr. Mendoza.

15 MR. MENDOZA: No questions.

16 EXAMINER ADDISON: Mr. Pritchard?

17 MR. PRITCHARD: No questions.

18 EXAMINER ADDISON: Ms. Spinosi?

19 MS. SPINOSI: No questions, your Honor

20 EXAMINER ADDISON: Ms. Bojko?

21 MS. BOJKO: No questions, your Honor.

22 EXAMINER ADDISON: Ms. Willis?

23 MS. WILLIS: No questions, your Honor.

24 EXAMINER ADDISON: Mr. Kurtz?

25 MR. KURTZ: No, your Honor.

1 EXAMINER ADDISON: Mr. Alexander?

2 MR. ALEXANDER: No question, your Honor.

3 EXAMINER ADDISON: Mr. McNamee?

4 MR. McNAMEE: It's unanimous again. No
5 questions.

6 EXAMINER ADDISON: Examiner Chiles?

7 EXAMINER CHILES: No.

8 EXAMINER ADDISON: Examiner Price?

9 EXAMINER PRICE: No.

10 EXAMINER ADDISON: Commissioner Haque?

11 COMMISSIONER HAQUE: No questions.

12 EXAMINER ADDISON: Thank you, all. I
13 have no questions.

14 Mr. Ellis, you are excused.

15 Mr. Settineri.

16 MR. SETTINERI: Your Honor, at this time
17 we would move for the admission of Dynegy Exhibit 1
18 into the record, please.

19 EXAMINER ADDISON: Are there any
20 objections to the admission?

21 MR. ALEXANDER: No objection, your Honor.

22 EXAMINER ADDISON: Thank you. Hearing
23 none, it will be admitted.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 MR. ALEXANDER: Your Honors, at this

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1 point the companies move Exhibits 182, 183, and 184
2 into the record.

3 EXAMINER ADDISON: Are there any
4 objection to Companies' Exhibits 182, 183, and 184?

5 MR. SETTINERI: Your Honors, because 184
6 is such a large exhibit could we take a few minutes
7 to at least review that document first?

8 EXAMINER ADDISON: Certainly.

9 MR. SETTINERI: Thank you.

10 EXAMINER ADDISON: Let's go off the
11 record.

12 (Discussion off the record.)

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

15 After a brief discussion off the record,
16 we will take up the admission of Company Exhibits
17 182, 183, and 184 tomorrow morning.

18 We are adjourned for today. We will meet
19 again at 9 o'clock tomorrow morning. Thank you, all.

20 Let's go off the record.

21 (Thereupon, at 1:54 p.m., the hearing was
22 adjourned.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is
3 a true and correct transcript of the proceedings
4 taken by me in this matter on Thursday, January 21,
5 2015, and carefully compared with my original
6 stenographic notes.

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10
11 Karen Sue Gibson, Registered
Merit Reporter.

12 (KSG-80068)

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Case No(s). 14-1297-EL-SSO

Summary: Transcript in the matter of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company hearing held on 01/21/16 - Volume XL electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.