

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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PROCEEDINGS

before Mr. Gregory Price, Ms. Mandy Chiles, and
Ms. Megan Addison, Attorney Examiners, and
Commissioner Asim Z. Haque at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 9:00 a.m. on Friday,
January 22, 2016.

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 - - -

8566

1	INDEX		
2	- - -		
3	WITNESSES		PAGE
4	Joseph P. Kalt, Ph.D.		
	Direct Examination by Mr. Petricoff		8601
5	Cross-Examination by Mr. Kurtz		8627
	Cross-Examination by Mr. Kutik		8638
6	Further Cross-Examination by Mr. Kurtz		8687
	Further Cross (Continued) by Mr. Kurtz		8701
7	Further Cross-Examination by Mr. Kutik		8709
	Redirect Examination by Mr. Petricoff		8712
8	- - -		
9			
10	COMPANIES EXHIBITS	IDENTIFIED	ADMITTED
11	182 - Dynegy Press		
	Release 9/8/15	XL-8536	8570
12			
13	183 - Dynegy Press		
	Release 9/10/15	XL-8540	8570
14	184 - Dynegy Investor		
	Day Presentation		
15	June 2015	XL-8544	8570
16	185 - Testimony of J. Kalt		
	in Case No. 13F--145E,		
17	Public Utilities		
	Commission of the		
18	State of Colorado	8645	--
19	186 - Testimony of J. Kalt		
	in Case No. E-2, Sub 998,		
20	et al., North Carolina		
	Utilities Commission	8647	--
21			
22	187 - SNL Natural Gas		
	Forwards & Futures,		
23	12/1/10	8650	--
24	188 - CME Group, Crude Oil		
	Futures Settlements,		
25	1/20/16	8656	--
	- - -		

8567

INDEX (Continued)

- - -

COMPANIES EXHIBITS

IDENTIFIED ADMITTED

189C	- Expert Report on Quantum of J. Kalt, ICSID Case No. ARB/08/6 (Confidential)	8665	--
190	- SNL Financial NYMEX Henry Hub Futures, 12/16/15	8672	--
191	- SNL Financial NYMEX Henry Hub Futures, 12/29/15	8672	--
192	- ICF, "Marcellus Juggernaut" article	8674	--
193	- EIA Short-Term Energy Outlook for March, 2014	8679	--
194	- EIA Short-Term Energy Outlook for April, 2014	8679	--
195	- EIA Short-Term Energy Outlook for March, 2015	8679	--
196	- EIA Short-Term Energy Outlook for April, 1915	8679	--

- - -

OEG EXHIBIT

IDENTIFIED ADMITTED

3	- US EIA Coal Markets, 1/11/16	8701	--
---	-----------------------------------	------	----

- - -

8568

INDEX (Continued)

- - -

P3/EPISA EXHIBITS

IDENTIFIED ADMITTED

12 - Second Supplemental
Testimony of Joseph
P. Kalt, Ph.D.

8601 8719

12A - Errata Sheet Joseph P.
Kalt, Ph.D.

8601 8719

13C - Second Supplemental
Testimony of Joseph
P. Kalt, Ph.D.
(Confidential)

8601 8719

- - -

8569

1 Friday Morning Session,
2 January 22, 2016.

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

5 Good morning. The Public Utilities
6 Commission has set for hearing at this time and place
7 Case No. 14-91297-EL-SSO, being In the Matter of the
8 Application of the Ohio Edison Company, The Cleveland
9 Electric Illuminating Company and The Toledo Edison
10 Company for Authority to Provide for a Standard
11 Service Offer pursuant to Revised Code 4928.143 in
12 the Form of an Electric Security Plan.

13 This is our 41st day of hearing in this
14 proceeding. My name is Gregory Price. With me are
15 Megan Addison, Mandy Chiles, and Commissioner Asim
16 Haque. We are presiding over today's hearing.

17 We will dispense with appearances and
18 begin with the admission of Company Exhibits 182,
19 183, and 184 from yesterday's hearing.

20 EXAMINER ADDISON: Are there any
21 objections to the admission of Companies Exhibits
22 182, 183, and 184?

23 MR. SETTINERI: No.

24 EXAMINER ADDISON: No objections?

25 MR. MENDOZA: Your Honor, I object to 184

1 but not the other two.

2 EXAMINER ADDISON: Thank you. We are
3 going to overrule the objection and admit those
4 exhibits at this time.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER PRICE: Ms. Willis, we had an
7 issue regarding administrative notice of an OCC
8 exhibit.

9 MS. WILLIS: Yes, your Honor. Per your
10 request I did make a proposal to the -- both the
11 company and IGS with regard to proposed excerpts
12 associated with the administrative notice. I have
13 not heard back from either party as to whether my
14 proposal was acceptable.

15 EXAMINER PRICE: Mr. White -- Mr. Olikier.

16 MR. OLICKER: Your Honor, starting with
17 the broadest request I believe there is the entirety
18 of the staff report requested to be administratively
19 noticed, and it's not -- it's not clear why that
20 entire document should be administratively noticed at
21 this point in time because it's quite broad and
22 covers many issues that are not at play in this
23 hearing, so maybe -- if my microphone would work. It
24 would be helpful to hear why exactly that document is
25 relevant in its entirety from Ms. Willis.

1 Regarding the other issues, I believe it
2 talks largely about the elimination of default
3 service, which simply is not an issue in this
4 proceeding or in any of the issues it relates to with
5 the IGS company agreement, so I don't know why that's
6 relevant or the companies' response, so I would say
7 the documents are irrelevant to the issues at
8 consideration.

9 MS. WILLIS: Your Honor, if I may quickly
10 respond.

11 EXAMINER PRICE: Ms. Dunn will respond
12 for the companies and then I will let you respond.

13 MS. DUNN: I echo IGS's comments. I echo
14 Mr. Oliker's comments on this. I have copy of the
15 staff report if your Honor would like to refresh your
16 recollection of it, but it is quite broad and deals
17 with the seamless move contract, portability, and the
18 instant connect portion of the RMI. It was simply
19 staff's report in response to the Commission order
20 requesting they investigate it. I don't see the
21 relevance. The first prong of the three-factor test
22 is negotiating among parties, and that's why we
23 believe it's not appropriate or relevant for
24 administrative notice and echo the rest of the
25 comments by Mr. Oliker.

1 EXAMINER PRICE: And the excerpts to the
2 two documents you did not find acceptable?

3 MS. WILLIS: There were four documents.

4 EXAMINER PRICE: Four documents.

5 MS. DUNN: If your Honors are fine with
6 it, your Honors are going to let that in, I agree,
7 though it's not relevant with Mr. Oliker -- or as
8 Mr. Oliker said, but they are what they are.

9 EXAMINER PRICE: Ms. Willis.

10 MS. WILLIS: Yes, your Honor. I believe
11 the ruling was that these are coming in and that the
12 relevancy was -- the relevancy objections were
13 overruled, so I'm not sure why we are talking about
14 relevance at this point.

15 I would also indicate with respect to the
16 only document that was really addressed as being
17 overly broad, the staff report, I would note that
18 there's been many documents, for instance, the PJM
19 rules, where one piece -- one question was asked
20 about one section of a 52-page document, and that
21 was -- that all came in, so I'm not sure why we
22 wouldn't want to be consistent with our prior rulings
23 on letting documents in. I don't think it's
24 prejudicial. It represents the staff report. It is
25 a document within the Commission's docket. These are

1 all docketed at the Commission, and I don't
2 understand why we wouldn't just take administrative
3 notice of these documents and my proposals.

4 MS. DUNN: Your Honor, if I may, what we
5 haven't heard is the relevance of the document.

6 MR. OLIKER: Your Honor, if I may add, we
7 talked about an agreement between IGS and the
8 companies, and now we are seeking administrative
9 notice of a staff report when staff wasn't involved
10 in this agreement that these allegedly relate to, so
11 we are just grabbing evidence to throw in the record
12 for the sake of doing it.

13 EXAMINER PRICE: Why don't you refresh
14 our recollection on the relevance of the staff
15 report.

16 MS. WILLIS: The relevance, well, we can
17 start with the 12-3151 --

18 EXAMINER PRICE: I am not worried about
19 that. I am just talking about the staff report.

20 MS. WILLIS: That kind of gives the
21 background. That was a Commission investigation that
22 looked at the competitive market and looked at a
23 number of issues, including standard service offer
24 and warm transfer, cold transfers. And the
25 Commission determined -- and in that docket IGS

1 supplied comments and the companies supplied reply
2 comments. And in IGS's comments, IGS proposed a
3 proposal that is very much like the proposal it has
4 agreed to in the side agreement in this case, and so
5 the Commission in the order in 12-3151 rejected that
6 approach.

7 And so I think the existence of the
8 comments and the companies' reply comments which
9 attacked IGS's proposal are relevant in arguing that
10 the Commission has spoken, and to adopt the side
11 agreement and the proposals that IGS has in the side
12 agreement would be a collateral attack on that -- on
13 the Commission's order in 12-3151.

14 EXAMINER PRICE: Understanding that the
15 Supreme Court has already held that side agreements
16 are not relevant for second- and third-prong purposes
17 then, it sounds to me like you are simply arguing the
18 merits of the programs that are to be proposed as a
19 result of the side agreement rather than how it
20 relates to the first prong, which the court has
21 directed us is the only relevant prong.

22 MS. WILLIS: Well, your Honor, there is a
23 connective issue. The connective issue is you have a
24 signature on a stipulation, and the only reason the
25 signature is on a stipulation is because of a side

1 agreement, so it goes to whether or not there was --
2 certainly it is on the merits and certainly it is
3 related to whether those proposals are appropriate,
4 but it also goes to the first prong in looking at the
5 integrity of the negotiations process.

6 There is an issue as to whether or not
7 the side agreement that IGS was able to close the
8 deal on was -- was being -- whether those discussions
9 were being undertaken at the same time with different
10 parties at different times in this proceeding
11 relating to the other numerous stipulations, so I
12 think there is a question of the integrity of the
13 stipulation process, and I think that this
14 evidence --

15 EXAMINER PRICE: I am not understanding
16 your -- I am not understanding what you just said and
17 why that's relevant.

18 MS. WILLIS: Your Honor, I guess I am
19 going to go back to I thought the ruling was last
20 week that it was relevant, it was admitted, and now
21 we are addressing the scope of these documents, not
22 whether or not these documents should be admitted.

23 EXAMINER PRICE: No. 1, we can always
24 reconsider our rulings; and, No. 2, my recollection
25 is we had not reached the staff report. We had only

1 ruled upon the three sets of comments.

2 MS. WILLIS: That is correct, your Honor.

3 EXAMINER PRICE: So the staff report is
4 the one that we were talking about.

5 MS. WILLIS: And the staff report really,
6 again, rejects the IGS proposal and is further
7 evidence of the fact that it is inappropriate and
8 inconsistent with the Commission's orders.

9 MR. OLIKER: Which proposal are you
10 referring to, Ms. Willis? I am not following.

11 MS. WILLIS: I think both of the
12 proposals. There is mention of the Pennsylvania
13 process and why we can't -- and in the reply comments
14 of IGS, they are focusing on why we can't adopt the
15 Pennsylvania process, and I believe that's a process
16 that is incorporated into the side agreement.

17 EXAMINER PRICE: Here is where you are
18 losing me. On straight fixed available, the
19 Commission in a separate proceeding said we want to
20 move to straight fixed variable, and you are fighting
21 it tooth and nail in this proceeding and asking the
22 Commission to revisit that decision.

23 On this issue you're saying, well, the
24 Commission has already ruled and you can't change
25 your mind, and we get a get out of jail free card on

1 this issue.

2 MS. WILLIS: Your Honor, I think that's a
3 misinterpretation of our position. Our position is
4 that if a straight fixed variable rate design is
5 implemented, it should only be implemented in the
6 context of a distribution rate case. We haven't had
7 a distribution rate case for this company in eight
8 years, and now we are going to add another eight
9 years, so we are going to have 16 years.

10 EXAMINER PRICE: Your position was
11 founded upon the language in the Commission order
12 that said we should do this in our next distribution
13 rate case.

14 MS. WILLIS: That's correct, your Honor.

15 EXAMINER PRICE: So, again, my point is
16 exactly the same. I mean, on the one case you are
17 saying the Commission's ruled with respect to the
18 distribution rate case. The Commission has ruled;
19 you can never change your mind. This one the
20 Commission has ruled; you can never change your mind.
21 I am not sure if I follow your position. But you are
22 going to get what your want for the most part.

23 MS. WILLIS: I appreciate that.

24 EXAMINER PRICE: We will not allow -- I
25 mean, we will allow the administrative notice of all

1 four documents, including the staff report. You can
2 make your arguments as to the relevance. I think the
3 law is clear on the public interest. I think the law
4 is clear that you're wrong, but we'll let you have
5 your case so you can go ahead and make it to the
6 Commission.

7 We'll take the excerpts, but they are not
8 in the record, so if you could read into the record
9 the excerpts of the comments, then we will go ahead
10 and take administrative notice only of those
11 excerpts.

12 MS. WILLIS: Thank you, your Honor. With
13 respect to the comments of IGS filed 3/1/2013, page
14 3, beginning with Section C, carrying over to page 4
15 through the end of section C; staff report in its
16 entirety; the reply comments the company filed in
17 12-3151-EL-COI, page 14 through the end of page 15;
18 the initial comments of IGS filed 1/6/16 in case
19 docket 14-2704-EL-EDI, the entire document.

20 MR. KUTIK: Could I just ask the date of
21 the companies' reply comments?

22 MS. WILLIS: Yes, you may. The reply
23 comments were filed in docket 3151 on April 5, 2013.

24 EXAMINER PRICE: Thank you. We will take
25 administrative notice of those documents and the

1 excerpts as you have outlined and the Commission will
2 give it the weight it deserves.

3 MR. OLIKER: Was that 2015 or '13?

4 MS. WILLIS: I believe it was 2013.

5 EXAMINER PRICE: 2013.

6 MS. DUNN: Can we identify the staff
7 report for the record? I didn't hear that.

8 MS. WILLIS: That would be the staff
9 report that was filed in 14-2074-EL-EDI on July 16,
10 2014.

11 MS. DUNN: Actually, Miss Willis, if you
12 look, it's a typo on the front page. It was filed
13 July 16, 2015.

14 MS. WILLIS: Oh, I appreciate that.
15 Thank you.

16 EXAMINER PRICE: Thank you.

17 Okay. At this time we will take up the
18 question of IGS's letter. IGS filed a letter in the
19 docket withdrawing the majority of its testimony
20 given in this proceeding, and I believe Ms. Willis
21 has an objection to that.

22 MS. WILLIS: I do, your Honor. Quickly,
23 I want to go through the five points I am going to
24 address. First of all, the notice is procedurally
25 defective I am going to talk about. Second of all,

1 we believe in the reopening of the record does not
2 mean subtracting from the record, which is what IGS
3 is proposing to do here. Third, the filed testimony
4 was admitted into the record and constitutes the
5 public record and cannot be altered at this point.
6 Four, altering of the record prejudices OCC and
7 others; and, five, we are headed down a slippery
8 slope.

9 To begin with, your Honor, the notice was
10 filed through a letter filed at the Commission, and
11 that notice attempted to withdraw testimony that had
12 been marked and admitted into the evidentiary record
13 in this proceeding and had been subject to
14 cross-examination.

15 In fact, there were five pieces of
16 testimony, IGS Exhibits 11, 12, 13, 9, and 10
17 consisting of the Direct and Supplemental Testimony
18 of Witness White and the Direct and Supplemental
19 testimony of Mr. Haugen, I believe it's pronounced.

20 We would -- we would assert that no party
21 can unilaterally determine to withdraw testimony that
22 has already been admitted into the record and
23 subjected to cross-examination.

24 We believe that the notice was an
25 improper form to raise the issue before the

1 Commission, and that instead IGS should have filed a
2 motion and memorandum in support and should have
3 provided good cause to allow it to withdraw its
4 testimony. So we believe it is procedurally
5 defective.

6 The second point, your Honor, is in
7 this --

8 EXAMINER PRICE: Let's just pause on that
9 question. Nobody has been prejudiced by the
10 procedural defect. You had notice. We're here
11 arguing it. Nobody is prejudiced.

12 MS. WILLIS: Understood, your Honor.

13 EXAMINER PRICE: Nobody has been
14 prejudiced; is that right?

15 MS. WILLIS: With respect to that filing,
16 yes, we are given notice. We are given the
17 opportunity to be heard. But rules are rules and,
18 the Commission's rules should be followed.

19 Second point, your Honor, is that in this
20 phase of the hearing we are dealing with a reopening
21 of the record to take additional evidence that has
22 been limited in scope under 4901:1-24.

23 As your Honors recall, the attorney
24 examiners' entry granted the joint intervenors'
25 motion to reopen. It is a reopening to add to the

1 evidence, limited matters. It is not an opportunity
2 to subtract from the established record.

3 Third, your Honor, the record --

4 EXAMINER PRICE: With respect to that
5 point, he really wasn't trying to do this in the
6 hearing, was he? I mean, his withdrawal has nothing
7 to do with this week's hearing. He has filed a
8 withdrawal. He didn't make the motion at the
9 hearing.

10 MS. WILLIS: The evidence he presented in
11 the hearing has to do with the earlier versions of
12 the stipulation, that is correct.

13 EXAMINER PRICE: Thank you.

14 MS. WILLIS: Now, the third point, your
15 Honor, is that the record evidence -- the record
16 evidence in this case, which includes the testimony
17 that has been admitted into the record and subjected
18 to cross-examination, constitutes the public record
19 and may not be altered by agreement of the parties to
20 support a desired result.

21 Fourth point, your Honor, is that
22 altering the record by deleting the exhibits
23 prejudices OCC and others and interferes with the
24 appellate process that is assured under 4903.13 and
25 4903.21.

1 OCC and others should be able to rely on
2 the testimony filed and placed in the record by IGS.
3 In particular, your Honor, IGS -- if we could go
4 through the testimony, we can point to the points
5 that were made by IGS in its testimony and talk about
6 how that information was to be relied upon, or OCC
7 and others should be able to rely upon that
8 testimony.

9 If we take first the supplemental
10 testimony of Mr. Haugen, he testified that rider
11 RRS -- he testified against rider RRS testifying that
12 the utility and the affiliates are supposed to be
13 fully on their own in the competitive marketplace.
14 He also testified that RRS is a subsidy. Mr. Haugen
15 also testified that the PUCO would be unlawfully
16 regulating wholesale energy and capacity under the
17 RRS, and Mr. Haugen testified that the RRS is not
18 necessary to ensure that the plants continue to
19 operate.

20 EXAMINER PRICE: Did you have an
21 arrangement with IGS that they would present this
22 testimony on your behalf as opposed to you presenting
23 your own witness on this testimony?

24 MS. WILLIS: Well, your Honor, we were in
25 a -- we did have a common interest with IGS. In

1 fact, I'm not certain at this point whether a joint
2 defense agreement was signed, but there was -- there
3 were many communications between IGS and others with
4 respect to the joint opposition of the rider RRS.

5 EXAMINER PRICE: But did you have an
6 arrangement that said, we'll handle these topics?
7 You handle those topics?

8 MS. WILLIS: No, your Honor, we did not.

9 EXAMINER PRICE: Thank you.

10 MS. WILLIS: With respect to the
11 testimony of Mr. White, Mr. White's testimony focused
12 on that the stipulation should be rejected, that the
13 RRS was deceptively named and an unlawful subsidy
14 that violated preemption in Ohio law.

15 He also testified that it didn't pass the
16 three-prong test, that it violates all three prongs,
17 that rider RRS will not stabilize rates, and he
18 testified that it directly contradicts Ms. Vespoli's
19 testimony in front of the Ohio legislature. So the
20 points and the issues raised by the testimony should
21 be -- OCC and others should be able to use that
22 testimony to bolster and supplement its testimony
23 against rider RRS.

24 And we would note that OCC and others
25 forwent cross of IGS's witness based upon the fact

1 that at that point in time, IGS, such
2 cross-examination would not have been allowed because
3 IGS was a friendly witness.

4 And, finally, your Honor, the slippery
5 slope. We are now talking about withdrawing
6 testimony that has been admitted into the record and
7 has been subjected to cross-examination. In fact,
8 when --

9 EXAMINER PRICE: Or not subjected to
10 cross-examination.

11 MS. WILLIS: Pardon?

12 EXAMINER PRICE: Or not subjected to
13 cross-examination in the case.

14 MS. WILLIS: It was subjected to
15 cross-examination by the company, and, in fact, the
16 company admitted or had -- went through and admitted
17 four or five different exhibits with Mr. White and
18 Mr. Haugen, so now we are talking about whether or
19 not -- if the testimony is gone, is the
20 cross-examination gone? Are the exhibits gone? And
21 then, perhaps, are anybody else's testimony that
22 addresses any of the issues that were addressed by
23 Mr. Haugen or Mr. White gone? And is that
24 cross-examination gone?

25 I think, your Honor, we are at "It's a

1 Wonderful Life" moment. The testimony of Mr. Haugen
2 and Mr. White --

3 EXAMINER PRICE: Whose playing the angel?

4 MS. WILLIS: I am not sure the angel is
5 in this room. I could be Clarence, though. I would
6 be willing to take up that role.

7 But the fact of the matter is that
8 testimony there is -- it is related to a number of
9 issues and a number of -- a number of parties have
10 relied upon that and were intending to rely upon
11 that. The record was closed in this proceeding. It
12 has been reopened for a certain amount.

13 Now, we are talking about changing the
14 record. I believe it's highly inappropriate, highly
15 improper, and that it has not been done before in
16 this Commission, your Honor. I did research. I had
17 others do research. We could not find one instance
18 where testimony had been admitted into the record,
19 subjected to cross-examination, and then withdrawn.

20 EXAMINER PRICE: Well, before we go on to
21 Mr. Oliker, I will tell you you are incorrect that
22 the record was closed. The examiners never closed
23 the record in this -- the examiners did not close the
24 record in this proceeding at the conclusion of the 35
25 days of testimony, so that's factually inaccurate.

1 MS. WILLIS: Your Honor, I just might --
2 and there may not have been the ruling. I believe
3 that the parties were beginning to write their
4 briefs, treated the record as being closed.

5 EXAMINER PRICE: I understand, but that's
6 not exactly accurate. Whether you did or didn't,
7 that's not factually accurate, but it's also not
8 dispositive either.

9 Mr. Olikar.

10 MS. BOJKO: Would you like supporting?

11 EXAMINER PRICE: Ms. Willis did an
12 extensive and thorough job. We will come back to you
13 after Mr. Olikar.

14 MS. BOJKO: I wanted a chance before
15 Mr. Olikar.

16 EXAMINER PRICE: Okay. Go ahead.

17 MS. BOJKO: I am happy to go after him.

18 EXAMINER PRICE: No, no. Go ahead.

19 MS. BOJKO: And I do not want to repeat
20 everything that Ms. Willis said. OMAEG supports all
21 of the arguments made. The only thing I would add is
22 with your question as to whether parties did rely on
23 testimony or not in deciding whether to file their
24 own testimony or not, I will tell you that we did
25 rely on attachments to testimony and documents that

1 had been admitted.

2 As you are aware, for administrative
3 efficiency, we don't readmit or remark certain
4 documents. So if those documents are now taken out
5 or withdrawn from the record, then we will be
6 prejudiced by those because those are documents we,
7 ourselves, would have admitted into the record or
8 attempted to admit into the record at various points
9 in time. So with respect to that, we did rely on
10 portions of either data responses or, I don't know,
11 say, testimony that was filed attached to certain
12 testimonies.

13 The second point --

14 EXAMINER PRICE: You took a risk. You
15 took a risk, and it may not have panned out for you.

16 MS. BOJKO: I didn't take a risk, your
17 Honor. It was admitted into the record. As typical,
18 we don't readmit the same document twice, so, I mean,
19 if you are saying that then all the companies'
20 exhibits are subject to be withdrawn --

21 EXAMINER PRICE: No. I'm curious as to
22 if you had to file your testimony at the same time he
23 had to file his testimony, how --

24 MS. BOJKO: That's not what I am saying,
25 your Honor. I am saying the attachments to the

1 testimony, if they were marked and admitted into the
2 record, then we did not then again try to mark and
3 bring in those exhibits. We wouldn't have been able
4 to mark them as separate exhibits.

5 EXAMINER PRICE: You would have brought
6 them on cross because you are relying on his.

7 MS. BOJKO: Right.

8 EXAMINER PRICE: That makes sense.

9 MS. BOJKO: Thank you for clarifying.

10 The second point I would have would be
11 that the ability to cross-examine the testimony that
12 now still exists in the record has been lost, as
13 Ms. Willis pointed out, that had we attempted to
14 cross, we would have gotten objections for friendly
15 cross, so I think anything that's left in the record,
16 which is the proposal, did not get the fair
17 cross-examination that there might otherwise have
18 been from a party on the other side just by the
19 process itself of who crosses when.

20 Thank you, your Honor.

21 EXAMINER PRICE: Mr. Petricoff.

22 MR. PETRICOFF: To make it complete, we
23 will join with the objection. Obviously, we will not
24 repeat the arguments. I do want to add one
25 additional one, and that is, in terms of balancing

1 the equities, we have not heard any reason -- and
2 Mr. Olikier can be heard after this. But we've heard
3 no reason as to what the relative benefits of taking
4 these items out of the record and creating voids in
5 the record would be. Certainly there will be some
6 harm. I think you have to balance the equities, and
7 the balance should be to leave it in.

8 EXAMINER PRICE: Mr. Petricoff, you have
9 been around as long as anybody, so I will ask you the
10 precedent question. We all know that the Commission
11 has allowed parties to withdraw testimony prior to
12 its admission into the record in the event of a
13 stipulation.

14 Can you recall any instance in the past
15 where the Commission has allowed a party to withdraw
16 its testimony after its been admitted into the
17 record?

18 MR. PETRICOFF: No. I think -- as far as
19 I know, it's a question for suppression.

20 MR. OLIKER: Your Honor, can I ask a
21 follow-up question? Is there any time where they
22 have said you can't?

23 EXAMINER PRICE: Well, this may be the
24 one, Mr. Olikier.

25 MS. FLEISHER: Your Honor, if I may just

1 add one additional concern, just to pile on a little
2 bit more, ELPC obviously joins the opposition to the
3 motion to withdraw, and I just have a real particular
4 concern with respect to testimony that's been
5 admitted into the record.

6 Yes, it's filed as an exhibit, but that
7 is testimony, direct testimony given by a witness.
8 If you can withdraw that, can you withdraw responses
9 on cross-examination? I think it opens the question
10 as to what the limit is as to whether you can
11 withdraw things in the record. Can you withdraw
12 exhibits that the party has gotten admitted? And so
13 it's -- it's not clear how you would draw that line.

14 EXAMINER PRICE: Mr. Olikar.

15 MR. OLICKER: Thank you, your Honor.

16 EXAMINER PRICE: You finally get a chance
17 to respond.

18 MR. OLICKER: Before I do proceed, I want
19 to make sure I am responding to the right thing. I
20 understand there is no objection to the withdrawal of
21 testimony that has not been sponsored, admitted into
22 the record by Mr. White, which was intended to be
23 filed in this stipulation hearing.

24 Ms. Willis?

25 MS. WILLIS: Our objections go to the

1 testimony that was admitted into the record.

2 MR. OLIKER: Thank you. Okay.

3 Response, relatively brief, just that
4 it's common practice that when a stipulation is
5 entered into between parties, that party or any party
6 withdraws their testimony that they otherwise filed.
7 I think that has happened with Industrial Energy
8 Users of Ohio already at least once in this case. It
9 happens in many other cases as well.

10 Regarding the questions about prejudice,
11 which I think is the main issue that we're
12 considering right here, there is no prejudice to any
13 party. I think your Honor already touched on many of
14 the important points. There was no agreement between
15 IGS or any other party regarding the testimony that
16 would be submitted in any particular phase regarding
17 any of these stipulations, so no party can show that
18 this damaged their ability to present their case.

19 Many of the issues that Ms. Willis
20 identified was regarding positions that OCC has
21 already made in their own testimony and that they
22 will not be deprived from making in their
23 post-hearing brief. It's only duplicative evidence.

24 Regarding potential attachments to the
25 testimony, there -- the one attachment that comes to

1 mind I believe was a document that could not be
2 authenticated by FirstEnergy, which were related to
3 Ms. Vespoli. OMA took a risk by not including that
4 in its own testimony. It could not have been
5 admitted in cross-examination in this case, I
6 believe. It had to be sponsored by a witness, and
7 they took that risk when on the same day we filed
8 testimony, and they did not include it. They had
9 other testimony that they selected to include in
10 theirs, and they did not include this one. They ran
11 that risk.

12 Regarding whether or not there is
13 precedent, I don't believe there is precedent,
14 necessarily, that would say that IGS's request is
15 inappropriate. There is wide latitude in Commission
16 practice for the attorney examiners to determine
17 evidentiary issues. While we do follow the Ohio
18 Rules of Evidence, which I haven't actually heard any
19 citations to, the Commission itself has wide latitude
20 to determine how its own proceedings are conducted.

21 So I would say there's no prejudice in
22 this case, and it's customary for a party to withdraw
23 its testimony when it enters a stipulation.

24 EXAMINER PRICE: I think it's customary
25 to withdraw testimony that's not been admitted,

1 Mr. Olikier. I cannot recall a previous instance
2 where a party was permitted to withdraw its testimony
3 after the testimony has been admitted.

4 But let me just ask you one quick
5 question. Isn't the Commission wise enough and
6 discerning enough to understand how much weight to
7 give your testimony once you have signed on as a
8 signatory party?

9 MR. OLIKER: Your Honor, I would never
10 question the wisdom of the Commission, if that's what
11 you are asking.

12 EXAMINER PRICE: Okay. Perfect.

13 Mr. Kutik.

14 MR. KUTIK: Your Honor, it's been the
15 policy of forums, whether it be courts or
16 administrative litigation, to favor the amicable
17 resolution of disputes, and IGS's agreement in this
18 case is part of that resolution and should be favored
19 in terms of what it wants to do with respect to its
20 evidence.

21 The only real question, your Honor, is
22 whether there has been any prejudice here, and there
23 hasn't been. The recitation of arguments that were
24 included in the testimonies of the IGS witnesses can
25 all still be made. There is, for example, arguments

1 as to the lawfulness of the Commission's ability to
2 regulate this, whether it violates Ohio statutes,
3 which were, frankly, improper in IGS's testimony, can
4 still be made in brief by all the other parties.

5 With respect to the issues of whether
6 this is a so-called subsidy that's at issue in this
7 case for whether the PPA, as proposed, is necessary
8 for the continued operation of the plants are all
9 questions and issues that have been well-litigated in
10 this case without reference to the IGS testimony.

11 And with respect to the question of
12 cross-examination on the remaining testimony of IGS,
13 well, if the other parties were adverse on those
14 issues before, they should have been able to cross,
15 and they should have been able to argue that with
16 respect to this particular testimony, we should be
17 allowed to cross-examine, and they did not do so.

18 And so for all those reasons, your Honor,
19 there is no prejudice here. They have pointed to
20 none, and the record is fully able to support
21 whatever arguments they want to make in that regard,
22 and so IGS's request should be granted.

23 MS. WILLIS: Your Honor.

24 EXAMINER PRICE: One second. I
25 understand the prejudice issue, Mr. Kutik, and I

1 sympathize with your point. I guess I will ask you
2 two questions. One is the question I just asked
3 Mr. Olikar. Isn't the Commission discerning enough
4 to understand that a party might take a litigation
5 position and then reach an amicable resolution, and
6 isn't the Commission able to understand how much
7 weight to give to that testimony?

8 MR. KUTIK: Certainly, your Honor. The
9 parties to a settlement also, I believe, have a role
10 to play in what record they would like the Commission
11 to review.

12 EXAMINER PRICE: And then I guess --

13 MR. KUTIK: And the court.

14 EXAMINER PRICE: The other question I
15 have is the question I have been asking everybody.
16 Are you aware of a precedent where the Commission has
17 allowed a party to withdraw its testimony after it's
18 been admitted into the record?

19 MR. KUTIK: Although I am not aware of
20 any Commission precedent, I am aware of precedents in
21 courts. I can't cite you with specific case law. In
22 terms of my personal experience where the court has
23 determined that, you know, we will not take notice of
24 a hearing, for example, that consequently resulted in
25 a settlement or a consent decree in a discrimination

1 matter, for example.

2 EXAMINER PRICE: Ms. Willis, briefly,
3 please.

4 MS. WILLIS: Yes, your Honor. I would be
5 remiss if I did not point out the fact that we do
6 believe that the prejudice also occurs because this
7 interferes with the appellate process. The appellate
8 process ensured under 4903.13 and 4903.21, which
9 requires a transcript of the records of the
10 proceedings to be -- to be provided to the court if
11 an appeal is made.

12 Fooling with the record and taking things
13 out of the record that have been admitted into the
14 record influences and, we would say, prejudices our
15 right to take that appeal up with a full record, and
16 I might also add, your Honors, that the fact that the
17 testimony has been provided, and in the public
18 record, it would seem to be inconsistent with the
19 transparency that is generally afforded Commission
20 proceedings to take evidence out of the record and
21 out of the public.

22 EXAMINER PRICE: I have to say,
23 Ms. Willis, I think that argument is a stretch.
24 Mr. Oliker is not going into the docketing department
25 and physically removing the documents. The court

1 reporter is not removing the cross-examination. If I
2 rule -- if I rule in Mr. Olikier's favor, you will
3 have a right to address that ruling on brief before
4 the Commission. If the Commission sustains its
5 ruling, you will have a right to raise it on
6 rehearing, and if the Commission still sustains the
7 ruling on rehearing, you will have a right to raise
8 it before the Ohio Supreme Court, and all of the
9 information, the transcripts, the exhibits, and the
10 testimony will be in the record.

11 We are not messing around with the
12 record. The record will be exactly what happened,
13 and the court will have an opportunity ultimately to
14 decide exactly how this should be disposed of, so I
15 don't -- I think it's highly inflammatory to say we
16 are messing with the record. Nothing is being
17 removed from the record. The question simply -- from
18 the actual record. It is whether the evidence that's
19 been admitted and the Commission should rely upon it.

20 Having said that -- having said that, we
21 are going to deny Mr. Olikier's request to withdraw
22 his testimony. We are not going to set a precedent
23 in this proceeding that a party can withdraw its
24 testimony after it has been admitted into the record

25 MR. KUTIK: Your ruling isn't with

1 respect to Mr. White's testimony for the third
2 supplemental stipulation?

3 EXAMINER PRICE: No, that does not apply
4 to Mr. White's testimony, which has not been admitted
5 to the record -- on the third supplemental
6 stipulation, which has not been admitted into the
7 record.

8 The Commissioners are certainly able, as
9 we have all discussed, give due weight to the
10 evidence -- the testimony of the IGS witnesses and
11 how they should balance that against the fact that
12 IGS consequently became a signatory party.

13 It's not unusual for parties to have a
14 litigation position and then consequently move on to
15 settle the case or reach a resolution, as I believe
16 staff has in this proceeding and some other parties.

17 With that, Mr. Oliker, your request to
18 withdraw your testimony is denied, except with
19 respect to Mr. White's testimony on the third
20 supplemental stipulation

21 MR. OLIKER: Thank you, your Honor.

22 MR. KURTZ: Your Honor.

23 EXAMINER PRICE: Yes, sir.

24 MR. KURTZ: One observation, your ruling
25 is consistent with what happened in the AEP PPA

1 proceeding where there was a lot of testimony that
2 went in and there was a subsequent Settlement
3 Agreement. None of that testimony was withdrawn.

4 EXAMINER PRICE: Thank you, Mr. Kurtz.

5 At least we are consistent. Right or
6 wrong, we are consistent.

7 Okay. Ms. Fleisher, we will take up your
8 motion to strike after we take this witness.

9 MS. FLEISHER: Certainly, your Honor.
10 Thank you.

11 EXAMINER PRICE: Let me familiarize
12 myself with what happened.

13 Go off the record.

14 (Discussion off the record.)

15 EXAMINER PRICE: Let's go back on the
16 record. At this time, Mr. Petricoff, you may call
17 your first witness.

18 MR. PETRICOFF: Thank you, your Honor.
19 At this time we would like to call Dr. Joseph P. Kalt
20 to the stand.

21 (Witness sworn.)

22 EXAMINER ADDISON: Thank you. You may be
23 seated.

24 Please proceed, Mr. Petricoff.

25 MR. PETRICOFF: Thank you, your Honor. I

1 would like to have three documents marked. This
2 would be P3/EP SA, and I think we are up to 12, and we
3 would like to have marked as 12 the public version of
4 the Second Supplemental Stipulation of Joseph P.
5 Kalt.

6 And then we have an errata sheet that
7 goes with the testimony, and I guess we would call it
8 12A

9 And then also we would like to have
10 marked as Exhibit 13 the Confidential Version of the
11 Second Supplemental Testimony of Joseph P. Kalt.

12 EXAMINER ADDISION: It will be so marked.

13 MR. PETRICOFF: C for confidential.

14 (EXHIBITS MARKED FOR IDENTIFICATION.)

15 - - -

16 JOSEPH P. KALT, PH.D.

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

19 DIRECT EXAMINATION

20 By Mr. Petricoff:

21 Q. Dr. Kalt, on whose behalf do you appear
22 today.

23 A. P3 and EP SA. I'm sorry about that. The
24 P3 group and EP SA.

25 Q. Thank you. And do you have with you

1 copies of what has been marked as P3/EPSA Exhibits
2 12, 12A, and 13C?

3 A. I don't have the public version. I have
4 the confidential version with portions in yellow that
5 tells me what's confidential, but I don't have two
6 separate pieces.

7 Q. Would you like a copy?

8 A. No. I can follow it.

9 Q. And did you prepare these?

10 A. Yes, I did.

11 Q. And would you like to make changes to --
12 to Exhibit 12 and 13?

13 A. Well, there is the errata you just passed
14 out, and I would make those changes.

15 Q. Would you review them just quickly, what
16 the changes are.

17 A. Yes. On page 2, line 8, "FirstEnergy"
18 should be changed to "FirstEnergy or FE."

19 And then throughout on pages 4, 6, 7, 11,
20 20, 22, and 23, "FES'," all caps, apostrophe, should
21 be changed to "FE's," apostrophe, small "s".

22 Q. Okay.

23 A. Then on page 10, line 18, after the word
24 "calculations;" should add "(2)".

25 On page 10, line 20, after the word

1 "Companies;" you should add "(3)".

2 On page 15, line 12, "21010" should be
3 changed to "2010."

4 And then on page 17, line 4, "billion"
5 should be changed to "million."

6 Q. Okay. With those changes made, are there
7 any other changes to the testimony that you would
8 like to make?

9 A. No.

10 Q. And if I asked you the questions today,
11 would your answers be the same given these changes?

12 A. Yes, they would be.

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

15 EXAMINER ADDISON: Thank you very much.

16 Are there any motions to strike?

17 MR. KUTIK: Yes, your Honor.

18 EXAMINER ADDISON: Please proceed,

19 Mr. Kutik.

20 MR. KUTIK: May I ask one question about
21 the errata sheet, though?

22 EXAMINER ADDISON: You may.

23 MR. KUTIK: Before we begin,
24 Mr. Petricoff, with respect to page 6, there is a
25 reference to "FES" on line 11. Was that meant to be

1 changed to "FE" as well?

2 Perhaps I should ask the witness.

3 MR. PETRICOFF: Yeah. I think that's one
4 for the witness.

5 THE WITNESS: On that one, on page 11 --
6 page 6, line 11, it should be changed to "FE," yes.

7 MR. KUTIK: Thank you. All right.

8 Your Honor, we have several motions to
9 strike. Our first motion to strike, your Honor,
10 relates to the testimony beginning on page 3 at line
11 13, beginning with question No. 5 and going to page
12 6, line 2, which is essentially the entirety of the
13 question and answer No. 5.

14 Your Honors, we have discussed in this
15 case, this hearing is about the third supplemental
16 stipulation and the changes that the third
17 supplemental stipulation makes with respect to the
18 proposal before the Commission. The effects of that
19 proposal -- those changes, as well as the settlement
20 process. This portion of the testimony is a simple
21 regurgitation of testimony that's already been given
22 in this case so it's cumulative.

23 It also seeks to put forth evidence,
24 again, which was highly questionable to begin with.
25 For example, on page 4 the text and the accompanying

1 footnote 5 and the testimony that's cited at footnote
2 5, you may recall, were questions that were asked in
3 response to the Bench's questions relating to a
4 calculation, which as the Bench noted at the time,
5 had several issues and problems with it, and so we
6 shouldn't just assert facts again that were wrong to
7 begin with again.

8 So for all those reasons we don't need to
9 do cross-examination on those subjects again, and we
10 would move to strike for those reasons.

11 EXAMINER ADDISON: Thank you.

12 Mr. Petricoff.

13 MR. PETRICOFF: Thank you, your Honor.
14 It is accurate to say that this is a summing up of
15 the previous position, but I think the reason for
16 doing this is actually it leads to judicial economy
17 as opposed to subtracting from it. The testimony as
18 described in -- on page 1 and the purpose is just to
19 highlight what the changes are that have been made in
20 the stipulation and then see what the impact is.

21 And it's important to know, first, do the
22 changes that were made, and the major ones are the
23 term, the rate of return, and the \$100 billion
24 credit, does that change any of the objections that
25 were there?

1 So basically following a very clear
2 pattern, we state what the earlier problems were,
3 what was changed, and then basically it's summed on
4 what the impact was, which in this case was it didn't
5 address those.

6 So it -- it basically makes it easier to
7 follow. If we take it out, we lose some of the
8 continuity, and there is no harm that flows from
9 having this being a bit redundant, in fact, in a
10 41-day hearing it is impossible to avoid redundancy.

11 EXAMINER ADDISON: I'll agree with you on
12 that. At this time we are going to deny the motion
13 to strike. I think we've held previously that
14 summaries of past testimony are harmless in this
15 context, and despite this summary being rather
16 lengthy, it again is harmless, and for that reason we
17 are going to deny the motion to strike.

18 MR. KUTIK: Your Honor, our second motion
19 to strike deals with page 9, the sentence that begins
20 on line 5 and ends on line 7. This is a statement
21 about what OCC has supposedly found, quoting a OCC
22 press release.

23 It's obviously a statement outside the
24 hearing, a declarant outside the hearing, and offered
25 for the truth. That's classic hearsay.

1 EXAMINER ADDISON: Thank you.

2 Mr. Petricoff?

3 MR. PETRICOFF: Yes, your Honor. I think
4 in this case the truth that's being offered here is
5 there are important nonsignatory parties. I don't
6 believe when you read it, that the 4.5 million -- I'm
7 sorry. I don't think that there's anything that is
8 asserted within the press release other than the fact
9 that who the party is that's making it, and,
10 therefore, it's not hearsay.

11 MR. KUTIK: And, of course, all those
12 things can be argued without reference to hearsay,
13 which is why it should be out.

14 EXAMINER ADDISON: Thank you, Mr. Kutik.

15 At this time we will grant the motion to
16 strike, including footnote 17.

17 MS. BOJKO: I'm sorry, could you just
18 state, just for clarity, what was stricken?

19 EXAMINER ADDISON: Certainly, Miss Bojko.
20 Line 5, the sentence starting with "The OCC," and
21 ending on line 7 ending with "Rider RRS," including
22 footnote 17.

23 MS. BOJKO: Thank you. I was confused by
24 the \$4.5 million reference.

25 MR. PETRICOFF: That's why I withdraw my

1 argument.

2 EXAMINER ADDISON: Please proceed,
3 Mr. Kutik.

4 MR. KUTIK: Your Honor, our next motion
5 starts on -- or is directed to page 13, line 20, the
6 sentence that begins there with the words "The
7 impact" and continues on to page 14, line 2. We
8 would then also move on the same grounds to strike
9 the testimony beginning on line 19 of page 14 after
10 the word "Yes," moving through the testimony on page
11 15, ending on line 8. And we would move to strike
12 the accompanying footnotes to that text as well as
13 the Attachment JPK-SS-1, which refers to some of the
14 data in that material.

15 This includes information from natural
16 gas forward curves developed by Argus, a forecast by
17 Moody's, a report from Raymond James, including
18 hearsay statements of Raymond James, a forecast from
19 and statements by Goldman Sachs, and information from
20 a website called Knoema.

21 This is hearsay, and the only thing that
22 it could possibly fit within would be as an exception
23 to the hearsay rule, which would be under Rule 803.17
24 which is a rule that allows market quotations, lists,
25 directories, or other compilations that are generally

1 relied upon by the public or by persons in a
2 particular occupation.

3 Under the first part of the rule, the
4 information must pertain to relatively
5 straightforward and objective facts. So information
6 that is data that is compiled, that might be fair
7 game, but information that reflects an analyses based
8 upon data is not fair game and is not properly
9 considered a market compilation under 803.17.

10 Further, this is not information widely
11 relied upon, even if one could consider it a
12 compilation of data. For many of these, Dr. Kalt,
13 who presumably should have been aware of these
14 resources if they had been generally relied upon by
15 people in this field, was not aware of them before he
16 filed his direct or supplemental testimonies in this
17 case.

18 So, your Honor, what I would like to do,
19 if I may, is approach the Bench to show you some
20 things and to also discuss Mr. Kalt's testimony in
21 his deposition.

22 EXAMINER ADDISON: Certainly, Mr. Kutik.

23 MR. PETRICOFF: Your Honor, at this point
24 I think that it's kind of late to ask for a voir dire
25 now. He can certainly in part of the

1 cross-examination ask him questions and move to
2 strike at that time. I think we can answer the
3 general arguments here for a hearing and then move on
4 if there is something specific that requires a
5 deposition to be used, visited at that time.

6 EXAMINER ADDISON: Your response,
7 Mr. Kutik?

8 MR. KUTIK: Yes, your Honor. I would
9 like to finish my argument, if I may. And I do
10 believe, your Honor, using his testimony in his
11 deposition is fair game to discuss his knowledge.

12 EXAMINER PRICE: You are not going to ask
13 the witness any questions now. You are just going to
14 refer to his deposition?

15 MR. KUTIK: I am.

16 MR. PETRICOFF: Your Honor, I would
17 object to any use of the deposition because it has
18 not been filed. So impeachment is fine, but can't be
19 used for any other -- any other purpose. And, quite
20 frankly, there is some question it can be used at all
21 because it has not been filed.

22 EXAMINER ADDISON: Before we allow
23 Mr. Kutik to proceed, Mr. Petricoff, please provide
24 us your response.

25 MR. PETRICOFF: Yes, thank you, your

1 Honor. I think the key fallacy in the -- actually,
2 let me go back and state what should be the obvious.
3 This is probably the most important issue facing the
4 Bench as to what the dollar harm will be to the
5 public. We are here because we have testimony from
6 the -- from the company witnesses on what the net
7 present value is, and this portion of the testimony
8 goes to whether that net present value is accurate,
9 and then Dr. Kalt's got a calculation of his -- of
10 his own.

11 Where this gets into the argument that's
12 just been raised is that there has been the assertion
13 here that these trade articles are being used for the
14 truth of their -- for the truth that appears in the
15 numbers in the agreement; that is, that the numbers
16 are being used, and that is not the use in this --
17 this -- in his testimony. Dr. Kalt's numbers do not
18 use -- in this calculation do not use Argus or
19 Moody's or Goldman Sachs or Knoema or any of the
20 others.

21 They are there purely to point out that
22 there is a lot of difference of opinion out in the
23 community that experts look at as to whether or not
24 there has been a sea change in gas price, which would
25 alter what the net present value would be and when

1 that took place.

2 So I think it is fair game for an expert
3 to talk about in forming an opinion, you know, what
4 are the other items that are out there, and that it
5 should not be struck, and we should not be going into
6 this voir dire merely because -- merely because he
7 has cited those if he didn't use them in the
8 calculation.

9 MR. KUTIK: Your Honor, may I continue to
10 make my record, please?

11 EXAMINER PRICE: I just want to ask -- I
12 don't -- I just want to ask Mr. Petricoff a question
13 before we go on with that. How can Mr. Kutik
14 cross-examine Moody's? I mean, the point is, we have
15 lots of testimony on projections, and people have
16 dissected projections and dissected the background
17 behind projections.

18 How can he possibly -- I mean, this is
19 straightforward. He is presenting this as a fact.
20 How can Mr. Kutik cross-examine Moody's?

21 MR. PETRICOFF: It is a published
22 document. The numbers are published.

23 EXAMINER PRICE: You would agree it is
24 not a market report within the scope of the rule?

25 MR. PETRICOFF: No, I am not sure I would

1 agree it's not a market report.

2 EXAMINER PRICE: Okay. Fair enough. The
3 Goldman Sachs is double hearsay. The Goldman Sachs
4 is -- the Natural Gas Intelligence is reporting
5 something Goldman Sachs said. That's a double
6 hearsay he can't cross-examine on; isn't that right?

7 MR. PETRICOFF: But the accuracy of the
8 numbers is not what's being asserted here, only that
9 these are out in the -- these numbers are out in the
10 community. Those numbers are out in the community.

11 MR. KUTIK: That's the fact.

12 EXAMINER PRICE: That's the fact. It's
13 still the trend of the numbers is -- I mean, he even
14 says, Is there any evidence of such significant
15 reductions in forecast and natural gas prices?

16 It's -- I think you are parsing a bit and
17 saying it is not the truth of the matter asserted.
18 It's just the trends out there. The trends are
19 still -- as to whether the trend is out there, it is
20 still hearsay.

21 EXAMINER ADDISON: At this time we are
22 going to grant the motion to strike.

23 MR. KUTIK: Your Honor, in light of that
24 ruling, we would further ask that page --

25 MR. PETRICOFF: Your Honor, before we do

1 that, can I go back and ask you a clarification on
2 the ruling?

3 EXAMINER ADDISON: Certainly.

4 MR. PETRICOFF: I understand we are going
5 to have stricken from the record page 13, line 20, to
6 page 14, line 2 and we are going to have stricken
7 page 14, line 19, to page 15, line 8. What I'm --

8 MR. KUTIK: And the footnotes.

9 MR. PETRICOFF: And the footnotes.

10 MR. KUTIK: And my motion also went to
11 JPK-SS-1, since that refers to some of the
12 information that has now been excluded.

13 MR. PETRICOFF: And that's the point I am
14 going to at the moment, your Honor, that I want
15 clarification on. I would assume that the only
16 portion of the JPK-SS-1 would be the -- one moment,
17 your Honor. Your Honor, in looking at the chart, the
18 numbers that are in the sections we are talking about
19 are just, you know, individual data points. The rest
20 of the -- the rest of the curves are there, and I
21 guess we would ask that the -- that the chart be left
22 in.

23 MR. KUTIK: Well, the chart includes
24 information from Argus, information that's clearly
25 hearsay, information that I can't cross-examine this

1 witness about, and so the whole chart should be out.

2 MR. PETRICOFF: Well, your Honor, if that
3 was true, everything that had to do with the EIA
4 would have to be taken out of this record. The
5 double hearsay had to do with the Goldman Sachs that
6 were on lines 3 to 8. The rest should be -- the
7 chart should be left in.

8 MR. KUTIK: I don't understand the
9 reference to the EIA. The EIA documents are
10 government reports. Unfortunately, this exhibit is
11 tainted by the fact it includes hearsay information
12 that I can't cross-examine -- I can't cross-examine.

13 MR. PETRICOFF: Well, the NYMEX, Henry
14 Hub is a published report.

15 EXAMINER ADDISON: Thank you, both.

16 MR. PETRICOFF: You can find that in the
17 newspaper and Wall Street Journal every day.

18 EXAMINER ADDISON: Thank you, both. We
19 believe the Commission is sophisticated enough to
20 determine that the Argus line refers to the numbers
21 that have been stricken. We will make note on the
22 record that that particular line will not be
23 considered during their decision. Thank you.

24 MR. KUTIK: Thank you, your Honor.

25 Our next motion is related to page 15,

1 lines 9 through 18, and footnotes 28 and 29. And
2 there are two grounds. Principally, this
3 statement -- these are statements that are reportedly
4 made by colleagues of Mr. Rose at ICF Consulting.
5 They are certainly not admissions of the company.
6 They are -- they are not even admissions of Mr. Rose.
7 Even if Mr. Rose would be considered to be an agent
8 of the company, experts really aren't considered
9 agents of the company under evidentiary law, and so
10 these statements are clearly hearsay and, therefore,
11 they should be stricken. There is no -- there is no
12 exception to the hearsay rule that applies to these
13 statements, and that's the first ground.

14 The second ground is to the extent that
15 this refers to and cites the rebuttal testimony of
16 Mr. Rose, it is improper surrebuttal. Those are my
17 grounds.

18 Thank you.

19 EXAMINER ADDISON: Thank you, Mr. Kutik.

20 Mr. Petricoff.

21 MR. PETRICOFF: Well, dealing with the
22 second point first, this is just pointing out the
23 difference between Mr. Rose's statement because of
24 developments that have taken place since then. It's
25 not an attachment on his rebuttal as opposed to I

1 think the testimony of Mr. Wilson that was -- that
2 was struck.

3 As for the knowledge for that -- the
4 witness has from these other statements, I guess that
5 is something that I guess we will have to have -- we
6 should have maybe some cross-examination on to see
7 the basis for those statements, to see if that is
8 something that is published. I don't know at the
9 moment whether it is.

10 EXAMINER ADDISON: Mr. Kutik?

11 MR. KUTIK: Well, there is something
12 called foundation that needs to be laid, whatever
13 foundation has been laid or not laid, so there is no
14 foundation for the document. They are clearly
15 referring to a report that somebody at ICF published,
16 somebody that isn't Mr. Rose. No examination was
17 made of Mr. Rose. No discovery was made with respect
18 to Mr. Rose and any potential connection that
19 Mr. Rose might or might not have with respect to this
20 particular document, so it was just another report
21 out in the Ethernet that should be considered like
22 any other report out in the Ethernet, which is
23 hearsay.

24 MR. PETRICOFF: One last point on this,
25 your Honor, these will all -- this is the company

1 from which Mr. Rose is employed. These are items
2 that ICF is putting out to the public on the -- on
3 the internet, so it may, in fact, reach the status of
4 a published report. I think it's fair to be used by
5 an expert in forming their opinion.

6 EXAMINER ADDISON: Thank you,
7 Mr. Petricoff.

8 Mr. Kutik, what would prevent you from
9 brining in Mr. Rose to respond to the information
10 from ICF International here?

11 MR. KUTIK: I guess the question is why
12 should I bring in Mr. Rose to respond to that when
13 it's improper testimony to begin with?

14 EXAMINER PRICE: Because we would like to
15 construe all hearsay exceptions broadly, and although
16 you're almost certainly technically correct, Mr. Rose
17 is not part -- is -- do you have something to say,
18 Ms. Bojko? Don't shake your head when I am speaking,
19 please.

20 MR. KUTIK: I'm sorry, your Honor. Go
21 ahead.

22 EXAMINER PRICE: Although you are almost
23 certainly technically correct, we do like to construe
24 hearsay exceptions broadly, and with the principle of
25 admission by a party opponent you would have an

1 opportunity to bring in Mr. Rose and explain why his
2 colleagues' statements are consistent with his or
3 otherwise, explain away the statement.

4 I understand that it does not necessarily
5 apply to agents and/or fellow employees of agents,
6 but I think the principle is the same. You can bring
7 in your witness and explain why this is correct or
8 incorrect.

9 MR. KUTIK: I'm sorry, your Honor, have
10 you made a ruling or, are you asking me a question?

11 EXAMINER PRICE: I was making a point.
12 Isn't it true you can bring in your witness. You
13 said, why should I have to? I said because we would
14 like to construe these things broadly.

15 MR. KUTIK: I guess the question is there
16 has to be a touch point that you take the ruling
17 from. As I believe you note, this isn't an admission
18 of a party. I mean, we can't -- it is improper to
19 have even other statements of Mr. Rose be admitted
20 against the company. And so the companies shouldn't
21 have to prolong the hearing because a proper
22 foundation wasn't laid for this particular piece of
23 evidence.

24 MR. PETRICOFF: Well, your Honor, if I
25 may be permitted, one last comment on this. There is

1 a difference in an administrative proceeding and a
2 court of law. In an administrative proceeding we
3 generally have loosened the rule on hearsay, and for
4 a very good reason.

5 In administrative law we are looking
6 forward. We are going to set prices and rules that
7 are going to be in the future, whereas a court of law
8 we are looking backward. Where were you on the night
9 of the murder? We are asking the question what will
10 the impact be in the future? The sum and substance
11 of not only Dr. Kalt's testimony, but several other
12 pieces here is that there's been a sea change in gas
13 prices, and even Mr. Rose's company is out there now
14 changing their view on this, and, rightly so, because
15 they are looking forward so we should use the more
16 liberal hearsay rule in this proceeding because we
17 are looking forward.

18 MR. KUTIK: That sounds like surrebuttal
19 to me, your Honor. So again, we have that additional
20 basis as well.

21 MR. PETRICOFF: Your Honor, I realize I
22 said only one more, but if I could be given some
23 leave there, when you look at Mr. Rose's testimony,
24 he says, "My name is Judah L. Rose. I am the
25 managing director of ICF International."

1 And then they ask, "What is ICF
2 International" is the next question down in his
3 direct.

4 EXAMINER ADDISON: Ms. Bojko.

5 MS. BOJKO: I actually was agreeing with
6 the Bench, so I think that it's a slippery slope. So
7 I wasn't shaking my head at you, your Honor. I was
8 agreeing. It's a slippery slope to say that a
9 witness somebody puts forth is not -- would not fall
10 under admission of party opponent. We wouldn't be
11 able to use prior statements against the witness, and
12 that's the exact thing that those rules are in place
13 for.

14 MR. KUTIK: Well, that's what
15 cross-examination is all about, not necessarily
16 collaterally attacking stuff with something other
17 people in the company may have said.

18 EXAMINER ADDISON: Thank you. I think
19 we've heard enough. I am going to grant the motion
20 in part and deny it in part. I will be granting it
21 starting on line 15 with the sentence, "This stands
22 in contrast," and ends on line 18, with "2025,"
23 including footnote 29.

24 MR. KUTIK: Where does it begin?

25 EXAMINER ADDISON: On line 15 after

1 footnote 28, "This stands in contrast."

2 MR. KUTIK: That sentence that begins on
3 15 and ends on 17, including the footnote?

4 EXAMINER PRICE: Yes -- no.

5 EXAMINER ADDISON: I apologize.

6 EXAMINER PRICE: All the way to 18.

7 EXAMINER ADDISON: I apologize, that was
8 my mistake.

9 MS. WILLIS: The two sentences and the
10 footnote?

11 EXAMINER ADDISON: Yes.

12 MS. WILLIS: Thank you.

13 EXAMINER ADDISON: Thank you, Mr. Kutik.

14 MS. WILLIS: And that would be footnote
15 29, not footnote 28? I'm sorry, I am trying to
16 follow this.

17 EXAMINER ADDISON: No, that's fine.
18 That's correct.

19 EXAMINER PRICE: That's correct.

20 MR. KUTIK: Your Honor, our next motion
21 deals with page 16, line 6, and we would ask or we
22 would move that the phrase "numerous analysts and,"
23 given your prior ruling, that those three words be
24 stricken.

25 EXAMINER ADDISON: Mr. Petricoff.

1 MR. PETRICOFF: Your Honor, he is an
2 expert. He is not only entitled to, he is supposed
3 to be cognizant of what's going on in the industry
4 and, I don't think that this -- those several words
5 violate the hearsay rule, just describing what he is.

6 MS. FLEISHER: Your Honors --

7 EXAMINER ADDISON: Yes, Ms. Fleisher.

8 MS. FLEISHER: Unless you are going to
9 deny the motion to strike, I did want to throw one
10 other thing in, which is in terms of the types of
11 expert testimony that has been allowed in this case,
12 Mr. Rose in his rebuttal testimony included a number
13 of observations and even specific numbers about
14 ongoing industry trends which he -- if you give me a
15 minute, I could pull up the transcript, which I
16 believe he testified were based on his general expert
17 knowledge, and so I think this would fall in this
18 same category, as an expert Mr. Kalt is aware what
19 analyses are out there.

20 EXAMINER ADDISON: At this time we are
21 going to deny the motion to strike.

22 MR. KUTIK: And our last motion to
23 strike, your Honor, relates to page 12, line 12, the
24 sentence that begins at the end of that line through
25 page 13, line 2. And then page 14, lines 3 through

1 16; and then line 16, line 1 -- I'm sorry, page 16,
2 line 1, through page 20, line 19.

3 Basically, your Honor, this is testimony
4 that is beyond the scope of the hearing. It's
5 testimony that could have been done in the prior
6 proceeding. It supposedly relates to updated
7 information, updates that have nothing to do with the
8 third supplemental stipulation and its terms. It
9 modifies the proposal, the effects of those
10 proposals, as well as the settlement process.

11 EXAMINER ADDISON: Thank you.

12 Mr. Petricoff.

13 MR. PETRICOFF: Yes, your Honor. I think
14 this one is straightforward. Ms. Mikkelsen's
15 testimony gives you a net present value on the impact
16 to customers. It relies on Mr. Rose's calculation,
17 but only a portion of Mr. Rose's calculation. It's
18 just the numbers in that shortened period of time.

19 Dr. Kalt is now reviewing the impact of
20 that. It just so happens that he did update
21 Mr. Rose's numbers from 18 months ago, and so all
22 that's going on here we are showing that Dr. Kalt is
23 showing there has been great changes since then. The
24 numbers have not been updated, and this is the
25 impact. This is exactly the kind of testimony that

1 should come in at this stage of the hearing.

2 EXAMINER ADDISON: Thank you. I believe
3 we've allowed similar information such as this during
4 this proceeding, so at this time I am going to deny
5 that motion to strike.

6 MR. KUTIK: Your Honor, may we go off the
7 record, please?

8 EXAMINER ADDISON: Let's go off the
9 record for a moment.

10 (Discussion off the record.)

11 (Recess taken.)

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

14 MR. KUTIK: Your Honor, in reviewing my
15 notes and in view of your rulings here, there is one
16 other motion to strike that I had.

17 EXAMINER ADDISON: Please proceed.

18 MR. KUTIK: That relates to page 17, the
19 sentence that begins on line 1 and ends on line 3 and
20 the footnote, footnote 31. This certainly in the
21 footnote refers to Mr. Rose's rebuttal testimony, and
22 it is an attempt to rebut points that Mr. Rose made
23 in his rebuttal testimony, so, therefore, it's
24 improper surrebuttal.

25 EXAMINER ADDISON: Thank you, Mr. Kutik.

1 Mr. Petricoff.

2 MR. PETRICOFF: Your Honor, our response
3 would be the same as on the last one. This is coming
4 in because Mr. Rose's testimony is a key component of
5 the revised net present value so it's fair game to
6 comment upon it, and to point out the changes.

7 EXAMINER ADDISON: Thank you. At this
8 time we are going to grant the motion to strike, and
9 that includes the sentence beginning on line 1,
10 ending on 3, including footnote 31.

11 Just to be sure, that does conclude your
12 motions to strike, Mr. Kutik?

13 MR. KUTIK: For now, your Honor.

14 EXAMINER ADDISON: Fair enough.

15 Ms. Fleisher, do you have any questions?

16 MS. FLEISHER: No questions, your Honor.

17 EXAMINER ADDISON: Mr. Pritchard?

18 MR. PRITCHARD: No questions, your Honor

19 EXAMINER ADDISON: Mr. Oliker?

20 MR. OLIKER: No questions, your Honor.

21 EXAMINER ADDISON: Ms. Bojko?

22 MS. BOJKO: No, thank you, your Honor.

23 EXAMINER ADDISON: Ms. Willis?

24 MR. WILLIS: No, thank you, your Honor

25 EXAMINER ADDISON: Mr. Kurtz.

1 MR. KURTZ: Yes, thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Kurtz:

5 Q. Good morning, Dr. Kalt.

6 A. Good morning.

7 Q. Could you turn to page 16 of your
8 testimony, footnote 30.

9 A. Yes.

10 EXAMINER ADDISON: Mr. Kurtz, would you
11 mind turning on your mic. Thank you.

12 Q. Are you there?

13 A. Yes.

14 Q. This is a long footnote. Is this
15 basically the methodology you used in developing your
16 conclusions?

17 A. I am describing the methodology that I
18 used in updating Ms. Mikkelsen's calculations and
19 making the transition from the most up-to-date gas
20 prices that we have available to us, at least at the
21 time I was writing my testimony, into energy prices.

22 Q. Okay. So you took your new gas forecasts
23 and you extrapolated or developed a new on-peak and
24 off-peak market energy price?

25 A. Not quite. What I did was I took the

1 NYMEX-based forecasts of prices, and I described that
2 elsewhere. Ms. Mikkelsen's calculations rely upon a
3 transition from gas prices to electric energy prices
4 that Mr. Rose had done. But Mr. Rose never provided
5 the model or the methodology with which we could do
6 that. And so I was trying to, if you will, reverse
7 engineer using the most updated NYMEX numbers.

8 Mr. Rose, as you recall, had relied on
9 NYMEX when he did forecasts back in August of 2014.
10 I was following that methodology in trying to update
11 it because Ms. Mikkelsen's calculations relied on
12 those, but there was -- the economic reasons I state
13 in pages 18 and 19 of my report, there is no -- you
14 should update the NYMEX numbers if you are going to
15 rely upon them, and that's what I was doing.

16 Q. Okay. So you took the lower gas prices
17 and translated that into lower on-peak and off-peak
18 energy prices; is that what --

19 A. The NYMEX prices that Mr. Rose had used
20 back when he filed his testimony in August, 2014 were
21 much higher, yes, and so I was trying to get to new
22 energy prices that his modeling would imply, but we
23 didn't have his model so I was doing my best to match
24 that.

25 MR. KUTIK: Your Honor, I move to strike

1 everything but "yes" from that answer.

2 EXAMINER ADDISON: Mr. Petricoff.

3 MR. PETRICOFF: Your Honor, this was a
4 clear explanation given to answer the question.

5 EXAMINER ADDISON: Mr. Kutik.

6 MR. KUTIK: Your Honor, he was asked if
7 he did a certain thing. The witness agreed and went
8 on to expound about Mr. Rose and what Mr. Rose didn't
9 do or did do. That's not an answer to the question.

10 EXAMINER PRICE: Unfortunately, the
11 witness cut off the question, and it's not real clear
12 what Mr. Kurtz was actually asking.

13 EXAMINER ADDISON: At this time I will
14 deny the motion to strike.

15 But I will ask Dr. Kalt to just answer
16 counsel's questions and counsel's questions only.
17 Any other information you would like to bring up
18 Mr. Petricoff can surely bring that up during
19 redirect. Thank you.

20 Q. (By Mr. Kurtz) Still staying on that
21 footnote 30, you state at the bottom, "I then
22 constructed a straightforward dispatch model like
23 that I understand Mr. Lisowski used where I
24 dispatched the Sammis generation units individually
25 against these prices and estimated the resulting

1 production, revenues and costs. (I conservatively
2 ignore start up costs)." And you did the same thing
3 with Davis-Besse; is that -- is that correct?

4 A. Not quite, so it's not a straight yes or
5 no.

6 Q. I would like an explanation then.

7 A. I try only to give an explanation when
8 asked for them. No, your last remark isn't quite
9 right. We didn't do the same -- Mr. Lisowski
10 apparently did not do a dispatch model of Davis-Besse
11 so, so we did adjust the Davis-Besse numbers based on
12 what I say in that last sentence of that footnote,
13 but the first part of the footnote wasn't applied to
14 Davis-Besse because that wasn't applicable to
15 Davis-Besse.

16 Q. Okay. You don't even mention OVEC
17 against -- did you just keep the OVEC revenues the
18 same?

19 A. Yes, we didn't change OVEC.

20 MR. KUTIK: May we go off the record for
21 a minute?

22 EXAMINER ADDISON: Let's go off the
23 record.

24 (Discussion off the record.)

25 EXAMINER ADDISON: Let's go back on the

1 record.

2 Q. (By Mr. Kurtz) So when you dispatched --
3 you redispatched Sammis, it ran less because it
4 cleared the energy market less?

5 A. I believe it did run somewhat less, yes.

6 Q. Okay. Did you hold all other assumptions
7 the same that the company used?

8 A. We don't know -- I can't say "yes" or
9 "no" to that. What I mean by that, we don't know
10 exactly what the company used because it didn't
11 provide its proprietary model that it uses for
12 dispatch, Mr. Lisowski's model. That's why I say --
13 I say in that footnote a model like that I understand
14 Mr. Lisowski used.

15 So all I did was try to reverse engineer
16 and compare against -- sort of a benchmark against
17 what Mr. Lisowski had done to see that I was getting
18 it basically right.

19 Q. But you did not change anything from the
20 companies' model.

21 A. I couldn't. We didn't have the model.

22 Q. Just to be clear, you didn't change the
23 property tax assumption or the -- or the number of
24 employees or anything like that?

25 A. With respect to those, I believe, and I

1 cite it in here somewhere in another footnote, the
2 company provided an interrogatory answer indicating
3 those things wouldn't change so I didn't change
4 those.

5 Q. So you just -- you kept everything the
6 same except the energy prices, and then you tried to
7 replicate what the company did?

8 A. I tried to benchmark against the
9 dispatching that Mr. Lisowski had done using the
10 companies' proprietary model, which we didn't have.

11 Q. Okay. I would like to turn to your
12 exhibits. Start with SS-2, or Exhibit 2. Are you
13 there?

14 A. SS-2?

15 Q. Yes.

16 A. Yes.

17 Q. This is where you used NYMEX against
18 forward prices for the entire period, 2016 to 2024?

19 A. That's correct.

20 Q. And you conclude that the RRS is \$858
21 million worse than what the company estimated?

22 A. No. It's a swing relative to the company
23 more than that. I'm estimating that the -- the
24 proposal would have an \$858 million negative impact
25 on ratepayers.

1 Q. Okay. I see. That's the net present
2 value?

3 A. Yes.

4 Q. Okay. So --

5 A. And the 858 is that bottom
6 right-hand-corner number.

7 Q. Right. Okay. Just so I understand,
8 2017, the first full year, you reduce the market
9 energy revenues by 222 million, is that correct, the
10 market revenue change?

11 A. I have to have Mr. Lisowski's table in
12 front of me. We tried to keep our formatting, the
13 table in front of me, what we are showing there is
14 that there is a reduction as a result of lower energy
15 price, yes, in revenues.

16 Q. Well, is that with -- is that with market
17 revenue change?

18 A. Yes.

19 Q. So it's less market revenues --

20 A. Yes.

21 Q. -- 222 million.

22 A. Yes.

23 MR. KUTIK: Your Honor, may the witness
24 be admonished to allow Mr. Kurtz to finish his
25 question?

1 EXAMINER ADDISON: Yes. Let's wait until
2 responses and questions have been finished. Thank
3 you.

4 Q. (By Mr. Kurtz) And then the next line,
5 Projected Market Revenues, that's what the company
6 had?

7 A. I would have to compare it to
8 Mr. Lisowski. I am not quite sure.

9 Q. Variable Cost Change, is that simply a
10 function that the power plants ran less under your
11 redispatch?

12 A. They run less and the cost of fuel
13 changes, so it's a mixture of both, in other words.

14 Q. The cost of fuel change is because the
15 power plants run less, right?

16 A. No. In part the cost of fuel change was
17 because gas prices are lower.

18 Q. Well, these aren't gas plants. What do
19 you mean?

20 A. In -- I'm sorry. With respect to that
21 line, yes, I'm sorry, that's just the less fuel.

22 Q. The plants ran less under your
23 redispatch?

24 A. Yes. And I'm sorry, I misstated. It's
25 less fuel, plus the reduction in, for example, the

1 environmental reagents.

2 Q. Right, variable O&M; fuel, variable O&M
3 the reagent, et cetera, simply because the plants ran
4 less.

5 A. That's correct.

6 Q. You didn't make -- you didn't change any
7 assumptions with respect to what fuel would cost or
8 what variable O&M would be, et cetera, did you?

9 A. I used Mr. Lisowski's assumptions. I was
10 looking at the impact of lower energy prices being
11 created by lower gas prices.

12 Q. Okay. When you say "lower energy
13 prices," lower market on-peak and off-peak energy
14 rates?

15 A. Yes.

16 Q. Okay. And then the next exhibit, Exhibit
17 3, is the same methodology except that you used a
18 different -- you used NYMEX for the first three years
19 and then you increased them at the EIA projected
20 rate?

21 A. That's correct.

22 Q. Okay. Then you, again, extrapolated or
23 did some methodology to translate that into energy
24 prices then you redispatched based upon your
25 understanding of how you redispatched the power

1 plants; is that correct?

2 A. Based upon what I -- I was trying to
3 match Mr. Lisowski, benchmarking off Mr. Lisowski.

4 Q. And, again, you didn't change any
5 assumptions regarding variable O&M and emission
6 allowances or uranium costs or coal costs or anything
7 like that.

8 A. No. We kept Mr. Lisowski and
9 Ms. Mikkelsen's assumptions, and they had indicated
10 in an interrogatory that they wouldn't change.

11 Q. I would like to hand you a document
12 that's in the record. It a confidential document
13 that I would like to just discuss without getting
14 into the confidential aspects of it, but just to use
15 it. If we have to, I guess we could go into
16 confidential session, ROSE but I don't think we will.
17 This is in the record as Company Exhibit 25
18 Confidential, or at least a portion of it.

19 EXAMINER PRICE: Let's go off the record.
20 (Discussion off the record.)

21 EXAMINER PRICE: Let's go back on.

22 MR. KUTIK: We're fine, and I assume no
23 numbers are going to be discussed.

24 MR. KURTZ: Just in general.

25 MR. PETRICOFF: Your Honor, could we go

8637

1 off the record for a moment?

2 EXAMINER ADDISON: Off the record.

3 (Discussion off the record.)

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

6 (CONFIDENTIAL PORTION EXCERPTED.)

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15 (OPEN RECORD.)

16 MR. PETRICOFF: Your Honor, I am going to
17 object. There has been no foundation laid that he
18 has ever seen this.

19 MR. KUTIK: I thought we weren't going to
20 characterize the document in terms of numbers so I
21 would move to strike that and put it in confidential
22 section.

23 MR. KURTZ: What I would do then is --
24 that's fine. I would rather actually discuss
25 specific numbers so I'll just wait until

1 confidential, and I think I'll conclude my
2 cross-examination until the confidential session.

3 EXAMINER PRICE: What we are going to do
4 is put this last question he asked in the upcoming
5 confidential session and then we will go from there.

6 MS. BOJKO: Your Honor, I would just also
7 if we are going to go through the exercise of
8 numbers, we get the correct revised exhibit and use
9 those numbers.

10 EXAMINER PRICE: He can use whatever he
11 wants, and when you get a chance on -- when
12 Mr. Petricoff gets a chance on redirect, if he thinks
13 the numbers were improper, he can raise them on
14 redirect, right?

15 MR. PETRICOFF: I think we are ready to
16 move on.

17 MR. KURTZ: I think I'll just wait until
18 confidential then.

19 EXAMINER ADDISON: Thank you, Mr. Kurtz.

20 Mr. Kutik.

21 MR. KUTIK: Thank you, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Kutik:

25 Q. Good morning.

1 A. Good morning.

2 Q. Since the filing of your supplemental
3 testimony, that is, your first supplemental
4 testimony, you've done no analysis that does not
5 appear in your second supplemental testimony,
6 correct?

7 A. As of the filing of my testimony --
8 EXAMINER PRICE: Can you turn your
9 microphone back on. Get the dates again. Sorry.

10 Q. Since the filing of your supplemental
11 testimony, you've done no analysis that does not
12 appear in your second supplemental testimony; in
13 other words, all the analyses that you have done
14 since your first supplemental testimony appears in
15 your second supplemental testimony.

16 A. Not quite right. Not quite right.

17 Q. As of the filing of your second
18 supplemental testimony, then, it would show all the
19 analysis that you did since your first supplemental
20 testimony?

21 A. No. I did some analysis yesterday that
22 you wouldn't have.

23 Q. If I --

24 EXAMINER ADDISON: Mr. Kutik, let him
25 finish his answer and then you can --

1 MR. KUTIK: Again, I don't believe he
2 understands the question, your Honor.

3 MR. PETRICOFF: He is allowed to respond.

4 EXAMINER ADDISON: He can respond.

5 MR. KUTIK: I believe he has at this
6 point.

7 EXAMINER ADDISON: Dr. Kalt, were you
8 finished with your response?

9 THE WITNESS: I think so, yes.

10 EXAMINER ADDISON: Thank you.

11 MR. KUTIK: I apologize, your Honor. I
12 thought he was finished.

13 EXAMINER ADDISON: That was my mistake.
14 Please proceed, Mr. Kutik.

15 Q. (By Mr. Kutik) I want to talk to you
16 about the time period between your first supplemental
17 testimony and the filing of your second supplemental
18 testimony. Would it be correct to say any analysis
19 that you did is reflected in your second supplemental
20 testimony?

21 A. I believe so, yes.

22 Q. Now, you are familiar with ICF, correct?

23 A. Yes.

24 Q. And you've had some exposure to ICF's
25 model, correct?

1 A. Well, they have various reports where
2 they talk about it. Mr. Rose talks about it, yes.

3 Q. So the answer to my question is yes.

4 A. Yes.

5 Q. And ICF uses a model called IPM, correct?

6 A. I think that's correct, yes.

7 Q. And ICF does modeling in which ICF models
8 certain things including forecast of energy prices
9 and energy supply and demand.

10 A. I think that's correct. That's what they
11 say.

12 Q. IPM models things like transmission.

13 A. I can't say -- all I can say to this
14 question, that previous question and this one, is
15 that's what they say. It's a proprietary model. I
16 have never been able to look at it.

17 Q. That's your understanding, though.

18 A. That's -- that's what they say.

19 Q. That's your understanding.

20 A. Yes. I understand that's what they say,
21 yes.

22 Q. And you also understand the IPM models
23 things like transmission, correct?

24 A. They say they do, yes.

25 Q. And they model plant retirements,

1 correct?

2 A. Same answer.

3 Q. And ICF uses a number of interdependent
4 variables in its model, correct?

5 A. They indicate that, yes.

6 Q. Now, in this case for your forecast of
7 future natural gas prices, you didn't use a computer
8 model like ICF did, correct?

9 A. No. That wouldn't be appropriate here
10 for the reasons I state in my report.

11 Q. So the answer is yes.

12 A. I think the answer is no, I did not use a
13 computer model.

14 Q. But the answer is yes, you didn't use a
15 computer model?

16 A. Double negatives. Yes, I did not use a
17 computer model.

18 Q. Okay. And you in your -- the two
19 calculations that you do for SS-2 and SS-3, in the
20 first calculation you used futures from NYMEX,
21 correct?

22 A. That's correct.

23 Q. And in the second one, in SS-3, you used
24 NYMEX for three years, and then you used a trend
25 based upon the 2015 Annual Energy Outlook, correct?

1 A. That's correct.

2 Q. And what we mean by that is the base or
3 reference case for natural gas that appears in that
4 document.

5 A. The AEO document, yes.

6 Q. Now, in terms of forecasting and your
7 testimonial experience with respect to forecasting
8 natural gas prices for the last 10 years, you
9 understand that your counsel gave me three cases or
10 three pieces of testimony, correct?

11 A. I think that's correct, yes.

12 Q. And that was supposed to represent the
13 information that you could provide me within the
14 bounds of the protective agreements that represented
15 the forecasts you had done, correct?

16 A. That's correct.

17 MR. PETRICOFF: Your Honor, I want to --
18 I want to object there. I think that is based on an
19 incorrect premise as to what the request was.

20 MR. KUTIK: This is a subject for
21 redirect if I mischaracterized something with which
22 the witness has agreed.

23 MR. PETRICOFF: This is a technical
24 point. We responded to a written request, and the
25 written request we responded to does not match the

1 question that was asked, and that may not be
2 something that is known by the witnesses.

3 MR. KUTIK: Now, we are coaching, your
4 Honor. So if I mischaracterized, he can bring that
5 up on redirect.

6 EXAMINER ADDISON: I agree. He already
7 responded to the question, so please proceed,
8 Mr. Kutik.

9 MR. KUTIK: Thank you, your Honor.

10 Q. (By Mr. Kutik) One of the cases that your
11 counsel provided me, you testified on behalf of
12 Tri-State Generation and Transmission Association,
13 correct?

14 A. That's correct.

15 Q. And in another case that you -- your
16 counsel gave me, you testified on behalf of Duke
17 Energy Corporation and Progress Energy, correct?

18 A. That is correct.

19 Q. And the third case that your counsel gave
20 me, you testified on behalf of Perenco Ecuador,
21 correct?

22 A. Yes.

23 Q. If I pronounced that correctly.

24 A. Yes.

25 MR. KUTIK: Your Honor, at this time we

1 would ask that the following document be marked as
2 Company Exhibit 185. The Answer Testimony and
3 Exhibits of Tri-State Generation and Transmission
4 Association, Inc., in a case before the Public
5 Utilities Commission of the State of Colorado, Docket
6 No. 13F-0145E, La Plata Electric Association, Inc.,
7 et al., Complainants, versus Tri-State Generation and
8 Transmission Association, Inc.

9 EXAMINER ADDISON: It will be so marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MR. KUTIK: May I approach?

12 EXAMINER ADDISON: You may.

13 Q. (By Mr. Kutik) Dr. Kalt, I have handed
14 you what has been marked for identification as
15 Company Exhibit 185. Do you recognize this as your
16 testimony and a portion of the exhibits in the case
17 in which you testified on behalf of Tri-State
18 Generation and Transmission Association before the
19 Public Utilities Commission of Colorado?

20 A. Yes, I do.

21 Q. Would it be correct to say that nowhere
22 in this testimony do we see any evidence of gas price
23 forecasts?

24 A. That's correct. As I told you in my
25 deposition, this was the one I wasn't sure of. It

1 was the Duke case that we had sent you that you
2 didn't ask for where I had done that.

3 Q. Right. So let me make sure this is
4 correct. In the Tri-State Generation matter, the
5 testimony you gave in that case did not involve in
6 terms of your testimony natural gas forecasts,
7 correct?

8 A. I am not 100 percent sure. We had done
9 some gas price analysis. It didn't appear as part of
10 the testimony. It was the Duke testimony where it
11 appeared.

12 Q. All right. So let me try it a third
13 time, Dr. Kalt. Isn't it true that there is nothing
14 in the Tri-State testimony which reflects natural gas
15 price forecasts, correct?

16 A. That's basically, correct. Yes, as I
17 said, it was the Duke testimony.

18 Q. All right.

19 EXAMINER ADDISION: Let him finish his
20 answers from now on.

21 MR. KUTIK: Thank you.

22 EXAMINER ADDISON: Thank you.

23 MR. KUTIK: Your Honor, at this time I
24 would like to have marked as Company Exhibit 186,
25 beginning with a letter from Len S. Anthony, General

1 Counsel, Progress Energy Carolinas, from Renne Vance,
2 Chief Clerk, North Carolina Utilities Commission, in
3 Docket Number E-2, Sub 998, et al. and then attached
4 is the testimony of Dr. Joseph P. Kalt.

5 EXAMINER ADDISON: It will be so marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MR. KUTIK: May I approach?

8 EXAMINER ADDISON: You may.

9 Q. (By Mr. Kutik) Dr. Kalt, I have handed
10 you what's been marked for identification as Company
11 Exhibit 186. Do you recognize this as a copy of the
12 testimony that was filed on your behalf in the matter
13 before the North Carolina Utilities Commission, In
14 the Matter of the Application of Duke Energy
15 Corporation and Progress Energy, Inc. to engage in a
16 Business Combination Transaction and Address
17 Regulatory Conditions and Codes of Conduct?

18 A. Yes.

19 Q. Now, would it be correct to say that in
20 this testimony you are -- you are comparing some
21 scenarios that generally compare two types of
22 dispatching or two means of dispatching generation,
23 correct?

24 A. I don't recall that one way or the other.

25 Q. Okay. And so you don't recall that your

1 testimony looked at the difference between two
2 dispatch models or two dispatch cases?

3 A. It may have. I just don't recall. I
4 haven't reviewed it for that purpose.

5 Q. So your answer is you don't recall.

6 A. Yes, as I said.

7 Q. And for your calculations in this case,
8 you used NYMEX futures for natural gas, correct?

9 A. That's correct.

10 Q. And you did not use anything else; in
11 other words, you didn't use an inflation factor. You
12 didn't use the trend from the -- any AEO reference
13 case, correct, in terms of the base case you looked
14 at?

15 A. I don't think that's right because we do
16 have sensitivity on the gas prices as well.

17 Q. I said with respect to the base case.
18 You had base case, and you had four sensitivity
19 analyses, right, or four sensitivity cases?

20 A. I don't recall it was four, but I know we
21 had some sensitivity cases.

22 Q. For the base case --

23 A. We used NYMEX.

24 Q. If I may finish my question. You and I
25 think suffer from the same thing, Dr. Kalt.

1 Would it be fair to say that with respect
2 to the base case that you evaluated, you used NYMEX
3 futures and not any additional escalation factors
4 based upon inflation or the AEO reference case or
5 anything like that?

6 A. I used NYMEX.

7 Q. So the answer to my question is yes.

8 A. Yes, I used NYMEX.

9 Q. All right. And the -- well, actually,
10 you didn't just use NYMEX because you -- you adjusted
11 the NYMEX numbers for what we might call locational
12 differences, correct?

13 A. That's correct. The same as we do here.

14 Q. Now, you did this analysis in late 2010,
15 early 2011?

16 A. I believe it was late 2010.

17 Q. And would it be fair to say that in that
18 period of time when you were doing this study,
19 natural gas futures for 2014 through 2016 were over
20 \$5.50 per MMBtu?

21 A. I don't recall. I didn't try to memorize
22 NYMEX.

23 Q. Is SNL Financial a source of information
24 for NYMEX futures?

25 A. Yes.

1 MR. KUTIK: Your Honor, at this point we
2 would like to have marked as Company Exhibit 187 a
3 document from SNL Natural Gas Forwards and Futures as
4 of December 1, 2010.

5 EXAMINER ADDISON: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MR. KUTIK: May a approach, your Honor?

8 EXAMINER ADDISON: You may.

9 Q. (By Mr. Kutik) Dr. Kalt, I have handed
10 you a document that's been marked for identification
11 as Company Exhibit 187. Do you recognize this as
12 information coming from SNL Financials as of
13 December 1, 2010?

14 A. It appears to be, yes.

15 Q. And does this reflect Henry Hub prices
16 between 2014 and 2016 above \$5.50?

17 A. That's what --

18 MR. PETRICOFF: Your Honor, at this time
19 I want to object. I have been waiting patiently on
20 relevance as to why we are talking about a
21 three-year-old North Carolina case and what relevance
22 it has for this case. It appears if the relevance of
23 this case is trying to introduce past prices on
24 NYMEX, I am going to -- I am going to object and also
25 note that this would have been considered, had he put

1 in his report, as hearsay.

2 MR. KUTIK: Well, actually, no, on that
3 last point, your Honor, because this is a market
4 compilation, because it's data objective facts that
5 are compiled by a reputable source --

6 MR. PETRICOFF: But --

7 MR. KUTIK: Let me finish, if I may. It
8 is in terms of relevance, your Honor, this is one of
9 a few forecasts that this witness has provided to us
10 with respect to his pricing methodology, and I think
11 we are entitled to show the information that he
12 relied upon and as we know now, whether it's accurate
13 or not.

14 MR. PETRICOFF: This is information that
15 was relied upon in the North Carolina case. It's not
16 relevant here, and it can't be introduced for what
17 the prices were in NYMEX at the time.

18 MR. KUTIK: Well, your Honor --

19 EXAMINER ADDISON: I am going to overrule
20 the objection. I will allow Mr. Kutik a little
21 leeway.

22 Q. (By Mr. Kutik) I think the question on
23 the table, sir, does this reflect as of December 1,
24 2010, that Henry Hub forwards for 2014 to 2016 were
25 over \$5.50 per MMBtu?

1 A. Not quite right. It's Henry Hub futures,
2 not forwards.

3 Q. With that correction.

4 A. That's what they report, yes.

5 Q. Thank you. Now, you also in that case
6 used high and low gas sensitivity cases.

7 A. I think I did some sensitivities like
8 that, yes.

9 Q. Right. And with respect to the high
10 price gas sensitivity case, the gas prices you
11 assumed were \$1.50 per MMBtu in -- higher in 2012; in
12 other words, \$6.50, and this higher price -- and the
13 higher price increased by 50 cents per MMBtu every
14 year until 2016.

15 A. That's sounds like what I did, the best I
16 can recall.

17 Q. And for the low gas price sensitivity
18 case, the gas price was held constant at \$4 per
19 MMBtu.

20 A. I think that's correct.

21 Q. And would it be fair to say that both of
22 those scenarios projected natural gas prices for 2015
23 that were higher than those prices actually were even
24 with respect to the low gas price case?

25 A. You mean in later years they turned out

1 to be lower?

2 Q. Yes.

3 A. Many times, yes, yes.

4 Q. Now, in the Perenco case, you were
5 looking at future oil prices, not future gas price,
6 correct?

7 A. Correct.

8 Q. You would agree with me there are
9 differences between the oil market and the gas
10 market.

11 A. Of course.

12 Q. The oil market is an international
13 market?

14 A. You are being pretty broad there. The
15 oil traded on NYMEX includes international crudes;
16 that is, you have Brent crude, if you see crude
17 traded, for example, on NYMEX.

18 Q. That's international, correct?

19 A. Yes, that's what I just said.

20 Q. And would --

21 A. As well as Texas crude that are generally
22 not traded internationally because we have an export
23 restriction.

24 Q. My question was about oil, and oil is
25 generally regarded as an international market, is it

1 not?

2 A. I'm sorry, I was answering you about oil.
3 WTI is West Texas Intermediate crude oil, which is
4 traded on NYMEX and not traded internationally.
5 That's why I'm just saying, some of the crude is
6 traded internationally; some of it is not.

7 Q. Okay. Except for possibly the effect of
8 LNG exports or imports, natural gas is, with respect
9 to the United States, largely a market that is
10 confined to the contiguous U.S. and Canada.

11 A. And some Mexico, a little bit.

12 Q. So the answer is yes, and Mexico.

13 A. Yes.

14 Q. Would it be fair to say also that oil is
15 primarily used in the transportation sector of the
16 United States?

17 A. Probably, although I might have to go
18 back and look at data to be sure. I am sure a lot of
19 it is gasoline and jet fuel and so forth.

20 Q. And gas is primarily used for industrial,
21 commercial, and residential boilers and power plants.

22 A. Probably.

23 Q. Would it also be the case that there are
24 major differences in oil quality, including API and
25 sulfur content?

1 A. Typically our crude oil has differences
2 in quality along those and other dimensions.

3 Q. And gas is relatively fungible?

4 A. Relatively, yes.

5 Q. Okay. There also may be market power
6 issues, for example, OPEC, that would have effects on
7 price formation?

8 A. On both gas and oil, yes.

9 Q. Well, there isn't an OPEC for gas in the
10 United States, is there?

11 A. You said -- well, that doesn't mean OPEC
12 wouldn't influence our energy markets.

13 Q. That isn't my question. Isn't it true
14 there is no OPEC for gas in the United States?

15 A. There is no OPEC for gas in the United
16 States.

17 Q. Thank you. Now, natural gas and oil --
18 natural gas prices and oil prices don't necessarily
19 move in the same direction, correct?

20 A. Over the long horizon, at any point in
21 time, they could move in opposite directions.

22 Q. Would you agree with me that CME would be
23 a good source of information regarding the relative
24 volume of trades for Brent crude futures?

25 A. I believe it would be.

1 MR. KUTIK: Your Honor, at this time, I'd
2 like to --

3 A. I'm sorry. I'm sorry. For Brent crude
4 futures on NYMEX, but not for the entire market
5 because it's also traded on ICE, so CME would not be
6 a good source of information for the volumes for all
7 futures, all futures on the NYMEX.

8 Q. All right. So it would be a source of
9 information for futures on the NYMEX, correct?

10 A. That's correct.

11 MR. KUTIK: Your Honor, at this time I
12 would like to have marked as Company Exhibit 188 a
13 document from the CME Group, Crude Oil Futures
14 Settlements, as of Wednesday, January 20, 2016.

15 EXAMINER ADDISON: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.))

17 Q. (By Mr. Kutik) Dr. Kalt, I have handed
18 you what's been marked for identification as Company
19 Exhibit 188. Do you recognize this as information
20 from the CME Group on crude oil futures?

21 A. Sure appears to be.

22 Q. And it's as of January 20, 2016?

23 A. That's the trade date that's indicated on
24 the document.

25 Q. And it shows to the right-hand side of

1 this in the second to the -- second column to the
2 right, Estimated Volume. Do you see that.

3 MR. PETRICOFF: Your Honor, before we get
4 into the particulars of this document, the foundation
5 has not been laid whether he has seen this document
6 before and whether he is familiar with it.

7 EXAMINER ADDISON: Mr. Kutik.

8 MR. KUTIK: Your Honor, I believe that's
9 irrelevant, in any event, in terms of my question.

10 EXAMINER ADDISON: If we are looking at
11 the document itself, how is that irrelevant?

12 Q. (By Mr. Kutik) Have you seen this before,
13 Dr. Kalt?

14 A. No. You apparently printed it out
15 yesterday.

16 MR. KUTIK: I ask the Bench to take
17 administrative notice of the CME Group report for
18 January, 2016 with respect to crude oil futures.
19 It's a market compilation readily available. This is
20 the type of information that is readily accessible,
21 and is the type of information that would take
22 judicial notice, much less administrative notice.

23 MR. PETRICOFF: Objection. There is
24 nothing in the record as to what CME is other than
25 the testimony that we've just gotten here from

1 counsel.

2 MR. KUTIK: Well, this witness indicated
3 in the first line -- first question on this line was
4 whether CME was a reliable source of information on
5 crude oil trades.

6 MR. PETRICOFF: No. You asked him if
7 that's what it appears to be.

8 MR. KUTIK: No. Before I even stood up,
9 I asked that question.

10 MR. PETRICOFF: Still has not seen it.
11 Shouldn't be drilled on a document he is not familiar
12 with.

13 MR. KUTIK: I am not sure about drilling.

14 MR. PETRICOFF: Shouldn't be questioned
15 on a document he is not familiar with.

16 EXAMINER ADDISON: Thank you, both. At
17 this time we will take administrative notice of
18 Company Exhibit 188.

19 Q. (By Mr. Kutik) Now, I believe I was
20 directing your attention, Dr. Kalt, to the column
21 that says Estimated Volume. Do you see that?

22 A. Yes.

23 Q. And this appears to you to show relative
24 volumes of trades for various months on NYMEX for
25 Brent crude oil?

1 A. I believe it would be volume of
2 contracts, not volumes of oil, but it does have a
3 column labeled Estimated Volume.

4 Q. Okay. Well, with respect to the
5 estimated volume, you would take that as the number
6 of contracts?

7 A. It may. I would have to go back and look
8 at it again. But, generally, my understanding they
9 would report the number of contracts.

10 Q. Okay. And is the pattern shown here for
11 the volume a pattern that you've seen generally with
12 respect to trades in terms of volume?

13 MR. PETRICOFF: Your Honor, I want to
14 renew my objection. He's not indicated that he had
15 studied this document or had seen it before, and it
16 is unfair to question him about it.

17 EXAMINER ADDISON: Mr. Kutik.

18 MR. KUTIK: What's your question again?
19 I'm sorry.

20 MR. PETRICOFF: We have to wait for the
21 ruling.

22 MR. KUTIK: I'm sorry, I thought you had
23 ruled, your Honor.

24 EXAMINER ADDISON: I was asking you if
25 you would like to respond to the objection.

1 MR. KUTIK: Oh, your Honor. Since this
2 is information that the Bench, it's going to be
3 administratively noticed, I am asking him not
4 necessarily to verify this information is true, but I
5 am asking him in his experience does this pattern
6 show a pattern that he is familiar with.

7 EXAMINER ADDISON: Thank you, Mr. Kutik.
8 Objection overruled.

9 A. I've probably seen data in the past on
10 crude oil volumes on the CME exchange, but I would
11 have to go back. I haven't been looking at crude oil
12 volumes recently. You would have to go back and look
13 and see what it looks like.

14 Q. So you wouldn't be able to say generally
15 with respect to CME and what it reports for NYMEX
16 futures, that NYMEX futures become relatively thin
17 after a year or two?

18 A. They certainly tend to go down. But
19 whether how -- how this particular document compares
20 to the past, I don't know.

21 Q. Okay. And that's been your experience?

22 A. They tend to go down, yes, over time.

23 Q. Go down rapidly after two years?

24 A. I don't know. To say that, I would have
25 to go check. Sometimes they do; sometimes they

1 don't.

2 Q. Now, would it be fair to say that for
3 purposes of this case you have provided no
4 quantitative analysis to determine or show whether
5 natural gas futures are, in fact, predictive of what
6 spot prices would be?

7 A. By "predictive" you mean later spot
8 prices turned out?

9 Q. Yes.

10 A. How they turned out? No, I am not. That
11 wouldn't -- for the reasons I stated because 18 and
12 19 in my report, that's not what I am doing here. I
13 am looking at a forecast.

14 MR. KUTIK: I ask that everything after
15 the word "no" be stricken.

16 EXAMINER ADDISON: Mr. Petricoff.

17 MR. PETRICOFF: Yeah, your Honor. He was
18 asked a specific question concerning the futures, and
19 he has given a full answer, and the answer should be
20 allowed to stand.

21 EXAMINER ADDISON: It seems like
22 something you should bring up on redirect.

23 Thank you, Mr. Petricoff, the motion to
24 strike is granted.

25 Q. (By Mr. Kutik) With respect to --

1 MR. PETRICOFF: Could I have the question
2 reread, then?

3 EXAMINER ADDISON: You may.

4 (Record read.)

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

6 EXAMINER ADDISON: You may.

7 Q. (By Mr. Kutik) Would it also be fair to
8 say, sir, that nothing is available publicly to show
9 your quantitative analysis of the predictive value or
10 accuracy of natural gas prices on what natural gas
11 spot prices would ultimately be?

12 A. You mean what they turned out to be?

13 Q. Yes.

14 A. I don't believe so.

15 EXAMINER ADDISON: Dr. Kalt, I'm sorry,
16 would you mind turning on your microphone.

17 THE WITNESS: It goes on and off even
18 though I don't touch it.

19 EXAMINER ADDISON: We have that trouble.

20 MR. KUTIK: Welcome to our world.

21 THE WITNESS: I am freezing. My thumbs
22 are numb I'm so cold.

23 MR. KUTIK: Well, you will get quite a
24 workout with your microphone.

25 I don't believe the witness has answered

1 the question yet.

2 EXAMINER ADDISON: Can we have the last
3 question read back.

4 MR. KUTIK: Thank you, your Honor.

5 (Record read.)

6 Q. (By Mr. Kutik) Would it be correct to say
7 that the only quantitative analysis -- the only
8 quantitative analysis that you did regarding the
9 predictive value and accuracy of natural gas futures
10 on natural gas or on spot prices actually was the
11 Perenco case?

12 A. On natural gas, did you say, in that
13 question?

14 Q. Let me back up. Would it be fair to say
15 that the only quantitative analysis that you did with
16 respect to the value and accuracy -- the predictive
17 value and accuracy of futures prices on spot prices
18 was in the Perenco case?

19 MR. PETRICOFF: Your Honor,
20 clarification, gas or oil?

21 MR. KUTIK: I didn't say either.

22 EXAMINER ADDISON: You can answer the
23 question.

24 MR. KUTIK: And that's coaching, your
25 Honor, at this point.

1 Q. Can you answer the question?

2 A. I had already asked you if it was gas
3 before. You say -- I'm sorry, can I have the
4 question back.

5 Q. I took the word "gas" out of my question.

6 A. I am trying to understand. You say --
7 something about on spot prices. Maybe you will have
8 to repeat the question.

9 Q. I'll put it to you again, sir. Would it
10 be fair to say that the only quantitative analysis
11 that you have done with respect -- in testimony with
12 respect to the predictive value and accuracy of
13 futures prices has been on -- futures prices on what
14 spot prices would be is in the Perenco case?

15 A. What they ultimately turned out to be?

16 Q. Yes.

17 A. To the best of my recollection, the one I
18 can recall where I did that was for oil, was for
19 Perenco.

20 Q. Okay.

21 MR. KUTIK: Your Honor, at this time I
22 would like to have marked for identification as
23 company Exhibit 189 Confidential, an expert report on
24 Quantum of Joseph P. Kalt dated December 19, 2014, in
25 an arbitration matter entitled Perenco Ecuador

1 Limited versus the Republic of Ecuador.

2 EXAMINER ADDISON: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. KUTIK: At this point I would like to
5 go off the record to discuss how we want to handle
6 the document.

7 EXAMINER ADDISON: Let's go off the
8 record.

9 (Discussion off the record.)

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

12 MR. KUTIK: May I approach?

13 EXAMINER ADDISON: You may.

14 Q. (By Mr. Kutik) Dr. Kalt, I have handed
15 you what's been marked for identification as Company
16 Exhibit 189 Confidential. That is a copy of a
17 portion of your testimony from that case, correct?

18 A. Yes.

19 Q. And specifically it includes pages 36
20 through 42 of that testimony, correct?

21 A. Yes.

22 Q. And this was done about a little over a
23 year ago?

24 A. That's correct.

25 Q. All right. And would it be fair to say

1 that for your work in this case, the forecasted
2 prices you used, you used NYMEX prices for Brent
3 crude oil deliveries from December 14?

4 A. When you say "this case," you don't mean
5 this case, you mean the Perenco case?

6 Q. The Perenco case, yes.

7 A. Depending on which analysis I was doing I
8 did use NYMEX prices for December, 2014, and I don't
9 think I am revealing anything confidential, but if
10 you look at footnote 60, that's my analysis using
11 NYMEX as well.

12 Q. I am not asking you about footnote 60,
13 but in terms of the NYMEX futures that you used, it
14 included futures going from sometime in 2014, maybe
15 as early as January, 2015, through January, 2021,
16 correct?

17 A. It did include that. That was all I did
18 with NYMEX. It did include that.

19 Q. And then you adjusted the Brent crude
20 number.

21 THE WITNESS: Excuse me, your Honor, I am
22 just worried I am getting into confidential things
23 here with my other client. I just don't know.

24 MR. PETRICOFF: Yeah. If the witness --
25 if the witness is concerned, then I'm concerned. I

1 thought as long as we just talked about what he did,
2 that would be okay, but --

3 MR. KUTIK: I haven't finished my
4 question, so why don't I get a chance to finish my
5 question?

6 EXAMINER ADDISON: I will allow Mr. Kutik
7 to finish his question. If there are any concerns,
8 we can raise them at that point.

9 Q. (By Mr. Kutik) Okay. And you made
10 certain adjustment to the NYMEX numbers, correct?

11 A. For location and quality.

12 Q. And basically you used an adjustment
13 factor based upon the relationship of certain
14 markets?

15 MR. PETRICOFF: Okay. At this point,
16 your Honor, I think we are now -- we should
17 probably -- we are getting to a level here I think
18 where we are getting close to the border we ought to
19 be on the confidential.

20 EXAMINER ADDISON: To err on the side of
21 caution, we ought to table these questions.

22 MR. KUTIK: That's fair enough.

23 Q. (By Mr. Kutik) Dr. Kalt, let me refer you
24 to figure 16. Is the information on figure 16
25 confidential in your view?

1 A. I would have to see what Exhibit JKP-57
2 is. I'm doing something there. I don't recall what
3 it was, but I can see the footnote there on the
4 sources. I would have to go back and check. I'm not
5 sure.

6 MR. PETRICOFF: Your Honor, I think
7 that's another one for confidential session.

8 Q. Well, it refers to the U.S. Energy
9 Information, correct, that's the source?

10 A. Yes.

11 Q. And the source is NYMEX --

12 MR. PETRICOFF: Your Honor --

13 MR. KUTIK: May I finish my question,
14 please?

15 MR. PETRICOFF: No, because you can
16 finish the question as soon as we get in a
17 confidential session. You know, the problem is that
18 once -- once you say something, you can't take it
19 back. We are on a public record right here. I think
20 we need to go to the confidential section and then we
21 won't have to worry.

22 MR. KUTIK: All I asked, your Honor, he
23 has already testified he used NYMEX. So all I am
24 asking is one of the sources is NYMEX. That's not
25 confidential. I'm sorry.

1 A. Yes, I did use NYMEX.

2 MR. PETRICOFF: Hold on.

3 THE WITNESS: Oh, I'm sorry.

4 EXAMINER ADDISON: I believe Dr. Kalt has
5 already testified to that point, so.

6 MR. PETRICOFF: Right.

7 EXAMINER ADDISON: He has answered the
8 question, apparently, so let's move forward. If
9 there are -- how many more questions do you have on
10 this particular exhibit?

11 MR. KUTIK: A few.

12 MR. PETRICOFF: Let's just go to the
13 confidential session. I'm concerned.

14 EXAMINER ADDISON: I would like to.

15 MR. KUTIK: Let's go questions one at a
16 time, your Honor.

17 EXAMINER ADDISON: I would like to keep
18 as much in the public session as possible, so if we
19 get to a certain point, then I agree that we should
20 move to confidential session, but as of right now, I
21 feel like we're still -- we're okay.

22 Q. (By Mr. Kutik) Dr. Kalt, on that figure,
23 are the forecasted prices confidential?

24 A. I would have to go back and see what
25 Exhibit JPK-57 is to see what I am doing there.

1 Q. Okay. Do you know whether the forecasted
2 prices just reflect what the NYMEX futures were as of
3 the time you did your study for the years that are
4 shown on Exhibit 16 -- or figure 16?

5 A. Same answer, that is, I would have to go
6 back and see what -- what we were doing with this
7 Exhibit JPK-57. I just don't know. I'm sorry.

8 MR. KUTIK: I want to make sure what I
9 can ask and not ask, so if I could have one moment,
10 your Honor.

11 EXAMINER ADDISON: Certainly.

12 MR. KUTIK: Let's move on to a different
13 topic. If I need to, I will come back to that in the
14 confidential session.

15 EXAMINER ADDISON: Thank you, Mr. Kutik.

16 Q. (By Mr. Kutik) Would it be fair to say,
17 sir, for purposes of this case you did not analyze
18 the relationship of natural gas spot prices and
19 natural gas futures prices for Henry Hub?

20 A. Again, you mean how -- what the futures
21 curve said and what actual spot prices turned out to
22 be?

23 Q. No.

24 A. I'm sorry, I thought that's what you were
25 asking.

1 Q. No.

2 A. I'm sorry. What are you asking?

3 Q. I am asking a question. I'm asking,
4 which is, for purposes of this case, you did not
5 analyze a relationship of natural gas spot prices and
6 natural gas futures prices for Henry Hub.

7 A. If I interpret this to mean that I didn't
8 analyze what natural gas prices turned out to be
9 relative to what the futures had said earlier, again,
10 I did not do that.

11 Q. Well, did you analyze the relationship in
12 any way? You didn't, did you?

13 MR. PETRICOFF: Objection. There is a
14 question pending he hasn't answered.

15 MR. KUTIK: I'll ask the question again.

16 Q. (By Mr. Kutik) Isn't it true you did not
17 analyze the relationship of natural gas price -- spot
18 prices and natural gas futures prices in any way for
19 purposes of this case?

20 A. I don't recall doing so. I didn't find
21 the need to for the reasons I state in my testimony.

22 Q. Now, you would agree with me, would you
23 not, that, like, spot prices for natural gas, futures
24 prices for natural gas, are volatile?

25 A. Certainly.

1 Q. Now, you pulled your figures for futures
2 data as of December 16, 2015?

3 A. For my figures -- my calculations, for
4 example, in Attachment 2 and 3 to my second
5 supplemental testimony, yes.

6 Q. And you submitted your testimony on
7 December 30, correct?

8 A. Yes.

9 MR. KUTIK: Your Honor, at this time I
10 would like to have marked as Company Exhibit 190 and
11 191, two documents, one showing NYMEX Henry Hub
12 futures obtained from SNL financial as of 12-16-2015,
13 that's Company Exhibit 190; and Henry Hub NYMEX --
14 NYMEX Henry Hub futures obtained from SNL Financial
15 as of December 29, 2015.

16 EXAMINER ADDISON: They will be so
17 marked.

18 (EXHIBITS MARKED FOR IDENTIFICATION.)

19 Q. (By Mr. Kutik) Dr. Kalt, I have handed
20 you what's been marked for identification as Exhibits
21 190 and 191. You recognize this as information from
22 SNL Financial on Henry Hub NYMEX futures?

23 A. Yes. It appears to be that's what they
24 are reporting.

25 Q. And would it be fair to say that in the

8673

1 space of 13 days, the Henry Hub NYMEX futures prices
2 changed --

3 A. Yes.

4 Q. -- for those particular periods of time.

5 A. Yes.

6 Q. So, for example, for Henry Hub futures
7 for 2016 were 33 cents per MMBtu higher in just 13
8 days, correct?

9 A. For 2016?

10 Q. Yes.

11 A. Yes.

12 Q. And for 2017, they were 14 cents higher.

13 A. Yeah, about 14 cents.

14 Q. And for 2018 they were 17 cents higher.

15 A. Two thousand -- what was that?

16 Q. 17.

17 A. '17.

18 Q. I'm sorry 2018.

19 A. Yeah, '18.

20 Q. They were 17 cents higher.

21 A. No. It looks like they are 6 cents
22 higher from 2.865 to 2.93.

23 Q. Thank you.

24 MR. KUTIK: Your Honor, at this time I
25 would like to have marked as Company Exhibit 192 --

1 let me strike that.

2 Q. Dr. Kalt, you are familiar with the
3 Marcellus shale play?

4 A. Yes, somewhat.

5 Q. And you are familiar with the Utica shale
6 play?

7 A. Yes, somewhat.

8 Q. And those are two different shale plays,
9 correct?

10 A. They are treated that way, yes.

11 Q. Okay.

12 MR. KUTIK: I would like to have marked
13 at this time, your Honors, Company Exhibit 192, the
14 ICF document, Quick Take, "Marcellus Juggernaut."

15 EXAMINER ADDISON: It will be so marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. KUTIK: May I approach?

18 EXAMINER ADDISON: You may.

19 Q. (By Mr. Kutik) Dr. Kalt, I have shown you
20 what's been marked for identification as Exhibit 192,
21 an ICF document that you cite in your testimony,
22 correct?

23 A. Yes.

24 Q. And would it be correct to say that this
25 cites figures from the Marcellus and shale combined?

1 A. And Utica, you mean?

2 Q. Excuse me, the Marcellus and Utica
3 combined.

4 A. Yes, and separate.

5 Q. Thank you. And so, for example, when it
6 says in the second paragraph, it talks about
7 production, it was talking about the Marcellus and
8 Utica production, correct?

9 A. In the second paragraph they are talking
10 about, and, I guess, referring to their Exhibit 1,
11 yeah, they talk about it combined and separate, but
12 in reference to Exhibit 1.

13 Q. But I am talking now in the text they are
14 talking about both.

15 A. It refers to Exhibit, 1 which -- see what
16 I am saying?

17 Q. What I am saying is the 40 -- the
18 40 billion cubic foot per day number, that is a
19 combined number, is it not?

20 A. It looks to be, yes.

21 Q. And with respect to the 25 percent number
22 in terms of total U.S. production, again, that's
23 Marcellus and Utica, correct?

24 A. It appears to be, yes.

25 Q. And when they are referring in the third

1 paragraph -- the third paragraph is a -- is what you
2 are quoting from, are you not?

3 A. I quoted the second paragraph and, I
4 think, part of the third paragraph.

5 Q. All right. And in the third paragraph
6 would it be fair to say they are also referring to
7 combined Marcellus and Utica data?

8 A. With respect to the numbers 3-Bcf and 7
9 Bcf, it seems to be combined. The discussion
10 "significant improvements" appears to be applied to
11 each of them.

12 Q. Okay. Thank you. Well, for now, with
13 respect to your calculations in Exhibit JPK or
14 Attachment JPK-SS-3, you rely upon the 2015 AEO, in
15 part, correct?

16 A. Yes.

17 Q. And would it be fair to say you don't
18 believe that the AEO is widely relied upon in the
19 industry as a reliable forecast, natural gas prices?

20 A. I would say that the levels of prices is
21 not relied upon widely in the industry. The industry
22 relies, in my experience, on NYMEX, but the levels of
23 price, you know, \$2.82 cents, \$3.41, in my experience
24 they are not widely relied upon for that purpose.
25 They are relied upon by the government quite

1 frequently for their forecasting.

2 Q. So the answer to my question is it's not
3 relied upon other than by the government?

4 MR. PETRICOFF: Objection, asked and
5 answered.

6 EXAMINER ADDISON: He is just asking for
7 clarification.

8 A. The clarification is this. I only rely
9 on the rate of change of AEO --

10 Q. That's not my question.

11 A. -- not the level of prices. I said the
12 level of prices is not routinely relied upon in the
13 industry, to my knowledge.

14 MR. KUTIK: Move to strike as
15 nonresponsive.

16 EXAMINER ADDISON: Granted.

17 And I will direct the witness to just
18 respond to counsel's question.

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

21 EXAMINER ADDISON: You may.

22 (Record read.)

23 A. In my experience -- should I -- am I
24 still answering that question? In my experience the
25 price levels predicted by the AEO are not routinely

1 relied upon by industry. They are occasionally -- or
2 frequently relied upon by the government.

3 Q. Okay. So, again, your view is that the
4 AEO reference case forecast is not widely relied upon
5 in the industry except for by the government?

6 MR. PETRICOFF: Object, asked and
7 answered.

8 A. Not quite the way you said it.

9 MR. PETRICOFF: Dr. Kalt --

10 EXAMINER ADDISON: Yeah, I believe he
11 clarified his answer in his previous answer. I think
12 he answered your question.

13 MR. KUTIK: Thank you, your Honor.

14 EXAMINER ADDISON: Thank you.

15 Q. (By Mr. Kutik) Now, for purposes of
16 drafting your testimony, you did not do any
17 comparison of the 2014 AEO reference case for natural
18 gas prices to the same case for the 2015 AEO,
19 correct?

20 A. I don't recall doing it, no.

21 Q. And, again, for purposes of your
22 testimony, writing your testimony, you did not
23 compare the Short-Term Energy Outlook Natural Gas
24 Forecast that you relied upon with the natural gas
25 price forecast in previous short-term energy outlooks

1 by the EIA?

2 A. I don't recall doing such comparison.

3 MR. KUTIK: Your Honor, at this time we
4 would like to have four documents marked as Company
5 Exhibit 193, the EIA Short-Term Energy Outlook for
6 March, 2014; for Exhibit 194, the Short-Term Energy
7 Outlook for April, 2014; for Company Exhibit 195, the
8 Short-Term Energy Outlook for March of 2015; and as
9 196, the Short-Term Energy Outlook for April, 2015.

10 EXAMINER ADDISON: They will be so
11 marked.

12 (EXHIBITS MARKED FOR IDENTIFICATION.)

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

14 EXAMINER ADDISON: You may.

15 Q. (By Mr. Kutik) Dr. Kalt, I have handed
16 you what's been marked for identification as Company
17 Exhibits 193, 194, 195, 196, four documents that
18 appear to be Short-Term Energy Outlooks by the U.S.
19 Energy Information Administration. You've reviewed
20 Short-Term Energy Outlooks before, correct?

21 A. Yes.

22 Q. Did you review any of these Short-Term
23 Energy Outlooks for purposes of preparing your second
24 supplemental testimony?

25 A. No. I didn't find it necessary. I was

1 looking for the updated information.

2 MR. KUTIK: Your Honor, we ask that the
3 Bench take administrative notice of these four
4 reports. They are government documents, government
5 reports.

6 EXAMINER ADDISON: Are there any
7 objections?

8 MR. PETRICOFF: No objection, your Honor.

9 EXAMINER ADDISON: The Bench will take
10 administrative notice of Company Exhibits 193, 194,
11 195, and 196.

12 Let's go off the record.

13 (Discussion off the record.)

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

16 Q. (By Mr. Kutik) Dr. Kalt, would it be fair
17 to say that with respect to the natural gas futures
18 market that as one goes out in the futures, fewer and
19 fewer people are putting their money where their
20 mouth is?

21 A. In the case of natural gas, as you get
22 out three years and beyond, yes, the volumes of
23 trades go down.

24 EXAMINER ADDISON: Dr. Kalt, would you
25 mind turning your microphone on. I apologize.

1 THE WITNESS: I don't know when it goes
2 off. I apologize.

3 MS. FLEISHER: Could we just repeat the
4 question and answer.

5 EXAMINER ADDISON: Yes. Let's have the
6 question and answer read back.

7 Thank you, Karen.

8 (Record read.)

9 Q. Would it be fair to say -- would it be
10 fair to say that after three or four years, the
11 market can be characterized as thin?

12 A. It's relatively thin, yes, yes.

13 Q. Would it be --

14 A. Thin is a relative concept, as we all
15 know as we get to middle age.

16 Q. You are doing that better than me,
17 Dr. Kalt.

18 One of the consequences of a thinned
19 market in the out years is that if a large
20 transaction was consummated for a contract that was,
21 say, out four -- five to six years, that contract
22 might move the futures price by itself, correct?

23 A. It can, yes.

24 Q. Now, you're aware, are you not, that
25 there are -- there may be rules that require a buyer

1 or seller to cover the spread between a contract
2 price and a market price in a futures transaction?

3 A. I understand there are some rules of that
4 nature.

5 Q. Would it also be fair to say that there
6 is more at risk for a buyer or a seller in having to
7 meet such a potential spread the longer the contract
8 is for?

9 A. Yes. On a percentage basis, the risk
10 tends to go up the longer the contract. But on a
11 volume basis, it would again -- total dollars the
12 risk would depend on what size contracts.

13 Q. Holding all else equal, the longer the
14 contract, the more risk there might be to meet that
15 type of spread.

16 A. Generally, yes.

17 Q. I want to change topics, Doctor. You've
18 reviewed cases from the Commission involving approval
19 of stipulations, correct?

20 A. I've seen cases like that, yes.

21 Q. And you are not aware of any cases where
22 the Commission has approved stipulations even where
23 there are parties that object, correct?

24 A. Say that again.

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

1 please.

2 MR. PETRICOFF: We will object because it
3 calls for a legal conclusion, and we will allow him
4 to answer with that caveat.

5 EXAMINER ADDISON: Thank you,
6 Mr. Petricoff. With that understanding let's have
7 the question read back. Thank you.

8 (Record read.)

9 A. I am not aware of cases where a
10 stipulation has been approved where there are still
11 people objecting?

12 Q. Yes.

13 A. I suspect that's happened, but I am not
14 an expert on that.

15 Q. So you are not aware, correct?

16 A. I don't -- I don't think so.

17 Q. Okay.

18 A. Not something I study as part of my
19 normal course of work.

20 Q. You don't recall any case in which the
21 Commission approved a stipulation in which the Office
22 of the Ohio Consumers' Counsel opposed the
23 stipulation, correct?

24 MS. WILLIS: Objection.

25 EXAMINER ADDISON: Grounds?

1 MS. WILLIS: Relevance.

2 EXAMINER ADDISON: Mr. Kutik.

3 MR. KUTIK: Your Honor, he talks about
4 how the Office of Ohio Consumers' Counsel is opposed
5 to it as a reason to be -- to have the Commission not
6 approve the stipulation.

7 EXAMINER ADDISON: Objection overruled.

8 A. And your question again, please.

9 MR. KUTIK: May I have it read, please.

10 (Record read.)

11 A. I have not really studied the issue so I
12 don't have an awareness one way or the other.

13 Q. So the answer is yes, you are not aware?

14 A. I'm not aware of one way or the other.
15 It is not something I study.

16 Q. Now, you are aware, are you not, that
17 there are entities that are signatory parties that
18 represent the interest of residential consumers?

19 A. They represent themselves as representing
20 that, yes, I am aware of that.

21 Q. You would agree with me, would you not,
22 if the Office of the Ohio Consumers' Counsel takes a
23 position that is contrary to the public interest, the
24 Commission should reject that position?

25 MS. WILLIS: Objection.

1 EXAMINER ADDISON: Grounds?

2 MS. WILLIS: It assumes a fact not in
3 evidence. I think it's argumentative, and I don't
4 think it's relevant.

5 EXAMINER ADDISON: Overruled.

6 A. Just like I told you the other day, these
7 kinds of questions I can't give you a legal opinion
8 on what they should do or not do. What I can say as
9 an economist is if any of you take positions contrary
10 to the public interest, I hope the Commission won't
11 approve it, whether it's the OCC, you or anybody.

12 Q. That includes the OCC, correct?

13 A. That's what I just said.

14 Q. Thank you.

15 MR. KUTIK: May I have a moment, your
16 Honor?

17 EXAMINER ADDISON: You may. Let's just
18 go off the record for a minute.

19 (Discussion off the record.)

20 EXAMINER ADDISON: Let's go back on the
21 record.

22 Mr. Kutik.

23 MR. KUTIK: That's all the questions I
24 have at this time, your Honor. We have some
25 confidential questions as well.

8686

1 EXAMINER ADDISON: Thank you, Mr. Kutik.
2 Mr. McNamee?

3 MR. McNAMEE: No questions, your Honor.
4 Thank you.

5 EXAMINER ADDISON: Thank you.

6 At this time we are going to move into
7 the confidential portion of our transcript. If you
8 have not executed a confidentiality agreement, please
9 vacate the room at this time. I'll give the
10 companies the opportunity to look at the room.

11 MR. KUTIK: Well, are we on the record or
12 off?

13 EXAMINER ADDISON: Let's go off the
14 record for a minute.

15 (Discussion off the record.)

16 EXAMINER ADDISON: Let's go back on the
17 record. I would like to remind everyone we are now
18 in the confidential portion of our transcript.

19 The companies, did you have a moment to
20 review the room?

21 MR. BURKE: Yeah, we're okay. Thank you.

22 EXAMINER ADDISON: Mr. Kurtz.

23 - - -

24 (CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

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FURTHER CROSS-EXAMINATION (Continued)

By Mr. Kurtz:

Q. I hand you a document which should be
marked as OEG Exhibit 3, the EIA Short-Term Report.
Do you recognize this as a Federal Government EIA
document?

1 A. It looks like that's what you've copied,
2 yes.

3 Q. Do you see how they cite to SNL as the
4 source for the information?

5 A. Where you have yellowed there?

6 Q. Yes.

7 A. Yes.

8 Q. And this is the average weekly coal
9 commodity spot pricing information from EIA, correct?

10 A. That's the way it's labeled, yes.

11 Q. By the way, do you know where the coal
12 that powers Sammis comes from?

13 A. I recall that somewhat, but I haven't
14 brushed up on that. I think I turned in my first
15 report more than a year ago. I don't recall
16 specifically.

17 Q. Okay. You agree that in the first week
18 of January central Appalachian coal was down \$1.25
19 per ton or 2.8 percent?

20 MR. PETRICOFF: Your Honor, I am going to
21 object at this time. There's nothing that has been
22 laid in foundation as to whether the -- what the
23 contracts were for the Sammis plant because this is
24 all academic, if you don't know that. What this
25 witness knows about that, what the determined volumes

1 are going to be, what the other costs are going to
2 be, if this is now going to be a reexamination of
3 making adjustments on fuel, it's not relevant to this
4 testimony.

5 MR. KURTZ: Well, it's relevant because
6 he did a cherry-picked sensitivity analysis where he
7 looked at one element of the economics that went
8 against the PPA without looking at any other element
9 including the most important element for the coal
10 plant, fuel, which then drove his conclusion, and he
11 used his conclusions on the Sammis coal plant to
12 extrapolate a conclusion for Davis-Besse which
13 underlies his entire testimony.

14 MR. PETRICOFF: He has told what his
15 study is going to be. That is not going to change.
16 He cannot -- he cannot bootstrap him to get coal
17 evidence in this record that's not in this record and
18 especially since he can't tell you whether the coal
19 is going to be used at Sammis.

20 EXAMINER ADDISON: I am going to sustain
21 the objection at this point. Thank you.

22 MR. KUTIK: Your Honor, I would ask that
23 the Commission take administrative notice of the
24 information that's on OEG Exhibit 3 on two grounds.
25 One, it's a government report; and, two, it is a

1 compilation of data.

2 EXAMINER ADDISON: Any objection?

3 MR. PETRICOFF: Yes, your Honor, it is
4 not relevant. There is nothing in the record now as
5 to what the coal is that's being used or its
6 contractual obligations and so it's true that it's a
7 government record but it's not relevant.

8 MR. KUTIK: Well, what is in the record,
9 your Honor, Sammis does use coal, and coal prices are
10 and the trend of coal prices may be relevant to
11 arguments that parties may make in this case.

12 EXAMINER PRICE: Hold on, Mr. Petricoff.
13 Mr. Kutik, you have already introduced the Annual
14 Energy Outlook for 2014, the 2015 Annual Energy
15 Outlook, the Short-Term Energy Outlook for four
16 months, previous Short-Term Energy Outlooks. I think
17 the price of coal is probably in these documents. I
18 think they are all in the record for parties to site
19 if they want to show downward trends. I think we
20 have got lots of data.

21 MR. KUTIK: Fair enough, your Honor.

22 MR. PETRICOFF: I'm finished, your Honor.

23 MR. KURTZ: So the objection is
24 sustained?

25 EXAMINER ADDISON: Sustained.

1 EXAMINER PRICE: I have a follow-up
2 question before he moves on. I just want to make
3 sure I understand what your testimony is and what it
4 isn't. Your testimony is not a projection of the net
5 present value of the proposed transaction based on
6 all the available knowledge today. It is solely an
7 analysis of what the change is based upon the change
8 in one variable; is that correct?

9 THE WITNESS: The sensitivity analysis
10 is, but I have to -- if you will allow me.

11 EXAMINER PRICE: Yeah. Go ahead.

12 THE WITNESS: I guess this isn't -- if
13 one were to look at recent spot prices of coal, they
14 actually don't play a role anywhere in the NPV
15 calculation.

16 EXAMINER PRICE: I think you are going
17 beyond the question I am asking.

18 MR. KUTIK: I move to strike all -- any
19 of that last sentence.

20 THE WITNESS: Let me try the answer one
21 more time.

22 EXAMINER PRICE: Sustained.

23 THE WITNESS: The NPV calculations
24 utilize coal price forecasts going forward, and I am
25 not aware of any additional forecasts.

1 EXAMINER PRICE: You are not answering
2 the question that I asked, and honestly whether it
3 happens with counsel you have to answer my question.

4 THE WITNESS: Sure. I am trying.

5 EXAMINER PRICE: I don't think you are
6 trying. One more time, your analysis is not a
7 projection based upon all the available public
8 information today of what the NPV is; is that
9 correct?

10 THE WITNESS: I am trying to answer, your
11 Honor.

12 EXAMINER PRICE: Start with yes and no
13 and we will go from there.

14 THE WITNESS: I am trying to think
15 through all the elements, okay?

16 EXAMINER PRICE: Let me try to simplify
17 it. Let me try to simplify my question. Your
18 analysis is not a projection of the net present value
19 of the proposed transaction; is that correct?

20 THE WITNESS: My analysis, those
21 attachments are sensitivity analyses on the gas price
22 and No. 5, Attachment 5, is on the volumes.

23 EXAMINER PRICE: And so the answer to my
24 question is, yes, it is not an analysis of the net
25 present value of the proposed transaction.

1 THE WITNESS: The way you phrased it
2 there, yes, but not your prior answer. I am trying
3 to be honest but what you said earlier wasn't quite
4 the same thing.

5 EXAMINER PRICE: I understand. But my
6 last question was correct.

7 THE WITNESS: Yes. Based on your
8 previous question, what I understand you are asking,
9 yes.

10 EXAMINER PRICE: Thank you.

11 MR. KURTZ: No further questions.

12 EXAMINER ADDISON: Thank you, Mr. Kurtz.

13 Let's go ahead and move back onto the
14 confidential portion of our transcript. At this time
15 I believe the only parties to remain in the room are
16 P3/EPISA, the companies, and any staff members; is
17 that correct, Mr. Petricoff?

18 MR. PETRICOFF: That's correct, your
19 Honor.

20 EXAMINER ADDISON: Thank you. Let's go
21 off the record for a moment.

22 (Discussion off the record.)

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

25 (CONFIDENTIAL PORTION EXCERPTED.)

1 (OPEN RECORD.)

2 EXAMINER ADDISON: Let's go back on the
3 record. I would like to reflect that we are now in
4 the public version of our transcript.

5 Mr. Petricoff, did you have any redirect
6 as to Mr. Kurtz's questions asked during the
7 confidential session?

8 MR. PETRICOFF: No. We have no
9 confidential questions on either tier of the
10 confidential proceeding.

11 EXAMINER ADDISON: Thank you for that
12 clarification. Do you have any redirect for the
13 public session?

14 MR. PETRICOFF: I do. I have a question
15 for Mr. Kalt.

16 - - -

17 REDIRECT EXAMINATION

18 By Mr. Petricoff:

19 Q. Dr. Kalt, you were asked several times
20 whether you did a study or a comparison between what
21 the NYMEX future price was projected to be and then
22 what the closing price was for that future month when
23 the future month closed. Do you recall those
24 questions?

25 A. Or what the spot price was.

1 Q. Or what the spot price was.

2 A. Yes. I remember those questions, yes.

3 Q. Why didn't you look into that subject?

4 A. Because energy prices are volatile. That
5 is, we do not expect forecasts, including NYMEX
6 forecasts, to match how the world turns out. Indeed
7 that's kind of the point of the exercise here that I
8 am trying to make. That's why we do sensitivity
9 analysis. You -- implicitly the Commission here is
10 being asked to base a decision upon a particular
11 forecast. That forecast is outdated, as I said. But
12 no forecast is going to be accurate. That's kind of
13 the point as I say very clearly in my testimonies.
14 That is, what's being asked is to have the risk of
15 those energy markets shifted onto the ratepayers in a
16 very substantial way.

17 I show you that here. I do my
18 sensitivity, and you shift the consumer alleged
19 benefit from Ms. Mikkelsen, you swing like by more
20 than a billion dollars in the other direction, you
21 know. And so that's the point is that we're in a
22 situation which those risks are being shifted onto
23 ratepayers if the proposal is approved as it is
24 currently made.

25 That's not to say -- that's not to say, I

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1 need to say one thing, that's not to say, oh, so the
2 NYMEX isn't a perfect forecast; therefore, they are
3 all useless. They are all useless. That's not true.
4 The NYMEX -- and the reason economists use it, I
5 presume the reason Mr. Rose relied upon it, is
6 because the NYMEX is the best you are going to get.
7 The up-to-date NYMEX is the summation of people
8 think -- some people think the price can go up; some
9 think it can go down. And it's the balance point of
10 all the opinions in the market of the people who are
11 plunking money down in order to balance future oil
12 prices.

13 MR. PETRICOFF: No further questions,
14 thank you.

15 EXAMINER ADDISON: Thank you,
16 Mr. Petricoff.

17 Mr. Mendoza?

18 MR. MENDOZA: No questions.

19 EXAMINER ADDISON: Ms. Fleisher?

20 MS. FLEISHER: No questions, your Honor.

21 EXAMINER ADDISON: Mr. Dougherty?

22 MR. DOUGHERTY: No questions, your Honor.

23 EXAMINER ADDISON: Mr. Pritchard?

24 MR. PRITCHARD: No questions, your Honor.

25 Ms. Bojko?

1 MS. BOJKO: No questions, your Honor.

2 EXAMINER ADDISON: Ms. Willis?

3 MS. WILLIS: No questions, your Honor.

4 EXAMINER ADDISON: Mr. Kurtz?

5 MR. KURTZ: No questions.

6 EXAMINER ADDISON: Mr. Kutik?

7 MR. KUTIK: No questions, your Honor.

8 EXAMINER ADDISON: Thank you.

9 Mr. McNamee?

10 MR. McNAMEE: It's unanimous.

11 EXAMINER ADDISON: Thank you.

12 Any questions, Examiner Price?

13 EXAMINER PRICE: No.

14 EXAMINER ADDISON: Examiner Chiles?

15 Commissioner Haque?

16 COMMISSIONER HAQUE: I'll be the jerk,
17 okay. So keeping you from lunch, I apologize.

18 Sir, good afternoon now. How are you?

19 THE WITNESS: Hi.

20 COMMISSIONER HAQUE: Thank you so much
21 for flying in and joining us. I asked a similar
22 question to another witness in the AEP proceeding,
23 and I knew his answer this go-around so I didn't ask
24 it, but I want to ask this question of you, and this
25 goes to the concept of what is in the public

1 interest, okay?

2 So just think of that concept of -- just
3 conceptually think of this concept, okay? And you
4 are an economist, and you know you have provided
5 testimony and eloquently provided testimony in
6 responding to questions today.

7 My question is how do you evaluate as an
8 economist the social utility of potential good that
9 can come from something like what we are dealing with
10 today, the stipulation that we are dealing with
11 today? And so, you know, in a previous proceeding I
12 said this, and I'll -- I'll cite this to you as well
13 here, so the concept of grid modernization, okay,
14 this is something that a number of state utility
15 commissions are looking at. It is not foreign to
16 state utility commissions right now. There's a lot
17 of good that can be done with this concept, albeit,
18 there is still much to explore, okay? The concept of
19 decarbonized -- decarbonized generation fleet in the
20 future, again, we can argue what the stipulation
21 says, I don't want to do that, I just want to ask you
22 this theoretical question as an economist, how do you
23 evaluate social utility in your field?

24 THE WITNESS: That's, of course, the
25 topic of the whole field in some sense, but I will

1 try to give you a briefer answer.

2 COMMISSIONER HAQUE: And you have got to
3 hit your mic.

4 THE WITNESS: I will try to give you a
5 briefer answer. That's sort of the topic of public
6 policy economics. That's what we teach about.

7 The first principle that we invoke is the
8 public has an abiding interest in an economically
9 efficient economy meaning you deliver what consumers
10 want at the lowest possible cost. You don't waste
11 resources. And you -- that's principle No. 1.

12 Principle No. 2 is that where you have
13 some inefficiency the appropriate public policy
14 approach to that we sometimes say to the students you
15 go at it head on. What we mean by that, if you need
16 grid modernization among your regulated companies,
17 then what you do is you get grid modernization for
18 its own sake.

19 And, you know, to go to the heart of this
20 case in some sense, you don't, for example -- in
21 other words, if it's efficient to do it, you ought to
22 do it. You don't, for example, say we will do that
23 as part of a trade. We'll let you shift all these
24 costs and have the captive ratepayers and use their
25 captivity to guarantee the rates of return and so

1 forth on a couple of plants in order to get grid
2 modernization. You want to separate those from a
3 public policy point of view.

4 And there's actually theorems about this
5 in the work of Nobel Prize Winner Paul Samuelson
6 about how you want to take on those things because --
7 I don't know why I am squeaking, but if you try to
8 mess up, if you will, make this inefficient over here
9 in order to get some inefficiency over here, you are
10 going to end up distorting the whole economy, and
11 that's contrary to the public interest.

12 And so we have this principle of
13 separation we call it, approach the problem head on.
14 Want a better, cleaner environment? Go regulate the
15 plants for environmental cleanliness. Don't trade it
16 away by doing something like, you know, using your
17 captive ratepayers to cut a deal.

18 I think that's trying to be responsive.

19 COMMISSIONER HAQUE: Okay. Okay. That's
20 it. Thank you.

21 EXAMINER ADDISON: Thank you,
22 Commissioner Haque.

23 I have no further questions. You are
24 excused, Dr. Kalt. Thank you very much.

25 THE WITNESS: Thank you.

1 EXAMINER ADDISON: Mr. Petricoff.

2 MR. PETRICOFF: Yes, your Honor. At this
3 time we would like to move into the record P3/EP
4 Exhibits 12, 12A, and 13.

5 EXAMINER ADDISON: Are there any
6 objections to the admission of P3/EP
7 Exhibits 12, 12A, and 13 Confidential subject to the motions to
8 strike?

9 MR. KUTIK: Subject to your rulings on
10 the motion to strike.

11 EXAMINER ADDISON: Thank you. Thank you
12 for that clarification, Mr. Kutik.

13 Any objection?

14 Hearing none, they will be admitted.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 EXAMINER ADDISON: Mr. Kutik.

17 MR. KUTIK: Given your ruling on the
18 administrative notice, your Honor, I have nothing to
19 add at this time.

20 EXAMINER ADDISON: Thank you very much,
21 Mr. Kutik.

22 Mr. Kurtz?

23 MR. KURTZ: The -- the one exhibit I was
24 going to use you, I think, granted the motion to
25 strike, so I am not going to move it in.

1 EXAMINER ADDISON: Thank you.

2 Let's go off the record for a moment.

3 (Discussion off the record.)

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

6 We had a couple of pending procedural
7 matters we promised we would clear up before we left
8 today. Ms. Fleisher's motion to strike will be
9 granted. We do find under the narrow circumstances
10 in this case, not under some general duty to
11 supplement but under the narrow circumstances of this
12 case, that the discovery responses should have been
13 supplemented; and, therefore, the testimony will be
14 stricken.

15 With respect to the companies' motion for
16 protective order, we will grant the motion for
17 protective order in its entirety. All confidential
18 information in this proceeding will be protected
19 until 60 days after the Commission issues a final
20 nonappealable order in this proceeding.

21 MS. BOJKO: Your Honor, may you tell us
22 the testimony or portion that you did grant to be
23 stricken or that will be struck?

24 EXAMINER PRICE: Not off the top of my
25 head. Ms. Fleisher, do you have the transcript

1 reference?

2 MS. FLEISHER: I believe it's a portion
3 of the transcript I don't yet have. Certainly maybe
4 once --

5 EXAMINER PRICE: I'll e-mail it around
6 Monday.

7 MS. BOJKO: Thank you.

8 EXAMINER PRICE: And the part everybody
9 has been waiting for, I am sure, with trepidation,
10 rightfully so, post-hearing briefs will be due --

11 MR. KUTIK: Your Honor, may I confer with
12 my team about potential rebuttal?

13 EXAMINER PRICE: Oh, I'm sorry. Let's go
14 off the record before we discuss prehearing -- or
15 post-hearing briefs.

16 MR. KUTIK: Thank you.

17 (Discussion off the record.)

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

20 Mr. Kutik.

21 MR. KUTIK: We have no rebuttal, your
22 Honor.

23 EXAMINER PRICE: Thank you. Ms. Bojko,
24 would you like to argue as to rebuttal? Just
25 kidding. I know you wanted to make this argument all

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1 day.

2 Post-hearing briefs will be due February
3 12. Reply briefs will be due February 19. Thank
4 you, all.

5 We are off the record.

6 (Discussion off the record.)

7 (Thereupon, at 1:10 p.m., the hearing was
8 concluded.)

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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 Friday, January 22,
5 2016, and carefully compared with my original
6 stenographic notes.

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11 Karen Sue Gibson, Registered
Merit Reporter.

12 (KSG-80069)

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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 01/22/16 - Volume XLI electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.