

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 and Ms. Megan Addison,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 9:00 a.m. on Tuesday, July
12, 2016.

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REHEARING VOLUME II

- - -

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1 Tuesday Morning Session,
2 July 12, 2016.

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

13 My name is Gregory Price. With me is
14 Megan Addison. We are the attorney examiners
15 assigned to preside at today's hearing. We will
16 dispense with appearances of the parties.

17 Before we resume Ms. Mikkelsen's
18 testimony, Mr. Kutik.

19 MR. KUTIK: Yes, your Honor. During
20 Mr. Whitt's examination of Ms. Mikkelsen, the request
21 was made for us to review Direct Exhibits 2, 3, and 4
22 with respect to their authenticity, and we stipulate
23 to their authenticity.

24 EXAMINER PRICE: Are you stipulating to
25 their admission too?

1 MR. KUTIK: We will when that comes up,
2 your Honor.

3 EXAMINER PRICE: When that comes up,
4 okay. I tried to get you out of here.

5 MR. WHITT: Thank you.

6 EXAMINER PRICE: Okay. At this time we
7 will go to the confidential portion of our
8 transcript. Anybody who does not have a
9 confidentiality agreement with the companies or is a
10 member of the staff could please absence yourselves.

11 (CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

EXAMINER PRICE: Redirect?

MR. KUTIK: No redirect, your Honor.

EXAMINER PRICE: Thank you.

1 Ms. Mikkelsen, you are excused.

2 THE WITNESS: Thank you, sir.

3 EXAMINER PRICE: Did anyone know this was
4 going to happen?

5 We will go off the record for a second.

6 (Discussion off the record.)

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

9 Mr. Kutik.

10 MR. KUTIK: Your Honor, at this time the
11 companies move for the admission of Company Exhibits
12 197 and 198.

13 EXAMINER PRICE: Any objections to the
14 admission of Exhibits 197 and 198?

15 MS. PETRUCCI: Yes. Yes, we have an
16 objection with respect to Exhibit 198.

17 EXAMINER PRICE: Grounds?

18 MS. PETRUCCI: Given our argument, your
19 Honor, this is the letter that was filed in the
20 docket on May 4. It contains hearsay and it's being
21 offered for the truth of the matter asserted therein.
22 It indicates positions apparently by other signatory
23 parties, and it should not be permitted into the
24 record. As we noted earlier, we have a motion to
25 strike the letter from the docket. In addition, we

1 object to its admission as an exhibit in this
2 proceeding.

3 EXAMINER PRICE: Mr. Kutik?

4 MR. KUTIK: Your Honor, this exhibit was
5 discussed at Ms. Mikkelsen's direct testimony. It
6 was also discussed in her cross-examination
7 testimony. It is an important exhibit to advise the
8 Commission of the position of the various signatory
9 parties so the Commission can understand where those
10 parties are as we proceed to the modification of the
11 calculation of rider RRS.

12 MS. PETRUCCI: And, your Honors --

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

15 (Discussion off the record.)

16 EXAMINER PRICE: Let's go back on the
17 record. I'm sorry, Ms. Petrucci. You wanted to
18 finish your arguments?

19 MS. PETRUCCI: I'm sorry. Mr. Kutik's
20 argument is confirming that they are offering this
21 letter for the truth of the matter asserted therein
22 as to the position of these other signatory parties,
23 and Ms. Dunn is not a representative of those
24 signatory parties. It's classic hearsay and should
25 not be permitted.

1 EXAMINER PRICE: Mr. Kutik, final word?

2 MR. KUTIK: Your Honor, there are certain
3 times when the Commission can look at the rules and
4 adhere to the rules and certain times when they don't
5 need to. This is indicating the position of the
6 parties which is something the Commission should
7 understand and needs to understand. It goes forward
8 in evaluating the merits of the proposal.

9 EXAMINER PRICE: As I observed while we
10 were off the record briefly, there's going to be
11 another round of briefs in this proceeding. It's
12 enormously inefficient and an imposition on the
13 signatory parties to file a brief when the letter
14 clearly indicates their stance. Counsel for the
15 signatory parties -- all the signatory parties are
16 represented by counsel. Many of those counsel are
17 here and so we don't have to follow directly the
18 Rules of Evidence and so we will admit Company
19 Exhibit 198.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 MR. KUTIK: And you are also admitting
22 197?

23 EXAMINER PRICE: I was making sure there
24 are no objections. No objections to 197?

25 Okay. That exhibit will be admitted

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER PRICE: Mr. Fisk.

3 MR. FISK: Thank you, your Honor. Sierra
4 Club would move for admission of Sierra Club Exhibits
5 97, 98, and 99.

6 EXAMINER PRICE: Objections?

7 MR. KUTIK: Yes, your Honor. With
8 respect to Exhibit 97, that exhibit, I believe, is
9 being used in this case to indicate that the company
10 did not do a certain type of financial projections
11 with respect to certain calculations as the colloquy
12 during the introduction of this document indicates.

13 The question is badly formed and the
14 companies' -- Ms. Mikkelsen's testimony is that they
15 did do certain analysis with respect to a written
16 authorization program, and somehow they believe, I
17 guess, this somehow makes her testimony inconsistent.
18 The problem is not with Ms. Mikkelsen's testimony,
19 it's with the interrogatory. And so, for that
20 reason, your Honor, we believe it should not be
21 admitted because it's not inconsistent with anything
22 Ms. Mikkelsen said.

23 EXAMINER PRICE: Mr. Fisk.

24 MR. FISK: Well, first of all, this is a
25 response from the companies. Ms. Mikkelsen said she

1 was involved in -- in providing the response, so it's
2 clearly admissible. But the thought that a request
3 for financial projection is somehow vague and
4 ambiguous is -- is frankly meritless. This case --
5 the entire case involves financial projections. If
6 FirstEnergy doesn't know what that means, that's a
7 little disturbing. And the fact is we asked for them
8 to produce these documents and they produced nothing.
9 They simply pointed back to her testimony, and if
10 they want to try to change that, then the record will
11 show that Ms. Mikkelsen tried to change that, but
12 that does not make this exhibit inadmissible.

13 EXAMINER PRICE: We will go ahead and
14 admit the exhibit, noting the companies' objections
15 and its contentions that the -- regarding the weight
16 that should be given to this exhibit.

17 MR. FISK: Thank you, your Honor.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 EXAMINER PRICE: Ms. Petrucci?

20 MR. KUTIK: Your Honor, I do have
21 objections with respect to Exhibits 98 and 99.

22 EXAMINER PRICE: Oh, I'm sorry.

23 MR. KUTIK: With respect to relevance.
24 This is not something that's part of the companies'
25 proposal. It is not something the companies are

1 relying on. It is not a benefit the companies have
2 indicated. Therefore, it's beyond the scope of
3 Ms. Mikkelsen's testimony and beyond the scope of
4 this hearing as it relates to the proposal.

5 EXAMINER PRICE: Mr. Fisk.

6 MR. FISK: Well, both of these exhibits
7 are, again, company responses sponsored by
8 Ms. Mikkelsen who was the witness on them. They are
9 easily within the scope of this hearing which is
10 focused not just on the companies' proposal but on
11 alternatives to the proposal. These documents, the
12 responses, were cited by Mr. Buckley in his testimony
13 and I think these are plainly both relevant to the
14 proceeding and plainly admissible.

15 EXAMINER PRICE: I believe they are not
16 directly relevant with respect to Ms. Mikkelsen's
17 testimony. Now, they will be shortly, so we will go
18 ahead -- when Mr. Buckley takes the stand, so we will
19 go ahead and admit these exhibits.

20 MR. FISK: Thank you, your Honor.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 EXAMINER PRICE: That's Sierra Club 98
23 and 99.

24 Okay. Ms. Petrucci.

25 MS. PETRUCCI: We're not moving P3/EP SA

1 14 or 15 at this time and I believe earlier there was
2 a mention that we weren't going to admit P3
3 Exhibit -- P3/EPISA Exhibit 16, the excerpt from the
4 AEP decision.

5 EXAMINER PRICE: Thank you.

6 Mr. Whitt.

7 MR. WHITT: Direct Energy would move for
8 the admission of Direct Exhibits 1 through 4. I
9 believe that they are -- the admission of Exhibits 2
10 through 4 are stipulated which leaves us with Direct
11 Exhibit 1.

12 EXAMINER PRICE: He stipulated to the
13 authenticity of 2, 3, 4. He did not stipulate to the
14 admission of 2, 3, 4.

15 MR. KUTIK: Actually, I said when it came
16 time, I said we would.

17 EXAMINER PRICE: Oh, okay.

18 MR. KUTIK: I'm sorry if I was unclear.

19 EXAMINER PRICE: No, that's fine. Then
20 we will admit 2, 3, 4.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 EXAMINER PRICE: Any objection to Direct
23 Exhibit 1?

24 MR. KUTIK: Yes, your Honor.

25 EXAMINER PRICE: Grounds?

1 MR. KUTIK: Relevance.

2 EXAMINER PRICE: Mr. Whitt.

3 MR. WHITT: Well, your Honor, there was
4 testimony all day, and the tenor and purpose of the
5 company's proposal is that without these dollars, the
6 credit ratings of the FirstEnergy companies, whoever
7 that is, will be going to Hades in a handbasket and
8 the press release is relevant to the credit ratings
9 of the affected companies.

10 EXAMINER PRICE: Well, again, everybody
11 is bootstrapping on staff's interrogatory.
12 Ms. Mikkelsen never put in play the question of the
13 companies' credit ratings. It was simply that she
14 happened to be the sponsoring witness to the staff's
15 interrogatory. It's really the staff, and not the
16 company, that has put the credit ratings in play.

17 Nonetheless, consistent with our ruling
18 on Sierra Club, it may not be relevant with respect
19 to Ms. Mikkelsen's testimony, but it will be directly
20 relevant with respect to Mr. Buckley's testimony and
21 we will admit it at this time.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 MS. BOJKO: Your Honor, for the record,
24 may I add an argument on relevance, because I think
25 it is directly relevant to the proposal?

1 EXAMINER PRICE: You already won. It's
2 in.

3 MS. BOJKO: Then I would just like to
4 note for the record, OMAEG disagrees with any
5 statements that the relevance to the modified
6 proposal is -- doesn't pertain to these types of
7 issues because it does and we used it in our
8 testimony regardless of whether staff filed their
9 alternative or not.

10 EXAMINER PRICE: It's not a question
11 about relevance. It's a question about with respect
12 to Ms. Mikkelsen. That's all I am saying. She --
13 Ms. Mikkelsen never claimed that the company needed
14 the funds from their proposal to maintain their
15 credit rating. That's come up -- she just happened
16 to be the sponsored witness for 34 around 35. I am
17 not saying it's outside this proceeding. I am just
18 acknowledging that was not something she voluntarily
19 intended to do.

20 MS. BOJKO: My only position is my
21 witness directly contradicts that without Buckley's
22 testimony -- staff's testimony.

23 EXAMINER PRICE: That's what I am saying,
24 that's in, and I understand that's your issue.

25 Okay. Mr. Whitt, have you given the

1 court reporter copies of Direct 2, 3, 4?

2 MR. WHITT: I have not, your Honor.
3 Those were distributed to the company yesterday so
4 they would have an opportunity to check the
5 authenticity which they've done. If I could
6 actually, maybe if we could track down copies that
7 the company has and give them to the court reporter
8 or I can furnish copies to the court reporter.

9 EXAMINER PRICE: And the Bench.

10 MR. WHITT: And the Bench.

11 EXAMINER PRICE: We only need one between
12 the two of us. The court reporter is more important,
13 but the Bench needs them too.

14 MR. WHITT: Very well.

15 EXAMINER PRICE: Ms. Willis.

16 MS. WILLIS: Yes, your Honor, OCC moves
17 for the admission of Exhibits 36, 37, 38, 39, 40, and
18 41.

19 EXAMINER PRICE: Any objections?

20 MR. KUTIK: Yes, your Honor. Your Honor,
21 these interrogatory responses are -- should not be
22 admitted because the interrogatories themselves are
23 vague and ambiguous and no clear fact can be deduced
24 from the response; no analyses have been undertaken.
25 If you review the various questions about measures to

1 reduce cash requirements, reductions in capital
2 expenditures, reductions in operations and
3 maintenance expenses, it first assumes that there
4 will be such or such will be required.

5 It also assumes that there should be an
6 analysis that would be done and it's unclear as to
7 why the company would be required to do any analysis
8 in this situation.

9 So because these interrogatories are
10 vague, because they assume facts, no relevant fact
11 can be taken from any answer that's propounded in
12 these responses.

13 EXAMINER PRICE: Ms. Willis.

14 MS. WILLIS: That's an interesting
15 objection, your Honor. Nonetheless, we know that
16 they -- the response to these supposed vague and
17 ambiguous requests was no analysis has been
18 conducted.

19 So, obviously, the company understood
20 enough to provide a response, and had the company had
21 a problem with the -- with the interrogatory as -- as
22 Mr. Kutik is now stating, we would assume that it
23 would not have responded or else they would have done
24 some redirect on this and explained that their answer
25 really didn't mean what their answer says.

1 So I would say this is directly relevant.
2 It goes to whether or not the company took reasonable
3 measures instead of coming forth and asking customers
4 to fund their operations.

5 MR. KUTIK: Well, the companies haven't
6 come forward to ask customers to fund their
7 operations with respect to rider RRS, No. 1. No. 2,
8 the companies have made objections. As an
9 accommodation to the discovery process, the companies
10 went forward to provide objections expressly -- or
11 responses expressly subject to objections so that we
12 could make the very arguments we're making now.

13 So the fact that we've given a response,
14 doesn't mean that these things aren't ambiguous or
15 vague. We are saying whatever this means, we didn't
16 do any analysis because, again, we are not sure what
17 it means and we don't think, given the assumptions
18 that were made, an appropriate response can be had
19 from this in terms of appropriate thought or analysis
20 could be had with respect to this.

21 EXAMINER PRICE: We are going to go ahead
22 and admit the exhibits. The Commission will give it
23 its proper weight based upon the companies'
24 objections.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

1 EXAMINER PRICE: Ms. Bojko.

2 MS. BOJKO: Thank you, your Honor. At
3 this time OMAEG moves OMAEG Exhibits 30, 31, and 34.
4 We will withhold moving 33.

5 EXAMINER PRICE: Objections?

6 MR. KUTIK: We have no objection to 30.
7 We have no objection to 31. And we do object to 34
8 on relevance grounds. We understand your rulings,
9 your Honor, but we make our objections on the same
10 basis.

11 EXAMINER PRICE: We are going to go ahead
12 and admit. To the extent they are not relevant right
13 now, they will be relevant in an hour or two, so at
14 this time that exhibit will be admitted.

15 Let's go off the record.

16 (Discussion off the record.)

17 EXAMINER PRICE: Okay. Just to make
18 clear for the record, at this time we are admitting
19 OMAEG 30, OMAEG 31, and OMAEG 34.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 EXAMINER PRICE: Now let's go back off
22 the record.

23 (Discussion off the record.)

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

1 Mr. Kurtz.

2 MR. KURTZ: Your Honor, we would call
3 Mr. Baron.

4 (Witness sworn.)

5 EXAMINER ADDISON: Thank you. Please be
6 seated.

7 - - -

8 STEPHEN J. BARON

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

11 DIRECT EXAMINATION

12 By Mr. Kurtz:

13 Q. Mr. Baron, would you state your name for
14 the record, please.

15 A. Stephen J. Baron.

16 Q. Okay. You have in front of you a
17 document marked as rehearing testimony of Stephen J.
18 Baron?

19 A. Yes.

20 Q. Was it prepared by you or under your
21 direct supervision?

22 A. Yes.

23 Q. If I were to ask you the same questions
24 as those contained herein, would your answers be the
25 same?

1 A. Yes.

2 Q. Do you have any corrections or additions?

3 A. Not that I am aware of.

4 MR. KURTZ: Your Honor, I would like to
5 have this marked as OEG exhibit something. We'll
6 find a number before he takes the stand. Your Honor,
7 I tender the witness for cross.

8 EXAMINER ADDISON: Thank you. Just --

9 MR. KURTZ: I believe this would be OEG
10 Exhibit 3.

11 EXAMINER ADDISON: I have 4. Why don't
12 we go ahead and mark this as OEG Exhibit No. 4. It
13 will be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 EXAMINER ADDISON: Mr. Kutik, any
16 questions?

17 MR. KURTZ: No questions, your Honor.

18 EXAMINER ADDISON: Mr. Soules.

19 MR. SOULES: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Soules:

23 Q. Good morning, Mr. Baron.

24 A. Good morning.

25 Q. My name is Michael Soules. I represent

1 Sierra Club in this proceeding. How are you doing
2 today?

3 A. I'm doing fine.

4 Q. Before we take about your rehearing
5 testimony, I would like to cover a couple of
6 preliminary points. First of all, if I refer to the
7 companies' proposed modifications to rider RRS as
8 "the proposal," will you understand what I mean?

9 A. Yes.

10 Q. And if I refer to the version of rider
11 RRS that was approved by the Commission on March 31,
12 2016, simply as "rider RRS," will you understand what
13 I mean?

14 A. Yes.

15 Q. Great. Could you please turn to page 2
16 of your rehearing testimony.

17 EXAMINER ADDISON: Mr. Soules.

18 THE WITNESS: Is it on now?

19 MR. SOULES: Yes, yes.

20 EXAMINER ADDISON: I apologize,
21 Mr. Soules.

22 MR. SOULES: Thank you, your Honor.

23 A. Page 2?

24 Q. Yes, page 2. In looking specifically at
25 lines 14 to 18, it's your testimony that if the

1 proposal were approved, FirstEnergy's generation
2 pricing would be partly cost-based, correct?

3 A. Yes.

4 Q. And the reason why you describe this
5 pricing as cost-based is because customer charges and
6 credits will be calculated using the projected cost
7 data that's already in the record for this case; is
8 that correct?

9 A. Yes, that would -- that's what I'm
10 referring to as cost-based.

11 Q. Thank you.

12 And it's your opinion that because
13 generation pricing would be cost-based, retail
14 customers will have more stable rates if the proposal
15 is approved; is that correct?

16 A. Yes.

17 Q. Now, under the proposal, the credits and
18 charges that would be passed along to retail
19 customers, would be calculated by taking the
20 difference between the projected costs that are in
21 the record and the proxy revenues for the generation
22 plants; is that correct?

23 A. Yes. When you say "proxy revenues," I
24 understand that will be the pricing at the AEP Dayton
25 Hub.

1 Q. Thank you.

2 And to calculate the proxy revenues, the
3 companies will multiply the generation plants'
4 projected generation output by monthly averages of
5 the on-peak and off-peak day-ahead locational
6 marginal prices for the AEP Dayton Hub; is that
7 correct?

8 A. That's my understanding, yes.

9 Q. So the charges and credits that are
10 ultimately passed along to customers under the
11 proposal are based, in part, on wholesale market
12 energy prices, correct?

13 A. Well, clearly the -- the RRS, as I
14 explained in my testimony, if you look at it on an
15 energy weighted -- an energy basis, comprises about
16 40 percent of the total energy in terms of pricing.
17 So, in that sense, it's based on the -- the cost as
18 defined in the record in the earlier part of this
19 proceeding. So maybe I'm not understanding your
20 question. The -- you were asking me about the RRS or
21 the entirety of the pricing that customers would
22 face?

23 Q. The charges and credits that are
24 ultimately passed along to retail customers under the
25 proposal would be based in part on wholesale energy

1 prices, correct?

2 A. Yes. Arithmetically, it's my
3 understanding that the way the mechanism would work
4 is that there would be a -- the RRS would
5 effectively, on a monthly weighted basis,
6 on-peak/off-peak, would compute the concerns between
7 the costs, the costs of service pricing that -- and
8 the prices at the AEP Dayton Hub.

9 That difference then in terms of what
10 customers would actually pay for the energy would
11 then be added or subtracted from the actual market
12 prices. And to the extent that the AEP Dayton Hub
13 reflects as a proxy for those market prices, what
14 you'll end up with is it's A minus B, plus B, so you
15 end up with A, which is the cost of service for the
16 RRS compound. At least that's my understanding.

17 MR. SOULES: Could I have that last
18 answer read back?

19 EXAMINER ADDISON: You may.

20 (Record read.)

21 EXAMINER PRICE: Could we have the
22 question back?

23 (Record read.)

24 Q. (By Mr. Soules) So the charges and
25 credits would be passed along to customers under the

1 proposal reflect the difference between the projected
2 costs and the proxy revenues that are based upon
3 market energy prices, correct?

4 A. Yes. If we define "proxy revenues" as
5 the AEP Dayton Hub market prices.

6 Q. Thank you.

7 Could you turn to page 3 of your
8 rehearing testimony.

9 A. Yes.

10 Q. Starting on line 18, there is a sentence
11 that states "Nor would the proposal result in
12 customers paying an unlawful subsidy." Do you see
13 that reference in your testimony?

14 A. Yes.

15 Q. And you're not an attorney, Mr. Baron,
16 correct?

17 A. That's correct.

18 Q. So you're not offering a legal opinion
19 about whether the proposal would require customers to
20 pay an unlawful subsidy, correct?

21 A. That's correct.

22 Q. Could you please turn to page 5 of your
23 written testimony. Please let me know when you are
24 there?

25 A. I am on page 5. Did you give me a line

1 number?

2 Q. No, not yet. Looking specifically at
3 line numbers 14 to 19, that discussion is referring
4 specifically to wholesale energy prices, correct?

5 A. Yes. Give me a moment to read it, if you
6 would.

7 Q. Absolutely.

8 A. Yes. The answer to your question is yes.

9 Q. Okay. Thank you. And retail electricity
10 prices are not volatile from hour to hour, correct?

11 A. Retail electricity prices are -- would
12 you repeat that again, please.

13 Q. Certainly. Looking at your -- looking at
14 line 16 of your testimony, it states "These market
15 energy prices can be extremely volatile from hour to
16 hour...." Do you see that reference?

17 A. Yes.

18 Q. Retail electricity prices are not
19 volatile from hour to hour, correct?

20 A. That would be correct under standard
21 service offer type pricing. I suppose in the -- from
22 an independent CRES provider, for example, I suppose
23 a customer could obtain a contract like that. But as
24 a general matter, Standard Service Offer through --
25 would generally not vary by hour. It still is

1 subject to those market prices and, of course, the
2 bidders into those competitive auctions, for example,
3 were -- will obtain their energy via that same
4 hour-by-hour market.

5 MR. SOULES: Your Honor, I would move to
6 strike beginning with everything "It is still subject
7 to market" as being nonresponsive to the question.

8 EXAMINER ADDISON: Mr. Kurtz.

9 MR. KURTZ: I think he was being
10 responsive to the question about the volatility of
11 retail pricing.

12 EXAMINER ADDISON: I think he was
13 attempting to be responsive and I don't think
14 Mr. Baron's utilized his one bite at the apple yet,
15 so we will give him this courtesy, but, Mr. Baron, if
16 you could just restrict your answer to be responsive
17 to Mr. Soules's questions.

18 THE WITNESS: Yes, your Honor.

19 EXAMINER ADDISON: Thank you.

20 MR. SOULES: Thank you, your Honor.

21 Q. (By Mr. Soules) Mr. Baron, are you aware
22 of any CRES providers in Ohio that are providing
23 retail contracts that would vary hour by hour?

24 A. I am not personally, no.

25 Q. Okay. Thank you.

1 Could you please turn to page 6 of your
2 written testimony. Looking at Figure 1, that
3 presents real-time pricing for the PJM energy market,
4 correct?

5 A. I believe so, but I would have to check
6 to make sure they're real-time and not day-ahead.

7 Q. Okay.

8 A. So I have to check my workpapers and so
9 forth which might take a few minutes.

10 Q. Yeah, please, if you would like to look
11 at your workpapers, that's fine.

12 A. Yes, it is real-time.

13 Q. Okay. Thank you. And those real-time
14 prices are wholesale energy prices, correct?

15 A. When you say "close in," you mean in the
16 context of real-time. I'm not sure what you mean.
17 They are not day-ahead. They are in the real-time
18 market.

19 Q. You may not have heard my question
20 correctly.

21 A. Okay. Maybe I didn't.

22 Q. These real-time prices are wholesale
23 energy prices, correct?

24 A. Yeah. I still couldn't hear that last
25 word. Say it again.

1 Q. These real-time prices that are reflected
2 in Figure 1 are wholesale energy prices.

3 A. "Wholesale." I'm sorry, I couldn't catch
4 the word "wholesale."

5 Q. Thank you. Apologies for that.

6 A. Sorry. My hearing -- my ears are still
7 stuffed from the airplane.

8 Q. And we do appreciate you getting here so
9 quickly.

10 Could you please turn to page 7 of your
11 rehearing testimony.

12 A. Yes.

13 Q. Looking at Figure 2, that figure displays
14 PJM capacity prices, correct?

15 A. Yes.

16 Q. And those capacity prices are wholesale
17 prices, correct?

18 A. Yes.

19 Q. Would you please turn to page 8 of your
20 written testimony.

21 A. I'm on page 8.

22 Q. Okay. Starting on line 5, there is a
23 sentence that reads "In contrast, as explained in
24 Company Witness Mikkelsen's October 19, 2015 Rebuttal
25 Testimony, retail generation rates for shopping

1 customers increased by 32 percent over the first four
2 months after the polar vortex." Do you see that?

3 A. Yes.

4 Q. Great. And I assume you reviewed
5 Ms. Mikkelsen's rebuttal testimony?

6 A. At one time I did, yes.

7 Q. And the 32 percent figure that's cited in
8 your rehearing testimony was based upon a comparison
9 of competitive retail electric supplier offers on the
10 Commission's Apples to Apples website, correct?

11 A. Sitting here now, I don't recall the
12 methodology that she used, so I can't agree or
13 disagree with your statement. I guess it's in her
14 testimony that's been filed.

15 Q. If I provided you a copy of her
16 rebuttal -- excerpt of her rebuttal testimony, would
17 that refresh your recollection?

18 A. It could, yes.

19 MR. SOULES: Permission to approach, your
20 Honor?

21 EXAMINER ADDISON: You may.

22 Q. (By Mr. Soules) Mr. Baron, you have just
23 been handed an excerpt of Ms. Mikkelsen's rebuttal
24 testimony filed on October 19, 2015. This consists
25 of the first seven pages of her testimony. And you

1 may find that page 4 of her rebuttal testimony might
2 refresh your recollection.

3 A. Yes. If you give me a moment and let me
4 read this.

5 Q. Yeah.

6 A. Okay. I have read that section.

7 Q. Okay. So going back to the -- my earlier
8 question, the 32 percent figure cited in your
9 testimony was based on a comparison of CRES offers on
10 the Commission's Apples to Apples website, correct?

11 A. Yes. That's what it appears to be.

12 Q. And Ms. Mikkelsen did not present any
13 data concerning the generation rates actually being
14 paid by shopping customers during the first four
15 months after the polar vortex, correct?

16 A. At least in this section that you've
17 provided to me, the calculation that she presents,
18 which is, I think, a 35 percent increase actually, is
19 based on the CRES offers.

20 Q. And the most recent CRES offers cited in
21 this portion of Ms. Mikkelsen's rebuttal testimony
22 were from May of 2014, correct?

23 A. Yes.

24 Q. In preparing your rehearing testimony,
25 did you review any CRES offers on the Apples to

1 Apples website that were more recent than May of
2 2014?

3 A. No. The purpose of my -- and there was
4 no reason for me to do that. The purpose of this
5 portion of my testimony was to provide an
6 illustration of the potential volatility that can
7 occur in market prices. It was clearly, you know,
8 during the periods of the polar vortex and it was a
9 volatile period but it's just an example that over a
10 period of time, let's hypothesize eight years, you
11 can end up with volatility and that was the purpose.
12 It's not -- it's not designed to measure a particular
13 price today.

14 MR. SOULES: Your Honor, I would move to
15 strike everything after the word "no" as being
16 nonresponsive to the question which was very direct.

17 MR. KURTZ: I think he is entitled to
18 explain his answer and was very response.

19 EXAMINER ADDISON: That motion to strike
20 will be granted. That's clearly more appropriate for
21 redirect. You can take that issue up on redirect,
22 Mr. Kurtz.

23 Mr. Soules.

24 MR. SOULES: Thank you, your Honor.

25 Q. Mr. Baron, nonshopping customers receive

1 their generation service through the Standard Service
2 Offer, correct?

3 A. Yes. Well, please repeat that again.

4 Q. Yeah. Nonshopping retail customers
5 receive their generation service through the Standard
6 Service Offer?

7 A. Yes.

8 Q. Have you reviewed the results of the most
9 recent SSO auction from April of 2016?

10 A. I have not.

11 MR. SOULES: Your Honor, I have nothing
12 else for the public session. I have a few
13 confidential questions.

14 EXAMINER ADDISON: Thank you, Mr. Soules.
15 Ms. Bojko.

16 MS. BOJKO: Thank you, your Honor. May
17 we go off the record for one moment?

18 EXAMINER ADDISON: Let's go off the
19 record.

20 (Discussion off the record.)

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

23 Ms. Bojko.

24 MS. BOJKO: Thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Bojko:

Q. Good morning, Mr. Baron.

A. Good morning.

Q. We meet again.

A. Yes.

Q. Mr. Baron, on page -- actually throughout your testimony you use the term "FirstEnergy" and I just want to clarify when you use the term "FirstEnergy," you are talking about the distribution electric utilities of FirstEnergy Corp.

A. Yes, I am, that's correct.

Q. Thank you. So if you look on page 3, just for clarity on line 2, when you talk about "diversifying FirstEnergy's generating pricing portfolio," you are talking about the distribution companies' pricing portfolio, correct?

A. Yes, I am.

Q. Now, let's turn to page 2, line 3, of your testimony. You state it is reasonable that Ohio maintain control over generation pricing. Do you see that?

A. Yes.

Q. And you've already stated today you are not an attorney, correct?

1 A. Correct.

2 Q. And your regulatory opinion, non-attorney
3 opinion, it's your understanding that generation is a
4 competitive service in Ohio; is that correct?

5 A. Yes, that's my understanding.

6 Q. And it's your understanding that
7 generation is no longer supplied by a distribution
8 utility; is that correct?

9 A. That's correct.

10 Q. And customers may shop for their
11 generation supply; is that correct?

12 A. Yes.

13 Q. And, in fact, most, if not probably all,
14 of Ohio Energy Group's members shop for their
15 electricity, their generation?

16 A. I do not know. I haven't actually
17 examined that, but.

18 Q. It's a reasonable assumption?

19 A. I assume it's reasonable.

20 Q. And, sir, you would agree with me that
21 market-based pricing is based on the buying and
22 selling of energy and capacity in the retail and
23 wholesale energy markets; is that correct?

24 A. Yes.

25 Q. And that the actual sale of generation

1 and capacity output is at pricing determined by the
2 competitive market.

3 A. For -- certainly for shopping customers
4 who are -- have alternatives. As a general matter, I
5 would say it's determined by the competitive market.

6 Q. And those shopping customers can enter
7 into long-term contracts with suppliers to meet their
8 business needs; is that correct?

9 A. I assume -- I believe that they can. The
10 question is what constitutes a long-term contract in
11 a -- in the Ohio competitive CRES market, and it's my
12 understanding that most providers don't provide
13 contracts longer than a couple of years. But I have
14 not done a formal study of that.

15 Q. And those contracts for generation
16 service, they can be either a fixed price or a
17 variable price; is that correct?

18 A. Yes. Actually in regard to that, I
19 noticed that in reading the excerpt of
20 Ms. Mikkelsen's testimony that was handed to me a few
21 minutes ago, there apparently are LMP-type contracts
22 offered by CRES providers so.

23 Q. And --

24 MR. KUTIK: I'm sorry. Had you finished
25 your answer?

1 THE WITNESS: I was referring to the
2 excerpt that was provided to me, Ms. Mikkelsen's
3 October 19, 2015, testimony that was shown to me
4 earlier just a few minutes ago.

5 MS. BOJKO: Your Honor, I am going to
6 move to strike everything after the word "yes" in
7 response to my question whether the contracts can be
8 mixed or variable.

9 EXAMINER ADDISON: Mr. Kurtz?

10 MR. KURTZ: I think the answer was
11 responsive in explaining his answer.

12 EXAMINER ADDISON: I am going to grant
13 the motion to strike. You can raise that during
14 redirect.

15 Q. (By Ms. Bojko) Whether a contract is
16 fixed or variable, both of those rates are
17 market-based rates; is that correct?

18 A. Both of those rates -- I missed the last
19 word.

20 Q. Are market-based rates or established by
21 the market.

22 A. Yes.

23 Q. By the supplier.

24 A. Yes, I would agree with that.

25 Q. And it's your understanding that the

1 proposal before us today is the rider would be a
2 nonbypassable rider; is that correct?

3 A. Correct.

4 Q. And the rider -- the proposed rider RRS
5 will be an additional charge or credit to a
6 customer's generation charges, correct?

7 A. It would be a charge or a credit
8 depending on how the events turned out with respect
9 to market prices versus the cost.

10 Q. With regard to the calculation of the
11 rider, correct?

12 A. Yes.

13 Q. But the rider itself is going to be an
14 additional charge or credit on top of the generation
15 services.

16 A. Yes, that's what I was saying.

17 Q. And that rider RRS will not affect the
18 generation prices set by either the Standard Service
19 Offer or the CRES contracts; is that correct?

20 A. That's correct.

21 Q. And though rider RRS, the proposal, will
22 not affect long-term generation prices that a
23 customer may have with the supplier because it's a
24 separate additional charge or credit; is that
25 correct?

1 A. I would expect that to be correct, yes.

2 Q. And it's your understanding that the
3 rider will be reconciled quarterly; is that correct?

4 A. That's my recollection.

5 Q. On page 2, line 11, I think you
6 confirmed, but you stated you have not conducted a
7 substantive economic analysis of the modified rider
8 RRS; is that correct?

9 A. That is correct.

10 Q. And as I understood your description
11 earlier, the proposed rider RRS charge will be based
12 on projected costs of generating facilities netted
13 against revenues received from projected generating
14 output from those FirstEnergy Solution generating
15 facilities and the projected capacity from those
16 FirstEnergy generating facilities is projected --
17 excuse me and -- let me try that again.

18 The proposed rider RRS charge will be
19 based on projected costs of FirstEnergy's generating
20 facilities netted against revenues received from
21 projected generating output from those facilities and
22 projected capacity from those facilities, multiplied
23 by the actual energy prices and actual capacity
24 prices?

25 A. I think what you said I agree with.

1 Basically, it's my understand that the volumes are
2 fixed and they are based on the projections that were
3 submitted in the prior portion of this case, and they
4 will be trued up against the AEP Dayton Hub prices.

5 Q. And on page 2 still of your testimony,
6 line 13, you use the words "cost-based stability
7 mechanism." Do you see that?

8 A. Yes.

9 Q. And the costs you are referring to are
10 those projected costs from the generating facilities,
11 not actual costs that were used in the prior rider
12 RRS filing?

13 A. Yes. They are based on the proceed -- as
14 my understanding, they are based on the costs that
15 were filed in the earlier part of this proceeding
16 which were projected costs.

17 Q. Okay. And those projected costs are
18 associated with the Davis-Besse, Samsis, and
19 FirstEnergy's share of OVEC plants, correct?

20 A. Yes.

21 Q. And you stated that you believe that
22 those costs under the proposal will be fixed; they
23 will not change, correct?

24 A. That's correct.

25 Q. So that statement would be true even if

1 one of the underlining plants that the costs were
2 based on does not run for 12 months during the
3 proposal's eight-year term because it is uneconomic
4 to do so?

5 A. That would be my understanding of the
6 proposal.

7 Q. So there will be no reduction in the
8 costs used to calculate modified rider RRS to
9 recognize the expenses to operate that generating
10 plant, such as fuel costs may be lower because it is
11 not operating, correct?

12 A. That would follow from the use of what I
13 understand would be fixed costs that were developed
14 in the earlier part of this proceeding.

15 Q. And the fixed generation output
16 projections that you talked about, those were also
17 based on the projected output from the Davis-Besse,
18 Sammis, and FirstEnergy's share of OVEC plants,
19 correct?

20 A. Yes.

21 Q. And the capacity in the calculation is
22 the capacity from the Davis-Besse, Sammis, and
23 FirstEnergy's share of OVEC plants, correct?

24 A. Yes.

25 Q. Also included in the calculation of the

1 projected market revenue is the projected revenues
2 received from the sale of any ancillary services and
3 environmental attributes associated with those
4 plants; is that correct?

5 A. That would be my understanding.

6 Q. And if market prices are high and one of
7 the plants runs more and its output is greater than
8 what was projected, there will be no increase in the
9 projected generation output or projected clearing
10 capacity multiplied by those higher prices, correct?

11 A. They -- that's correct, that's my
12 understanding. The RRS is based on the projected
13 volumes and those are fixed for the term of the RRS.

14 Q. So the proposal would not be based on
15 actual generator performance in the energy and
16 capacity markets, correct?

17 A. That's correct. They are based on fixed
18 projections that were established in the earlier part
19 of this proceeding.

20 Q. And there are no revenues resulting from
21 the actual sale of energy or capacity into the
22 wholesale markets that will fund this credit or
23 offset to customers, correct?

24 A. I'm not sure I understood that last part.

25 Q. There will be no revenues achieved from

1 the wholesale market that will be used to provide a
2 netting or an offset to the rider RRS costs; is that
3 correct?

4 A. Well, I'm still having trouble with your
5 question. Maybe I am obviously not following it, but
6 RRS is calculated by comparing the costs, which we've
7 talked about, to the revenues at the AEP Dayton Hub,
8 based on the fixed volumes that were in the
9 projection.

10 So -- if your question was if those
11 volumes change and the revenues change, that -- that
12 aspect -- that would not be factored in. It's still
13 based on the fixed volumes as I understand it.

14 Q. In the old proposal it was your
15 understanding that the generating plants,
16 Davis-Besse, Samsis, and FirstEnergy's share of OVEC
17 plants would actually be sold into the market, and
18 then whatever revenue was achieved from that sale
19 would then be used to net against the cost of the
20 rider RRS; is that what your understanding of the
21 original proposal is?

22 A. Yes, that is my understanding of the
23 original proposal.

24 Q. And under the modified proposal, the --
25 there will be no actual revenues received from the

1 sale of generating output into the wholesale market
2 that will then be netted against the projected costs
3 included in the rider RRS, correct?

4 A. Yes, if I understand your question that
5 the revenues are not based on any actual sales of
6 output by those resources into the market.

7 Q. Okay. And on page 2 of your testimony,
8 on lines 18 through 21, you discuss percentages of
9 cost-based and market-based prices on a demand and
10 energy basis. Do you see that?

11 A. Yes.

12 MS. BOJKO: Your Honor, at this time I
13 would like to have marked as OMAEG Exhibit 35, a data
14 response from OEG to the Office of Ohio Consumers'
15 Counsel titled "Rehearing Request for Production
16 No. 1-1."

17 EXAMINER ADDISON: It will be so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MS. BOJKO: And, your Honor, just for the
20 record, I am only going to introduce and discuss the
21 public version of the data response and attachments.

22 EXAMINER ADDISON: Thank you.

23 MS. BOJKO: Also included in this package
24 is a Rehearing Request for Production No. 1-2 and
25 then the associated Attachment 1 that goes with both

1 public versions. May we approach?

2 EXAMINER ADDISON: You may.

3 Q. (By Ms. Bojko) Mr. Baron, do you have in
4 front of you what appears to be OEG's response to the
5 Office of Consumers' Counsel discovery requests
6 that's been marked as OMAEG Exhibit 35?

7 A. Yes.

8 Q. And, Mr. Baron, you are the responsible
9 witness for these requests; is that correct?

10 A. Yes.

11 Q. And do you recognize both the rehearing
12 request for production of No. 1-1 and 1-2; is that
13 correct?

14 A. Yes.

15 Q. And are these discovery requests
16 workpapers associated with your statement on page 2,
17 lines 18 through 21?

18 A. Yes.

19 Q. And both of these responses, when asked
20 to produce workpapers and information regarding the
21 calculation of your percentages of cost-based versus
22 market-based demand and energy pricing, refer to
23 Attachment 1; is that correct?

24 A. Yes.

25 Q. And does OMAEG Exhibit 35 have Attachment

1 1 attached?

2 A. I'm sorry. Would you repeat the last?

3 Q. Does the copy of OMAEG Exhibit 35 that I
4 gave you, have Attachment 1 attached?

5 A. Yes.

6 Q. And is Attachment 1 your workpaper
7 responsive to these two data requests?

8 A. Yes.

9 Q. And it's my understanding that this
10 represents your calculation of the percentages of
11 cost-based versus market-based; is that correct?

12 A. Yes.

13 Q. And the attachment appears, though, just
14 to be the cost-based side of the equation; is that
15 correct?

16 A. Would you repeat that again, please?

17 Q. Sure. The Attachment 1, it talks about
18 an energy ratio of 40 percent and a demand ratio of
19 30 percent. Those correspond with your testimony
20 with regard to the cost-based part of your equation;
21 is that correct?

22 A. Yes. On the basis that they are
23 calculated on the basis of energy, but, yes.

24 Q. And there's no corresponding or
25 additional attachment that talks about market-based;

1 it's a pure subtraction of the percentages; is that
2 correct?

3 A. This was -- the workpaper that you have
4 provided is the workpaper that I relied on for those
5 calculations. They are based on energy.

6 Q. Right. The cost-based of the equation.
7 If you take the energy ratio of 40 percent, you
8 subtract 100, you get 60 percent for the market-based
9 side; is that right?

10 A. The 60 percent would be the market
11 component, yes.

12 Q. Okay. And just so the record is clear,
13 the energy component, the costs, there's a footnote 1
14 with regard to the Davis-Besse, Sammis, and the OVEC
15 FirstEnergy data that's competitively sensitive,
16 that's footnote 1. And then footnote 2, the "Ohio
17 Net Energy for Load" during particular years comes
18 from FirstEnergy companies' -- it comes from the
19 distribution utility companies' 2016 long-term
20 forecast report filed at the Commission; is that
21 correct?

22 A. Yes.

23 Q. And the information with regard to
24 demand, and Sammis, Davis-Besse, and OVEC units which
25 is footnoted as 3, does not come from a

1 competitively-sensitive workpaper, but, instead,
2 comes from a 2016 long-term forecast report of the
3 companies; is that correct?

4 A. The data for the demand, right, it does,
5 yes.

6 Q. And similarly, the data for the demand on
7 the "Ohio Native Load Summer Peak" comes from the
8 long-term forecast report that's filed with the
9 Commission.

10 A. Yeah.

11 Q. And it's your belief that modified rider
12 RRS will be a charge to -- a charge or a cost to
13 customers through 2018; is that correct?

14 MR. KURTZ: Your Honor, I object to that
15 question. It's beyond the scope of his testimony.
16 He didn't testify to that. Whether the charge --
17 whether RRS would be a charge or a credit. He
18 specifically said he didn't look at it.

19 EXAMINER ADDISON: Ms. Bojko.

20 MS. BOJKO: Your Honor, we -- the witness
21 is putting on information about whether this is a
22 hedge or stability mechanism and whether it's a
23 benefit to customers, and I think that he should know
24 what he believes the modified rider RRS is going to
25 do in the first three years.

1 MR. KURTZ: That misstates his testimony.
2 He specifically did not address the question of
3 whether the RRS would be a charge or a credit. The
4 only thing he did is cite the Commission's
5 conclusion. That's it.

6 EXAMINER ADDISON: I will allow this
7 question. If he knows, he knows; if he doesn't, he
8 doesn't.

9 Mr. Baron, you can answer the question.

10 THE WITNESS: Yes, your Honor.

11 A. I haven't done any analysis of the -- of
12 the specifics of whether the amount by which the RRS
13 would be a charge or a credit in any year. I have
14 seen the Commission order that, over time, the
15 estimate was I think \$256 million of net benefit,
16 credit. I've read in some fashion, somewhere, I
17 don't recall where, that in the early years it was
18 going to be a charge; and in later years, a credit.
19 But I don't remember the exact dates.

20 Q. And you didn't review the workpaper,
21 Ms. Mikkelsen' workpaper provided in the rider RRS
22 proposal that showed where the credits or charges
23 would occur to customers?

24 A. I -- this is a recent workpaper that she
25 submitted in this rehearing portion of the case?

1 Q. Let me take a step back. If -- do you
2 recall -- or is it your understanding that whatever
3 those projections were, whether it would be a rider
4 or a credit in the original rider RRS proceeding that
5 you just referenced the Commission order, that those
6 projections still hold true for the modified rider
7 RRS, correct?

8 A. Yes. That would be my understanding and
9 I have seen a workpaper dated November 30, 2015.

10 Q. And that's the one I am referring to.
11 Are you looking to -- at Ms. Mikkelsen's workpaper?
12 It says at the top "Mikkelsen Workpaper, November 30,
13 2015."

14 A. Yes.

15 Q. Okay. And that's been marked for the
16 record as Sierra Club 89. That workpaper, does it
17 indicate in the first three years, through 2018,
18 there will be a charge to customers?

19 A. Yes. This workpaper does show that.

20 Q. And is it your understanding of the
21 proposal that there would also then be a charge
22 through 2018, projected?

23 A. Well, based on this work -- based on this
24 workpaper it shows that on line 12 that there would
25 be a charge.

1 Q. And it's your understanding that under
2 the proposal, the new proposal, that there's no
3 guarantee that there would actually be a credit to
4 customers; is that true?

5 MR. KUTIK: Objection.

6 EXAMINER ADDISON: Grounds?

7 MR. KUTIK: Your Honor, the relative
8 merits of the rider RRS as a hedging mechanism or
9 as -- what the credits are going to be have already
10 been litigated and decided by the Commission. This
11 line of questions has nothing to do with the proposal
12 or any alternative thereto.

13 EXAMINER ADDISON: Ms. Bojko.

14 MS. BOJKO: Thank you, your Honor. It
15 has exactly that to do with the proposal. I asked
16 under the proposal is it his understanding there are
17 no guarantee of credits. We are asking what the
18 proposal in this case will or will not guarantee and
19 I am asking if the proposal has guarantees of credits
20 to customers in any years of the eight-year modified
21 rider RRS. He is talking about rate stability and
22 things of that nature.

23 EXAMINER ADDISON: Thank you. I will
24 allow this one question, but we should move on here
25 soon.

1 A. It's my understanding that the proposal
2 RRS is -- would be the amount of any charge or credit
3 in any year would be a function of the comparison
4 that's made in the RRS calculation which is a
5 comparison of costs as projected and the market
6 prices at the AEP Dayton Hub.

7 Q. So it's your understanding that this
8 proposal does not guarantee a credit to customers in
9 any particular year?

10 A. It would be my understanding that it
11 doesn't guarantee a charge or a credit. It's a
12 function -- its function is to perform -- it performs
13 the calculation based on the market prices and the
14 costs that we talked about. Sorry, should I repeat
15 that?

16 EXAMINER PRICE: Did you get it all?

17 MS. BOJKO: I actually heard it too.

18 Q. So it's your understanding, under the
19 proposal today, that if the rider RRS results in a
20 credit, the companies are proposing to lower the
21 amount of cash received by the companies from
22 customers as a result of the proposal?

23 A. It's my understanding, all else being
24 equal, that if there is a credit, meaning that the
25 RRS provides a credit, it would serve as a credit to

1 customer bills, and by algebra the total revenues at
2 that point in time would be reduced; or the amount
3 that customers pay, at least that portion of
4 revenues.

5 Q. And you have not done any analysis of
6 whether the companies could sustain operations if, in
7 one year of the proposal, the companies were required
8 to provide customers with a credit which resulted in
9 a significant reduction in revenues, cash received;
10 is that correct?

11 A. I have not done any such analysis.

12 Q. And if the companies -- if rider RRS, the
13 proposal, the proposed rider RRS results in a credit
14 which reduces the amount of cash received from the
15 companies, isn't it true that the proposal does not
16 prohibit the companies from seeking recovery from
17 customers of additional revenues in order to offset
18 that reduction in revenues that they receive under
19 rider RRS?

20 A. I don't know.

21 Q. And, sir, is it your understanding, if
22 you know, that if the companies do become -- if the
23 companies experience financial difficulties because
24 of a credit provided to customers and a reduction in
25 their revenues received, the companies could file an

1 emergency rate case with the Commission?

2 A. I don't know.

3 Q. Do you know whether the proposal
4 prohibits the companies from filing an emergency rate
5 case under the Commission's rules?

6 A. I don't know.

7 Q. Do you know whether the proposal
8 prohibits the companies from filing a self-complaint
9 under the Commission's rules?

10 MR. KURTZ: Your Honor, I am going to
11 object to this line of questions. He should be asked
12 questions about what's in his testimony. There is a
13 whole world of things he didn't look at which are the
14 last three questions and apparently more.

15 EXAMINER ADDISON: I will allow this one
16 last question. I believe Ms. Bojko is finishing up
17 this particular line of questioning and we will move
18 on from here.

19 MS. BOJKO: Thank you. Could I have my
20 question read back.

21 EXAMINER ADDISON: Do you need the
22 question read back?

23 THE WITNESS: I can answer it.

24 A. I don't know.

25 MS. BOJKO: Could I ask that the question

1 be read back.

2 EXAMINER ADDISON: Certainly.

3 (Record read.)

4 MS. BOJKO: Thank you.

5 Q. (By Ms. Bojko) Mr. Baron, do you know
6 whether the -- do you know -- well, I will just ask.
7 Does the proposal prohibit the companies from seeking
8 recovery from -- strike that. I'm sorry.

9 Does the proposal prohibit the companies
10 from providing dividends to the parent company during
11 the term of the eight-year RS -- or rider RRS?

12 MR. KURTZ: I am going to object again.
13 It's the same questions of asking him things that are
14 not in his testimony.

15 EXAMINER ADDISON: Ms. Bojko.

16 MS. BOJKO: Your Honor, he does testify
17 how this is a rate stability mechanism and a
18 protection for customers. And all these questions go
19 to whether additional charges will ultimately come
20 upon customers and if customers are -- are required
21 to pay those additional charges through these
22 additional proceedings, then it's not a rate
23 stability mechanism. There will be charges and there
24 will be additional costs.

25 MR. KURTZ: That makes sense. I withdraw

1 my objection.

2 EXAMINER ADDISON: Thank you, Mr. Kurtz.

3 A. I don't know whether there are any
4 provisions that would restrict the company from using
5 proceeds to pay dividends if that was your question.

6 Q. Thank you.

7 Is it your understanding that the
8 companies have not made any commitments at this time
9 with regard to how the revenues collected from rider
10 RRS will be used?

11 A. My recollection -- I don't know whether
12 there's been any formal commitment.

13 Q. And you don't know whether there's been a
14 commitment of whether to prohibit the funds received
15 from the modified rider RRS from being distributed to
16 other affiliates within FirstEnergy Corp., correct?

17 MR. KUTIK: Objection.

18 EXAMINER ADDISON: Grounds?

19 MR. KUTIK: Relevance.

20 EXAMINER ADDISON: What was the --

21 MR. KUTIK: Relevance, your Honor.

22 EXAMINER ADDISON: Thank you.

23 MS. BOJKO: Again, your Honor, it goes to
24 where the revenue -- customers are paying these
25 dollars and how they are going to be used and where

1 they are going to be used. And as a customer
2 representative, I am asking him if he knows the
3 answers to these questions of how the money for his
4 member companies is going to be used through modified
5 rider RRS.

6 EXAMINER ADDISON: Mr. Kurtz, anything to
7 add?

8 MR. KURTZ: No.

9 EXAMINER ADDISON: Mr. Kutik, response?

10 MR. KUTIK: Your Honor, first, there's
11 nothing in this witness's testimony on that subject.
12 So it's beyond the scope of his testimony, that's
13 No. 1. No. 2, with respect to the company's
14 proposal, it's also beyond the scope of that.
15 Ms. Mikkelsen testified at length on some of these
16 issues. The Bench limited the examination on these
17 issues as well. And consistent with those rulings, I
18 make my objection.

19 EXAMINER ADDISON: Thank you. At this
20 time I am going to sustain the objection. I think
21 I've allowed plenty of leeway, so we will stop the --
22 this particular line of questioning here, so.

23 Q. (By Ms. Bojko) Sir, do you know if the
24 monies being collected from customers will be held in
25 a separate account available for the -- for the

1 period of time when credits would become a
2 possibility?

3 A. I don't know.

4 Q. On page 4 of your testimony, starting on
5 line 9, you list benefits that were obtained by the
6 ESP; is that correct?

7 A. Yes.

8 Q. Is it your understanding that the ESP is
9 currently in effect?

10 A. Yes.

11 Q. So it's your understanding that these
12 benefits obtained would be currently in effect?

13 A. It's my understanding that these
14 benefits, as part of the ESP, would be in effect.

15 Q. And it's not -- you are not suggesting in
16 this testimony that if the Commission doesn't approve
17 the modified rider RRS that these benefits of the ESP
18 will disappear, are you?

19 A. I am not suggesting that.

20 Q. And, sir, is it your understanding that
21 in order to provide this stability mechanism or
22 hedge, the companies are stating that they will incur
23 costs?

24 A. When you say "costs," are you referring
25 to costs other than the actual RRS credit or charge?

1 Q. Yes, thank you. That they are going to
2 incur costs to administer the rider.

3 A. I would assume that there would be some
4 costs. I haven't really looked at that.

5 Q. So do you know whether the companies will
6 seek recovery of these administrative costs such as
7 cost to prepare the rider or cost associated with the
8 rider audit and cost associated with providing
9 credits to customers?

10 A. I don't know. I haven't reviewed that
11 aspect of the proposal.

12 Q. So as I understand the hedge that you are
13 talking about or stability mechanism, it's your
14 understanding that customers pay the rider in the
15 first three years and they might have to pay costs
16 associated with administering the rider and then they
17 will hope to get money back through a reduction in
18 their bill later in the eight-year period; is that
19 your understanding?

20 A. Well, based on the -- Ms. Mikkelsen's
21 workpaper projections that we were discussing
22 earlier, that's what it would show.

23 Q. And is it true that large consumers take
24 into consideration -- well, let's -- your members are
25 large energy consumers; is that correct?

1 A. Yes.

2 Q. And is it true that large consumers take
3 into consideration the overall price of electricity
4 when making long-term capital investment decisions?

5 A. Yes. I would expect that to be an
6 important factor, absolutely.

7 Q. And that would be an important factor
8 when -- when deciding whether to expand in the state
9 of Ohio; is that correct?

10 A. Yes, it would certainly be one factor to
11 consider.

12 Q. And energy costs, in general, would be
13 one factor when considering whether to even locate
14 their business in the state of Ohio; is that correct?

15 A. Well, now you are talking hypothetically
16 in terms of a hypothetical industrial customer making
17 a decision to locate a new, perhaps, energy intensive
18 facility. And clearly such a customer would view
19 electric -- to the extent that electric prices were
20 an important input, they would look at that and look
21 at the -- try to do an evaluation of the expectations
22 over time as to what -- where those prices are going.
23 That's one of the aspects of stability that customers
24 look for.

25 Q. And customers would look at the electric

1 prices in the state of Ohio versus other states too;
2 is that fair? When making those decisions?

3 A. That would be -- presumably that would be
4 a -- one of the input factors that would be
5 considered.

6 Q. And electric consumers would look at --
7 if they decided on the state of Ohio, they would look
8 at the electric prices in the different service
9 territories to determine where to actually locate the
10 facility as one component, as well as land and all
11 the other considerations, but they could compare Ohio
12 Edison's electric prices to AEP's electric prices,
13 for instance?

14 A. What I think I -- what I can say in
15 general agreement with your question is that
16 customers would evaluate all of the important input
17 factors into their cost of production and any other
18 factors that are important for their businesses in
19 making a decision. To the extent that electricity is
20 an important cost input, they -- customers would
21 typically look at that as one of the input factors.

22 Q. And in making all these business
23 decisions, a customer would look at their competitors
24 and if they had an additional charge in electricity
25 that a competitor situated in another service

1 territory or another state did not have, they --
2 would you agree with me that they would look to see
3 whether that charge has anti-competitive results to
4 their company in making those business decisions?

5 A. You are asking -- it's a pretty
6 complicated, I think, analysis that you are asking
7 about. What I think I can answer, and perhaps this
8 is what you are looking for, is that customers, in
9 making decisions about where to produce, expansions,
10 contributions, look at a whole host of factors; and
11 to the extent electricity is important, those
12 customers would use -- develop and rely on some
13 estimate of what the costs of electricity is. And
14 that would be the all-in cost that the customer is
15 going to face from a whole host of possible charges.

16 Q. Turning to page 7 of your testimony,
17 Figure 2, did you provide a worksheet in your -- in
18 data responses detailing the results or the
19 workpapers associated with the chart that you
20 provided in Figure 2?

21 A. I thought I did. I can't sit here now
22 and tell you that I did or did not. They are based
23 on publicly-available PJM data.

24 MS. BOJKO: Your Honor, at this time can
25 we have marked as OMAEG Exhibit 36, OMAEG data

1 response to Rehearing Request for Production No. 1-4
2 of the Consumers' Counsel.

3 EXAMINER ADDISON: It will be so marked.
4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MS. BOJKO: And it also has an
6 Attachment 2.

7 EXAMINER ADDISON: Thank you.

8 MS. BOJKO: May we approach?

9 EXAMINER ADDISON: You may.

10 Q. (By Ms. Bojko) Do you have in front of
11 you what's been marked as OMAEG Exhibit 36?

12 A. Yes.

13 Q. Does this appear to be a data response to
14 OCC from OEG Rehearing Request for Production No. 1-4
15 with the associated Attachment 2?

16 A. Yes. I don't know whether this is the
17 complete information or not. I note that the last
18 page ends in delivery year '17-'18 and my chart goes
19 through delivery year '19-20. So there's two
20 additional data points, but my actual workpaper that
21 was used to create the chart just simply took the PJM
22 data and plugged it in.

23 Q. Are you the witness responsible for this
24 data response and the attachments?

25 A. Yes.

1 MS. BOJKO: Your Honor, at this time,
2 this was the version of the document that we
3 received. If there is a more complete chart, I would
4 ask that the counsel for OEG produce that and we can
5 put a correct exhibit into the record.

6 EXAMINER ADDISON: Let's go off the
7 record for a moment.

8 (Discussion off the record.)

9 EXAMINER ADDISON: Let's go back on the
10 record.

11 Ms. Bojko.

12 Q. (By Ms. Bojko) Mr. Baron, except for the
13 explanation, there appears to be two dates missing
14 from the attachment which we are going to get a
15 corrected copy of and put in the record, does this
16 appear to be the data responses that you provided to
17 the Consumers' Counsel in response to Rehearing
18 Request for Production 1-4?

19 A. Yes.

20 Q. And when asked about the worksheet for
21 Figure 2 in Attachment 2 attached to the data
22 response, you produced, again, Figure 2, and then you
23 also produced, as you mentioned, the actual prices
24 that were then inputted or placed on the data point
25 of the chart; is that correct?

1 A. Yes. It's just simply a chart that plots
2 the actual PJM public data.

3 Q. And your chart for the PJM base residual
4 auction prices go through -- they are plotted through
5 2019-20 planning years; is that correct?

6 A. Correct.

7 Q. And on Figure 3 when you use the word
8 "guaranteed pricing," as we described earlier, the
9 components of rider RRS are, in part, subject to the
10 netting provision which relies on market pricing; is
11 that correct?

12 A. Yes. But as I explained earlier, if you
13 have -- let's just say hypothetically you have fixed
14 costs, a number, 10, is the cost, and then you have a
15 market price in any period, and let's say in this
16 period it's 5, the difference is 5, and you add that
17 then to the market price of 5, it equals 10. So
18 essentially it reduces the cost and that's the basis
19 for the use of the word "guarantee."

20 Q. But the guarantee, these are not the
21 actual rider charges that the customer will see; is
22 that correct?

23 A. That's correct. It's the net effect of
24 the rider plus the market prices that the customer
25 would pay.

1 Q. It's only a component of the overall
2 calculation; is that correct?

3 A. The RRS is a component that when added to
4 the market price that a customer pays, results in the
5 cost as the residual.

6 (CONFIDENTIAL PORTION EXCERPTED.)
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18 (OPEN RECORD.)

19 THE WITNESS: Your Honor, I can explain
20 using hypotheticals.

21 EXAMINER PRICE: No. We will put it on
22 the confidential portion.

23 MS. BOJKO: I will save the rest of my
24 questions for confidential too. Thank you.

25 EXAMINER ADDISON: Thank you, Ms. Bojko.

1 MS. BOJKO: Oh, I meant on that chart.

2 EXAMINER ADDISON: Oh, sorry. I am
3 jumping the gun.

4 MS. BOJKO: I was trying to do it without
5 going into the confidential and then it led to that,
6 so I was just stating instead of continuing to just
7 do a confidential.

8 EXAMINER ADDISON: Please proceed.

9 Q. (By Ms. Bojko) Mr. Baron, we were talking
10 about business decisions and the effect of increases
11 in electric prices on customers. Is it fair to say
12 for a large electricity user, increases in their
13 electric prices for a three-year period would be a
14 significant consideration? With regard to their
15 business planning and business strategy?

16 MR. KUTIK: Objection.

17 EXAMINER ADDISON: Grounds?

18 MR. KUTIK: There is no evidence that
19 electric prices will increase. So it assumes facts.

20 EXAMINER ADDISON: Ms. Bojko, would you
21 mind just rephrasing your question as a hypothetical?

22 MS. BOJKO: Sure. Thank you.

23 EXAMINER ADDISON: Thank you.

24 Q. (By Ms. Bojko) Mr. Baron, assume for me
25 that the credit is -- does come to fruition that's

1 projected by the company for a three-year period and
2 that, all else being equal, would an increase on
3 customers' bills for an electric price -- for an
4 electric component, would an increase in their
5 overall electric bill be a significant consideration
6 when making business decisions for large electric
7 consumers?

8 MR. KUTIK: I believe Counsel misspoke.

9 EXAMINER ADDISON: Could we have that
10 last question read back, please.

11 MR. KUTIK: Just to be clear, she used
12 the word "credit"; I think she meant "charge."

13 MS. BOJKO: Oh, thank you.

14 EXAMINER ADDISON: Thank you for that.

15 MS. BOJKO: I'll rephrase. How about
16 that?

17 EXAMINER ADDISON: Thank you.

18 MR. KUTIK: I'll have an objection after
19 that, but go ahead.

20 MS. BOJKO: Thank you, Mr. Kutik.

21 Q. (By Ms. Bojko) Assume for me the
22 companies' projection comes to fruition with regard
23 to the proposal and that there is going to be a
24 charge to customers for the -- for a three-year
25 period or two-and-a-half-year period through 2018.

1 Would -- and all else being equal with regard to
2 their total electric charges, would an increase in an
3 electric bill for a two-and-a-half/three-year period
4 be a significant consideration for a large
5 electricity user in making business decisions in the
6 state of Ohio?

7 MR. KUTIK: I'll object. That's also
8 contrary to the record. The record is that as
9 Ms. Mikkelsen testified even with the projection,
10 generation rates will go down.

11 MS. BOJKO: I asked it in a hypothetical.
12 I said assuming all else being equal, if there was an
13 increase in electricity or a charge on customers'
14 bills that would make an overall increase in their
15 total bill, would that be a significant consideration
16 for electric consumers making business decisions in
17 the State of Ohio?

18 MR. KUTIK: The facts, including the
19 impacts, that have been discussed in this record are
20 just the opposite. The bills are going down, not up.

21 EXAMINER ADDISON: Thank you.

22 MR. HAYS: Your Honor, I would like to
23 weigh in. I believe there have been any number of
24 experts, including upcoming experts, who have
25 indicated opposite testimony. Mr. Kutik may say the

1 record says that, but I believe the experts disagree,
2 and in particular the opponents' experts disagree.

3 MR. KUTIK: The question was about
4 projections.

5 MR. HAYS: No.

6 EXAMINER ADDISON: Mr. Hays --

7 MR. KUTIK: It was about the companies'
8 projections. If you are going to weigh in, weigh in
9 correctly please.

10 EXAMINER ADDISON: Thank you. I will
11 allow the question. Your objection is noted,
12 Mr. Kutik. The Commission can take as much weight
13 with Mr. Baron's answer if he has any opinion to the
14 matter.

15 So, Mr. Baron, you may answer the
16 question.

17 A. The answer is that to the extent that
18 all-in electric prices that customers face increase
19 and to the extent that a particular customer is
20 energy intensive or that that could have an impact or
21 it may not have as much impact. It depends on the
22 magnitude of the charge. It depends on the intent --
23 electric intensity, and but the -- I think the
24 important thing, of course, is it's the total bill
25 that the customer faces or the total charge.

1 And so, if one particular component of
2 the charge goes up and another one goes down, it
3 depends on what the net is and -- but your question
4 was "significant" and that's just -- you would have
5 to know exact -- in other words, if you told me
6 electric prices were going to increase 100 percent, I
7 can tell you that that's going to be significant no
8 matter what. But it just depends on what the
9 impact -- the real measure is.

10 And customers, also they -- they look at,
11 clearly, a particular period, a short-term period of
12 time, but they also look at longer periods of time in
13 terms of evaluating. In other words, is this going
14 to be something that is going to be a permanent
15 impact on my input costs of production? Are there
16 going to be other changes that occur that could
17 offset that? There's a whole host of decisions as
18 anybody would just guess.

19 Q. And you said this within your answer,
20 just to be clear to your point about total bill
21 impact. If there was an increase in the total bill
22 for a large energy consumer, it would be a
23 consideration that they need to make -- or it would
24 be a factor that they would consider in making
25 business decisions for a two- to three-year period,

1 correct?

2 A. Well, I don't know whether I -- I mean
3 it's possible that someone would, based on a
4 particular period of time. It depends on the
5 business. It depends what types of investments
6 they're making, how long they have to -- what kind of
7 contracts they have. I mean things like labor
8 contracts tend to fix behavior of customers in terms
9 of short term. But -- and it depends on the size of
10 the change. So I mean anything could -- I mean
11 anything could happen obviously.

12 Q. And the large manufacturing customer has
13 to look at all of their cost components including
14 electricity, labor, raw materials, to look at their
15 overall costs of their product and how they can be
16 competitive in -- in the market; is that correct?

17 A. I think that's fair, yes.

18 MS. BOJKO: Thank you, your Honor. I
19 have no further questions.

20 EXAMINER ADDISON: Thank you, Ms. Bojko.

21 MR. KURTZ: Before moving on, could we
22 take a 5-minute break?

23 EXAMINER ADDISON: You read my mind,
24 Mr. Kurtz. Let's go ahead and take a 10-minute break
25 and come back at 11:15. Let's go off the record.

1 (Recess taken.)

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

4 Mr. Kurtz.

5 MR. KURTZ: Your Honor, we have submitted
6 a revised what would be OMA Exhibit 36, with the two
7 years of missing PJM capacity data.

8 EXAMINER ADDISON: Thank you, Mr. Kurtz.

9 Mr. Moore.

10 MR. MOORE: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Moore:

14 Q. Mr. Baron, if I could have you turn to
15 page 2. You state you did not analyze the
16 substantive economic analysis associated with the
17 modified RRS; is that correct?

18 A. Yes.

19 Q. And just to be clear, you are referring
20 to the estimate of the costs and revenues associated
21 with the proposal, correct?

22 A. Yes. The economics, that's correct.

23 Q. Have you read the cost and revenue
24 projections that were presented by the companies?

25 A. I've seen some. In the prior part of the

1 case, I may have looked at it. My recollection is I
2 didn't really review it in the earlier part of the
3 case either, though I did -- I have seen
4 Ms. Mikkelsen's workpaper that I was referring to
5 earlier today.

6 Q. Are you aware that those costs and
7 revenue projections used data from 2014?

8 A. I recall in the Commission's order there
9 is a discussion of that.

10 Q. So prior to submitting your rehearing
11 testimony, in this proceeding, you did not perform a
12 formal evaluation of costs or revenue projections
13 that were presented by the company; is that correct?

14 A. That's correct.

15 Q. So it's fair to say you are not offering
16 an expert opinion in this case about the
17 reasonableness of the companies' costs and revenue
18 projections?

19 A. That's correct.

20 Q. Would it also be fair to say you are not
21 offering an expert opinion in this case about the
22 accuracy of the companies' costs and revenue
23 projections?

24 A. That's correct.

25 Q. Mr. Baron, would you agree with me that

1 there are other ways, besides the proposal, in which
2 a customer could protect itself from potentially
3 volatile electric costs?

4 A. I suppose so, though my -- I'm not aware
5 that there are general products available that would
6 traverse eight years in terms of, but I suppose
7 there -- you could hypothesize some configuration
8 with somebody. Maybe Warren Buffett would offer it.

9 Q. For example, a customer could purchase a
10 financial hedge on the NYMEX exchange; is that
11 correct?

12 A. I don't know that that would be the case
13 for an eight-year period.

14 Q. I'm not --

15 A. I don't know.

16 Q. But it is possible for a customer to
17 purchase the financial hedge on the NYMEX.

18 A. For some period of time, I would guess.
19 I have not really looked at that though, so I don't
20 really know.

21 Q. And these financial hedges could be
22 multi-year hedges, correct?

23 A. Again, I haven't really reviewed that so
24 I don't know. I assume that -- there probably would
25 be something available. I don't know the duration of

1 those contracts. I don't know the particulars. I
2 just haven't done that analysis.

3 Q. Okay. If a customer did purchase a
4 multi-year hedge, could they purchase one and then
5 purchase another one after that?

6 A. Well, hypothetically, if there were
7 multi-year hedges and they continued to be offered
8 over time, then I think by definition when one
9 expired you could buy another one if it was offered.

10 Q. Thank you. Another way a customer could
11 protect itself from potentially volatile electric
12 costs would be to purchase a financial instrument
13 from a marketer; is that correct?

14 A. Yes. I imagine so. Again, I haven't
15 looked at what might be available, if any, but, as a
16 conceptual matter, I could agree that at some price
17 somebody would probably be willing to provide some
18 type of insurance.

19 Q. Do they also purchase generation from a
20 competitive retail electric service provider on a
21 fixed-rate contract?

22 A. It's my understanding CRES providers do
23 provide fixed -- some types of fixed rate contracts,
24 but it's also my understanding that they would not be
25 available for a duration of eight years which is what

1 is at issue here. This -- the RRS essentially
2 provides a fixed price for the generation component
3 for 40 percent of a customer's usage.

4 MR. MOORE: Your Honor, I am going to
5 move to strike. The witness's answer is not
6 responsive to my question. I was simply asking if
7 it's possible for a customer to purchase a fixed-rate
8 contract from a CRES provider.

9 MR. KURTZ: He did answer that question.

10 MR. MOORE: And much more. That's a
11 "yes" or "no" question.

12 EXAMINER ADDISON: Mr. Kutik.

13 MR. KUTIK: In terms of understanding
14 what a fixed-price contract is; it's not a "yes" or a
15 "no". It's a "yes" for some and a "no" for others
16 and that's what he was explaining.

17 MR. MOORE: I wasn't asking him to
18 compare a fixed-price contract with a CRES provider
19 with the proposal in this proceeding.

20 MR. KUTIK: The fact of the matter is, as
21 this witness has indicated, there aren't fixed-price
22 contracts available for eight years.

23 MR. MOORE: That's not my question.

24 MR. KUTIK: The question assumes there
25 may be, and so this witness is being precise in terms

1 of his answer in terms of what's available with
2 respect to fixed price. That's a fair answer to a
3 question.

4 EXAMINER ADDISON: Thank you, all. At
5 this time I am going to deny the motion to strike.

6 Mr. Baron, I would instruct you again to
7 listen to Counsel's questions very closely and try to
8 limit your response to directly answering his
9 questions.

10 THE WITNESS: Yes, your Honor.

11 MR. MOORE: Thank you, your Honor.

12 Q. (By Mr. Moore) Would a CRES provider's
13 fixed-price contract provide price stability?

14 A. To the extent that there was a fixed-rate
15 contract for generation supplied, then, by
16 definition, during the term of that contract,
17 whatever it is, one year, two years, whatever, then
18 that would provide stability with respect to that
19 component for that period of time.

20 Q. And such an arrangement could be for
21 multiple years, correct?

22 A. Could be for more than four years?

23 Q. Just multiple. More than one.

24 A. I'm sorry, say -- would you repeat it
25 again?

1 Q. Sure. A CRES provider fixed-rate
2 contract for a customer could be for multiple years;
3 is that correct?

4 A. I -- I assume so. I haven't done any
5 evaluation of what the availability of such fixed
6 rate contracts that might be available from CRES
7 providers. I haven't done that so I don't know. My
8 understanding is that there are fixed rate contracts.
9 I don't know the terms, the terms of the duration.

10 Q. You don't know if there are fixed rate
11 contracts for more than one year?

12 A. I don't know for a fact that there are.
13 It's my understanding, from general discussions, that
14 there are fixed rate contracts that would have
15 durations for more than one year. I don't -- my
16 understanding also is that there are -- that they
17 aren't available for long periods of time. I don't
18 know that I heard anything about eight years.

19 Q. And again, if, hypothetically, a fixed
20 rate contract did go for multiple years, a customer
21 could purchase one and then purchase another one once
22 that one ends, correct?

23 A. Yes. That's not the same thing as --
24 yes, the answer is yes, you could -- if you assume a
25 multiple-year contract is available and would

1 continue to be available, that when it expires you
2 could buy another one, and when that expires you
3 could buy another one, presumably in perpetuity.

4 Q. Thank you.

5 I think you testified earlier that price
6 stability -- it is your opinion that price stability
7 is attractive to large electric-intensive customers;
8 is that correct?

9 A. Yes.

10 Q. Do you know what percentage of industrial
11 customers are shopping customers in FirstEnergy's
12 territories?

13 A. I have not -- I don't know the answer to
14 that as of today. I reviewed that previously, but I
15 don't have a recollection.

16 MR. MOORE: Our Honor, at this time I
17 would like to have marked as an exhibit -- I am not
18 sure which OCC exhibit we are on.

19 EXAMINER ADDISON: I believe you are on
20 42.

21 MR. MOORE: 42. This is a "Summary of
22 Switch Rates from EDUs to CRES Providers in Terms of
23 Customers for the Month Ending March 31, 2016," off
24 the PUCO website.

25 EXAMINER ADDISON: It will be so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MR. KUTIK: I'm sorry, your Honor, the
3 exhibit again?

4 EXAMINER ADDISON: OCC Exhibit 42.

5 Q. (By Mr. Moore) Mr. Baron, do you have
6 what's been marked as OCC Exhibit 42?

7 A. Yes.

8 Q. And is that titled "Summary of Switch
9 Rates from EDUs to CRES Providers in Terms of
10 Customers for the Month Ending March 31, 2016?"

11 A. Yes.

12 Q. Have you seen this document before,
13 Mr. Baron?

14 A. I may have. I've certainly seen similar
15 documents. I don't know if I saw this particular
16 period, but I may have.

17 Q. So you are familiar with the general
18 information on the summary switch rates from EDUs to
19 CRES providers that's generated on the PUCO website?

20 A. I have seen this type of report before,
21 yes.

22 Q. If you could look under the first table
23 where it says "Cleveland Electric Illuminating
24 Company" on the left.

25 A. Yes.

1 Q. Scratch that.

2 Go down just below that where it says
3 "Electric Choice Customers Switch Rates." Do you see
4 that --

5 A. I do.

6 Q. -- in bold? And then if you move across
7 to "Industrial Customers," do you see where it says
8 88.35 percent?

9 A. Yes.

10 Q. So is that correct that 88.35 percent of
11 industrial customers of the Cleveland Electric
12 Illuminating Company are shopping customers?

13 MR. KUTIK: Your Honor, this information
14 is on the website. If counsel wants the Commission
15 to take administrative notice of what's on its
16 website, we certainly would not object to that. I
17 think we can move on.

18 EXAMINER PRICE: You don't want to test
19 his reading skills?

20 MR. KUTIK: Not today.

21 EXAMINER ADDISON: Thank you, Mr. Kutik.
22 We will take administrative notice.

23 MR. MOORE: I can stipulate to that.

24 A. The value -- the values shown for
25 industrial customers is 88.35 percent.

1 Q. Okay. Thank you, Mr. Baron.

2 Mr. Baron, hypothetically, if a CRES
3 provider offered a fixed-rate contract to a customer
4 and the CRES provider ended up losing money on that
5 contract, how would the CRES provider ensure that you
6 cover those losses?

7 MR. KUTIK: Objection.

8 EXAMINER ADDISON: Grounds?

9 MR. KUTIK: Relevance. How is that
10 relevant to the company's proposal or any alternative
11 thereto?

12 EXAMINER ADDISON: Mr. Moore.

13 MR. MOORE: I think this hearing is
14 direct -- or is supposed to be about alternatives to
15 the proposal. We are talking about alternatives that
16 other customers could take including fixed-rate
17 contracts and how those fixed-rate contracts would
18 operate. It couldn't be more appropriate or
19 relevant.

20 EXAMINER ADDISON: Mr. Kutik.

21 MR. KUTIK: I think when the Commission
22 was talking about alternatives, it was talking about
23 alternatives to the company's proposal, not
24 alternatives to what other customers could do,
25 whatever they might want to do.

1 EXAMINER ADDISON: Thank you, Mr. Kutik.

2 The objection is sustained.

3 Q. (By Mr. Moore) Mr. Baron, if I could have
4 you turn to page 3 of OEG Exhibit 4, your rehearing
5 testimony, on line 11, are you there, sir?

6 A. Yes. Page -- you said page 3, line 11?

7 Q. Yes, sir. You use the term "physical
8 limit on retail shopping" in that sentence. Do you
9 see that?

10 A. Yes.

11 Q. And in that statement how are you
12 defining the phrase "physical limit on retail
13 shopping"?

14 A. It's -- I am using it in terms of the
15 fact that the RRS proposal doesn't affect the level
16 of shopping in terms of the -- the economic choices
17 that customers would make. It's consistent with what
18 I -- how I interpreted the Commission's order.

19 Q. And the "order" you are referring to is
20 the AEP order?

21 A. Actually, I was referring to the order in
22 this case.

23 Q. Is there anything else you are referring
24 to when you are making that statement?

25 A. Well, it's my general understanding of

1 how the RRS proposal would work.

2 Q. Are you also referring to the Ohio
3 Revised Code Section 4928.143(B)(2)(d) in making this
4 statement?

5 A. I would have to look at that section of
6 the code to answer your question.

7 Q. Do you have a copy of the Ohio Revised
8 Code up there with you?

9 A. No.

10 Q. I could provide one for you if it would
11 help refresh your recollection. Would it, if you
12 looked at it?

13 A. I can look at it. That's not what I was
14 basing it on, but it's my -- but I can look at it and
15 see if that's consistent with what I understood.

16 Q. So you were not basing -- did you not
17 use -- you did not refer or use the Ohio Revised Code
18 in making this statement; is that your testimony?

19 A. I don't remember reviewing the code when
20 I wrote this portion of the testimony. I have
21 addressed this issue -- I think I addressed this
22 issue in the first portion of this case and probably
23 I would expect that I used similar language with
24 respect to the original RRS proposal, that it doesn't
25 impose any restrictions on shopping, and effectively

1 it's neutral to shopping, which I understand would be
2 consistent with the code.

3 Q. Were you advised by counsel at all in
4 making this statement in your testimony?

5 A. Did I --

6 MR. KURTZ: Objection. I think that
7 calls for an attorney-client privilege.

8 EXAMINER ADDISON: Mr. Moore?

9 MR. MOORE: I will rephrase the question.

10 EXAMINER ADDISON: Thank you.

11 Q. (By Mr. Moore) Was the conclusion that
12 you are making on page 3 based on advice from
13 counsel?

14 MR. KURTZ: Same objection.

15 MR. MOORE: I am not asking for the
16 substance of the communication. I am just asking
17 whether, you know, communication with counsel has had
18 any bearing on the statements that he made here or if
19 it was all his own personal opinion.

20 MR. KURTZ: This is his testimony. He
21 should ask him about his testimony, not any
22 conversations he may have had with the lawyers.

23 EXAMINER ADDISON: I agree. Objection
24 sustained.

25 Q. (By Mr. Moore) Mr. Baron, is this

1 statement based on your independent expert opinion?

2 A. Yes, it's my understanding of how the RRS
3 proposal would work, that it doesn't have any impact
4 on the economics of shopping versus nonshopping.

5 Q. So is it your conclusion -- or is it your
6 independent conclusion that this statement is
7 consistent with the Ohio Revised Code?

8 A. I would have to look at the Ohio Revised
9 Code, but you don't want me to give a legal opinion
10 as to whether -- what the Ohio Revised Code says, but
11 I can look at it if you would like.

12 Q. So you're not providing a legal opinion
13 in your opinion; is that correct?

14 A. No, I'm not.

15 Q. On page -- or, yeah, page 3, line 15, you
16 use the term "financial limitation on shopping." Do
17 you see that, Mr. Baron?

18 A. Yes.

19 Q. Can you define that phrase as you are
20 using it on line 15?

21 A. I am using it in the same manner that the
22 Commission used in its order in this case, initial
23 order in this case, which is my -- and consistent
24 with my understanding that the RRS proposal only
25 impacts effectively the ultimate -- the prices, the

1 financial impacts on customers, in terms of their
2 bills, but it does not impact any decisions with
3 regard to shopping.

4 So to the extent, I think the language,
5 "financial limitation," is the language that the
6 Commission used in its order.

7 Q. Mr. Baron, if you could turn to Figure 1
8 on page 6 of your testimony.

9 A. Yes, I have it.

10 Q. Well, first, hypothetically, would it be
11 better for consumers or customers, financially, if
12 the costs under the proposal were, for example, \$10
13 or \$20?

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

16 EXAMINER ADDISON: You may.

17 (Record read.)

18 MR. KURTZ: I'll object. The question
19 doesn't make any sense. I don't know what that even
20 means.

21 EXAMINER ADDISON: Would you care to just
22 rephrase, Mr. Moore?

23 MR. MOORE: Sure.

24 EXAMINER ADDISON: Thank you.

25 Q. (By Mr. Moore) The proposal in this

1 proceeding is based on fixed costs; is that correct?

2 A. The RRS is -- is based on projections --
3 on the fixed costs that were provided in the earlier
4 part of this case.

5 Q. Okay. And hypothetically, would it be
6 better for customers, economically speaking,
7 financially speaking, if those fixed costs were \$10
8 or if they were \$20?

9 A. If I understand your question, I imagine
10 it would be better for every customer to pay a \$10
11 charge than a \$20 charge, if that's your question.

12 Q. I don't know if you quite answered my
13 question. My question is would it be better if just
14 the fixed cost price was \$10 or \$20, that would go
15 into the calculation of the eventual charge or
16 credit?

17 A. Yes, and the -- that's what -- it's my
18 understanding that's how the RRS works. Essentially,
19 through the RRS, plus market prices that customers
20 would pay, either through a standard service or CRES,
21 that ultimately customers will end up paying the
22 fixed costs, so that is the cost that customers will
23 pay for each year of the term of the RRS. It is --
24 it's the fixed costs.

25 Q. So would the answer to my question be the

1 \$10 price, \$10 fixed costs --

2 A. \$10 --

3 Q. -- would be better than \$20?

4 A. -- is better than \$20 under any scenario
5 that I can imagine.

6 Q. Okay. And that would be better for
7 customers because they would have a better chance of
8 receiving a credit if the costs were lower, correct?

9 A. Well, I think that's true, but as I said,
10 essentially the RRS proposal sets the fixed price
11 at -- it effectively becomes the price that customers
12 pay through the -- for -- 40 percent, roughly, of
13 their usage.

14 Q. Okay. Now, moving to Figure 1 in your
15 testimony on page 6. Can we agree that the very
16 right-hand part of the graph is a data point from
17 January of 2016? It's not listed there, but.

18 A. If you give me a moment, I will try to
19 find my workpapers.

20 Q. Take all the time you need.

21 A. And your question is my chart on
22 Figure 1?

23 Q. Yes, sir.

24 A. According to the "State of the Market"
25 report that I relied on, that chart is for the period

1 through 2015.

2 Q. Okay. So for the data that's past July
3 2015, that would end around January 2016; is that
4 right? Is that about where your graph ends?

5 A. It's through 2015.

6 Q. Okay. Do you know what the current LMP
7 price is today?

8 A. No.

9 Q. Would you agree that generally prices
10 have been decreasing since around January of 2015 on
11 your graph, Figure 1?

12 A. The -- could you repeat that again,
13 please?

14 Q. Sure. On Figure 1, would you agree that
15 the prices generally have been decreasing since
16 around January 2015?

17 A. Based on that graph, you would -- you
18 could draw that conclusion.

19 Q. Would you agree that --

20 A. And that, of course, through 2015, that's
21 what -- what it shows.

22 Q. Correct. So would you agree that LMP
23 prices are lower at the end of 2015 than they were
24 during any point in 2014?

25 A. It appears from the chart that that's

1 correct. And I think as we established earlier this
2 morning, it was -- these are real-time prices, but
3 yes.

4 Q. If you could turn to page 8 of your
5 testimony, line 21 through 22.

6 A. What was the page reference?

7 Q. Page 8.

8 A. And line?

9 Q. 21 to 22.

10 A. All right.

11 Q. You state there that, in other words,
12 "both the credits and charges associated with Rider
13 RRS should be pro formed out of retail ratemaking."
14 Can you describe how you propose that charges and
15 credits be pro formed out of ratemaking?

16 A. Well, I was referring to the
17 significantly excessive earnings test and the
18 statement that you asked me about on line 21 or the
19 sentence was referring to the SEET test.

20 Q. So you're just proposing that the rider
21 RRS revenues not be included in the SEET test; is
22 that correct?

23 A. Well, I think the --

24 Q. Revenues and expenses.

25 A. It's my understanding that was part of

1 the proposal. And this portion of my testimony
2 said -- states that I don't have -- I agree that
3 that's reasonable, assuming that the costs would also
4 be excluded.

5 Q. Have you ever been involved in a rate
6 proceeding, sir, where the significantly excessive
7 earnings -- or just the excessive earnings have been
8 looked at for FirstEnergy?

9 A. I don't know whether I've been involved
10 in a proceeding where that's been looked at or not.
11 I have not addressed that issue in any proceeding.

12 Q. Have you been involved in a SEET
13 proceeding for any other utility?

14 A. In a SEET proceeding, no.

15 MR. MOORE: No further questions, your
16 Honor. Thank you.

17 EXAMINER ADDISON: Thank you, Mr. Moore.

18 Ms. Petrucci?

19 MS. PETRUCCI: Thank you very much.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. Petrucci:

23 Q. Good afternoon, Mr. Baron.

24 A. Good afternoon.

25 Q. A couple minutes ago you indicated that

1 the rider RRS does not have an impact on the level of
2 shopping and that it's effectively neutral to
3 shopping. Do you recall that?

4 A. Yes, I think that would be my
5 understanding of how it would work.

6 Q. Okay. And that -- in stating that, you
7 are indicating that the rider proposal is not going
8 to have an impact on the ability of any of the
9 customers to shop, correct?

10 A. Correct. Nor would it have an impact on
11 the economic choice.

12 Q. You've indicated, however, that the rider
13 proposal will "diversify FirstEnergy's generation
14 pricing." That's on page 2, lines 14 to 15. Do you
15 see that?

16 A. Yes.

17 Q. And in reference to the word
18 "FirstEnergy," you're talking about the electric
19 distribution companies that are the applicants in
20 this case, correct?

21 A. Yes, that's correct.

22 Q. The rider proposal, however, is not going
23 to change the amount that is charged for a
24 nonshopping customer under the SSO, correct?

25 A. That would be -- yes, that's correct.

1 That's my understanding.

2 Q. And it's also not going to change the
3 pricing for a customer who is shopping and what they
4 pay either the aggregation provider or the individual
5 CRES provider for that generation, correct?

6 A. Correct.

7 Q. And, in fact, the proposal is going to
8 recover, when it's a charge, additional amounts apart
9 from the generation costs that the customer incurs
10 either if they're a shopping customer or a
11 nonshopping customer, correct?

12 A. It would be a charge or a credit
13 depending on how the -- how the numbers work out any
14 particular quarter.

15 Q. Is it your understanding that the charge
16 or credit under the proposal will be a separate line
17 item on the customer's bills?

18 A. I don't know.

19 Q. Do you believe that it's going to be
20 rolled into the generation pricing that the companies
21 list on their bills to customers?

22 A. I haven't reviewed that so I would
23 just -- I could speculate, but I don't know that it
24 would be of any value to you for me to speculate.

25 Q. But, in any event, you agree that

1 rider -- the charge or credit under rider RRS is
2 going to be separate from -- let me rephrase that.

3 You are effectively combining the
4 generation pricing that the companies impose, along
5 with the costs under rider RRS, in order to conclude
6 that this proposal is going to diversify pricing,
7 correct?

8 A. Yes, because it -- as I discuss in
9 these -- this -- this section of my testimony that
10 you've asked me about, for 40 percent of the energy
11 that any customer -- customer on average would
12 purchase, it's set by a fixed price established in
13 the RRS. And it's a scheduled fixed price for the
14 eight years.

15 MS. PETRUCCI: May I have the answer
16 reread, please.

17 EXAMINER ADDISON: You may.

18 (Record read.)

19 Q. Customers are not purchasing generation
20 under rider RRS -- the new proposal, are they?

21 A. No, they are not purchasing generation.

22 Q. And in your testimony you indicated that
23 as compared to the original company proposal, this
24 new proposal has less risk for customers, correct?

25 A. Yes.

1 Q. The proposal, however, does entail some
2 risk for customers, correct?

3 A. I would say, to be perfectly fair, an
4 instrument -- a financial instrument like this has --
5 has some component of risk in the sense that if
6 market prices were to drop or stay very low, then
7 it -- there's the risk that that might be the outcome
8 over eight years and that would have an impact on
9 the -- the RRS charge or credit relative to the
10 projections.

11 Q. And as we sit here today, customers in
12 the companies' territories aren't exposed to that
13 risk because this proposal is not in place, correct?

14 A. They are not exposed to that risk. They
15 are exposed to market price risks.

16 Q. And that's dependent upon the type of
17 service they choose for purchasing generation,
18 correct?

19 A. I'm not sure I follow that what you are
20 asking.

21 Q. The market risk that you just indicated
22 that exists today, it will vary depending on the type
23 of generation service they are purchasing, correct?

24 A. The particular magnitude of volatility in
25 any given period may -- would vary depending on

1 whether you are an SSO customer or a shopping
2 customer. It might vary depending on the nature of
3 the shopping contract that you enter, but essentially
4 over an eight-year period, either -- no matter how
5 you do it, it's going to be -- the prices you pay are
6 going to be a function of the market prices. It has
7 to be that way.

8 Q. And that's not going to change that --
9 that existing risk that you just mentioned, as a
10 result of this proposal, because customers will still
11 either choose to shop or not shop, correct?

12 A. No, I don't agree with that.

13 Q. Under this proposal, it will be
14 nonbypassable, the rider, correct?

15 A. Yes.

16 Q. And applicable to all the customers in
17 the service territory, correct?

18 A. That's my understanding, yes.

19 Q. As of today, with the status of the rider
20 RRS, there is no risk at all to customers because it
21 hasn't been fully implemented; isn't that correct?

22 MR. KUTIK: Objection.

23 EXAMINER ADDISON: Grounds?

24 MR. KUTIK: Asked and answered. He said
25 no, they are exposed to market risks.

1 MS. PETRUCCI: My question was specific
2 to the risk associated with the rider.

3 MR. KUTIK: And that question was asked
4 as well.

5 EXAMINER ADDISON: We'll just let him
6 answer to make the record clear.

7 You may answer, Mr. Baron.

8 A. To the extent that there is any risk
9 associated with the RRS, and the RRS is not in
10 existence as of today, then whatever that risk, if
11 any there is, is not in existence today. The -- but
12 in terms of what customers actually pay for
13 electricity, the risks are there because of the
14 market and they are not offset by a hedge mechanism.

15 But if you single out the RRS by itself
16 and it doesn't exist, then whatever risk it may have
17 had or may have, by definition, doesn't exist. I can
18 agree with that.

19 MS. PETRUCCI: Thank you. I don't have
20 anything further for the public section.

21 EXAMINER ADDISON: Thank you.

22 Mr. Whitt.

23 MR. WHITT: Thank you, your Honor.

24 - - -

25

1 CROSS-EXAMINATION

2 By Mr. Whitt:

3 Q. Mr. Baron, my name is Mark Whitt. I
4 represent Direct Energy in this case. I was not here
5 for the first 41 days.6 EXAMINER ADDISON: Mr. Whitt, if you
7 could just use a microphone. Thank you.8 Q. Mr. Baron, let me try to close the loop
9 on the questions you were just asked about the
10 current generation pricing for the applicants in this
11 proceeding. As we sit in this hearing room today,
12 the price that the utilities' customers pay for
13 generation service, nonshopping customers, is based
14 on a competitive-bid process, correct?

15 A. That's my understanding, yes.

16 Q. And that would continue under the current
17 proposal that in addition to a competitive-bid
18 process, there would be a component of the generation
19 price that in addition to whatever the
20 competitive-bid price is, there would also be a
21 charge or a credit from RRS, correct?

22 A. Yes.

23 Q. Now, your testimony generally describes
24 stability as a benefit, correct?

25 A. Yes. That is really what my testimony is

1 about is stability.

2 Q. Okay. And there is a cost associated
3 with stability, is there not?

4 A. Yes, I would agree with that.

5 Q. And would you agree with the
6 characterization of RRS as providing a form of
7 insurance against future rate volatility?

8 A. Yes. It's a hedge mechanism that
9 essentially converts what otherwise would be market
10 prices into a stable fixed price at the level that
11 was built into the RRS.

12 Q. And just as a consumer pays a premium for
13 an insurance product, the charge or credit under RRS
14 would be functionally equivalent to an insurance
15 premium, would it not?

16 A. I'm not sure if I agree with your
17 analogy. An insurance premium is designed to
18 provide, as I understand it, the -- to cover the
19 costs of the underwriter for offering a product that
20 pays off in the event of an -- a particular event
21 like a fire or a death.

22 In the case of the RRS, the charges and
23 credits are the payoffs. And I -- you know, it could
24 be -- so I don't know if the analogy you've raised is
25 exactly the same, but the RRS is what it is.

1 Q. Okay. Well, let's go back a minute.
2 Under the competitive-bid process you understand that
3 the companies, to the extent the companies incur any
4 costs associated with a competitive-bid process, that
5 they fully recover those costs. You understand that,
6 correct?

7 A. Yes.

8 Q. So -- and you also understand that under
9 the proposal we are talking about today, there is
10 going to be no transaction involving the applicants
11 in this proceeding and any generator -- generation
12 provider, you understand that, correct?

13 A. Yes. It's a financial instrument.

14 Q. And because there is no transaction,
15 there is no exchange, in other words, no -- the
16 utilities will not be paying anyone money to get
17 something in return as was the case under the PPA,
18 correct?

19 A. Well, it's certainly not the same as the
20 PPA which was an actual generation purchase and then
21 sale.

22 Q. Right. So to the extent RRS -- RRS, the
23 rider, to the extent the rider results in charges to
24 customers, whether the utility receives that revenue,
25 it's essentially all profit, is it not, because there

1 are no offsetting costs with that revenue because
2 there is no transaction.

3 MR. KUTIK: Objection.

4 EXAMINER ADDISON: Grounds?

5 MR. WHITT: I have a point of order, your
6 Honor.

7 EXAMINER ADDISON: Let him give his
8 reasoning for his objection.

9 MR. KUTIK: My objection, your Honor,
10 that's -- that's contrary to the record at this
11 point. We all know how the -- how it works. The
12 question assumes that there is only profits.
13 Obviously --

14 MR. WHITT: Does not.

15 EXAMINER ADDISON: Mr. Whitt, please.
16 Thank you.

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

18 EXAMINER ADDISON: You may.

19 MR. KUTIK: And it is an eddying
20 mechanism since we have talked about since the first
21 day of this hearing. So the question is improper.

22 EXAMINER ADDISON: Mr. Whitt.

23 MR. WHITT: My point of order relates to
24 who is entitled to object when witnesses are on the
25 stand. As far as I know, the company is not also

1 representing this witness. And I've not been
2 involved in a proceeding at the Commission before
3 where it's -- we allow everyone to pile on on a
4 witness. You have the party that sponsored the
5 witness defending that witness, and I know that it's
6 happened this morning but, again, in respect for what
7 I thought used to be the protocol, I didn't want to
8 speak up when it's not my turn, but now it's my turn,
9 I would like to call attention to my objection to
10 other parties objecting on behalf of witnesses they
11 don't represent.

12 EXAMINER ADDISON: Well, I can't say what
13 has happened in prior proceedings at this -- in this
14 hearing room, for the last 41 days we have allowed
15 such objections to be made, so we will continue doing
16 so.

17 MR. WHITT: Okay. Now, I understand why
18 you were here 41 days.

19 If I may address the substance, the --
20 the witness has talked about stability and I am
21 trying to understand what the implications of this
22 stability are in addition to what the company
23 represents. And my question was expressly based on a
24 hypothetical, if there were credits -- or if there
25 were charges, there would be no offsetting costs.

1 MR. KURTZ: That's not what his question
2 addressed. The stability is to consumers. His
3 question was as to the effect on the income of the
4 utility.

5 MR. WHITT: I think --

6 MR. KURTZ: Which is a completely
7 different topic.

8 EXAMINER ADDISON: Can we have the last
9 question read back, please.

10 (Record read.)

11 EXAMINER ADDISON: Thank you.

12 Please rephrase your question, Mr. Whitt.

13 Q. (By Mr. Whitt) Assume -- well, we've
14 established, I think, that to the extent the
15 utilities incur any costs in procuring and pricing
16 generation, that the utility would cover those --
17 would recover those costs through rider GEN. I don't
18 know if I used rider GEN in my last Q and A, but you
19 understand those competitive-bid process costs would
20 be recovered somehow, correct?

21 A. Yes.

22 Q. And you also understand that under the
23 revised proposal, there is no transaction proposed in
24 which the utilities would incur costs, correct?

25 A. There's no -- it's not a PPA and the

1 utility is basically providing what I view as a
2 financial hedge mechanism which is the RRS.

3 Q. So what -- the revenue the utilities
4 receive from rider RRS, if there are such revenues,
5 would that be to compensate the utilities for the
6 stability that they are offering? Is that what --
7 what you're saying?

8 A. Over the term of the RRS, I would -- I
9 would think the -- the charges and the credits
10 together over the entire term, the eight-year term,
11 is -- is the -- what the company is providing in
12 terms of the stability product.

13 Q. So the -- whatever it is that the
14 utilities are providing that is associated with the
15 rider does not relate to costs that it actually
16 incurs for procuring or -- for procuring generation
17 service, correct?

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

20 EXAMINER ADDISON: You may.

21 (Record read.)

22 MR. KURTZ: I'll object on asked and
23 answered. I think we have established there is no
24 PPA. There is no physical purchase of generation.
25 There is no physical sale.

1 EXAMINER ADDISON: Mr. Whitt.

2 MR. WHITT: That may be the case. I just
3 want to make sure there aren't any additional costs
4 outside of a PPA.

5 EXAMINER ADDISON: I'll allow the witness
6 to answer this question and then we'll move on.

7 THE WITNESS: Could you repeat the
8 question.

9 EXAMINER ADDISON: Could we have the last
10 question read back. Thank you.

11 (Record read.)

12 A. The RRS is not related to the procurement
13 of actual generation service.

14 Q. Thank you.

15 And assume that retail electric bills in
16 Ohio break out for the consumer separate components
17 for generation, transmission, and distribution.
18 Assume that to be the case, all right?

19 A. All right.

20 Q. Would it make sense to you that any
21 charges or credits associated with RRS be billed or
22 credited as part of the generation component of the
23 bill?

24 A. Well, the RRS obviously is related to --
25 it's a financial hedge or stability mechanism related

1 to the -- to what otherwise would be market prices
2 and is designed to mitigate the potential volatility
3 of those market prices.

4 Where it shows up on the bill or how it's
5 characterized, I don't -- I haven't looked at that.

6 Q. Well, if the Commission wished for
7 consumers to have transparent pricing, would it be
8 your recommendation that the effect of RRS flow
9 through the generation component of the bill?

10 A. It's a nonbypassable charge. I don't
11 know how it would show up on the bill. I certainly
12 wouldn't have any personal objection to it being
13 broken out as a separate item on the bill. And
14 probably that's how it would be done, but I don't
15 know.

16 Q. Well, I'm not -- I'm not -- I am talking
17 about something slightly different than adding
18 something to the bill that says rider GEN. What I'm
19 talking about is if the back-office computers, in
20 netting out various riders and preparing bills, did
21 the calculations in a way that whatever impact RRS
22 has, it would impact the generation component of the
23 bill as the customer sees it. Wouldn't that be the
24 sensible way to do it?

25 MR. KUTIK: I'll object at this point.

1 We are well beyond the scope of this witness's
2 testimony.

3 EXAMINER ADDISON: Sustained.

4 Please move on, Mr. Whitt.

5 Q. (By Mr. Whitt) We talked about how --
6 well, again, your testimony being about stability, I
7 think we've established there is a cost associated
8 with stability. And would it be fair to say that the
9 longer -- the longer the period that somebody wants
10 stability, the greater premium they would have to pay
11 for that?

12 A. As a hypothetical matter, if you were in
13 the market buying a financial hedge for some -- under
14 some arrangement unrelated to this -- the issues of
15 this case, I would expect the longer the term of the
16 hedge, the higher the premium.

17 I would add you've characterized the
18 costs for stability. It's my understanding, based on
19 the Commission's order, that the Commission found
20 that the RRS costs and expected market prices
21 actually produces a net benefit over the term, I
22 think, of \$261 million. So I want to make sure that
23 that's clear that I'm not ignoring that.

24 When you say "costs," I was referring to
25 sort of the hypothetical or general idea of an

1 insurance product or a hedge.

2 Q. Well, when the Commission -- the
3 Commission's order on -- in this case is based on
4 evidence associated with a PPA which is no longer
5 part of the current proposal, correct?

6 A. The costs' side of the RRS are the costs
7 that were considered by the Commission in the earlier
8 portion of this case. I think --

9 Q. Based on the transaction.

10 MR. KUTIK: Your Honor, he hadn't
11 finished his answer.

12 EXAMINER ADDISON: Mr. Whitt, please let
13 him finish his answer.

14 A. It's my understanding the proposed RRS
15 that's at issue today is -- is based on those costs
16 that the Commission already reviewed in the prior
17 part of the case.

18 Q. When you say "based on costs the
19 Commission reviewed," you are referring to future
20 projections, correct?

21 A. The future projections that the
22 Commission reviewed in coming to its decision that
23 the RRS, the original RRS, produced, I think,
24 \$261 million of benefits.

25 Q. Back to the point of longer-term, you

1 know, purchasing longer-term stability, whether it's
2 through a hedge or some other instrument, it would
3 generally -- one would have to pay more for a
4 commodity, whatever it is, to hedge that price for
5 two years than they would have to pay if they were
6 hedging for one year; is that generally the case?

7 A. As a general matter it -- in financial
8 instruments, that would be my understanding of how
9 markets would work.

10 Q. Okay. In a market where there are
11 generally declining prices, it would not be
12 economically rational, would it, to lock in a
13 long-term price at today's market?

14 A. I don't know whether it would be rational
15 or not. I think when you say "generally declining,"
16 if someone would guarantee that it would be declining
17 over a period of eight years, then I -- I would agree
18 that it would make no sense to lock in today's price.

19 If there's no guarantee, if it's only an
20 expectation or recent history, then a financial hedge
21 serves a purpose.

22 Q. Are you aware of any guarantees that come
23 with the companies' proposal? Are they guaranteeing
24 anything?

25 MR. KUTIK: Your Honor, at this point

1 that's argumentative.

2 EXAMINER ADDISON: Sustained.

3 Please rephrase your question.

4 Q. Given that it would -- well, can we agree
5 that to hedge a price for eight years would be more
6 expensive than to hedge that price for one year?

7 A. As a general matter, talking based on my
8 understanding of how financial instruments would
9 work, an eight-year hedge of anything, natural gas,
10 corn, wheat, would -- I would expect would cost more
11 than a two-year hedge.

12 Q. And would it be reasonable to conclude
13 that if there are no eight-year products offered by
14 CRES providers, that one explanation may be that
15 there is no market for such a product because it
16 would cost too much?

17 A. I don't know.

18 Q. You have no opinion on that?

19 A. I don't know.

20 Q. And to the extent customers have already
21 evaluated their own tolerance for market risk or any
22 other sort of risk and planned appropriately with a
23 CRES provider or anyone else, those customers would
24 be forced to pay rider RRS as well, correct?

25 A. It's my understanding that under the

1 proposal that it would be a nonbypassable charge, so
2 my definition would apply to all customers.

3 Q. Okay. If you'll look -- and if we can --
4 I am going to wrap up here. On page 2 of your
5 testimony at line 19 -- actually starting on line 18
6 you say, "Specifically, I calculate the FirstEnergy's
7 modified Rider RRS proposal would result in
8 generation pricing that is approximately 30 percent
9 cost-based and 70 percent market-based on a demand
10 basis" and then it continues. Do you see that?

11 A. Yes.

12 Q. And a 30 percent cost-based component
13 refers to charges under rider RRS, correct?

14 A. Yes. Effectively those are the costs
15 that were projected -- projected in the -- in the
16 earlier part of this case. And so the mechanism
17 essentially produces -- or charges customers, if RRS
18 were in place, it charges customers that fixed price
19 for the eight years, whatever the -- it changes year
20 by year, but it's a fixed set of prices for 30,
21 40 percent of the consumption that the customer uses.

22 Q. And that is -- and the market-based price
23 you refer to here are -- is the price developed under
24 the competitive-bid process, correct?

25 A. Yes, or that -- those prices charged by

1 CRES providers.

2 Q. So the 30 to 40 percent that you talk
3 about in your testimony is essentially the premium
4 customers would pay for the stability the company
5 says it's offering; is that not correct?

6 A. No. I don't agree with that. That's not
7 correct.

8 Q. Well, tell me -- tell me what about that
9 is incorrect. Customers today and going forward will
10 pay a generation price based on the results of a
11 competitive-bid process, correct, yes or no?

12 MR. KUTIK: Objection. He's asked now
13 three questions.

14 MR. KURTZ: Right. I would like him to
15 answer the first.

16 MR. KUTIK: May we have the first
17 question read?

18 EXAMINER ADDISON: How about we just go
19 back and you can reask your question one at a time.
20 The witness will respond. He will give his full
21 response and you will ask another question.

22 MR. WHITT: Okay.

23 EXAMINER ADDISION: That's how we are
24 going to move forward.

25 Q. (By Mr. Whitt) Let me start with an easy

1 "yes" or "no." Generation pricing today is based on
2 the results of a competitive-bid process? Yes or no.

3 A. For standard service customers, yes.

4 Q. And that will also be the case under the
5 current proposal of the company? Yes or no.

6 A. Yes, there still will be a
7 competitive-bid process for standard service
8 generation.

9 Q. And in addition to the rate customers pay
10 under the competitive-bid process to the extent the
11 math works out in a way there is a charge under rider
12 RRS, that would be added to whatever charges the
13 customers incurs as determined by the competitive-bid
14 process, correct?

15 A. RRS, it would either be a charge or a
16 credit which, when added to the otherwise applicable
17 generation charge from a competitive-bid process,
18 would -- so it would be an increment or decrement
19 from that, but it would effectively substitute for
20 the 30 or 40 percent the cost of energy pursuant to
21 the -- cost projections that were submitted in the
22 earlier portion of this case.

23 Q. We would basically add 30 to 40 percent
24 on the generation component of the bill, would we
25 not?

1 A. No. That's the part that's entirely
2 incorrect.

3 Q. Okay. That's all I have.

4 EXAMINER ADDISON: Thank you, Mr. Whitt.
5 Mr. Hays?

6 MR. HAYS: Nothing, your Honors.

7 EXAMINER ADDISON: Thank you.
8 Mr. Dougherty?

9 MR. DOUGHERTY: No questions, your Honor.

10 EXAMINER ADDISON: Mr. McNamee?

11 MR. McNAMEE: No questions.

12 EXAMINER ADDISON: At this time we will
13 go ahead and take our lunch break and return at 1:45.
14 Thank you.

15 Let's go off the record.

16 (Thereupon, at 12:43 p.m., a lunch recess
17 was taken.)

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1 Tuesday Afternoon Session,
2 July 12, 2016.

3 - - -

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

6 At this time we will go on to the
7 confidential portion of our transcript. If anyone is
8 has not executed a confidentiality agreement, I would
9 ask that you leave the room now. Let's go ahead and
10 go off the record.

11 (Discussion off the record.)

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

14 At this time we will go into the public
15 version of the record.

16 EXAMINER ADDISON: Mr. Kurtz.

17 MR. KURTZ: Well, I guess, in the public
18 version, so we are going to mark the confidential
19 version of Mr. Baron's testimony as Exhibit 5C. And
20 I guess he is ready for the cross-examination on the
21 confidential portion of his testimony.

22 EXAMINER ADDISON: I believe we were also
23 going to mark the additional document.

24 MR. KURTZ: Oh, you're right, and that
25 should be marked as --

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EXAMINER ADDISON: 6.

MR. KURTZ: OMAEG --

EXAMINER ADDISON: OEG.

EXAMINER PRICE: No.

MS. COHN: You want us to mark it?

MR. KURTZ: OEG Exhibit 6.

EXAMINER ADDISON: Can you identify what Exhibit 6 is, Mr. Kurtz?

MR. KURTZ: It is the PJM BRA auction results for PJM years '18-'19 and '19-'20.

EXAMINER ADDISON: Thank you. They will be so marked.

(EXHIBITS MARKED FOR IDENTIFICATION.)

MS. BOJKO: Your Honor, can we go off the record?

EXAMINER ADDISON: Let's go off the record.

(Discussion off the record.)

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

At this time we will enter the confidential portion of our transcript.

(CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

EXAMINER ADDISON: Mr. Kurtz, do you have any redirect?

MR. KURTZ: No redirect.

EXAMINER ADDISON: Thank you.

Any additional questions?

I have no further questions. You are excused, Mr. Baron. Thank you very much.

THE WITNESS: Thank you, your Honor.

EXAMINER ADDISON: Mr. Kurtz.

MR. KURTZ: Your Honor, we move the admission of OEG Exhibit 4, OEG 5C, and OEG 6.

EXAMINER ADDISON: Any objection?

Hearing none, they will be admitted

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER ADDISON: Ms. Bojko?

MS. BOJKO: Thank you, your Honor. At this time -- at this time OMAEG moves the exhibits

1 OMAEG Exhibit 35 and OMAEG Exhibit 36.

2 EXAMINER ADDISON: Are there any
3 objections to the admission of these two exhibits?

4 Hearing none, they will be admitted
5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER ADDISON: Let's go ahead and go
7 off the record for a moment.

8 (Discussion off the record.)

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

11 Mr. McNamee.

12 MR. McNAMEE: Thank you, your Honor. At
13 this time staff would call Joseph P. Buckley.

14 (Witness sworn.)

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

17 THE WITNESS: My name is Joseph Buckley.
18 My business address is 180 East --

19 MR. McNAMEE: Your thing is not on, Joe.

20 MR. KUTIK: Your microphone.

21 THE WITNESS: My name is Joseph Buckley.
22 My business address is 180 East Broad Street,
23 Columbus, Ohio 43215.

24 - - -

25 JOSEPH P. BUCKLEY

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

3 DIRECT EXAMINATION

4 By Mr. McNamee:

5 Q. Mr. Buckley, by whom are you employed and
6 in what capacity?

7 A. The Public Utilities Commission of Ohio.
8 I'm a Utility Specialist 3.

9 Q. Okay.

10 MR. McNAMEE: Your Honor, at this point I
11 would ask to have marked for identification as Staff
12 Exhibit -- I don't know what the number is.

13 EXAMINER PRICE: 13.

14 MR. McNAMEE: 13. That's interesting.

15 MR. KUTIK: Got that on the record.

16 MR. McNAMEE: Staff Exhibit 13, a
17 multi-page document filed in this case on June 29,
18 denominated "Confidential Rehearing Testimony of
19 Joseph P. Buckley."

20 EXAMINER PRICE: It will be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. McNAMEE: Your Honor, though this
23 document is marked "Confidential," the rather small
24 confidential portion of it is -- the confidentiality
25 has been waived by the company as I understand it.

1 And so, this document should not be treated as
2 confidential.

3 EXAMINER PRICE: Thank you.

4 MR. McNAMEE: Now, in addition, I need to
5 explain some slight confusion -- maybe not slight.
6 In filing this testimony there was originally a
7 public version and a confidential version filed with
8 docketing. Both of those versions were correct. We
9 distributed a public version to everybody and that
10 version was correct.

11 Apparently, the confidential version that
12 was distributed to the parties who had signed the
13 confidentiality agreement contains at least one error
14 and I don't know how that happened but it did. And
15 that error would be in the answer to Question No. 5
16 on page 2. It refers to the distribution
17 modernization rider -- it should refer to the
18 distribution modernization rider being created rather
19 than company's proposal being modified.

20 So there may be other edits that were not
21 picked up in that version; I don't know. This is the
22 only divergence that I'm aware of. But the version
23 that I am asking to have marked as -- or I have had
24 marked as Staff Exhibit 13 is the version that was
25 filed with the docketing and it is correct --

1 EXAMINER PRICE: Thank you.

2 MR. McNAMEE: -- at this point.

3 EXAMINER PRICE: Please proceed.

4 Q. (By Mr. McNamee) Mr. Buckley, do you have
5 before you what's been marked for identification as
6 Staff Exhibit 13?

7 A. I do.

8 Q. What is it?

9 A. It's my prefiled testimony.

10 Q. Was it prepared by you or under your
11 direction?

12 A. It was.

13 Q. Are the contents of that document true to
14 the best of your knowledge and belief?

15 A. They are.

16 Q. Okay. Do you adopt what's contained in
17 Staff Exhibit 13 as your direct testimony in this
18 case?

19 A. I do.

20 Q. If I were to ask you the same -- the
21 questions that appear in what's been marked for
22 identification as Staff Exhibit 13, again here this
23 afternoon, will your answers be as presented therein?

24 A. They would.

25 MR. McNAMEE: Thank you.

1 customers for at least three years; is that correct?

2 A. Correct.

3 Q. Okay. And if you could turn to page 7 of
4 your testimony, and if you look at lines 8 to 9, it
5 says "Additionally, if FE has not improved its credit
6 position after three years, it could request an
7 extension of the current plan for an additional two
8 years." Do you see that?

9 A. Yes.

10 Q. And --

11 EXAMINER PRICE: Excuse me. Let's go off
12 the record.

13 (Discussion off the record.)

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

16 Mr. Buckley, you are excused for the
17 remainder of the day, and we will take your
18 cross-examination tomorrow. Thank you.

19 We are off the record.

20 (Recess taken.)

21 EXAMINER PRICE: Okay. Let's go on the
22 record.

23 Mr. McNamee.

24 MR. McNAMEE: Thank you, your Honor.
25 Staff would call -- staff would call Tammy Turkenton.

1 (Witness sworn.)

2 EXAMINER PRICE: Please state your name
3 and business address for the record.

4 THE WITNESS: Tammy Turkenton, 180 East
5 Broad, Columbus, Ohio 43215.

6 EXAMINER PRICE: Please proceed,
7 Mr. McNamee.

8 - - -

9 TAMARA S. TURKENTON
10 being first duly sworn, as prescribed by law, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 By Mr. McNamee:

14 Q. Ms. Turkenton, by whom are you employed
15 and in what capacity?

16 A. Public Utilities Commission of Ohio. I
17 am the Chief of Regulatory Services.

18 Q. Thank you.

19 MR. McNAMEE: Your Honor, at this time, I
20 would ask to have marked for identification Staff
21 Exhibit 14, a document filed in this case on June 29,
22 entitled "Rehearing Testimony of Tamara Turkenton."

23 EXAMINER PRICE: It will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Ms. Turkenton, do you have before you

1 what has been marked for identification as Staff
2 Exhibit 14?

3 A. I hope so, yes.

4 Q. Oh, dear. I've had better days.
5 Ms. Turkenton, what is that document?

6 A. It is my rehearing testimony filed in
7 this case.

8 Q. Okay. Was it prepared by you or under
9 your direction?

10 A. It was.

11 Q. Okay. Do you have any corrections to
12 make to that document?

13 A. I do not.

14 Q. Okay. If I were to ask you the questions
15 that appear in Staff Exhibit -- what's been marked
16 for identification as Staff Exhibit 14, again here
17 this afternoon, would your answers today be as
18 represented therein?

19 A. They would be.

20 Q. So do you adopt this -- what's been
21 marked for identification as Staff Exhibit 14 as your
22 direct testimony in this case?

23 A. Actually, my rehearing testimony, yes.

24 Q. Your rehearing testimony.

25 A. Yes.

1 MR. McNAMEE: Okay. Thank you. The
2 witness is available for cross, your Honor.

3 EXAMINER PRICE: Mr. Kurtz.

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

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Kurtz:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Ms. Turkenton, will you turn to page 2,
11 line 8. Are you there?

12 A. I am there.

13 Q. Okay. You reference this paragraph (h)
14 of the Revised Code as being, I guess, the statutory
15 basis for staff's proposal?

16 A. It is as addressed in Dr. Choueiki's
17 testimony.

18 Q. Okay.

19 MS. BOJKO: Excuse me, your Honor. We
20 can't hear. Could you ask him to turn his microphone
21 on.

22 EXAMINER PRICE: Give Mike a mic.

23 MS. BOJKO: Thank you.

24 MS. WILLIS: Your Honor, I'm afraid I
25 have the same issue with Ms. Turkenton's testimony.

1 You said page 3, line 8 and 9?

2 MR. KURTZ: Page --

3 EXAMINER PRICE: Page 2.

4 MS. WILLIS: Oh, I'm sorry.

5 THE WITNESS: Ms. Willis, do not --

6 MS. WILLIS: Page 2. Okay. Thank you.

7 MR. KUTIK: Everybody is gun-shy.

8 MS. WILLIS: Thank you.

9 Q. (By Mr. Kurtz) Do you have a copy of
10 section (h) in front of you?

11 A. I -- I don't. I don't have a full copy.

12 Q. Okay. Do you -- do you recognize the
13 section (h) authorizes the Commission to approve
14 single-issue ratemaking revenue decoupling or any
15 other incentive ratemaking provision?

16 MR. WHITT: I will object, your Honor.
17 Friendly cross.

18 MR. KURTZ: We haven't taken a position
19 on staff's proposal at all. Just because I am not
20 yelling like some counsel doesn't mean it's friendly.

21 EXAMINER PRICE: Let's not editorialize
22 about each other's counsel with the friendly cross.
23 The objection will be overruled.

24 Q. (By Mr. Kurtz) Do you recognize this
25 provision of the law authorizes incentive ratemaking

1 provisions?

2 A. It would be nice if I saw a copy of the
3 code section, but I do recollect that it does -- the
4 plain words do say "incentive ratemaking."

5 Q. Okay. Would you turn to page 4 of your
6 testimony, please. Line -- line 6, you -- you talk
7 about the policy of the state to encourage the
8 modernization of the distribution grid and that your
9 proposal, the distribution modernization rider, will
10 further this policy by promoting modernization of the
11 grid; is that a fair paraphrase?

12 A. Yes. What I state here is that based on
13 Dr. Choueiki's testimony and Mr. Buckley's testimony
14 that this is credit support to the company for them
15 to be able to access the capital markets. And then,
16 in turn, by accessing the capital markets, we hope
17 that they modernize the grid.

18 Q. So this -- would this be characterized as
19 a form of incentive ratemaking to incentivize grid
20 modernization?

21 A. It could be.

22 Q. Sort of like -- like what FERC does to
23 incentivize transmission investment; it gives a
24 premium return on equity? Would that be a
25 similarity?

1 A. I don't know that the distribution
2 modernization rider, because it's offering credit
3 support, is -- has a return but, yes, if the
4 companies invest in the grid, the ultimate rider,
5 i.e., the SmartGrid rider, would have a return
6 component to it -- and would have a return component
7 to it.

8 Q. Yeah, I was asking whether what you are
9 proposing is similar to what FERC does in terms of
10 gives more money to encourage transmission
11 investments, like you're proposing the 131 million,
12 to provide credit support to promote grid
13 modernization.

14 A. I'm not overly familiar with what FERC
15 does, but if they term it as "credit support," then
16 yes, this would be similar.

17 Q. Okay. Last couple of questions. You're
18 Chief of Regulatory Services, correct?

19 A. I am.

20 Q. And you're familiar with the allocation
21 of rate design issues of ratemaking?

22 A. Generally, yes.

23 Q. Okay. The staff testimony has not
24 proposed how the \$131 million would be allocated or
25 recovered; is that correct?

1 A. Yeah, that is not addressed in my
2 testimony.

3 Q. Are there options that are available to
4 the Commission?

5 A. Yes. Certainly. It's one of those -- I
6 mean the Commission has several options. The rate
7 structure or the rate design that was approved for
8 the RRS is an option that the Commission could use.

9 I think there are other options that the
10 Commission would need to consider as that rider is
11 completely different than this new rider. So I think
12 there are other rate designs that could be
13 appropriate.

14 Q. And staff has not taken a firm position
15 on that issue at this point?

16 A. We don't have a staff proposal. I have
17 some thoughts, but we don't have a formal staff
18 proposal, no. It's not part of my testimony.

19 Q. Okay. I don't want to leave it as -- is
20 there anything else as to staff's position on the
21 allocation and design of the rider?

22 A. What I would submit to the Commission is
23 this is a unique rider, it's a different rider, it's
24 a rider that's -- what I would say is credit support
25 as evidenced by Mr. Buckley's testimony.

1 So from at least my perspective, I am not
2 certain that the RRR -- RRS rate design and structure
3 is appropriate as that was related to generation, and
4 I believe credit support is different than
5 generation. So I think the Commission should
6 consider differing rate designs, different than the
7 RRS that was recently approved.

8 Q. Okay. And does the fact that this is a
9 distribution rider under the distribution portion of
10 the ESP statute influence your thinking at all?

11 A. I don't believe this is -- it is named
12 "distribution modernization rider," but I believe
13 Staff Witnesses Buckley and Dr. Choueiki and myself
14 believe that this is a form of credit support for the
15 company to be able to access -- access the capital
16 markets and hopefully they will, in turn, modernize
17 the grid. So there is a distribution component to
18 it, but I don't know that staff believes that it is a
19 distribution rider, per se. That late recovery will
20 happen when they apply for this in the SmartGrid
21 rider.

22 MR. KURTZ: Thank you, Ms. Turkenton.

23 No further questions.

24 EXAMINER PRICE: Thank you.

25 Mr. Darr, do you have some questions

1 today?

2 MR. DARR: Yeah, if I may, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Darr:

6 Q. Ms. Turkenton, just a couple of
7 questions. I want to follow up on something you said
8 to Mr. Kurtz that you indicated that you had some
9 thoughts with regard to the rate design issue.

10 Apart from what you've described for him
11 indicating that this rider is designed to provide
12 credit support, are there any other factors that you
13 would consider being relevant to the overall design
14 of a recovery mechanism?

15 A. Well, obviously, we do want to look at
16 how it affects all rate classes, be it commercial,
17 residential, or industrial. As we do with any rate
18 design, we want to promote concepts of gradualism and
19 ensure there is not rate shock.

20 The Commission in the RRS -- in approving
21 the RRS, looked at certain impacts related to how the
22 RRS would impact residential customers, industrial
23 and commercial customers. So I would again encourage
24 in any rate design that the Commission institutes for
25 this new distribution modernization rider, would

1 ensure that they look at the concepts of gradualism
2 and ensure that all customers -- customer classes are
3 treated hopefully equitable.

4 Q. But at this point you don't have any
5 particular allocation in mind; is that correct?

6 A. We do not have a staff proposal. My
7 personal thoughts are because, as I indicated with
8 Mr. Kurtz, what seems logical to me is that perhaps
9 you could allocate this on a 50/50 basis being
10 50 percent demand, 50 percent energy, and then you
11 could also charge it on a 50 percent demand basis and
12 50 percent energy basis but, again, I have not done a
13 cost-of-service study. That just seems to be a more
14 equitable avenue in my mind. Since this is a new
15 rider and is a new type of what I -- a new rider that
16 we have not encountered before.

17 Q. Are there concerns with regard to the
18 assignment of this rate based on its impacts on the
19 economy as a whole in terms of, for example, the
20 policy concern about maintaining the effectiveness of
21 the -- of Ohio industries and global economy?

22 A. Certainly that's a factor I consider. I
23 would hope the Commission would consider that also.

24 MR. DARR: That's all I've got. Thank
25 you, your Honor.

1 EXAMINER PRICE: Thank you.

2 Are there any other signatory party
3 intervenor counsel that would like to ask questions?

4 MR. DARR: Just a clarification, your
5 Honor. IEU-Ohio is not a signatory.

6 EXAMINER PRICE: A signatory party or a
7 nonopposing --

8 MR. DARR: We are a nonopposing party.

9 EXAMINER PRICE: -- party.

10 MR. DARR: Thank you, your Honor.

11 EXAMINER PRICE: Thank you.

12 Ms. Grady.

13 MS. WILLIS: Thank you, your Honor.

14 For purposes of this cross-examination, I
15 would like to approach the witness and give her
16 copies of two statutes that she references in her
17 testimony, the 4928.143 and 4928.142, as I will have
18 some questions on those.

19 EXAMINER PRICE: You may approach.

20 Ms. Willis, you may approach.

21 - - -

22 CROSS-EXAMINATION

23 By Ms. Willis:

24 Q. Now, just to follow-up -- or good
25 afternoon, Ms. Turkenton.

1 A. Good afternoon.

2 Q. To follow-up some questions from
3 Mr. Kurtz's cross-examination, you indicated that you
4 hope that the companies modernize the grid. Do you
5 recall that testimony?

6 A. I do.

7 Q. Is there anything in the staff's proposal
8 that requires the companies to modernize the grid if
9 they were given the credit support that you are
10 recommending?

11 A. It's probably better suited for
12 Dr. Choueiki, but it's my understanding that there is
13 no requirement.

14 Q. And you indicated that this would be
15 credit support to the company. By "company" were you
16 meaning the FirstEnergy utilities?

17 A. I am; the three EDUs.

18 Q. Do you believe that this provides credit
19 support to FirstEnergy Corp.?

20 A. That's a question you would have to
21 address to Mr. Buckley or Dr. Choueiki.

22 Q. Now --

23 EXAMINER PRICE: Let's take a step back
24 and follow-up with the question Ms. Willis asked.

25 The companies and the staff have entered

1 into a stip, which has been approved by the
2 Commission, which required the companies to file a
3 SmartGrid appli -- business case and they have done
4 so. Is it your testimony that there is no additional
5 provisions for SmartGrid modernization beyond what
6 the company has already committed to?

7 THE WITNESS: Yes. I mean to clarify,
8 obviously there are those stipulation provisions
9 regarding SmartGrid and modernizing the grid in terms
10 of the SmartGrid case. Ms. Willis's question, as I
11 understood, it was -- was the new distribution
12 modernization rider, did it require them to spend
13 money on grid modernization. And my answer was no.

14 EXAMINER PRICE: There's no further
15 requirement.

16 THE WITNESS: No further requirement,
17 yes.

18 EXAMINER PRICE: Thank you.

19 Q. (By Ms. Willis) Ms. Turkenton, do you
20 understand the stipulation commitment -- I'm sorry.
21 Thank you, your Honor.

22 EXAMINER PRICE: I am done. Thank you.

23 Q. Ms. Turkenton, do you understand the
24 commitment with respect to the stipulation to require
25 the companies to fund grid modernization or to merely

1 file a plan for grade modernization?

2 A. You would have to show me the stipulation
3 language to ensure that -- to recollect -- to refresh
4 my recollection, but I do believe that they were
5 required to file a plan.

6 Q. And can you -- let me strike that.

7 Now, let's turn to page 3 of your
8 testimony, and specifically I want to direct your
9 attention to lines 1 through 21, and there you say
10 that the revenues from the -- the additional
11 distribution revenues of the 131 million per year for
12 three years that provide credit support will have no
13 impact on the ESP versus the MRO test. Do you see
14 that reference?

15 A. I do.

16 Q. And you say that you reached that
17 conclusion because the equivalent -- equivalent
18 revenues could potentially be recovered through an
19 MRO application under 4928.142(D)(4) or an ESP
20 application per 4928.143(B)(2)(h). Do you see that?

21 A. I do.

22 Q. And I want to talk at least first about
23 the 4928.142(D)(4). And do you have before you a
24 copy of 4928.142(D)(4)?

25 A. I do.

1 Q. Now, your opinion that the -- that
2 equivalent revenues could be collected through an MRO
3 under that provision, is that an opinion that is
4 based on advice of counsel?

5 MR. McNAMEE: Objection.

6 EXAMINER PRICE: Grounds?

7 MR. McNAMEE: That would be
8 attorney-client privilege.

9 EXAMINER PRICE: Sustained.

10 Q. It's your opinion 4928.142(D) (4) allows
11 you to -- allows revenues to be collected under an
12 MRO, an opinion that you have formed on your own?

13 MR. McNAMEE: Objection.

14 EXAMINER PRICE: Grounds?

15 MR. McNAMEE: Ms. Turkenton is speaking
16 on behalf of the staff. Nothing that she says was
17 formed on her own. It's -- it's -- all of her
18 opinions are a representation of the staff position.

19 EXAMINER PRICE: Can you rephrase,
20 Ms. Grady?

21 MS. WILLIS: Yes, I can.

22 Q. Ms. Turkenton, the opinion that
23 4928.142(D) (4) allows the collection of the credit
24 support is -- is that an opinion that is held by the
25 staff of the PUCO?

1 A. In preparing my testimony, yes, I -- I
2 believed that the section was relevant.

3 Q. And when you say "I," are you speaking on
4 your own behalf or the staff?

5 A. The staff.

6 Q. The staff. Thank you.

7 Now, let's go to that statute
8 4928.142(D). And it's a long section, (D) is, would
9 you agree?

10 A. Quite long.

11 Q. And can you tell me specifically what
12 portion of that statute you believe allows the
13 opportunity to collect credit support through an MRO?

14 A. It's in the middle of paragraph (4) where
15 it starts "Additionally, the Commission may adjust
16 the EDUs most recent Standard Service Offer" to the
17 end of that paragraph.

18 Q. Okay. Can you -- can you read that
19 entire paragraph, if you would?

20 MR. McNAMEE: Objection. Why are we
21 reading statutes into the record?

22 MS. WILLIS: Okay. I'll withdraw that.

23 Q. (By Ms. Willis) That provision,
24 Ms. Turkenton, indicates that the Commission may
25 adjust the electric distribution company's most

1 recent Standard Service Offer price by such a just
2 and reasonable amount that the Commission determines
3 necessary to address an emergency that threatens the
4 utility's financial integrity, or to ensure that the
5 resulting revenue available to the utility is not so
6 inadequate as to result, directly or indirectly, in
7 the taking of property. Is that a correct
8 characterization of that?

9 A. You said to address "an emergency" and it
10 does say "any emergency." I think that's a
11 distinction.

12 Q. Thank you. And can you tell me how you
13 understand -- or can you tell me how you -- how you
14 understand the term "emergency" used there in that
15 statute, how that relates to your -- to the staff's
16 understanding of the statute and its position that
17 the MRO would allow a credit support rider?

18 A. My definition of "emergency" is the
19 inability to pay your bills. The statute, though, in
20 this particular case, says "any emergency" and I
21 think that's quite broad.

22 So I think the Commission can consider
23 any emergency. And the company, as you see there in
24 that paragraph, they have the burden of proof to
25 demonstrate that they have the emergency. It does

1 say "any emergency."

2 Q. And the statute also speaks to any
3 emergency that threatens the utility's financial
4 integrity; is that right?

5 A. Yes.

6 Q. Is it your understanding that -- can you
7 tell me what, in this case, is the emergency that
8 threatens the utility's financial integrity?

9 A. This has just been used for comparison of
10 the ESP versus MRO test. It doesn't necessarily say
11 that there's any emergency. Like my testimony said,
12 it could potentially, for purposes of the test, be
13 equivalent revenues.

14 Q. But is it your opinion that there is a
15 financial -- if the company had filed an MRO -- let
16 me strike that.

17 Is it your testimony that there is a --
18 that in your opinion there is a financial -- an
19 emergency that threatens these utilities' financial
20 integrity as we sit here today?

21 THE WITNESS: Could I have that question
22 reread, please?

23 EXAMINER PRICE: You may.

24 (Record read.)

25 A. I can't answer that. It may be better

1 directed to Mr. Buckley as to whether he believes
2 there is an emergency.

3 Q. Do you understand, Ms. Turkenton, that
4 this provision of the code refers to the Commission's
5 ability to adjust the Standard Service Offer price?

6 MR. McNAMEE: Could I have that question
7 reread, please?

8 EXAMINER PRICE: You may.

9 MR. McNAMEE: Thank you.

10 (Record read.)

11 A. Yes. I believe, in part, that's one of
12 the components of this whole section is how you can
13 adjust the standard service price.

14 Q. And so, with respect to the -- to the
15 specific language we have been discussing, the
16 ability to address an emergency threatening the
17 utility's financial integrity, that would allow
18 specifically the Commission to adjust the electric
19 distribution utility's most recent Standard Service
20 Offer price, correct?

21 A. That's what it says, yes.

22 Q. Would you then agree that if the
23 Commission uses its ability to adjust the Standard
24 Service Offer price via an amount to address an
25 emergency, that that type of charge would be a

1 bypassable charge as opposed to a nonbypassable
2 charge?

3 EXAMINER PRICE: I think we are getting a
4 little far afield in a hypothetical MRO if you are
5 getting down to the question of bypassable or
6 nonbypassable. I mean, next we will be talking about
7 rate design and allocation. It's a hypothetical MRO
8 and she has testified to her understanding that the
9 company can receive equivalent revenue through that
10 section.

11 MR. SETTINERI: Your Honor, if I may,
12 briefly --

13 EXAMINER PRICE: You may.

14 MR. SETTINERI: -- on that last ruling?
15 Her testimony does reference in terms of how these
16 revenues potentially could be recovered under an MRO
17 application. I know, as you said, we are going down
18 a path a little ways --

19 MR. KUTIK: Could you use the microphone,
20 please?

21 MR. SETTINERI: Yes. I'm sorry. We are
22 going down the path a little bit there, but it's a
23 simple bypassable versus nonbypassable under
24 142(D)(4) in staff's viewpoint as to that. Given
25 that the staff does view it as a potential for

1 recovery, I think that would be a fair question to
2 ask and I would ask you to reconsider that.

3 EXAMINER PRICE: I think it's a legal
4 question and I don't -- I think that it's been
5 represented to the Commission, by other utilities,
6 that that charge could be a nonbypassable charge. So
7 I think it's a legal question. I think it's outside
8 the scope of her testimony. It's a legal question
9 that should be decided on brief, not on a
10 non-attorney staff witness.

11 MR. SETTINERI: Thank you for the
12 explanation. I appreciate it.

13 MS. WILLIS: So there is no question
14 pending; is that correct?

15 EXAMINER PRICE: I believe that's
16 correct.

17 Q. (By Ms. Willis) The -- going back to your
18 testimony on page 3, carrying over to page 4, you say
19 that the credit support revenues could be potentially
20 recovered, and I am looking at the second half of
21 your statement, through an ESP application per
22 4928.143(B)(2)(h). Do you see that reference?

23 A. I do.

24 Q. And you have a copy of that statute as
25 well, correct?

1 A. I do.

2 Q. Is it your understanding that the -- that
3 provision speaks to a charge that would be
4 nonbypassable?

5 MR. McNAMEE: Object.

6 EXAMINER PRICE: Grounds?

7 MR. McNAMEE: Legal conclusion.

8 EXAMINER PRICE: Sustained.

9 Q. (By Ms. Willis) Ms. Turkenton, as part of
10 your conclusion that the credit support charge fits
11 under 4928.140 --

12 EXAMINER PRICE: Let's not rename the
13 staff's proposal. They have called it a
14 "distribution modernization rider." Let's not call
15 it something that they don't call it, okay?

16 Q. (By Ms. Willis) Would you agree with me,
17 Ms. Turkenton, the -- the staff's proposal is for
18 credit support? Isn't that what you state in your
19 testimony?

20 A. That is the purpose of the rider. It's
21 not necessarily the name of the rider, but yes.

22 Q. When I call it a "credit support rider,"
23 do you dispute that it is a credit support rider?

24 MR. McNAMEE: Object. Argumentative.

25 EXAMINER PRICE: Sustained. And let me

1 add, it's my decision what you are going to call it,
2 not Ms. Turkenton's decision what you are going to
3 call it.

4 MS. WILLIS: I just --

5 EXAMINER PRICE: So in order to keep the
6 record clean, I am going to ask you to refer to the
7 staff's proposed rider the way they have
8 characterized it, not the way you choose to
9 characterize it in pursuit of your advocacy. Thank
10 you.

11 MS. WILLIS: I apologize, your Honor. I
12 was not meaning to muddle the record.

13 EXAMINER PRICE: Thank you.

14 Q. (By Ms. Willis) Now, to the extent that
15 the staff's proposed distribution modernization rider
16 fits under -- let me strike that.

17 Is it your testimony that the staff's
18 proposed distribution modernization rider is a
19 permissible provision of an ESP under subsection (h)?

20 MR. McNAMEE: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. McNAMEE: Asks for a legal
23 conclusion; what is permissible.

24 EXAMINER PRICE: I am going to allow this
25 one because Ms. Turkenton did, in fact, refer to

1 (B) (2) (h) as something that was the grounds for this
2 and she can answer that question. Although, I will
3 note for the record she is not an attorney. She is
4 giving her regulatory interpretation, not a legal
5 interpretation.

6 MS. WILLIS: Understood.

7 A. I think the question is better suited for
8 Dr. Choueiki. However, yes, staff -- it's my
9 understanding that staff does believe that this code
10 section is the appropriate section.

11 Q. And, Ms. Turkenton, is it your opinion
12 that the -- let me strike that.

13 If -- if the revenues that you identify
14 as part of the distribution modernization rider could
15 not be recovered through a market rate offer, then
16 you would count the costs of the distribution
17 modernization rider on the MRO side of the equation
18 when you are doing the MRO versus ESP test, correct?

19 A. Yes. If the Commission determined that
20 the costs were not recoverable under the code section
21 I cited, yes.

22 Q. And, in turn, the ESP section would --
23 would have those costs assigned to it if the
24 Commission determined that it is a provision, as you
25 identified it, that can fit under an ESP.

1 THE WITNESS: Can I have that question
2 read, please?

3 EXAMINER PRICE: You may.

4 (Record read.)

5 A. Yes. 131 million for three years would
6 be on the ESP side, yes.

7 Q. And you said the 131 for three years,
8 that would be counted. Is there anything beyond that
9 that would be counted for purposes of the MRO versus
10 ESP test if the Commission determined it is not a
11 provision that is allowed under the MRO?

12 A. Again, if the Commission determined --
13 that's not my staff proposal -- but if the Commission
14 determined that equivalent revenues were not
15 recovered under the MRO statute, yes, you would need
16 to count those costs, but you also need to count the
17 51.1 million of other quantitative benefits for
18 economic development, fuel funds, other advisory
19 groups.

20 Q. Do you know if the Commission cannot
21 count the costs attributable to the distribution
22 modernization rider as costs that could be collected
23 under the MRO, would that cause the ESP to be less
24 favorable in the aggregate than the MRO, all else
25 equal?

1 A. It could be -- if the Commission --
2 again, if the Commission, in your hypothetical
3 proposal, deemed that the costs were not recoverable
4 from an MRO perspective, from a quantitative basis
5 the costs would be higher on the ESP side, but a
6 qualitative -- the Commission can consider
7 qualitative benefits. And the quantitative and
8 qualitative are both two prongs to one test. The
9 test is both qualitative and quantitative.

10 Q. And speaking of the qualitative benefits,
11 your testimony on page 4, you -- you specifically
12 address the qualitative benefits that you considered
13 in your conclusion; is that correct?

14 A. Yes.

15 Q. And you state on lines 5 through 6 that
16 the staff agrees with the qualitative benefits
17 discussed by the Commission in its March 31, 2016
18 Opinion and Order. Do you see that reference?

19 A. I do.

20 Q. Can you point me to what exactly those
21 qualitative benefits are that you -- that you still
22 believe apply to the -- the ESP IV?

23 A. If I can reference the Order, that would
24 be great. I think it's page 118. I don't have it
25 memorized. I can tell you generally what the

1 qualitative benefits were.

2 Q. That would be helpful.

3 A. But I would rather address the Order.

4 Q. I do not have a copy of that with me.

5 A. I do.

6 EXAMINER PRICE: Ms. Turkenton, do you
7 have a copy?

8 THE WITNESS: I do.

9 EXAMINER PRICE: If you would like to
10 refresh your recollection, you may refer to the
11 Order. Maureen -- excuse me. Ms. Willis, would you
12 like to see what she has up there?

13 MS. WILLIS: No. I've got a copy of it
14 myself now. Thank you.

15 EXAMINER PRICE: I just wanted to know if
16 you wanted to look to what she is referring to.

17 A. It's actually page 119.

18 Q. I am sorry. Could you refresh your
19 recollection and could you take a moment to look at
20 that and see if that refreshes your recollection as
21 to the qualitative benefits discussed by the
22 Commission that you agree with?

23 A. Yes, there are five qualitative benefits
24 that the Commission considered on page 119 of the
25 March -- I believe March 31 Order. Would you like me

1 to enumerate those, go through those?

2 Q. No, that's fine. Thank you.

3 EXAMINER PRICE: I would, just so the
4 record is clear. I don't want to make the Master
5 Commissioner have to go back and look at the Order if
6 she is incorporating those into her testimony.

7 MR. McNAMEE: There won't be an appeal.

8 (Laughter.)

9 EXAMINER PRICE: Ms. Turkenton, if you
10 could enumerate the benefits you believe are still
11 relevant under your analysis.

12 THE WITNESS: Yes. My testimony on
13 lines 5 and 6 just indicate staff agrees with the
14 qualitative benefits discussed by the Commission. I
15 am going to paraphrase, but the first one is to --
16 continuation of the distribution rate increase freeze
17 until June of 2024; continuation of multiple rate
18 options and programs to preserve and enhance rate
19 options for various customers provided in previous
20 ESPs; the establishment of a goal to reduce CO-2
21 emissions by FirstEnergy Corp. with periodic
22 reporting requirements; reactivation and expansion of
23 energy efficiency programs; and programs to promote
24 the use of energy efficiency programs by small
25 businesses pursuant to state policy.

1 MS. WILLIS: Thank you.

2 That's all the questions I have,

3 Ms. Turkenton. Thank you.

4 Thank you, your Honor.

5 EXAMINER PRICE: Thank you.

6 Mr. Fisk.

7 MR. FISK: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Fisk:

11 Q. Good afternoon, Ms. Turkenton.

12 A. Good afternoon.

13 Q. Just a few follow-ups. Going back to
14 your reference starting on page 3 of your rehearing
15 testimony starting at line 20 where you state that
16 "equivalent revenues could potentially be recovered
17 through an MRO application under R.C.
18 4928.142(D)(4)." I believe earlier you -- you
19 testified that you don't know if there is any
20 emergency that threatens the utilities' financial
21 integrity; is that correct?

22 A. I personally do not. You could address
23 that with Staff Witness Buckley.

24 Q. Okay. So what is your basis for
25 contending that equivalent revenues could potentially

1 be recovered through 4928.142(D)(4)?

2 A. Again, as I stated, I said my testimony
3 says this "potentially" could be recovered under an
4 MRO.

5 Q. Okay. And why could it potentially be
6 recovered?

7 A. If the Commission determines there is an
8 emergency, based on Staff Witness Buckley's
9 testimony, companies' testimony, Mr. Choueiki's
10 testimony, and again the statute is fairly broad if
11 there is any emergency, there is the potential that
12 equivalent revenues could be recovered. And that's
13 my testimony.

14 Q. Okay. And I believe a few minutes ago,
15 in response to Ms. Willis, you agreed that if those
16 equivalent revenues couldn't -- if the Commission
17 were to decide they couldn't be collected under
18 142(D)(4), then the \$131 million per year for three
19 years would count towards determining whether the ESP
20 is better than the MRO; is that correct?

21 MR. McNAMEE: Object.

22 EXAMINER PRICE: Grounds?

23 MR. McNAMEE: Asked and answered.

24 EXAMINER PRICE: Sustained.

25 MR. FISK: I am just trying to lay a

1 foundation.

2 EXAMINER PRICE: It was just 10 minutes
3 ago.

4 MR. FISK: Fair enough.

5 MR. McNAMEE: We all remember.

6 Q. (By Mr. Fisk) Are you aware that the
7 staff's proposal would allow the companies to request
8 an extension of the distribution modernization rider
9 for an additional two years?

10 A. I --

11 MR. McNAMEE: Objection. That's outside
12 the scope. That's Mr. Buckley's testimony.

13 EXAMINER PRICE: I am going to give him a
14 little leeway because he wants to tie it back to the
15 ESP MRO test, so we will allow this one.

16 MR. McNAMEE: All right.

17 MR. FISK: Thank you, your Honor.

18 A. I do understand from Mr. Buckley's
19 testimony that is an option that the company has.

20 Q. Okay. And if that -- if that option were
21 pursued, would then the companies receive
22 \$131 million per year for five years?

23 A. I don't know that -- you can address this
24 with Mr. Buckley. I don't know that the staff has
25 said the number would be 131 for years four and five,

1 but I do think the staff referenced that there --
2 there could be an extension if the companies applied.
3 I don't know that staff proposed 131.

4 Q. Okay. Well -- so, okay. We will address
5 with Mr. Buckley what the amount might be, but would
6 whatever that amount is count towards the ESP versus
7 MRO test?

8 A. Yes.

9 Q. Is there, in the staff's proposal, any
10 limit on what the companies could do with the cash
11 they would receive under the distribution
12 modernization rider?

13 A. It's better addressed to Mr. Buckley.

14 Q. And you refer, on page 3, line 18 of your
15 testimony, of your rehearing testimony, you have a
16 reference "to provide credit support in accessing the
17 capital markets." Do you see that?

18 A. Yes.

19 Q. Okay. And are you offering any testimony
20 that the companies have difficulty accessing the
21 capital markets?

22 A. I believe personally not. That would be
23 better addressed with Mr. Buckley.

24 Q. Okay. And when did you first hear about
25 the distribution modernization rider proposal?

1 MR. McNAMEE: Objection.

2 EXAMINER PRICE: Sustained.

3 MR. FISK: What?

4 EXAMINER PRICE: When did you first --
5 you are asking about the staff's internal trial
6 preparation. You can't ask that question.

7 Q. When was the distribution modernization
8 rider proposal finalized?

9 MR. McNAMEE: Objection.

10 EXAMINER PRICE: Grounds?

11 MR. McNAMEE: Well, first of all, it was
12 finalized when the testimony was filed, I guess.

13 THE WITNESS: I was going to say.

14 MR. McNAMEE: But beyond that, what
15 difference does it make? It's completely irrelevant.

16 EXAMINER PRICE: I -- I agree. I mean I
17 don't want to testify for the witness. We are going
18 to overrule the objection. You can --

19 THE WITNESS: Can I have the question
20 reread?

21 (Record read.)

22 A. It was finalized when we filed our
23 testimony in this case.

24 Q. And is it the staff's proposal that if
25 the Commission were to approve the distribution

1 modernization rider, that would replace rider RRS
2 that has been approved?

3 MR. McNAMEE: Can I have that question
4 reread, please.

5 (Record read.)

6 A. I would not use the word "replace."
7 Rider RRS -- you can address these questions to
8 Dr. Choueiki. Staff -- we're not in agreement with
9 RRS and we made an alternative proposal. I wouldn't
10 say it's replacing it. It's an alternative proposal
11 to RRS.

12 Q. Just to clarify, I was referring to the
13 original rider RRS that's been approved by the
14 Commission; not the modified proposal.

15 A. I still wouldn't call it a replacement.

16 Q. Okay. So when --

17 A. That's not the word I'd use.

18 Q. What word would you use?

19 A. It's a new rider we have proposed during
20 rehearing.

21 Q. So under the staff's proposal, if the
22 Commission were to approve the distribution
23 modernization rider, would there be both a
24 distribution modernization rider and the original
25 rider RRS in the ESP IV?

1 A. No. There would be no RRS. I just
2 wouldn't use the word "replace." I am just quibbling
3 with the word "replace."

4 Q. So the original proposed -- the original
5 approved rider RRS would be removed from the ESP IV
6 under staff's proposal.

7 A. Correct, and a new rider would be
8 instituted.

9 Q. Thank you.

10 You -- you talk about, in your rehearing
11 testimony, quantitative benefits of the distribution
12 modernization rider; is that correct?

13 A. I don't speak to it quantitatively. I
14 speak to it qualitatively.

15 Q. Okay. So the only quantitative benefits
16 that you identify in your rehearing testimony are
17 with regards to other provisions of ESP IV; is that
18 correct?

19 A. Correct, the 51.1 million.

20 Q. Okay. In your opinion, is the
21 distribution modernization rider better for the
22 companies' customers than rider RRS?

23 MR. McNAMEE: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. McNAMEE: I believe this is outside

1 the scope of her testimony.

2 EXAMINER PRICE: Sustained. I believe
3 Dr. Choueiki covers this topic in more detail.

4 MR. FISK: Okay. So we will be allowed
5 to ask Mr. Choueiki that question?

6 EXAMINER PRICE: I didn't say that. He
7 talked about it in more detail. I don't know what
8 objections we will get at that point.

9 MR. FISK: Okay. On the record I would
10 say that I would state then that I believe this is
11 relevant to Ms. Turkenton's testimony, who talks
12 about the quantitative and qualitative analyses of
13 the ESP versus the MRO. We have an ESP with an
14 approved rider RRS. There is now a staff proposal to
15 replace -- not replace, but to put in a new
16 distribution modernization rider with rider RRS
17 coming out.

18 And so the question is how does that
19 affect the ESP versus MRO test. And the question of
20 whether the distribution modernization rider is
21 better for customers than rider RRS is relevant to
22 that -- to that test.

23 EXAMINER PRICE: I agree with everything
24 you said until the last sentence so overruled.

25 MR. FISK: All right. I have nothing

1 further.

2 EXAMINER PRICE: Thank you.

3 Ms. Bojko.

4 MS. BOJKO: Thank you, your Honor. Just
5 a few.

6 - - -

7 CROSS-EXAMINATION

8 By Ms. Bojko:

9 Q. Good afternoon, Ms. Turkenton.

10 A. Good afternoon.

11 Q. Following up on maybe what Mr. Fisk was
12 trying to ask you. When you did your MRO versus ESP
13 test for the purposes of your testimony here today,
14 did you remove rider RRS that was approved by the
15 Commission and did you institute in its place the new
16 distribution modernization rider in conducting your
17 test, your ESP versus MRO test?

18 A. Yes, for purposes of the test, I think
19 the Commission indicated that the RRS value, I
20 believe it was 256 million, I removed that
21 256 million which gets me to the 51.1 million.

22 Q. Thank you.

23 MS. BOJKO: And may -- may I abbreviate
24 the rider and call it "DMR"? Is that permissible,
25 your Honor?

1 EXAMINER PRICE: Yes.

2 Q. It's my understanding, Ms. Turkenton, you
3 are not testifying to the creation of the DMR rider;
4 is that correct?

5 A. I am not.

6 Q. And you are not testifying to the amount
7 of the rider; is that correct?

8 A. I am not testifying to the amount of the
9 rider, no.

10 Q. And I think, as Mr. Price established,
11 you are not an attorney and you're not testifying to
12 the legality of providing credit support to the
13 companies through the DMR rider, correct?

14 A. I am not.

15 MR. KUTIK: May I have that question and
16 answer read, please.

17 EXAMINER PRICE: You may.

18 (Record read.)

19 Q. (By Ms. Bojko) Your discussion -- I am
20 trying to understand your discussion of the pending
21 SmartGrid rider proceeding. Is that what you would
22 call the business plan that was filed, grid
23 modernization proceeding?

24 A. I'm generally aware that a plan was
25 filed, yes.

1 Q. Okay. So the DMR rider is in addition or
2 separate from the -- let me start over.

3 You believe that the DMR rider is
4 separate than the AMR rider -- AMI rider that's
5 established in the business plan filed in the grid
6 modernization case?

7 A. That's my understanding, yes.

8 Q. And you also understand that the DMR
9 rider is separate from the DCR distribution rider
10 that was approved through the ESP IV proceeding in
11 this case as well?

12 A. That's my understanding, yes.

13 Q. And turning to your testimony on page 3,
14 at the bottom lines 19, 19 through 21. Are you
15 there?

16 A. I am.

17 Q. You say "these revenues" and you are
18 referring to the revenues that come from rider DMR
19 which is the 131 million per year for three years; is
20 that correct?

21 A. That's correct.

22 Q. And when making your statement that those
23 revenues would have no impact on the ESP versus MRO
24 test since equivalent revenues could potentially be
25 recovered, when making this statement regarding

1 equivalent revenues, is it fair to say that you are
2 not taking into consideration the bypassability of
3 the rider? Either under an ESP or MRO test?

4 A. My testimony doesn't address
5 bypassability. It was addressing the dollar amounts
6 for purposes of the test.

7 MS. BOJKO: Thank you for that
8 clarification.

9 I have nothing further. Thank you.

10 EXAMINER PRICE: Ms. Fleisher.

11 MS. FLEISHER: No questions, your Honor.

12 EXAMINER PRICE: Mr. Hays.

13 MR. HAYS: Yes, your Honor. A couple of
14 quick ones. And I apologize in advance if some of
15 these questions should go to another witness. I just
16 want to make sure I'm understanding.

17 EXAMINER PRICE: If they are going to
18 another witness, she will direct you as to which.

19 THE WITNESS: I definitely will.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Hays:

23 Q. If we go in your testimony to page 4,
24 lines 9 through 13, and let me give you a moment to
25 read it.

1 MR. HAYS: And maybe, your Honor, I will
2 read it for the record. "The new Distribution
3 Modernization Rider will further this policy by
4 promoting modernization of the grid through the
5 deployment of advanced technology and the continued
6 promotion of competition by enabling competitive
7 providers to offer innovative products and services
8 to serve customers in Ohio."

9 Q. (By Mr. Hays) My first question is, other
10 than -- I think you already testified the
11 \$131 million per year will go into that rider,
12 correct?

13 A. They will go into the distribution
14 modernization rider, yes.

15 Q. And then that money is for credit support
16 and that's what you expect it to be used for?

17 A. That's what -- that's the staff's
18 testimony.

19 Q. If that is the only -- is that the only
20 money that's going into this rider?

21 A. That's my understanding, yes.

22 Q. Then can you explain to me how that will
23 promote modernization of the grid through the
24 deployment of advanced technology?

25 A. Because by allowing the company -- by --

1 as you put it, putting money into the distribution
2 modernization grid and providing them that credit
3 support, they are going to be able to, in turn,
4 better access, utilize, the capital markets. And by
5 being able to access the capital markets more
6 efficiently and effectively, they're going to have
7 the money to actually invest in the distribution
8 modernization.

9 Q. Let me ask you to assume something.
10 Assume that the companies, instead, use the money to
11 bail out a generating company, who's having financial
12 problems, through intercompany transfers and
13 dividends. Just make that assumption. Would -- in
14 that case, would it modernize the grid in any way?

15 MR. McNAMEE: Objection.

16 MR. KUTIK: Objection.

17 EXAMINER PRICE: Grounds?

18 MR. McNAMEE: I believe these questions
19 should be directed to Dr. Choueiki. This really has
20 nothing to do with the MRO versus ESP test.

21 ATTORNEY EXAMINER: Mr. Kutik.

22 MR. KUTIK: Even though it is a
23 hypothetical, it assumes facts that are not in
24 evidence directly contrary to the evidence.

25 EXAMINER PRICE: Sustained on both

1 grounds.

2 Q. (By Mr. Hays) And then we have the second
3 part of the sentence after the word "and," and it
4 says "the continued promotion of competition by
5 enabling competitive providers" -- and the word is
6 plural there, "providers" -- "to offer innovative
7 products and services to serve customers in Ohio."
8 Who are these competitive providers that are
9 referenced?

10 A. What I am referencing there is through
11 the deployment of this advanced technology, we will
12 have a more intelligent grid which will allow
13 suppliers, either wholesale or retail suppliers, to
14 provide more innovative and, you know,
15 customer-type-friendly products to the marketplace.

16 MR. HAYS: Okay. I'm serious. I am
17 trying to understand this. I am not criticizing. I
18 am just trying to understand. That's all the
19 questions I have, your Honor. Thank you.

20 EXAMINER PRICE: Mr. Dougherty?

21 MR. DOUGHERTY: One quick moment. I
22 think Ms. Willis may have already asked my questions.

23 Nope, no questions, your Honor.

24 EXAMINER PRICE: Mr. Stinson.

25 MR. STINSON: No questions.

1 Speaking of competitive providers,
2 Mr. Whitt.

3 MR. WHITT: Just a few, your Honor.
4 Thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Whitt:

8 Q. Ms. Turkenton, do you still have section
9 4928.142 in front of you?

10 A. I do.

11 Q. And if we look at paragraph (D), the
12 first few words say "The first application filed
13 under this section...." Do you see that?

14 A. I do see that.

15 Q. And the FirstEnergy EDUs filed an MRO
16 application shortly after SB 211 was enacted, didn't
17 they?

18 MR. McNAMEE: Objection.

19 EXAMINER PRICE: Grounds?

20 MR. McNAMEE: The -- the staff's position
21 is that this may -- this provision may be applicable.
22 Whether we are right in that or not is purely a legal
23 matter that we will spill much ink on in brief.

24 EXAMINER PRICE: Sustained.

25 MR. WHITT: Your Honor, I asked a factual

1 question whether the companies previously filed an
2 MRO. That's a fact question.

3 EXAMINER PRICE: We will take
4 administrative notice of the fact the companies
5 previously filed an MRO.

6 MR. WHITT: Thank you, your Honor.

7 Q. (By Mr. Whitt) What, if anything, has
8 staff done to ensure the reliability of the
9 applicant's distribution systems?

10 A. That question is not something I
11 addressed in my testimony.

12 Q. Well, do you know what if anything staff
13 has done?

14 MR. KUTIK: Objection.

15 MR. McNAMEE: Objection.

16 EXAMINER PRICE: Grounds, Mr. McNamee?

17 MR. McNAMEE: It's way outside the scope
18 of her testimony.

19 EXAMINER PRICE: Mr. Kutik.

20 MR. KUTIK: I will go with just outside
21 the scope.

22 MR. WHITT: No. Staff has cited 143(B)
23 (2)(h) as grounds for their rider and that section
24 states "As part of its determination as to whether to
25 allow in an electric distribution utility's electric

1 security plan inclusion of any provision described in
2 (B) (2) (h) of this section, the Commission shall
3 examine the reliability of the electric distribution
4 utility's distribution system and ensure that
5 customers' and the electric distribution utility's
6 expectations are aligned," et cetera. And I am just
7 asking whether staff has done the things that the
8 statute says must be done; what they are recommending
9 be done.

10 EXAMINER PRICE: It's outside the scope
11 of this particular witness's testimony. When we get
12 to brief, staff will cite to the witnesses they
13 believe conducted the reliability investigation which
14 likely will be the same people that did the
15 reliability investigation for the DCR.

16 MR. WHITT: That's all I am trying to
17 find out.

18 EXAMINER PRICE: She's the wrong person.
19 It's outside her testimony.

20 MR. KUTIK: She specifically said she
21 didn't address it in her testimony. So, by
22 definition, it's beyond the scope.

23 MR. WHITT: That doesn't speak to whether
24 she has knowledge. I don't know, perhaps none of the
25 three staff witnesses are the people that are doing

1 an investigation, but I am just trying to find out
2 who we should ask, that's all.

3 EXAMINER PRICE: Mr. McNamee will tell
4 you offline. I am not trying to be -- let's go off
5 the record for a second.

6 (Discussion off the record.)

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

9 MR. KUTIK: So the objection is
10 sustained, your Honor?

11 EXAMINER PRICE: The objection is
12 sustained.

13 MR. WHITT: Could I hear the last, I
14 guess, question and then objection?

15 EXAMINER PRICE: You may.

16 (Record read.)

17 EXAMINER PRICE: Both objections will be
18 sustained.

19 MR. WHITT: I'm sorry. Can I ask for the
20 whole question?

21 (Record read.)

22 MR. WHITT: Thank you.

23 And I ask this question, your Honor, only
24 because we had the discussion off the record. I need
25 to make a record, myself.

1 Q. (By Mr. Whitt) So I will also ask what,
2 if anything, has staff done to ensure that customers'
3 expectations are aligned with the FirstEnergy EDUs
4 with respect to grid modernization?

5 A. I know in the previous 41 days of
6 testimony in this case that there was a staff witness
7 that discussed the reliability of the distribution
8 system.

9 Q. For what purpose?

10 A. I believe it was for purposes of -- at
11 that time of the DCR.

12 Q. Has any investigation been conducted
13 specifically for purposes of the grid modernization
14 rider?

15 A. I do not know.

16 Q. Now, the proposed revenues of
17 131 million, I want to just confirm those are -- that
18 is an aggregate figure for -- for all of the electric
19 distribution utilities combined; is that correct?

20 A. That's my understanding, yes.

21 Q. And I know that rate design and cost
22 allocation would be decided separately, but does
23 staff have any expectation in terms of allocation of
24 the aggregate \$131 million figure among the three
25 companies? In other words, we just divided three or

1 do it by customer count?

2 A. I do not address that in testimony.
3 Perhaps ask Dr. Choueiki that question.

4 MR. WHITT: That's all I have. Thank
5 you.

6 EXAMINER PRICE: Thank you.

7 MR. SETTINERI: Your Honor, don't forget.

8 EXAMINER PRICE: Mr. Settineri, I'm
9 sorry. When I was thinking competitive providers, I
10 was thinking Mr. Whitt. But you are part of the
11 competitive providers today.

12 MR. SETTINERI: We have wholesale too.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Settineri:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Go with page 3 of your testimony at
19 line 18. You talked earlier about that phrase "to
20 provide credit support."

21 MR. KUTIK: Could you use your
22 microphone.

23 MR. SETTINERI: Yeah. Thanks.

24 Q. Page 3 line 18, the phrase "provide
25 credit support," do you see that?

1 A. I do.

2 Q. And to whom is that credit support being
3 provided?

4 A. Better addressed to Mr. Buckley, but I
5 believe it's the operating companies.

6 Q. And then turning to page 4, lines 9
7 through 13, Mr. Hays asked you a few questions about
8 the last sentence in that paragraph. This is the
9 word "deployment." Do you see that on line 10?

10 A. I do.

11 Q. All right. So deployment is contingent
12 on the companies' actually spending money on grid
13 modernization, correct?

14 A. Correct.

15 Q. Okay. And if that money is not spent,
16 fair to say there would be no promotion of
17 modernization through the distribution modernization
18 rider?

19 THE WITNESS: Could I have that question
20 reread, please.

21 EXAMINER PRICE: You may.

22 (Record read.)

23 A. I don't know if I understand your
24 question.

25 Q. All right. Well, let me try again; try a

1 different way. It was clunky.

2 When you mentioned that the new
3 distribution modernization rider will further this
4 policy by promoting modernization, when you say --
5 what do you mean when you say "promoting"?

6 A. As I said many times, the distribution
7 modernization rider is credit support that will allow
8 the companies to access the capital markets which, in
9 turn, will provide them the cash, hopefully, to
10 modernize the grid.

11 Q. The key word is "hopefully," correct?
12 Because if they don't access the capital markets to
13 modernize the grid, then there would be no grid
14 modernization.

15 A. Well, as we've stated in my testimony and
16 you can -- and also in Dr. Choueiki's testimony, the
17 company has already committed in the stipulation to
18 file a business plan -- they have filed a business
19 plan to further development of the grid. So they --
20 they should be making -- they have made that
21 commitment to file the plan, so.

22 Q. They have made the commitment to actually
23 spend cold cash on grid modernization, correct?

24 MR. KUTIK: Objection.

25 EXAMINER PRICE: Grounds?

1 MR. KUTIK: Argumentative.

2 EXAMINER PRICE: I'll allow it. You may
3 answer the question.

4 A. No, they have made no commitment.

5 EXAMINER PRICE: Ms. Turkenton, if the
6 Commission order approves the business plan and
7 orders the companies to deploy the SmartGrid, is it
8 reasonable to expect the companies will follow the
9 Commission order?

10 THE WITNESS: I would hope they would
11 follow the Commission order, yes.

12 EXAMINER PRICE: Beyond hope.

13 THE WITNESS: Hope" is my word, I guess.
14 People keep using it. Yeah.

15 Q. (By Mr. Settineri) To follow-up on that
16 then. If the Commission orders, would the companies
17 be allowed then to get cost recovery doctor -- let me
18 ask this: Would you expect the companies to receive
19 cost recovery of any grid modernization projects that
20 would be authorized by the Commission?

21 A. Yes.

22 Q. So, in that scenario, the companies would
23 get the money that is being proposed to be collected
24 through the distribution modernization rider as well
25 as cost recovery for any grid modernization projects,

1 correct?

2 A. Yes, but one is credit support and one is
3 plant infrastructure.

4 Q. Thank you.

5 Do you have any -- does staff have any
6 expectation as to when it would see grid
7 modernization projects start to be implemented as a
8 result of the distribution modernization rider?

9 MR. McNAMEE: Objection.

10 EXAMINER PRICE: Grounds?

11 MR. McNAMEE: Scope. This would be a
12 matter for Dr. Choueiki. This is far afield from the
13 test.

14 EXAMINER PRICE: Mr. Settineri, can you
15 save this question for Dr. Choueiki?

16 MR. SETTINERI: Sure can.

17 EXAMINER PRICE: Thank you.

18 Q. (By Mr. Settineri) Let me ask this
19 question and you are free to punt it, if you would
20 like. Are you aware that under the staff's proposal,
21 the companies would be receiving more money in the
22 next three years than under their modified rider RRS
23 proposal using the projections of the companies?

24 MR. McNAMEE: Objection.

25 EXAMINER PRICE: Grounds?

1 MR. McNAMEE: Again, this is outside the
2 scope of her testimony. It's not related to the MRO
3 versus ESP test.

4 MR. SETTINERI: Your Honor --

5 EXAMINER PRICE: You can save that
6 question for Dr. Choueiki.

7 MR. SETTINERI: Be glad to.

8 EXAMINER PRICE: Or Mr. Buckley. I am
9 not sure which one is appropriate.

10 MR. McNAMEE: Neither am I.

11 EXAMINER PRICE: Sadly, for Dr. Choueiki,
12 he's last, so he's stuck holding the bag.

13 Q. (By Mr. Settineri) To the extent you are
14 aware -- let me rephrase that.

15 Does staff view modernizing the grid as
16 an important component of its distribution
17 modernization rider proposal?

18 A. Again, better addressed to Dr. Choueiki,
19 but I will say yes, staff believes that that's an
20 important component.

21 Q. And there are many benefits to
22 modernizing the grid beyond what we have today,
23 correct?

24 A. Correct.

25 MR. SETTINERI: Thank you. No further

1 questions.

2 Thank you, Ms. Turkenton.

3 EXAMINER PRICE: Thank you. Did I miss
4 any nonsignatory intervenor?

5 Mr. Kutik.

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

8 EXAMINER PRICE: We may.

9 (Discussion off the record.)

10 (Recess taken.)

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

13 Proceed, Mr. Kutik.

14 MR. KUTIK: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Kutik:

18 Q. Good afternoon. Staff was a signatory
19 party to the third supplemental stipulation, correct?

20 A. Yes, we were.

21 Q. And would it be fair to say that
22 currently staff still agrees with the third
23 supplemental stipulation except with respect to rider
24 RRS?

25 MR. SETTINERI: Object. Outside the

1 scope of her testimony today. That's friendly cross
2 as well.

3 MR. KUTIK: Well, I think it's important,
4 your Honor, to understand where the staff is with
5 respect to the third supplemental stipulation.

6 MR. SETTINERI: Her testimony, your
7 Honor, is about the ESP MRO under the staff
8 distribution modernization rider. It's outside the
9 scope.

10 MR. KUTIK: She's the Chief of the
11 Regulatory Services area.

12 MR. WHITT: Additionally, your Honor,
13 there is no indication the stipulation has been
14 withdrawn.

15 EXAMINER PRICE: I believe that this is
16 outside the scope of her testimony. I believe it's
17 probably better directed at Dr. Choueiki, so we are
18 going to sustain the objection.

19 Q. (By Mr. Kutik) You are the ESP versus MRO
20 test expert for the staff, at least in this case?

21 A. I am the witness, yes.

22 Q. Now, would it be fair to say that when
23 the staff agreed to the third supplemental
24 stipulation, the staff believed that ESP IV, as
25 stipulated, would satisfy the ESP versus MRO test?

1 A. Yes.

2 Q. Now, you have not presented, have you, in
3 your testimony, any quantitative analysis that
4 suggests that the companies' proposal has changed the
5 prior analysis, the quantitative analysis of the ESP
6 versus MRO test?

7 MR. SETTINERI: Object. I'm sorry. I
8 was to going to say outside scope of her testimony.

9 EXAMINER PRICE: Overruled. That's a
10 fair question. He is speaking to the proper test.

11 MS. WILLIS: I would object on the basis
12 it is unclear what proposal we are talking about.
13 Are we talking about the stipulated proposal, the
14 modified proposal?

15 EXAMINER PRICE: We will ask him to
16 rephrase to be more clear.

17 MS. WILLIS: That would be great.

18 MR. KUTIK: And, your Honor, I thought I
19 already mentioned "the proposal" was the company's
20 proposal, "the staff's proposal" is the staff's
21 proposal, and my question was "the proposal."

22 EXAMINER PRICE: That is correct.

23 May we have the question back again.

24 (Record read.)

25 A. No. As stated in my testimony on page 4,

1 lines 6 and 7, for purposes of the test, I started
2 with the quantitative benefits and the qualitative
3 benefits that the Commission outlined in their
4 testimony -- in their Order, on the March 31 Opinion
5 and Order.

6 Q. So what I said was correct?

7 A. Yes.

8 Q. Now, would it also be fair to say you had
9 previously, I think with Ms. Willis, reviewed the
10 qualitative factors that the Commission looked at in
11 its balancing of the ESP versus MRO test, correct?

12 A. Yes.

13 Q. Would it be fair to say that none of the
14 qualitative factors that the Commission relied on for
15 its test or its analysis of the test have been
16 changed by the companies' proposal?

17 A. I certainly can't speak to the companies'
18 proposal but, yes, those qualitative benefits have
19 not changed since the Opinion and Order.

20 Q. Now, I want to talk to you a little bit
21 about the staff's proposal and how that -- and how we
22 do an ESP versus MRO analysis with the staff's
23 proposal. Would it be fair to say that the staff
24 took some care in determining what it would call the
25 rider?

1 MS. WILLIS: Objection.

2 MR. FISK: Objection.

3 EXAMINER PRICE: Grounds?

4 MS. WILLIS: Relevance.

5 EXAMINER PRICE: Overruled.

6 MR. FISK: I would object also as
7 friendly cross.

8 EXAMINER PRICE: Overruled.

9 MS. BOJKO: Your Honor, may I hear the
10 question again?

11 EXAMINER PRICE: You may.

12 (Record read.)

13 A. I think that question is better addressed
14 to Dr. Choueiki, but yes, I would hope that staff --
15 I mean, we did take care in ensuring that the rider
16 was appropriately named.

17 Q. All right. And you took care in
18 determining what policies you thought the staff
19 should reference in support of that rider, and in
20 your evaluation of the ESP versus MRO test of that
21 rider added to ESP IV, correct?

22 MR. HAYS: I have an objection, your
23 Honor. I believe this really truly is a classic
24 example of friendly cross-examination. I myself,
25 having had that used against me earlier in this case,

1 would ask the Court, on that basis, to disallow the
2 question.

3 EXAMINER PRICE: Overruled. The staff
4 has a proposal that is totally different from what
5 the companies' proposal was made that is the genesis
6 of this hearing. There is no reason to believe the
7 company supports it or the companies' abandoning
8 their support of their proposal and it is not
9 friendly at all.

10 MR. HAYS: May I be heard one more
11 moment, your Honor, before your final decision?

12 EXAMINER PRICE: You may.

13 MR. HAYS: A friendly question is one
14 that says something, "Attaboy, you really looked at
15 it and you did a nice job on it and you were really
16 careful." A cross-examination question goes to
17 errors and flaws and mistakes and other items.
18 That's the reason that it is friendly. Thank you,
19 your Honor, for allowing that.

20 EXAMINER PRICE: It's still overruled.
21 Mr. Kutik chooses his cross-examination questions
22 very carefully and he will continue to do so.

23 MR. KUTIK: I'm sorry, I believe a
24 question is pending, your Honor?

25 EXAMINER PRICE: Yes. Let's have the

1 question back again.

2 (Record read.)

3 A. Yes, and they're enumerated in my
4 testimony.

5 Q. Okay. So would it be fair to say that it
6 would -- the staff's goal here is to have the
7 companies' engage or have sufficient funds to engage
8 in a distribution modernization program?

9 MR. WHITT: Objection.

10 EXAMINER PRICE: Grounds?

11 MR. WHITT: The testimony states what --
12 what the goal is and whether there is some other
13 goal, consistent or inconsistent with the testimony
14 itself, is irrelevant.

15 EXAMINER PRICE: Overruled.

16 THE WITNESS: Can I have the question
17 reread, please?

18 EXAMINER PRICE: You may.

19 (Record read.)

20 A. Yes.

21 Q. Now, let's assume we were back in the
22 good old days where we had no ESP or MROs. Would it
23 be your understanding that costs to acquire capital
24 and expenses that were incurred as part of the
25 distribution modernization program would be recovered

1 as a part of a rate case normally?

2 MR. WHITT: Objection.

3 MR. McNAMEE: Objection.

4 MS. BOJKO: Objection.

5 EXAMINER PRICE: Mr. McNamee?

6 MR. McNAMEE: I don't see how this is
7 related to MRO versus ESP at all.

8 EXAMINER PRICE: Ms. Bojko?

9 MS. BOJKO: Yes, your Honor. That's what
10 I was going to say. We weren't allowed to ask about
11 an MRO that was hypothetical, so I don't know why he
12 would be allowed to ask about a rate case that's
13 hypothetical before deregulation even occurred.

14 EXAMINER PRICE: Mr. Kutik.

15 MR. KUTIK: Your Honor, I am trying to
16 explore the witness's understanding of the ESP versus
17 MRO test and the application of the DMR rider to that
18 test. There have been other riders, your Honor, in
19 which the Commission has recognized that expenses
20 under the rider could be recovered under a rate case;
21 and, therefore, for purposes of the ESP versus MRO
22 test, it's a wash and that's what I am trying to
23 explore with this witness.

24 MR. McNAMEE: Withdrawn.

25 MR. WHITT: If I may -- and I had an

1 objection as well, your Honor. The company hasn't
2 filed a rate case. They could have filed one if they
3 chose. They could file one tomorrow. It simply is
4 beyond the scope of her testimony and any relevant
5 issue.

6 EXAMINER PRICE: Not at all. I think
7 it's premature to decide where he is going, but in
8 the past the Commission has found certain riders were
9 a wash between that and a hypothetical distribution
10 case under the MRO test. It's well established, and
11 the Supreme Court upheld it.

12 MS. BOJKO: Your Honor, may I respond,
13 please? Earlier today -- I mean, throughout the last
14 two days there were questions raised and our
15 questioning was cut off because there was a
16 distribution rate case -- or distribution rate freeze
17 under the ESP stipulation. So under the companies'
18 own argument they are not allowed to file a
19 distribution rate case; and, thus, any questions
20 about a rate case are hypothetical and would not go
21 and not be applicable.

22 EXAMINER PRICE: Not at all.

23 MS. BOJKO: I asked questions about it.

24 EXAMINER PRICE: We are talking about an
25 MRO. If they are under an MRO, the distribution rate

1 freeze is gone by the wayside.

2 MR. KUTIK: Exactly, your Honor.

3 MS. BOJKO: Your Honor, we were talking
4 about bypassable under an MRO, and those questions
5 were not allowed.

6 EXAMINER PRICE: I gave you guys lots of
7 questions on the MRO test. I am going to give him
8 some questions on the MRO test too. Overruled. All
9 of the objections except for Mr. McNamee's which was
10 withdrawn are overruled.

11 Proceed with -- let's have the question
12 back for Ms. Turkenton.

13 (Record read.)

14 A. Yes, back in the day.

15 Q. Now, let's assume that there is no
16 rationale that would support considering the recovery
17 of a revenue requirement for DMR under an MRO or an
18 MRO world for purposes of ESP versus MRO test. Is it
19 the staff's position that the ESP versus MRO with the
20 DMR would still satisfy the ESP versus MRO test?

21 A. Yes, from a qualitative basis, yes.

22 MR. KUTIK: I have no further questions.

23 EXAMINER PRICE: Thank you.

24 Mr. McNamee, redirect?

25 MR. McNAMEE: Yeah. I believe we will

1 have a bit of redirect, if I could have a few minutes
2 with the witness, your Honor.

3 EXAMINER PRICE: Let's go off the record.
4 (Discussion off the record.)

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

7 Mr. McNamee.

8 MR. McNAMEE: Thank you, your Honor.

9 - - -

10 REDIRECT EXAMINATION

11 By Mr. McNamee:

12 Q. Ms. Turkenton, in your cross-examination
13 by Mr. Kutik, you had a discussion about the
14 qualitative benefits that the staff considered as
15 coming from the Opinion and Order in this case. Do
16 you remember that?

17 A. Yes.

18 Q. Okay. The qualitative benefits that you
19 referred to were the items that you earlier read
20 specifically and in answers to cross-examination
21 questions from Ms. Willis; isn't at that right?

22 MS. WILLIS: Objection.

23 EXAMINER PRICE: Grounds?

24 MS. WILLIS: Those were questions from
25 the Bench.

1 EXAMINER PRICE: Well --

2 MR. KUTIK: I would also object that it's
3 leading.

4 EXAMINER PRICE: I will overrule the
5 leading question. He is just trying to make sure we
6 are tying within the scope, and I don't know what to
7 do with your question. I mean all I did was ask you
8 to clarify exactly what the points were.

9 MS. WILLIS: Yes, you asked her to
10 identify. I just want the record to be clear.

11 MR. McNAMEE: I can rephrase.

12 EXAMINER PRICE: Thank you.

13 MS. WILLIS: Thank you.

14 Q. (By Mr. McNamee) Earlier you were asked
15 questions by Mr. Kutik regarding the qualitative
16 benefits that the staff used in its calculations that
17 arose from the Opinion and Order in this case. Do
18 you recall that?

19 A. I do.

20 Q. Okay. And to what did you refer when you
21 answered -- when you described those qualitative
22 benefits?

23 A. When I was answering Mr. Kutik's
24 questions, I was answering -- for purposes of my
25 test, I factored in the five items that I enumerated

1 earlier with Ms. Willis, on page 119 of the March 31
2 Order.

3 MR. McNAMEE: That's all I have.

4 EXAMINER PRICE: Thank you.

5 Mr. Kurtz?

6 MR. KURTZ: No questions, your Honor.

7 EXAMINER PRICE: Mr. Whitt?

8 MR. WHITT: No questions.

9 EXAMINER PRICE: Ms. Willis?

10 MS. WILLIS: No questions.

11 EXAMINER PRICE: Mr. Settineri?

12 MR. SETTINERI: No questions, your Honor.

13 EXAMINER PRICE: Mr. Fisk?

14 MR. FISK: No questions.

15 EXAMINER PRICE: Ms. Bojko?

16 MS. BOJKO: No questions.

17 EXAMINER PRICE: Mr. Hays?

18 MR. HAYS: No questions.

19 EXAMINER PRICE: Mr. Dougherty?

20 MR. DOUGHERTY: No questions.

21 EXAMINER PRICE: Mr. Stinson? Mr. Darr?

22 MR. DARR: No questions.

23 EXAMINER PRICE: Did I miss anybody?

24 MR. KUTIK: No questions, your Honor.

25 EXAMINER PRICE: Mr. Kutik. I started on

1 the outside and forgot all about the company.

2 Thank you, Ms. Turkenton. You are
3 excused.

4 Let's go off the record.

5 (Discussion off the record.)

6 EXAMINER PRICE: Now we are on the
7 record.

8 MR. McNAMEE: At this time, your Honor, I
9 have with me now good copies of the testimony of Mr.
10 Buckley and what we've done is gone through and
11 actually yellow highlighted the variation between the
12 incorrect version and the correct version on all of
13 these to make it easy to find where the differences
14 are. And I have 25 copies, I think, of this, so we
15 can hand them out so that we are all on the same
16 literal page.

17 EXAMINER PRICE: Thank you.

18 I did want to clarify, Ms. Turkenton is
19 excused, subject to being re-called based upon
20 counsel's review of Mr. Buckley's testimony in case
21 anything has changed. Is that the clarification?

22 MR. McNAMEE: That's fair.

23 MR. HAYS: Are you going to e-mail that
24 out to people who may have left?

25 MR. McNAMEE: Pardon?

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, July 12, 2016, and carefully compared with my original stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

Carolyn M. Burke, Registered
Professional Reporter.

(KSG-6219)

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