

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PROCEEDINGS

before Mr. Gregory Price 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 Thursday, July
14, 2016.

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REHEARING VOLUME IV

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1 - Rehearing Direct Testimony 848 899
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(Public Version)

2C - Rehearing Direct Testimony 848 899
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43 - Rehearing Direct Testimony 900 949
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OMAEG EXHIBITS IDENTIFIED ADMITTED

33 - PowerPoint presentation I-235 --
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dated April 27, 2016.

33 - Cover Page and Slide 18 of 766 767
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1Q 2016 Earnings Call,"
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1 Thursday Morning Session,
2 July 14, 2016.

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

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

14 My name is Megan Addison and with me is
15 Gregory Price and we are the attorney examiners
16 assigned to preside over this hearing.

17 We will dispense taking appearances this
18 morning.

19 Examiner Price.

20 EXAMINER PRICE: We have one piece of
21 unfinished business. Yesterday, I believe
22 Ms. Petrucci moved for the admission of OMAEG 33 and
23 P3/EPISA. Did you move 14 or 15? Or did you not move
24 either?

25 MS. PETRUCCI: I did not move for the

1 admission of P3/EPISA Exhibit 14. We only discussed
2 OMAEG Exhibit 33, yes.

3 MR. LANG: Your Honor, if I may, I have a
4 proposal on that?

5 EXAMINER PRICE: Okay.

6 MR. LANG: With regard to -- yes, because
7 it was only OMAEG 33 that was moved. We had lodged
8 an objection. In order to perhaps expedite us
9 getting going on witnesses this morning, the
10 companies are proposing they would withdraw their
11 objection to slide 18 of that exhibit which is what
12 was discussed at hearing yesterday. And would,
13 therefore, could allow that slide to go in. The rest
14 of the pages on the exhibit were not discussed and so
15 we would still maintain our objection to the rest of
16 the slide simply because it wasn't -- wasn't
17 discussed, wasn't addressed by the witness.

18 EXAMINER PRICE: Ms. Petrucci.

19 MS. PETRUCCI: Would you be willing to
20 put the cover page on as well?

21 MR. LANG: That makes sense, certainly.

22 MS. PETRUCCI: That's acceptable.

23 EXAMINER PRICE: Okay. We will grant
24 admission of the cover page and slide 18. It's 18?

25 MR. LANG: Yes. Yes, your Honor.

1 EXAMINER PRICE: Thank you both.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 MS. PETRUCCI: Your Honor, do you want to
4 have it labeled as a different one since originally
5 the -- what had been marked was the full document?
6 Do you want to make it Exhibit 33A?

7 EXAMINER PRICE: No. We will understand
8 what we admitted. We'll keep notes.

9 MS. BOJKO: Well, your Honor, for clarity
10 sake, I guess I'm not precluding the possibility that
11 the whole document may be used later in this
12 proceeding or, I mean, through a different witness
13 so.

14 EXAMINER PRICE: I'm not precluding the
15 possibility that we will admit it then, but she only
16 moved 18 and the cover page and so that's all that's
17 in right now.

18 MS. PETRUCCI: That's why I was
19 suggesting maybe if we -- maybe we could relabel it
20 to a P3/EPISA exhibit, the cover page and page 18.
21 It's just a suggestion.

22 EXAMINER PRICE: Mr. Kutik.

23 MR. KUTIK: The problem with that is the
24 witness examination referred to a specific exhibit
25 number, so it makes no sense to have it a different

1 exhibit number at this point.

2 MS. PETRUCCI: Actually, I agree as well.

3 EXAMINER PRICE: We will keep it as OMAEG
4 Exhibit 33. The Bench is fully aware at this point
5 it's only the cover page and slide 18 has been
6 admitted. If it is used with a different witness,
7 then we'll move admission of the rest of the exhibit
8 at that point.

9 MS. PETRUCCI: Thank you very much.

10 EXAMINER ADDISON: Is Sierra Club ready
11 to proceed?

12 MR. FISK: We are as soon as the
13 microphone comes on.

14 EXAMINER ADDISON: You may call your next
15 witness as soon as it comes on.

16 MR. FISK: Thank you, your Honors.

17 Sierra Club would call Mr. Tyler Comings
18 to the stand.

19 (Witness sworn.)

20 EXAMINER ADDISON: Thank you. You may be
21 seated.

22 THE WITNESS: Thank you, your Honor.

23 - - -

24 TYLER COMINGS

25 being first duly sworn, as prescribed by law, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 By Mr. Fisk:

4 Q. Good morning, Mr. Comings.

5 A. Good morning. Good morning. There it
6 is.

7 Q. Could you please state your name for the
8 record.

9 A. Tyler Comings.

10 Q. And could you please state your business
11 address for the record.

12 A. 45 Massachusetts Avenue, Suite 2,
13 Cambridge, Massachusetts 02139.

14 MR. FISK: And, your Honors, I would ask
15 to be marked as Sierra Club Exhibit 100, the public
16 version of the rehearing testimony of Tyler Comings,
17 and to be marked as Exhibit 101C, the confidential
18 version of Mr. Comings rehearing testimony.

19 EXAMINER ADDISON: They will be so
20 marked.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 Q. And, Mr. Comings, do you have your
23 testimony with you today?

24 A. I do.

25 Q. Okay. And is what has been marked as

1 Exhibit 100 the public version of your rehearing
2 testimony in this proceeding?

3 A. Yes.

4 Q. Okay. And is what has been marked as
5 Exhibit 101C the confidential version of your
6 testimony, rehearing testimony in this proceeding?

7 A. Yes.

8 Q. Okay. And do you have any corrections to
9 your testimony?

10 A. I have one. On page 13, line 6.

11 Q. Okay. And what is the correction?

12 A. To strike the sentence starting with
13 "This energy forecast," the entire sentence.

14 Q. So starting with "This energy forecast"
15 in line 6 and going through "in this filing" in line
16 9?

17 A. Yes.

18 MS. WILLIS: Could I have that page
19 reference?

20 THE WITNESS: Page 13.

21 Q. (By Mr. Fisk) And do you have any other
22 corrections?

23 A. No.

24 Q. Okay. And so with that correction, if I
25 were to ask you today all the questions in your

1 rehearing testimony, would your answers be the same?

2 A. Yes.

3 MR. FISK: Your Honor, Sierra Club moves
4 for the admission of Exhibit 100 and 101C and tenders
5 Mr. Comings for cross-examination.

6 EXAMINER ADDISON: Thank you, Mr. Fisk.

7 We will defer ruling on the admission of
8 those two exhibits upon the conclusion of
9 cross-examination.

10 MR. KUTIK: Your Honor, at this time will
11 the Bench entertain motions to strike?

12 EXAMINER ADDISION: We will, Mr. Kutik.

13 MR. KUTIK: Your Honor, my motions are in
14 three groups. So the first group starts with page 8,
15 line 15, through page 11, line 8. And that would
16 include all of the figures and all of the exhibits
17 referenced therein, those exhibits would be TFC 46,
18 TFC 47. These are all on the same grounds.

19 Let me go through the rest of the
20 testimony that's the subject of this motion to
21 strike. And that would be line -- or page 18, line
22 1, through page 19, line 3, again, including the
23 figures and exhibits referenced therein.

24 Your Honor, these two excerpts that are
25 the subject of the motion relate to documents that

1 are hearsay. Specifically, these documents are not
2 documents that are produced by the companies so it's
3 not a party admission. They are documents from ICF.
4 They are not Mr. Rose's documents. So even if they
5 were Mr. Rose's documents, that would still not
6 qualify as an exception to hearsay as a party
7 admission.

8 And so because it is a declaration by
9 a -- an out-of-court -- out-of-court declarant
10 offered for the truth, all of these -- all of the
11 excerpts, all the citations to those documents, as
12 well as the exhibits themselves, they are hearsay
13 and, therefore, they should not be admitted and they
14 should be stricken from this witness's testimony.

15 EXAMINER ADDISON: Thank you, Mr. Kutik.
16 Mr. Fisk.

17 MR. FISK: Are we going to do them one by
18 one or get all of them on the table?

19 MR. KUTIK: With your indulgence, I think
20 it makes sense to talk about them in the groups I had
21 arranged, so this group is one.

22 EXAMINER ADDISON: I agree.

23 MR. FISK: Thank you, your Honors.

24 Well, Sierra Club certainly would oppose
25 the motion to strike the testimony that Mr. Kutik has

1 identified. It certainly does cite to and rely on
2 various forecasts from ICF. I believe these are
3 obviously relevant. These are later forecasts from
4 the consulting firm that Mr. Rose works for. They
5 are directly -- they are on the same issues that
6 Mr. Rose presented ICF forecasts on in terms of
7 natural gas forecasts, capacity price forecasts.

8 The Bench has already previously admitted
9 multiple ICF forecasts including the ICF August 2015
10 forecast which was a -- a natural gas price forecast
11 that was presented in testimony submitted by ICF
12 witness in Michigan. That was already admitted
13 through Mr. Comings's third supplemental testimony.
14 And in that time it was determined that was
15 appropriate to come into the record. The fact that
16 it's a report authored by the same reporting firm
17 that has been retained by FirstEnergy to provide
18 testimony shows that it is not hearsay.

19 Mr. Kutik certainly will have all the
20 opportunity he would like to cross-examine
21 Mr. Comings on it, and the companies are free to
22 present rebuttal testimony from Mr. Rose if they feel
23 there is something improper about the use of ICF's
24 own more-recent forecasts in this proceeding.

25 So, for all of those reasons, we would --

1 we would oppose the motion to strike and urge the
2 Commission to deny.

3 EXAMINER ADDISON: Thank you.

4 Mr. Kutik.

5 MR. KUTIK: The fact that this is --
6 these are references to ICF documents does not
7 somehow make them something other than hearsay. They
8 still are hearsay. The fact that I can cross-examine
9 Mr. Comings on them doesn't make these documents not
10 hearsay. The fact that I would have to bring
11 Mr. Rose back for rebuttal doesn't mean that these
12 documents are not hearsay. They are hearsay,
13 therefore, they are inadmissible.

14 EXAMINER ADDISON: We will take this
15 motion to strike under advisement.

16 Let's move on to the next group.

17 MR. KUTIK: Yes, your Honor, and there
18 are three passages that are the subject of the next
19 motion. The first starts on page 7, starting on line
20 3, and going to line 9, so basically that question
21 and answer. The next is page 16, line 11, the -- the
22 sentence that begins with the word "Given," "Given
23 how much" and ending on page 17, line 2.

24 And lastly, page 21, line 4, going to
25 line 15. Let me amend that it should probably be

1 line 6 -- starting at line 6, after the word "No."
2 To the end of line 15.

3 Your Honor, each of these excerpts merely
4 repeats Mr. Comings's position from his earlier
5 testimony about the correlation of natural gas prices
6 and energy prices, his commentaries about ICF's
7 forecasts. All of those specific points were points
8 he made earlier, and it's therefore cumulative. We
9 would move to strike on that basis.

10 EXAMINER ADDISON: Thank you, Mr. Kutik.
11 Mr. Fisk.

12 MR. FISK: Can I take one second?

13 EXAMINER ADDISON: Certainly.

14 MR. FISK: Thank you, your Honor.
15 Thank you, your Honor.

16 Sierra Club would oppose this motion to
17 strike. We believe that this information is not
18 cumulative. It's testimony from Mr. Comings
19 regarding how the specific forecasts from mid 2014
20 that the companies continue to rely on in this
21 proceeding are outdated and they are relying on those
22 forecasts with regards to their modified proposal
23 which is the subject of this hearing.

24 The information is presented in the
25 context of Mr. Comings's analysis of the likely

1 credits and charges under the modified proposal, so
2 this is plainly relevant because all of his testimony
3 goes towards whether the forecasts the companies are
4 relying on and claiming in the modified proposal is
5 somehow a benefit for customers is reasonable or not.

6 The -- in terms of the specific
7 information presented and as to whether it is
8 cumulative, what's being presented here is the most
9 current information, and Mr. Comings is making the
10 point that using the most current information, it is
11 once again clear that actual market conditions are
12 significantly different than what ICF had forecast
13 back in mid 2014.

14 And when the Commission is deciding on
15 the modified proposal in, you know, August or
16 September or whenever, 2016, having the most current
17 information about how far off the 2014 ICF forecast
18 that the companies continue to rely on is directly
19 relevant and important to the Commission being able
20 to make a decision based on current information.

21 EXAMINER PRICE: Mr. Fisk, look at
22 page 7, lines 3 to 9. Other than the word
23 "modified," I mean, isn't that exactly testimony he
24 did give previously?

25 MR. FISK: I believe that that -- the

1 testimony about the correlation --

2 EXAMINER PRICE: And about the outdated.
3 I mean, he was arguing the last trip here that the
4 ICF arguments are outdated and that was an issue you
5 raised in your brief.

6 MR. FISK: But, I guess the point here
7 and what -- why this is relevant and appropriate is
8 that we are now faced with a new modified proposal
9 that has a new mechanism for how you calculate
10 credits and charges. There's numerous -- there used
11 to be numerous different factors that -- that were
12 variable in that calculation. Now, there are two,
13 energy prices and capacity prices.

14 And the fact that those prices and the
15 natural gas prices that feed into it continue to be
16 outdated and will be even more outdated and even
17 demonstrate to be even more unreasonable given actual
18 market conditions that have happened, is directly
19 relevant and is additive to his previous testimony,
20 not simply cumulative, because it's looking at what
21 are the conditions today, not what are the conditions
22 back when Mr. Comings filed his third supplemental
23 testimony quite a while ago.

24 MR. KUTIK: May I be heard?

25 EXAMINER ADDISON: You may.

1 MR. KUTIK: Well, as a matter of fact,
2 this isn't the most up-to-date information as of
3 today as we may explore in cross-examination, but
4 even that particular point which Mr. Comings
5 certainly does spend a lot of time on which will be
6 another subject of a motion to strike, the excerpts
7 that are the subject of this motion are tailored
8 specifically to deal with statements, declarations,
9 and points that Mr. Comings has already made.

10 Mr. Fisk, while giving an impassioned
11 defense of the general point of Mr. Comings's
12 testimony, did not point the Bench to a single new
13 fact that Mr. Comings raises in any of these excerpts
14 and that's the definition of cumulativeness and,
15 therefore, they should be stricken.

16 MR. FISK: Your Honors.

17 EXAMINER ADDISON: Go ahead, Mr. Fisk.

18 MR. FISK: Yeah. Just by definition what
19 is being presented here is a new fact because it is
20 new information regarding current market conditions.
21 It is not -- the current market conditions today are
22 different than the market conditions when Mr. Comings
23 presented in his last testimony and that is what this
24 testimony today, the rehearing testimony, goes
25 towards.

1 EXAMINER PRICE: But that's not the point
2 of this hearing today. The point of the hearing
3 today is to give information that you couldn't
4 reasonably -- or evidence you couldn't reasonably
5 have given in the last hearing. The fact that market
6 conditions have changed and the fact that projections
7 are now different, you know, we could spend another
8 three months on different projections again and by
9 the time we get done the projections will once again
10 be different. I mean, it's a rolling -- it's a
11 rolling problem.

12 MR. KUTIK: Which brings us to our third
13 motion, your Honor.

14 MR. FISK: Well, before we get to the
15 third motion, respectfully.

16 EXAMINER PRICE: I wasn't looking for a
17 response.

18 MS. WILLIS: I do believe, your Honor,
19 this is one -- this is testimony that provides
20 context. And I know in the past the Commission has
21 allowed and the -- yourself included, attorney
22 examiners have made rulings allowing background or
23 support information that provides context to the
24 readers, so I would believe it's also appropriate
25 from that respect.

1 EXAMINER ADDISON: Would you care to
2 respond to that point, Mr. Kutik?

3 MR. KUTIK: Your Honor, it's a point
4 that's been made. It's already been made. The
5 court -- the Commission has considered it, ruled upon
6 it, and therefore, it's cumulative and not to be
7 brought up again. They are trying to fight old
8 battles.

9 EXAMINER ADDISON: Okay. At this time we
10 will grant in part and deny in part the motion to
11 strike. As to page 7, lines 3 through 9, we will
12 grant the motion to strike.

13 As to page 16, starting on line 11, with
14 the sentence starting with "Given how much" we will
15 be denying the motion to strike.

16 And as to page 21, line 6, starting after
17 the word "No" to line 15 ending in "Such an approach
18 is unreasonable" we will be granting the motion to
19 strike.

20 Mr. Kutik.

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

22 EXAMINER ADDISON: You may.

23 MR. KUTIK: I would like to hand the
24 Bench a copy of Mr. Comings's deposition testimony.
25 My argument will depend a little bit on his prior

1 testimony.

2 Your Honor, this motion is quite
3 extensive in terms of the scope that it reaches.
4 There will be a number of excerpts. So with the
5 Bench's indulgence, bear with me.

6 First, it begins on line -- on page 1,
7 line 23, with the sentence that begins with the word
8 "While the costs."

9 MR. FISK: I'm sorry, what was the
10 reference?

11 MR. KUTIK: Page 1, line 23. The
12 sentence that begins "While the costs" and continues
13 through page 2 to the end of line 3.

14 We would also move to strike page 2,
15 line 5, so I guess we continue on actually through
16 page 3, line 4.

17 Moving on to page 4, we would move to
18 strike line 5, the word at the end "The" and
19 continuing to the end of the page on line 16.

20 Moving to page 5, we would move to strike
21 line 3 after the word "No" through line -- excuse me,
22 page 6, line 11.

23 We would also move to strike page 7,
24 lines 1 and 2. And page 7, starting at line 7 with
25 the words "The natural -- "The ICF natural gas price

1 forecast...."

2 EXAMINER ADDISON: Mr. Kutik, I believe a
3 portion of that has --

4 MR. KUTIK: Oh, yes, your Honor. Okay.

5 Then we would move to strike starting at
6 line 10 through page 16, line 3.

7 We would then start again on line 11 of
8 page 16, through page 21, line 3. We would then --

9 EXAMINER ADDISON: I'm sorry, Mr. Kutik.
10 Could I get that last line reference one more time?

11 MR. KUTIK: Line 3 on page 21.

12 EXAMINER ADDISON: Thank you.

13 MR. KUTIK: Then we would pick it up
14 again on line 16 of page 21, through page 22, line 4,
15 and page 22, line 13, through page 23, line 15.

16 Now, your Honor, let me then direct you
17 to Mr. Comings's deposition and two excerpts of his
18 deposition.

19 MS. WILLIS: Do you have copies for other
20 parties?

21 MR. KUTIK: I have one.

22 MS. WILLIS: Thank you.

23 MR. KUTIK: The excerpts begin on
24 page 33. And it starts on line 13 where I had asked
25 him the following question; he gave the following

1 answer:

2 The Question: "The question I asked you,
3 did you do a comparison between the effect of rider
4 RRS as approved and Rider RRS as proposed by the
5 company on rehearing? You didn't do that, did you?

6 "Answer: I'm -- I don't believe I used
7 the -- I compared the NPV that was developed
8 previously for Rider RRS, since that has not changed.

9 So I didn't do a direct comparison of the
10 Rider RRS to the modified proposal. I've -- but I do
11 refer to information that was provided under the
12 Rider RRS, because that -- to the effect that that
13 hasn't changed."

14 And then I asked him now on line -- on
15 page 34, line 11, "Question: Again, I'm just looking
16 for anything in your study, your testimony, that
17 compares Rider RRS as approved versus Rider RRS as
18 proposed by the company. There is not such a
19 comparison, fair to say?"

20 "Answer: Okay. I think that's fair to
21 say."

22 And that's the point of our motion, that
23 this testimony does not prepare -- is not properly
24 within the scope of this hearing. This hearing is to
25 address the proposals -- or the proposal by the

1 company.

2 It certainly is fair game for anyone to
3 talk about how the proposal has changed and what that
4 proposal's effect is versus the modified proceed --
5 the original proposal as approved. The Commission
6 has already ruled on the merits of rider RRS and the
7 benefits of rider RRS.

8 The -- the parties opposing rider RRS
9 don't get a second bite of the apple to explain why
10 rider RRS is inappropriate in their view. If they
11 want to talk about the adverse effect or effects at
12 all of rider RRS proposed, versus rider RRS as
13 approved, that's fair game, but they didn't do that,
14 and this is just a rehash of old arguments, certainly
15 with updated information, but updates can go
16 ad infinitum and is improper. The Commission has
17 already ruled and therefore it's beyond the scope of
18 this hearing.

19 EXAMINER ADDISON: Thank you, Mr. Kutik.
20 Mr. Fisk.

21 MR. FISK: Thank you, your Honors.
22 Certainly, once again, Sierra Club opposes the motion
23 to strike. This -- the testimony being presented by
24 Mr. Comings in his rehearing testimony is directly
25 relevant to the question pending before the

1 Commission today which is should modified rider RRS
2 proposal be approved. And that is the subject of
3 this rehearing and that is what Mr. Comings's
4 testimony goes to.

5 I would say that there's really three
6 reasons why the motion to strike should be denied.
7 The first is that the modified proposal uses a
8 different mechanism for calculating the charges and
9 credits under the rider. And that is what
10 Mr. Comings used in his testimony which presents an
11 analysis of the likely costs to customers of the
12 modified rider RRS proposal and comes to a conclusion
13 that those costs could be around \$1.6 million.

14 The previous proposal, the one approved
15 by the Commission, had numerous variables that could
16 change and, as a result, made it, you know, much more
17 difficult to determine exactly, you know, what the
18 potential costs and credits and charges could be
19 under it.

20 Now, there are two variables which change
21 energy prices and capacity prices. And that is what
22 Mr. Comings's testimony looks at and he -- using the
23 new way to calculate it, he was able to use that
24 mechanism to calculate NPV and that is what he is
25 presenting in his testimony.

1 EXAMINER PRICE: But his testimony is
2 solely about the part of the calculation that hasn't
3 changed. His testimony is not about the part of the
4 calculation that has changed.

5 MR. FISK: But now that the calculation
6 has changed and there is a new mechanism for doing
7 the calculation, it is now -- it is now much -- now
8 parties are able to make a much more certain
9 conclusion as to what the NPV price impacts of the
10 proposal would be on customers. And use -- and that
11 question is directly relevant to whether or not this
12 proposal is beneficial to customers.

13 And that cuts to the second point which
14 is Mr. Comings's testimony goes directly towards
15 Ms. Mikkelsen's rehearing testimony contending that
16 the modified rider RRS proposal is less risky for
17 customers and is better for customers, and presenting
18 an NPV analysis, what Mr. Comings' testimony does, it
19 shows that there is still substantial risk here
20 despite Ms. Mikkelsen's testimony about this being a
21 lower risk-option. There is still substantial risk
22 here and now that we have the new mechanism, we are
23 able to calculate well what that risk is.

24 EXAMINER PRICE: Again, those risks are
25 all the risks that were unchanged. Her testimony was

1 there's no longer the risk that the costs will be
2 higher. There is no longer the risk that the output
3 of the plants will be lower than was projected.
4 Those are the things that have changed. What hasn't
5 changed is the market risk in terms of the revenues
6 generated.

7 MR. FISK: Right. But the suggestion
8 that -- what Mr. Comings's testimony shows is that
9 those are the core risks. The energy and the
10 capacity prices are the core risks here and we are
11 now able to show what those risks are to customers.

12 EXAMINER PRICE: We certainly spent a lot
13 of time on non-core risks at the original hearing
14 then, didn't we?

15 MR. FISK: I mean, it enables us to
16 actually be able to do that calculation and that is
17 the information that we are presenting that is
18 directly relevant to the subject of this hearing.

19 The third point is that the Commission
20 will be deciding this proposal in basically the fall
21 of 2016. And while the company would like to
22 continue relying on stale information that is
23 inconsistent with actual market conditions that is
24 inconsistent with its consultant's own more recent
25 forecasts, that is simply improper for the Commission

1 to do.

2 The Commission should be basing its
3 decision on current information; that is what
4 Mr. Comings is presenting. He is presenting updated
5 forecasts from gas prices, capacity prices, natural
6 energy prices from PJM, Energy Information
7 Administration, and ICF. Some of that updated
8 information has already been allowed into the record
9 yesterday with Mr. Baron's testimony. The updated
10 PJM capacity price auction results were allowed into
11 the record.

12 EXAMINER PRICE: Mr. Fisk, isn't there a
13 distinction between a fact, PJM has a new capacity
14 price, versus an updated projection, which is just
15 somebody's estimate of what's going to happen in the
16 future subject to a bunch of variables?

17 You know, I get -- I understand, you
18 know, there are some actual facts that have changed
19 as time has moved on, capacity price, forward prices
20 for the first couple of years, those are facts.
21 These projections, you know, they are just expert's
22 testimony as to what they think will happen in the
23 future. They are not -- do you see the distinction I
24 am making between the two? I think it is a
25 worthwhile distinction.

1 MR. FISK: I believe that those facts go
2 directly towards what is likely to be the cost, and
3 if charges -- charges and credits under the -- under
4 the modified proposal. The company chose not to
5 present the information of how those facts could
6 change it, but we are presenting the information
7 which we think is important for the Commission
8 decision, to consider in its decision.

9 And to the extent those are facts, one of
10 the facts is that the companies' own expert's
11 consulting firm is projecting much different prices
12 than what the company is continuing to rely on here
13 and that is a very relevant fact for the Commission
14 to consider when it decides whether the projections
15 that the companies are relying on should continue to
16 be used.

17 And, you know, Mr. Kutik talks about,
18 well, we could be updating things ad infinitum. They
19 are the ones that opened the door here by proposing a
20 new modified proposal. We are entitled to present
21 the information about why that new modified proposal
22 looking at it at the time of the decision, right now,
23 is not beneficial to customers.

24 EXAMINER PRICE: But you are not
25 presenting any evidence as to the modification. You

1 are presenting evidence as to what hasn't changed.

2 MR. FISK: We are presenting evidence as
3 to the impacts of the modified proposal that the
4 companies chose to make on customers which directly
5 challenges and rebuts Ms. Mikkelsen's testimony
6 claiming that this would be beneficial to customers.

7 MS. WILLIS: Your Honor, might I be
8 heard?

9 EXAMINER PRICE: I think Ms. Bojko.

10 MS. BOJKO: Your Honor, I would just add,
11 OMAEG strongly disagrees with the characterizations
12 being made here about the risk and reduction of risk.
13 We don't believe that the proposal reduces the risk
14 in the way that the Bench just stated, and we also
15 disagree there's been no evidence presented here
16 to -- this week about those reductions in risk and
17 the changes that were made to the projected cost side
18 and projected output side which I think you were just
19 alluding to.

20 So we just wanted to put that on the
21 record that we don't agree with the characterizations
22 that there has been a reduction in risk and that
23 there's been no evidence produced with regard to the
24 changes in the formula. Thank you.

25 EXAMINER ADDISON: Ms. Willis, did you

1 have something to add?

2 MS. WILLIS: Yes, your Honor. I want to
3 be clear that as part -- that the -- we keep in mind
4 the statutory test that we need to pass here and that
5 is to show that the provision -- or the companies'
6 proposal along with other provisions in the ESP
7 will -- will be more favorable in the aggregate than
8 a -- an MRO.

9 And part of that analysis, your Honor,
10 goes to determining the quantifiable benefits.
11 Ms. Mikkelsen relies upon the quantifiable benefits
12 that were found to be present in the first part of
13 this proceeding, the 41 days of hearing.

14 Part of the analysis, with updates, and
15 showing how the numbers have changed go to the fact
16 that the quantifiable benefits that the Commission
17 settled upon may no longer be reasonable given what
18 has occurred in the -- in -- with respect to the
19 prices of capacity, what has occurred with respect to
20 the prices in energy.

21 So it does go to whether or not there
22 is -- they are going to pass the quantifiable -- or
23 whether it is going to pass the ESP versus MRO
24 analysis.

25 And I would also take issue with

1 Mr. Kutik trying to limit the scope of this
2 proceeding to the companies' proposal. If we look at
3 the Commission's entry which set up this rehearing,
4 it's very clear that that is not the scope of this
5 rehearing. And I quote from paragraph 15 of that
6 entry where it says the "scope of the hearing will be
7 limited to the provisions of and alternatives,"
8 alternatives.

9 EXAMINER PRICE: Do you have an
10 alternative or is your alternative zero?

11 MS. WILLIS: No, your Honor. I think
12 there are a number of alternatives. We're still
13 talking about -- and the Commission made this clear
14 and the company still made this clear, an alternative
15 out there is to pursue the PPA at FERC. That's still
16 up in the air. And so any updated information about
17 the PPA and the cost of the PPA can still be looked
18 at because that's an alternative that's out there and
19 that is certainly an alternative to the modified RRS
20 proposal. It's not an alternative we would pursue,
21 but it is an alternative.

22 So I think when we try to go to limit the
23 scope to the company's proposal, I think that's
24 inconsistent with what the Commission and your Honors
25 found to be the scope of this proposal. I think

1 that's -- that's it.

2 MR. FISK: If I could just briefly
3 clarify that certainly I agree that alternatives are
4 at issue here as the Commission has ordered, but we
5 believe even if you stick with just the scope of
6 looking at the modified rider RRS proposal,
7 Mr. Comings's testimony clearly comes in. It
8 addresses the mechanism and how -- and then costs and
9 benefits of that proposal.

10 MR. HAYS: Your Honor, if I may be heard
11 for one moment?

12 EXAMINER ADDISON: Certainly, Mr. Hays.

13 MR. HAYS: I don't want to repeat what
14 others have said, but I would say there are other
15 alternatives out there as the OCC has indicated. One
16 of those is the staff's proposal which talked -- and
17 included Moody's, which talked about the change in
18 energy prices and the change of the risk -- and you
19 can read that testimony yesterday -- the change in
20 the risk of the generating units.

21 It was a matter of discussion yesterday.
22 It is clearly at the center of this case, that is
23 that right now they are facing a creditworthiness
24 problem because of problems that the generating
25 companies caused by shifts in the market. It's in

1 Exhibit 1, Exhibit 2, Exhibit 3, and in the actual
2 testimony of the staff witness. This is clearly an
3 issue in this case. And with that said, thank you.

4 EXAMINER ADDISON: Thank you.

5 Mr. Kutik.

6 MR. KUTIK: Your Honor, I think the first
7 two arguments that were posed by counsel for Sierra
8 Club, frankly, make no sense in supporting or
9 supporting the testimony that we've made the subject
10 of the third part of our motion to compel and this is
11 why.

12 He talks about, well, yes, there's been a
13 change in the calculation; and yes, there are things
14 that are less risky in the new calculation. But
15 that's not the subject of the motion to strike. The
16 motion to strike is really relating to the third
17 point that he's making which is he believes that and
18 will always believe that somehow if you don't have
19 the absolute, up-to-date-today information, it must
20 be stale and the Commission can't use it.

21 We've already litigated that question.
22 Mr. Rose came in and explained to the Commission how
23 gas prices go up, gas prices goes down, they are very
24 volatile, future prices today aren't going to be what
25 they are going to be tomorrow for a particular time.

1 And it is reasonable to use a reliable method --
2 methodology of forecasting, which numerous entities
3 have done, to come up with a reasonable estimate of
4 what the impact would be.

5 Mr. Comings used the same costs that were
6 used previously. The only thing different is he
7 updated the price information going into the revenue
8 part of the calculation. That has nothing to do with
9 the means of the calculation. All it is is updating
10 the projections. We've been there, we've done that,
11 and it's beyond the scope of the hearing because it
12 has nothing to do with the changes brought about by
13 the modification of the calculation that the
14 companies' proposed or, in fact, any alternative.

15 EXAMINER PRICE: Let me ask you the
16 question that I posed to Mr. Fisk. Isn't it fair to
17 allow the parties to update actual facts where prices
18 like the capacity price -- not a projection, because
19 as you pointed out, Mr. Rose has a methodology, if
20 it's reliable, it's reliable; if it's not, it's not.
21 But isn't it fair to allow the parties to update
22 actual facts, capacity price, new forward prices,
23 that are actual facts, they aren't a projection based
24 upon some sort of methodology?

25 MR. KUTIK: I don't see a distinction

1 between the two, your Honor. You have already ruled
2 on the question of the reasonableness of the RRS
3 mechanism and the projections from that.

4 MR. FISK: Your Honor, if I may briefly?

5 EXAMINER ADDISON: You may.

6 MR. FISK: What the reality is, is that
7 the rider RRS mechanism has changed. The way that
8 they are going to calculate credits and charges under
9 the rider RRS has changed. They're using AEP Dayton
10 Hub prices when the projection did not totally use
11 that. The averaging is different.

12 So -- and Mr. Tyler -- Mr. Comings's
13 testimony uses the fact that the mechanism has
14 changed in a number of ways to be able to provide the
15 forecast.

16 As to Mr. Kutik's claim that, you know,
17 Sierra Club always just wants to use the most
18 up-to-date information. Well, you know, we do think
19 it's reasonable the Commission would evaluate a
20 proposal that the company is claiming is good for
21 customers based on what we know today, not based on
22 information from mid 2014.

23 And the simple reality here is that
24 regardless of the question of whether Mr. Rose's
25 forecasts and methodology in 2014 was reasonable, ICF

1 itself has new forecasts, you know, much more recent
2 that show much lower prices that directly show that
3 using their own numbers, customers would pay
4 significant amounts of money under this proposal.

5 And FirstEnergy would love for everybody
6 to ignore that fact. But that's a fact. That's
7 reality. And having the Commission ignore that fact
8 would be highly unreasonable and would lead to
9 decision-making that isn't based on what everybody
10 knows is occurring and what ICF's own forecast shows
11 is occurring.

12 That's what Mr. Comings's testimony goes
13 towards. That's why it's relevant and that's why we
14 believe the motion to strike should be denied.

15 EXAMINER PRICE: I can see why you can
16 use ICF forecasts to -- if Mr. Rose were here. I
17 could see why you could use updated forecasts to
18 cross-examine Mr. Rose and impeach him.

19 I don't understand why you believe that
20 FirstEnergy -- it gets back to the first motion to
21 compel -- first motion to strike. I don't understand
22 why you believe FirstEnergy owns ICF forecasts. They
23 can't cross-examine the ICF witnesses here as to how
24 they developed the 2016 forecasts.

25 You haven't produced them. You could

1 have subpoenaed them. You could have tried to bring
2 them in, but you haven't. So how is he supposed to
3 address what he may perceive as flaws? They may have
4 hired ICF, they may believe ICF is reasonable, but
5 they don't own ICF, ICF is not their subsidiary.
6 They are not -- they are an independent entity.

7 MR. KUTIK: And, your Honor, as was
8 established with Mr. Rose's testimony, different
9 forecasts are different for different purposes. We
10 don't know all the purposes, all the assumptions that
11 were done in different forecasts.

12 So to lay one set of numbers against
13 another set of numbers without understanding the
14 purpose behind those numbers is unfair to us because
15 we don't have the opportunity to fully explore that
16 and explain the differences. That's why it's unfair
17 and that's why hearsay evidence of this type gets
18 stricken.

19 MR. FISK: Well, I mean, Mr. Kutik is
20 free to try to explore that issue in cross of
21 Mr. Comings and is also free to put on a rebuttal
22 witness on this. The Commission has already let in
23 other ICF forecasts and that issue has been decided
24 as to when it's appropriate to bring in new
25 forecasts.

1 And this -- I would just come back to
2 it's not only ICF's forecast that changes it's EIA
3 forecasts, PJM forecasts have changed. Those are
4 forecasts that the companies continue to rely on and
5 that's their -- that's their choice to rely on those
6 from 2014. It doesn't mean that the Commission
7 should do it and doesn't mean that the parties should
8 be limited when the companies come in and say we have
9 a modified proposal that we believe is best -- is
10 good for customers and that we claim will still
11 provide a net credit to customers.

12 We are entitled to explore the bases for
13 that claim that this is still good for customers,
14 that this is less risky and this will provide a net
15 credit. That is what Mr. Comings's testimony does;
16 using today's information. It is clear that those
17 claims by Ms. Mikkelsen in her rehearing testimony
18 are incorrect and are unreasonable. And that is why
19 it is appropriate to allow -- that is why it is
20 appropriate to allow the testimony.

21 And in addition, in terms of the market
22 energy price, the way that it is being used in the
23 new proposal is different than what was originally
24 proposed under the rider RRS that has been approved,
25 and that factors into Mr. Comings's testimony.

1 MR. KUTIK: May I have the last word,
2 your Honor?

3 EXAMINER ADDISON: You may.

4 MR. KUTIK: Again, all they are trying to
5 do is update. There is nothing in what we've asked
6 to be struck that relates to any change in the
7 calculation. What it does is it seeks to not
8 relitigate what we have already litigated, which is
9 the reasonableness of rider RRS and the calculations
10 that are going -- and the effect on customers and the
11 positives as the Commission has already found.

12 There's nothing in Mr. Comings's
13 testimony that we have put as part of our motion that
14 relates to the manner of the calculation and the
15 effect of the calculation. That's what this
16 Commission is here to decide; what the Bench is here
17 to hear and the Commission is here to decide as part
18 of the entry.

19 We are not here to revisit rider RRS.
20 And what they are asking for you to do is to revisit
21 the wisdom of rider RRS with so-called updated
22 information which picks a time of their choosing, not
23 a time that is reasonable in any way; but even that
24 is a subject we've already discussed and you've
25 decided.

1 EXAMINER ADDISON: Okay. At this time we
2 will be granting the third motion to strike presented
3 by Mr. Kutik in its entirety, and please correct me
4 if I cite to the extensive motion to strike
5 incorrectly, Mr. Kutik, at any point.

6 Just to clarify, starting on page 1,
7 lines 23 through page 3, lines 4, will be struck.

8 Moving to page 4

9 MR. KUTIK: Well, your Honor, I believe
10 we also had moved lines 5 through 10. And actually
11 through -- I am sorry, did you grant through page 3,
12 line 4?

13 EXAMINER ADDISON: Yes. I believe those
14 consolidated together.

15 MR. KUTIK: Thank you, your Honor.

16 EXAMINER ADDISON: I apologize for the
17 confusion.

18 MR. KUTIK: No.

19 MR. FISK: I'm sorry, now I'm confused.

20 EXAMINER ADDISON: I can cite that again.

21 Page 1, line 23, starting with the word
22 "While" through page 3, line 4 is struck.

23 Moving on to page 4, line 5, beginning
24 with the word "the" to page 4, line 16.

25 Moving on then to page 5, line 3,

1 beginning after the word "no" through page 6,
2 line 11.

3 Page 7, lines 1 and 2. Page 7 beginning
4 with line 10 to page 16, line 3.

5 Mr. Kutik, can you verify on page 20
6 where the next portion?

7 MR. KUTIK: Well, your Honor, our
8 motion -- next motion was on line 16 starting with
9 line 11.

10 MR. FISK: Did you mean page 16?

11 MR. KUTIK: Page 16.

12 EXAMINER PRICE: Then page 21, line 1?

13 MR. KUTIK: To page 21, line 3, yes.

14 MR. FISK: I'm sorry. On page 16,
15 line 11, it starts with "Given how much...."

16 MR. KUTIK: Yes.

17 MS. WILLIS: I thought that was denied.

18 EXAMINER PRICE: Well, that was a
19 previous motion the first round.

20 MR. FISK: Well, the first round was --

21 MR. KUTIK: So that portion is stricken?

22 EXAMINER ADDISON: Yes. I apologize for
23 that.

24 MS. BOJKO: I'm sorry, 16, line 1 through
25 21.

1 EXAMINER ADDISON: Through page 21,
2 line 3. Is everyone clear up to this point?

3 Moving on. Remaining on page 21, line 16
4 continuing on to page 22, line 4. And I believe the
5 last one is page 22, line 13 with the sentence
6 beginning "This scenario" all the way to page 23,
7 line 15.

8 EXAMINER PRICE: Mr. Kutik, in light of
9 this ruling, is your first motion moot entirely?

10 MR. KUTIK: Yes.

11 MS. BOJKO: Your Honor, point of
12 clarification?

13 EXAMINER ADDISON: Of course.

14 MS. BOJKO: It's my understanding you are
15 granting a motion to compel, not only with respect to
16 the update of energy forecasts, but you're also
17 granting the motion to compel with respect to the
18 actual known capacity prices that have occurred; is
19 that my understanding? There were some questions
20 from the Bench.

21 EXAMINER ADDISON: Did you mean motion to
22 strike, Ms. Bojko?

23 MS. BOJKO: I'm sorry?

24 EXAMINER ADDISON: Did you mean motion to
25 strike? You said motion to compel.

1 MS. BOJKO: Oh, I'm sorry.

2 MR. FISK: We would love to compel.

3 MS. BOJKO: Motion to strike with regard
4 to the known, not projected, but actual known
5 capacity prices?

6 EXAMINER PRICE: Yes.

7 EXAMINER ADDISON: Yes.

8 MS. BOJKO: Just for the record, OMAEG
9 would like to state its objection to the granting of
10 the motion to compel in its whole, but particularly
11 with regard to actual known capacity prices that
12 occurred in the PJM market and are known and are no
13 longer forecasted per the companies' --

14 EXAMINER PRICE: I tried to give Mr. Fisk
15 the lifeline. He didn't take it.

16 MR. FISK: What?

17 EXAMINER PRICE: I tried to give you the
18 lifeline of known capacity prices; you didn't agree
19 there was a distinction.

20 MS. BOJKO: I would have jumped in to
21 jump on that lifeline.

22 EXAMINER ADDISON: Do any other parties
23 wish to make the same objection on the record?

24 EXAMINER PRICE: And just back to
25 Ms. Bojko's point that she earlier sought

1 clarification. We are not addressing the cost side
2 in this motion. If you've got evidence you want to
3 put on with respect to the cost side, that's not part
4 of this motion.

5 MS. BOJKO: Thank you. That's why I
6 wanted to make the statement because of your comments
7 on the record.

8 EXAMINER PRICE: I understand.

9 MR. FISK: Your Honors, I would like to
10 make a proffer of Mr. Comings's testimony for
11 purposes of appeal. Respectfully, the Sierra Club
12 disagrees with the motion to strike and the granting
13 of the motion to strike.

14 MR. KUTIK: Mr. Fisk, maybe I can -- I
15 assume that his testimony would be the proffer.

16 MR. FISK: That what?

17 MR. KUTIK: The thing you filed would be
18 the proffer.

19 MR. FISK: Yes. I just want to reserve
20 objections we've made and reserve the right to use
21 his testimony as a proffer.

22 EXAMINER ADDISON: It's noted on the
23 record.

24 MR. FISK: Thank you.

25 MR. HAYS: NOAC and the individual

1 communities would join in that, your Honor.

2 MS. WILLIS: And please note on the
3 record, OCC takes issue with the ruling and I guess
4 we will be addressing this in our motion -- in our
5 presentation of Mr. Wilson. We will address and
6 expect to have the opportunity to make our argument
7 before the Bench on those -- on that testimony and
8 any motion to strike.

9 EXAMINER ADDISON: Of course. Thank you,
10 Ms. Willis.

11 That concludes -- I want to be sure it
12 concludes all the motions to strike, Mr. Kutik?

13 MR. KUTIK: Yes, it does, your Honor.

14 EXAMINER ADDISON: Thank you.

15 Mr. Hays, any questions?

16 MR. HAYS: I think he's a friendly
17 witness, your Honor, no.

18 EXAMINER ADDISON: Providing the
19 courtesy.

20 Mr. Pritchard?

21 MR. PRITCHARD: No questions, your Honor.

22 EXAMINER ADDISON: Ms. Bojko?

23 MS. BOJKO: No questions. Thank you.

24 EXAMINER ADDISON: Ms. Petrucci?

25 MS. PETRUCCI: No questions.

1 EXAMINER ADDISON: Ms. Willis?

2 MS. WILLIS: No questions.

3 EXAMINER ADDISON: Ms. Glover?

4 MS. GLOVER: No questions.

5 EXAMINER ADDISON: Mr. Boehm?

6 MR. K. BOEHM: No questions.

7 EXAMINER ADDISON: Mr. Kutik?

8 MR. KUTIK: No questions, your Honor.

9 Mr. McNamee?

10 MR. McNAMEE: No questions, your Honor.

11 EXAMINER ADDISON: Examiner Price?

12 EXAMINER PRICE: No questions.

13 EXAMINER ADDISON: I have no questions.

14 You are excused, Mr. Comings. Thank you very much.

15 THE WITNESS: Thank you, your Honor.

16 EXAMINER ADDISON: Mr. Fisk?

17 MR. FISK: We renew our motion to admit

18 what is left of Exhibit Sierra Club 100 and Sierra

19 Club 101C.

20 EXAMINER ADDISON: Thank you. And

21 subject to the motions to strike, are there any

22 objections to the admissions of these two exhibits?

23 Hearing none, they will be admitted.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 MR. KUTIK: May we go off the record,

1 your Honor?

2 EXAMINER ADDISON: Let's go off the
3 record.

4 (Discussion off the record.)

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

7 Dynegy may call its next witness.

8 MR. SETTINERI: Thank you, your Honor.
9 At this time we would call Dean Ellis to the stand.

10 (Witness sworn.)

11 EXAMINER ADDISON: Thank you. You may be
12 seated.

13 MR. SETTINERI: Your Honors, at this time
14 we would like to mark an exhibit. It would be Dynegy
15 Exhibit No. 2. That exhibit will be the rehearing
16 testimony of Dean Ellis. May I approach, your Honor?

17 EXAMINER ADDISON: You may, and it will
18 be so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 - - -

21 DEAN ELLIS

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

24 DIRECT EXAMINATION

25 By Mr. Settineri:

1 Q. Good morning, Mr. Ellis.

2 A. Good morning.

3 Q. Could you please state your name and
4 business address for the record, please.

5 A. Dean Ellis, 601 Travis Street, Houston,
6 Texas.

7 Q. And do you have before you what's been
8 marked as Dynegey Exhibit No. 2?

9 A. Yes, I do.

10 Q. And could you identify that for the
11 record, please.

12 A. That is my rehearing testimony.

13 Q. All right. Was that prepared by you or
14 under your direction?

15 A. Yes, it was.

16 Q. And do you have any changes or revisions
17 to your testimony at this time?

18 A. I do. I have one change on page 8,
19 line 18, "8,920 megawatts" should be
20 "9,120 megawatts" which was corrected in a
21 supplemental filing by the companies.

22 Q. Do you have any other corrections to --
23 revisions to your testimony, today?

24 A. I do not.

25 Q. If I was to ask you the questions in your

1 testimony today, would your answers, as you have
2 revised, be the same?

3 A. Yes.

4 MR. SETTINERI: Thank you.

5 At this time, your Honor, the witness is
6 available for cross-examination.

7 EXAMINER ADDISON: Thank you,
8 Mr. Settineri.

9 Before we begin, any motions to strike?

10 MR. ALEXANDER: Yes, your Honor, one. We
11 would move to strike page 8, line 14 through page 9,
12 line 12. This Question and Answer relate to the
13 companies' reference to 3,200 megawatts which was
14 withdrawn by Ms. Mikkelsen, and so this reference is
15 no longer relevant.

16 MR. SETTINERI: Your Honor, Ms. Mikkelsen
17 did withdraw a question -- or certain portions of her
18 testimony, but the reason why this testimony needs to
19 remain is the Commission found that the application
20 for rehearing in this matter included her prefiled
21 testimony. Therefore, that still remains active in
22 the Commission's eyes as part of the application for
23 rehearing. And for that reason, this testimony is
24 very relevant.

25 MR. ALEXANDER: And, your Honor, two

1 points. One -- I will give Mr. Settineri a chance to
2 address this if he likes -- I missed a reference,
3 it's also page 5, line 8, beginning with "The
4 Companies" through line 10 ending after the footnote.

5 And so, with that clarification, to
6 address the substance of Mr. Settineri's argument,
7 the testimony in these proceedings, as the Bench is
8 well aware, is not what has been prefiled and said,
9 it is what is sponsored by the witness on the stand
10 and subject to cross-examination. So the fact that
11 it was in prefiled testimony does not make it part of
12 the record in this proceeding.

13 And then with regard to the application
14 for rehearing, that's a separate document from
15 Ms. Mikkelsen's testimony, and the withdrawn portion
16 of Ms. Mikkelsen's testimony is simply no longer
17 relevant.

18 MR. SETTINERI: Your Honor, if I may?

19 EXAMINER ADDISON: Before I let you
20 respond, Mr. Settineri.

21 Mr. Alexander, I just wanted to clarify
22 the motion to strike. Are you requesting -- you
23 mentioned it begins on line 14. Did you mean to say
24 it begins on line 12, on page 8, I'm sorry.

25 MR. ALEXANDER: Yes, your Honor.

1 EXAMINER ADDISON: It includes line -- it
2 begins on line 12?

3 MR. ALEXANDER: The question doesn't have
4 reference to the 3,200 megawatts, it can stay in, but
5 then the answer does, so we could --

6 EXAMINER PRICE: The "No" part doesn't.

7 MR. ALEXANDER: We could keep the
8 question and the word "No" and delete the remainder.

9 EXAMINER ADDISON: So beginning on line
10 14 with "The companies."

11 MR. ALEXANDER: Yes, your Honor.

12 EXAMINER ADDISON: Thank you.

13 MR. SETTINERI: Your Honor, what I would
14 like to do, if I may, first start with the argument
15 as to whether the motions to strike should be granted
16 conceptually, because then I would like an
17 opportunity to go through and look at the actual text
18 because there is portions here that don't relate in
19 that answer, the answer on page 8 running into 9, I
20 believe that our -- that information can remain
21 because it's responsive to the question.

22 The Question is "Would opening rider RRS
23 to competitive procurement impair economic
24 development and transmission reliability in Ohio?"

25 The Answer starts with "No." And there

1 is other information there. But on page 9 there is a
2 continuation, as I noted previously, "Dynergy owns,"
3 and the sentence prior at line 2, "Moreover, economic
4 development and transmission reliability...."

5 So I -- I guess to make it simple for
6 starters, page 8 to page 9, if the motion was to be
7 granted, it should only be limited to what the
8 argument is which is on the 3,200 megawatts. So that
9 answer would then read "Answer: No."

10 "Moreover, economic development and
11 transmission reliability will be assured by other
12 sources of generation in Ohio and in the ATSI zone."
13 So the rest of the answer should stand because all of
14 that is responsive to the question which is asked
15 about opening rider RRS to competitive procurement.

16 As to the remaining language which
17 relates to the 3,200, there's -- the Commission, when
18 it denied the interlocutory appeal, found that the
19 application for rehearing included not only the
20 application for rehearing document, it also said
21 includes the memorandum in support and includes her
22 prefiled direct testimony. That was in the
23 Commission's interlocutory entry on that
24 interlocutory appeal.

25 So because of that, that's -- in the

1 Commission's eyes, that is what is before the
2 Commission. They've withdrawn pieces from her
3 testimony, but there's been no formal filing made or
4 approved by the Commission or accepted by the
5 Commission that's off the table. So until that's off
6 the table, in the Commission's eyes, this testimony
7 is certainly relevant, and the Commission can easily
8 weigh this evidence. The fact that in the event the
9 Commission says yes, this is off the table; it
10 doesn't need to address this evidence at all.

11 EXAMINER PRICE: But even if the
12 Commission -- I think you are being very technical.
13 But even if the Commission were inclined to
14 reinstitute what was in the first version of the
15 prefiled testimony, Mr. Alexander is right, that's
16 not evidence and there would be no record on -- to
17 base it on because the record is coming out of this
18 proceeding -- this hearing.

19 MR. SETTINERI: But what the Commission
20 has said is their application for rehearing
21 included --

22 EXAMINER PRICE: I know what the
23 Commission said.

24 MR. SETTINERI: Now, I am beating a dead
25 horse but maybe, but I am quite linear in my

1 thinking, but with that said, the Commission has
2 found three documents to constitute that rehearing
3 application and that is what the Commission is
4 looking at in regards to this rehearing.

5 There's been -- and so as long as that is
6 on the table, perhaps hyper-technical, this testimony
7 on that proposal is still relevant and we shouldn't
8 take it -- we should be allowed to admit it because
9 the Commission has considered the document that they
10 filed as part of their application for rehearing
11 which is the subject of this hearing, so we should be
12 permitted to put in that evidence to address that
13 prefiled document that is still active in the eyes of
14 the Commission.

15 It hasn't been admitted into the record
16 as evidence, but in the Commission's eyes that is
17 part of the proposal that was submitted to them in
18 this application on rehearing. We don't agree with
19 that, but perhaps technical, but that was an issue
20 that's been created by that order on the
21 interlocutory appeal. So with that said, we believe
22 this testimony can stay in. It will not affect the
23 record in any way.

24 EXAMINER PRICE: I think it runs the risk
25 of muddying the record because you are talking about

1 something that's not happening.

2 MR. SETTINERI: Still in play with the
3 Commission. It could happen and so we should be
4 permitted to have evidence in the record to address
5 that potential, as technical as it may be, we are
6 allowed to protect ourselves. If it is granted,
7 obviously then the answer should be "No" starting
8 then with "Moreover" on line 2 and the rest should
9 remain in.

10 But we believe strongly that because of
11 that interlocutory appeal, the Commission's decision
12 that that prefiled document is part of the
13 application of rehearing, we should be allowed to
14 enter this evidence into the record subject to
15 cross-examination to the extent the companies deem it
16 necessary.

17 EXAMINER ADDISON: Mr. Alexander,
18 response?

19 MR. ALEXANDER: I'm fine with ending the
20 motion to the strike prior to the word "Moreover,"
21 your Honor. I think that makes sense, and with that
22 I think the Bench understands the grounds of the
23 motion, so nothing more to add.

24 EXAMINER ADDISON: At this time we will
25 grant the motion to strike in part, beginning on

1 page 5, lines 8, starting with the sentence "The
2 companies" and ending on line 10, after a reference
3 to the footnote and that includes the footnote
4 itself.

5 Then moving on to page 8, we will be
6 striking, beginning on line 14, beginning with "The
7 companies" and ending on page 9, line 2, with "units
8 in Ohio."

9 Does that conclude your motions to
10 strike, Mr. Alexander?

11 MR. ALEXANDER: Yes, your Honor.

12 EXAMINER ADDISON: Thank you.

13 MR. ALEXANDER: Good morning, Mr. Ellis.

14 EXAMINER ADDISON: Mr. Alexander, sorry,
15 I'm going to -- you're jumping the gun a little bit.
16 Mr. Pritchard?

17 MR. PRITCHARD: No questions, your Honor.

18 EXAMINER ADDISON: Ms. Bojko?

19 MS. BOJKO: No questions, your Honor.

20 EXAMINER ADDISON: Mr. Sauer?

21 MR. SAUER: No questions, your Honor.

22 EXAMINER ADDISON: Ms. Glover?

23 MS. GLOVER: No questions.

24 EXAMINER ADDISON: Mr. Boehm?

25 MR. K. BOEHM: No questions.

1 EXAMINER ADDISON: Mr. Alexander, you're
2 up.

3 MR. ALEXANDER: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Alexander:

7 Q. Mr. Ellis, can you please turn to page 3,
8 line 18 of your testimony where you reference
9 Dynegy's generation in the ATSI region.

10 A. Yes.

11 Q. Now, when you say that "7 percent of
12 Dynegy's generation is located in the ATSI zone," you
13 mean that percent of Dynegy's Ohio generation is
14 located in the ATSI zone, correct?

15 A. That's correct.

16 Q. And Dynegy actually owns 400 megawatts in
17 the ATSI zone, correct?

18 A. Yes.

19 Q. Dynegy does not own any nuclear assets,
20 correct?

21 A. That's correct.

22 Q. Page 5, line 21, you reference "grid
23 modernization efforts." Do you see that?

24 A. Yes.

25 MR. SETTINERI: Excuse me. What page

1 reference? I'm sorry.

2 MR. ALEXANDER: Page 5, line 21.

3 MR. SETTINERI: Thank you.

4 Q. (By Mr. Alexander) Now, Mr. Ellis, you
5 would agree that grid modernization efforts are
6 dependent upon the ability of the companies to fund
7 those efforts, correct?

8 A. I believe that the companies's ability to
9 invest in grid modernization would obviously be
10 contingent upon the companies' ability to fund those
11 efforts, yes.

12 Q. And the ability of the companies to fund
13 grid modernization is partially dependent on the
14 credit rating of the companies, correct?

15 A. It could potentially be.

16 Q. And you are aware that in response to
17 stipulations filed in this proceeding, the companies
18 have filed a grid modernization case with the
19 Commission.

20 A. I'm generally aware of it, yes.

21 Q. And you have not reviewed those grid
22 modernization cases in detail, correct?

23 A. Not in detail, no.

24 Q. But you're aware the companies have
25 presented three grid modernization scenarios?

1 A. That's correct; under the plan there were
2 three scenarios.

3 Q. And you are aware the companies' proposed
4 scenarios had investment ranges from 3 to 5 billion
5 dollars, but you don't remember the exact numbers in
6 each scenario?

7 A. I reread the companies' grid
8 modernization plan and I couldn't find any reference
9 to the costs.

10 Q. Please turn to page 10, line -- strike
11 that.

12 Please turn to page 7, line 10 of your
13 testimony.

14 A. Yes.

15 Q. Now, your written testimony does not
16 include a firm offer to provide a financial product
17 with the lower risk to customers, correct?

18 A. Correct. Our testimony does not provide
19 for a firm offer.

20 Q. And you are not aware of any financial
21 institution which currently offers a product similar
22 to modified rider RRS, correct?

23 A. Off the top of my head, I'm generally not
24 aware of a product; although, at the same time, it
25 wouldn't be unusual in certain respects such as the

1 term.

2 MR. ALEXANDER: Your Honor, I move to
3 strike everything after the word "although."

4 EXAMINER ADDISON: Mr. Settineri.

5 MR. SETTINERI: Could I have that
6 question and answer reread, your Honor.

7 EXAMINER ADDISON: You may.

8 MR. SETTINERI: Thanks.

9 (Record read.)

10 MR. SETTINERI: Your Honor, the question
11 asked about products similar to modified rider RRS,
12 so his whole answer would be going to clarifying the
13 similar portion of the question, so it wasn't a
14 targeted question to RRS; it was similar. His answer
15 gave that last part -- that last part that
16 Mr. Alexander seeks to strike simply was clarifying
17 his answer going to the question.

18 EXAMINER ADDISON: Thank you.

19 At this time I am going to deny the
20 motion to strike. I'll allow Mr. Ellis to have his
21 one bite of the apple. But, Mr. Ellis, if you could
22 just listen to Mr. Alexander's questions very closely
23 and make sure your response is limited to his
24 question going forward. Thank you.

25 Q. (By Mr. Alexander) Mr. Ellis, you are not

1 aware of any long-term arrangement similar to
2 modified rider RRS being publicly traded on any index
3 or trading floor, correct?

4 A. I'm personally not aware of any, no.

5 Q. And staying on page 7, now focusing on
6 line 14 where you reference a proposal which could
7 hypothetically be made using actual costs instead of
8 proposals similar to modified rider RRS. Do you see
9 that?

10 A. Yes.

11 Q. Now, in this sentence you are referencing
12 a hypothetical possibility, rather than an actual
13 offer which has been made in this proceeding,
14 correct?

15 A. That's correct.

16 Q. And similarly at line 18, page 7,
17 line 18, you reference the possibility of a financial
18 institution offering to provide the transaction at
19 90 percent or lower of the projected costs. Do you
20 see that?

21 A. Yes.

22 Q. Now, you are not aware of any financial
23 institution which has made such an offer in response
24 to the companies' modified rider RRS proposal,
25 correct?

1 A. I'm personally not aware of any, no.

2 Q. So this sentence again is referencing a
3 hypothetical possibility rather than an actual offer.

4 A. It is a possibility, that's correct.

5 Q. Now, please go back up to page 7,
6 line 14, and your independent power producer
7 hypothetical.

8 A. Yes.

9 Q. Now, under that hypothetical, there would
10 be the possibility that actual costs could vary from
11 those projected by the independent power producer,
12 correct?

13 A. I'm sorry. Could you repeat the
14 question?

15 Q. Certainly. Under your hypothetical on
16 page 7, line 14, there could be the possibility that
17 actual costs could vary from those projected by the
18 independent power producer, correct?

19 A. Mr. Alexander, I don't believe I
20 reference a "vary" in the actual costs. I just say
21 we could "use actual costs," if I understand your
22 question correctly.

23 Q. I don't believe you did. In your
24 independent power producer hypothetical, there's the
25 chance that the actual costs incurred by the

1 independent power producer could vary from those
2 projected by the independent power producer at the
3 time it made its offer, correct?

4 MR. SETTINERI: Just object to the extent
5 that he is claiming the hypothetical includes
6 projected costs.

7 EXAMINER ADDISON: Mr. Alexander?

8 MR. ALEXANDER: Your Honor, the
9 hypothetical does include projected costs. A similar
10 construct is a reference to actual costs which has a
11 projected cost at the beginning and actual costs as
12 the rider goes on; by definition that has to include
13 projected costs at inception and actual costs as you
14 progress, so I don't know how it could work any other
15 way.

16 EXAMINER ADDISON: Maybe you could take a
17 step back and kind of work up to that question.

18 MR. ALEXANDER: Certainly.

19 Q. (By Mr. Alexander) Mr. Ellis, do you
20 recall being deposed in this proceeding?

21 A. Yes.

22 Q. And do you recall swearing to tell the
23 truth in that deposition?

24 A. Yes.

25 Q. Could you please turn to page 30 of your

1 deposition, starting at line 1.

2 MR. SETTINERI: Your Honor, before we do
3 that, shouldn't there be a question to the witness
4 before we jump and start using the deposition
5 transcript on cross?

6 MR. ALEXANDER: There was a question. We
7 are going to that question.

8 MR. SETTINERI: I believe I objected and
9 I think it may have been sustained with some guidance
10 from the Bench.

11 EXAMINER ADDISON: Thank you,
12 Mr. Settineri.

13 MR. SETTINERI: So I would expect a new
14 question before we ask him to open his deposition
15 transcript.

16 EXAMINER ADDISON: Go ahead and pose the
17 question again, Mr. Alexander, and if you feel that
18 there's a reason to bring out his deposition, we'll
19 allow it at that time.

20 Q. (By Mr. Alexander) Mr. Ellis, in your
21 hypothetical at page 7, line 14, you assumed that
22 there was the possibility that hypothetical -- in
23 your hypothetical that actual costs could vary from
24 those projected by an independent power producer,
25 correct?

1 A. Yes.

2 Q. (By Mr. Alexander) Could I ask that
3 question and answer be reread, please.

4 EXAMINER ADDISON: You may.

5 (Record read.)

6 Q. Now, under modified rider RRS, the costs
7 are currently known with certainty, correct?

8 A. My understanding of modified RRS is that
9 it will be based on the projected costs which will be
10 fixed.

11 Q. Now again, going back to your
12 hypothetical, there would be the possibility that the
13 units submitted by the independent power producer did
14 not clear in the capacity auction, correct?

15 A. Could you repeat the question,
16 Mr. Alexander?

17 Q. Going back to your hypothetical, page 7,
18 line 14, there would be the possibility that the
19 units submitted by the independent power producer did
20 not clear in the capacity auction, correct?

21 A. Under our hypothetical, we didn't take
22 into account whether or not those units cleared a
23 capacity auction.

24 Q. Well, you do say at page 7, line 15, your
25 hypothetical uses "actual revenues," correct?

1 A. Correct.

2 Q. And actual revenues include capacity
3 revenues, correct?

4 A. If the unit were to receive capacity
5 revenues.

6 Q. Okay. So your -- in your hypothetical,
7 there is the chance that the unit may not clear in
8 the capacity auction and that would then impact
9 actual revenues, correct?

10 A. Correct.

11 Q. And under modified rider RRS, there is no
12 risk of units failing to clear in capacity auctions,
13 correct?

14 A. My understanding of modified rider RRS is
15 that it is simply based upon the projected costs of
16 the unit and not tied to the revenues of the units,
17 so clearing a capacity market would not affect
18 modified -- or rider RRS.

19 MR. ALEXANDER: Nothing further, your
20 Honor.

21 Thank you, Mr. Ellis.

22 EXAMINER ADDISON: Thank you,
23 Mr. Alexander.

24 Mr. McNamee?

25 MR. McNAMEE: No questions, thank you.

1 EXAMINER ADDISON: Thank you.

2 Mr. Settineri, redirect?

3 MR. SETTINERI: May I have a very brief
4 moment?

5 EXAMINER ADDISON: You may. Let's go off
6 the record.

7 (Discussion off the record.)

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

10 Mr. Settineri.

11 MR. SETTINERI: Your Honor, we have no
12 redirect for Mr. Ellis.

13 EXAMINER ADDISON: Thank you.

14 Mr. Ellis, we have no questions. You are
15 excused. Thank you very much.

16 THE WITNESS: Thank you.

17 MR. SETTINERI: Your Honor, at this time
18 we would move into the record Dynegy Exhibit 2, as
19 modified by the Bench's decision on the motion to
20 strike.

21 EXAMINER ADDISON: Thank you,
22 Mr. Settineri.

23 Are there any objections to the admission
24 of Dynegy Exhibit No. 2? Subject to the motions to
25 strike?

1 Hearing none, it will be admitted.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 EXAMINER ADDISON: Let's go off the
4 record for a moment.

5 (Discussion off the record.)

6 EXAMINER ADDISON: All right. Let's go
7 ahead and go back on the record.

8 RESA may call its next witness.

9 MR. SETTINERI: Thank you, your Honor.
10 At this time we would call Brenda Crockett-McNew to
11 the stand.

12 (Witness sworn.)

13 EXAMINER ADDISON: Thank you. You may be
14 seated.

15 THE WITNESS: Thank you.

16 MR. SETTINERI: Thank you. Your Honors,
17 at this time we would like to mark as RESA Exhibit 7,
18 the direct rehearing testimony of Brenda
19 Crockett-McNew.

20 EXAMINER ADDISON: It will be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. SETTINERI: May I approach, your
23 Honor?

24 EXAMINER ADDISON: You may.

25 - - -

1 BRENDA CROCKETT-McNEW

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

4 DIRECT EXAMINATION

5 By Mr. Settineri:

6 Q. Good morning, Ms. Crockett-McNew.

7 A. Good morning.

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

10 A. It's Brenda Crockett-McNew at Champion
11 Energy Services. Address is 1500 Rankin Road,
12 Suite 200, Houston, Texas.

13 Q. And do you have before you what's been
14 marked as RESA Exhibit 7?

15 A. Yes.

16 Q. And can you identify that for the record,
17 please?

18 A. That is my direct rehearing testimony.

19 Q. And was that prepared by you or under
20 your direction?

21 A. Yes, it was.

22 Q. And do you have any changes or
23 corrections to your testimony today?

24 A. I do.

25 Q. And if I may interrupt, if you could

1 carefully read those into the record for the court
2 reporter.

3 A. Yes, I will. On page 3, line 11, after
4 "1986" insert "from 1989 to 1995." And then
5 continuing on in that line if you will delete "Enron"
6 and replace it with "Natural Gas Clearing House
7 (Dynergy)." And after that -- after the word "and" if
8 you would insert "ultimately."

9 Then continuing on to line 12 before the
10 "1997," if you would insert from "1995 to 1997, I
11 took a position with Enron as manager of natural gas
12 trading and then returned to Dynergy in June of" --
13 and then from there would delete "I took a position
14 with Dynergy."

15 EXAMINER ADDISON: Ms. Crockett-McNew,
16 would you just mind reading the sentence as it --

17 THE WITNESS: Yes, I will, to make it
18 easier, certainly.

19 The -- my answer -- the question was
20 training experience prior to Champion.

21 "I started in the energy industry nearly
22 30 years ago, as an accountant with Enron Corp. in
23 1986. From 1989 to 1995, I moved into natural gas
24 marketing with Natural Gas Clearing House (Dynergy)
25 and ultimately became involved in -- ultimately

1 became involved with purchasing and negotiating
2 natural gas pipeline supplies and rates. From 1995
3 to 1997, I took a position with Enron as manager of
4 natural gas trading. And then returned to Dynegy, in
5 June of 1997, managing its natural gas trading and
6 assets in the Rocky Mountain region and then the
7 entire western region."

8 EXAMINER ADDISON: Thank you.

9 THE WITNESS: Certainly.

10 Q. (By Mr. Settineri) Do you have any other
11 corrections to your testimony today?

12 A. I do. On the same page, number -- on
13 page 3, line 19, if we would insert after the word
14 "No" comma "not in person."

15 Q. Any other corrections?

16 A. One last -- one last minor one. On
17 page 5, line 4, if you would insert after the word
18 "at" with the word "their" and then delete thereafter
19 "own." So it would read "would make that selection
20 at their own risk."

21 Q. Any other corrections or revisions to
22 your testimony?

23 A. That is all.

24 Q. If I was to ask you the questions in your
25 testimony today, would your answers, as you have

1 revised, be the same?

2 A. Yes.

3 MR. SETTINERI: Thank you.

4 At this time, your Honor, the witness is
5 available for cross-examination.

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

8 Are there any motions to strike to
9 consider before cross-examination?

10 MS. DUNN: No, your Honor.

11 EXAMINER ADDISON: Thank you.

12 Mr. Hays?

13 MR. HAYS: No questions, your Honor.

14 EXAMINER ADDISON: Mr. Pritchard?

15 MR. PRITCHARD: No questions, your Honor.

16 EXAMINER ADDISON: Ms. Bojko?

17 MS. BOJKO: No questions, your Honor.

18 EXAMINER ADDISON: Mr. Fisk?

19 MR. FISK: No questions.

20 EXAMINER ADDISON: Ms. Willis?

21 MS. WILLIS: No questions.

22 EXAMINER ADDISON: Ms. Glover?

23 MS. GLOVER: No questions.

24 EXAMINER ADDISON: Mr. Boehm?

25 MR. K. BOEHM: No questions.

1 EXAMINER ADDISON: Ms. Dunn?

2 MS. DUNN: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Ms. Dunn:

6 Q. Good morning, Ms. Crockett-McNew.

7 A. Good morning.

8 Q. My name is Carrie Dunn, and I represent
9 the companies in this case. In preparing your
10 written testimony, you relied, in part, on portions
11 of the pieces of testimony filed by RESA witness
12 Stephen Bennett, correct?

13 A. I reviewed his testimony, yes.

14 Q. Other than -- I would like you to turn to
15 Exhibit -- or excuse me, Attachment BCM-1 to your
16 rehearing testimony.

17 A. Yes.

18 Q. Other than the discovery response that is
19 attached to your testimony, you did not review any
20 other responses to discovery that the companies
21 provided in this case, correct?

22 A. This is the only piece that I reviewed of
23 the direct rehearing testimony, yes.

24 Q. And you have also not signed a
25 certificate that would entitle you to confidential or

1 competitively-sensitive information in this case,
2 correct?

3 A. That's correct.

4 Q. And in your experience, your work
5 experience, you have not ever designed rates for an
6 electric or gas utility, correct?

7 A. That's correct.

8 Q. And you also have not developed pricing
9 models for CRES products, correct?

10 A. That's correct.

11 Q. You define a "hedge" as an offset to a
12 price or product that gives you a known outcome,
13 correct?

14 A. Yes.

15 Q. And you are aware of a product that
16 certain CRES providers may provide in Ohio which is a
17 percentage off the price to compare, correct?

18 A. That's correct.

19 Q. And under your definition we just
20 discussed of a "hedge," you do not consider that type
21 of product a hedge because the price to compare
22 fluctuates, correct?

23 A. Yes.

24 Q. However, for a customer, that may be what
25 they deem a hedge, correct?

1 A. I can't speak for every customer.

2 Q. So would the answer to my question be
3 "yes"?

4 A. I can't speak for every customer.

5 Q. If you could -- we are going to go ahead.

6 MS. DUNN: Mike, do you need a copy of
7 her deposition?

8 MR. SETTINERI: Thanks for asking.

9 MR. LANG: May we approach?

10 EXAMINER ADDISON: You may.

11 Q. (By Ms. Dunn) Ms. Crockett-McNew, I have
12 handed you a copy of your deposition from June 30 of
13 2016. Do you have that in front of you?

14 A. Yes.

15 Q. And if you could please turn to page 24
16 of your deposition.

17 A. Yes.

18 Q. Line 4, please.

19 A. Yes.

20 Q. "Question: And certain CRES providers in
21 Ohio may offer as part of their pricing a percentage
22 off price to compare products. Have you heard of
23 that?"

24 MR. SETTINERI: I am sorry to interrupt.
25 I missed that page reference.

1 MS. DUNN: Oh, I'm sorry. Page 24,
2 line 4.

3 MR. SETTINERI: I'm sorry, and if you
4 want to go ahead and repeat your --

5 MS. DUNN: Sure.

6 MR. SETTINERI: -- I don't want to
7 interrupt your --

8 Q. Line 4, "Question: And certain CRES
9 providers in Ohio may offer as part of their pricing
10 a percentage off price to compare products. Have you
11 heard of that?"

12 "Answer: Yes."

13 "Question: And would you consider that
14 type of product a hedge under your definition?"

15 "Answer: So, according to my definition,
16 not necessarily, because that price to compare
17 fluctuates. But for a customer, that may be what
18 they deem as a hedge." Did I read that correctly?

19 A. Yes.

20 Q. Thank you.

21 MR. SETTINERI: Your Honors, I would, at
22 this time, also object as that being improper
23 impeachment to the extent it leaves off the next
24 Question and Answer. The question states "Would it
25 be possible, then, that a customer would --

1 proceed -- strike that. I'll stop there.

2 EXAMINER ADDISON: Thank you. We will
3 let the record just speak for itself. Let's move on
4 from this.

5 Q. And, Ms. Crockett-McNew, you don't know
6 whether a customer would consider the companies'
7 proposal, in the rehearing testimony that
8 Ms. Mikkelsen presented, a hedge, correct?

9 A. That's for the individual customer to
10 decide.

11 Q. And my next question would be because you
12 can't speak for a customer, correct?

13 A. Right.

14 Q. And if you turn to your testimony on
15 page 4, line 17, when you state that the companies'
16 proposal offers no hedge to -- to those customers,
17 that is the view of RESA, correct?

18 A. That's correct.

19 Q. And that's because you do not know what
20 customers may or may not think, correct?

21 A. That's correct.

22 Q. Under the companies' proposal, customers
23 still have the option to shop for CRES, correct?

24 A. That's correct.

25 Q. If you could please turn to page 5,

1 line 8 of your testimony, you reference a "standard
2 service offer," correct?

3 A. Yes.

4 Q. And under the companies' proposals,
5 customers can still choose to stay on the companies'
6 Standard Service Offer, correct?

7 A. Yes.

8 Q. And under the companies' proposal, CRES
9 providers still can provide CRES service to the
10 companies' customers, correct?

11 A. That's correct.

12 Q. And the company's proposal does not
13 prevent CRES providers from providing CRES, correct?

14 A. I'm sorry, can you repeat that question?

15 Q. Sure. The companies' proposal does not
16 prevent CRES providers from providing CRES, correct?

17 A. I'm sorry, I don't understand your
18 definition of "CRES."

19 Q. Oh, competitive retail electric service.

20 A. Okay. So, yes, that's correct.

21 Q. And when I used the term "CRES" in my
22 prior questions, I also meant "competitive retail
23 electric service," okay?

24 A. Okay. Versus supplier, that's -- sorry.

25 Q. And some CRES providers provide customers

1 other products than electric generation, such as
2 time-of-use rates or energy savings communications,
3 correct?

4 A. That's correct.

5 Q. To your knowledge, RESA has not
6 calculated any projections of the costs or credits
7 under the companies' proposal, correct?

8 A. That's correct.

9 Q. If you could turn to page 6 of your
10 testimony --

11 MR. HAYS: Your Honor, may I have that
12 last question and answer reread, please?

13 EXAMINER ADDISON: You may.

14 (Record read.)

15 MR. HAYS: Thank you very much.

16 EXAMINER ADDISON: Please proceed,
17 Ms. Dunn.

18 Q. On page 6 of your testimony, you discuss
19 grid modernization improvements, correct?

20 A. That's correct.

21 Q. And generally charges to customers for
22 grid modernization improvements are not avoidable or
23 nonbypassable, correct?

24 A. That's generally -- yes, correct, yes.

25 Q. And on page 6 of your testimony, line 17,

1 you reference three scenarios from the companies'
2 grid modernization plan, correct?

3 A. That's correct.

4 Q. And you do not know how much the
5 companies estimated each scenario would cost,
6 correct?

7 A. That's correct.

8 Q. And you do not know how the costs and/or
9 credits from the companies' proposal would compare to
10 the costs of the companies' grid modernization
11 business plan, correct?

12 A. That's correct.

13 Q. And on page 7 to 8 of your testimony,
14 question 17, you discuss certain distribution
15 improvement riders that Duke and AEP have, correct?

16 A. Yes.

17 Q. And you are not aware of the companies
18 having a similar rider, correct?

19 A. I'm not -- not exactly like theirs,
20 that's correct.

21 Q. When you were drafting your written
22 testimony, you had not ever heard of the companies'
23 rider DCR, correct?

24 A. That's correct.

25 MS. DUNN: No further questions, your

1 Honor.

2 EXAMINER ADDISON: Thank you, Ms. Dunn.

3 Mr. McNamee?

4 MR. McNAMEE: No questions, thank you.

5 EXAMINER ADDISON: Thank you.

6 Mr. Settineri, redirect?

7 MR. SETTINERI: If I may have a few
8 minutes, your Honor.

9 EXAMINER ADDISON: You may.

10 Let's go off the record.

11 (Discussion off the record.)

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

14 Redirect, Mr. Settineri?

15 MR. SETTINERI: Yes, your Honor.

16 - - -

17 REDIRECT EXAMINATION

18 By Mr. Settineri:

19 Q. Ms. Crockett-McNew, do you recall
20 questions from counsel for the companies regarding
21 comparisons between costs that the -- of the
22 company's proposal versus costs of the grid
23 modernization plan?

24 A. Yes.

25 Q. Have you reviewed the companies' proposed

1 grid modernization plan?

2 A. Yes, I have.

3 Q. Does that plan include cost estimates for
4 the three scenarios?

5 A. To my knowledge, there was no -- they
6 didn't define costs. They only defined the net
7 benefits in that plan.

8 MR. SETTINERI: All right. No further
9 questions. Thank you, your Honor.

10 EXAMINER ADDISON: Thank you,
11 Mr. Settineri.

12 Mr. Pritchard?

13 MR. PRITCHARD: No questions.

14 EXAMINER ADDISON: Ms. Bojko?

15 MS. BOJKO: No questions.

16 EXAMINER ADDISON: Mr. Fisk?

17 MR. FISK: No questions.

18 EXAMINER ADDISON: Ms. Willis?

19 MS. WILLIS: No questions, your Honor.

20 EXAMINER ADDISON: Ms. Glover?

21 MS. GLOVER: No questions.

22 EXAMINER ADDISON: Mr. Boehm?

23 MR. K. BOEHM: No questions, your Honor.

24 EXAMINER ADDISON: Ms. Dunn?

25 MS. DUNN: No questions, your Honor.

1 EXAMINER ADDISON: Mr. McNamee?

2 MR. McNAMEE: Unanimous. No questions.

3 MR. HAYS: And no questions here, your
4 Honor.

5 EXAMINER ADDISON: Thank you, Mr. Hays.

6 I have no other questions. You are
7 excused, Ms.--

8 EXAMINER PRICE: I said I have questions.

9 EXAMINER ADDISON: Oh, I apologize.
10 Examiner Price does have questions.

11 - - -

12 EXAMINATION

13 By Examiner Price:

14 Q. I wanted to follow-up with your issue
15 about SmartGrid. Do you believe that the widespread
16 deployment of SmartGrid in FirstEnergy's service
17 territory would cause more competitive providers to
18 come into the territory?

19 A. I can speak to my experience in Texas and
20 I believe that that would be the case. With the
21 advent of more smart meters and that technology, more
22 products can be developed and offered to customers in
23 Ohio.

24 Texas is a great example of, you know, I
25 personally can have free nights and weekends if I

1 sign up on a particular plan and that's because as a
2 supplier, I know exactly what that customer uses and
3 I can bill them accordingly.

4 In Ohio, we don't have that granular
5 information to be able to do that and offer that
6 product.

7 Q. Would industrial and commercial customers
8 benefit from the deployment of smart meters?

9 A. I think a lot of industrial customers
10 currently have integral meters, but certainly other
11 products could be developed, you could see a lot
12 more -- or potentially see more peak-shaving type
13 products and reduction of load, you know, type of
14 products, encouragement of reduction of load type
15 offerings.

16 Q. Do you believe that widespread deployment
17 of smart meters would promote the use of net metering
18 and behind the meter generation?

19 A. Absolutely. I can -- again, for -- as,
20 you know, as Texas as an example, we have that
21 information for net metering and we can offer unique
22 products for net metering. In Ohio, that's a little
23 more challenging.

24 Q. What kind of unique products do you offer
25 in Texas?

1 A. You can -- you can specialize or
2 customize a price for that net metered product versus
3 when you don't know -- you don't have that granular
4 type of information of, you know, when they submit
5 load back to the grid and/or if you are not settled
6 properly within the ISO, then you have to make some
7 additional assumptions that are not exactly
8 customized to that net metered customer.

9 Q. So do you believe encouraging the
10 deployment of smart meters would be an important
11 policy objective for this Commission?

12 A. I do.

13 EXAMINER PRICE: Thank you.

14 EXAMINER ADDISON: Thank you. I have no
15 additional questions. You are excused.

16 MR. SETTINERI: Your Honor, at this time
17 we would move for the admission of RESA Exhibit 7.

18 EXAMINER ADDISON: Are there any
19 objections to RESA Exhibit 7?

20 MS. DUNN: No objections, your Honor.

21 EXAMINER ADDISON: Hearing none, it will
22 be admitted.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 EXAMINER ADDISON: Let's go off the
25 record for a moment.

1 (Discussion off the record.)

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

4 Ms. Willis, you may call your next
5 witness

6 MS. WILLIS: Yes, thank you, your Honor.
7 OCC/NOAC calls to the stand Mr. James F. Wilson.

8 (Witness sworn.)

9 EXAMINER PRICE: Please state your name
10 and business address for the record.

11 THE WITNESS: James F. Wilson, 4800
12 Hampden Lane, Suite 200, Bethesda, Maryland 20814.

13 EXAMINER PRICE: Please proceed,
14 Ms. Willis.

15 MS. WILLIS: Thank you.

16 - - -

17 JAMES F. WILSON

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

20 DIRECT EXAMINATION

21 By Ms. Willis:

22 Q. Mr. Wilson, for purposes of this
23 proceeding, by whom are you employed and in what
24 capacity?

25 A. I am testifying on behalf of NOAC,

1 Northwest Ohio Aggregation Coalition, and OCC.

2 MS. WILLIS: And at this point, I would
3 like to have marked as OCC/NOAC Exhibit No. 1, the
4 public version of the rehearing direct testimony of
5 James F. Wilson, dated June 22, 2016.

6 EXAMINER PRICE: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MS. WILLIS: And I would also like marked
9 as OCC/NOAC Exhibit 2, the confidential version of
10 the rehearing direct testimony of Mr. Wilson.

11 EXAMINER PRICE: Also be so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. (By Ms. Willis) Mr. Wilson, do you have
14 before you what has now been marked as OCC/NOAC
15 Exhibit No. 1?

16 A. I thought you said, 2C, 2 and 2C?

17 Q. We have got 1 and 2C, I'm sorry.

18 A. Okay.

19 MR. KUTIK: "C" for confidential.

20 A. I have 2C.

21 Q. Do you have Exhibit No. 1?

22 A. I don't have the public version.

23 Q. I'm sorry. Let me give you that.

24 Mr. Wilson, can you identify what has
25 been marked as OCC/NOAC Exhibit No. 1?

1 A. Yes. This is my rehearing direct
2 testimony public version.

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

5 A. Yes, it was.

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

8 A. I have some errata, yes.

9 Q. Could you please go through that errata.

10 A. Okay. Page 22, there's a footnote and it
11 should say "INT-9" instead of "INT-10."

12 Next page, 5, line 9, this is only in the
13 confidential version actually. This change.

14 Q. Okay. Go ahead and do that one if you
15 would.

16 MR. KUTIK: Why don't you just say the
17 difference in the number as opposed to what the
18 number is.

19 A. Okay. That number needs to come 20 cents
20 lower.

21 And page 26, line 19, the exact same
22 change to the same number. There is two numbers, but
23 it's the same one also comes down 20 cents.

24 Page 28, line 3, "runs as a loss" should
25 read "runs at a loss."

1 And then page 35, line 4, should read --
2 "Third Supplemental" should read "Rehearing Direct."

3 And then page 3, line 14. Are the lines
4 numbered different in the confidential version?

5 Q. Yes.

6 A. Okay. I guess it's line 15. And this
7 appears to be in the public version. The "3.9"
8 should be "3.6."

9 And on page 3, line 14, "most scenarios"
10 should read "most likely scenarios." That's all.

11 Q. Now, Mr. Wilson, with respect -- let me
12 ask you with respect to OCC Exhibit No. 2C, was that
13 prepared by you or under your direct supervision and
14 control?

15 A. Yes.

16 Q. And the errata that you indicated would
17 follow -- would flow to that document as well?

18 A. Yes.

19 Q. And if I were to ask you today the
20 questions that are posed in OCC/NOAC Exhibit 1 and
21 2C, would your answers be the same?

22 A. Yes.

23 MS. WILLIS: At this time, your Honor, we
24 would move for the admission of OCC/NOAC Exhibit 1
25 and 2C subject to cross-examination.

1 EXAMINER PRICE: Thank you.

2 Mr. Settineri?

3 MR. KUTIK: Your Honor.

4 EXAMINER PRICE: You want to do your
5 motions to strike now?

6 MR. KUTIK: I think it makes sense before
7 any cross-examination.

8 MR. SETTINERI: Your Honor, Mr. Batikov
9 will be at the desk.

10 MR. KUTIK: As unlikely as the intervenor
11 cross may be, we should do it at this time if the
12 Bench, please.

13 EXAMINER PRICE: We will take your
14 motions to strike now.

15 MR. KUTIK: Your Honor, we, for
16 Mr. Wilson's rehearing testimony, have motions in
17 four groups. The first one, your Honor, and these
18 are all, by the way, similar grounds to what we
19 previously discussed.

20 The first one, your Honor, is directed to
21 line 14 -- excuse me, page 14, the sentence that
22 begins on line 13 and ends on line 15, as long -- as
23 well as the footnote and the exhibit that is
24 referenced in the first note, we would move to strike
25 all of those on the ground of hearsay.

1 As we discussed with Mr. Comings,
2 similarly this is a document that was published by
3 ICF. ICF is not a party in this case. It is an
4 out-of-court declarant and it's offered for the truth
5 and it's classic hearsay and for that reason we would
6 move to strike.

7 EXAMINER PRICE: Let's go on to the next.

8 MR. KUTIK: Okay. The next grounds, your
9 Honor, the next grouping starts on line 3 -- excuse
10 me, page 3, line -- starting at line 6, going all the
11 way to page 5, line 10, that's Question and Answers 5
12 and 6.

13 Next would be page 28, line 19 through
14 21. It is basically the sentence that begins on
15 line 19 and ends on 21. On page 32 --

16 EXAMINER PRICE: I'm sorry, can I have
17 the last one again? I went to the wrong spot.

18 MR. KUTIK: Yes, page 28, the sentence
19 that begins on line 19, "If the plants" and ends on
20 line 21 about the reference to page 48.

21 MR. HAYS: Your Honor, I missed the last
22 one. If you wouldn't mind.

23 MR. KUTIK: For the third time, your
24 Honor, it is line 19, the sentence that begins "If
25 the plants" and ends on line 21 with the reference to

1 page 48.

2 The next, your Honor, would be at
3 page 32, line 7. Line 7, ending with line 19, the
4 Question and Answer No. 36.

5 And the last in this group, your Honor,
6 would be page 33, line 16 to line 21, ending with the
7 word "impact."

8 The basis for this group, your Honor, is
9 that all of the -- these excerpts are specifically
10 points that Mr. Wilson raised in earlier testimony.
11 For that reason, your Honor, as we similarly, as we
12 argued with Mr. Comings's testimony on this grounds,
13 these points have all been covered and don't need to
14 be covered again. It's cumulative.

15 The third group, your Honor, is -- or the
16 third excerpt is on line -- page 30, starting with
17 line 1 and going over to page 32, line 2. This
18 relates to portions of Ms. Mikkelsen's testimony
19 relating to the 3,200 megawatt provision which has
20 been withdrawn and, therefore, this testimony is no
21 longer relevant.

22 And the last group, your Honor, we have a
23 number of these.

24 EXAMINER PRICE: Let's hold on that one
25 and let's take the arguments on the first three

1 groups now as those seem to be pretty concise. And I
2 understand your hearsay arguments, so we'll allow
3 Ms. Willis to respond to the hearsay argument.

4 MS. WILLIS: Yes, your Honor.

5 As your Honor is well aware, we do not
6 necessarily have to adhere to the strict Rules of
7 Evidence in this proceeding, and the Commission has
8 never forced a strict reliance on -- on rules
9 including hearsay.

10 This is -- the ICF forecast is
11 information that Mr. Wilson is well aware of and is
12 familiar with and can respond to questions on. So he
13 may be able to answer questions on it. These are
14 expert reports. They are reports that are available
15 to the public, widely available. And the --
16 Mr. Wilson's testimony and analysis on that would be
17 helpful to this Commission.

18 Ironically enough, in the first phase of
19 this proceeding, Mr. Wilson was cross-examined by
20 Mr. Kutik on ICF information and reports, and I
21 objected on the basis that it was hearsay and it was
22 out-of-court statements and shouldn't be used against
23 Mr. Wilson and that was overruled. So I believe
24 what's fair is fair.

25 If Mr. Kutik could introduce ICF reports

1 in the first part of this proceeding and use them
2 with Mr. Wilson, then we, in turn, could use ICF
3 reports and have Mr. Wilson present those as part of
4 his information that he relied on in supporting his
5 testimony and in presenting his testimony to the
6 Commission.

7 EXAMINER PRICE: Do you have a transcript
8 reference on that?

9 MS. WILLIS: I can get that for you.

10 EXAMINER PRICE: Do you remember which --
11 I think he has given several sets of testimony. Do
12 you remember with respect to which set of testimony
13 we were talking about?

14 MS. WILLIS: Your Honor, I don't know. I
15 can, though, track that down. I have somewhere here
16 the transcripts and the excerpts. My piles are
17 getting a little unmanageable, but I did look that up
18 prior to Mr. Wilson coming on because it was
19 something I recalled that there were a number of
20 documents thrown at Mr. Wilson because he is an
21 expert and that, you know, are you aware of these,
22 are you familiar with these, and they all came in.

23 So I think, and in particular there was a
24 reference to the ICF analysis. And Mr. Kutik, in
25 fact, in his cross, said that ICF was an expert and,

1 gee, wasn't ICF a well-known expert in the field. So
2 I think -- I will get those -- those to you.

3 EXAMINER PRICE: Can you cite to any case
4 where the Supreme Court of Ohio or the Commission has
5 held that a contractor to a party is the same as that
6 party for purposes of the hearsay rule?

7 MS. WILLIS: I'm not sure I understand
8 your question, your Honor.

9 EXAMINER PRICE: Well, Mr. Kutik has made
10 the point that ICF is not a party to this proceeding
11 and that the -- and, therefore, ICF statements can be
12 brought in as an admission of a party opponent. I am
13 simply asking you if you can cite to a case which
14 would undermine Mr. Kutik's point.

15 MS. WILLIS: Not -- not offhand, your
16 Honor, no. But it is -- it is information that an
17 expert is relying upon, and under Rule 702 an expert
18 is permitted to provide testimony on facts known and
19 data that he has relied upon in making his opinion.
20 And so, I believe under 702, it would allow -- it
21 would be an exception and would allow Mr. Wilson to
22 testify on the ICF reports.

23 Moving along to the materials that were
24 considered cumulative

25 MR. KUTIK: Excuse me, your Honor. May I

1 respond to that or do you want me to wait?

2 EXAMINER PRICE: Come back and respond to
3 all three.

4 MR. KUTIK: Sorry.

5 MS. WILLIS: Moving to the information
6 that was cumulative. Your Honor, in the first phase
7 of this proceeding, we had -- this very same issue
8 arose and I have got the transcript site to this one.

9 XXXVIII, with respect to Mr. Wilson's
10 prior testimony Mr. Kutik made a motion to strike.
11 It was XXXVIII, 8110, and it was on -- it was the
12 objection was a restatement of Mr. Wilson's prior
13 testimony and that it was wholly cumulative and
14 repetitive and not part of the -- properly part of
15 the discussions in this case.

16 Your Honor, my argument was that it
17 provides context and background for the testimony.
18 Your Honors ruling at 8111 was that we will deny the
19 motion to strike. It's probably cumulative, but it's
20 also harmless and it does help set the stage for
21 following the remainder of his testimony.

22 So consistent with that ruling, I would
23 believe that it is proper to allow that to remain in.
24 It is contextual, it does provide background, and it
25 is harmless.

1 EXAMINER PRICE: Does the fact that we
2 are now in an evidentiary hearing on rehearing and
3 the -- as I believe somebody pointed out, you can't
4 give testimony by law, I believe it was
5 Mr. Michael's, as a matter of fact, your colleague,
6 you can't give testimony by law, according to the
7 rehearing statute, that you have given -- that you
8 could have reasonably given before.

9 So does the fact now we are simply
10 repeating on rehearing his direct testimony, which
11 not only could he have given before, but he did give
12 before, make a difference?

13 MS. WILLIS: No. I don't think -- I
14 think your Honor's interpretation of that statute is
15 not something I would agree with.

16 EXAMINER PRICE: I was giving -- I was
17 giving Mr. Michael's interpretation of the statute,
18 not mine.

19 MS. WILLIS: Well, you were relying upon
20 how you interpret 4903.10 and what evidence can
21 and -- can come in and not come in. We disagree with
22 you fundamentally about the fact that this proposal
23 is at this stage allowed in the rehearing, so I think
24 there is a fundamental disagreement.

25 EXAMINER PRICE: I think you disagree

1 with the Commission, not with me.

2 MS. WILLIS: Yes, that would be correct,
3 your Honor, we do have that fundamental disagreement.

4 EXAMINER PRICE: Okay.

5 MS. WILLIS: In response to the Mikkelsen
6 withdrawn testimony, you know, your Honors, I would
7 still say that although I can see some merit to that
8 motion, the fact that she withdrew that provision
9 still does not mean that this transaction is not
10 connected to the 3,200 megawatts.

11 We all know that the proxy costs or the
12 costs that are -- that are to be charged to customers
13 come from somewhere and that somewhere is those 3,200
14 megawatts. So to strike Mr. Wilson's testimony on
15 the basis that the 3,200 that Ms. Mikkelsen's
16 withdrawn testimony has fundamentally changed the
17 reliance on that 3,200 megawatts is, at best, a
18 mistake or a very strange way of looking at the
19 record.

20 EXAMINER PRICE: I think the arguments
21 you are making here is precisely the muddying of the
22 record that I raised with Mr. Settineri and that's --
23 they have withdrawn that portion of their proposal
24 and now you are trying to bootstrap that withdrawal
25 into your other arguments that you want to make with

1 respect to modified rider RRS.

2 But that being said, let's let Mr. Kutik
3 respond to these three points and then we will go
4 from there.

5 MR. KUTIK: Your Honor, I've looked
6 through the notes of my prior cross-examinations and
7 I'm sorry that I don't know what Ms. Willis is
8 referring to with respect to prior ICF documents. I
9 take her at her word, but I'm sure if I had the
10 context I could respond slightly -- in a better way.

11 In any event, what we are talking about
12 here is classic hearsay. She hasn't rebutted the
13 fact that it's classic hearsay, and the Bench
14 obviously understands the position we are in, having
15 to deal with that document.

16 As a legal matter, the test that
17 Ms. Willis discusses about expert testimony being
18 reasonably relied upon in the field, that's under the
19 Federal Rule. Under the Ohio law, we have to have
20 independently admissible, and this is not
21 independently admissible. Therefore, just the fact
22 he relies upon it is not enough.

23 With respect to cumulative nature, your
24 Honor, I think your questions to Ms. Willis hit it
25 right on the head in terms of we are now in a much

1 different procedural posture than we were before. We
2 are limited to what we are to talk about; the
3 Commission has limited what we are supposed to talk
4 about.

5 And under, as you noted, OCC's very
6 framing of the issues in terms of what we are allowed
7 to talk about, that is, we are not allowed to talk
8 about things we could have talked about earlier since
9 they did this is clearly cumulative.

10 And frankly, your Honor, I am not sure I
11 really understand the basis for opposing
12 commentary -- posing striking commentary on the
13 wisdom of a withdrawn provision of the -- of our
14 proposal. Given that's what this testimony is
15 directed at, a withdrawn proposal, it makes no sense
16 for us to have cross-examination or any discussion of
17 it at this point in the record.

18 EXAMINER PRICE: Thank you.

19 At this point, the third group, the
20 withdrawn -- discussion with respect to the withdrawn
21 proposal will be stricken.

22 MS. WILLIS: I'm sorry, just to be clear
23 that would be page 32, line 7 through 19?

24 MR. KUTIK: No. Page 30, line 1, through
25 page 32, line 2.

1 MS. WILLIS: Thank you.

2 EXAMINER PRICE: And at this point, the
3 second group, the motion to strike will also be
4 granted. I do believe we are in a different spot in
5 the hearing, and as Ms. Willis pointed out in quoting
6 the examiner, even at the time we acknowledged it was
7 probably cumulative. So, at this time, we are
8 acknowledging it's cumulative and we will strike the
9 testimony.

10 MS. BOJKO: Your Honors, do you mind
11 going through those?

12 EXAMINER PRICE: No, not at all. The
13 second group.

14 MR. KUTIK: Did you tell me to go through
15 them, your Honor?

16 EXAMINER PRICE: Let me try. Why don't
17 you go through them. Your notes are probably more
18 organized than my quickly scribbled things.

19 MR. KUTIK: Page 3, line 6 to page 5,
20 line 10. Page 28, line 19, sentence begins "If the
21 plants" to line 21, the reference to page 48.

22 MS. WILLIS: I'm sorry. I missed that.
23 Can you repeat that?

24 MR. KUTIK: It must be something about
25 this provision or my inflection of saying these

1 words, but it is page 28, line 19.

2 MS. WILLIS: Hang on. Can you hang on
3 for a second?

4 MR. KUTIK: I certainly can. I
5 apologize.

6 MS. WILLIS: Go ahead.

7 MR. KUTIK: Line 19.

8 MS. WILLIS: Yes.

9 MR. KUTIK: The sentence that begins "If
10 the plants" going to line 21, and that's the same
11 sentence ending with the reference to page 48. May I
12 continue?

13 MS. WILLIS: I'm not sure, what are we
14 talking about here? Is this --

15 MR. KUTIK: I'm repeating what's been
16 stricken, can you tell?

17 MS. WILLIS: This is the second
18 cumulative?

19 EXAMINER PRICE: Yes. It's the second
20 part of the cumulative.

21 MS. WILLIS: Okay. Thank you.

22 MR. KUTIK: Page 32, line 7 to 19,
23 Question and Answer 36 in its entirety. And lastly,
24 page 33, line 16, beginning with the words "In my
25 direct testimony" ending on line 21 with the words

1 "cost impact."

2 MS. WILLIS: Thank you.

3 EXAMINER PRICE: Okay. With respect to
4 the hearsay, have you been able to locate that
5 reference?

6 MS. WILLIS: Your Honor, I have been told
7 this is -- I have not double-checked, so I will give
8 you the reference and then I will double-check. I
9 would hope that perhaps we could defer ruling on the
10 motion until you give me some time, over lunch, to
11 pull my notes together, but the transcript cite I
12 have at this point is XXII, transcript Volume XXII,
13 page 4491. But I would like to confirm and look at
14 that over lunch because I'm not sure that was the
15 reference I was thinking of.

16 EXAMINER PRICE: Mr. Kutik, your fourth
17 batch.

18 MR. KUTIK: Yes, your Honor. That begins
19 at page 9, line 14, going to page 10, line 7. It's
20 the Question and Answer No. 11 in its entirety.

21 Next, page 12, line 1, through to
22 page 17, line 4.

23 MS. WILLIS: That's 12 through 17 pages,
24 that what you were saying?

25 MR. KUTIK: Yes. So we are starting at

1 line 1 on page 12, going over to line 17 and ending
2 on line 4 of page 17.

3 MS. WILLIS: Thank you.

4 MR. KUTIK: And this would include the
5 Questions and Answers 15 through 19 in their entirety
6 and the Exhibits JFW-1 and JFW-2.

7 Next page 21, lines 7 through 21,
8 including JFW-3, Exhibit JFW-3.

9 MR. HAYS: Mr. Kutik, I hate to ask. Can
10 you do that once more?

11 MR. KUTIK: Certainly.

12 MR. HAYS: Thank you.

13 MR. KUTIK: Page 21, line 7 through
14 line 21. The Question and Answer No. 23 in its
15 entirety as well as Exhibit JFW-3.

16 Next page 22, lines 8 through 17,
17 Question and Answer No. 25, as well as Exhibit JFW-4
18 in its entirety.

19 And lastly, page 28, line 1, beginning
20 with the words "if future prices" and continuing
21 through that sentence on line 4, ending with the
22 words customer -- "to customers."

23 Your Honor, similarly to Mr. Comings,
24 this portion of Mr. Wilson's testimony does not
25 present a comparison of the effect on customers of

1 rider RRS as approved versus rider RRS as proposed.

2 All this information does is it updates
3 information using the exact same calculations that
4 Mr. Wilson used in his prior testimony except
5 updating information for information earlier in June.

6 That information is an attempt to attack
7 the wisdom of rider RRS. It is not an attempt to
8 deal with the specific effects of the change that is
9 proposed by the company and, therefore, it is beyond
10 the scope of this hearing. It should be stricken.

11 EXAMINER PRICE: Ms. Willis.

12 MS. WILLIS: Thank you, your Honor.

13 First of all, I think that there's very
14 limited similarity to the motion to strike
15 Mr. Comings's testimony. When we look at some of the
16 provisions that Mr. Kutik wishes to strike, it's very
17 clear that Mr. Wilson is addressing the change -- the
18 difference or the changes between modified rider RRS
19 and how that the -- what is put into modified rider
20 RRS has tie-ins to what was approved under the
21 original rider RRS.

22 In terms of the -- before the Commission
23 originally, rider RRS relied upon projections and
24 those projections and energy costs were to
25 determine -- they were used for a specific purpose

1 and that purpose was to determine the net benefits to
2 customers under the proposal and those -- those
3 numbers and figures were used as part of the ESP
4 versus MRO calculation and that net benefit was
5 determined by the Commission to justify that original
6 proposal and to find that with that proposal the
7 ESP IV passed the MRO versus ESP test.

8 But now in this phase of the proceeding
9 the projections are being used for a wholly different
10 purpose. That purpose now is to use those
11 projections to set rates, not to just evaluate the
12 benefits, but we are now talking about using
13 projections to set rates. Use of projections to set
14 rates has not been litigated in this proceeding.

15 The PUCO must now determine whether it's
16 appropriate as a value -- in evaluating part of the
17 company's proposal to set rates based on projected
18 costs while allowing other elements of the proposal,
19 the revenues, to adjust based on actual prices.

20 In determining whether it's reasonable at
21 this stage in the proceeding to set rates based on
22 projections, we should be entitled to challenge the
23 projections that the rates are being set on, and that
24 would include challenging the 2014 projections as an
25 unreasonable basis, not to determine the net -- the

1 benefit to customers, but as an unreasonable basis to
2 set rates. That issue has never been before this
3 Commission, it is now, and we should be afforded that
4 opportunity.

5 The projections that were used to
6 determine net benefits in the first part of this
7 proceeding are -- become very important, especially
8 now when they are being used to set rates. And
9 specifically if we want to see what the problem is,
10 we could go to Mr. Wilson's testimony, part of the
11 testimony that is moved to be stricken.

12 We go to page 21, Mr. Wilson testifies
13 that the use of projected rates to set rates is
14 problematic under the modified RRS proposal because
15 it -- when you use those projected rates and you try
16 to mesh them with actual energy revenues, there lies
17 a problem; and that is a criticism of the modified
18 rider RRS.

19 EXAMINER PRICE: Can I seek a
20 clarification? You referenced page 20 or 21?

21 MS. WILLIS: 21, your Honor.

22 EXAMINER PRICE: Okay. Thank you.

23 MS. WILLIS: Specifically, if you look at
24 the question, "You have identified problems with
25 modified rider RRS...." It's not rider RRS as

1 approved by the Commission, but modified rider RRS,
2 that would result from using future market prices
3 that are different from the prices that were assumed
4 in the 2014 rider RRS estimate. And Mr. Wilson goes
5 on to explain how that causes a problem.

6 Now, does it attack the 2014 projections?
7 It does, but it attacks them on the basis of now we
8 are using those projections for a wholly different
9 purpose and that purpose is to set rates; to use
10 those projections as proxy costs. The Commission has
11 not addressed this.

12 EXAMINER PRICE: How is the revenue side
13 different, under modified rider RRS, than the revenue
14 side under rider RRS?

15 MS. WILLIS: I think, your Honor, that
16 would be a question for the witness to answer.

17 EXAMINER PRICE: I am asking you. Come
18 back to you. That was part of your argument you said
19 was about setting rates. Why is the rate impact on
20 the revenue portion part of the calculation any
21 different today than it was before? I get that the
22 cost side is different, so I get that. But we're not
23 talking -- he is not talking about the cost side.

24 MS. WILLIS: Well, your Honor, there is a
25 relationship between -- when the revenue side was

1 developed, the revenue side is -- it has -- and it's
2 not the simplest thing to understand but the -- the
3 revenue side is related to the generation output and
4 the generation output is assumed as part of this
5 whole process.

6 And because you had assumed generation
7 output associated with those projected costs and you
8 mesh them up with actual revenues, there's a mismatch
9 and it does not fundamentally mesh. Mr. Wilson
10 addresses this in his testimony, I believe, just at
11 that point of his testimony I was referring to.

12 I'm somewhat inarticulate on -- with
13 respect to this, but I am trying to explain how there
14 is a mismatch when you use the -- when you hold
15 projections of cost constant and use those as a basis
16 to set rates and you mesh them up with revenues that
17 are actual, that there is a problem and the problem
18 relates to the assumptions that went into the
19 projections and went into the costs coming out of
20 those projections.

21 MR. SOULES: Your Honor, may I be heard
22 for just a moment?

23 EXAMINER PRICE: Ms. Bojko actually asked
24 first.

25 MS. BOJKO: I think we are talking about

1 the same issue. The reason that the revenue side
2 changes is because the revenue, it's projected output
3 and projected capacity that's projected to be
4 cleared. So when you take the projected output of
5 the plants and the projected capacity, then you
6 multiply it by actual market prices. But the
7 projections still changes the revenue side; that's
8 different than rider RRS.

9 EXAMINER PRICE: I think those are all
10 very legitimate criticisms of his previous testimony
11 when he accepted the projected costs and didn't
12 change the revenues, but that's not what the
13 companies' proposing today.

14 MS. BOJKO: But --

15 EXAMINER PRICE: No. Don't interrupt.
16 What the company is proposing, rightly or
17 wrongly, but it's their proposal, is that those cost
18 figures are in place.

19 Now, you are free to argue on brief that
20 those cost figures should be different, but what they
21 have simply said is this is the base -- the costs are
22 a baseline and the Commission should use that
23 baseline to apply these. That's what their actual
24 proposal is.

25 If intervenors would like to do a

1 different alternative, which is your -- which is your
2 option under the Commission's rules of the scope of
3 the hearing, of using a different way to calculate
4 costs, you are free to do so. But that's not what
5 the companies' proposed and that's not what he is
6 testifying to today.

7 MS. WILLIS: Your Honor, I disagree, and
8 maybe we are talking apples and oranges, but the
9 company is -- the company's relying upon the
10 benefits, the net benefit that was calculated in the
11 last proceeding. They are saying that net benefit
12 applies to their new proposal. So to say that we
13 have no right to challenge today, as we sit here,
14 that net benefit under a new proposal is -- it's
15 unreasonable.

16 We are challenging the determination of
17 net benefits. That goes into the MRO versus ESP. We
18 are saying that those net benefits that were
19 associated with that proposal, which the company is
20 still relying on today are unreasonable.

21 And why are they unreasonable? They are
22 unreasonable in light of what has -- what has
23 occurred. What -- they are unreasonable in light of
24 the forecast being updated.

25 They are unreasonable because

1 Mr. Wilson -- in fact, when you -- when you determine
2 the net benefit, you used Mr. Wilson's reference case
3 scenario, the EIA reference case scenario. That
4 reference case scenario has now been updated; it's
5 much different.

6 So that number that they are relying upon
7 for purposes of their modified proposal is
8 unreasonable at this point. It doesn't -- it's not
9 borne out by the record. The record today shows that
10 that -- that those projections and what was
11 considered reasonable is no longer reasonable given
12 today and given the updated forecast.

13 EXAMINER PRICE: We will hear Mr. Soules.

14 MR. SOULES: Thank you, your Honor.

15 I think one important point that we
16 should keep in mind is that the calculation -- the
17 revenue side of the calculation is actually
18 substantively different as well.

19 Under the original rider RRS proposal,
20 both the projection and the actual revenues will be
21 based upon nodal pricing for the Sammis and
22 Davis-Besse. By contrast, the calculation of the
23 modified rider, as explained in Ms. Mikkelsen's
24 rehearing testimony, is based on AEP Dayton Hub
25 prices, and that relates both to the forecast that

1 will be done quarterly as well as the true-up. So
2 that is a -- it is not merely the cost side that has
3 changed here; it's both the cost and revenue side of
4 the calculation.

5 EXAMINER PRICE: Mr. Kutik.

6 MS. BOJKO: Your Honor --

7 EXAMINER PRICE: I'm moving on to
8 Mr. Kutik. You all had -- I heard you all. I am
9 moving on to Mr. Kutik.

10 MR. KUTIK: Thank you, your Honor.

11 Ms. Willis says that Mr. Wilson, in his
12 testimony, addresses the changes. And that is true,
13 he does address the changes, but not in the testimony
14 that we are moving to strike.

15 The testimony that we are moving to
16 strike has to do specifically with the calculations
17 that he's made, the updated calculations that he's
18 made with respect to the ultimate cost or credit of
19 rider RRS.

20 It has nothing to do with the change in
21 the revenue calculations discussed by Mr. Soules. In
22 fact, Mr. Wilson's testimony is that it is just
23 exactly the same, except updating the natural gas
24 price forecasts for two of his scenarios. That's it.

25 Ms. Willis gives the game away with her

1 last argument. You know, she tries to say this is
2 all about setting rates and how we are going to set
3 rates and that type of thing. Well, certainly,
4 that's certainly part of something the Commission
5 needs to discuss; but again, that's not the
6 testimony.

7 The testimony here is about updates. And
8 Ms. Willis gives an impassioned plea that, oh, we
9 should be allowed to update. We've had that argument
10 already. You've ruled and you should rule again the
11 same way.

12 EXAMINER PRICE: At this time we are
13 going to grant the motion to strike in part and deny
14 in part.

15 It will be granted with respect to all
16 questions except page 15, line 1 through line 9,
17 where I do believe it is appropriate and fair to
18 update a new capacity actual price. We are not
19 revisiting new forecasts, but this is an actual
20 capacity price, and I believe it's fair for him to go
21 ahead and make that testimony.

22 Ms. Willis, do you have a proffer?

23 MR. KUTIK: And the motion is granted
24 otherwise?

25 EXAMINER PRICE: The motion is otherwise

1 granted.

2 MS. WILLIS: I do have a proffer. I
3 would take exception. I think the, you know, if you
4 look at the specific motions to strike. For
5 instance, on page 9, "Have you estimated the cost to
6 customers based on the modified rider RRS proposal?"

7 EXAMINER PRICE: You are just revisiting
8 the argument, Ms. Willis. I am not -- we are moving
9 forward. You've got your option to proffer.

10 MS. WILLIS: I would definitely proffer.

11 EXAMINER PRICE: And you can raise it on
12 interlocutory appeal or just raise it on brief.

13 MS. WILLIS: Just so the record reflects,
14 I strongly disagree with the ruling.

15 MR. KUTIK: Your Honor, may we go off the
16 record at this point?

17 MS. BOJKO: Well, no. Your Honor, on
18 this topic, I would like to be heard if that's
19 possible.

20 EXAMINER PRICE: No.

21 MS. BOJKO: I am sorry?

22 EXAMINER PRICE: No. We're moving on.

23 Mr. Kutik?

24 MR. KUTIK: I would suggest, your Honor,
25 that this might be a good time for a break so I can

1 see what's left. I will have cross of this witness,
2 I expect it will probably be in the half-hour range,
3 but I would like to be able to organize my cross.

4 EXAMINER PRICE: We also have the issue
5 of the hearsay, Ms. Willis, where we are going -- on
6 the break, we will look up the transcript reference
7 she gave us and see if that's it. If there is
8 another one, we will go from there.

9 MR. KUTIK: Your Honor, I am advised, if
10 you want to go look at the cite, the cite she -- she
11 pointed you to, the document was stricken as hearsay.

12 EXAMINER PRICE: Well, she didn't think
13 it was the right cite either.

14 MS. WILLIS: Yeah, I am not certain that
15 was the right cite. I would appreciate the time over
16 lunch. Thank you.

17 EXAMINER PRICE: Uh-huh. At this time we
18 will break for lunch. We will come back at 1:20.

19 (Thereupon, at 12:19 p.m., a lunch recess
20 was taken.)

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1 Thursday Afternoon Session,
2 July 14, 2016.

3 - - -

4 EXAMINER PRICE: Ms. Grady, you want to
5 supplement your argument regarding hearsay?

6 MS. WILLIS: Yeah, I would appreciate
7 that opportunity, your Honor.

8 We believe that the information related
9 to the ICF updated projections fall within the
10 hearsay exception rule under 803.17 which allows
11 market quotations and publications generally relied
12 upon by the public or persons in a particular
13 occupation as an exception to hearsay.

14 We would note that the record in this
15 proceeding, actually the earlier parts of this
16 proceeding established that ICF is a -- is known for
17 its forecasting in the energy area and that ICF is
18 the main consultant to the USEPA on analyzing the
19 impact of environmental regulations on the power
20 industry; and, in fact, it's the main consultant to
21 the U.S. Environmental Protection Agency as
22 established by transcript -- the transcript, XXII,
23 excerpts on page 4533 and 4534.

24 In fact, the PUCO itself, in the Opinion
25 and Order in this case, described ICF as a leader in

1 the field and noted that EIA uses ICF projections, so
2 I would believe that this would fit within the
3 exception to hearsay under 803.17.

4 Secondly, your Honor, this morning I
5 spoke with respect to transcript cites dealing with
6 ICF. I want to put that in the proper context now
7 that I have had more time to review that. The
8 transcript cite that I want to direct your attention
9 to is transcript XXII at page 4489 through 4492.

10 And although the -- the testimony or that
11 piece of information was struck, it was struck
12 because it was hearsay within hearsay, and that
13 colloquy that occurred between the Bench and Counsel,
14 I thought, was instructive in that the -- the
15 background is that Mr. Kutik was objecting to an
16 INGAA Foundation -- or, a forecast that was prepared
17 by ICF for the INGAA Foundation, and Mr. Kutik --
18 Mr. Wilson relied upon that.

19 And Mr. Kutik objected. And the
20 conversation was that the -- that had it been just an
21 ICF forecast, there would not have been an issue, but
22 the fact that INGAA relied upon that forecast, that
23 was the reason for ruling, that that should be
24 stricken and it should not be part of the record.

25 And, in fact, the Bench noted that

1 because Mr. -- or because the company had utilized an
2 ICF witness and it could call that ICF witness on
3 rebuttal to rebut any ICF -- any questions --

4 EXAMINER PRICE: Wasn't that a question
5 from the Bench?

6 MS. WILLIS: I am sorry?

7 EXAMINER PRICE: Was that a question from
8 the Bench or was it a declarative statement?

9 MS. WILLIS: I believe it was questioning
10 by the Bench.

11 EXAMINER PRICE: If I ask questions, it's
12 because I'm pursuing an issue, not necessarily
13 because I am making an affirmative statement.

14 MS. WILLIS: I thought your Honor was
15 making a distinction saying had it been a report by
16 ICF, given the fact that ICF was a -- Mr. Rose was
17 from ICF and presented a -- presented testimony, and
18 I would make the argument that in this case, ICF
19 certainly could be called by the company as a
20 surrebuttal witness and could respond to any
21 questions on that ICF forecast, but certainly that
22 gives them the opportunity to cross-examine and to be
23 able to address any issues related to the ICF study.

24 EXAMINER PRICE: Thank you.

25 Mr. Kutik, response?

1 MR. KUTIK: Yes, your Honor.

2 The document that they want to have in
3 does not qualify under the exception of 803.17.
4 803.17 is with respect to market reports and
5 compilation, things like what's -- what was the spot
6 price for natural gas on March 4, 2016? That type of
7 information is information you can get and compile
8 and you can rely upon. That's the type of
9 information that is assumed under 803.17.

10 The companies, and perhaps even the
11 Bench, are second to none in their admiration of ICF
12 and their belief in ICF that it is a leader in
13 forecasting. That doesn't mean that ICF -- that
14 every ICF document falls under 803.17, except if it
15 is, in fact, a market compilation as opposed to a
16 projection, whose assumptions and other things are
17 unclear on the record and unknowable unless we have
18 someone from ICF here. Someone from ICF isn't here.
19 And nothing that Ms. Willis said means that this
20 stuff isn't hearsay. It's hearsay.

21 And I should also note, your Honor, two
22 other things. First, that the transcript that we're
23 talking about, to be clear, wasn't a document that I
24 was showing the witness. It was a document that OCC
25 and NOPEC were seeking to offer through Mr. Wilson.

1 The objection that we had to the document was
2 sustained and should be sustained here. That's
3 first.

4 Second and finally, given your prior
5 rulings, the information with respect to hearsay has
6 been stricken so this issue is moot.

7 EXAMINER PRICE: Although I agree it is
8 potentially moot, you did make the motion, so I feel
9 like I owe you a ruling and we will grant the motion
10 to strike on the grounds that it's hearsay.

11 Ms. Willis, you had a second question?

12 MS. WILLIS: Yes, your Honor. Just to
13 make things clear, I want to make sure that I
14 understand the material that was stricken. I have
15 included in that material that I believe was
16 stricken, testimony on page 9, carrying over to
17 page 10, starting with Question 14 which asks "Have
18 you estimated the cost to customers based on the
19 modified RRS proposal?"

20 And so my question is, is the Bench
21 really intending to exclude from the record the cost
22 to customers of the company's proposal?

23 And I guess the other portion of that
24 cost to customer's proposal begins on page 12 through
25 13, "What is the cost to customers of modified rider

1 RRS based on your analysis?"

2 And if that is truly the case that the
3 Commission -- that the Attorney Examiners are ruling
4 that the cost to customers of the modified rider RRS
5 proposal is stricken, I would ask for reconsideration
6 of that ruling in that it would seem perfectly
7 reasonable, logical, and compelling to have cost
8 information related to what this is going to cost
9 customers under the companies' modified proposal.

10 EXAMINER PRICE: Mr. Kutik.

11 That wasn't exactly a clarification, was
12 it?

13 MR. KUTIK: No, it wasn't, your Honor.

14 EXAMINER PRICE: I believe they simply
15 asked us to relitigate this issue.

16 MR. KUTIK: Yes, it does. And further, I
17 think it's a mischaracterization of your ruling. I
18 think the basis of our motion, your Honor, was that
19 these questions are updates of the projections that
20 Ms. Willis made about the effect of rider RRS.

21 The modifications of rider RRS have
22 nothing to do with the projected costs. Therefore,
23 it's outside the scope of the hearing and is
24 appropriately stricken.

25 MS. WILLIS: Your Honor, if I might?

1 EXAMINER PRICE: No. We need to move on.
2 We have got a lot of witnesses yet to go today.

3 We've thoroughly heard this. You asked
4 for a clarification and it turned out to be more
5 issues you want to raise; but, notwithstanding that,
6 yes, it was our intent to strike those particular
7 provisions. Nothing in the company's proposal
8 changed the revenue side. It is simply an effort to
9 update his projections once again. And we are not
10 going to spend our limited hearing time, and it
11 wasn't within the scope of this hearing, to
12 relitigate all of the projections which the
13 Commission thoroughly addressed in its Opinion and
14 Order in this proceeding.

15 With that, Mr. Pritchard.

16 MR. PRITCHARD: I have no questions, your
17 Honor.

18 EXAMINER PRICE: Mr. Olikier?

19 MR. OLIKER: No questions, your Honor.

20 EXAMINER PRICE: Ms. Bojko?

21 MS. BOJKO: No. Thank you.

22 EXAMINER PRICE: Mr. Soules?

23 MR. SOULES: No questions, your Honor.

24 EXAMINER PRICE: Mr. "Bantikov"?

25 MR. BATIKOV: Batikov.

1 EXAMINER PRICE: Batikov.

2 MR. BATIKOV: No questions, your Honor.

3 EXAMINER PRICE: Mr. Hays.

4 MR. HAYS: No questions.

5 EXAMINER PRICE: You don't get a chance.

6 Mr. Whitt?

7 MR. WHITT: No questions.

8 EXAMINER PRICE: Mr. Boehm?

9 MR. K. BOEHM: No questions.

10 EXAMINER PRICE: Mr. Kurtz -- Mr. Kutik?
11 I'm struggling through.

12 MR. KUTIK: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Kutik:

16 Q. Good afternoon. Mr. Wilson, you believe
17 that the proposed calculation of rider RRS, as
18 proposed, would produce assumed periods of
19 inefficient dispatch, correct?

20 A. The calculation, of course, doesn't have
21 any impact on dispatch. But within the calculation
22 there would be calculations that could only be
23 interpreted as inefficient dispatch because they
24 would use generation quantities from the 2014
25 simulation that are based on the prices that were

1 used in that simulation and they would multiply them
2 by future prices that might be very, very different
3 and under which those generation quantities wouldn't
4 have happened.

5 So, in that regard, my answer is yes,
6 that, within the calculations, it would correspond to
7 something that could only be interpreted as
8 inefficient dispatch.

9 Q. And when we're talking about periods of
10 assumed inefficient dispatch, I think you said where
11 costs would be greater than revenues, correct?

12 A. It could be -- it could be either
13 direction.

14 Q. Okay. Now, would it be fair to say that
15 nuclear units do not typically follow dispatch?

16 A. That's correct.

17 Q. Because they run 100 percent of the time
18 when they are available?

19 A. That's usually right.

20 Q. And you are aware, are you not, that
21 there are a number of Sammis units?

22 A. Yes.

23 Q. You are aware that there are seven Sammis
24 units?

25 A. I believe that's correct.

1 Q. And you are aware that each of the Sammis
2 units aren't the same?

3 A. That's correct.

4 Q. Two of the Sammis units, particularly
5 Sammis 6 and 7, are sometimes referred to as
6 "supercritical units."

7 MS. WILLIS: Objection, your Honor.

8 EXAMINER PRICE: Grounds?

9 MS. WILLIS: I believe with
10 Ms. Mikkelsen's withdrawal of the -- of her testimony
11 on the 3,200 megawatts being tied to Sammis and
12 Davis-Besse, this is no longer relevant.

13 EXAMINER PRICE: Mr. Kutik?

14 MR. KUTIK: Your Honor, we are talking
15 about the assumptions that are in the projections and
16 whether they are reasonable. He said that there
17 would be inefficient dispatch because there would be
18 times when the plants would be running at lower
19 costs. The fact of the matter is there are several
20 units here that will be running all the time
21 regardless of whether we had actual costs or
22 projected costs.

23 EXAMINER PRICE: Overruled. We'll see
24 where this goes.

25 MR. KUTIK: Not too much longer.

1 May we have the question read, please?

2 EXAMINER PRICE: You may.

3 (Record read.)

4 Q. Correct?

5 A. I don't recall the details, but I recall
6 that several units had different numbers in terms of
7 their frequency of operations and such.

8 Q. And assuming the record reflects that
9 Sammis 6 and 7 are supercritical units, those units
10 also would run most of the time when they were
11 available, correct?

12 A. I don't know. We have some information
13 from discovery that I could review, but I don't know.

14 Q. Now, for at least the Sammis 1 through 5
15 units or the OVEC units, the dispatch model did not
16 assume that they would stop running any hours where
17 generation would not be profitable, correct?

18 A. I don't know.

19 Q. Well, do you have your deposition
20 transcript, sir, from July 5?

21 MS. WILLIS: May I have a moment, your
22 Honor, to find that?

23 MR. KUTIK: Does the Bench need copies?

24 EXAMINER PRICE: Yes.

25 MR. KUTIK: May I approach?

1 EXAMINER PRICE: You may.

2 MS. WILLIS: Thank you.

3 MR. KUTIK: Are you ready, Counsel? Do
4 you have the deposition, Counsel?

5 MS. WILLIS: Oh, yes, I'm sorry.

6 Q. (By Mr. Kutik) Mr. Wilson, you recall
7 that I took your deposition on July 5, correct?

8 A. Yes.

9 Q. And you took an oath to tell the truth at
10 the deposition, correct?

11 A. Yes.

12 Q. Did you have the opportunity to review
13 the transcript?

14 A. I did.

15 Q. Let me refer you to page 50 of your
16 transcript.

17 A. Yes.

18 Q. And starting at line 21, did I ask you
19 the following question and did you give the following
20 answer: "Question: And would it be fair to say that
21 the dispatch model that was used by the companies did
22 not assume that every hour of generation would be
23 profitable?"

24 Mr. Sauer raised an objection.

25 "The Witness: Well, if I understand, you

1 had -- yes. The original dispatch model, I hope, was
2 probably efficient in the sense that it generally did
3 not call for operation and generation in hours and
4 periods when prices were below variable cost. I
5 expect that yes, it probably had that
6 characteristic." Did I read that correctly?

7 A. Yes.

8 Q. Now, a coal unit can't dispatch that way
9 either, correct?

10 A. What way?

11 Q. That is, be dispatched one hour and not
12 dispatched another hour depending on whether it was
13 profitable or not?

14 A. Correct. It's got a ramping speed that
15 prevents it from doing that.

16 Q. So the dispatch model did not assume that
17 every hour that Sammis runs would be profitable,
18 correct?

19 A. A dispatch model simulates operation. It
20 doesn't -- the word "assume" I am having trouble
21 with. But a dispatch model is not going to result in
22 every hour being profitable. Is that what you are
23 asking?

24 Q. Yes.

25 A. Yes.

1 Q. Now, would it be fair to say that the
2 rider RRS calculations, as proposed by the company,
3 would not make any assumptions comparing hourly costs
4 with hourly revenues?

5 A. That's correct.

6 Q. The calculations are done on a monthly
7 basis, correct?

8 A. Yes.

9 Q. Now, there may be circumstances, would
10 you agree, in which the calculation of rider RRS as
11 proposed, would be more favorable to customers than
12 the calculation used for rider RRS as approved?

13 A. That's hypothetically possible.

14 Q. For example, if actual incremental or
15 variable costs were greater than forecasted, the
16 calculation proposed by the companies would be more
17 favorable to customers, correct?

18 A. Correct.

19 Q. And if fixed costs were greater than
20 forecasted, the calculation proposed by the companies
21 would be more favorable to customers, correct?

22 A. Correct.

23 Q. And if there were outages -- there were
24 extended outages that did not occur in the dispatch
25 model, the calculation proposed by the companies

1 would be more favorable to customers, correct?

2 A. That depends on whether it's making or
3 losing money --

4 Q. Well --

5 A. -- when that outage would have occurred.

6 Q. Especially if it occurs at times of high
7 LMPs, the outage.

8 A. Then what was the question again?

9 Q. It would be more favorable to customers
10 if there were extended outages that were not assumed
11 in the dispatch model.

12 A. Yes.

13 Q. You would agree with me also that the
14 companies' proposal eliminates certain risks inherent
15 as part of rider RRS as approved.

16 A. Yes.

17 Q. For example, it eliminates the risks of
18 costs increasing beyond the forecast's costs,
19 correct?

20 A. Yes.

21 Q. Now, you would agree with me, would you
22 not, that you would expect plants to run during
23 periods of high LMPs?

24 A. Yes, you would expect that.

25 Q. And you would also expect that there

1 would be times in January and February where there
2 would be high LMPs?

3 A. There could be, yes, in some -- some
4 years there would be.

5 Q. Now, would it be fair to say that under
6 the companies' proposed calculation, the customers
7 would get the benefit of higher LMPs in months even
8 if the plants didn't run at those hours in the model?

9 A. If -- in the simulation they had -- I
10 mean, it's on a monthly basis. Okay. But when LMPs
11 are high, you are going to multiply them by whatever
12 number came out of that 2014 simulation.

13 Q. Right. And so --

14 A. High or low, you are going to multiply it
15 by that number.

16 Q. Right. So if you had higher LMPs in the
17 month, the average monthly LMP might be higher, or
18 would reflect those prices, correct?

19 A. If prices are higher, the prices are
20 higher. Your question seemed rather -- I don't
21 understand the question.

22 Q. Well, if there were months of higher
23 LMPs, the monthly average price would reflect those
24 prices, correct?

25 A. Yes.

1 MR. KUTIK: That's all. Thank you, your
2 Honor.

3 EXAMINER PRICE: Thank you.
4 Redirect?

5 MS. WILLIS: I would like a 10-minute
6 break, please. Thank you.

7 EXAMINER PRICE: You may.
8 (Recess taken.)

9 EXAMINER PRICE: Let's go back on record.
10 Ms. Grady -- Ms. Willis.

11 MS. WILLIS: Thank you, your Honor.

12 - - -

13 REDIRECT EXAMINATION

14 By Ms. Willis:

15 Q. Mr. Wilson, do you recall in the
16 cross-examination of Mr. Kutik where he led you
17 through a series of examples where he asked you if
18 the changes that had been made under the companies'
19 proposal are more favorable to customers than the
20 prior proposal. Do you recall those questions?

21 A. Yeah. He posed a few hypotheticals where
22 it could be more favorable, yes, sir.

23 Q. Now, in your testimony didn't you address
24 some of the hypothetical changes where -- and your
25 opinion as to how that would -- how the new proposal

1 compares to the original proposal?

2 A. Yeah. In my testimony I gave some
3 examples where the changes would result in outcomes
4 less favorable to the customer than the original
5 rider RRS.

6 Q. And overall, sir, do you believe that the
7 changes made in the companies' proposal, in total,
8 make it more or less favorable to customers?

9 A. Yes. With this -- with regard to this
10 question of hypotheticals and dispatch and such, I
11 concluded that overall the changes to use fixed
12 generation amounts and fixed cost amounts, et cetera,
13 would raise the cost of rider RRS to customers
14 relative to the original proposal.

15 Q. And can you tell me what the main
16 determinant or main factor that -- that affects and
17 causes the proposal to be less favorable to
18 customers?

19 A. Yes. The main problem is that the
20 calculations, the modified calculations as proposed,
21 would use generation amounts from the 2014
22 simulations for the revenue calculations and the cost
23 calculations; as opposed to the original rider RRS,
24 where the calculations would use future prices and
25 generation amounts, actual generation amounts that

1 are consistent with those future prices.

2 And I explained that the inefficient
3 dispatch assumption results from the fact that the
4 assumed generation amounts from the 2014 simulation
5 could be very inconsistent with what should happen
6 under the future prices that may occur from time to
7 time over the course of the rider. So that's what
8 leads to inefficient dispatch and the nonsensical
9 assumptions that I referred to.

10 Q. And can you tell me what you attribute
11 the nonsensical result to come from related to the
12 companies' new proposal?

13 A. The inefficiency and the nonsensical
14 results are driven by the extent to which future
15 prices may, at times, be very different from the
16 prices that were assumed in the 2014 simulations.

17 So if -- at times when those future
18 prices are similar to what was used in the
19 simulation, then presumably the dispatch may be
20 similar and the calculation may be similar.

21 But in the future, if those prices are
22 lower or what I believe is -- if those prices are
23 higher or if what I believe is much more likely,
24 future energy prices are much lower than what was
25 assumed in the 2014 simulation, then those generation

1 amounts from the simulation will be very inconsistent
2 with what makes sense under those prices; and the
3 revenue calculation, in particular, will make no
4 sense because it will multiply prices by quantities
5 that make no sense under those prices.

6 Q. And, Mr. Wilson, what's your best
7 understanding of how future pricing is likely to
8 compare or differ from the 2014 pricing?

9 MR. KUTIK: Objection.

10 EXAMINER PRICE: Grounds?

11 MR. KUTIK: That wasn't part of cross, so
12 it's beyond the scope. It's a backdoor way to get in
13 what's already stricken.

14 EXAMINER PRICE: Ms. Willis?

15 MS. WILLIS: Your Honor, it goes to his
16 analysis, and Mr. Kutik opened the door by suggesting
17 by his questions that this proposal is more favorable
18 to customers than the original proposal so this is
19 just an extension of that.

20 EXAMINER PRICE: Let's have the question
21 back again.

22 (Record read.)

23 EXAMINER PRICE: Objection is sustained.

24 MR. SOULES: Your Honor, may I be heard
25 for just a moment?

1 EXAMINER PRICE: You may.

2 MR. SOULES: I just want to point out
3 Mr. Kutik did ask a number of questions related to
4 hypotheticals regarding high LMPs and so I would
5 share in OCC's view that he did open the door.

6 EXAMINER PRICE: Thank you. Noted.

7 MS. WILLIS: That's all the questions I
8 have. Thank you, Mr. Wilson.

9 At this time we would re-move for --

10 EXAMINER PRICE: They get a chance to
11 recross.

12 MS. WILLIS: I'm sorry.

13 EXAMINER PRICE: IEU-Ohio?

14 MR. PRITCHARD: No questions, your Honor.

15 EXAMINER PRICE: OMAEG?

16 MS. BOJKO: No questions, your Honor.

17 EXAMINER PRICE: Sierra Club?

18 MR. SOULES: No questions.

19 EXAMINER PRICE: RESA?

20 MR. BATIKOV: No questions. Thank you.

21 EXAMINER PRICE: Direct?

22 MR. WHITT: No questions.

23 EXAMINER PRICE: OEG?

24 MR. K. BOEHM: No questions.

25 EXAMINER PRICE: Company?

1 MR. KUTIK: No questions, your Honor.
2 Thank you.

3 EXAMINER PRICE: Thank you.

4 Mr. Wilson -- Ms. Addison, any questions?

5 EXAMINER ADDISON: No questions.

6 EXAMINER PRICE: Mr. Wilson, you are
7 excused.

8 MS. WILLIS: At this time, before he
9 leaves the stand, we move for admission of OCC/NOAC
10 Exhibit No. 1 and No. 2C.

11 EXAMINER PRICE: He can leave the stand
12 while we consider this.

13 Any objections?

14 MR. KUTIK: Subject to the motions to
15 strike, your Honor.

16 EXAMINER PRICE: At this time we will
17 admit OCC/NOAC 1 and 2C subject to the motions to
18 strike which we ruled on.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 MS. WILLIS: And noting objections.

21 EXAMINER PRICE: Noting the strenuous
22 objections.

23 MS. WILLIS: And that's okay. I can go
24 back to the office and tell Mr. Weston they were
25 strenuous.

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

2 (Discussion off the record.)

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

5 OCC may call its next witness.

6 MR. KUMAR: The OCC would like to call
7 Daniel Duann to the stand and would like his direct
8 testimony marked.

9 EXAMINER ADDISON: Hold on, Mr. Kumar.
10 Let me swear him in.

11 (Witness sworn.)

12 EXAMINER ADDISON: Thank you. You may be
13 seated.

14 MR. KUMAR: We would like to mark his
15 testimony as OCC, I guess Exhibit No. 43.

16 EXAMINER ADDISON: It will be so marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 - - -

19 DANIEL J. DUANN, Ph.D.

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

22 DIRECT EXAMINATION

23 By Mr. Kumar:

24 Q. Dr. Duann, could you state your full name
25 and business address for the record.

1 A. Daniel J. Duann. 10 West Broad Street,
2 Suite 1800, Columbus, Ohio 43215.

3 Q. Are you the same Dr. Daniel J. Duann
4 whose direct testimony was filed in these cases?

5 A. Yes.

6 Q. On whose behalf do you appear?

7 A. I appear on behalf of the Office of the
8 Ohio Consumers' Counsel.

9 Q. Do you have your prepared testimony with
10 you on the stand?

11 A. Yes.

12 Q. Did you prepare the testimony or have it
13 prepared at your direction?

14 A. Yes.

15 Q. Do you have any changes or corrections to
16 your direct testimony?

17 A. Yes. My first change is on page 3,
18 line 5, the word "testified" should be deleted and
19 replaced by "file testimony." So that line will read
20 as "have also filed testimony in the 2010 AEP Ohio
21 SEET proceeding (Case No. 11-4571...."

22 Q. Can you explain that change?

23 A. Yes. When I'm preparing my testimony, I
24 rely on the list of testimony filed before the PUCO
25 which is the attachment drafted for the purposes

1 DJD-1 and -- and I look at -- and I noticed there is
2 two cases that I filed testimony, but I did not
3 remember that in the 2010 AEP Ohio SEET proceeding,
4 in that case I filed testimony, but the OCC did not
5 call me as a witness in that proceeding, so my
6 testimony was not entered into the record.

7 So this -- I just simply forgot when I
8 prepared my testimony. And also I did not record it
9 at the deposition, but after the deposition I went
10 back and checked the transcript of that proceeding
11 and I noticed that.

12 And regarding the FirstEnergy ESP III
13 proceeding, I did file testimony in that case, and I
14 did testify in that case and FirstEnergy does not ask
15 any questions, so in that case my testimony was
16 stipulated and admitted into the record.

17 Q. Thank you.

18 Do you have any other changes or
19 corrections to your testimony?

20 A. Yes. On page 5, on the footnote 6,
21 "Ibid," that should be deleted and it should be
22 replaced by "See hearing testimony of Mikkelsen at
23 18." So this is essentially just a wrong reference
24 to the previous footnote. And the same page,
25 footnote No. 7, that "Ibid" should be replaced by

1 "Id."

2 Also page 6, line 10, the word "finds"
3 should be replaced by "found," f-o-u-n-d.

4 And page 18, at end of that line --

5 Q. Do you mean line 18?

6 A. Yes, line 18, sorry. End of that
7 line 18, after the word "special" the word "or"
8 should be replaced with "and," and I meant this
9 particular correction just to be consistent with the
10 order that I cited. It doesn't change my opinion or
11 testimony. And that's all the corrections and
12 changes I have.

13 Q. With those changes and corrections, if I
14 asked you today the same questions found in your
15 direct testimony, OCC Exhibit 43, would your answers
16 be the same?

17 A. Yes.

18 MR. KUMAR: The OCC would like to move
19 for the admission of OCC Exhibit 43 and make this
20 witness available for cross-examination.

21 EXAMINER ADDISON: Thank you, Mr. Kumar.
22 We will defer ruling on admission of OCC 43 upon the
23 conclusion of cross-examination.

24 MR. LANG: Would your Honor entertain
25 motions to strike?

1 EXAMINER ADDISON: Of course, Mr. Lang.

2 MR. LANG: Of course, there is two
3 motions, same basis, so I will give you them both.

4 The first one is on page 7, starting on
5 line 13, after the word "Yes" where it says "I am
6 advised by counsel" going through to the end of that
7 line -- the end of that sentence on page 15.

8 MR. KUMAR: Do you mean line 15?

9 MR. LANG: I'm sorry, on line 15.

10 The second is on page 13 and it's all of
11 lines 5 through 9.

12 The basis is -- and understanding that
13 the Bench certainly allows witnesses with regulatory
14 experience to testify as to their opinion of legal
15 matters and Dr. Duann certainly has done that
16 throughout his testimony here. The motion to strike
17 in these two instances is because this does not
18 represent Dr. Duann's opinion as an economist or
19 someone with regulatory experience. These are
20 statements that are based on advice of counsel.

21 Dr. Duann, in these places of his
22 testimony, is not giving his nonlegal opinion, but he
23 is providing the hearsay legal opinion of others. So
24 I, therefore, move to strike on the basis of hearsay.

25 EXAMINER ADDISON: Thank you.

1 Do you have a response, Mr. Kumar?

2 MR. KUMAR: Yeah, I do. I would
3 disagree. I think that these -- these portions of
4 his testimony are not actual legal conclusions but,
5 rather, they are assumptions that underlie some of --
6 partially underlie portions Mr. Duann's testimony
7 and, as a result, they should be included in his
8 testimony.

9 And I think that additionally, the fact
10 that he is simply asked the meaning of certain legal
11 provisions in order to enhance his testimony should
12 not be grounds to strike this from the record.

13 EXAMINER ADDISON: Thank you.

14 Consistent with prior holdings by this
15 Bench, we are going to go ahead and grant the motion
16 to strike. And just to be clear, those -- that
17 includes both the reference on page 7, lines 13,
18 beginning after the word "Yes" to line 15 after the
19 citation to the Revised Code.

20 MR. KUMAR: Wait. Line -- line 15,
21 right?

22 EXAMINER ADDISON: Yes. I believe I said
23 line 15.

24 MR. KUMAR: Okay. Sorry.

25 EXAMINER ADDISON: Moving on to page 13,

1 line 5 to line 9.

2 MR. LANG: Thank you, your Honor. I have
3 no other motions.

4 EXAMINER ADDISON: Thank you, Mr. Lang.
5 Mr. Pritchard?

6 MR. PRITCHARD: No questions, your Honor.

7 EXAMINER ADDISON: Ms. Bojko?

8 MS. BOJKO: No. Thank you, your Honor.

9 EXAMINER ADDISON: Mr. Soules?

10 MR. SOULES: No questions, your Honor.

11 EXAMINER ADDISON: Mr. Batikov?

12 MR. BATIKOV: No questions, your Honor.

13 EXAMINER ADDISON: Did I say it
14 correctly?

15 MR. BATIKOV: You did.

16 EXAMINER ADDISON: Wonderful.

17 Mr. Hays?

18 MR. HAYS: Thank you. None, your Honor.

19 EXAMINER ADDISON: Mr. Whitt?

20 MR. WHITT: No questions --

21 EXAMINER ADDISON: Mr. Boehm?

22 MR. WHITT: -- your Honor.

23 EXAMINER ADDISON: Sorry. I knew what
24 you wanted to say.

25 Mr. Boehm?

1 MR. K. BOEHM: No questions, your Honor.

2 Mr. Lang?

3 MR. LANG: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Lang:

7 Q. Good afternoon, Mr. Duann.

8 A. Good afternoon.

9 Q. You would agree that you do not have any
10 experience working or consulting as an accountant for
11 a for-profit company, correct?

12 A. Correct.

13 Q. And outside of the public utility
14 context, you do not have any experience determining
15 what items are nonrecurring, special, or
16 extraordinary for purposes of excluding those items
17 from net income, correct?

18 MR. KUMAR: Objection, your Honor.

19 EXAMINER ADDISON: Grounds?

20 MR. KUMAR: I am not sure when we are
21 going to be outside the utility context in this
22 hearing. I guess relevance.

23 EXAMINER ADDISON: Would you mind just
24 rephrasing, Mr. Lang?

25 MR. LANG: The -- certainly, your Honor.

1 EXAMINER ADDISON: Thank you.

2 Q. (By Mr. Lang) Dr. Duann, you have not
3 participated in any regulatory proceeding in which
4 one of the contested issues was whether an accounting
5 item was nonrecurring, special, or extraordinary for
6 purposes of excluding that item from that income; is
7 that correct?

8 MR. KUMAR: May I have the question
9 reread?

10 EXAMINER ADDISON: You may.

11 (Record read.)

12 A. I have participated in many SEET
13 proceedings and it is certainly one of the issues to
14 be addressed in those proceedings.

15 Q. Can you identify any of those SEET
16 proceedings that were contested, for example went to
17 hearing in which one of the contested issues was
18 whether an accounting item was nonrecurring, special,
19 or extraordinary?

20 A. Yes, I remember in the 2009 AEP SEET
21 proceeding, and I said one of the issues being
22 contested is the -- margin of off-system sales.

23 Q. And that -- and that proceeding was --
24 the margin of AEP's off-system sales dealt with under
25 the standard of whether it was a nonrecurring,

1 special, or extraordinary item.

2 A. I think the order speaks for itself. At
3 this time I cannot recall the details of that case,
4 but I remember that's one of the issues.

5 Q. Would you agree that whatever experience
6 you do have with regard to determining whether an
7 item is nonrecurring, special, or extraordinary for
8 purposes of excluding that item from that income,
9 that experience would be wholly here at the PUCO
10 either in ESP proceedings or in SEET proceedings?

11 THE WITNESS: Can I have the question
12 read back, please?

13 EXAMINER ADDISON: You may.

14 (Record read.)

15 A. I would say most of my experience would
16 be in the ESP and SEET, but since I was involved in
17 other cases, and some of them may be a few years
18 back, so I cannot recall whether they have those
19 issues or not. But I will say, yeah, most of those
20 would be related to the SEET proceeding.

21 Q. So you would agree that your experience
22 with those accounting terms are limited to the
23 regulatory context and you do not have experience
24 outside of the public utility regulatory context,
25 correct?

1 A. I'm not accountant and I would not
2 necessarily agree with you that nonrecurring,
3 special, or extraordinary only has accounting
4 meaning -- accounting meanings, and I say those --
5 those common words and you can use your commonsense
6 to look at it.

7 Q. That's fair. Let me rephrase the
8 question then.

9 Your only experience with regard to
10 determining whether an item is nonrecurring, special,
11 or extraordinary is within -- solely within the
12 regulatory context and is -- you do not have
13 experience in the nonutility regulatory context,
14 correct?

15 MR. KUMAR: I am going to object. I
16 think this question has been asked and answered
17 already.

18 EXAMINER ADDISON: I will allow it this
19 time. I think he has made it more clear what he
20 means by his question.

21 You can answer.

22 A. I think we are dealing with regulatory
23 proceeding here, and I would certainly use my
24 experience in the regulatory field to address those
25 issues.

1 Q. So what I asked you is true?

2 A. No, it's not true. I'm using my
3 regulatory experience and I have commonsense on what
4 recurring, what special, what extraordinary is,
5 and -- and whether I apply that to other things, you
6 know, I probably could.

7 Q. Okay. So is your statement that in
8 addition to your regulatory experience, you are using
9 your commonsense in defining "nonrecurring,"
10 "special," and "extraordinary"?

11 A. Yes.

12 Q. Now, in providing your testimony today,
13 you are not providing a legal opinion, correct?

14 A. No, I am not.

15 Q. Now, let me ask you to turn to page 4 of
16 your testimony. At lines 5 through 10, you discuss
17 and you provide the statement that rider RRS revenues
18 are an adjustment under Revised Code Section
19 4928.143(F). Is it fair to say in this portion of
20 your testimony you were offering your opinion,
21 nonlegal, as to what the word "adjustment" means in
22 the ESP statute?

23 MR. KUMAR: I am going to object at this
24 point. Mr. Lang has already struck the portion of
25 Dr. Duann's testimony that deals with that, I

1 believe, in page 7. And this language, I think,
2 speaks for itself and it specifically says, earlier,
3 "as a regulatory economist." So I think he is
4 mischaracterizing Mr. Duann's testimony.

5 EXAMINER ADDISON: Mr. Lang?

6 MR. LANG: Your Honor, I was unclear as
7 to the objection. Is counsel suggesting that the
8 language on lines 5 through 10 should also be
9 stricken as legal opinion?

10 MR. KUMAR: No. What I'm suggesting is
11 that -- is that it says specifically in the preface
12 to that section "based on my experience as a
13 regulatory economist." It's clearly not a legal
14 opinion. So for you to bring in a local statute for
15 Mr. Duann to interpret is inappropriate.

16 EXAMINER ADDISON: Mr. Kumar, please
17 direct all comments to the Bench.

18 MR. KUMAR: I apologize. Sorry.

19 MR. LANG: Your Honor, in that case, I
20 think --

21 EXAMINER ADDISON: You are going to win,
22 Mr. Lang. I am going to overrule the objection. He
23 can clearly provide his understanding as I think he
24 is attempting to do in his testimony.

25 You may answer the question. Do you need

1 the question read back?

2 THE WITNESS: Yes, please.

3 EXAMINER ADDISON: Thank you, Karen.

4 (Record read.)

5 A. I think -- I think this conclusion is
6 based on my experience and knowledge by participating
7 in the various SEET proceedings and my understanding
8 is pretty straightforward. If a rider, such as rider
9 RRS, is approved as part of an ESP, then it is an
10 adjustment in the meaning of that Revised Code.

11 Q. So, again --

12 A. But it's not a legal opinion.

13 Q. Right. So what I asked you is true,
14 that's -- you're offering your nonlegal opinion as to
15 what "adjustment" means in an ESP statute, correct?

16 A. Yes.

17 Q. Now, still on page 4 and footnote 5, you
18 list examples of certain exclusions from that income
19 permitted under the SEET, the significantly excessive
20 earnings test. Dr. Duann, do you agree that the
21 exclusions you have listed here in footnote 5 are not
22 the only permitted exclusions?

23 A. Yes.

24 Q. And you would also agree that the -- as I
25 believe you mentioned earlier, the Commission has

1 authorized the exclusion of the margin from
2 off-system sales in the two AEP SEET proceedings that
3 you listed on page 3 of your testimony, correct?

4 A. I think in my previous answer I referred
5 to 2009 AEP SEET proceeding.

6 Q. Let me rephrase the question then.

7 You would agree that the Commission has
8 authorized the exclusion of the margin from
9 off-system sales in both of the AEP SEET proceedings
10 you list on page 3 of your testimony, both the 2009
11 and the 2010 AEP Ohio SEET proceedings, correct?

12 A. I didn't cite that in my testimony and I
13 didn't say that in my answer. I am only referring to
14 the 2009 AEP Ohio SEET proceeding. Whether, in 2010,
15 they include that, I cannot recall at this time.

16 Q. Okay. So let me see if I can clarify
17 this. So you do agree that the Commission authorized
18 the exclusion of the margin from off-system sales in
19 AEP's 2009 SEET proceeding, but you cannot recall
20 whether that was done in the 2010 proceeding; is that
21 correct?

22 A. Yes.

23 Q. Now -- now, the testimony that you filed
24 in the 2010 AEP Ohio SEET proceeding argued that the
25 margin from off-system sales should be included in

1 the SEET, correct?

2 A. Yes. I think that's consistent with my
3 recollection at this time.

4 Q. And is it fair to say, other than the
5 exclusions from SEET that are in your footnote 5 and
6 the margin from off-system sales that we've just
7 discussed, you -- you cannot remember any other SEET
8 exclusions that the Commission has authorized?

9 A. Can you be more specific on the exclusion
10 that you are referring to?

11 Q. The question is with regard to the
12 exclusions that you've described in footnote 5 of
13 your testimony on page 4, and then adding to that the
14 margin from off-system sales for AEP that we've
15 discussed, whether you remember any other exclusions
16 from SEET that the Commission has authorized.

17 A. I believe that they are. They are the
18 exclusion.

19 Q. And what would those be?

20 A. On page 6, line 5, 6, 7, I talk about "as
21 a result of SEET refund," there can be exclusion
22 and -- and I'm pretty sure there are others, but I
23 probably cannot recall now.

24 Q. Okay. Would you agree that in the
25 companies' second ESP proceeding, Case 12-1230, the

1 Commission authorized the companies to exclude
2 deferred carrying charges from the SEET calculation?

3 A. I'm not sure about an ESP II proceeding,
4 but I say in the ESP III proceeding the company does
5 propose that and -- and I believe I think my
6 testimony addressed that particular issue.

7 Q. Okay.

8 A. My testimony in that proceeding addressed
9 that particular issue.

10 Q. So you do remember that in one of the
11 companies' past ESP proceedings, you filed testimony
12 offering your opinion that excluding deferred
13 carrying charges from the SEET calculation was
14 contrary to the public interest and inconsistent with
15 the Commission's practice regarding exclusions,
16 correct?

17 A. I think that's good description of my
18 testimony.

19 Q. And are you also aware in Duke Energy
20 Ohio's second ESP proceeding the Commission
21 authorized Duke to exclude, from the SEET
22 calculation, all impacts of mark-to-market
23 accounting?

24 MR. KUMAR: Objection, your Honor.

25 EXAMINER ADDISON: Grounds?

1 MR. KUMAR: I think we have gone through
2 a few of these.

3 EXAMINER ADDISON: Mr. Lang.

4 MR. LANG: The relevance for his
5 testimony is what's missing in his testimony.

6 EXAMINER ADDISON: I'll allow this
7 question. We'll see where we go.

8 THE WITNESS: Can I have the question
9 read back, please.

10 EXAMINER ADDISON: You may.

11 (Record read.)

12 A. I don't remember the detail of
13 Commission's decision in the Duke ESP II, and in my
14 review of those SEET filing, and I did remember that
15 assigned mark-to-market adjustment got taken out of
16 their book, either taken out or added back to their
17 book income.

18 Q. And from your review of that SEET
19 proceeding, do you remember what was being marked to
20 market?

21 A. No.

22 Q. Let's talk about the Commission's generic
23 SEET proceeding which you discuss on page 6 of your
24 testimony. I am looking specifically on page 6 of
25 the quote you have from the Commission's order --

1 Finding and Order in that case. The quote is on
2 lines 1 through 15. You would agree that if an item
3 satisfies the requirements to be deemed a
4 nonrecurring item, it can be excluded from that
5 income for purposes of the SEET, correct?

6 A. Yeah. I would say it has the potential
7 of being excluded.

8 Q. Dr. Duann, do you remember being deposed
9 in this proceeding?

10 A. Yes.

11 Q. And that deposition took place on the
12 afternoon of July 1, while people were setting up for
13 "Red White & Boom!" in downtown Columbus?

14 A. Yes.

15 Q. And there was a court reporter there?

16 A. Yes.

17 Q. And you were sworn in at that time?

18 A. Yes.

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

20 EXAMINER ADDISON: You may.

21 Q. Dr. Duann, do you need a copy of your
22 transcript?

23 A. No, I have a copy.

24 Q. Dr. Duann, if I could have you turn to
25 page 25 of your deposition transcript, I am going to

1 read a question and answer and ask you if I have read
2 it correctly.

3 Starting on line 14. "Question: Well,
4 would you agree that if an item satisfies the
5 requirements to be deemed a nonrecurring item, then
6 it could be excluded from net income for purposes of
7 the SEET?"

8 "Answer: Yeah, if it's a nonrecurring."
9 Did I read that correctly?

10 A. Yes.

11 Q. All right. Now, going on to a special
12 item. You would agree that if an item satisfies the
13 requirements to be deemed a special item, it can be
14 excluded from that income for purposes of the SEET,
15 correct?

16 A. So you are reading from line 19?

17 Q. We are not in the deposition anymore.
18 Sorry. We are back to live. So let me ask me -- let
19 me ask my question again.

20 Do you agree that if an item satisfies
21 the requirements to be deemed a special item, it can
22 be excluded from that income for purposes of the
23 SEET?

24 A. Yeah. It has the potential of being
25 excluded.

1 Q. It not only has the potential, but as the
2 Commission's generic proceeding, as the question is
3 stated in the generic proceeding, it can be excluded
4 from the SEET, correct?

5 A. I think when you use the word "can" it
6 means "can," that means it has the potential. It
7 does not mean it should be or -- so that's the reason
8 I use the word "potential."

9 Q. Okay. So with that explanation, you
10 agree with my -- with my question, correct?

11 MR. KUMAR: Objection, your Honor.
12 Mr. Lang -- it's asked and answered.

13 EXAMINER ADDISON: Overruled.

14 A. As I said, it has the potential of being
15 excluded.

16 Q. And, Dr. Duann, you are providing a
17 qualification. I just want to make sure we're on the
18 same page. When you say it has the potential to be
19 excluded, you are agreeing that it can be excluded
20 under the generic SEET order that refers to special
21 items being excluded from that income, correct?

22 THE WITNESS: Can I have the question
23 read back?

24 EXAMINER ADDISON: You may.

25 (Record read.)

1 A. As I say, it can be included -- it can be
2 excluded, but you have to look at special items as
3 you describe it. This is a generic proceeding, so
4 that only provides a guideline.

5 Q. Now, the third category is extraordinary
6 item. You would also agree that an item that
7 satisfies the requirements to be deemed an
8 extraordinary item can be excluded from that income
9 for purposes of the SEET.

10 A. It can be excluded.

11 Q. Now, as an economist, you do not believe
12 that the words "nonrecurring," "special," or
13 "extraordinary" have a technical meaning associated
14 with them, correct?

15 A. There's no technical economic meaning
16 associated with it.

17 Q. And you would agree and in your opinion
18 the -- let me start that question over.

19 Your opinion is that the common
20 dictionary meaning of "nonrecurring," "special," and
21 "extraordinary" should apply, correct?

22 A. Apply to what?

23 Q. Should apply when determining whether an
24 item is nonrecurring, special, or extraordinary for
25 purposes of excluding it from income under the SEET.

1 MR. WHITT: Your Honor, I am going to
2 object at this point. Whether an item is includable
3 or excludable in a SEET proceeding is a function of
4 Ohio statute, not any particular definition of
5 certain terms or an accountant's or economist's
6 understanding. And those issues can be decided in a
7 SEET proceeding if there is one.

8 EXAMINER PRICE: So you're moving to
9 strike Dr. Duann's testimony?

10 MR. WHITT: I am objecting to the
11 question that was just asked.

12 EXAMINER ADDISON: Overruled.

13 THE WITNESS: Can I have the question
14 read back, please?

15 EXAMINER ADDISON: You may.

16 MR. LANG: I think it would be the
17 question and his question back to me and then my
18 explanation.

19 EXAMINER ADDISON: Thank you for that,
20 Mr. Lang.

21 (Record read.)

22 A. My answer would be that you should start
23 with the -- you know, the common definition of
24 "nonrecurring," "special," and "extraordinary." But,
25 on the other hand, I think the SEET proceeding has

1 been going on in the State of Ohio for over a number
2 of years. And the Commission has spoken on many
3 issues and -- many proceedings regarding the term
4 "nonrecurring," "special," and "extraordinary."

5 And so -- so I think, yeah, you can start
6 with it, but you have to look at what the -- what's
7 the precedent in the State of Ohio and what the
8 standard says. You cannot just -- just say oh, I
9 think it's extraordinary and -- and then exclude it.
10 I think just like in FirstEnergy's rehearing
11 testimony, there's no explanation why it's a special
12 item.

13 MR. LANG: Your Honor, I would move to
14 strike his response starting with the word "but" and
15 then everything that comes thereafter.

16 EXAMINER ADDISON: Mr. Kumar.

17 MR. KUMAR: I don't agree. I think it
18 gets to the heart of what Mr. Lang is asking. It
19 provides essential context, understanding Mr. Duann's
20 answer.

21 EXAMINER ADDISON: Consistent with our
22 practice, I will afford Mr. -- Dr. Duann one bite of
23 the apple. I think he is especially owed, since he
24 was not here the first two hearings.

25 But from this point forward, Dr. Duann,

1 if you could just listen to Counsel's question and
2 answer only that question. Mr. Kumar can bring up
3 any other issues you feel are important to bring up
4 during redirect.

5 THE WITNESS: Sure.

6 EXAMINER ADDISON: Thank you.

7 Q. (By Mr. Lang) Dr. Duann, your
8 understanding is that in the context of the quotation
9 on page 6 of your testimony that "special" means "one
10 of a kind, not ordinary"; is that right?

11 A. Yes.

12 Q. And you agree that you -- you base that
13 definition on your commonsense; is that correct?

14 A. As well as my knowledge and experience
15 in -- my involvement with prior SEET proceedings.

16 Q. Can I refer you to page 28 of your
17 deposition transcript. Starting at line 2, did I ask
18 you the question: "And are you drawing from your
19 economic" -- just for context, let me back up.

20 At the end of page 27, you see we had an
21 exchange about what the word "special" means and your
22 understanding of what "special" means.

23 So now at the top of page 28, starting at
24 line 2, I asked you: "And are you drawing from your
25 economic expertise to provide that definition or

1 something else?"

2 Your answer was: "I think this is just
3 common sense."

4 Did I read that correctly?

5 MR. KUMAR: Objection, your Honor.

6 EXAMINER ADDISON: Grounds?

7 MR. KUMAR: I think it's improper
8 impeachment, and as Mr. Lang stated before, this
9 discussion started on page 27. And if you look at
10 page 27, Mr. Duann does refer, specifically lines 13
11 through 17, how the context of that definition would
12 also --

13 MR. LANG: Your Honor, that would be
14 appropriate for redirect.

15 MR. KUMAR: Your Honor, it's improper
16 impeachment. He's not providing --

17 EXAMINER ADDISON: Thank you. You can
18 raise that during redirect, Mr. Kumar.

19 Q. (By Mr. Lang) Now, Dr. Duann, you did
20 agree that I read that correctly.

21 A. What you read on page 28, line 2 to 5?

22 Q. Correct.

23 A. Yeah, you read that correctly.

24 Q. Thank you.

25 Now, Dr. Duann, is it correct that you

1 have no opinion on whether annual mark-to-market
2 adjustments would qualify as a special item?

3 MR. KUMAR: Objection, your Honor.
4 Relevance. This is the provision of -- we are
5 discussing the relevance of FirstEnergy's rider RRS
6 to the SEET proceeding, not Duke's mark-to-market
7 adjustments.

8 EXAMINER ADDISON: Mr. Lang?

9 MR. LANG: Your Honor, his testimony is
10 that a special item must also be nonrecurring and
11 anything that would happen on an annual basis would
12 not qualify as special. So I'm testing his opinion
13 with regard to other items that actually are
14 recurring.

15 EXAMINER ADDISON: Thank you. The
16 objection is overruled.

17 A. I have no opinion on that.

18 Q. Dr. Duann, your understanding is that in
19 the context of the quote on page 6 of your testimony,
20 that "extraordinary" means "out of the ordinary, not
21 ordinary, or unusual," correct?

22 A. Yes.

23 Q. And your understanding of what
24 "extraordinary" means is based on your standard
25 English, commonsense reading of the word, correct?

1 A. As well as my expert -- my experience and
2 knowledge in participating in prior SEET proceedings.

3 Q. And your understanding is that in the
4 context of the quote on page 6, the word
5 "nonrecurring" means "an item that does not happen
6 regularly" or "it happens one time," correct?

7 A. My definition of "nonrecurring" means
8 this happened once and not regular, yes, I will agree
9 to that.

10 Q. So you -- so you were agreeing with both
11 my statements, not happening regularly, or happens
12 one time; is that correct?

13 A. Yes, I agree.

14 Q. Okay. Now, you agree that the Commission
15 can interpret the SEET statute and make a decision
16 based on its interpretation; is that fair?

17 A. No, that's not fair.

18 Q. Okay. Well, your proposal is that when
19 the companies would pay credits under modified rider
20 RRS, that the cost of those credits would be included
21 in net income for purposes of the SEET, correct?

22 A. Correct.

23 Q. And you're also proposing that when the
24 companies receive revenue from charges under modified
25 rider RRS, that those revenues would be included in

1 that income for purposes of the SEET, correct?

2 A. Yes.

3 Q. And you believe that including rider RRS
4 revenues as well as the costs of credits in the SEET
5 would result in symmetrical treatment, correct?

6 THE WITNESS: Can I have the question
7 read back, please?

8 EXAMINER ADDISON: You may.

9 (Record read.)

10 MR. KUMAR: Objection.

11 EXAMINER ADDISON: Grounds?

12 MR. KUMAR: I think you are
13 mischaracterizing his testimony. Where is that in
14 his testimony?

15 MR. LANG: Your Honors --

16 MR. KUMAR: I'm sorry, your Honor.

17 EXAMINER ADDISON: Thank you. I believe
18 it's a fair question. Overruled.

19 A. Actually, I don't quite understand the
20 question. I would like to know in what context were
21 you referring to "symmetric"?

22 Q. Your understanding is with regard to
23 including rider RRS revenues in the SEET for the cost
24 of charges in the SEET in a different year that, in
25 either case, it should be treated symmetrically,

1 correct?

2 A. Actually, I still don't understand the
3 question. I apologize. Because I think when you say
4 that, then you say "should be treated symmetrically,"
5 so I kind of get lost in that part, so maybe you can
6 rephrase it.

7 Q. Let's try something else. You would
8 agree that if the cost of rider RRS credits is
9 included in the SEET, and that results in the
10 companies' earned return on equity being too low,
11 there is no mechanism to have customers refund those
12 credits to the companies, correct?

13 A. Actually, I don't know -- I don't quite
14 understand the question. So for example -- let me
15 try to see if I can answer. Say, for example, you
16 have a credit and -- and that credit would become --
17 your credit provided to the customer in certain years
18 and that credit will be taken out of your net income
19 in your financial statement. And you will have --
20 then you can use that to calculate your return on
21 equity. And so whether you exclude or include that
22 expense for SEET purpose, doesn't change your -- your
23 book return on average.

24 Q. With that explanation, you would agree
25 then that there is no mechanism in the statute to

1 adjust for a significantly lower earnings in the same
2 way that there is a mechanism in the statute to
3 adjust for significantly excessive earnings.

4 A. My understanding of the statute is the
5 statute does not adjust anything. Does not adjust --
6 the statute -- the SEET statute just essentially say
7 if the utility -- if the Commission approve an ESP
8 and, as a result of that approved ESP, the companies'
9 earnings are significantly higher than those
10 companies that can earn in that particular year, then
11 the company need to provide a refund and -- refund or
12 credit to customer.

13 However, this refund to customer is
14 calculated on a company-wide basis -- on a company --
15 you know, it could be the result of other rider, it
16 could be the result of other things. So you cannot
17 really say that's a return of the charge specifically
18 related to rider RRS. All you can say that's --
19 that's a collection of the credit related to the
20 rider RRS. It's on a totally income basis; it's not
21 related specifically to a specific rider.

22 Q. And so you will agree with me that the
23 refund mechanism you just described is the only
24 refund mechanism in the statute.

25 A. I will agree with you the statute -- the

1 SEET statute treat the excess earning as a result of
2 ESP different from the treatment of lower earning
3 from ESP.

4 Q. Thank you.

5 Now, is it your view that the exclusions
6 from net income that the Commission has authorized in
7 prior SEET proceedings are the only possible
8 exclusions?

9 A. In general, I would say that's the case.
10 That's the -- probably all the possible exclusions.
11 And as I explained earlier, you know, we had this
12 proceeding, this SEET provision for a number of
13 years. There's a number of cases being hotly
14 debated, litigated, so I think we had a pretty good
15 record and guidance there.

16 But, on the other hand, I don't want to
17 be absolutely say oh, there's no -- no more. I
18 think, you know, it's possible, but I don't think
19 it's likely. I think the Commission has a pretty --
20 pretty good guidelines from the statutes, and the
21 Commission's precedents are pretty clear, and -- and
22 so my answer would be I would generally say that's
23 all possible, but there could be exceptions.

24 Q. If I could ask you to look at page 8 of
25 your testimony. Here on lines 7 through 13, you do

1 reference exclusions that have been authorized by the
2 Commission that are one-time events. Do you agree,
3 Dr. Duann, that the examples you provide are not the
4 only examples of items that could be excluded from
5 net income for purposes of the SEET?

6 A. I agree.

7 Q. And also on pages 8 and 9 of your
8 testimony, you reference what you describe as
9 "regular and continuous riders." Do you agree that
10 all of those regular and continuous riders that you
11 reference on pages 8 and 9 of your testimony are
12 riders that are revenue-collection mechanisms?

13 MR. KUMAR: Excuse me, your Honor. May I
14 have that clarification for line numbers?

15 MR. LANG: Just generally on pages 8 and
16 9, your Honor.

17 EXAMINER ADDISON: Thank you.

18 A. Yes, I agree that the FirstEnergy
19 proposed rider RRS, the -- the FirstEnergy rider DCR,
20 and the Dayton Power and Light rider SSR, and AEP's
21 rider RSR, they are all revenue-collection
22 mechanisms.

23 Q. And let me ask you, at the bottom of
24 page 8, going over to page 9 of your testimony, and
25 this is starting on line 23 of page 8, you refer to

1 "other regular (recurring) and continuous riders."

2 Is that reference there in your testimony to the
3 three riders that you just named in your previous
4 answer?

5 A. No. It will be more than any regular and
6 continuous rider.

7 Q. So the extent you are referring in that
8 reference at the bottom of page 8, going over to
9 page 9, to, "regular and continuous riders," you
10 would agree that to whichever riders you are
11 referring, those are riders that are solely designed
12 to collect revenues; is that correct?

13 A. I will agree that's generally the case
14 but I -- I really have to -- to look all the riders.
15 I mean, for example, I think FirstEnergy probably has
16 more than 15 riders, AEP has more than 20 riders, and
17 I will have to look at that.

18 And -- and also I think internal -- the
19 rider, I think there's also, in many cases, an annual
20 or quarterly true-up. And I -- I remember that
21 inside of AEP's economic development rider or other
22 rider, they have credit provided on certain year or
23 reduction of rider. So my answer is generally that's
24 the case, but there is a lot of -- there may be some
25 exceptions.

1 Q. Now, let's talk about you just mentioned
2 on page 9, your riders -- well, AEP's rider RSR, and
3 DP&L's SRR, your belief is that both of those riders
4 functioned at hedges, correct?

5 MR. KUMAR: Your Honor, just to clarify
6 would, that be "SSR" not "SRR"?

7 EXAMINER ADDISON: Thank you.

8 MR. LANG: Did I have it wrong? Yes, the
9 SSR.

10 EXAMINER ADDISON: Thank you, Mr. Lang.

11 A. Yes.

12 Q. Would you also agree there is no
13 possibility that either of those riders would pay
14 credits to customers, correct?

15 A. I would say that, in general, when this
16 rider -- well, was designed and approved, they did
17 not anticipate any credit to the customer. But I
18 think, you know, the recent Supreme Court decision on
19 the -- especially in the AEP ESP and capacity case,
20 you know, this would be recalculation of the RSR --
21 of the capacity cost deferral balance and we don't
22 know what will happen on those -- on that particular
23 case. And just based on my own opinion, I think, or
24 based on my initial -- I think there could be credit
25 provided.

1 Q. So you would agree that under the design
2 of those riders, AEP's and DP&L's stability charges,
3 there was no possibility that they would pay a credit
4 to customers, correct?

5 A. As I say as originally the -- as
6 originally approved, they are not intended to provide
7 a credit to the customer.

8 Q. Now, AEP's RSR and DP&L's SSR were
9 designed to support each utility's financial
10 integrity as they transitioned to market-based SSO
11 pricing and divested their generation assets,
12 correct?

13 A. I think the Order speak's for itself, and
14 my understanding is those two riders are designed to
15 enhance those utilities's financial integrities.

16 Q. Dr. Duann, if I can take you to page 41
17 of your deposition, and again if you look at the
18 bottom of page 42. You will see we are talking about
19 DP&L's SSR and AEP's RSR.

20 And then at the top of page 43, starting
21 at line 2, I asked you the question: "And isn't it
22 true that each of those riders were designed to
23 support the utilities' financial integrity as those
24 utilities transition to market-based SSO pricing and
25 divested their generation assets?"

1 And you answered: "That's one of the
2 rationales used in those two cases."

3 Did I read that correctly?

4 A. Yes. And I think that's perfectly
5 consistent with what I say here.

6 MR. LANG: Your Honor, I would move to
7 strike after the word "Yes."

8 MR. KUMAR: Objection, your Honor. I
9 think you -- again, you have to look at the page he
10 refers to, page 42, in which Mr. Lang, himself,
11 refers to those -- that those riders were designed to
12 support the financial integrity. And Mr. Duann
13 replies "Yes, that's one of the rationales," as Mr.
14 Duann stated earlier in his testimony on the stand.

15 EXAMINER ADDISON: He doesn't have to
16 cite to the earlier pages. He is just trying to get
17 some context.

18 MR. KUMAR: Exactly. And I think that
19 context is essential to that whole question.

20 EXAMINER ADDISION: Which he provided. I
21 am just going to let the record stand. The motion
22 will be denied. Objection overruled.

23 Q. Dr. Duann, the companies' what you
24 referred to as the "modified rider RRS" was not
25 designed to support the companies' financial

1 integrity while they transitioned to market-based SSO
2 rates and divest their generation, correct?

3 A. My answer is it would be the company,
4 that utility has already divested their generation
5 assets, so I don't -- I don't know the meaning of
6 your question.

7 Q. Sounds like you accepted the truth of my
8 question, correct?

9 A. I accept the truth that these companies
10 are already divested. Why there's -- those -- what's
11 the purpose? They are already divested from -- of
12 their generation assets.

13 Q. And as a result, modified rider RRS was
14 not designed to support the companies' financial
15 integrity while they transition to market-based SSO
16 rates and divest of generation, correct?

17 MR. KUMAR: Objection, your Honor.
18 That's already asked and answered by the witness.

19 EXAMINER ADDISON: That's a slightly
20 different question. I'll allow it.

21 MR. LANG: Still looking for an answer,
22 your Honor.

23 A. My answer is the company already used
24 company EDU to procure their -- their electricity for
25 their SSO customer.

1 Q. So, Dr. Duann, let me take you to page 58
2 of your deposition. Start at the very bottom of
3 page 58, line 25. I asked you the question: "Do you
4 agree that rider RRS is not intended to protect the
5 companies from financial harm while they transition
6 to market-based SSO rates and divest their
7 generation?"

8 You answered: "Those companies already
9 divested their generation."

10 I asked the question: "So you would
11 agree?"

12 "Answer: For that limited purpose, yes."

13 MR. KUMAR: Objection.

14 MR. LANG: Did I read that correctly?

15 A. You did.

16 Q. Thank you.

17 Now, Dr. Duann, modified rider -- would
18 you also agree that modified rider RRS was not
19 designed to support the company's financial integrity
20 while they transitioned to market-based SSO rates?

21 MR. WHITT: Objection.

22 EXAMINER ADDISON: Grounds?

23 MR. WHITT: When I asked the question the
24 other day that used the word "transition," I was
25 admonished that it has a peculiar legal meaning that

1 witnesses can't testify to. And on that basis,
2 consistent with that ruling, I object to this
3 question.

4 EXAMINER PRICE: That's a totally
5 different context.

6 EXAMINER ADDISON: Overruled. You may
7 answer the question.

8 THE WITNESS: Can I have the question
9 read back, please?

10 EXAMINER ADDISON: You can.

11 MR. KUMAR: I would like to note for the
12 record I would join Mr. Whitt's objection.

13 EXAMINER ADDISON: Thank you, Mr. Kumar.
14 It's noted.

15 EXAMINER PRICE: It's still a totally
16 different context.

17 (Record read.)

18 A. As I say in deposition, those companies
19 are already market-based SSO rate.

20 EXAMINER ADDISON: Dr. Duann, please
21 don't refer to your deposition when you are answering
22 questions.

23 THE WITNESS: Sure.

24 EXAMINER ADDISON: Thank you.

25 Q. So your answer is yes, you agree?

1 A. No. My answer is it would be those
2 companies are already in market-based SSO rate.

3 Q. And, therefore, you agree that modified
4 rider RRS could not have been designed to support the
5 companies' financial integrity while they
6 transitioned to market-based SSO rates, that could
7 not be -- the purposes for the rider, correct?

8 A. Because they are already market --
9 already market-based SSO, how can they do the
10 transition? So I don't understand the question.

11 Q. Dr. Duann, you believe the companies,
12 with regard to modified rider RRS, are not absorbing
13 the financial consequences of the hedge risk,
14 correct?

15 THE WITNESS: Can I have the question
16 read back, please?

17 EXAMINER ADDISON: You may.

18 (Record read.)

19 A. I think I have difficulty regarding the
20 word "absorb" and the reason is obviously the -- the
21 impact, you know, the collection of charges and the
22 credits, those reflect in the companies' financial
23 statement. But, on the other hand, the company is
24 part of large organization, the FirstEnergy
25 Corporation. So -- so I think the answer is -- could

1 be yes and no.

2 Q. Dr. Duann, let me go to page 59 of your
3 deposition. At line 17, I asked you the question:
4 "And do you agree that the companies are absorbing
5 the financial consequences of the hedge risk?"

6 You asked to have the question reread.
7 It was. Then your answer was: "No, I don't agree
8 with that."

9 Did I read that correctly?

10 A. Yes.

11 Q. Now, the Commission set the revenue
12 requirement for the RSR and SSR riders by targeting a
13 reasonable range of equity for AEP and DP&L, correct?

14 A. That's my general understanding.

15 Q. And is it your general understanding that
16 there was a range of ROEs cited in each Commission
17 order?

18 A. I would generally agree with that.

19 Q. And is it your understanding that the
20 range of ROE had a floor of 7 percent and a ceiling
21 of 11 to 12 percent?

22 A. I cannot recall that.

23 Q. Is it fair to say you do not know the
24 total amount of revenues that modified rider RRS
25 would provide to the companies in 2017?

1 A. I think nobody knows at this time,
2 including me.

3 Q. And it would also be fair to say you do
4 not know the total amount of revenues that modified
5 rider RRS would provide to the companies in 2018?
6 Just asking with regard to your knowledge.

7 A. I did not make that kind of calculation.

8 Q. And you personally do not know whether
9 rider RRS will be a charge or a credit in 2019 or any
10 following year, correct?

11 A. My understanding, based on my reading of
12 the filing made in the SEET proceeding, including the
13 earlier, when it was first filed, is -- is -- and
14 also the more recent one, I believe is the company
15 estimated there could be -- there could be some
16 credit in 2019. And OCC's witness estimated there
17 could not be any credit to customers at least until
18 2023 or '24, and that will happen only in very
19 limited and variable scenario.

20 MR. LANG: And, your Honors, if I could
21 move to strike. I was trying to be very specific to
22 his personal knowledge and what he knows. He
23 answered, by reference, to other testimony. I'm only
24 asking him what he's looked at and what he knows with
25 regard to, you know, any year of a charge or credit.

1 MR. KUMAR: Your Honor, first of all, I
2 believe Mr. Lang asked what Mr. Duann's understanding
3 was and Mr.-- Dr. Duann's understanding is partially
4 also based on OCC's testimony. And as he mentioned,
5 he also has read what the company has filed in this
6 case. And so, additionally, Dr. Duann is also
7 reflecting OCC's position in this case and he is
8 testifying on behalf of OCC.

9 EXAMINER ADDISON: Thank you.

10 I believe Mr. Lang did use the words
11 "personal knowledge" in his question though, so I
12 will grant the motion to strike.

13 Mr. Lang, would you like that question
14 reread?

15 MR. LANG: Thank you, your Honor, but
16 we'll move on.

17 EXAMINER ADDISON: Thank you.

18 Q. Dr. Duann, slightly new SEET topic, you
19 agree that the SEET requires that a utility's return
20 on equity be compared to the return on equity of
21 publicly-traded companies including utilities that
22 face comparable business and financial risk, correct?

23 A. Correct.

24 Q. However, you do not know whether any of
25 the companies, including utilities that are

1 considered to be comparable or that have been
2 considered to be comparable in recent SEET
3 proceedings, provide a hedge to their customers that
4 are similar to the proposed rider RRS, correct?

5 MR. KUMAR: Your Honor, may I have that
6 question reread?

7 EXAMINER ADDISON: You may.

8 (Record read.)

9 A. I did not examine or I did not even
10 remember all those companies based in the comparable
11 group, and so I have no opinion whether those
12 companies have or have not riders similar to
13 modified -- the rider that FirstEnergy had, as
14 proposed. So there could be some company has or
15 could -- I simply don't know.

16 Q. Dr. Duann, you would agree that the
17 policy of the State of Ohio is to assure the
18 availability to consumers of adequate, reliable,
19 safe, efficient, nondiscriminatory, and
20 reasonably-priced retail electric service; is that
21 correct?

22 A. I would agree with that.

23 Q. Now, you believe that stability charges
24 are not authorized by the ESP statute; is that
25 correct?

1 A. That's my understanding.

2 Q. And to further pursue that point, your
3 understanding is that the Ohio Supreme Court
4 decisions in the recent AEP and DP&L appeals means
5 that no stability charge can be approved under the
6 ESP statute; is that your understanding?

7 MR. KUMAR: Objection.

8 EXAMINER ADDISON: Grounds?

9 MR. KUMAR: I think this calls for a
10 legal conclusion on the part of Dr. Duann.

11 EXAMINER ADDISON: Dr. Duann, I don't
12 believe we've asked you this question on the record,
13 but are you an attorney?

14 THE WITNESS: No.

15 EXAMINER ADDISON: I believe he can
16 answer in his capacity as a regulatory economist if
17 he has an opinion on the matter.

18 You can answer.

19 THE WITNESS: Can I have the question
20 read back?

21 EXAMINER ADDISON: You may.

22 (Record read.)

23 A. That's my understanding.

24 MR. KUMAR: Your Honor, in light of the
25 most recent exchange, I would ask the Bench to

1 reconsider their ruling on Mr. Lang's earlier motion
2 to strike and ask them to just limit, I guess, on
3 page 13, lines 5 through 9, to just strike the part
4 "I was advised by counsel" because as we've just
5 established, Mr. Duann does have an understanding of
6 those cases.

7 MR. LANG: And, your Honor, the point for
8 striking was hearsay, that to the extent Ms. Willis
9 or Mr. Kumar or Mr. Michael, who is sitting in the
10 back, was providing the advice that he was providing
11 in his testimony. And in those portions in his
12 testimony he was specifically saying this was advice
13 I was getting from attorneys at OCC. That's hearsay;
14 that should be stricken.

15 He obviously spends of his testimony
16 providing his opinion as a regulatory person on
17 numerous legal subjects and once we put aside the
18 advice -- the hearsay advice that he obtained from
19 others, I'm -- have been spending the afternoon
20 exploring what his opinion is and that's why I asked
21 his opinion with regard to those cases. That
22 certainly is relevant for purposes of this case and
23 is not hearsay. But the hearsay advice that he got
24 from other people that he sought to include in his
25 testimony remains improper.

1 EXAMINER ADDISON: Thank you, Mr. Lang.
2 I have reconsidered my earlier ruling and I will not
3 be amending it.

4 MR. KUMAR: Thank you.

5 EXAMINER ADDISON: Let's move on. Thank
6 you.

7 Q. (By Mr. Lang) Dr. Duann, you have some --
8 you have some discussion in your testimony about
9 making rider RRS revenues subject to refund. You
10 would agree that if rider RRS revenues were approved
11 subject to refund, that could affect the credit
12 metrics of the companies.

13 A. No, I do not agree.

14 Q. Would you agree -- do you -- do you agree
15 that a rating agency -- try this. Do you agree that
16 a rating agency would look at the risk that a refund
17 could occur in a future year?

18 A. They will certainly look at it, yes.

19 Q. And if rider RRS revenues were approved
20 subject to refund, it could affect the ability of the
21 companies to access capital markets, correct?

22 A. Not necessarily.

23 Q. I'm sorry. It may or it may not, would
24 be your opinion; is that correct?

25 A. It may or may not, but I don't think it's

1 likely.

2 MR. LANG: Thank you, your Honor. That
3 concludes my examination.

4 EXAMINER ADDISON: Thank you, Mr. Lang.
5 Mr. McNamee?

6 MR. McNAMEE: No, thank you.

7 EXAMINER ADDISON: Thank you.

8 Mr. Kumar, redirect?

9 MR. KUMAR: May I have a few minutes,
10 your Honor?

11 EXAMINER ADDISON: You may.

12 Let's go off the record.

13 (Discussion off the record.)

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

16 Mr. Kumar, redirect?

17 MR. KUMAR: I don't have any questions on
18 redirect, your Honor.

19 EXAMINER ADDISON: Thank you.

20 Do you have any questions, Examiner
21 Price?

22 EXAMINER PRICE: No.

23 EXAMINER ADDISON: I have no additional
24 questions. You're excused, Dr. Duann. Thank you
25 very much.

1 THE WITNESS: Thank you.

2 MR. KUMAR: Your Honor, I would move for
3 the admission of OCC Exhibit 43 again.

4 EXAMINER ADDISON: Subject to the motions
5 to strike, are there any objections to the admission
6 of OCC Exhibit 43?

7 MR. LANG: No, your Honor.

8 EXAMINER ADDISON: Thank you. Hearing
9 none, it will be admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 EXAMINER ADDISON: Let's go off the
12 record for a second.

13 (Discussion off the record.)

14 EXAMINER PRICE: Go back on the record.
15 Staff may call its next witness.

16 MR. McNAMEE: At this time, staff would
17 call Dr. Hisham Choueiki.

18 (Witness sworn.)

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

21 THE WITNESS: Hisham, H-i-s-h-a-m, last
22 name Choueiki, C-h-o-u-e-i-k-i, 180 East Broad
23 Street, 3rd floor, Columbus, Ohio 43215.

24 - - -

25

1 HISHAM M. CHOUEDIKI, Ph.D., P.E.

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

4 DIRECT EXAMINATION

5 By Mr. McNamee:

6 Q. Dr. Choueiki, by whom are you employed?

7 A. By the Public Utilities Commission of
8 Ohio.

9 MR. McNAMEE: Your Honor, at this time, I
10 would ask to have marked for identification as Staff
11 Exhibit 15, a document entitled "Rehearing Testimony
12 of Hisham M. Choueiki."

13 EXAMINER PRICE: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. Dr. Choueiki, do you have what's been
16 marked for identification as Staff Exhibit 15?

17 A. I do.

18 Q. What is it?

19 A. That's my rehearing testimony filed in
20 this case.

21 Q. It was prepared by you or at your
22 direction?

23 A. Yes.

24 Q. Do you have any corrections to make to
25 that document?

1 A. Yes.

2 Q. What are they please, slowly?

3 A. Typo on page 11. I misspelled "RRS"
4 after working with it for two years, but it should
5 be, on line 4, it should be "RRS" not "RRSS."

6 Q. With that correction, are the contents of
7 what's been marked for identification as Staff
8 Exhibit 15, true to the best of your knowledge and
9 belief?

10 A. Yes.

11 Q. If I were to ask you the questions
12 contained within what's been marked for
13 identification as Staff Exhibit 15 again here this
14 afternoon, would your answers be as represented
15 therein?

16 A. Yes.

17 Q. Do you adopt that as your direct
18 testimony -- or your direct rehearing testimony in
19 this case?

20 A. Yes.

21 MR. McNAMEE: With that, your Honor, the
22 witness is available for cross.

23 EXAMINER PRICE: Do we have any motions
24 to strike?

25 Mr. Fisk or Mr. Soules.

1 MR. SOULES: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Soules:

5 Q. Good afternoon, Dr. Choueiki, my name is
6 Michael Soules, and I represent Sierra Club in this
7 proceeding. How are you today?

8 A. Pretty good. Good afternoon.

9 Q. Before we discuss your rehearing
10 testimony, I just wanted to cover a couple of
11 preliminary points. First of all, if I refer to the
12 companies' modified rider RRS proposal simply as "the
13 proposal," will you understand what I mean?

14 A. Yes.

15 Q. And if I refer to the version of rider
16 RRS that was approved by the Commission on March 31,
17 2016, as "rider RRS," will you understand what I
18 mean?

19 A. Yes.

20 Q. And if I refer to staff's proposed
21 distribution modernization rider as "the staff
22 proposal" or "DMR," will you understand what I mean?

23 A. Yes.

24 Q. Great. Thank you.

25 A. The only thing I would point out, I am --

1 in my testimony I call it "modified rider RRS" as the
2 proposal, so now we are going to call it "proposal."

3 Q. Yeah. Yeah. Yep. Consistent with the
4 nomenclature that other witnesses have used.

5 A. Okay.

6 Q. If you are confused at any point, please
7 just let me know.

8 Could you please turn to page 13 of your
9 rehearing testimony.

10 A. Yes, I'm there.

11 Q. The staff is recommending that the
12 Commission deny the companies' proposal; is that
13 correct?

14 A. That is correct.

15 Q. And in preparing your testimony, did you
16 review the rehearing testimony of companies' witness
17 Eileen Mikkelsen?

18 A. Yes.

19 Q. Are you aware that on July 11,
20 Ms. Mikkelsen withdrew a portion of her testimony?

21 A. Yes.

22 Q. And I do have a copy of that testimony if
23 you need it for purposes of our conversation.

24 A. Okay.

25 Q. By withdrawing that testimony, the

1 companies have altered one of the aspects of the
2 proposal; is that correct?

3 A. That's correct. I believe now there is,
4 as I recall when I saw what -- from my counsel he
5 showed me what was stricken, there was -- there was a
6 commitment on maintaining 3,200 megawatts of legacy
7 assets. To the extent -- to the extent the megawatts
8 of the legacy assets go below 3,200 megawatts, then
9 proportionately the rider RRS will go down by that
10 proportion. And I don't know if that's the only
11 concept that was taken out of her testimony, but I
12 thought that was the significant concept that was
13 taken out.

14 Q. Would it be helpful to have a copy of
15 her --

16 A. Sure.

17 MR. KUTIK: Your Honor, I'll object.
18 This is -- we are talking about something that's been
19 stricken. So we are talking about the contours of
20 what's been stricken; that's irrelevant.

21 EXAMINER PRICE: I think he is going a
22 long way around to get to an important point, so I
23 will overrule your objection, but I think I know
24 where you are going and I think we can --

25 MR. SOULES: Okay, okay. Thank you, your

1 Honor.

2 Q. (By Mr. Soules) Dr. Choueiki, did the
3 companies' alteration of their proposal, does that
4 affect staff's recommendation with respect to the
5 proposal?

6 A. Not at all.

7 Q. Thank you.

8 EXAMINER PRICE: I do have a question.
9 If you turn to page 14.

10 THE WITNESS: I'm there.

11 EXAMINER PRICE: And look at line 3 and
12 read the sentence that begins at line 3 and that's
13 halfway through line 4, I would like to ask you if
14 you would like to make a correction.

15 THE WITNESS: "As a matter of fact, all
16 of its credits and charges are ex --

17 EXAMINER PRICE: I meant to yourself, not
18 out loud. Sorry.

19 THE WITNESS: No. No, it doesn't change
20 anything in that statement at all because the
21 costs -- the costs are still based on the units at
22 hand.

23 EXAMINER PRICE: Okay. I understand.

24 THE WITNESS: So the costs are a function
25 of 3,257 megawatts, so I will not change that.

1 EXAMINER PRICE: I misunderstood your
2 testimony. My mistake.

3 Thank you, Mr. Soules.

4 MR. SOULES: Thank you, your Honor.

5 Q. (By Mr. Soules) Dr. Choueiki, let's
6 switch gears and talk about the staff proposal.

7 A. Okay.

8 Q. Your rehearing testimony proposes a new
9 distribution modernization rider, correct?

10 A. Correct.

11 Q. If the staff proposal were approved, the
12 companies would not be required to spend any of the
13 money collected through the DMR on grid
14 modernization, correct?

15 A. So are they tied to a specific grid
16 modernization item? The answer is no, but we are
17 recommending that the Commission directs the company
18 to initiate and start investing in modernizing the
19 grid and this amount of money, according to
20 Mr. Buckley, will provide credit support for the
21 companies too, not only for the corp., for FE Corp.,
22 to jump-start that modernization rather than go
23 through -- I mean, the DC -- there is a
24 distribution -- I can't recall if -- it's called
25 "DCR" and I can't recall if it's delivery or

1 distribution cost recovery. But that one is audited
2 annually and the companies would get recovery on
3 investments they make annually and costs they incur
4 annually similarly for the AMI.

5 This one is to jump-start this whole
6 process upfront and provide a cash infusion to
7 commence the -- the modernization initiatives.

8 Now, how much of it will be, according to
9 Mr. Buckley, I heard him say yesterday a major
10 portion of it, it's the expectation of staff, would
11 be going towards that, but it's not tied to a
12 specific item.

13 Q. Under the staff proposal there is no
14 mandate that the cash collected through the DMR would
15 go to the various initiatives you just identified,
16 correct?

17 A. Correct.

18 Q. Under the staff proposal, the funds
19 collected through the DMR would not need to be held
20 in a segregated account, correct?

21 A. I'm not sure about the mechanics, but we
22 haven't specified, ourselves, what type of account
23 would go -- how the \$131 million would be itemized
24 and accounted for and what account. I'm not sure.

25 Q. Okay. Thank you. There's nothing in the

1 staff proposal that would prevent the companies from
2 transferring the cash associated with the DMR to
3 FirstEnergy Corp. through dividends, correct?

4 A. The only -- we are asking -- with our
5 recommendation, we are asking the Commission to
6 direct the company to commence the modernization
7 initiative. Now, how the Commission does that, the
8 Commission could say -- put additional conditions
9 than the ones that Mr. Buckley put. But our
10 recommendation leaves it open to the Commission.

11 MS. WILLIS: May I have that answer
12 reread, please?

13 EXAMINER PRICE: You may.

14 (Record read.)

15 A. I would just change "company" to
16 "companies."

17 Q. Thank you.

18 MR. SOULES: Your Honor, with that, I
19 would move to strike the answer as nonresponsive to
20 the question which was quite specific.

21 EXAMINER PRICE: Denied.

22 Q. Dr. Choueiki, can you identify anything
23 in the staff proposal that would prevent the
24 companies from transferring the cash associated with
25 the DMR to FirstEnergy Corp. through dividends?

1 MR. KUTIK: Objection. Asked and
2 answered.

3 EXAMINER PRICE: In light of my denying
4 his motion to strike, I'll give him some leeway to
5 ask his question again.

6 MR. SOULES: Thank you, your Honor.

7 A. If you look at page 15, starting on
8 line 14, it's not only recommending the new rider be
9 formed and 131 be collected in it, but the Commission
10 should direct -- I mean, you have got to take the two
11 paragraphs together; you can't just take the first
12 one and not the second one. So accordingly, the
13 Commission should direct the companies to invest in
14 modernization -- modernizing the distribution grid.
15 Those are together, not separate.

16 Q. Okay. Thank you, Dr. Choueiki.

17 So maybe if we could step back and talk
18 for a minute about the purpose of the DMR. The DMR's
19 purpose is to enable the companies to provide credit
20 support to FirstEnergy Corp., correct?

21 A. I think Mr. Buckley, yesterday, testified
22 and in his testimony -- in his testimony yesterday
23 that it's for the companies and FE Corp., FirstEnergy
24 Corp.

25 Q. So the purpose of the DMR is to enable

1 the companies to provide credit support to both
2 themselves and FE Corp.; is that correct?

3 A. The purpose of the DMR is to provide
4 credit support, correct.

5 Q. Thank you. And it's the staff's belief
6 that this credit support is necessary to help
7 FirstEnergy Corp. maintain an investment grade credit
8 rating from the major credit agencies; is that
9 correct?

10 A. Those would have been good questions, and
11 I thought Mr. Buckley responded to all these
12 yesterday. He is the expert on the financial
13 matters.

14 Q. Dr. Choueiki, does staff believe that
15 this credit support is necessary in order to enable
16 the companies to invest in modernizing the
17 distribution grid?

18 A. According to Mr. Buckley's testimony,
19 it's necessary to provide credit support to the
20 companies and to FirstEnergy Corp., not to
21 modernizing the grid. The modernization of the grid
22 is an objective and a -- and a policy of the State of
23 Ohio that I cited in my testimony.

24 MR. SETTINERI: Excuse me. Could I have
25 that question and answer reread, please?

1 EXAMINER PRICE: You may.

2 MR. SETTINERI: Thank you.

3 (Record read.)

4 MR. SETTINERI: Thank you.

5 Q. (By Mr. Soules) If the DMR were approved
6 by the Commission, but the companies did not spend
7 any of the money collected under the DMR on grid
8 modernization, would that outcome meet the purposes
9 of the staff proposal?

10 MR. McNAMEE: Objection. This continuing
11 line of questioning has all been covered by Staff
12 Witness Buckley yesterday, I believe.

13 MR. SOULES: Your Honor, I'm -- Staff
14 Witness Buckley said that Dr. Choueiki was the policy
15 witness. I'm exploring the policy objectives of the
16 staff proposal.

17 EXAMINER PRICE: I understand, but I am
18 still going to sustain the objection. I think your
19 hypothetical is incomplete. It sounds like you're
20 saying if they don't spend the specific dollars from
21 rider DMR, are you saying they don't spend any
22 dollars or they have to take the \$20 bill they
23 collected from FirstEnergy and invest in SmartGrid?

24 MR. McNAMEE: I thought the question was
25 being asked if they would violate a Commission

1 requirement.

2 EXAMINER PRICE: That's why -- that's why
3 I am trying to say it's an incomplete hypothetical.
4 It's not clear exactly what he is asking.

5 MR. SOULES: Okay. Thank you, your
6 Honor.

7 Q. (By Mr. Soules) Dr. Choueiki, it's
8 staff's expectation that if the DMR were approved,
9 that the companies will invest more in grid
10 modernization than they otherwise would; is that
11 correct?

12 A. So these -- the staff alternative
13 proposal addresses the policy of the State of Ohio
14 and the credit support recommended by Mr. Buckley.
15 They are all together. I can't take each one of them
16 independently. They are in the same section of the
17 proposal that we're titling "Staff's alternative
18 proposal." So I'm still having difficulty why you
19 are separating them when staff did not separate the
20 two from each other.

21 MR. SOULES: Your Honor, could I have
22 that last question and answer, please.

23 EXAMINER PRICE: You may.

24 (Record read.)

25 MR. SOULES: Your Honor, I would move to

1 strike that response as nonresponsive to the
2 question.

3 EXAMINER PRICE: Well, I think the
4 problem is your question misconstrues what his
5 testimony is. I don't think it says anywhere in his
6 testimony that they will spend more and so I think
7 that's -- he is trying to answer a question that's
8 not relevant to what's not actually reflecting what
9 his testimony is. I don't think anywhere in his
10 testimony he says they will spend more. He says
11 staff believes it's necessary for them to access the
12 capital markets to get more favorable terms and
13 conditions. So I will strike his answer, but I'm
14 going to strike your question too. So if you would
15 like to try again.

16 MR. SOULES: Okay. Thank you, your
17 Honor.

18 Q. (By Mr. Soules) Is the staff recommending
19 the Commission direct the companies to invest a
20 specific amount of money in modernizing the
21 distribution grid?

22 MR. McNAMEE: Objection. Wasn't this
23 asked and answered?

24 EXAMINER PRICE: I don't think he asked
25 the question about a specific amount of money. I'm

1 not sure it's in the scope of his testimony, but he
2 can answer if he knows.

3 A. So per the stipulation the companies
4 filed earlier this year, at length, they were
5 supposed to file, like, 90 days after the stipulation
6 was signed. There is a plan right now that
7 intervenors and the companies and staff are
8 reviewing, so --

9 THE WITNESS: Could you repeat again?
10 May you reread the question again? I want to make
11 sure I answer his question correctly.

12 (Record read.)

13 A. So in that -- in that case, which is the
14 AMI case, I can't remember the course number -- case
15 number, but I think it's cited in my testimony, there
16 are numbers that the companies have included. And at
17 the end of the day, there will be a plan, hopefully,
18 that is agreed to by everyone that then we can file
19 at the -- in the docket and then the Commission would
20 decide how much money and what is the expenditure
21 plan, but right now there is no number. On the
22 costs, let me just add, on the costs, there are no
23 numbers because the companies cite net benefits in
24 that plan.

25 Q. And, Dr. Choueiki, you are referring to

1 the grid modernization business plan that's
2 referenced on page 16 of your rehearing testimony; is
3 that correct?

4 A. Yeah. I think I cite the case, right,
5 and I think the grid modernization plan was filed in
6 February sometime. I mean it's per the stipulation
7 they have to file 90 days after. I don't remember
8 when it was, the case number that was filed by the
9 companies, that's the plan.

10 Q. Are you familiar with the companies'
11 initial filing in that proceeding?

12 A. I read it when it was filed.

13 EXAMINER PRICE: I think this -- we have
14 heard references to this filing multiple times and so
15 just to make it easier for everybody, on my own
16 motion we are going to take administrative notice of
17 the companies' filing in that case and then people
18 can freely refer to it in their briefs in this case.

19 MS. WILLIS: Does that include, your
20 Honor, the Exhibit A which actually has the plan to
21 the filing?

22 EXAMINER PRICE: I honestly don't
23 remember. I will have to go back and look.

24 MS. WILLIS: We would ask if
25 administrative notice be taken, it be taken of the

1 entire filing with the plan, the filed business plan.

2 EXAMINER PRICE: That's probably correct.

3 I will go ahead and take administrative notice of the
4 entire filing. I reviewed it a long time ago also.

5 MS. BOJKO: Your Honor, for the record,
6 do you have the case number handy there?

7 EXAMINER PRICE: I do not.

8 MR. KUTIK: It's in his testimony.

9 EXAMINER PRICE: Wait. It's right here.
10 16-481-EL-UNC.

11 MS. BOJKO: Thank you.

12 Q. Dr. Choueiki, is it your understanding
13 there will be a collaborative process in that grid
14 modernization docket?

15 MR. KUTIK: Objection.

16 EXAMINER PRICE: Grounds?

17 MR. KUTIK: Relevance.

18 EXAMINER PRICE: Mr. Soules.

19 MR. SOULES: Your Honor, Dr. Choueiki
20 cites to that document in his rehearing testimony, so
21 I think it's directly relevant to his testimony.

22 EXAMINER PRICE: Well, I don't think the
23 examiners assigned to that case have set forth any
24 process for that case and so I don't think
25 Dr. Choueiki is in a position to answer that

1 question. So some sort of process will be
2 forthcoming once we wrap up this particular matter.

3 MR. KUTIK: So is my objection sustained?

4 EXAMINER PRICE: Sustained. I like my
5 way; was more expansive.

6 Q. (By Mr. Soules) Dr. Choueiki, you don't
7 know what the final outcome of that -- of that filing
8 will be; is that a fair statement?

9 A. That is a fair statement.

10 Q. So you don't know if there will be a
11 specific level of funding mandated by the Commission
12 in that proceeding; is that correct?

13 A. Our recommendation is for the grid to be
14 modernized and to become one of the most intelligent
15 grids in the current industry. We would like Ohio,
16 the entire state of Ohio, with all of its
17 distribution electric utilities, to develop a
18 modernization grid that is self-healing, that is
19 open, that is available for retailers and consumers
20 and third-party providers to, as I state in my
21 testimony, interact and transact and offer all sorts
22 of services to consumers and empower consumers in the
23 state of Ohio.

24 Q. Thank you.

25 In -- Dr. Choueiki, you're referring to

1 page 15 of your rehearing testimony, starting on
2 line 14; is that correct?

3 A. Yes.

4 Q. And is it staff's official recommendation
5 that the Commission direct the companies to invest in
6 modernizing the distribution grid?

7 A. It is our -- in our recommendation, yes.

8 Q. If the Commission were to require a
9 certain level of investment in grid modernization as
10 a condition of approving the DMR, would you agree
11 that that condition would help achieve the staff
12 recommendation?

13 A. I am not going to -- my recommendation is
14 not going to be adding more conditions on the
15 Commission. The Commission will look at the entire
16 application in that case and in the rehearing in this
17 case and they will look at them and decide what
18 should be the appropriate mechanics of this rider and
19 of the AMI rider. So the Commission is free to do
20 whatever it pleases. Consistent with the policy of
21 the State of Ohio.

22 Q. Just so I understand, staff is not
23 recommending that the Commission be required to make
24 any specific level of investment in grid
25 modernization under their proposal; is that correct?

1 MR. McNAMEE: Objection.

2 EXAMINER PRICE: Grounds?

3 MR. McNAMEE: I believe this was
4 literally asked before.

5 EXAMINER PRICE: Sustained.

6 Q. (By Mr. Soules) Dr. Choueiki, what
7 proportion of the revenues collected through the DMR
8 does staff anticipate will be spent on grid
9 modernization?

10 A. What I heard Mr. Buckley state yesterday
11 that it's his expectation that a major portion of it
12 would be. Again, it's a cash infusion for the
13 company -- companies to go and access more in the
14 capital market and -- but at least it will be a start
15 for them because right now it looks like their
16 financial condition is not healthy enough to go on
17 their own.

18 MS. WILLIS: May I have that answer
19 reread?

20 EXAMINER PRICE: You may.

21 (Record read.)

22 Q. (By Mr. Soules) Dr. Choueiki, earlier
23 we -- I posed a question to you about whether the
24 staff proposal would prevent the companies from
25 transferring the cash associated with the DMR to

1 FirstEnergy Corp. through dividends. Do you recall
2 that exchange?

3 A. I recall that exchange.

4 Q. If the revenue associated with the DMR
5 were transferred up to FirstEnergy Corp. through
6 dividends, is there anything in the staff proposal
7 that would prevent FirstEnergy Corp. from
8 subsequently using that cash to make equity infusions
9 into FirstEnergy Solutions?

10 A. Again, I thought that line of questioning
11 was asked of Mr. Buckley. I don't address any of
12 this in my testimony.

13 Q. So you are not aware of any aspect of the
14 proposal that would prohibit that; is that a fair
15 statement?

16 A. I can't recall what Mr. Buckley stated,
17 so I don't want to say something other than that he
18 is the financial expert, not me.

19 Q. The Commission approved the original
20 rider RRS in its March 31, 2016, order, correct?

21 A. Correct.

22 Q. And the Commission staff supported the
23 original rider RRS, correct?

24 A. Correct.

25 Q. And as we sit here today, rider RRS

1 remains part of ESP IV as approved by the Commission,
2 correct?

3 MR. KUTIK: Could I have the question
4 read, please?

5 EXAMINER PRICE: You may.

6 (Record read.)

7 A. Yes. Right now it has a zero in it.

8 EXAMINER PRICE: Well, technically, it
9 has a blank in it. The record is clear about that.

10 MS. BOJKO: Thank you, your Honor.

11 MR. KUTIK: Thank you, your Honor.

12 Q. Under the staff proposal, if the DMR were
13 approved by the Commission, would rider RRS be
14 removed from ESP IV?

15 A. So rider RRS does not exist anymore.
16 There is now a proposal. It is our recommendation
17 that the Commission deny that proposal. Now, the
18 mechanics of that, I'm not sure, whether the RRS
19 suddenly goes away and now there is a new rider
20 called "distribution modernization rider" if the
21 Commission should agree with us, with staff. But our
22 recommendation is to deny the proposal.

23 Q. And staff would be opposed to an ESP that
24 included both the original rider RRS and the DMR,
25 correct?

1 MR. McNAMEE: Objection.

2 EXAMINER PRICE: Yes, sir.

3 MR. McNAMEE: This witness does not speak
4 to the RRS, I don't believe.

5 EXAMINER PRICE: I think the difficulty,
6 Mr. Soules, is you are asking a non-attorney about
7 the legal intricacies of the rehearing process, and I
8 think that is why you are not getting the answers you
9 would like to get from him, because I don't think
10 it's his place to answer that question.

11 So I think what happens, whether the
12 Commission goes with staff's proposal, the companies'
13 modified proposal, or addresses the applications for
14 rehearing with respect to -- to the original rider
15 RRS, including the companies' application assignments
16 of error, is a matter for brief or for the Commission
17 to decide. It's not -- it's not within his
18 expertise.

19 MR. SOULES: Your Honor, I was merely
20 trying to explore whether the staff would be opposed
21 to a situation where the DMR were approved and added
22 to the ESP. And if, hypothetically speaking, FERC
23 withdrew its, you know, requirement or signed off on
24 the PPA, if somehow we could end up with an ESP that
25 included both the original RRS and DMR.

1 EXAMINER PRICE: Again, I think that's a
2 legal question for brief. I don't believe that
3 that's a question for this non-attorney witness.

4 MR. SOULES: I guess I was thinking of it
5 in terms of both of these are revenue collection
6 mechanisms and I was trying to understand the staff's
7 position with respect to that.

8 EXAMINER PRICE: Again, I think you are
9 asking a question that calls for a legal conclusion
10 so your question is not going to go on.

11 Q. Under the staff's proposal, the companies
12 will be authorized to collect \$131 million per year
13 from customers for at least three years, correct?

14 MR. McNAMEE: Could I have that question
15 reread, please?

16 EXAMINER PRICE: You may.

17 (Record read.)

18 A. I believe Mr. Buckley stated it was for
19 three years and the companies would have the burden
20 of proof to come back to the Commission and ask for
21 no more than two. So stating that it's at least
22 three years is not true.

23 Q. Okay. Thank you for that clarification.

24 So the Commission would have to approve
25 any requests for an extension of the DMR past three

1 years; is that accurate?

2 A. I didn't hear you. I'm sorry.

3 EXAMINER PRICE: Can we have the question
4 back again, please?

5 (Record read.)

6 A. Yes. But no more than two years, our
7 recommendation. So it's not like they can come in,
8 the companies can come in and ask for another four
9 years or another five years. Our recommendation is
10 that the burden is on them to demonstrate to the
11 Commission that they need an additional two years or
12 no more than two years.

13 Q. But under the staff proposal would there
14 be a full Commission proceeding on that extension
15 request, with an evidentiary hearing?

16 A. The Commission would have to address that
17 in its order, in its rehearing order. We did not --
18 staff did not specify the mechanics of the procedure,
19 a the description of what can happen.

20 Q. Under the staff proposal would the
21 companies have to make any showing that FirstEnergy
22 Corp. needs credit support in order to receive an
23 extension of the DMR?

24 A. Well, what I heard -- again, that's a
25 question for Mr. Buckley, but I heard him say that

1 the Commission would have to decide on that. I'm not
2 sure I personally -- I'm not sure what would be the
3 necessary financial showing because I didn't -- I
4 wasn't the one who evaluated the financial metrics of
5 the companies to make the recommendation.

6 Q. Under the staff proposal would the
7 companies have to make any showing that they had
8 invested in grid modernization in order to receive an
9 extension of the DMR?

10 A. I highly doubt that the companies will
11 come in asking for an extension without that showing.
12 But to answer your question, I have to be fair, it's
13 not in the recommendation.

14 Q. Thank you.

15 Under the staff proposal, is there any
16 limit on the amount of revenue that the companies
17 could request for the fourth and fifth years if the
18 DMR were extended?

19 A. Again, that's a question I thought
20 Mr. Buckley answered, and I can't recall what he
21 answered.

22 MR. SOULES: Your Honor, I believe
23 Mr. Buckley referred to Dr. Choueiki for -- on that
24 point.

25 A. On a financial matter he referred to me?

1 EXAMINER PRICE: Do your best,
2 Dr. Choueiki.

3 MR. McNAMEE: I don't remember.

4 MS. WILLIS: I've got the transcript if
5 you want me to check.

6 EXAMINER PRICE: I trust all of you that
7 you are not misrepresenting that --

8 MR. KUTIK: May we have the question put
9 to the witness again?

10 EXAMINER PRICE: -- on this issue.

11 MR. KUTIK: May we have the question put
12 to the witness again?

13 EXAMINER PRICE: We may.

14 (Record read.)

15 A. There would have to be a methodology that
16 the companies are going to use to come up with a
17 number. Then staff is going to look at that
18 methodology, ourselves, and decide whether we agree
19 with it or not. And the metrics could be completely
20 different. I recall him saying that maybe their
21 financial exposure to risk in three years is -- is
22 smaller than now. So maybe it won't be 14-and-a-half
23 percent. Maybe it will be 12 percent. And the
24 metrics may be different. The ratio could be a
25 different ratio.

1 So the burden is on them, and then the
2 staff will make a recommendation to the Commission at
3 that time. The Commission could alternatively
4 address it in their order. They may disagree with us
5 on the two year and say only three years. Who knows
6 what the Commission will decide.

7 Q. The staff proposal, as it currently
8 stands, does not include any monetary limit on the
9 amount of revenue that the companies could request
10 for the fourth and fifth years of the DMR; is that
11 correct?

12 A. That is correct.

13 Q. Dr. Choueiki, I think earlier you had
14 made a reference to the companies having difficulty
15 accessing capital markets. Do you recall that?

16 A. I am relying on Mr. Buckley's testimony.

17 Q. So you are not offering any opinions as
18 to the amount of credit support the companies would
19 need; is that correct?

20 A. No. Mr. Buckley provided that opinion.

21 Q. And you are not offering any opinions
22 about the effect of a downgrade -- a credit rating
23 downgrade to FirstEnergy Corp. on the companies'
24 ability to access capital markets; is that correct?

25 A. Again, that's addressed in Mr. Buckley's

1 prefiled testimony and testimony yesterday.

2 Q. Is it your opinion the DMR would be
3 better for the companies' customers than the
4 proposal?

5 A. It is staff's opinion it is better.

6 Q. And why is that?

7 A. Because the alternative proposal --
8 staff's proposal addresses the policy goals of the
9 State of Ohio, two of the policy goals articulated in
10 State of Ohio's set of policy rules.

11 This -- the proposal -- I am talking
12 about the companies' proposal now, is more of an
13 insurance hedge. And staff's position is that our
14 proposal benefits the State of Ohio more. And the
15 companies' customers.

16 Q. Does staff believe that the DMR
17 economically benefits the companies' customers more
18 than the proposal would?

19 A. Yes. In the long run, it is better for
20 consumers.

21 Q. Are you aware of the companies'
22 projections of charges and credits under their
23 proposal?

24 A. Yes.

25 Q. And the companies project a net credit to

1 customers of \$561 million in nominal terms over the
2 eight-year period of the proposal; is that correct?

3 A. That's correct.

4 Q. And that's \$260 million in net present
5 value dollars, correct?

6 A. I don't remember what the net present
7 value is, but it seems reasonable.

8 Q. Okay. And under the DMR, customers would
9 pay the companies \$131 million for three -- for three
10 years; is that correct?

11 A. That is correct.

12 Q. So customers would pay the companies
13 \$393 million under the DMR as proposed by staff,
14 correct?

15 A. That is correct.

16 Q. So if you accept the companies'
17 projection, then the companies' customers would pay
18 far more under the DMR than they would under the
19 companies' proposal, correct?

20 A. But I did not say that at this point in
21 time, in July of 2016, we are now accepting the
22 companies' forecasts.

23 EXAMINER PRICE: I think, Mr. Soules,
24 you're not -- I am not saying this purposely, but I
25 think you are not totally construing his -- you are

1 misconstruing his testimony somewhat.

2 Doctor, you are also concerned and you
3 say in your testimony you're concerned that the
4 proposal may be construed as a transition charge by
5 the Supreme Court; is that correct?

6 THE WITNESS: It's not a legal conclusion
7 but that's staff's opinion.

8 EXAMINER PRICE: Staff's concern.

9 THE WITNESS: Staff's concern.

10 EXAMINER PRICE: And if, at some point,
11 two years down the line, three years down the line,
12 the court were to throw out the proposal, the company
13 would have collected some amount of money in the
14 early years, as the company projects, and there would
15 have been no opportunity to collect the credits at
16 the back end; isn't that correct?

17 THE WITNESS: That is very true and
18 correct, yes.

19 EXAMINER PRICE: So if you read your
20 entire testimony, that would explain the staff's
21 position; is that correct?

22 THE WITNESS: That's correct. He didn't
23 allow me -- I mean, the way the questions were being
24 asked, I --

25 EXAMINER PRICE: I am sure it was not

1 advertent.

2 MS. WILLIS: Can we have his,
3 Mr. Soules's question, and Mr. Choueiki's answer
4 reread?

5 EXAMINER PRICE: "Doctor."

6 MS. WILLIS: I'm sorry. Dr. Choueiki and
7 Mr. Soules. I apologize.

8 EXAMINER PRICE: His previous --
9 Mr. Soules's last question to Dr. Choueiki.

10 MS. WILLIS: Yes, thank you, your Honor.
11 (Record read.)

12 MR. SOULES: No further questions, your
13 Honor. Thank you, Doctor.

14 THE WITNESS: Thank you.

15 EXAMINER PRICE: Let's go off the record.
16 (Discussion off the record.)

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

19 RESA, P3/EP SA, or Dynegy, or --

20 MS. PETRUCCI: Et al.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Settineri:

24 Q. Good afternoon, Dr. Choueiki.

25 A. Good afternoon.

1 Q. My name is Mike Settineri. Nice to see
2 you today.

3 A. Nice to see you.

4 Q. I wanted to follow-up on that last
5 question. Now, we will go to the bottom-line
6 question, and if we have to work back, we will. It's
7 just a numbers game.

8 Under staff's alternative proposal, it
9 would give the companies more money than the
10 companies' project would be recovered under the
11 modified rider RRS proposal, correct?

12 A. If you are looking just at the pure, the
13 first three years, the \$393 million versus, I can't
14 remember what the number is, I think it's proprietary
15 what the number is. And if you were to accept the
16 companies' projections at this point in time, then,
17 yes, there is a difference, and I don't remember what
18 the difference is, and I don't think we can address
19 it in a open hearing.

20 Q. Which one -- and staff's alter -- the
21 difference would be that staff's alternative proposal
22 would provide the companies with more money, correct?

23 A. If staff, at this point in time, agreed
24 with the companies' projections again that are in the
25 record, which I did not address, yes, it would be

1 larger.

2 Q. And staff does not agree with the
3 projections that are in the record for the companies'
4 modified rider RRS proposal, correct?

5 MR. KUTIK: Objection.

6 EXAMINER PRICE: Grounds.

7 MR. KUTIK: Beyond the scope of this
8 witness's testimony. Ms. Turkenton addressed that.

9 MR. SETTINERI: He just testified a
10 minute ago. As of today, they may not agree with it.
11 I am following up. It's a fair question.

12 MR. KUTIK: It's not in his testimony.

13 EXAMINER PRICE: Pardon?

14 MR. KUTIK: It's not in his testimony.
15 The fact that somebody asked him about it doesn't
16 mean it's in his testimony.

17 EXAMINER PRICE: I am going to sustain
18 the objection. I am also going to note the company
19 is free to advocate for its projections all it wants,
20 but the Commission decided on a different number, and
21 I don't believe staff has done anything about
22 addressing what the Commission's number is.

23 So, you know, staff is -- they are not --
24 I don't see anywhere in the rehearing evidence the
25 staff is endorsing the companies' projections, and

1 the Commission found a totally different number.

2 MR. SETTINERI: Staff -- well, I am not
3 going to respond unless you would like me to.

4 EXAMINER PRICE: Fire away.

5 MR. SETTINERI: I mean we have three
6 proposals on the table today. We have the original
7 rider RRS, we have a modified proposal, and now we
8 have a staff proposal.

9 EXAMINER PRICE: Yes.

10 MR. SETTINERI: I think it's fair to
11 point out which one would give the companies the most
12 money and based on -- and the only thing we have is
13 based on the initial projections.

14 EXAMINER PRICE: The staff cannot endorse
15 the companies' projections as part of the -- as part
16 of the company's proposal. That's my sole point.

17 MR. SETTINERI: It doesn't matter. I am
18 creating a record of a comparison. Whether he
19 endorsed it or not, and they've evaluated it --

20 EXAMINER PRICE: He just said they don't
21 endorse the companies' projections at this time. Ten
22 minutes ago.

23 MR. SETTINERI: My question was much more
24 targeted. I don't think he said that.

25 EXAMINER PRICE: Go ahead and try again.

1 MR. SETTINERI: Can I have that question
2 reread?

3 EXAMINER PRICE: Let's try again. You
4 can go ahead and make the record. I do agree with
5 Mr. Kutik, none of this is in the staff's testimony.

6 MR. SETTINERI: I guess, again, staff has
7 a proposal. The Commission has to decide do we keep
8 the original proposal, do we go with modified rider
9 RRS proposal, or do we go with the alternative
10 proposal.

11 EXAMINER PRICE: I understand that. And
12 in the record of this case, we will have
13 Ms. Mikkelsen testifying as to the companies' number,
14 and we have Mr. Buckley who has testified as to the
15 staff's number, and the Commission is fully able to
16 make the -- and you have your evidence that you may
17 or may not be submitting in the future, and the
18 Commission is fully capable of deciding the case
19 based upon that record.

20 MR. SETTINERI: We will also not have any
21 intervenors testifying on those projections. The
22 company got to get that in the record; they got to
23 ask questions on it.

24 EXAMINER PRICE: I understand.

25 MR. SETTINERI: The intervenors have not

1 been able to get their evidence in the record.

2 EXAMINER PRICE: I understand what you
3 are saying. I was there for my ruling.

4 MR. SETTINERI: I know. What I am trying
5 to do is do comparisons and see where I go and you
6 can tell me what you think. Or Mr. Kutik will first,
7 so.

8 EXAMINER PRICE: Excuse me?

9 MR. SETTINERI: I will have an objection
10 before you rule on it.

11 EXAMINER PRICE: Thank you.

12 Q. (By Mr. Settineri) Okay. So I can't have
13 the last question reread.

14 As of today, isn't it true that the staff
15 does not agree with the companies' projections of the
16 modified rider RRS proposal as to the overall credit
17 or charge?

18 MR. KUTIK: Objection.

19 EXAMINER PRICE: Grounds?

20 MR. KUTIK: Beyond the scope of his
21 testimony.

22 EXAMINER PRICE: I will allow this
23 question and then we will move on.

24 A. Staff does not agree with the companies'
25 projections, that is correct.

1 Q. And why doesn't staff agree with the
2 companies' projections?

3 MR. KUTIK: Objection.

4 EXAMINER PRICE: Grounds?

5 MR. KUTIK: Beyond the scope of his
6 testimony.

7 EXAMINER PRICE: I told you we were going
8 to get that one question and we were going to move
9 on, so I think it's time to move on.

10 MR. SETTINERI: Thank you, your Honor.

11 Q. (By Mr. Settineri) Now, the -- would you
12 agree with me we have three proposals in play
13 currently which would be the original rider RRS
14 proposal, the modified rider RRS proposal, and
15 staff's alternative proposal?

16 A. The nuance that I am not getting, by the
17 company -- the company filing a proposal, doesn't
18 that mean they are throwing away the other proposal,
19 the original RRS?

20 Q. Let me -- let me make it easier for you.

21 Assume that the Commission can select
22 from all three proposals. It can select either the
23 original rider RRS proposal, it can select the
24 modified rider RRS proposal, or it can select staff's
25 alternative proposal. So that's -- I am going to

1 make that assumption.

2 A. Sorry for the interruption, but in
3 reality, that first -- the first RRS application is
4 no longer there in my mind.

5 Q. Right. And what I am trying to do is I'm
6 just asking you to assume. I am not asking you to
7 say whether it's right or wrong.

8 A. All right.

9 Q. Just assume that all three are available
10 to the Commission. And under all three proposals,
11 the revenue collected would be included in
12 FirstEnergy Corp.'s cash flow from operations,
13 correct?

14 MR. KUTIK: Well, I'll object to the
15 approved rider RRS as a "proposal."

16 EXAMINER PRICE: Grounds -- could you
17 explain?

18 MR. KUTIK: Because it's not a proposal.
19 It's approved.

20 MR. SETTINERI: I can rephrase. I will
21 be glad to.

22 EXAMINER PRICE: Okay.

23 Q. Under the three alternatives I gave that
24 the Commission could select from, the revenue
25 collected would be included in FirstEnergy's Corp.'s

1 cash flow from operations, correct?

2 A. I mean, I am not the financial expert, so
3 I hate to speculate here, so I won't. That would
4 have been something you would have asked Buckley. He
5 would know exactly what goes into the cash flow.

6 Q. Okay. Well, let me just close the loop
7 on that, just to be clear then, of the three
8 alternatives I gave that the Commission could collect
9 from under this assumption I gave you, the revenue
10 collected -- is it your understanding that the
11 revenue collected would be included in FirstEnergy
12 Corp.'s cash flow from operations?

13 MR. KUTIK: Objection. He just said he
14 wouldn't want to speculate on that, plus it's beyond
15 the scope of his testimony.

16 MR. SETTINERI: I am just asking for his
17 understanding, and if he doesn't understand, that's
18 fine.

19 EXAMINER PRICE: He already said he
20 didn't understand.

21 A. I did not want to speculate.

22 Q. Thank you.

23 Under staff's new proposal, that proposal
24 is -- would be for three years; is that correct?
25 With a two-year extension available?

1 A. Yes.

2 Q. What about the term of the ESP IV that's
3 currently in place, would that ESP IV continue to run
4 to May 31, 2024?

5 A. Right. Now the company is in an
6 eight-year ESP, the companies, so we have an
7 eight-year ESP, we are in the first year of it.

8 Q. But if the Commission approves staff's
9 proposal, has staff considered whether the ESP IV
10 should be shortened to match up with the term of
11 staff's alternative proposal?

12 MR. KUTIK: Objection.

13 EXAMINER PRICE: Grounds?

14 MR. KUTIK: It's beyond the scope of his
15 testimony. His testimony says nothing about changing
16 the term of the ESP.

17 EXAMINER PRICE: But he is the policy
18 witness. He is capable of answering this question.
19 Overruled.

20 A. We do not contemplate or make a
21 recommendation to change anything but rider RRS, the
22 proposal.

23 Q. So as the ESP progressed, at a certain
24 point in time you would expect, you call it "rider
25 DMR," would drop off, as some riders do during the

1 course of an ESP?

2 A. Based on our recommendation, yes.

3 Q. Thank you.

4 If could you turn to page 8 of your
5 testimony lines 12 to 14. Let me know when you are
6 there.

7 A. Okay. I'm there.

8 Q. Thank you.

9 There you note that FES docketed an
10 informational filing to notify FERC that FES had
11 executed a PPA.. Do you see that reference? And I
12 paraphrased your testimony there, but do you see
13 that?

14 A. Yes.

15 Q. Okay. Have you reviewed a copy of that
16 executed PPA?

17 MR. KUTIK: Objection.

18 EXAMINER PRICE: Grounds?

19 MR. KUTIK: Beyond the scope.

20 EXAMINER PRICE: He references it.

21 Overruled.

22 A. I did not review the executed PPA. I
23 reviewed the correspondence, the filing, but not the
24 PPA itself.

25 Q. Are you aware of whether anyone in staff

1 has seen a copy of the executed PPA?

2 A. I'm not aware. I don't know whether
3 someone has seen it or not.

4 Q. Thank you.

5 The modified rider RRS is based on a
6 different methodology than the original rider RRS,
7 correct?

8 A. Correct.

9 Q. I have a series of questions here for
10 you, Dr. Choueiki, starting first with: Staff's
11 alternative proposal will not address the financial
12 need of any generating plant in Ohio, correct?

13 A. It has nothing to do with any financial
14 needs of generation in Ohio, that's correct.

15 Q. Staff's alternative proposal will not
16 address the necessity of any generating facility in
17 light of future reliability concerns, including
18 supply diversity, correct?

19 A. The proposal is no longer tied to
20 diversity, supply diversity, or economic development
21 at all.

22 EXAMINER PRICE: I think he is asking you
23 if staff's rider DMR is tied to.

24 A. I'm sorry. I misheard the first part.
25 If you would read it again, please.

1 Q. I would be glad to. And these questions
2 are all geared to staff's alternative proposal.

3 A. Proposal, okay.

4 Q. And if I -- I will just go forward.

5 Staff's alternative proposal will not
6 address the necessity of any generating facility in
7 light of future reliability concerns, including
8 supply and diversity; correct?

9 A. That is correct.

10 Q. And staff's alternative proposal will not
11 ensure compliance, environmental compliance, correct?

12 A. I mean to the extent you have -- there is
13 an indirect relationship, which is to the extent you
14 have a modernized grid, and you have, you know
15 Volt/VAR deployment where you have energy
16 conservation, and, you know, to the extent that might
17 trickle down to less emissions, yes, but it's not
18 directly tied to any power plant in Ohio reducing its
19 emissions.

20 Q. And it's not directed towards compliance
21 with environmental regulations, correct?

22 A. That's correct.

23 Q. And staff's -- and staff's proposal will
24 not address the closure of any generating plant and
25 the impact that closure would have on electric prices

1 and economic development in the state of Ohio,
2 correct?

3 A. That is correct.

4 Q. Let me ask you this question: Would you
5 agree with me that the modified rider RRS proposal --
6 the modified rider RRS is dependent on two variables?

7 A. Tell me what the two variables are, and I
8 will tell you if you are missing anything. I think
9 there is a lot more than two, but go ahead.

10 Q. I am talking about the modified rider RRS
11 proposal.

12 A. Yes. Tell me what they are.

13 Q. Sure. It would be the actual capacity
14 prices. And that would be on one side of the
15 equation because -- and then the other would be the
16 day-ahead energy prices, correct?

17 A. Those are the -- okay. So those are the
18 prices that change year to year for capacity and,
19 according to their proposal, month to month for
20 energy. But, yes, they are tied to -- the revenues
21 are tied to these, to prices, but there are other
22 variables, however the variables are fixed.

23 So you have variables that are fixed like
24 the output -- the output that they tie to, right?
25 You have three power plants, there's an output in the

1 record, that output is fixed. There's also a UCAP
2 which is a capacity unforced outage value, that's
3 fixed also. So those variables are fixed. And then
4 you have the market prices that change. That's why I
5 hesitate when you said "variables." There are
6 variables that are constant and variables that vary.

7 Q. So I will be a little more precise with
8 the word "variable." And you are an engineer,
9 correct?

10 A. Correct.

11 Q. So would you say "a variable changes,"
12 correct?

13 A. Yes.

14 Q. Every -- all the other inputs are fixed,
15 correct?

16 A. They are fixed within a -- like one year;
17 but they may be different like the UCAP changes from
18 year to year, but it's fixed in that -- in a specific
19 year.

20 Q. Yes, I understand.

21 A. Okay.

22 Q. But as of today, they are all fixed.
23 They are fixed inputs.

24 A. That's what I say in my testimony. They
25 say they are fixed. As a matter of fact, I make sure

1 I stress that.

2 Q. All right. And because you have those --
3 what you used to be -- now let me back up.

4 The original rider RRS proposal, those --
5 on the cost side, those were variables throughout the
6 life of the original rider RRS, correct?

7 A. That is correct.

8 Q. Okay. And so -- because we only have two
9 variables under my definition --

10 A. Yes.

11 Q. -- under the modified rider RRS, do you
12 believe that any forecast using this methodology
13 would be more accurate than a forecast of the
14 original rider RRS proposal?

15 MR. KUTIK: Objection.

16 EXAMINER PRICE: Grounds?

17 MR. KUTIK: Accurate as to what? And
18 also beyond the scope of his testimony.

19 EXAMINER PRICE: It is way beyond the
20 scope of this witness's testimony. I'm amazed it's
21 gone this far without this objection. So the
22 objection is sustained. This is way outside the
23 scope of this witness's testimony.

24 MR. SETTINERI: He does compare them,
25 your Honor, though. If I may?

1 EXAMINER PRICE: Show me where.

2 MR. SETTINERI: Let's see. Well, reviews
3 the modified rider RRS in his testimony and he notes
4 that the companies say it's an improvement. Do I
5 have a paragraph that says what the original one is
6 here?

7 MS. BOJKO: Yes. Page 4.

8 MR. SETTINERI: I am looking for that.

9 MS. BOJKO: Page 4.

10 MR. SETTINERI: He does, page 4. So his
11 testimony presents a comparison. And I think it's
12 important to recognize -- and previously, I believe,
13 in this proceeding, he testified about how staff
14 utilizes forecasts and how far staff would go out and
15 would not go out.

16 And we now have a methodology that relies
17 on only two inputs that change over the course.
18 There are only two inputs that change over the
19 course.

20 EXAMINER PRICE: That's way outside. The
21 things on page 4 you're referencing are entitled
22 "Brief History. Rider RRS as Originally Proposed."
23 Then he goes on to his understanding of the
24 companies' proposal, and then he states their
25 recommendations, and he gives his specific reasons

1 why the staff does not agree with the rider RRS as
2 the proposal to modified rider RRS.

3 You need to confine your questions to
4 what he is actually testifying to; not try to
5 bootstrap in issues that have already been resolved.
6 That way we can all wrap up this hearing as quickly
7 as possible.

8 MS. WILLIS: Your Honor, if I might, just
9 get into the fray. He does have this testimony that
10 is a history; it does explain the staff's past
11 position and explains the companies' proposal, so
12 they have opened the door to these type of questions.

13 I'm frankly shocked that there wasn't a
14 motion to strike Mr. Choueiki's recitation of what
15 had occurred before because that is cumulative, just
16 as Mr. Wilson's testimony was cumulative on the
17 position that OCC had taken in the past. So he opens
18 the door by giving us a history. I appreciate the
19 history and appreciate the door being opened, but he
20 does do that.

21 EXAMINER PRICE: I don't believe that's
22 opening the door at all. He is simply setting forth
23 some context for how we got here and then gives his
24 recommendations.

25 You can ask him any question you want on

1 his recommendations. If you want to ask him a
2 question as to why his recitation of history is
3 inaccurate, you are free to do that if that's the way
4 you want to spend your cross-examination time, but's
5 he's not making a comparison. He gives specific
6 reasons why they are not in favor of what the
7 companies' proposed and he has laid out a proposal.

8 We would best use our time if we address
9 those two issues and not opening the door to some
10 hypothetical line of questioning that's not going to
11 be allowed.

12 MR. SETTINERI: Thank you, your Honor.

13 Q. (By Mr. Settineri) Dr. Choueiki, staff's
14 alternative proposal is not a fully-developed
15 proposal, correct?

16 A. You have got to explain to me what that
17 means, "fully-developed proposal."

18 Q. For instance, has staff determined how
19 this rider should be allocated among the classes of
20 customers?

21 A. I'm trying to recall if Ms. Turkenton
22 addressed that or not. But I am not addressing it.

23 Q. And when you said you are not addressing
24 it, what did you mean? I'm sorry.

25 A. I am not addressing a rate design or how

1 it's allocated.

2 Q. Were you here yesterday during her
3 testimony?

4 A. Yes, I was, but I don't recall what she
5 said. I tried to recall, but I couldn't. That's why
6 I paused for a second.

7 Q. When I say "fully-developed proposal" to
8 you, what does that mean to you?

9 A. That's why I asked you, because I don't
10 know what you -- what you mean by a "fully-developed
11 proposal." In my mind -- in my mind what we -- we
12 have developed a concept. The mechanics and the
13 procedures those would be -- the Commission will
14 decide those. They could decide to allocate them in
15 the same manner as when they approved rider RRS or
16 they could allocate to a different rate design. It
17 doesn't exist in my testimony.

18 Q. So you view -- just to be clear, to you,
19 the staff's alternative proposal is a concept at this
20 time?

21 A. The -- I think the \$131 million is a lot
22 more than a concept developed. It's -- I mean that's
23 modernization. And because we have a case that's
24 open, because we are in an ESP that has already
25 commitments and there's a business plan that is being

1 reviewed by staff and by intervenors, so the only
2 thing we recommend is that could be addressed, the
3 modernization plan could be addressed, modernization
4 investment in that case or in another case. Whatever
5 the Commission deems appropriate.

6 Q. But the staff's proposal does not include
7 a mandate that the companies make investments in grid
8 modernization, correct?

9 A. We are making a recommendation for the
10 Commission to direct the companies to start investing
11 and modernizing the grid, that is correct.

12 Q. Earlier you said about -- on page 15 of
13 your testimony. There are two paragraphs there. You
14 said earlier that you had to take those -- you have
15 to consider those two paragraphs together. Do you
16 recall that?

17 A. Yes.

18 Q. What did you mean by that?

19 A. So the first paragraph discusses the
20 formation of the rider. And the reason for that
21 rider. But it has to also -- the second paragraph
22 addresses the modernization issue. So first one is
23 what would be the venue or under what statute would
24 we even recommend and it would be under 143(B)(2)(h).
25 And then, of course, we articulate the policy, policy

1 goals, the policy goals.

2 And then the second one has to do with,
3 okay, the modernization, so that would be the second
4 paragraph. So together -- you can't evaluate one of
5 them by itself independently.

6 Q. All right. Now, rider -- I will say the
7 rider DMR is not a precondition to the companies'
8 investment in projects to modernize the grid,
9 correct?

10 A. Every --

11 EXAMINER PRICE: I don't understand your
12 question. I don't know if he does, but I certainly
13 don't understand your question.

14 THE WITNESS: Thank you, your Honor. I
15 don't understand the question either.

16 Q. Let me try again. Dr. Choueiki,
17 Commission approval of rider DMR is not necessary in
18 order for the companies to invest in projects to
19 modernize the grid, correct?

20 A. So according to Mr. Buckley's testimony,
21 again I am going to recite some of his testimony,
22 although I am pretty sure he answered it yesterday,
23 they have more favorable terms and conditions, the
24 companies would with rider DMR being included,
25 because, first, it's his expectation that maybe a

1 downgrade would be avoided if that -- if the DMR is
2 taken into account with the list of other financial
3 moves that the companies and FE Corp. would have to
4 take.

5 Q. But let me -- going back to the two
6 paragraphs. One of your paragraphs talks about DMR
7 and then you proceed to the policy of directing --
8 asking the Commission to direct the companies to
9 invest in modernizing the grid. What I am asking you
10 is do you believe -- let me strike that. I am asking
11 you -- strike that. Rider DMR -- strike that.
12 Commission approval of rider DMR, though, is not
13 necessary in order for the companies to invest in
14 projects to modernize the grid, correct?

15 MS. WILLIS: Can I have that question
16 reread?

17 EXAMINER PRICE: You may.

18 MS. WILLIS: I apologize, Dr. Choueiki.

19 (Record read.)

20 MR. KUTIK: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. KUTIK: Asked and answered.

23 MR. SETTINERI: Your Honor, I have to say
24 he did not answer. He referred to Mr. Buckley.

25 MR. KUTIK: The same answer.

1 MR. SETTINERI: This witness, he has tied
2 the DMR, he is presenting DMR coupled with this grid,
3 and it's -- and it's an answer -- a question that has
4 not been answered.

5 EXAMINER PRICE: Overrule the objection.

6 A. I thought I made -- my testimony is very
7 clear. Lines 8 through 12 answers your question.

8 MS. BOJKO: Which page?

9 THE WITNESS: On page 15.

10 Q. (By Mr. Settineri) Let me ask you this,
11 Dr. Choueiki, isn't it true that the companies' grid
12 modernization plan was filed well before staff
13 developed its alternative proposal?

14 A. That's correct. It was filed in February
15 and rehearing wasn't filed until, I can't remember,
16 May maybe.

17 Q. So you would agree with me that the
18 companies had already implemented a docket on grid
19 modernization --

20 A. They simply filed their plan. That's the
21 only thing they did per the stipulation agreement.
22 They didn't implement anything. They just filed the
23 plan.

24 EXAMINER PRICE: And isn't it true,
25 Doctor, in the interim, between the filing of the

1 plan and the filing of the staff testimony, according
2 to Mr. Buckley's testimony, S&P put the companies on
3 a ratings watch from stable to negative?

4 THE WITNESS: I don't recall when the
5 date was, but, yeah, maybe it was in the April time
6 frame so.

7 EXAMINER PRICE: So this was an
8 intervening event between the filing of the gridSMART
9 plan and the filing of your testimony.

10 THE WITNESS: Lots of events occurred
11 after the Commission order.

12 EXAMINER PRICE: It's been a busy time
13 for us.

14 THE WITNESS: Yes.

15 Q. (By Mr. Settineri) So is it your
16 understanding that if rider DMR is not approved, the
17 companies will not be investing in projects to
18 modernize the grid in the near future?

19 A. No. The Commission can still direct them
20 to invest. But, again, there is a concern that staff
21 raises and that's the possibility of a downgrade, a
22 possibility of collateral goals, increasing the cost
23 of money borrowing -- borrowing money. That's a
24 concern that Mr. Buckley addressed so.

25 Q. And those are concerns --

1 MR. KUTIK: Excuse me, your Honor, had he
2 finished his answer?

3 EXAMINER PRICE: Did you finish your
4 answer, Doctor?

5 THE WITNESS: I think I have.

6 EXAMINER PRICE: You may proceed.

7 Q. Those are concerns, correct?

8 A. Yes, they are concerns.

9 Q. If the Commission approves staff's
10 alternative proposal and directs the companies to
11 invest in modernizing the distribution grid, do you
12 have an understanding of when the companies would
13 actually implement projects to modernize the
14 distribution grid?

15 A. Right now there is a plan that is
16 being -- is before us right now so -- so whenever --
17 I mean that's why I cite that case so that at least
18 that would be where things could be initiated. And
19 then the Commission could decide whether they want to
20 direct us to do something, you know, in that case,
21 and give deadlines when they come up with their
22 order. That would be -- they will provide guidance.

23 Q. Under your proposal, then, is it your
24 expectation that the only grid modernization projects
25 that would result from rider DMM would be out of the

1 grid modernization plan?

2 MR. KUTIK: May I have the question read,
3 please?

4 EXAMINER PRICE: You may.

5 (Record read.)

6 Q. Correcting that same question, but "DMR."

7 A. "DMR." That's why I don't say "just that
8 case." You think -- let me see -- let me tell you
9 what I wrote. It should not be limited to that case.
10 The Commission could do it generically; it could do
11 it in this case.

12 Q. So were you here for the testimony of
13 Ms. Crockett-McNew earlier today?

14 A. No, I'm sorry. I had meetings in the
15 morning. I would have liked to, but.

16 Q. So it's your expectation, under your
17 recommendation at page 15, line 14, that the
18 Commission would not be limited to directing
19 companies to invest in modernizing the grid to what
20 is in the grid modernization business plan?

21 A. We left it open.

22 Q. And you also left it open for the
23 Commission to impose additional requirements such as
24 a specific dollar amount of investment or a specific
25 time frame for investment, correct?

1 A. We did not address those, that is
2 correct.

3 Q. If you could turn to page 16 of your
4 testimony, Dr. Choueiki.

5 A. Okay. I'm there.

6 Q. At line 9 you reference potential
7 implications of FERC's authority over wholesale power
8 markets. Do you see that?

9 A. Yes.

10 Q. And my understanding is you are not an
11 attorney, correct?

12 A. That is correct.

13 Q. But you have added this phrase to your
14 testimony. I would like to know what do you mean
15 by -- what "implications" are you referring to there?

16 A. So although it's no longer a PPA, it's no
17 longer -- the rider RRS is no longer tied to a PPA,
18 it's still in staff's opinion a function of
19 generation. Whether you say fixed or not fixed or
20 whether you say there is a PPA or not a PPA, we
21 haven't forgotten that the costs are a function of
22 Davis-Besse's output, Sammis's output, and FES's
23 portion of OVEC's output.

24 Q. Would you agree with me that it could be
25 characterized as a "virtual PPA"?

1 MR. KUTIK: Objection.

2 EXAMINER PRICE: Grounds?

3 MR. KUTIK: I will withdraw that.

4 EXAMINER PRICE: You can answer.

5 A. I don't know what to call it. You want
6 to call it a "virtual PPA," by all means.

7 Q. Fair enough.

8 EXAMINER PRICE: We are not adding it to
9 the lexicon of this hearing, however.

10 MS. WILLIS: Was there an answer to the
11 question? I am kind of losing it here. There was an
12 answer?

13 MR. KUTIK: "I don't know what to call
14 it. If you want to call it a 'virtual PPA,' by all
15 means."

16 MS. WILLIS: Oh, okay. I'm sorry. If
17 that could be reread, I would appreciate it.

18 EXAMINER PRICE: Let's have the last
19 answer back, please.

20 MS. WILLIS: Mr. Kutik, a citation.

21 (Record read.)

22 EXAMINER PRICE: I want to follow-up on
23 some questions that Mr. Settineri had asked you
24 earlier and it seems like an opportune time.
25 Mr. Settineri paraphrased a list of the factors the

1 Commission set forth at one point and as to whether
2 staff's proposal meets some of those factors,
3 including the necessity of the generating facilities,
4 the financial need of the generating facilities, the
5 impact of the closures of generating facilities.
6 Isn't it true the staff's proposal doesn't address
7 any of those because the staff's proposal is not
8 related to generation whatsoever?

9 THE WITNESS: I thought I answered that
10 several times. I told him it's not tied to
11 generation.

12 EXAMINER PRICE: I just want to make the
13 overarching clear point, it's not a generation
14 related charge.

15 THE WITNESS: I agree with you all the
16 way. Yes.

17 EXAMINER PRICE: Thank you.

18 Q. (By Mr. Settineri) Dr. Choueiki, could
19 you turn back to page 16 of your testimony.

20 A. I haven't moved away from it, so I'm
21 there.

22 Q. Thank you very much -- I just want -- for
23 Attorney Examiner Price's last question and your
24 answer. I want to go back though. You gave prior
25 answers on why you believed -- or, the implications

1 with FERC's answers. And you reference that and you
2 still felt there was, I'm paraphrasing, but a
3 generation component. You're not -- your answer to
4 Attorney Examiner Price was not changing your prior
5 answers to me about what I had asked you on page 16,
6 correct?

7 A. No. We are talking about two different
8 riders. He was asking me about rider DMR.

9 Q. Oh.

10 A. This paragraph addresses the proposal.
11 At its core, I state, is generation.

12 Q. All right. I apologize.

13 A. And its implications to FERC.

14 Q. I was not listening well, thank you.
15 Staff's recommendation on its proposal,
16 it shall -- strike that.

17 You're not testifying here today that any
18 particular grid modernization initiative must be in
19 place before collections under staff's proposed rider
20 could begin, correct?

21 A. Again, they are together. In our
22 recommendation they are together. So there is the
23 rider DMR and the Commission directing the company to
24 modernize the grid. They are tied together.

25 MS. BOJKO: Your Honor, I'm sorry, may I

1 have his answer reread.

2 EXAMINER PRICE: You may.

3 (Record read.)

4 MS. BOJKO: Thank you.

5 Q. (By Mr. Settineri) Dr. Choueiki, I asked
6 you previously some questions about the ESP IV term
7 related to the term of the rider. You remember those
8 questions?

9 A. Yes.

10 Q. Okay. If the Commission adopts staff's
11 proposal and approves rider DMR, would rider DMR be
12 added to the companies' current ESP IV?

13 A. So we are right -- I don't know the legal
14 process, but we are -- ESP IV is still open. So it
15 is my understanding, staff's understanding that, yes,
16 it will be added. And the other one will be
17 subtracted, but that's our recommendation.

18 MR. SETTINERI: All right. Thank you for
19 your patience, your Honor.

20 Thank you, Dr. Choueiki. No more
21 questions.

22 EXAMINER PRICE: Ms. Willis.

23 MS. WILLIS: OCC is going last on this
24 one.

25 EXAMINER PRICE: The company is going

1 last.

2 MS. WILLIS: Well, I meant of the
3 intervenors.

4 EXAMINER PRICE: Okay. Who was next on
5 the list then?

6 MS. WILLIS: I think Kim is.

7 EXAMINER PRICE: Ms. Bojko.

8 MR. WHITT: Which is fine with me, I have
9 maybe 15, maybe 20 minutes, if that makes any
10 difference.

11 EXAMINER PRICE: It does make a
12 difference because that way it will be easier, rather
13 than interrupting her, we will have you up and down
14 before the end of the evening.

15 MR. WHITT: Is that okay, Kim?

16 MS. BOJKO: That's fine.

17 EXAMINER PRICE: Let's go with Mr. Whitt.

18 MS. WILLIS: Thank you.

19 EXAMINER PRICE: Mr. Whitt.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Whitt:

23 Q. Dr. Choueiki, Mark Whitt, on behalf of
24 Direct Energy. Regardless of what we call the
25 modified proposal the company has filed, would it be

1 fair to describe the companies' modified proposal as
2 seeking the same financial outcome of the PPA without
3 actually executing and perform the PPA?

4 A. There are some nuances in the sense of
5 the discussion we had -- I had with Mr. Settineri.

6 THE WITNESS: I'm sorry if I said your
7 last name wrong.

8 MR. SETTINERI: Perfect.

9 A. The output of the power plants were not
10 fixed; now they are fixed so, but the concept is
11 similar; it's tied to an output of three power
12 plants. And the prices are the wholesale market
13 prices so the concepts are very similar.

14 Q. So could we fairly say that what the
15 company is proposing is a different means of
16 achieving the same result that they have sought
17 previously?

18 A. Again, the result is a bit different,
19 right? Because before, outages to power plants were
20 in the equation. The prices were a bit different;
21 the way -- the formation of prices before. But,
22 again, the concepts are the same, you tie -- there is
23 an output from three power plants that are not there
24 anymore, but the outputs are still there and you are
25 multiplying them by market prices, and you have

1 credits and charges, and you do the arithmetic and
2 reflect it and then your proposal.

3 Q. Thank you.

4 Now, there has been discussion today of
5 two similarly-sounding concepts that I think may be
6 causing some confusion, at least on my part, and I
7 may very well be the only one confused.

8 But there's been discussion of the grid
9 modernization business plan that the FirstEnergy
10 companies filed in February that was alluded to
11 earlier in a separate docket, correct?

12 A. Correct.

13 Q. And what staff is proposing now is a
14 distribution modernization rider, correct?

15 A. They are two different -- the ESP
16 required them to file a plan, and in that plan cost
17 recovery would be under rider AMI or something like
18 this. If my memory serves me correctly, it was AMI.
19 And then there is this addition of DMR, with the
20 recommendation that proposed rider RRS will go away.

21 Q. Okay. Well, what I am trying to
22 understand is what, if any, relationship there is
23 between the docket considering the grid modernization
24 business plan and the distribution modernization
25 rider. And to be more specific, is the staff

1 proposal intended to allow the companies to recover
2 costs for whatever projects may eventually be
3 developed in the, with I will call "the grid
4 modernization docket"?

5 A. Okay. So there it is again. I will go
6 back, refer you to page 15 of my testimony.
7 Mr. Buckley recommended the credit support. The
8 credit support would enable the companies, okay, the
9 companies, that the Public Utilities Commission of
10 Ohio regulate, have more favorable terms and
11 conditions to access the capital market.

12 And then, in turn, that would jump start
13 then the -- the investment schedule. So in the long
14 term it may be cheaper for ratepayers if the
15 companies were to borrow at the lower rate with less
16 collateral and less collateral calls and more
17 favorable conditions than otherwise if that rider did
18 not exist. And by "that rider" I mean DMR.

19 Q. Okay. What, if anything, do the
20 FirstEnergy companies have to do to begin receiving
21 the \$131 million that staff is recommending?

22 A. The Commission would have to issue an
23 order allowing the company to gather 131 and,
24 according to our recommendation, directing the
25 company to invest in modernizing the grid. They go

1 together.

2 Q. Okay. Now, you're familiar, I assume,
3 with the concept of riders generally when we are
4 talking about utilities and cost recovery, correct?

5 A. A little bit, yes.

6 Q. Okay. And is it the case that typically
7 once the Commission approves a rider, typically the
8 initial rate for that rider is zero, correct?

9 A. I'm not sure if it's always this way or
10 not.

11 Q. But typically it would be?

12 A. I'm not sure.

13 Q. Okay.

14 A. That's my answer.

15 Q. All right. Isn't it the case that when a
16 utility has an approved rider, that the utility is
17 recording costs in some account, so that during some
18 subsequent proceeding the Commission can look at what
19 was actually spent on whatever the rider relates to,
20 correct?

21 A. There are riders this way, but there are
22 riders also based on forecasts. So they populate
23 with a forecast, they collect, we get to one-year
24 anniversary and they do an audit. They reconcile the
25 actuals with the forecast and then move on. So some

1 riders are this way. Some riders start at zero, wait
2 until the end of the year, and then you populate with
3 actual. And I am not sure which -- you know, which
4 ones are required to be this way and which ones are
5 based on forecasts.

6 Q. Okay. But whether we start with a
7 forecast or we start at zero, at some future point in
8 time the Commission would ordinarily have staff do a
9 review in order to reconcile projected costs with
10 actual costs, correct?

11 A. That's a slight -- it's a capital
12 expenditure rider -- tied rider.

13 Q. Okay. As the DMR would be, correct?

14 A. No. The DMR is a bit different. The DMR
15 again is providing credit support to the companies
16 and right now the concept is to have that money be
17 collected annually based on, you know, some billing
18 determinants or based on some rate design.

19 Q. Right. What I am trying to figure out is
20 when the money would actually be collected.

21 A. Annually, I mean, the way I am thinking
22 about it, that's just me. You should have asked that
23 question to Ms. Turkenton.

24 EXAMINER PRICE: Actually, Mr. Buckley
25 did answer that question.

1 MR. WHITT: Perhaps he did. I don't
2 recall it.

3 EXAMINER PRICE: Mr. Buckley, in response
4 to somebody's question, said that the rider will be
5 collected on a 36-month period of time following the
6 Commission order in this proceeding.

7 Q. What I am trying to understand, what is
8 being collected.

9 A. The \$131 million.

10 Q. From the time the rider is approved, the
11 company would begin collecting money under that
12 rider?

13 A. If the Commission approves it, then what
14 would happen is -- I am going to give the simplest
15 way, and it's not this way, okay, you will have
16 \$131 million; you would have 53 million
17 megawatt-hours. So you divide 131 by 53, let's say
18 you get \$2 or \$2.20 a megawatt-hour. So they will
19 populate, they do a rate design and allocate the
20 \$131 million into residential/commercial/industrial,
21 and then based on that they will have dollars per
22 megawatt-hour or cents per kilowatt-hour tariff. And
23 that's how it would be -- it would be collected. So
24 that by the end of the year they have collected 131.

25 Q. Okay.

1 A. To the extent they collected 130, it will
2 be reconciled with the next set of collections for
3 the next 12 months.

4 Q. Understood. So that collection will
5 occur independent of what, if anything, the company
6 actually spends on distribution modernization,
7 correct?

8 A. Again, you are assuming that the
9 Commission agreed only to this. The --

10 Q. I am assuming that.

11 MR. KUTIK: Excuse me. Let him finish
12 his answer.

13 MR. McNAMEE: That's right.

14 A. The Commission generally, in my opinion,
15 that's how I am speaking now, is going to look at all
16 the recommendations. If they -- under your
17 hypothetical that the Commission disagreed with our
18 second paragraph and only looked at the first
19 paragraph and authorized 131 million, then under that
20 hypothetical, yes, they will start collecting without
21 any investments.

22 Q. Okay. So, in that respect, the recovery
23 under the distribution modernization rider, is not
24 tied to distribution investment, correct?

25 A. That's not staff's position. That's your

1 assumption. Staff's position is the Commission
2 will -- we recommend the Commission authorize the
3 collection of 131 and the Commission directs the
4 company to initiate investment. So those are
5 together. Not -- we've had that discussion already.
6 They have to be together. The Commission may
7 disagree with us and go with your hypothetical and
8 says you get 131. Under that hypothetical, yes, they
9 will collect regardless of what modernization
10 schedule.

11 Q. Okay. But then again, going back to the
12 grid modernization business plan, the reason for that
13 docket is to have a stakeholder process and forum to
14 determine what the utilities should be doing with
15 regard to grid modernization, correct?

16 A. That's correct. And I cite that case and
17 I say this initiative can begin with that case. So
18 the Commission may direct.

19 EXAMINER PRICE: Doctor, it's your
20 testimony that the grid modernization case is not the
21 entire population of projects the companies should
22 undertake as a result of this.

23 THE WITNESS: That's correct, because I
24 say that it's not only this one and others, so the
25 Commission could have a bigger objective than just

1 the grid modernization that is described in the
2 companies' business plan.

3 EXAMINER PRICE: For example, let me
4 follow-up. For example, in the stipulation, the
5 staff agreed to in this proceeding, there was a
6 discussion of investments in battery technology which
7 would be used to modernize --

8 THE WITNESS: That's correct, on the
9 distribution side.

10 EXAMINER PRICE: That also is another
11 part of the overall. I think what is confusing is
12 you've got grid modernization and then you have got
13 another docket that has a similar title, but it's all
14 part of a larger effort to modernize the grid; is
15 that correct?

16 THE WITNESS: That's correct. Because
17 the ESP that we agreed to includes several other,
18 beside the AMI filing, like what his Honor was
19 talking about. So that's why the recommendation is
20 to initiate discussions in this case, but others too.

21 Q. (By Mr Whitt) Understood. But to the
22 extent the DMR is intended to provide credit support,
23 wouldn't collection under that rider necessarily need
24 to begin regardless of whether any plans have been
25 finalized in any other pending docket?

1 A. The Commission will decide whether that
2 should be collected separately, regardless of what
3 happens in the grid modernization and in the ESP
4 commitments or together.

5 Q. Okay. You had mentioned -- well, in your
6 testimony, a concern that the companies' modified
7 proposal could be construed as a transition charge,
8 and my question is whether staff has any concern that
9 its proposal could be construed as authorizing the
10 transition charges?

11 A. That's -- now, I am not a lawyer.

12 Q. I understand.

13 A. So staff's opinion is that there is no
14 concern at all with our proposal.

15 Q. Okay.

16 A. It's not considered a transition charge.
17 Transition charge has to do with generation. And I'm
18 referring to transition charge per the statute,
19 4928.38, 39, and 40, I think. Those are the ones
20 I've looked at as a nonlawyer. Those have to do with
21 generation.

22 Q. Okay. Who decided -- who came up with
23 the name of distribution modernization rider? How
24 did you settle on that nomenclature?

25 MR. KUTIK: I'll object.

1 MR. McNAMEE: Okay.

2 MR. KUTIK: It's compound at least.

3 MR. McNAMEE: What possible difference
4 does it make?

5 EXAMINER PRICE: It's irrelevant. And to
6 the extent it calls for staff's trial preparation,
7 it's improper. Sustained.

8 Q. (By Mr. Whitt) Did the term "distribution
9 modernization rider" come up in the context of any
10 settlement discussions with the company?

11 MR. KUTIK: I will object, your Honor.

12 MR. McNAMEE: Objection.

13 EXAMINER PRICE: Sustained.

14 Q. If rider DMR was approved, would you
15 agree that that approval of that rider would
16 generally reduce the financial risk of the utilities?
17 That's its purpose, is it not?

18 A. So rider DMR, according to Mr. Buckley,
19 will improve the financial situation of the
20 companies.

21 Q. Does staff have an opinion whether --
22 about whether any revenue received under the DMR
23 should be considered in any SEET proceeding,
24 significantly excessive earnings test?

25 A. We did not address it in our testimony.

1 Q. Does staff have an opinion on that as of
2 today?

3 EXAMINER PRICE: Mr. Buckley testified as
4 to this issue when he was on the stand.

5 MS. WILLIS: Your Honor, if I might add
6 to the record, Mr. Buckley indicated that he could
7 not -- he was not -- the staff had not taken a
8 position on SEET, just as Mr. -- or, Dr. Choueiki
9 did. He offered -- I think he punted and I think --

10 EXAMINER PRICE: He gave his opinion. I
11 think he said we haven't taken a position, but in my
12 opinion something should be decided in the SEET
13 proceeding.

14 MS. WILLIS: And I think, too, the
15 question was, from the Bench, does, you know, does
16 anyone -- or do you have an opinion or does anyone
17 address the SEET.

18 And the upshot of it was that you had
19 asked if Dr. Choueiki would be prepared to speak to
20 that question, and the response was well, it's not in
21 his testimony, but Mr. -- and I am looking at the
22 transcript, 614, and Mr. McNamee's response was "The
23 witness did not speak to the SEET test."

24 And your question was "Is Dr. Choueiki
25 prepared to speak to this question?"

1 Mr. McNamee said "This is not in his
2 testimony either."

3 And you said -- your response was "That's
4 not what I asked. I know it's not in his testimony.
5 I am asking if he is prepared to speak to this
6 question."

7 And Mr. McNamee said "I think not so."

8 And it went on.

9 EXAMINER PRICE: Is there a point to
10 this?

11 MS. WILLIS: I guess the point is, your
12 Honor, it was punted, and so we should be able to
13 explore this issue with Dr. Choueiki.

14 MR. KUTIK: You Honor.

15 MR. McNAMEE: I think just the opposite.

16 MR. KUTIK: Let me read the answer
17 because you let him answer that.

18 "We have not discussed how it will be
19 treated for SEET. And the company could ask for it
20 to be treated differently than the typical revenues
21 if they so choose. We could act on it how we thought
22 it would be appropriate at the time. We really
23 haven't discussed it yet."

24 EXAMINER PRICE: Everything you said in
25 the transcript indicates that I pushed Mr. McNamee to

1 whether he could punt it to Dr. Choueiki and he kept
2 saying no.

3 MS. WILLIS: I was under the impression,
4 just from reading that, that you are pushing it to
5 Dr. Choueiki.

6 EXAMINER PRICE: I was pushing for an
7 answer, and the answer I kept getting was "No, I
8 can't promise you that."

9 MR. McNAMEE: And the answer we have
10 gotten from Dr. Choueiki is we don't know; we haven't
11 taken a position so.

12 EXAMINER PRICE: Which is not
13 inconsistent with what Mr. Buckley did testify to
14 yesterday.

15 MR. WHITT: It's all good enough for me.
16 Thank you, your Honor.

17 EXAMINER PRICE: They are just trying to
18 screw up your cross-examination estimates.

19 Q. (By Mr. Whitt) There was a question
20 punted to you, I don't know if you were here when I
21 asked of Mr. Buckley, but has staff considered
22 whether there is any moral hazard by having a
23 precedent where utilities regulated by the Commission
24 are authorized to collect money in order to support
25 the credit of unregulated affiliates?

1 MR. KUTIK: I'll object. That's not
2 staff's proposal.

3 MR. WHITT: Well, it's a -- I am simply
4 asking whether the staff has considered this
5 particular implication of its proposal.

6 MR. McNAMEE: Just by way of
7 clarification, by way of clarification perhaps we
8 should have a definition of "moral hazard." Not a
9 term of art frequently used in utility matters.

10 MR. WHITT: As perhaps it should be.

11 Q. (By Mr. Whitt) Dr. Choueiki, have you
12 heard the term moral hazard before?

13 A. I've heard it before.

14 Q. Sort of colloquial and maybe in the
15 context of "too big to fail." Have you heard that
16 before as well?

17 A. Yes.

18 Q. Has staff considered the potential
19 implications of proposing that regulated utilities be
20 authorized to recover money from captive customers
21 for the express purpose of benefiting the capital and
22 financial situation of unregulated affiliates in a
23 parent company? Understanding that the intent is for
24 some of that benefit to flow down to the regulated
25 utilities, but, in fact, credit support is needed for

1 unregulated entities as well, correct?

2 MR. KUTIK: Objection.

3 EXAMINER PRICE: Grounds?

4 MR. KUTIK: Well, my prior objection but
5 this is compound.

6 EXAMINER PRICE: The witness can answer
7 what he knows.

8 A. It wouldn't have been recommended if we
9 felt it was a moral hazard. In the long term we
10 think it is beneficial to the ratepayers of Ohio to
11 have a health company -- to have healthy companies,
12 so to have the healthy companies, you need the
13 healthy parent, but the objective -- regardless what
14 decisions were made in the past that have caused this
15 issue to happen now, there is this issue that is a
16 concern.

17 A concern is our utilities continue to
18 provide reliable service and to the extent -- and to
19 the extent the Commission agrees with us on the
20 policy matter that we would like to have a modernized
21 grid that requires cash infusion at this point. So
22 to have a modernized grid and have healthy companies,
23 we don't see this at all as a moral hazard. The
24 objective is to modernize the distribution grid in
25 Ohio. That's our objective.

1 Q. Have any of the other electric utilities
2 or holding companies that operate electric utilities
3 in Ohio required a cash infusion in order to engage
4 in grid modernization efforts?

5 A. We can't compare FirstEnergy -- the
6 FirstEnergy companies to anyone else right now.
7 Right now, this case is before -- that is what we are
8 discussing, the FirstEnergy companies, and staff
9 raised a concern. We have raised a concern before
10 with other cases, and the Commission agreed or
11 disagreed with us on these concerns.

12 Q. And the companies' grid modernization
13 business plan was filed before staff recommended its
14 cash infusion, correct?

15 A. That is correct, but we've established
16 that the negative downgrading came after the threat
17 of a negative -- downgrading, it doesn't have to be a
18 negative. Downgrade is a negative.

19 Q. But the companies' actual rating from the
20 agencies has remained at investment grade and is
21 investment grade today, correct?

22 EXAMINER PRICE: I think at this point we
23 are simply rehashing Mr. Buckley's testimony, and
24 Mr. Buckley was the witness that is designated to
25 testify about this. You asked if you could ask your

1 moral hazard question of this witness. He gave you
2 his best answer. I think you are now just getting
3 into rehashing Mr. Buckley's testimony.

4 MR. WHITT: That's actually my last
5 question.

6 EXAMINER PRICE: Sorry. You are not
7 going to get an answer to that, Mr. Whitt, but you
8 get an answer for moral hazard as your last question,
9 so that's a plus.

10 Ms. Bojko?

11 EXAMINER PRICE: Let's go off the record.
12 (Discussion off the record.)

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

15 We will adjourn for the day, at which
16 point we'll take up Ms. Bojko's cross-examination of
17 Dr. Choueiki --

18 MR. KUTIK: Actually, aren't we going to
19 start with the date certians?

20 EXAMINER PRICE: Oh, that is absolutely
21 correct. Let me strike what I just said. At this
22 point we are going to adjourn for the day. We will
23 resume at 9 o'clock.

24 We are off the record.

25 (Thereupon, at 5:53 p.m., the hearing was

1 adjourned.)

2 - - -

3 CERTIFICATE

4 I do hereby certify that the foregoing is
5 a true and correct transcript of the proceedings
6 taken by me in this matter on Thursday, July 14,
7 2016, and carefully compared with my original
8 stenographic notes.

9
10
11 Karen Sue Gibson, Registered
12 Merit Reporter.

13
14 Carolyn M. Burke, Registered
15 Professional Reporter.

16 (KSG-6221)

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Summary: Transcript in the matter of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company hearing held on 07/14/16 - Volume IV electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.