

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 Friday, July  
15, 2016.

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REHEARING VOLUME V

- - -

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1 Friday Morning Session,  
2 July 15, 2016.

3 - - -

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

6 The Public Utilities Commission of Ohio  
7 has set for hearing at this time and place Case No.  
8 14-1297-EL-SSO being In the Matter of the Application  
9 of Ohio Edison Company, The Cleveland Electric  
10 Illuminating Company, and The Toledo Edison Company  
11 for Authority to Provide a Standard Service Offer  
12 Pursuant to RC 4928.143 in the Form of an Electric  
13 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'll dispense taking appearances this  
18 morning.

19 Ms. Bojko, you may call your next  
20 witness.

21 MS. BOJKO: Thank you, your Honor. Ohio  
22 Manufacturers' Association Energy Group calls Mr. Tom  
23 Lause to the stand.

24 (Witness sworn.)

25 EXAMINER ADDISON: Thank you. You may be

1 seated.

2 THE WITNESS: Thank you.

3 - - -

4 THOMAS N. LAUSE

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

7 DIRECT EXAMINATION

8 Ms. Bojko:

9 Q. Could you please state your name and  
10 business address for the record.

11 A. My name is Thomas Lause. Business  
12 address is Cooper Tire & Rubber, 701 Lima Avenue,  
13 Findlay, Ohio 45840.

14 Q. Could you please turn your microphone on,  
15 sir.

16 A. My name is Thomas Lause. I work at  
17 Cooper Tire & Rubber Company, 701 Lima Avenue,  
18 Findlay, Ohio 45840.

19 Q. Did you file or cause to be filed  
20 testimony regarding the companies' modified rider RRS  
21 proposal in this procurement proceeding?

22 A. Yes.

23 MS. BOJKO: Your Honors, at this time, I  
24 would like to mark as OMAEG Exhibit 37, a document  
25 titled "Direct Testimony on Rehearing of Thomas N.

1 Lause on behalf of the Ohio Manufacturers Association  
2 Energy Group." May we approach?

3 EXAMINER ADDISON: You may and it shall  
4 be marked so.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MS. BOJKO: Thank you, your Honor.

7 EXAMINER ADDISON: Thank you.

8 Q. Sir, do you have in front of you what's  
9 been marked as OMAEG Exhibit 37, your direct  
10 testimony on rehearing?

11 A. I do have in front of me my direct  
12 testimony of rehearing of Thomas N. Lause, yes.

13 Q. Could you turn your microphone back on,  
14 please. And was that testimony filed with the  
15 Commission on June 23, 2016?

16 A. Yes, it was.

17 Q. Do you recognize the document as your  
18 testimony that you filed in this proceeding?

19 A. Yes, I do.

20 Q. Was this testimony prepared by you or  
21 under your direction?

22 A. Yes, it was. It was prepared by me under  
23 direction of counsel.

24 Q. And on whose behalf are you testifying  
25 today, sir?

1           A.    I am testifying on behalf of the OMAEG,  
2           which is the OMA Energy Group, which represents the  
3           manufacturers of the State of Ohio that are part of  
4           the OMA which is the Ohio Manufacturers' Association.

5           Q.    Sir, since the filing of your testimony,  
6           do you have any changes to your testimony?

7           A.    Yes.  There were several changes that  
8           were filed, I believe, last evening.

9           MS. BOJKO:  Actually, at this time, your  
10          Honor, instead of -- it wasn't filed, but we would  
11          like to have marked as OMAEG Exhibit 38, an errata  
12          sheet to Mr. Lause's testimony.

13          EXAMINER ADDISON:  So marked.

14          (EXHIBIT MARKED FOR IDENTIFICATION.)

15          MS. BOJKO:  May we approach?

16          EXAMINER ADDISON:  You may.

17          Q.    Mr. Lause, do you have in front of you  
18          what's been marked as OMAEG Exhibit 38?

19          A.    Yes, I do.

20          Q.    Is this the series of revisions that you  
21          were discussing previously?

22          A.    Yes.  It is.

23          Q.    And there are six changes that you have  
24          to your testimony?

25          A.    Yes, that's correct.

1           Q.    In addition to the -- or do you have any  
2 additional revisions to your testimony other than  
3 those that appear in OMAEG Exhibit 38 at this time?

4           A.    No, I do not.

5           Q.    With the changes delineated in the errata  
6 sheet, if I were to ask you the same questions today  
7 as they appear in your testimony, would your answers  
8 be the same?

9           A.    Yes, they would.

10           MS. BOJKO:  At this time, your Honor, I  
11 would like to move for the admission of OMAEG  
12 Exhibits 37 and 38, subject to cross-examination, and  
13 I tender the witness for cross.

14           EXAMINER ADDISON:  Thank you, Ms. Bojko.  
15 We will defer ruling on the motion for admission upon  
16 the conclusion of cross-examination.

17           MS. BOJKO:  Thank you.

18           EXAMINER ADDISON:  Are there any motions  
19 to strike?

20           MS. DUNN:  Your Honor, may I have a few  
21 minutes to review the errata?  This is the first time  
22 I saw them.

23           EXAMINER ADDISON:  You may.

24           Let's go off the record for a moment.

25           (Discussion off the record.)

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

3 At this time the Bench will entertain any  
4 motions to strike.

5 MS. DUNN: Yes, your Honor. I have a  
6 few.

7 EXAMINER ADDISON: Please proceed,  
8 Ms. Dunn.

9 MS. DUNN: The first motion to strike  
10 would be for to move to strike Attachment TNL-1, the  
11 letter from Cooper Tire. There's two letters. One  
12 is a cover letter docketing a different letter dated  
13 January 11, 2016. The rationale behind the motion to  
14 strike is that the letter is not relevant.

15 As you can see by the dates, the letters  
16 pertain to the companies' original RRS. It also  
17 predates the Commission's decision of March 31 of  
18 this year and it does not pertain to modified RRS or  
19 the scope of the hearing.

20 I am leaving in the text that references  
21 the -- that references the letter because I believe  
22 that's context, but if the footnote -- I am also  
23 leaving the footnote in except for the -- and I will  
24 get to that footnote. I apologize. That would be  
25 page 5, footnote 4.



1           And now to footnote 4, I just request to  
2       strike the reference to Attachment TNL-1. So in sum,  
3       I am moving to strike Attachment TNL-1 and the  
4       reference to it in the footnote.

5           THE WITNESS: Do I respond now?

6           EXAMINER PRICE: Oh, no, no, no.

7           EXAMINER ADDISON: Thank you, Ms. Dunn.

8       Do you want to proceed with the other motions to  
9       strike or would you prefer handling each?

10          MS. DUNN: Whatever you would prefer,  
11       your Honor. The others are on different grounds.

12          EXAMINER ADDISON: Okay. Perfect. Thank  
13       you.

14          Ms. Bojko, would you care to respond?

15          MS. BOJKO: Thank you, your Honor.

16          The suggested TNL-1, first of all, the  
17       beginning letter is a letter to the Commission from  
18       Thomas N. Lause, himself. He drafted the letter and  
19       it is docketed in a public docket. It's a public  
20       record.

21          It's very relevant to this proceeding.  
22       It was filed in this proceeding. It is some -- it's  
23       provided for contextual reasons, in part, but it also  
24       explains Cooper Tire's position, as well as his  
25       participation in this proceeding from the very

1 beginning. He is a new witness, so we are providing  
2 information as to the activity and the participation  
3 of Cooper Tire throughout this proceeding within  
4 OMAEG.

5 Additionally, the letter attached to  
6 Mr. Lause's letter to the Commission is from Cooper  
7 Tire. It's from the Chairman of Cooper Tire.  
8 Mr. Lause was involved in the drafting of that  
9 letter, so it is not hearsay. He participated in the  
10 letter, had input to the letter, as well as conducted  
11 analysis at Cooper Tire with the energy team with  
12 regard to the letter. So the letter is not hearsay.

13 He is here to testify to the letter. He  
14 can be cross-examined as to the contents of the letter. He  
15 was involved in the letter and it is relevant to the  
16 proceeding as it demonstrates the participation. It  
17 was filed in the case, and it is contextual in nature  
18 with regard to rider RRS, and how the changes come  
19 about. Later in his testimony, he will explain the  
20 differences between rider RRS and the modified rider  
21 RRS, which I believe is consistent with rulings  
22 yesterday that a comparison of the two riders was  
23 appropriate.

24 EXAMINER ADDISON: Ms. Dunn, last word?

25 MS. DUNN: My objection was not hearsay.

1 My objection was relevance. As noted previously,  
2 the -- I left in the context that OMA has provided a  
3 letter, but the letter, itself, should not come in as  
4 evidence attached to this witness's testimony. It  
5 clearly relates to the position of Cooper Tire to  
6 original rider RRS.

7 Later on in his testimony he does provide  
8 a comparison of the two, but does not reference the  
9 of letter as a source or use of that letter, so it  
10 should be stricken.

11 MS. BOJKO: And just for clarity, OMA did  
12 not provide this letter. This letter is on behalf of  
13 Cooper Tire; Mr. Lause.

14 EXAMINER ADDISON: Thank you for that  
15 clarification.

16 At this time we will be denying the  
17 motion to strike. The Commission normally considers  
18 all public letters filed within a case docket. And  
19 to the extent this has been afforded some weight in  
20 the past, it will be -- it will not be afforded any  
21 additional weight for purposes of this proceeding.  
22 So we consider it to be harmless to include these  
23 letters. For that reason, the motion to strike is  
24 denied.

25 MS. BOJKO: Thank you, your Honor.

1 EXAMINER ADDISON: Ms. Dunn.

2 MS. DUNN: Yes, your Honor. I also move  
3 to strike page 5 of the testimony, line 18, to  
4 page 6, line 12, including footnotes 5, 6, and 7.  
5 Also including Attachments TNL-2 and TNL-3.

6 In addition, relating to the errata of  
7 Mr. Lause, on the errata page -- footnote 2 on page 5  
8 has also been amended to include a reference to TNL-3  
9 which is "See also, Motion to Intervene and Comments  
10 in Support Submitted on Behalf of the OMAEG, Docket  
11 Nos. ER16-1807-000 et al. 10 (June 17, 2016.)" So I  
12 am moving to strike just that portion of the errata  
13 footnote, if that makes sense.

14 The reason -- the rationale for the  
15 motions to strike in this case are a few reasons.  
16 Both of these attachments and the references and the  
17 testimony refer to two FERC proceedings. First, they  
18 are not relevant. The FERC decision in EL -- or the  
19 FERC docket EL-16-34000 is the docket number where  
20 the FERC issued their decision on April 27. The  
21 comments from OMAEG preceding that decision are not  
22 relevant to this proceeding. The FERC order is what  
23 the FERC order is.

24 TNL-3 is a reference to a docket at FERC  
25 16-1087, which is also the footnote from the errata

1 is the docket where -- to be honest, I am not sure  
2 which FirstEnergy entity had to file a market-based  
3 rate authority tariff, but one of the entities had to  
4 file a market base rate authority tariff as a result  
5 of the April 27 FERC order. That is also not  
6 relevant to this proceeding and the scope of this  
7 proceeding which is the Ohio Commission's review of  
8 the modified rider RRS. So, for that reason, those  
9 documents and the references are not relevant.

10 Second, these documents are hearsay.  
11 Mr. Lause did not draft those comments. I cannot  
12 cross-examine him on the comments. We don't know who  
13 drafted the comments, but we know it was no one here  
14 I can actually ask about those comments.

15 Third, there's no foundation for either  
16 of these comments to his testimony. As I stated  
17 before, he did not draft the comments. He has no  
18 knowledge of the comments other than he's attached  
19 them. His attorney gave him both of the comments.  
20 Therefore, there's no foundation to attach, to his  
21 testimony, those comments.

22 And fourth, portions of TNL-2 are various  
23 letters from other companies and corporations in  
24 Ohio. For example, Sherwin Williams, BASF, Belton,  
25 none of which are parties to this case, none of which

1 Mr. Lause represents or is here and has personal  
2 knowledge and those are clearly hearsay. For all of  
3 those reasons, the motion to strike should be  
4 granted.

5 EXAMINER ADDISON: Thank you, Ms. Dunn.  
6 Ms. Bojko.

7 MS. BOJKO: Thank you, your Honor. I'll  
8 start with the relevancy argument. These proceedings  
9 are directly relevant. In fact, TNL-2 was directly  
10 referenced. The proceeding, itself, was directly  
11 referenced by Ms. Mikkelsen in her testimony. Our  
12 testimony was to respond to the companies' modified  
13 rider RRS proposal. She discusses the FERC order  
14 proceeding on page 4. She states that the FERC order  
15 and that proceeding gave rise to the new proposal.  
16 So it is directly relevant. It's lines 5 through 13.

17 And then on line 14 on page 4 of her  
18 testimony, she claims that because of that  
19 proceeding, they decided, and because of the  
20 regulatory delay they decided to propose the modified  
21 rider RRS. So his testimony is directly responding  
22 to that proceeding.

23 Secondly, with regard to relevancy, the  
24 Attachment TNL-3, the FERC proceeding, that is  
25 directly relevant to the modified rider RRS proposal

1 as it talks about the modified rider RRS proposal and  
2 it discusses the elements of the modified Rider RRS  
3 proposal. It talks about the companies' changes to  
4 rider RRS and it talks about concerns that we have  
5 with regard to rider RRS. These are the same  
6 concerns that Mr. -- Dr. Choueiki said yesterday were  
7 still in play. This is responsive to the modified  
8 rider RRS proposal.

9 So both of them are directly relevant.  
10 One regarding, the basis for the modified rider RRS  
11 proposal; the other one speaks directly to the  
12 modified Rider RRS proposal.

13 EXAMINER PRICE: Can we talk about the  
14 hearsay issue real fast.

15 MS. BOJKO: I'm sorry?

16 EXAMINER PRICE: Can we talk about the  
17 hearsay issue real fast.

18 MS. BOJKO: Sure.

19 EXAMINER PRICE: Are you offering these  
20 documents as this is what our position is or are you  
21 offering them for the truth of the matter asserted in  
22 the documents?

23 MS. BOJKO: Mr. Lause is offering them  
24 that these were the comments that were made and filed  
25 in a public docket to two proceedings that are very

1 relevant and are public proceedings. So not for the  
2 truth of the matter, just merely that this is the  
3 position that was taken. He's also demonstrating  
4 Cooper Tire was actively involved in that proceeding  
5 because they filed the letter that Ms. Dunn  
6 referenced. Ms. Dunn made some misstatements.  
7 Mr. Lause can lay the foundation if she would ask him  
8 questions with regard to those documents. He can  
9 speak to them. Cooper Tire is a member of OMAEG.  
10 They are on the board of OMAEG. They are directly  
11 responsible for litigation strategy. They are  
12 directly involved in the compensation and the  
13 development of that strategy as well as filings that  
14 are made on behalf of OMAEG. Mr. Lause is here as  
15 OMAEG witness. He has been authorized to testify on  
16 for members of OMAEG. So he can speak to -- for  
17 those companies as a representative of OMAEG on the  
18 board. They have approved his authority to speak on  
19 their behalf so the foundation questions are  
20 inaccurate and misrepresentation of both his  
21 deposition testimony as well as what he will testify  
22 here today.

23 With regard to the -- I think I addressed  
24 all of the arguments, your Honor, with regard to  
25 TNL-2 and TNL-3.



1           The only thing I would add is the errata  
2     sheet for the citation, again it's stating the  
3     position and it's comparing the two proposals, the  
4     rider -- original rider RRS with the modified rider  
5     RRS, and the changes that were made to those  
6     proposals, and how those changes affect the  
7     underlining proposal, as well as how those changes  
8     affect his position and OMAEG's position in the case  
9     and -- and the impact on customers that OMAEG is  
10    advocating for.

11           EXAMINER ADDISON: Thank you.

12           MS. DUNN: Your Honor, may I respond  
13    briefly?

14           EXAMINER ADDISON: I think I've heard  
15    enough on this particular issue. We will be taking  
16    administrative notice of the filings in both FERC  
17    dockets cited in Mr. Lause's testimony.

18           In addition, consistent with our prior  
19    ruling on letters filed -- with our prior ruling on  
20    the initial motion to strike, we will be denying the  
21    motion to strike Attachments TNL-2 and Attachment  
22    TNL-3, as well as denying the motion to strike the  
23    actual contents Ms. Dunn cited to on pages 5 through  
24    6.

25           MS. BOJKO: Thank you, your Honor.

1 EXAMINER ADDISON: Thank you.

2 Ms. Dunn.

3 MS. DUNN: That's all I have, your Honor.

4 Thank you.

5 EXAMINER ADDISON: Thank you.

6 Mr. Dougherty?

7 MR. DOUGHERTY: No questions, your Honor.

8 EXAMINER ADDISON: Mr. Hays?

9 MR. HAYS: No questions, other than to  
10 say thank you for coming today.

11 THE WITNESS: You're welcome.

12 EXAMINER ADDISON: Mr. Fisk?

13 MR. FISK: No questions.

14 EXAMINER ADDISON: Mr. Batikov?

15 MR. BATIKOV: No questions.

16 EXAMINER ADDISON: Mr. Sauer?

17 MR. SAUER: No questions, your Honor.

18 EXAMINER ADDISON: Ms. Glover?

19 MS. GLOVER: No questions.

20 EXAMINER ADDISON: Mr. Kurtz?

21 MR. KURTZ: No questions.

22 EXAMINER ADDISON: Ms. Dunn?

23 MS. DUNN: Thank you, your Honor.

24 - - -

25

## CROSS-EXAMINATION

By Ms. Dunn:

Q. Good morning, Mr. Lause.

A. Good morning, Ms. Dunn.

Q. Mr. Lause, prior to your experience at Cooper Tire, you have not ever designed utility rates, correct?

A. I've worked at Cooper for 33 years, so in my experiences of operational and financial areas, I cannot say that I have designed utility rates, that's a correct statement.

Q. And one of your responsibilities at Cooper Tire is using the cost of the tires for making investment decisions, correct?

A. Among other things, we use the cost for investment decisions, but yes, that's one of the items we use our tire costs for, that's correct.

Q. And when you are making investment decisions, you are looking at the cost structure of the tire as a whole, not just energy costs separately, correct?

A. There are several large inputs into our tire costs. Raw materials are large, labor and manpower is large, energy costs are also a large component of our tire costs. So it would be correct

1     that we look at our costs holistically as well as by  
2     individual input.

3             Q.     And my question, though, was to you  
4     personally.  You, when you are making investment  
5     decisions, you are looking at that cost structure as  
6     a whole, not just the several small -- excuse me, not  
7     just the several portions?

8             MS. BOJKO:  Objection.

9             EXAMINER ADDISON:  Grounds?

10            MS. BOJKO:  Asked and answered.  He just  
11     explained how they review business investments and  
12     business decisions and what they look at and don't  
13     look at.

14            EXAMINER ADDISON:  Overruled.

15            Answer the question.

16            A.     I am heavily involved in the cost  
17     structure, so no, I don't think that's an accurate  
18     statement.  I will tend to look at all the components  
19     of costs.  In particular, it's not just the current  
20     costs we look at to make an investment decision.  We  
21     are looking at our projected costs.

22            So if we know one component of our cost  
23     is going to be variable and -- and have an increase,  
24     we will factor that into our investment decisions  
25     such as utility costs.  If we know there's going to

1 be a variable that's going to go up, we would include  
2 that in our investment decisions. So I say yes, I  
3 look at more than just the holistic costs.

4 MS. DUNN: Your Honor, I move to strike  
5 everything after "in particular" as not responsive to  
6 my question.

7 MS. BOJKO: Your Honor, I thought he did  
8 a fine job answering the first time. She asked a  
9 follow-up and he added. He was directly responsive.

10 EXAMINER ADDISON: Thank you.

11 Since, Mr. Lause, this is your first time  
12 testifying in this proceeding, we typically have a  
13 rule that you are allowed one bite of the apple. But  
14 from this point forward, I would instruct you to just  
15 listen to Ms. Dunn's questions and try to limit your  
16 response to the question that she is posing.  
17 Ms. Bojko can bring out any other issues on redirect  
18 that you feel are relevant.

19 THE WITNESS: Okay. And who do I look at  
20 when I'm answering? You or Ms. Dunn?

21 EXAMINER ADDISON: Whoever you would  
22 like, as long as the court reporter can hear you.

23 Q. (By Ms. Dunn) At Cooper Tire there are  
24 other individuals who manage energy costs, correct?

25 A. We have individuals who look at all of

1 our costs, some of which would be we have individuals  
2 that are more focused on looking at our energy costs,  
3 that's correct.

4 Q. On page 2 of your testimony, line 7, you  
5 indicate that you are responsible for tax strategy,  
6 among other things, at Cooper Tire, correct?

7 A. Yes, that is correct.

8 Q. And tax strategy would be different for  
9 every company because every company has a different  
10 sets of circumstances, correct?

11 A. The tax regulations from the IRS are  
12 going to be the same for all companies, so we are all  
13 playing within the same game rules. The facts and  
14 circumstances of how they are applied could be  
15 different company to company, whether that be two  
16 different tire companies would be the same as a  
17 utility company versus a tire company versus a  
18 service company.

19 MS. DUNN: Your Honor, I move to strike  
20 everything after "whether that be." I asked a "yes"  
21 or "no" question.

22 EXAMINER ADDISON: Thank you, Ms. Bojko.

23 MS. BOJKO: Your Honor, she is not asking  
24 a "yes" or "no." She is assuming these questions are  
25 in a vacuum and he is explaining how management

1 decisions are made. She asked if different companies  
2 have different tax strategies. He said no, because  
3 they are all playing under the IRS. They may have a  
4 different fact pattern and data behind them, but they  
5 are all playing within the same realm, so he did  
6 answer it. It was a two-part answer because there  
7 is -- one part is "yes" and one part is "no."

8 THE WITNESS: May I add one other thing?

9 MS. BOJKO: No.

10 EXAMINER ADDISON: There is an objection  
11 pending.

12 I am going to deny the motion to strike.  
13 I think he was trying to respond to your comment  
14 about different sets of circumstances and he was  
15 explaining those circumstances would be the same, so  
16 the motion to strike is denied.

17 Q. (By Ms. Dunn) And on page 2, line 8, you  
18 also indicate that one of your responsibilities is  
19 risk management for Cooper Tire's global operations,  
20 correct?

21 A. That is correct.

22 Q. And every company would have different  
23 risks, correct?

24 A. I guess similar to how I answered it for  
25 the tax situation, every company has the same

1 fundamental risks, the facts and circumstances may be  
2 different, and how you -- how you address those  
3 different facts and circumstances could be different,  
4 but, fundamentally, we all have the same type of  
5 risks.

6 Q. The prices that Cooper Tire charges for  
7 its product are not regulated, correct?

8 A. We set our prices within the  
9 anti-competitive rules of the United States of  
10 America and in every country we operate in, like  
11 Robinson-Patman. So, from that standpoint, we are  
12 under the requirements of U.S. regulations; but no,  
13 we are not a truly regulated environment. We operate  
14 in a fully-competitive environment.

15 Q. On page 14 of your testimony --

16 A. Okay.

17 Q. -- lines 3 to 8, you were discussing that  
18 Cooper Tire currently shops for generation service  
19 with a CRES provider, correct?

20 A. That is correct.

21 Q. And on line 7 to 8 of that page, you  
22 reference CRES contracts, correct?

23 A. Yes, it does.

24 Q. And you personally do not know whether  
25 those contracts are fixed contracts or variable



1 contracts, correct?

2 A. I personally am not involved with making  
3 those purchases, so I don't have that level of  
4 detail, so that is correct.

5 Q. And you also do not know, in detail, the  
6 length of those contracts, correct?

7 A. I feel that I do, but I have not seen the  
8 contracts, so I could not state with 100-percent  
9 assurance that I know the length of the contract.

10 Q. And if the companies' proposal in this  
11 proceeding is approved and implemented, it would not  
12 preclude Cooper Tire from shopping for generation  
13 service from a CRES provider, correct?

14 A. Did you say "the company" or "companies"?

15 Q. "Companies."

16 A. "Companies," and that being the defined  
17 term of the three regulated distribution companies;  
18 is that correct?

19 Q. Yes.

20 A. Could you repeat the question again?

21 Q. Sure. If the companies' proposal is  
22 approved and implemented, it would not preclude  
23 Cooper Tire from shopping for generation service from  
24 a CRES provider, correct?

25 A. It's my understanding that we would still

1 pay a nonbypassable rider under this proposal even if  
2 we are able to continue to buy from the CRES  
3 provider.

4 Q. So the answer to my question though is  
5 yes, you can still shop -- Cooper Tire can still shop  
6 with a CRES provider, correct?

7 A. It is my understanding, yes, we could.

8 Q. And to your knowledge, you are not aware  
9 of any federal or state law, tax or otherwise, that  
10 would impede the companies, as we just defined them,  
11 from moving funds to FES, correct?

12 MS. BOJKO: Objection.

13 EXAMINER ADDISON: Grounds?

14 MS. BOJKO: I'm assuming she is asking  
15 for a nonlegal opinion, but she's specifically asking  
16 about laws. He is not an attorney. He is not  
17 providing a legal opinion.

18 MS. DUNN: And my question is in the  
19 nonlegal context, your Honor.

20 EXAMINER ADDISON: Thank you.

21 And with that on the record, can we have  
22 the question back.

23 MS. BOJKO: Thank you.

24 (Record read.)

25 MS. BOJKO: Objection, your Honor. I am

1 not sure I understand the question. It's vague and  
2 ambiguous.

3 EXAMINER ADDISON: How do you find this  
4 question vague or ambiguous?

5 MS. BOJKO: I think he -- I don't have it  
6 in front of me like you do, your Honor, so I can't  
7 look at it, but "impede," it actually sounded like it  
8 had -- it had a double-negative, but impede the  
9 companies from transferring funds.

10 EXAMINER PRICE: In his testimony, on  
11 line 10 of page 8, he uses the word impediment. I  
12 assume that Ms. Dunn was using it in the same context  
13 as the word "impediment."

14 MS. BOJKO: Okay.

15 MS. DUNN: Yes, your Honor.

16 MS. BOJKO: It sounded like there was a  
17 double-negative in there.

18 EXAMINER ADDISON: Let's have the  
19 question reread again. Thank you, Karen.

20 (Record read.)

21 EXAMINER ADDISON: You may answer.

22 THE WITNESS: Okay. Thank you.

23 A. After hearing the question, I do now hear  
24 the double-negative potential. So rather than  
25 answering "yes" or "no," I would just like to read my

1 testimony.

2           My testimony from page 8, beginning on  
3 line 1, "The companies' claim in their Rehearing  
4 Testimony that the 'cash associated with Rider RRS  
5 charges would not flow to FES,' seems  
6 disingenuous...the companies, FES, and other  
7 affiliates that own generation share the same  
8 corporate parent. Costs recovered from customers  
9 under Modified Rider RRS could be imputed to FES or  
10 other affiliates that own generation based on the  
11 transfer of funds from the regulated Companies to the  
12 parent. Given that all FirstEnergy Corporation  
13 entities are in the same tax jurisdiction (that is,  
14 USA Corporate Tax), there is no impediment from a  
15 corporate tax perspective to move funds among  
16 subsidiaries of a company (as opposed to when  
17 companies move funds between foreign entities, which  
18 normally triggers cash tax payments). The Companies  
19 seem to recognize this possibility, admitting that  
20 there is no prohibition in the Modified Rider RRS  
21 Proposal regarding the Companies' ability to pay  
22 dividends to the parent, FirstEnergy Corp."

23           "The Companies have also failed to  
24 explain how they will guarantee that the revenue  
25 collected from customers through the Modified Rider

1 RRS will in fact not be used to support or bolster  
2 FES or other generation affiliates."

3 MS. DUNN: Your Honor, may we approach?

4 EXAMINER ADDISON: You may.

5 Ms. Bojko, do you need a copy of  
6 Mr. Lause's deposition?

7 MS. BOJKO: Yes, please.

8 Q. (By Ms. Dunn) Mr. Lause, I've handed you  
9 a copy of your deposition transcript. Could you  
10 please turn to page 47.

11 A. Okay.

12 Q. Starting at line 8 on page 47.

13 "Question: So my question was in your  
14 testimony you were indicating there is no impediment  
15 from a corporate tax perspective to move funds among  
16 subsidiaries of a company. Do you see that?"

17 "Answer: Correct, yes."

18 MS. BOJKO: Objection.

19 EXAMINER ADDISON: Grounds?

20 MS. BOJKO: That was not inconsistent  
21 with his statement earlier. She didn't reference him  
22 to his testimony.

23 EXAMINER ADDISON: Hold on, Ms. Bojko.

24 Were you finished, Ms. Dunn?

25 MS. DUNN: I wasn't finished yet. I was

1 reading the question before.

2 EXAMINER ADDISON: Go ahead.

3 Q. And continuing on page 47, line 13.

4 "Question: And my question is are you  
5 aware of any federal or state law, tax or otherwise,  
6 that you would -- that would impede the distribution  
7 utilities from moving funds to FES?"

8 "Answer: Not to my knowledge."

9 Did I read that correctly?

10 MS. BOJKO: Objection.

11 EXAMINER ADDISON: Grounds?

12 MS. BOJKO: It's improper impeachment.  
13 He said the exact thing. First of all, she never  
14 directed him to his testimony, so the first  
15 impeachment question and answer is improper under the  
16 rules.

17 Secondly, the question she just asked and  
18 answered, he said the exact same thing. He said on  
19 lines 9 and 10, "there is no impediment from a  
20 corporate tax perspective to move funds among  
21 subsidiaries" and explained which -- which company  
22 and -- or which tax perspective he was speaking to  
23 with regard to the parentheses. So it's improper  
24 impeachment.

25 EXAMINER ADDISON: Thank you. We will

1 just let the record stand for itself and we will move  
2 on from this point.

3 MS. BOJKO: Thank you.

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

6 EXAMINER ADDISON: Certainly.

7 MS. DUNN: Thank you, your Honor. I have  
8 no further questions.

9 EXAMINER ADDISON: Thank you, Ms. Dunn.  
10 Mr. McNamee?

11 MR. McNAMEE: No questions, your Honor.

12 EXAMINER ADDISON: Redirect, Ms. Bojko?

13 MS. BOJKO: Yes. Could we have a minute,  
14 your Honor?

15 EXAMINER ADDISON: Let's go off the  
16 record.

17 (Discussion off the record.)

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

20 Ms. Bojko?

21 MS. BOJKO: We have no redirect, your  
22 Honor. Thank you.

23 EXAMINER ADDISON: Thank you, Ms. Bojko.

24 Examiner Price?

25 - - -

## EXAMINATION

By Examiner Price:

Q. If you could turn to your testimony, page 9. I just have a couple of follow-up questions.

A. Sure. Yes.

Q. On page 9 you indicate that Moody's downgraded FirstEnergy Corp.'s and its subsidiaries outlook from negative to -- to negative from stable?

A. Correct.

Q. Are you also aware whether S&P revised their outlook for the companies as well?

A. I'm not exactly positive, but I specifically had read the Moody's one.

Q. That's okay. I will ask you a more general question.

A. I'll speculate. From personal experience normally those two are very consistent.

Q. So if one rating agency were to move and downgrade the companies, it's highly possible another rating agency would move to downgrade the companies?

A. Yes.

Q. And here I am saying "the companies" as FirstEnergy operating utilities.

A. I guess I speak more to the parent. That's my familiarity is the parent because that's



1     how they would look at an organization is the parent  
2     because the parent provides the parental guarantees  
3     to the operating companies.

4             Q.     Okay.   Very good.   Let's say,  
5     hypothetically, any company, but in this case the  
6     companies, were downgraded from investment grade to a  
7     notch below investment grade.   Would that increase  
8     their borrowing costs?

9             A.     Potentially it could.   The biggest driver  
10    are the market prices for capital, but one factor  
11    that is considered could be the credit ratings.

12            Q.     All else being equal.

13            A.     All else being equal.   It would not have  
14    a positive impact.   It could possibly have a negative  
15    impact, yeah.

16            Q.     And if the companies had to go out and  
17    borrow, say, a billion dollars, that would be a  
18    significant increase in their borrowing costs.

19            A.     I don't know if I could categorize it as  
20    significant.   It could be just a few basis points  
21    which is -- which is relatively small.

22                    Speaking from experience, I know  
23    personally of a company who does not have an  
24    investment grade credit rating, but who can borrow  
25    money at what is equivalent to investment grade

1 rating. So it has not affected this company and you  
2 can see multiple cases of that.

3 So that's why I hesitate in saying it's  
4 not a 100-percent assurance that if there is a  
5 downgrade, there will always be an increase in the  
6 borrowing costs. I can't say that because I know  
7 specifically where there are cases where that has not  
8 happened.

9 Q. Do you know of cases the opposite way,  
10 where they downgraded and it does increase the  
11 borrowing costs?

12 A. Yeah. It could go both ways, that's  
13 correct.

14 EXAMINER PRICE: Okay. Thank you.

15 EXAMINER ADDISON: Thank you. I have no  
16 additional questions. You are excused, Mr. Lause.  
17 Thank you very much.

18 THE WITNESS: Thank you very much.

19 EXAMINER ADDISON: Ms. Bojko.

20 MS. BOJKO: Yes, your Honor. At this  
21 time, OMAEG moves for admission of OMAEG Exhibit 37,  
22 the Direct Testimony on Rehearing of Thomas N. Lause,  
23 and OMAEG Exhibit 38, the related errata sheet.

24 EXAMINER ADDISON: Thank you.

25 Are there any objections to the admission

1 of OMAEG Exhibit 37 and 38?

2 MS. DUNN: No, your Honor.

3 EXAMINER ADDISON: Hearing none, they  
4 will be admitted.

5 MS. BOJKO: Thank you, your Honor.

6 EXAMINER ADDISON: Thank you.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

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

10 (Discussion off the record.)

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

13 OCC you may call your next witness.

14 MR. SAUER: The OCC calls Matthew Kahal  
15 to the stand and would like his rehearing direct  
16 testimony marked as OCC Exhibit No. 44.

17 EXAMINER ADDISON: It will be so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 (Witness sworn.)

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

22 You may proceed, Mr. Sauer.

23 MR. SAUER: Thank you, your Honor.

24 - - -

25

1 MATTHEW I. KAHAL

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

4 DIRECT EXAMINATION

5 By Mr. Sauer:

6 Q. Please state your full name and business  
7 address for the record.

8 A. My name is Matthew I. Kahal. 1108  
9 Pheasant Crossing, Charlottesville, Virginia 22901.

10 Q. Are you the same Matthew Kahal whose  
11 rehearing direct testimony was filed in this case?

12 A. Yes.

13 Q. On whose behalf do you appear today?

14 A. The Office of Consumers' Counsel.

15 Q. Do you have your prepared testimony with  
16 you on the stand?

17 A. I do.

18 Q. Did you prepare that testimony or have it  
19 prepared at your direction?

20 A. Yes.

21 Q. Do you have any changes or corrections to  
22 your rehearing direct testimony?

23 A. I have a couple of minor clerical  
24 corrections.

25 Q. Could you go through those, please.

1           A.     Sure. At page No. 9 at line 4, there's  
2 the number 1.344 and the word "billion" should go  
3 after 1.344.

4                     At page No. 20 at line No. 14, in the  
5 middle of that line there's the word "projection" to  
6 the end of the sentence. "Projection" should be  
7 "protection."

8                     And then finally at page No. 21 at  
9 line 6, there's the number 1.344 billion and that's  
10 at the end of the sentence, but before this sentence  
11 ends I would add the words "to," that is t-o,  
12 "3.575 billion." So what got left out at the end of  
13 that sentence was t-o, "to," t-o, "\$3.575 billion"  
14 and that would end the sentence.

15                    Those are the only corrections and they  
16 are clerical in nature and don't change the nature of  
17 the testimony or any conclusions.

18                    MS. BOJKO: I'm sorry, your Honor. May I  
19 have the page and line number of that last addition?

20                    EXAMINER ADDISON: Certainly.

21                    THE WITNESS: The last one?

22                    MS. BOJKO: Yes.

23                    THE WITNESS: The last one was on page 21  
24 and that was at line 6.

25                    MS. BOJKO: Thank you.

1           Q.     (By Mr. Sauer) Thank you, Mr. Kahal. So  
2 if I asked you today the same questions found in your  
3 rehearing direct testimony in OCC Exhibit 44, would  
4 your answers, other than the errata changes you made  
5 today, be the same?

6           A.     Yes.

7           MR. SAUER: The OCC moves for the  
8 admission of OCC Exhibit No. 44 and tenders the  
9 witness for cross-examination.

10          EXAMINER ADDISION: Thank you, Mr. Sauer.  
11 We will defer ruling on OCC Exhibit 44 upon the  
12 conclusion of cross-examination.

13          At this time the Bench will entertain  
14 motions to strike.

15          MR. KUTIK: Your Honor, we have a few.  
16 These are grouped into two groups.

17          The first, your Honor, starts on page 8  
18 and there are three sentences in page 8. The first  
19 starts on line 4 with the words "The rider RRS" and  
20 ends on line 7 with "customers)."

21          The second sentence begins on line 10  
22 with the word "Obviously" and ends on line 11 with  
23 the word "desirable."

24          And the third sentence begins on line 13  
25 with the word "Quite" and ends on line 15 with the

1 word "utility."

2 The grounds for our motion, your Honor,  
3 are that these statements are cumulative. They  
4 restate the position of this witness that was given  
5 in prior testimony.

6 As we discussed the general attitude or  
7 notion or commentary on rider RRS, per se, is not at  
8 issue in this case or in this hearing. What is at  
9 issue in this hearing is commentary on the changes  
10 the proposal the companies made. To be sure, this  
11 witness has commentary on that subject, which will be  
12 the subject of our cross-examination this morning,  
13 but on those subjects and on these sentences, your  
14 Honor, it does relate to Rider RRS, per se, and,  
15 therefore, it's old ground trod, and should be  
16 stricken.

17 EXAMINER ADDISON: Thank you.

18 Mr. Sauer, would you care to respond?

19 MR. SAUER: Yeah.

20 Your Honors, the rider RRS still is an  
21 alternative that is there, it's been approved by the  
22 Commission, potentially has play should the companies  
23 decide to go back to FERC and provide their PPA.  
24 This just provides context in the event that that  
25 particular eventuality would take place.

1 EXAMINER PRICE: Mr. Sauer, are you  
2 conceding that these sentences are about the old  
3 rider RRS?

4 MR. SAUER: The old one --

5 EXAMINER PRICE: The previously --

6 MR. KUTIK: Rider RRS as approved.

7 EXAMINER PRICE: Rider RRS as approved.

8 Thank you.

9 MR. SAUER: Rider RRS as approved, yes.

10 EXAMINER PRICE: Are you sure?

11 MR. SAUER: Can I have the references  
12 again, please?

13 MR. KUTIK: Sure. Page 8. Lines 4  
14 through 7, the sentences there. Lines 10 through 11,  
15 the sentences there. Lines 13 through 14, the  
16 sentences there.

17 EXAMINER PRICE: Let me short-circuit  
18 this. Why don't we just ask the witness.

19 Do you have the reference in front of  
20 you?

21 THE WITNESS: I do, your Honor.

22 EXAMINER PRICE: Are you -- just let me  
23 ask the question.

24 THE WITNESS: Sure.

25 EXAMINER PRICE: In light of the actual



1 line page sentence -- sentence on line 3, when you  
2 say "The Rider RRS" on line 4, are you talking about  
3 rider RRS as approved or the new rider RRS proposed  
4 by the company?

5 THE WITNESS: I was talking about this in  
6 the context of the new. If you look at line 3, it  
7 says "Under this new construct."

8 EXAMINER PRICE: That's the way I read  
9 it. That's why I asked your counsel if he was  
10 conceding that, and I was stunned by his answer.

11 THE WITNESS: Right. That's --

12 MR. SAUER: Well, I was reading the  
13 "Rider RRS" and the errata didn't address rider RRS.  
14 Is that another errata you might make to that, that  
15 this is the proposed new rider RRS on line --

16 THE WITNESS: I don't know if it's an  
17 errata or not or just a clarification, but when I use  
18 the term "Under this new construct," "Under this new  
19 construct" referred to the modified rider RRS. I  
20 thought that was clear. If not, I can make it clear.

21 EXAMINER PRICE: Mr. Kutik, is his  
22 statement now inconsistent with what he said in his  
23 deposition?

24 MR. KUTIK: No, your Honor. We didn't  
25 discuss these particular lines in the deposition.

1           MR. SAUER: In light of what we just  
2 discussed, this isn't cumulative, this addresses the  
3 new proposal the company put out there and should not  
4 be stricken.

5           EXAMINER ADDISON: Thank you, Mr. Sauer.  
6           At this time, we will deny the motion to  
7 strike.

8           MR. KUTIK: Our next group of motions,  
9 your Honor, begins on page 8, line 20, with the word  
10 "While" and that would carry-over to line 9 -- excuse  
11 me, page 9, line 16. So that's page 8, line 20,  
12 starting with the word "While" through page 9,  
13 line 16.

14           Next would be on page 10, the sentence  
15 that begins on line 7 with the words "The Commission"  
16 and ends on line 12.

17           Next would be line 14 -- page 14,  
18 line 13, and specifically everything after the word  
19 "profits." Continuing on page 17, starting at  
20 line --

21           EXAMINER PRICE: I'm sorry. I just need  
22 clarification on that last one. It was just line 13.

23           MR. KUTIK: Those words after the word  
24 "profit."

25           EXAMINER PRICE: Okay.

1           MR. KUTIK: The sentence after that word.  
2       Page 17, line 13, through page 18, line 20.

3           Next page, 20, line 4, beginning with the  
4       sentence that begins "More crucially" and ending on  
5       line 8.

6           Moving on to page 21. Beginning on  
7       line 5 and ending on line 11, with the "market  
8       data)."

9           Finally, staying on page 21. Beginning  
10      on line 14 with the word "While" continuing through  
11      line 21.

12           Your Honor, consistent with our motions  
13      and your rulings on the motions with respect to the  
14      analyses, particularly analyses done by Mr. Wilson  
15      with regard to so-called updates, that information is  
16      beyond the scope of the hearing.

17           In fact, Mr. Kahal, in his deposition,  
18      recognized there had not been an analysis done, in  
19      terms of a quantitative analysis with respect to  
20      rider RRS as opposed to versus RRS as proposed. In  
21      fact, he had not seen one.

22           And so to the extent that he is  
23      discussing updated information with respect to the  
24      alleged impact of rider RRS, that's beyond the scope  
25      of the hearing. And consistent with your rulings, it

1     should be stricken.

2                 EXAMINER ADDISON:   Mr. Sauer, response?

3                 MR. SAUER:   Regarding Mr. Kahal's  
4     reliance on Mr. Wilson's analysis that's been  
5     stricken, there were plenty -- there were many  
6     compelling arguments made yesterday, by Ms. Willis,  
7     Mr. Soles, Ms. Bojko, against the companies' motions  
8     to strike.

9                 But one of the more compelling arguments  
10    was ESP versus the MRO statutory test.   And that  
11    test, that statutory test is still applicable.   The  
12    ESP versus MRO test is, by law, a matter that must be  
13    addressed within the scope of this rehearing.

14                The testimony of Mr. Wilson that was  
15    struck yesterday presented OCC's calculations of the  
16    cost of the ESP specifically focus on the cost of the  
17    company's proposal.   That cost calculation is an  
18    integral part of Mr. Kahal's ESP versus MRO analysis.

19                Mr. Kahal relies upon Mr. Wilson's  
20    estimate of the cost of the company's proposal.   The  
21    companies estimate that the cost of their proposal is  
22    a \$561 million credit over eight years.   The record  
23    now only includes that estimate because OCC and  
24    others have been precluded from presenting such  
25    evidence based on evidentiary rulings the Bench has

1 made to exclude testimony --

2 EXAMINER PRICE: Mr. Sauer --

3 MR. SAUER: -- including Mr. Wilson.

4 EXAMINER PRICE: Mr. Sauer, the \$561  
5 million estimate that Ms. Mikkelsen is relying upon  
6 is based upon the companies' projections from the  
7 original case; is that correct?

8 MR. SAUER: That is correct.

9 EXAMINER PRICE: And the Commission  
10 actually calculated a different number; is that  
11 correct?

12 MR. SAUER: They did.

13 EXAMINER PRICE: And notwithstanding  
14 that, the companies are standing upon, they filed  
15 their assignment of errors to whatever the Commission  
16 did in the Opinion and Order, and the company is  
17 standing by the original numbers.

18 MR. SAUER: They are.

19 EXAMINER PRICE: Is there anything in our  
20 evidentiary ruling that precludes you from relying  
21 upon your original numbers that you filed in this  
22 case?

23 MR. SAUER: No. We can rely on the  
24 original numbers, but --

25 EXAMINER PRICE: To the extent the

1 Commission may or may not see merit in your  
2 assignments of error with respect to the rulings on  
3 those numbers; is that correct?

4 MR. SAUER: But, importantly, the  
5 Commission relied upon one of Mr. Wilson's analysis  
6 that --

7 EXAMINER PRICE: And is there anything to  
8 stop you from relying upon that analysis in the MRO  
9 test in this proceeding?

10 MR. SAUER: No, other than it's now been  
11 updated and there is more current information that's  
12 available and that should be available to the  
13 Commission for them --

14 EXAMINER PRICE: It's just an updated  
15 forecast. It's just an updated estimate. Did we  
16 ever, yesterday, say that you could not rely upon  
17 actual new prices or actual new facts other than  
18 forecasts?

19 MR. SAUER: No, you did not.

20 EXAMINER PRICE: Thank you.

21 MR. SAUER: But the forecasts have been  
22 updated. There's nothing to stop the companies  
23 from -- from crossing Mr. Wilson, from providing  
24 surrebuttal testimony that you allowed them to do.  
25 But they could provide their own updates --

1 EXAMINER PRICE: Updated forecasts are  
2 beyond the scope of this proceeding and updated --  
3 and we would have made it clear that updated  
4 forecasts were beyond the scope of this proceeding if  
5 anybody had asked us prior to the hearing.

6 There were weeks that went by nobody  
7 asked the Bench for guidance on this question. Many  
8 filings were made. Nobody asked the Bench for  
9 guidance as to whether the scope of this hearing  
10 would include forecasted -- updated forecasts. And  
11 if you had asked that question, we would have given  
12 you an answer.

13 MR. KUTIK: Your Honor, so is my motion  
14 granted?

15 EXAMINER PRICE: I am not done letting  
16 him do his arguments.

17 MR. KUTIK: Okay, well.

18 EXAMINER PRICE: He's got more he wants  
19 to read.

20 MR. SAUER: Thank you, your Honor.

21 But the lawful outcome in yesterday's  
22 motion to strike should have been the Bench to admit  
23 Mr. Wilson's testimony in its entirety. This would  
24 have permitted OCC the right to put on evidence on  
25 the statutory MRO versus ESP test, instead of the

1 Attorney Examiner's ruling denying OCC that right.

2 That ruling was in error and will unduly  
3 prejudices OCC's and others' right to present their  
4 case on this important issue of law to the Commission  
5 and this matter of due process.

6 And I would point out also that I think  
7 in an application for rehearing OCC did bring up the  
8 concern and the desire to update forecast  
9 information.

10 EXAMINER PRICE: I understand that.

11 MR. SAUER: I don't believe that was  
12 ruled.

13 EXAMINER PRICE: The Commission has not  
14 ruled on any interlocutory rehearing, other than the  
15 granting rehearing, or to have this limited  
16 evidentiary proceeding.

17 MR. SAUER: But that limbo state is now  
18 creating a situation where we can't --

19 EXAMINER PRICE: Nothing is stopping you  
20 from relying on your previous numbers. The company  
21 is relying on their previous numbers. Nothing is  
22 stopping you from relying on your previous numbers.  
23 I assume you still stand by them.

24 MR. SAUER: Absolutely, but there are  
25 better numbers available and the Commission's record



1 should reflect the most current and accurate  
2 information that's available.

3 MR. FISK: Your Honor, we would -- we  
4 would join in the opposition to the motion to strike.  
5 And respectfully, with regards to our testimony  
6 yesterday, the updated actual information was struck.

7 EXAMINER PRICE: I tried very carefully  
8 to preserve anything I could that was actual  
9 information that we could preserve. If I missed  
10 something, I apologize. I was trying to look -- I  
11 know one of the pieces of testimony we did deny the  
12 adjustment to capacity prices. I'm not sure which  
13 one of the two it was.

14 MR. FISK: We also had updated NYMEX  
15 numbers, actual gas prices. They were all struck.

16 EXAMINER PRICE: I think they were buried  
17 in there. It couldn't be -- it could not be removed  
18 easily as the other instance was.

19 MR. FISK: Okay. Well, for the record, a  
20 lot of that information in our testimony was struck  
21 and we would just -- we would just join in  
22 reiterating our position that updated forecasts are  
23 directly relevant to whether the modified proposal  
24 the companies chose to propose is in the best  
25 interest of customers presents risk.

1           And given the new mechanism for  
2     calculating both costs and revenues under that  
3     proposal, we should be allowed to provide updated  
4     projections.

5           MS. BOJKO: Your Honor, if OMAEG could  
6     state for the record our opposition as well. I think  
7     that information that was struck yesterday were  
8     calculations to arrive at an estimate for the  
9     modified rider RRS, which included new capacity  
10    prices that are known. It also included new pricing  
11    mechanisms and new calculations on the revenue side,  
12    which the witnesses tried to discuss created new  
13    outcomes and new forecasts, projected prices and  
14    benefits and the costs to customers.

15           So there were actual prices embedded in  
16    the calculations of the cost to customers under the  
17    modified rider RRS that was struck yesterday on the  
18    revenue side. It's a different pricing scheme at a  
19    different location and it also is with regard to  
20    actual versus projected. Thank you.

21           EXAMINER ADDISON: Thank you.

22           Mr. Kutik, care to respond?

23           MR. KUTIK: Well, there is now no  
24    pretense that the numbers that they seem to introduce  
25    go to the wisdom and the merit of rider RRS as to the

1 effect of the proposal.

2 That being said, given that the order in  
3 this case, which is that this hearing is to be -- is  
4 to address the limited issues of the companies'  
5 proposal and the alternative; how rider RRS, at  
6 large, affects customers, good or bad, is beyond the  
7 scope of this hearing and only with respect to how  
8 the proposal has changed that effect, that's what's  
9 at issue in this case, among other things. But in  
10 terms of effects and quantitative analysis, that's  
11 all that's relevant.

12 And I would take issue, by the way, with  
13 Ms. Bojko's characterization of the evidence. There  
14 was no such thing. They were projections that  
15 Mr. Wilson did based upon the same analysis he did,  
16 not reflecting any change in the calculation of rider  
17 RRS.

18 EXAMINER ADDISON: Thank you. I think  
19 we've heard enough.

20 At this time we will be granting the  
21 motion to strike in its entirety. Would the parties  
22 prefer if I go through each reference? Mr. Sauer?

23 MR. SAUER: Yes, please.

24 EXAMINER ADDISON: Starting on page 2 --  
25 or page 8, I apologize, page 8, line 20, beginning

1 with the word "While," to page 9, line 16.

2 The next reference being page 10, line 7,  
3 beginning with the words "the Commission." And  
4 ending on line 12 with the word "proposal."

5 Moving on to page 14, line 13, with the  
6 phrase following "profits." So now line 13 reads  
7 "huge FE Utilities profits."

8 Moving on to page 17, line 13, through  
9 page 18, line 20.

10 MS. BOJKO: I'm sorry, your Honor, did  
11 you say page 17 through page 20? So all of 18, all  
12 of 19?

13 EXAMINER ADDISON: It's page 17, line 13,  
14 through page 18, line 20.

15 MS. BOJKO: Thank you.

16 EXAMINER ADDISON: No problem.

17 Moving on to page 20, line 4, beginning  
18 with the words "More crucially" and ending on line 8  
19 of page 20 as well.

20 And moving on to page 21, beginning with  
21 line 5, and ending on line 11, after "energy market  
22 data." And continuing on page 21, line 14, beginning  
23 with the word "While" and ending on line 21.

24 MR. SAUER: Could I have the last one  
25 reread, again?

1 EXAMINER ADDISON: Absolutely. Page 21,  
2 line 14, beginning with the word "While" and ending  
3 on line 21 of that same page.

4 MR. SAUER: Thank you, your Honor.

5 EXAMINER ADDISON: My pleasure.

6 Mr. Kutik, does that conclude your  
7 motions to strike?

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

9 EXAMINER ADDISON: Thank you.

10 Mr. Dougherty?

11 MR. DOUGHERTY: No questions.

12 EXAMINER ADDISON: Mr. Hays?

13 MR. HAYS: None. Thank you, your Honor.

14 EXAMINER ADDISON: Ms. Bojko?

15 MS. BOJKO: No questions, your Honor.

16 EXAMINER ADDISON: Mr. Fisk?

17 MR. FISK: No questions.

18 EXAMINER ADDISON: Mr. Batikov?

19 MR. BATIKOV: No questions.

20 EXAMINER ADDISON: Ms. Glover?

21 MS. GLOVER: No questions.

22 EXAMINER ADDISON: Mr. Kurtz?

23 MR. KURTZ: No questions.

24 EXAMINER ADDISON: Mr. Kutik?

25 MR. KUTIK: Thank you, your Honor.

1 - - -

2 CROSS-EXAMINATION

3 By Mr. Kutik:

4 Q. Good morning.

5 A. Good morning, sir.

6 Q. I want to talk to you about your  
7 criticisms of the company's proposal. Let's start  
8 with your testimony that the proposal leaves the  
9 companies to absorb some financial risk. Isn't it  
10 true that rider RRS, as proposed, was not financially  
11 neutral -- as approved was not financially neutral to  
12 the companies?

13 MR. SAUER: Can I have the question  
14 reread, please?

15 EXAMINER ADDISON: You may.

16 (Record read.)

17 MS. BOJKO: Objection.

18 EXAMINER ADDISON: Grounds?

19 MS. BOJKO: We just got done striking all  
20 of his testimony regarding the original rider RRS and  
21 now the question is purely based on original RSS.  
22 This is cumulative cross.

23 MR. KUTIK: This is to the companies,  
24 your Honor.

25 MS. BOJKO: He said "original RRS."

1           MR. KUTIK: I am comparing his statements  
2 about rider RRS as proposed versus RRS as approved.  
3 He is saying that the company has financial risk  
4 under rider RRS as proposed. I am pointing out, as  
5 approved, there was also financial risk for the  
6 companies.

7           EXAMINER ADDISON: Overruled.

8           A. As -- as Ms. Mikkelsen discussed in her  
9 testimony, it was designed -- the original RRS or the  
10 approved RRS is designed to be financially neutral,  
11 but as we also discussed in the deposition, there  
12 could be exceptions to that.

13          Q. All right. So there -- as approved, as  
14 opposed to as designed, as approved, rider RRS was  
15 not financially neutral to the companies, correct?

16          A. It might or might not be. I am simply  
17 saying there could be exceptions; that is, it's  
18 intended to be financially neutral, but because of  
19 things like a possible prudence disallowance, that  
20 could take place. And depending upon whether that's  
21 protected under the PPA, between FES and the  
22 companies, which is something I don't know, that it's  
23 possible -- that it's at least theoretically possible  
24 it could end up not necessarily being exactly  
25 financially neutral.

1           Q.   All right.  So let's talk about some of  
2   those things that ended up in rider RRS as approved.  
3   There was a risk-sharing mechanism, correct?

4           A.   Yes.

5           Q.   And if that risk-sharing mechanism went  
6   into effect, that would not have been financially  
7   neutral to the companies?

8           A.   Right.  It might or might not kick in.  
9   But if it did kick in, then I would assume it's not  
10   going to be financially neutral.

11          Q.   And there is also a -- a risk of  
12   disallowance of certain costs under rider RRS,  
13   correct, as approved?

14          A.   The -- I think you are referring to the  
15   capacity performance?

16          Q.   No.  I am referring to if the Commission  
17   determined there were certain costs that the  
18   companies had paid to FirstEnergy Solutions that the  
19   Commission deemed to be unreasonable or improper.

20          A.   There's at least a theoretical  
21   possibility of that happening, yes.

22          Q.   Right.  And if the companies, under the  
23   PPA, could not collect those costs back or recover  
24   those costs back from FirstEnergy Solutions, that  
25   would have not been financially neutral to the



1 companies, correct?

2 A. Right. If it's not covered in the PPA,  
3 that would be correct.

4 Q. And there is also a risk, under rider RRS  
5 as approved, of the companies incurring capacity  
6 performance penalties, correct?

7 A. That was in the Commission's order, yes.

8 Q. And if that took place, that would not  
9 have been financially neutral to the companies,  
10 correct?

11 A. Right. Unless that's covered under the  
12 PPA. Performance provisions often are covered under  
13 PPAs, but that's something that I wouldn't know since  
14 I never saw the PPA.

15 Q. Right. Now, in terms of doing a cash  
16 analysis of the effect of rider RRS on the companies,  
17 you did not -- excuse me -- you did not do a cash  
18 analysis of the effect of ESP IV as approved on the  
19 companies, correct?

20 A. That's correct.

21 Q. And you would agree with me that ESP IV  
22 has other provisions in it than rider RRS?

23 A. It does, many.

24 MS. BOJKO: Objection, your Honor.

25 EXAMINER ADDISION: He's already answered

1 the question.

2 Q. There are other riders in ESP IV --

3 MS. BOJKO: Objection.

4 EXAMINER ADDISON: I don't believe the  
5 question is --

6 MS. BOJKO: Oh, sorry.

7 EXAMINER ADDISON: No. You're fine.

8 Please proceed.

9 MR. KUTIK: Thank you, your Honor.

10 Q. (By Mr. Kutik) There are other riders in  
11 ESP IV that provide the companies with an opportunity  
12 to obtain cash in excess of what they would have  
13 received under ESP III, correct?

14 MS. BOJKO: Objection, your Honor.

15 EXAMINER ADDISON: Grounds?

16 MS. BOJKO: I think I've counted 10 or 11  
17 questions now that are purely based on rider RRS as  
18 approved by the Commission. It's a series of  
19 questions as to whether he has done analysis on the  
20 old ESP III, the old ESP IV, rider RRS. There's no  
21 tie to the modified proposal.

22 EXAMINER ADDISON: Mr. Kutik.

23 MR. KUTIK: Your Honor, this witness is  
24 making certain statements about the effect of rider  
25 RRS as -- as proposed, a proposal on the companies,

1 and I'm exploring with him whether those risks were  
2 still -- were intended, under rider RRS as approved.  
3 And so, his comments with respect to rider RRS as  
4 proposed are inappropriate. They have already been  
5 ruled on by the Commission because those risks  
6 already existed.

7 EXAMINER ADDISON: Thank you.

8 MS. BOJKO: Your Honor, he could --

9 MR. KUTIK: And further, that his --

10 EXAMINER ADDISON: I think I have heard  
11 enough. I am going to overrule the objection.

12 Q. Do you have the question in mind, sir?

13 A. Yes. There are lots of other riders in  
14 the third stipulation and the approved ESP IV that  
15 would provide revenue beyond what was in ESP III. I  
16 think that was your question.

17 Q. Yes, it was. And those riders would  
18 include things like rider DCR?

19 A. Yes. And there's more revenue in rider  
20 DCR under the third stip -- excuse me, under the  
21 third stipulation as compared to ESP III.

22 Q. And there would also be additional cash  
23 available potentially to the companies under the grid  
24 modernization rider.

25 A. Potentially. I don't think that's ever

1     been quantified, but it's certainly a potential.

2             Q.     Now, you also say in your testimony that  
3     the only plausible explanation for the companies'  
4     proposals that the companies must believe that it  
5     will translate into profits consistent with the view  
6     that the consumers have had in this case, but isn't  
7     it fair to say that there's no document that you've  
8     seen from FirstEnergy -- FirstEnergy, the companies,  
9     or any FirstEnergy entity that says that?

10            A.     That was kind of a long question, but I  
11     have not seen any document that states that the  
12     company expects to lose money on the rider.

13            Q.     RRS?

14            A.     RRS, yes.

15            Q.     Thank you.

16            A.     I'm not relying on any specific company  
17     document for that, yes.

18            Q.     And you've seen or heard of no statement  
19     from any officer or employee of the companies that  
20     says that, correct?

21            A.     That's -- that's correct. That's not  
22     based on any statement from a company official that I  
23     have seen.

24            Q.     And when you wrote your testimony, would  
25     it be fair to say you had no idea of who within the

1 FirstEnergy companies reviewed or approved the  
2 proposal?

3 A. Right. I don't know which individuals in  
4 FirstEnergy came up with the proposal.

5 Q. Nor do you know what analysis they  
6 undertook?

7 A. No, I don't.

8 Q. All right. Now, you say that -- you also  
9 say in your testimony that the hedge as proposed is  
10 not appropriate because it's not backed up by a  
11 financial statement, correct, or financial  
12 instrument, correct?

13 A. That's correct.

14 Q. Okay. And would it be fair to say  
15 that -- you also believe that a financial hedge would  
16 be financially neutral to the companies, correct?  
17 Your testimony on page 15, line 16 to 20.

18 A. Right. What I am saying is if the  
19 company --

20 Q. What is says --

21 EXAMINER ADDISON: Mr. Kutik, let him  
22 answer the question.

23 MR. KUTIK: I am just asking if it's in  
24 his testimony.

25 EXAMINER ADDISON: Let him answer and

1 then, if you believe it is not responsive, we can  
2 take that bridge when we cross it.

3 A. I'm sorry. I was slightly confused by  
4 the question, but.

5 Q. Let me try it again then.

6 A. Sure.

7 Q. Isn't it true that you said that a  
8 financial hedge should be financially neutral to the  
9 companies?

10 A. Oh, it should be, yes, I believe that  
11 that would be -- should be in the sense of being that  
12 would be the proper way to do it.

13 Q. And a financial hedge could include  
14 long-term debt, correct?

15 A. That's an example of a financial hedge.  
16 The use of long-term debt to finance rate base.

17 Q. Right. And you believe that the  
18 companies can absorb long-term debt when they have a  
19 rate freeze.

20 A. Can absorb it?

21 Q. Yes.

22 A. For sure, of course they can absorb it,  
23 or they wouldn't have entered into the rate freeze.

24 Q. And so you believe that if the companies  
25 were to enter long-term debt during a rate freeze,

1 that would not be -- that would be financially  
2 neutral to the companies, fair to say?

3 A. It would be at least approximately  
4 financially neutral, yes. Not dollar for dollar, but  
5 approximately.

6 Q. Now, you also believe that a proposed  
7 hedge is not standard practice because it is not  
8 procured from a competitive market and not subject to  
9 a competitive -- to a rigorous market test, correct?  
10 That's your testimony.

11 A. No, I don't think so. I wasn't here, in  
12 my testimony, criticizing financial hedges or saying  
13 they were improper.

14 Q. No. That's not my testimony -- not my  
15 question.

16 MR. SAUER: Objection.

17 EXAMINER ADDISON: Mr. Kutik --

18 MR. KUTIK: And I apologize for that.  
19 Let me try again.

20 EXAMINER ADDISON: Thank you.

21 MR. FISK: Can we let the witness --

22 MR. KUTIK: I am sorry. I thought he had  
23 finished.

24 EXAMINER ADDISON: Had you finished your  
25 answer, Mr. Kahal?

1           THE WITNESS: Yeah. My answer is there's  
2 nothing inherently improper about a utility entering  
3 into and providing a -- entering into a financial  
4 hedge on behalf of its ratepayers. That wasn't the  
5 criticism in my testimony.

6           Q. And I didn't mean to suggest that was  
7 your criticism. My question is you state that the  
8 proposed hedge is not standard practice because it is  
9 not procured from a competitive market and not  
10 subject to a rigorous market test, correct?

11          A. I would say that those are ors, but yes.  
12 Not necessarily ands, but ors.

13          Q. And would you agree with me that rider  
14 RRS as approved, was not -- would not be procured  
15 from a competitive market?

16          A. That's right. It would have been the  
17 sole source.

18          Q. And rider RRS as approved would not be  
19 subject to a rigorous market test.

20          A. Right.

21          Q. Now, with respect to hedges, you would  
22 agree with me there is no standard product for  
23 hedging products over an eight-year period.

24          A. Not standard products. It would have to  
25 be a customized product.



1           Q.    Right.  And you are not aware of a  
2 financial hedge that goes out that far, correct?

3           A.    No, I'm not.  It --

4           Q.    Thank you.

5                   Now, you have not done --

6           EXAMINER ADDISON:  Wait, Mr. Kutik.

7           MR. KUTIK:  I'm sorry.

8           EXAMINER ADDISON:  Had you finished your  
9 answer, Mr. Kahal?

10           THE WITNESS:  No, but I'm -- in my answer  
11 I just wanted to clarify what the term "standard  
12 product" meant in the context of my answer.  And I  
13 simply wanted to clarify that I think when you were  
14 using the term "standard product" and I was using the  
15 term "standard product," I was referring to the type  
16 of product that could be acquired through a broker on  
17 an organized exchange as opposed to a bilateral  
18 contract.

19           MR. KUTIK:  Thank you.

20           THE WITNESS:  That's all I meant.

21           MR. KUTIK:  Thank you, sir.

22           Q.    (By Mr. Kutik) Now, let me talk to you a  
23 little bit about your comments on SEET.  It would be  
24 correct to say you have never reviewed that statute,  
25 correct?

1           A.    I have not.

2           Q.    Nor have you reviewed any regulations,  
3 correct?

4           A.    That's correct.

5           Q.    Nor have you read any Commission opinions  
6 on that subject.

7           A.    Not exactly. That's not exactly correct.

8           Q.    You haven't read any SEET --

9               MR. SAUER: Your Honor --

10           MR. FISK: Your Honor, this is like the  
11 fifth time he has cut him off.

12               EXAMINER ADDISON: Thank you. Thank you,  
13 all.

14           MR. KUTIK: I'm sorry. I thought he had  
15 finished.

16               THE WITNESS: No.

17           MR. KUTIK: I really do apologize.

18           A.    When I was asked about orders, and I  
19 think this is what Mr. Kutik meant, was that I had  
20 not read the orders that were specifically orders  
21 arising out of SEET proceedings. I had read  
22 discussion of SEET issues in other Commission orders,  
23 such as ESP orders, where there were references to  
24 the SEET test.

25           Q.    So you have not read any opinions of the

1 Commission from SEET cases.

2 A. Right. From SEET specific cases, only  
3 from other proceedings such as ESP proceedings where  
4 SEET issues were discussed.

5 Q. Okay. And would it be fair to say that  
6 other than reading Mr. Duann's testimony, you don't  
7 know what the standards may be -- what standards may  
8 be established for including or excluding items of  
9 costs or revenues from SEET.

10 A. I think that's a fair statement. I am  
11 relying on Mr. Duann's testimony on that.

12 Q. And other than Mr. Duann's testimony, you  
13 don't know what specific items have, in fact, been  
14 excluded from the SEET in other cases.

15 A. That's correct. I am relying on his  
16 testimony for that.

17 Q. Now, you would agree me that, in some  
18 ways, excluding the results of rider RRS from SEET  
19 could be favorable to customers, correct?

20 A. Oh, it's -- it's possible if, you know,  
21 the numbers go the other way.

22 Q. Right.

23 A. And there's a loss, for example.

24 Q. So -- I'm sorry, go ahead.

25 A. If there's a loss for the company, then

1 it's possible that -- that in the event of such a  
2 loss, that customers might be better off if it's  
3 excluded from -- from the SEET test. That's a  
4 possibility.

5 Q. So if there were credits going to the  
6 customers, that's the loss you are referring to, and  
7 that year those credits were excluded from the SEET,  
8 that would be more favorable to customers, correct?

9 A. Well, it may or may not be. It depends  
10 upon the circumstances; that is, the companies'  
11 earnings might be such that the SEET test doesn't  
12 matter.

13 Q. Well, all other things being equal.

14 A. All other things being equal, it's  
15 possible.

16 Q. Okay.

17 A. It's not -- it's not a certainty either  
18 way.

19 MR. KUTIK: Fair enough. Thank you, sir.  
20 No further questions.

21 EXAMINER ADDISON: Thank you, Mr. Kutik.  
22 Mr. McNamee?

23 MR. McNAMEE: No questions, thank you.

24 EXAMINER ADDISON: Thank you.

25 Mr. Sauer, redirect?

1 MR. SAUER: Could we have a couple of  
2 minutes, your Honor?

3 EXAMINER ADDISON: You may.

4 Let's go off the record.

5 (Discussion off the record.)

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

8 Mr. Sauer.

9 MR. SAUER: No redirect, your Honor.

10 EXAMINER ADDISON: Thank you, Mr. Sauer.

11 Examiner Price?

12 EXAMINER PRICE: I have no questions.

13 EXAMINER ADDISON: I have no questions.  
14 You are excused, Mr. Kahal. Thank you very much.

15 MR. SAUER: Your Honor, OCC would renew  
16 its motion to admit OCC Exhibit No. 44.

17 EXAMINER ADDISON: Thank you.

18 Subject to the motions to strike, are  
19 there any objections to the admission of OCC Exhibit  
20 44?

21 Hearing none, it will be admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

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

25 (Discussion off the record.)

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

3 Mr. Settineri.

4 MR. SETTINERI: Thank you, your Honor.  
5 At this time P3/EPISA would call Dr. Joseph Kalt to  
6 the stand.

7 (Witness sworn.)

8 EXAMINER ADDISON: Thank you. You may be  
9 seated.

10 MR. SETTINERI: Your Honor, at this time  
11 we would like to mark two exhibits. And I believe we  
12 are up to P3/EPISA Exhibit 17. P3/EPISA Exhibit 17 is  
13 the rehearing testimony of Joseph P. Kalt, public  
14 version. And I believe consistent with our  
15 nomenclature, we would do a P3/EPISA Exhibit 17C.

16 EXAMINER ADDISON: 18C.

17 MR. SETTINERI: 18C, yes, thank you.  
18 That would be the confidential version of the  
19 rehearing testimony of Joseph Kalt.

20 EXAMINER ADDISON: They will be so  
21 marked.

22 (EXHIBITS MARKED FOR IDENTIFICATION.)

23 MR. SETTINERI: May I approach, please?

24 EXAMINER ADDISON: You may.

25 - - -

1 JOSEPH P. KALT, Ph.D.

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, Dr. Kalt.

7 A. Good morning.

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

10 A. Joseph P. Kalt, K-a-l-t, Compass Lexecon,  
11 4280 North Campbell Avenue, No. 200, Tucson, Arizona  
12 85718.

13 Q. And do you have before you what has been  
14 marked as P3/EPSA Exhibit 17?

15 A. Yes. That is the confidential -- or  
16 which one is the confidential?

17 Q. That would be 18C would be the  
18 confidential version.

19 A. And 17 is?

20 Q. Public version.

21 A. Okay. Yes, I have it.

22 Q. And do you also have before you what's  
23 been marked as P3/EPSA Exhibit 18C?

24 A. Confidential version, yes.

25 Q. And the confidential version of what?

1           A.    My testimony, my rehearing testimony.

2           Q.    Okay.  And those versions are identical  
3 except that the confidential -- the public version  
4 contains redaction portions, correct?

5           A.    Yes, yes.

6           Q.    All right.  Was that testimony prepared  
7 by you -- I should say, was your testimony, in both  
8 the confidential and public versions, prepared by you  
9 or at your direction?

10          A.    By me, at my direction, both, yes.

11          Q.    Do you have any changes or corrections to  
12 your testimony at this time?

13          A.    Yes, one set of changes.

14          Q.    If you could walk us slowly through the  
15 changes, please.

16          A.    Sure.  In Attachment JPK-RH-3 in, I  
17 believe, both the confidential and the public  
18 versions.  There's a slight change as a result of the  
19 way I handled OVEC and it causes small changes in the  
20 numbers at the bottom panel of the table.

21                Starting at the row in the bottom panel,  
22 the table labeled "Projected Market Revenue." I'll  
23 read across.  517 becomes 519.  918 becomes 920.  909  
24 stays 909.  953 becomes 950.  938 becomes 934.  978  
25 becomes 974.  1010 becomes 1006.  1056 becomes 1051.



1 448 becomes 446. And then at the far end of the row,  
2 7727 becomes 7707.

3 In the row labeled "Under (Over)  
4 Recovery." Again, reading across the row from the  
5 left. 244 becomes 243. 412 becomes 410. 477 stays  
6 477. 428 becomes 431. 512 becomes 516. 499 becomes  
7 503. 551 becomes 555. 525 becomes 530. 241 becomes  
8 242. And the last entry in that row 3889 becomes  
9 3908.

10 And then lastly, the bottom row of the  
11 table -- the bottom panel of the table, labeled "NPV  
12 Under (Over) Recovery." Starting from the left.  
13 227 becomes 226. 357 becomes 355. 384 stays 384.  
14 321 becomes 323. 357 becomes 360. 324 becomes 327.  
15 333 becomes 336. 295 becomes 298. 126 becomes 127.  
16 And the last entry, 2725 becomes 2736.

17 Q. Dr. Kalt, do you have any other  
18 corrections or revisions to your testimony at this  
19 time?

20 A. No.

21 Q. Thank you.

22 If I asked you the questions in your  
23 testimony, would your answers today be the same as  
24 you have revised?

25 A. Yes.

1 MR. SETTINERI: Okay. Thank you.

2 At this time, your Honor, the witness is  
3 available for cross-examination.

4 EXAMINER ADDISON: Thank you,  
5 Mr. Settineri.

6 At this time, the Bench will entertain  
7 any motions to strike.

8 MR. KUTIK: Yes, your Honor, we have a  
9 few. Your Honor, we've grouped these motions into  
10 two groups.

11 The first begins on page 6, line 8, with  
12 the sentence that begins at the end of that line "If  
13 that." And continues to page 7, line 11, including  
14 the footnote reference.

15 The next motion, your Honor, is on page  
16 8, line -- strike that.

17 The next one is on page 8, line 23. The  
18 sentence that starts with "As I" and ends on page 9,  
19 line 2, with the word "evidence" and that would also  
20 include striking the footnote.

21 Continuing on page 9, starting at line 9,  
22 the sentence that begins "In making" all the way  
23 through the end of the page on line 19. That would  
24 also include the footnotes to footnote No. 12 and  
25 footnote No. 13.

1 EXAMINER PRICE: What was the end of that  
2 one?

3 MR. KUTIK: I am sorry.

4 EXAMINER PRICE: What was the end of  
5 that?

6 MR. KUTIK: Line 19.

7 EXAMINER PRICE: Sorry. I thought you  
8 said page 19.

9 MR. KUTIK: I'm sorry.

10 Continuing on to page 10, starting on  
11 line 7, with the word "As I explained in my Direct  
12 Testimony" -- "As I explained in my Direct Testimony"  
13 and ending on page -- on line -- on line 12.

14 Continuing on to page 14, we would  
15 strike -- move to strike footnote 18.

16 Continuing on to page 20, line 5 starting  
17 with the word "The Companies" through line -- or  
18 through line 20 -- excuse me, line 12, with the words  
19 "the marketplace."

20 And lastly, on this line, we would move  
21 to strike page 21, line 15, through page 22, line 17.

22 The basis for all of these, striking all  
23 of these excerpts, your Honor, is that this is  
24 cumulative. And many of these references, your  
25 Honor, helpfully cite Mr. -- Dr. Kalt's direct and

1 supplemental testimony such as in footnote 8,  
2 footnote 9, footnote 12 and 13.

3 And so, you know, I believe that proves  
4 the point that the commentary here that we move to  
5 strike is commentary with respect to rider RRS and  
6 not commentary directed to the proposal and the  
7 changes made by the proposal to rider RRS.

8 EXAMINER ADDISON: Thank you, Mr. Kutik.  
9 Mr. Settineri.

10 MR. SETTINERI: Well, I would like to  
11 know, are there other motions to strike as well?

12 MR. KUTIK: Yes, there are.

13 MR. SETTINERI: I think at this time if  
14 we would -- in order to consider the motions to  
15 strike, I think it would be fair to know what part of  
16 the testimony will be subject to motions to strike.  
17 Can we have that? That's up to you, your Honor.

18 EXAMINER ADDISON: Well, I believe this  
19 is all the motions to strike pertaining to this  
20 particular reasoning, correct?

21 MR. KUTIK: Grounds, yes.

22 MR. SETTINERI: Thank you, your Honor.

23 MR. KUTIK: Your Honor, just one thing.  
24 I'm sorry, sir. I'm not sure I included this or not.  
25 Did I include line -- or page 10, lines 7 to 12?

1 EXAMINER ADDISON: I believe you did.  
2 Thank you, Mr. Kutik.

3 MR. SETTINERI: Your Honor, if you  
4 recall, the last time Dr. Kalt testified there was  
5 very much a similar motion to strike made. And the  
6 ruling from the Bench was that referring to prior  
7 testimony was certainly allowed to set the stage for  
8 new testimony.

9 I think the first thing I'm going to do,  
10 because I haven't had a chance, this is the first  
11 time we are hearing the motion to strike for our  
12 out-of-state witness, is look at the questions where  
13 the motion to strike is based on.

14 Page 6, Question 5, "What Conclusions Do  
15 You Reach Regarding the Companies' Revised Rider RRS  
16 Proposal?" That's page 6, Question 5.

17 Certainly, Dr. Kalt is allowed to address  
18 that question and he has. To the extent he refers  
19 back to segments of his prior testimony, either to  
20 set up his answer or to supplement or complete his  
21 answer, that's certainly allowed because the question  
22 is addressing revised rider RRS.

23 Let's look at the next question. That  
24 would be Question 6. "While the Companies' Revised  
25 Proposal Forces Captive Retail Ratepayers to Take on

1 the Marketplace Risks that Would Normally be Borne by  
2 Generators or Marketers, Do You Find that Those  
3 Ratepayers Would Nevertheless Benefit From the  
4 Proposal?"

5 His answer is "No" and he goes on to  
6 explain his answer. And part of that explanation the  
7 companies' are seeking to strike is a sentence that  
8 says "As I have previously shown, those levels of  
9 power prices are completely unsupported by the  
10 evidence." That is directly responsive to the  
11 question, in part.

12 They also seek to strike, I believe,  
13 starting at line 9 on page 9, as well, in response to  
14 that question, a sentence that says "In making such  
15 claims of rate stabilization, however, the Companies  
16 continue to produce absolutely no new evidence, only  
17 assertion. As I have previously found, however, the  
18 evidence on implied links...." So again, he is being  
19 responsive to the question.

20 We have the same result on page 10 which,  
21 again, is responsive to the question I read on  
22 page 7. "As I explained in my Direct Testimony, spot  
23 market power prices are much more volatile than  
24 forward market prices. Thus, linking the Rider RSR  
25 to wholesale spot market prices would expose

1 ratepayers to the impact of day-to-day price  
2 movements on a quarterly basis. If anything, the  
3 Companies' proposed quarterly reconciliation would  
4 serve to increase ratepayer retail price volatility  
5 as opposed to decrease it."

6 It's an important --

7 MR. KUTIK: I'm sorry. Where are you  
8 reading from, Counsel?

9 MR. SETTINERI: Page 10, lines 7 to 12.

10 I was just waiting for you.

11 EXAMINER PRICE: We appreciate it.

12 MR. SETTINERI: So I was explaining how  
13 his answers are responsive to the questions. And I  
14 was at the point of just pointing out, looking at the  
15 question on page 7, which talks about does he find  
16 that those ratepayers would nevertheless benefit from  
17 the new proposal. And the component the companies'  
18 seek to strike in that answer go to that question.

19 And I was making the next point that it's  
20 important, especially at page 9, the part they seek  
21 to strike, in making such claims of rate  
22 stabilization he refers to "As I previously found,  
23 however, the evidence on...links between  
24 wholesale...and retail rates...." And he said what's  
25 important about that.

1           And also important as to page 10, where  
2 he explains "If anything," lines 10 to 12, "If  
3 anything, the Companies' proposed quarterly  
4 reconciliation would serve to increase ratepayer  
5 retail price volatility...."

6           It's important to realize that we have  
7 some new facts with this proposal. We have -- they  
8 are changing the way they set it annually.  
9 Previously, they were going to set it annually using  
10 the companies' forecasts on pricing expected from the  
11 actual revenues from the plants.

12           They are changing it now to be based on  
13 futures from the AEP Dayton Hub, LMP, and that's  
14 going to change the amount of that rider when it gets  
15 set every year.

16           As well, the quarterly reconciliations  
17 are no longer based on actual costs. They are based  
18 on projected costs.

19           So you are going to see a difference -- a  
20 different amount every quarter than what you would  
21 have had, so those are all new facts. That's an  
22 important point to realize.

23           But to summarize on that question, all of  
24 the information they seek to strike is responsive to  
25 the question. Any reference to prior testimony is



1 simply to supplement that answer and to complete the  
2 answer and that's certainly allowed and that was  
3 allowed in the first go-around.

4 EXAMINER PRICE: If you were going to use  
5 this -- I mean, clearly, you are presenting this  
6 testimony with the intent of using this in your  
7 brief, explaining why the companies' proposal is  
8 something you find unacceptable. Why can't, in your  
9 brief, you go back and cite to the previous testimony  
10 that was given in this proceeding?

11 MR. SETTINERI: You have to take the  
12 answer in context as we all know, if we get a good  
13 answer we are going to clip it and put it in the  
14 brief and hopefully it's not too long so one will  
15 fall asleep when they read it, but that's what we'll  
16 deal with.

17 EXAMINER PRICE: Never with your briefs.

18 MR. SETTINERI: Yeah, the record could  
19 reflect I laughed on that one. Probably believe it's  
20 not true. But anyway.

21 EXAMINER PRICE: Remember, your former  
22 colleague is now a commissioner. Remember your  
23 former colleague is now a commissioner.

24 MR. KUTIK: And his briefs were quite  
25 perspicacious.

1 MR. SETTINERI: Let the record reflect  
2 laughter.

3 But the point --

4 MR. KUTIK: I didn't laugh.

5 MR. SETTINERI: -- is that just because  
6 you refer to prior testimony and you say why don't  
7 you just use that, we have a witness who is  
8 testifying. And so, he has prepared an answer and  
9 that answer should be taken in its totality. And  
10 that's what's important about it. So if you strip  
11 out pieces and parts, you lose the context of the  
12 answer and that's not good for the record.

13 EXAMINER PRICE: Mr. Kutik, let's focus,  
14 at least initially, on his proposition that the  
15 companies -- following the Commission order have  
16 changed from an annual reconcil -- true-up to a  
17 quarterly true-up. Isn't this a new proposal by the  
18 company?

19 MR. KUTIK: Yes, it is. The point,  
20 though, is an old one. I mean just because you ask a  
21 question and you have the words "modified proposal"  
22 there or "modified RRS" doesn't mean everything in  
23 the answer is new. And the only ground I heard, I  
24 think, your Honor, for not doing what you suggest was  
25 gee, it would be harder for our brief. I'm not sure

1     that means it's not cumulative.

2                 MR. SETTINERI: Your Honor, that's not  
3     the case.

4                 EXAMINER PRICE: Well, it's Mr. Kutik's  
5     turn right now.

6                 MR. SETTINERI: Oh, I'm sorry. I thought  
7     he was done. I'll wait. I haven't gone through the  
8     rest as well.

9                 EXAMINER PRICE: We've been looking.

10                MR. SETTINERI: Okay. Your Honor, I'm  
11     sorry to interrupt, if I may, though? I have not had  
12     a chance to go through and finish looking at the  
13     actual sections that were being stricken at the very  
14     end, so before you rule, I would like a chance just  
15     to address the very last sections, please.

16                EXAMINER PRICE: Okay. Go ahead.

17                MR. SETTINERI: Okay. I believe the last  
18     section relates to -- starts at page 20, Question 16.  
19     "Please Summarize Your Findings Regarding the  
20     Companies' Assertion that Retail Rates Will Be More  
21     Stable as a Result of the Companies' Proposal." And  
22     there's also an explanation.

23                This -- these answers here go towards my  
24     point earlier that it's not, your Honor, that they  
25     are changing from an annual forecast to a quarterly

1 forecast, or annual reconciliations to quarterly  
2 reconciliations. My understanding is that under the  
3 old proposal there would be -- they would set the  
4 rider annually and there will be quarterly  
5 reconciliations to adjust that amount. That will  
6 actually be the same under the new proposal. But how  
7 they set that rider annually is changing. It's going  
8 to change the value.

9           They are relying on the AEP -- LMP Dayton  
10 Hub futures, LMP energy prices, versus prior they are  
11 relying on the actual -- the estimated revenues they  
12 received at the plant nodes.

13           And the quarterly reconciliations, again,  
14 are based on the average energy LMP, the actuals, and  
15 the actual capacity; versus, under the old proposal,  
16 it was also -- it would have included actual costs  
17 verse projected costs. So I want to keep hammering  
18 that because that will come up again when we talk  
19 about the motions to strike any forecasts. Those are  
20 changes to methodology of this entire proposal and  
21 that's important. And that's why this answer section  
22 is very important. And these -- these answers that  
23 they move to strike are responsive to the questions  
24 as well.

25           So with that, your Honor, we think it's

1 certainly appropriate that what the companies claim  
2 is cumulative evidence is not cumulative evidence.  
3 It's simply an attempt to strike pieces of his  
4 testimony that are responsive to the question. And  
5 taking his answer in totality, those are important  
6 components to his answer. And striking them will  
7 leave us with gaps in the record and there's no  
8 reason to do that.

9 MR. KUTIK: Your Honor?

10 EXAMINER ADDISON: Mr. Kutik.

11 MR. KUTIK: Although counsel is arguing  
12 to you that it has -- that these provisions have to  
13 do with the different reconciliation methodology that  
14 may be employed as part of the proposal, when you  
15 read the testimony that's stricken, it has nothing to  
16 do with the changed methodology.

17 It has to do with Mr. Kalt's concerns  
18 about where wholesale prices might be and the fact  
19 that you have a reconciliation process that, in his  
20 view, may not do what the rider is supposed to do or  
21 is intended to do.

22 That's old commentary on the general  
23 structure and nature of rider RRS. It has nothing to  
24 do with the specific changes in the reconciliation  
25 under the proposal and the effect of those.

1           MR. SETTINERI: And, your Honor, if I  
2 may, if Mr. Kutik is done, I would like to add one  
3 short point.

4           EXAMINER ADDISON: Certainly.

5           MR. SETTINERI: Thank you.

6           His testimony is addressing the modified  
7 rider RRS proposal. There may be pieces from his  
8 prior testimony that are applicable as to address the  
9 modified rider RRS. He's addressing the proposal in  
10 his testimony and that's what this testimony is  
11 about. So there's nothing improper or cumulative  
12 when you are addressing this current proposal to  
13 either make a comparison or say this -- this new  
14 proposal has the same issue that I saw in the last  
15 proposal. But this testimony is dealing with a new  
16 modified proposal. It's a new methodology. It has a  
17 number of new components to it that change the  
18 outcomes.

19           MR. KUTIK: And I would urge the Bench to  
20 review the testimony to see if he is specifically  
21 addressing the effects of the change in the  
22 methodology as opposed to just the reconciliation  
23 process, itself, and his general concerns with rider  
24 RRS. If you read it, it will be the latter.  
25 Therefore -- let me finish.

1 MR. SETTINERI: Yes, you're right.

2 MR. KUTIK: And, therefore, it is  
3 cumulative. We should move on. The motion to strike  
4 should be granted and I would like a ruling at this  
5 point.

6 MR. SETTINERI: And your Honor --

7 EXAMINER ADDISON: I think we've heard  
8 enough.

9 MR. SETTINERI: Okay. Thank you.

10 EXAMINER ADDISON: At this time we will  
11 be granting the motion to strike in its entirety.  
12 And we will go ahead and go through all of the  
13 particular citations just to make sure everyone is on  
14 the same page.

15 Beginning on page 6, line 8, with the  
16 words "If that" through page 7, line 11, and that  
17 also includes footnote No. 8.

18 The next reference begins on page 8,  
19 line 23, through page 9, line 2, ending with the word  
20 "evidence."

21 MR. SETTINERI: Your Honor, could you  
22 please repeat that?

23 EXAMINER ADDISON: I certainly can. I'm  
24 sorry, Mr. Settineri.

25 Beginning on page 8, line 23, with the

1 words "As I have" through page 9, line 2, ending with  
2 the word "evidence." And that also includes  
3 footnote 10.

4 Staying on page 9, line 9, starting with  
5 the words "In making" through line 19 of page 9. And  
6 that would also include footnotes 12 and 13.

7 Moving to page 10, line 7, beginning with  
8 the words "As I explained" through line 12 of that  
9 same page. And that includes footnote 14.

10 Moving on then to page 14 --

11 MR. SETTINERI: Your Honor, if I may.

12 EXAMINER ADDISON: Absolutely.

13 MR. SETTINERI: Well, I will let you  
14 finish. If the Bench would be allow me to, I would  
15 like to, when we're done, come back and look at  
16 what's been stricken specifically.

17 EXAMINER ADDISON: Certainly. We can  
18 allow all the parties a few minutes to look at what's  
19 been stricken from the record from his testimony. I  
20 apologize. Did you get that last reference,  
21 Mr. Settineri?

22 MR. SETTINERI: I did.

23 MS. BOJKO: I did not.

24 EXAMINER ADDISON: You did not? Okay.  
25 It was page 10, line 7.



1 MS. BOJKO: Oh.

2 EXAMINER ADDISON: Beginning with the  
3 words "As I explained."

4 MS. BOJKO: Thank you. I got that one.  
5 I thought there was an additional one.

6 EXAMINER ADDISON: Okay. So everyone is  
7 up to where we need to be? Okay.

8 Moving on to page 14, footnote 18.

9 Then moving to page 20, line 5, through  
10 line 12, ending with the words "by the marketplace."

11 MR. HAYS: Excuse me, your Honor. Could  
12 you do that once more?

13 EXAMINER ADDISON: Absolutely, Mr. Hays.

14 MR. HAYS: Thank you.

15 EXAMINER ADDISON: It was page 20,  
16 line 5, through line 12, ending with the words "by  
17 the marketplace."

18 And then I believe the last --

19 MR. KUTIK: That would include the  
20 footnotes, your Honor, as well?

21 EXAMINER ADDISON: Absolutely. Thank  
22 you, Mr. Kutik. That would include both footnote 31  
23 as well as 32 on page 20.

24 And I believe the last portion of the  
25 testimony subject to the motion to strike is on

1 page 21, starting with the line 15, through page 22,  
2 line 17.

3 MR. KUTIK: Your Honor, our next group of  
4 motions --

5 MR. SETTINERI: Excuse me. We are going  
6 to take some time, I think.

7 EXAMINER ADDISON: I just want to clarify  
8 that also includes footnote 34.

9 Then, as promised, I'll afford --

10 EXAMINER PRICE: Why don't we do that  
11 after the second go-around, so they can review  
12 everything that may have been stricken.

13 MR. SETTINERI: I have a couple of  
14 questions. Are we striking questions? I don't think  
15 questions -- I think you -- did you strike line 15 at  
16 page 21?

17 EXAMINER ADDISON: Yes. Because the  
18 entire answer had been stricken.

19 MR. SETTINERI: Should the question  
20 remain?

21 MR. KUTIK: No.

22 MR. SETTINERI: They can't strike the  
23 question. They can't strike the question and strike  
24 the answer.

25 EXAMINER PRICE: You want to leave it in?

1 Please explain.

2 MR. SETTINERI: Yeah. Go ahead.

3 MR. KUTIK: That makes no sense, your  
4 Honor.

5 EXAMINER PRICE: For what purpose?

6 MR. SETTINERI: I want that in the  
7 record.

8 EXAMINER PRICE: Please explain.

9 MR. SETTINERI: I think the answer should  
10 be stricken, I think that's appropriate, but to start  
11 striking questions, I think that takes it out. It  
12 won't be in the record. I want the question in the  
13 record part of the record.

14 MR. KUTIK: Having the question in the  
15 record serves no purpose, your Honor. He has a  
16 proffer by the fact the document has been filed.

17 EXAMINER PRICE: I think he actually  
18 needs to make his proffer if he is going to. He  
19 doesn't have to.

20 MR. SETTINERI: I think it's appropriate  
21 to show what the question was going towards. And if  
22 there is an appeal or anything like that, the  
23 question will be in the record.

24 EXAMINER PRICE: If you are going to  
25 appeal it, you are going to win or loss on your

1 appeal.

2 MR. SETTINERI: I am just asking the  
3 question, so.

4 The other thing I would like to do,  
5 though, because I haven't had a chance, as we just  
6 heard the motion to strike and we had to address it  
7 very quickly, I would like some time, briefly, to  
8 look at each answer that's been stricken to verify  
9 that actually that answer -- the entirety of the  
10 answer relates to cumulative evidence.

11 When you strike the whole page or a page  
12 and a half, it's very easy for sentences in there  
13 that are not cumulative to be stricken. And I would  
14 like the opportunity to look at each answer to see,  
15 confirm that indeed it relates to cumulative.

16 MR. KUTIK: I assume the Bench is taking  
17 care in its ruling, your Honor.

18 EXAMINER PRICE: We did our best to go  
19 through each individual answers. Let's move on. If  
20 there is something that you want us -- and, again,  
21 not everything, but if there is a specific line or  
22 something you want us to reconsider, we'll be here.

23 MR. SETTINERI: It would be targeted and  
24 if I may have an opportunity, after break, to revisit  
25 that, but I think that wouldn't be fair for him for

1 his cross if it stays in. It would be very limited,  
2 but I've seen that happen before.

3 MR. KUTIK: May I go to the next series  
4 of motions?

5 EXAMINER ADDISON: You may, Mr. Kutik.

6 MR. SETTINERI: Your Honor -- I'm sorry,  
7 Mr. Kutik. Just to be -- so I don't leave things  
8 off. At this time, we would proffer any -- the  
9 Questions and Answers that have been stricken at this  
10 point in time to the Bench and into the record.

11 EXAMINER ADDISON: Thank you. Your  
12 proffer is noted.

13 Mr. Kutik.

14 MR. KUTIK: Our next group of motions,  
15 your Honor, starts on page 7, line 17, after the word  
16 "No." And continues through page 5 -- excuse me.  
17 Page 8, line 5. So that's right starting on line 17,  
18 after the word "No" on page 7, going over to page 8  
19 through line 5.

20 The next motion starts on -- on page 8,  
21 line 9 through line 23. Moving over to line 9 --  
22 excuse me, page 9, line 2 through 7 --

23 MR. SETTINERI: Could you repeat that?  
24 You lost me.

25 MR. KUTIK: Sure. Page 9, lines 2

1 through 7.

2 MR. SETTINERI: And if you would just  
3 back up one more. Just start, if you don't mind,  
4 your second revision to page 8.

5 MR. KUTIK: Line 9, on page 8, starting  
6 with the words "My analysis" through line 23.

7 MR. SETTINERI: And that would be all the  
8 way to the end including "As I have."

9 MR. KUTIK: As I have has been stricken.

10 MR. SETTINERI: Thank you.

11 MR. KUTIK: Next, your Honor, page 13.

12 MR. SETTINERI: Page 9, please?

13 MR. KUTIK: I'm sorry. I thought we had  
14 covered that one. Page 9, line 2 through line 7.

15 MR. SETTINERI: Thank you.

16 MR. KUTIK: Page 13, line 13, through  
17 page 19, line 6, including all footnotes and Exhibits  
18 JPK-RH-1 through JPK-RH-3.

19 And we would also move to strike and have  
20 the Bench -- or have the Commission not rely on any  
21 of the numbers that Mr. -- excuse me, Dr. Kalt orally  
22 provided this morning in direct. So it would be --  
23 it would relate to those numbers as well since they  
24 are part of a revised JP -- JPK-RH-3.

25 MR. SETTINERI: Mr. Kutik, if you would,

1 please. I understand the last piece of the  
2 revisions. Can you do that last section again for  
3 me, please?

4 MR. KUTIK: Certainly.

5 MR. SETTINERI: Thank you.

6 MR. KUTIK: Page 3 -- excuse me. Page  
7 13, line 13, through page 19, line 16.

8 MR. SETTINERI: Page 19, line 16. Thank  
9 you.

10 MR. KUTIK: And all the exhibits and  
11 footnotes referenced there. Your Honor, as Mr. --  
12 excuse me, Dr. Kalt.

13 EXAMINER ADDISION: I'm sorry, Mr. Kutik.  
14 Just a point of clarification. I believe I had the  
15 last reference -- reference you made from page 13,  
16 line 13 to page 19, line 6, are you saying it's --

17 MR. KUTIK: No. Line 16.

18 EXAMINER ADDISON: Okay. Thank you very  
19 much.

20 MR. KUTIK: Thank you.

21 As Dr. Kalt recognized in his deposition,  
22 and as is apparent from these excerpts that are the  
23 subject of these motions --

24 MR. SETTINERI: I would just object right  
25 away. Referencing his deposition.

1 MR. KUTIK: May I finish, please?

2 MR. SETTINERI: Not the deposition. He  
3 shouldn't be allowed to raise that up for a motion to  
4 strike.

5 EXAMINER ADDISON: Thank you.

6 MR. KUTIK: It would be nice if I could  
7 finish my objection before people object to my  
8 objection.

9 EXAMINER ADDISON: Please finish,  
10 Mr. Kutik.

11 MR. KUTIK: These materials relate to --  
12 do not relate to any analysis that Dr. Kalt did  
13 comparing rider RRS as approved versus rider RRS as  
14 proposed. They are purely an analysis of rider RRS  
15 and an update of that. Updating information is  
16 taking issue with rider RRS and an issue that's been  
17 decided by the Commission. We are here to talk about  
18 the -- the proposal which is a modified rider RRS and  
19 any alternatives thereto.

20 None of Dr. Kalt's analysis that we've  
21 pointed out in these excerpts relates to the effects  
22 of -- the effects of the proposal and, therefore,  
23 these materials are outside the scope of this hearing  
24 and, as with other updates, should be excluded.

25 EXAMINER ADDISON: Thank you, Mr. Kutik.



1           Mr. Settineri.

2           MR. SETTINERI: Certainly, your Honors.  
3       The whole purpose of Dr. Kalt's testimony is to  
4       evaluate the companies' new modified rider RRS  
5       proposal. He's not comparing one to the old. He's  
6       looking at a new proposal in evaluating it that --  
7       and we have new facts that exist here. We know we  
8       have a new methodology. Dr. Choueiki said that  
9       yesterday. We all understand the methodology is  
10      different.

11           There is no way Dr. Kalt, last fall, or  
12      in January, could have addressed this new methodology  
13      in any kind of projection or forecast. He didn't  
14      know it. It wasn't presented until May 2. The  
15      methodology, itself, is a new fact.

16           Certainly, any analysis, commentary as to  
17      the methodology, the impacts of the methodology on  
18      ratepayers, as well as the markets, is certainly  
19      within the scope of this hearing which is to address  
20      the modified rider RRS proposal.

21           We also have a new fact. They are going  
22      to set the rider based on the March 2016 futures at  
23      the AEP Dayton LMP hub. That's their annual  
24      forecast. They weren't going to do that in the  
25      last -- in the original rider. That is a new fact.

1           They are now, in the quarterly  
2       reconciliations, going to base the reconciliation on  
3       projected costs from the record; when, originally, it  
4       was going to be on the actual costs of the plants.  
5       That's a big difference. That's a new fact. We have  
6       many new facts here.

7           We know what the AEP Dayton LMP futures  
8       are. We have a new fact. We have a new short-term  
9       outlook from the EIA. That's a new fact. All of  
10      those new facts are relevant and Dr. Kalt's testimony  
11      relies on those new facts to present projections of  
12      the new modified rider RRS proposal as well as the  
13      impacts of that proposal on ratepayers and rate  
14      stability.

15           This is not an updated forecast. If so,  
16      you would use the same methodology that was in the  
17      original rider RRS. I'm certain Dr. Choueiki would  
18      not do that.

19           EXAMINER PRICE: Dr. Choueiki didn't give  
20      any forecasts.

21           I have a question for Mr. Settineri,  
22      first.

23           MR. SETTINERI: Sure.

24           EXAMINER PRICE: Yesterday, I tried to  
25      give Mr. Fisk a lifeline, and distinguish between

1 updating forecasts, and actual changes in actual  
2 prices such as futures or capacity price. Would you  
3 like to take advantage of the lifeline and explain  
4 why you think the Bench should distinguish between  
5 the two?

6 MR. SETTINERI: Oh, certainly, your  
7 Honor. They are two different things, I think.  
8 Here, you have -- we have new facts. We have actual  
9 prices. That's not a forecast. We have a new EIA  
10 outlook. That's a new fact that can go into a  
11 forecast.

12 EXAMINER PRICE: Now you are losing me.  
13 EIA is another projection.

14 MR. SETTINERI: But the fact it exists,  
15 it's a piece of evidence that could not have come in  
16 in the prior sessions in this hearing. It's a new  
17 piece of evidence that can come in, but we have  
18 actual capacity prices. We know the future Dayton  
19 AEP Dayton Hub prices. Those exist.

20 EXAMINER PRICE: I'm much more  
21 sympathetic to actual capacity prices and actual  
22 forecasts -- actual futures prices --

23 MR. SETTINERI: Right.

24 EXAMINER PRICE: -- than I am on, you  
25 know, every few months the U.S. Energy Information

1 Administration changes their outlook. So, I mean,  
2 they do short-term outlooks. They do annual-energy  
3 outlooks. We'll never get done if we keep trying to  
4 update to that.

5 But let me turn to Mr. Kutik.

6 I am trying to help you here.

7 So let me turn to Mr. Kutik. Let's go to  
8 Attachment JPK-RH-1. And let's talk about  
9 Mr. Settineri's point that you do have now -- I mean  
10 this seems to illustrate the difference between the  
11 futures that were forecasted under the as approved  
12 rider RRS and the way futures will be developed from  
13 average AEP Dayton Hub forwards as proposed. Why is  
14 this not something that we should be able to  
15 consider?

16 MR. KUTIK: Well, your Honor, again,  
17 because it deals with the benefits or costs of rider  
18 RRS overall. It doesn't deal with the change in the  
19 proposal. Mr. Settineri discussed, you know, several  
20 things that are new. But none of those new things go  
21 into this calculation. All he did is he basically  
22 used a methodology very similar to the methodology he  
23 used in his supplemental testimony which is to take  
24 futures prices and to put some kind of escalator that  
25 he thought was appropriate.

1 EXAMINER PRICE: Let's leave out the  
2 "escalator." I am actually really just talking about  
3 the --

4 MR. KUTIK: But --

5 EXAMINER PRICE: It's a public session  
6 here, so let's be careful.

7 MR. KUTIK: But my point is this: That  
8 if you allow this document in, it has the escalator  
9 in it. And my point is that escalator is  
10 inappropriate now. If what you are saying, your  
11 Honor, is the parties are free to cite spot prices or  
12 futures prices, that's one thing. But to allow  
13 analyses that are based upon those things which,  
14 again, are -- again issues that deal with rider RRS  
15 generally and not with respect to the effect of the  
16 proposal, that's outside the scope of the hearing.

17 EXAMINER PRICE: Okay. But what about --  
18 what I am asking is if you look at the left part of  
19 the chart.

20 MR. KUTIK: The solid line.

21 EXAMINER PRICE: The solid line, thank  
22 you, that's a better way to put it, do you object to  
23 the use of the solid line?

24 MR. KUTIK: Yes. Because how can you  
25 just look at the solid line without the rest of the

1 document? It makes no sense. Either the document is  
2 in or the document is out. It's an exhibit.

3 EXAMINER PRICE: Well, that doesn't mean  
4 we can't go back and leave in the text that relates  
5 to that part of it.

6 MR. KUTIK: Again, your Honor, that's not  
7 relating to this exhibit though. What I am talking  
8 about this exhibit is this exhibit can't come in  
9 because there are things on this exhibit which are  
10 outside the scope of this hearing.

11 EXAMINER PRICE: Oh, I think the  
12 Commission is perfectly capable of understanding  
13 which part of the exhibit they can rely on and which  
14 part they can't rely on.

15 MR. KUTIK: Well, the question is maybe  
16 you can, because you're in charge of the hearing and  
17 you may be having something to say in the order of  
18 writing the order. But then we have the Court as  
19 well. Unless we are going to resubmit the document  
20 with only that part of the exhibit that's  
21 appropriate, how is the Court to understand what  
22 exactly we are talking about?

23 MR. SETTINERI: Your Honor, at your  
24 convenience, if I may?

25 EXAMINER PRICE: You want to take him up

1 on that offer?

2 MR. SETTINERI: No, not at all.

3 EXAMINER PRICE: All or nothing kind of  
4 guy.

5 MR. SETTINERI: Let that reflect  
6 laughter.

7 I think it's important, first of all in  
8 this exhibit, when you look at the dotted line, we  
9 haven't had testimony. No one really knows in here,  
10 in a sense, how that ties in, but it's tied into a  
11 line that is the average AEP Dayton Hub based on  
12 March 2016 forward prices in the solid. And then you  
13 have an escalated Dayton Hub price based on March  
14 2016 forward prices.

15 So we have these new facts. We have  
16 actual capacity. We have forward prices. All of  
17 those new facts roll into his projections of the  
18 impact, not this generic rider RRS, which Counsel for  
19 the companies keeps painting it, into a new modified  
20 rider RRS. Those -- these riders, they are two  
21 different things, technically and mathematically, and  
22 that's so important to understand here. They are two  
23 different things.

24 We are relying on new facts, new actual  
25 capacity, forward -- actual known forward prices, and

1 rolling those in to determine the impacts of the  
2 modified rider RRS proposal, your Honors, and that's  
3 why all of this testimony is within the scope of this  
4 hearing which is to consider modified rider RRS.

5 I would also note, and I hadn't gone  
6 through all my arguments, in the companies' own  
7 witness's testimony, they recognize the differences  
8 in the methodology.

9 Mikkelsen says at page 18, lines 18 to  
10 21 of her testimony, that "the modified rider RRS  
11 calculation does not impact the companies' analysis  
12 that was relied upon by the Commission in the order  
13 since the modified rider RRS calculation is designed  
14 to produce the same or very similar results for  
15 customers." There's a recognition of a difference  
16 there. That may be minor. But, in math, that means  
17 something. It's not the same. And we are allowed to  
18 change it to a different rider.

19 MR. KUTIK: May I respond.

20 MR. SETTINERI: I am not done yet.

21 EXAMINER ADDISON: Let Mr. Settineri  
22 finish.

23 MR. SETTINERI: I am linear and I prefer  
24 to finish my train of thought.

25 MR. KUTIK: I thought you had. I'm



1     sorry.

2                   MR. SETTINERI:  She also says at page 5,  
3     line 18 to 21 of her testimony that "As modified," as  
4     modified, page 5, lines 18 to 21 of her testimony,  
5     "As modified, Rider RRS will provide a more reliable  
6     hedge," more reliable hedge, "against increasing  
7     market prices by using the Companies' assumed costs  
8     of the Plants as a proxy for costs associated with  
9     fuel-diverse baseload generation assets.  This is an  
10    improvement over the originally-proposed Rider RRS,  
11    which needed to be reconciled to actual Plant costs."

12                   Big difference.  She says at page 4,  
13    line 22 and 23 of her direct testimony that "Indeed,  
14    the stability mechanism the Companies will provide to  
15    customers will have fewer moving parts and, thus,  
16    will present less risk to the customers."  That's a  
17    different proposal.

18                   EXAMINER PRICE:  Their testimony -- I  
19    understand you keep trying -- you keep trying to  
20    parse that idea that because -- and I just continue  
21    not to buy that argument.  The cost part is the part  
22    that we are talking about not changing here, and your  
23    testimony is on the revenue side.  I'm just not  
24    seeing that argument.

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

1           EXAMINER PRICE: Really, I am trying to  
2 get your witness up and down so we can get everybody  
3 else's witnesses up and down.

4           MR. SETTINERI: This is so important that  
5 it's worth to take the time and it's important to  
6 understand if you have a formula, just because you  
7 change one side of the formula and don't -- and you  
8 make a change to one side and change the other, it is  
9 a different formula. Just because you don't change  
10 one side of a formula, doesn't mean it's the same  
11 thing. The overall -- the outcome of the formula is  
12 an over- and underrecovery. That's so important to  
13 understand here. They made a change to the formula.  
14 It changes the over- and underrecovery and they  
15 relied on new facts --

16           EXAMINER PRICE: I am seriously trying to  
17 help you here, Mr. Settineri. And you're retreading  
18 odd ground -- old ground. I am trying to keep as  
19 much of your witness's testimony in, and you are  
20 asking me to relitigate questions I think we really  
21 ruled upon yesterday at great length and that's --  
22 it's not helpful.

23           MR. SETTINERI: I'll move forward with a  
24 couple of other points in the companies' testimony.  
25 They also claim that the stipulated ESP IV, including

1 the modified rider RRS proposal, satisfies the  
2 three-prong test. Dr. Kalt's testimony certainly  
3 goes to the public interest prong, and because the  
4 companies have put that in play, his projections of  
5 the new modified rider RRS are certainly relevant and  
6 within the scope of this hearing. Otherwise, we will  
7 not have evidence to put on to refute the public  
8 interest argument they make.

9 They also say rider RRS is no longer  
10 revenue neutral to the companies. Well, we should be  
11 allowed to put on evidence as to what we think, under  
12 the new rider RRS, revenue the companies would be  
13 receiving, especially given their claim for an  
14 exception from the SEET calculation for these  
15 revenues.

16 I also -- to wrap it up, your Honors, we  
17 talked yesterday, the Commission is faced with  
18 alternatives. We have the original rider RRS, the  
19 modified rider RRS, and staff's alternative proposal.  
20 As we talked about yesterday, we have Ms. Mikkelsen  
21 testifying as to the companies' number on the new  
22 proposal. We have staff's number on the alternative  
23 proposal. At this point in time we don't have an  
24 intervenor's number about the modified rider RRS.

25 I think the Commission deserves a full

1 record on all projections on the new methodology that  
2 the rider relies upon. Anything short of that would  
3 deprive the Commission of important information as to  
4 the risk and impact of this new methodology.

5 So at this time we would ask the motions  
6 to strike be denied. Thank you.

7 MS. BOJKO: Your Honor, may I be heard  
8 just briefly?

9 EXAMINER PRICE: No. You don't have a  
10 right to speak to every motion. Every intervenor  
11 counsel doesn't have a right to speak to every  
12 motion. We've heard Mr. Settineri at great length on  
13 this. You've spoken as to the other witnesses. I  
14 would really like to just keep this moving.

15 Mr. Kutik, last word, please.

16 MR. KUTIK: Your Honor, I'll focus my  
17 remarks only on Mr. Settineri's characterization of  
18 the exhibit that you and I spoke about earlier. He  
19 said that it basically took futures prices and  
20 extended them based upon futures prices. That's not  
21 correct. It's based upon a EIA forecast information.  
22 It's base -- it's a forecast based upon a forecast.  
23 This is information that deals with rider RRS.

24 All of the things that Mr. Settineri has  
25 talked about are criticisms about rider RRS. All the

1 calculations that are here are criticisms about rider  
2 RRS, not the effect of the new proposal.

3 EXAMINER ADDISON: At this time the Bench  
4 is going to take the motions to strike under  
5 advisement. We will take a brief recess and examine  
6 the pending motions to strike and return in 10  
7 minutes, at 12:05, in order to provide you our  
8 ruling.

9 Thank you. We are off the record.

10 (Discussion off the record.)

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

13 After considering the pending motions to  
14 strike, at this time we will be granting in part and  
15 denying in part the various motions to strike. And I  
16 will go through all of them and make sure everyone is  
17 on the same page before moving forward.

18 On page 7, line 17 beginning with the  
19 word "While" through page 8, line 5, we will be  
20 striking -- we will be granting the motion to strike.  
21 And I believe that also would include then the  
22 reference to footnote No. 9.

23 MR. SETTINERI: Your Honor, I'm sorry. I  
24 may have missed the page. Could you do that one one  
25 more time for me, please?

1 EXAMINER ADDISON: Certainly,  
2 Mr. Settineri. Page 7, line 17, beginning with the  
3 word "While" through page 8, line 5.

4 MR. SETTINERI: Thank you.

5 EXAMINER ADDISON: And that includes  
6 footnote No. 9.

7 As to page 8, line 9, through line 23, we  
8 will also be granting the motion to strike.

9 Moving on then to page 9, line 2, through  
10 line 7, we will be granting the motion to strike.

11 Moving on to page 13, we will be granting  
12 the motion to strike from page 13, line 13, through  
13 page 15, line 7.

14 We will be denying the motion to strike  
15 as to page 15, lines 8 and 9.

16 MR. SETTINERI: One more time, please,  
17 your Honor, on that one.

18 EXAMINER ADDISON: Certainly. Just the  
19 last one, Mr. Settineri, or the last two?

20 MR. SETTINERI: What you just said.

21 EXAMINER ADDISON: We will be denying  
22 the motion to strike as to page 15, lines 8 and 9.  
23 And I apologize, I would like to rephrase that last  
24 one. We will be denying the motion to strike  
25 starting on page 15, line 8, through page 16,

1 line 15. Is everyone clear on that last one?

2 MS. BOJKO: So Question 13, Question and  
3 Answer?

4 EXAMINER ADDISON: Question 13 and  
5 Answer 13. Yes, Ms. Bojko.

6 MS. BOJKO: Thank you.

7 EXAMINER ADDISON: Moving on then to  
8 page 16, line 16, through page 19, line 16, we will  
9 be granting the motion to strike.

10 MR. SETTINERI: And if you'll humor me  
11 one more time, please.

12 EXAMINER ADDISON: Absolutely. Page 16,  
13 lines 16, through page 19, line 16. And that would  
14 include all the referenced footnotes in that section  
15 as well.

16 In addition, we will be granting the  
17 motion to strike in part and deny in part as to  
18 Attachments JPK-RH-1 as well as JPK-RH-2. We will be  
19 granting the motion to strike to the extent that  
20 these charts do not reflect actual prices.

21 Mr. Settineri, you will have the  
22 opportunity to file revised exhibits simply limiting  
23 the information presented on these charts to the  
24 actual known prices.

25 MR. KUTIK: In other words, your Honor,

1 deleting the dotted lines?

2 EXAMINER ADDISON: Correct. Thank you,  
3 Mr. Kutik.

4 MR. SETTINERI: I appreciate that  
5 courtesy, your Honor. Just a side note. Would it  
6 make it better for the record as well -- I guess I  
7 don't think it matters at this point, never mind, on  
8 the first exhibit we revised this morning. I want to  
9 be clear, though, you mentioned that anything would  
10 be stricken that's not based on I think you said  
11 actual costs? What about line -- the blue and red  
12 lines, I assume those stay, correct?

13 EXAMINER PRICE: They don't serve any  
14 purpose without the comparison, so I will --

15 MR. SETTINERI: I want to make sure we  
16 are clear on the record.

17 EXAMINER PRICE: So those should come  
18 out.

19 MR. SETTINERI: So what we would file  
20 would be a corrected exhibit removing the dotted  
21 line, correct?

22 EXAMINER PRICE: Yeah.

23 EXAMINER ADDISON: Correct.

24 EXAMINER PRICE: No. I would delete both  
25 lines.



1 MR. SETTINERI: Well, the green dotted  
2 line would come out and that's the only thing that  
3 would be removed.

4 EXAMINER PRICE: No.

5 MS. PETRUCCI: Everything --

6 EXAMINER PRICE: The other ones don't  
7 have any -- there is no reference and they don't  
8 serve any purpose without the green dotted line.  
9 Just do the half of the exhibit. Ms. Petrucci is  
10 correct.

11 MR. SETTINERI: So everything stays up to  
12 2018.

13 EXAMINER PRICE: Yes.

14 MR. SETTINERI: I understand. Thank you.

15 EXAMINER PRICE: Capacity year '19-'20 on  
16 the next one.

17 MS. BOJKO: Your Honor, I have a question  
18 with regard to one of your rulings.

19 EXAMINER ADDISON: Certainly.

20 MS. BOJKO: It's on page 8. So, is the  
21 sentence, on line 11, that this means -- and it talks  
22 about the proposal, that that sentence is out? That  
23 refers only to the companies' proposal?

24 MR. KUTIK: I'm sorry, what was the  
25 question?

1 MS. BOJKO: I asked if the entirety of  
2 this section is stricken, even the sentence on  
3 line 11 that only references the companies' proposal?

4 MR. SETTINERI: What page are you looking  
5 at?

6 MS. BOJKO: Page 8, line 11 to 12. I  
7 don't want it read it into the record.

8 EXAMINER ADDISON: Thank you. Yes, I  
9 believe that was included in the motion to strike.

10 MS. BOJKO: Okay.

11 EXAMINER ADDISON: Which was granted.

12 MS. BOJKO: Thank you.

13 EXAMINER ADDISON: And just to be clear,  
14 the motion to strike has also been granted to  
15 JPK-RH-3.

16 MR. MOORE: Your Honor, I also have a  
17 question regarding the motion.

18 MR. KUTIK: I am sorry. That would  
19 include the numbers referred to by Dr. Kalt earlier?

20 EXAMINER ADDISON: Precisely, Mr. Kutik.

21 MR. MOORE: I believe your Honors granted  
22 the motion regarding page 7, line 17 through page 8,  
23 line 5. And my notes state that the motion the  
24 companies made started on page 7, line 19 through  
25 page 8, line 5.

1 EXAMINER ADDISON: I had it beginning  
2 with line 17 after the word "No."

3 Is that correct, Mr. Kutik?

4 MR. KUTIK: That's correct.

5 MR. MOORE: My mistake.

6 EXAMINER ADDISON: Thank you for  
7 clarifying that, Mr. Moore.

8 MR. SETTINERI: So to be clear then,  
9 Attachment JPK-RH-3 is -- will be stricken in its  
10 entirety?

11 EXAMINER ADDISON: Yes.

12 MR. SETTINERI: So 2016 to '18 would also  
13 be stricken? The reason I ask, obviously, is we have  
14 '18, we have actual capacity numbers. That's why I  
15 was wondering why 2016 to '18 would be stricken in  
16 that exhibit, when we have futures for 2016 to '18,  
17 actual futures, and we have actual capacity prices,  
18 why '16 to '18 would be stricken, or I should say  
19 years '16 to '18 of that.

20 EXAMINER PRICE: If you want to bring in  
21 a revised exhibit, we will take it up then.

22 MR. SETTINERI: I'm sorry?

23 EXAMINER PRICE: If you want to bring in  
24 a revised exhibit, we will take it up then.

25 MR. SETTINERI: I would be glad to.

1 Thank you. Did we address Attachment 2?

2 EXAMINER ADDISON: I believe we did.

3 MR. SETTINERI: What was your ruling on  
4 that one?

5 EXAMINER ADDISON: A similar ruling to  
6 Attachment JPK-RH-1, except we would be allowing  
7 everything before the dotted line, as Mr. Kutik  
8 pointed out.

9 MR. SETTINERI: Same thing. And you  
10 would -- this would be a revised exhibit as well?

11 EXAMINER ADDISON: Exactly.

12 MR. SETTINERI: Thank you, your Honors.

13 Your Honors, if I may, obviously at this  
14 time I would proffer to the Bench and to the record  
15 all of the Questions and Answers that have been  
16 stricken through your ruling today.

17 EXAMINER ADDISON: The proffer is noted.

18 MR. SETTINERI: I would also ask, I don't  
19 know if we have to break at 12:30, but we've, I think  
20 by my account, I have 13 pages of testimony,  
21 approximately, that's been stricken. With your  
22 permission, I would like to have a chance to go  
23 through it and look briefly, and take a little more  
24 time than previously, but over lunch was what I was  
25 going to suggest, if I had a chance to go through, I

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1 didn't get a chance to closely look at each  
2 paragraph.

3 I'm certain there are sections in here  
4 that don't relate to the motions to strike and maybe  
5 the Bench already looked at that closely. I assume  
6 you didn't have the time; none of us have had time.  
7 Is that something we could do and come back after  
8 lunch and then I could at least point out a few  
9 sections I think should not have been subject to the  
10 motions to strike?

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

12 (Discussion off the record.)

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

15 Dr. Kalt, you are excused for the moment.

16 THE WITNESS: Thank you.

17 Mr. Dougherty.

18 MR. DOUGHERTY: Yes. Thank you. Ohio  
19 Environmental Council and Environmental Defense Fund  
20 call Mr. John Finnigan.

21 (Witness sworn.)

22 EXAMINER ADDISON: Thank you.

23 Please proceed, Mr. Dougherty.

24 MR. DOUGHERTY: Thank you.

25 - - -

1 JOHN FINNIGAN

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

4 DIRECT EXAMINATION

5 By Mr. Dougherty:

6 Q. Mr. Finnigan, can you state your name and  
7 address for the record, please.

8 A. John Finnigan, 128 Winding Brook Lane,  
9 Terrace Park, Ohio 45174.

10 Q. And did you file testimony in this  
11 proceeding?

12 A. Yes.

13 MR. DOUGHERTY: Your Honor, may I  
14 approach?

15 EXAMINER ADDISON: You may.

16 MR. DOUGHERTY: I would like marked as  
17 OEC/EDF Exhibit, I don't have very many, I'm thinking  
18 3. We'll call it 3.

19 EXAMINER ADDISON: Let's double-check  
20 just to be sure.

21 MR. DOUGHERTY: Thank you.

22 EXAMINER ADDISON: That's correct. It  
23 will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Mr. Finnigan, do you have in front of you

1 what's been marked as OEC/EDF Exhibit 3?

2 A. Yes.

3 Q. And is that your testimony?

4 A. Yes.

5 Q. Do you have any corrections to make to  
6 that testimony?

7 A. Yes.

8 Q. Can you please.

9 A. I have several typos where the acronym  
10 "RRS" is listed as "RSS" in my testimony. So  
11 wherever the acronym "RSS" appears, it should be  
12 "RRS."

13 And then -- and then another change I  
14 have is on page 6, line 4. There's a sentence that  
15 begins "The Commission stated at page 85 that,  
16 using...." After the word "using" the following  
17 language should be inserted: "an average of the  
18 561 million credit with the projection of a  
19 50 million charge by OCC Witness Wilson based on" and  
20 then the rest of that sentence should resume as it  
21 appears in my testimony.

22 Those are the only changes I had.

23 Oh, excuse me. I have one more.

24 On page 10, line 20, the word "three"  
25 should be "four." And those are the only changes I

1 have.

2 Q. Thank you.

3 And with those changes, if I asked you  
4 the same questions, would your answers be the same?

5 A. Yes.

6 MR. DOUGHERTY: Your Honors, OEC/EDF move  
7 for -- we move OEC/EDF Exhibit 3, pending  
8 cross-examination.

9 EXAMINER ADDISON: Thank you.

10 Are there any motions to strike? Just  
11 double-checking.

12 MR. ALEXANDER: Thank you, your Honor.

13 EXAMINER ADDISON: Ms. Bojko?

14 MS. BOJKO: No questions, your Honor.

15 EXAMINER ADDISON: Mr. Fisk?

16 MR. FISK: No questions, your Honor.

17 EXAMINER ADDISON: Mr. Batikov?

18 MR. BATIKOV: No questions, your Honor.

19 EXAMINER ADDISON: Mr. Moore?

20 MR. MOORE: No questions, your Honor.

21 EXAMINER ADDISON: Ms. Glover?

22 MS. GLOVER: No questions.

23 EXAMINER ADDISON: Mr. Kurtz?

24 MR. KURTZ: No questions.

25 EXAMINER ADDISON: Mr. Alexander?



1 MR. ALEXANDER: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Alexander:

5 Q. Good morning, Mr. Finnigan.

6 A. Good morning.

7 Q. Now, your testimony is organized around  
8 the Commission's three-part settlement test; is that  
9 correct?

10 A. Yes.

11 Q. And you agree the three-prong test is  
12 generally applicable to settlements at the  
13 Commission?

14 A. Yes.

15 Q. And the Commission has, in the past,  
16 applied that three-part test to ESP settlements.

17 A. Yes.

18 Q. And the three-part stipulation test  
19 applies to the stipulation as a whole, not to any  
20 given provision of the stipulation.

21 A. Yes.

22 Q. And the stipulation is evaluated as a  
23 package, correct?

24 A. Yes.

25 Q. And rider RRS, modified rider RRS, "the

1 proposal" as we refer to it in this proceeding, is  
2 just one part of that larger settlement package,  
3 correct?

4 A. Yes.

5 Q. If you could focus your attention in your  
6 testimony on page 5, line 8, where you say "...it  
7 would have been appropriate for the Companies to have  
8 this transaction reviewed...." Do you see that?

9 A. Yes.

10 Q. Now, you believe that an independent  
11 review should have taken place before modified rider  
12 RRS was proposed, correct?

13 A. Yes.

14 Q. And you are not aware of any other Ohio  
15 electric distribution utility who is forced to have  
16 one of its ESP provisions reviewed and approved by an  
17 independent expert before its inclusion in an ESP,  
18 correct?

19 A. Yes, that's correct. I am not aware  
20 where any utility has been forced to do that, but I'm  
21 aware of many instances where utilities have, as part  
22 of their submission to the Commission, brought in  
23 independent experts to support their proposals.

24 Q. Thank you.

25 MR. ALEXANDER: Your Honor, I believe

1 Mr. Finnigan may have used his bite at the apple. I  
2 move to strike everything after the word "but."

3 EXAMINER ADDISON: Thank you. And as  
4 noted, he has not used his --

5 MR. DOUGHERTY: Thank you.

6 EXAMINER ADDISON: Mr. Finnigan, from  
7 this point forward, please just listen to  
8 Mr. Alexander's questions and limit your response to  
9 only his questions.

10 Mr. Dougherty, you can bring up any other  
11 issues we find -- or you find to be relevant during  
12 his redirect. So motion to strike is denied.

13 MR. ALEXANDER: Thank you, your Honor.

14 Q. (By Mr. Alexander) If you could please  
15 turn to page 9, line 3, where you say "...the  
16 Companies are offering a competitive retail electric  
17 service...." Let me know if you see that.

18 A. Yes.

19 Q. You were referring to "competitive retail  
20 electric service" as defined in Ohio Revised Code?

21 A. Yes.

22 Q. And you believe that competitive retail  
23 electric service are all the services necessary for a  
24 customer to receive firm electric service from the  
25 company or from a supplier, correct?

1 A. Yes.

2 Q. And you believe that POLR service, or  
3 provider-of-last-resort service, is a competitive  
4 retail electric service?

5 A. Yes.

6 Q. Please turn to page 10, line 4, where you  
7 reference the SEET test. Are you there?

8 A. Yes.

9 Q. By "SEET," you mean the significantly  
10 excessive earnings test, correct?

11 A. Yes.

12 Q. And with regard to the SEET test, you  
13 reviewed only the decisions cited in your testimony?

14 A. Yes.

15 Q. Now, the statute actually requires  
16 excessive earnings to be determined through an  
17 analysis of similarly-situated utilities, correct?

18 A. Yes.

19 Q. And you are not aware of any comparable  
20 utility who has a similar situated -- strike that.

21 You are not aware of any comparable  
22 utility who is similarly situated by having a rider  
23 like modified rider RRS, correct?

24 A. I'm aware of other utilities that have  
25 riders that provide a price for competitive service

1 as part of their standard service offer. But not one  
2 that is exactly the same as this rider RRS which  
3 purports to offer a price to customers based on  
4 certain units that is not backed up by a PPA or  
5 actual physical generation.

6 Q. You have not analyzed the size of a  
7 revised rider RRS versus the size of the distribution  
8 revenues for the companies, correct?

9 A. That's correct.

10 Q. And you don't know what impact rider RRS  
11 would have on company returns on equity if the  
12 projections presented in this case are correct?

13 A. That's correct.

14 Q. And the generic SEET test you cite in  
15 your testimony, Case No. 09-786, that specifically  
16 allows for extraordinary items to be excluded from  
17 the SEET calculation, correct?

18 A. Yes.

19 Q. And the SEET test only provides an upper  
20 limit on whether a return on equity can be earned by  
21 an electric distribution utility, correct?

22 A. Yes.

23 Q. There is no lower limit to the SEET test,  
24 correct?

25 A. Yes.

1           Q.    And you would agree that the SEET test is  
2 asymmetric because the companies are exposed to a  
3 SEET adjustment if rider RRS is a charge, but are not  
4 provided with any protections if rider RRS is a  
5 credit.

6           A.    Well, I'll answer that by saying that I  
7 agree with your -- the premise in your earlier  
8 question that the SEET test is asymmetric; that it  
9 only impacts the company if it has significantly  
10 excessively earnings; and that if it has  
11 under-earnings, then it would not apply.

12               MR. ALEXANDER:  Thank you, Mr. Finnigan.

13               EXAMINER ADDISON:  Thank you.

14               Mr. McNamee?

15               MR. McNAMEE:  No questions, your Honor.

16               EXAMINER ADDISON:  Thank you.

17               Mr. Dougherty, redirect?

18               MR. DOUGHERTY:  May I have, like, 12  
19 seconds?

20               EXAMINER ADDISON:  You may.

21               Let's go off the record for 12 seconds.

22               (Discussion off the record.)

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

25               Redirect, Mr. Dougherty?

1 MR. DOUGHERTY: No redirect.

2 EXAMINER ADDISON: Thank you.

3 Examiner Price?

4 EXAMINER PRICE: No questions.

5 EXAMINER ADDISON: I have no questions.

6 You are excused, Mr. Finnigan.

7 THE WITNESS: Thank you, your Honor.

8 MR. DOUGHERTY: Now OEC/EDF now moves for  
9 the admission of OEC/EDF Exhibit 3.

10 EXAMINER ADDISON: Thank you.

11 Are there any objections to the admission  
12 of this exhibit?

13 Hearing none, it will be admitted

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER ADDISON: Let's go off the  
16 record.

17 (Discussion off the record.)

18 EXAMINER PRICE: Back on the record.

19 Consumers' counsel, you may call your  
20 next witness.

21 MR. SAUER: Before I do that, one  
22 housekeeping matter, if I may. I want to make sure  
23 on the record we proffered Mr. Kahal's testimony that  
24 was stricken earlier.

25 EXAMINER PRICE: You had not. Any

1 objections to the proffer?

2 MR. KUTIK: No, your Honor.

3 EXAMINER PRICE: They will be accepted.

4 MR. SAUER: The OCC calls Dr. Ken Rose to  
5 the stand and would like his rehearing direct  
6 testimony marked as OCC Exhibit 45.

7 EXAMINER PRICE: 45?

8 MR. SAUER: 45.

9 EXAMINER PRICE: Dr. Rose.

10 (Witness sworn.)

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 EXAMINER PRICE: We will go ahead and  
13 mark his direct testimony as OCC Exhibit No. 45.  
14 Please give your name and business address for the  
15 record.

16 THE WITNESS: My name is Kenneth Rose. I  
17 work as a private consultant out of my house in  
18 Chicago, Illinois. I prefer not to --

19 EXAMINER PRICE: You don't have to give  
20 your home address. Please proceed.

21 THE WITNESS: Thank you.

22 - - -

23 KENNETH ROSE, Ph.D.

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



DIRECT EXAMINATION

By Mr. Sauer:

Q. Are you the same Dr. Rose whose rehearing direct testimony was filed in this case?

A. Yes.

Q. And on whose behalf do you appear today?

A. The OCC.

Q. Do you have your prepared testimony with you on the stand?

A. Yes, I do.

Q. Did you prepare the testimony or have it prepared at your direction?

A. Yes.

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

A. No, not at this time.

Q. If I asked you the same questions today that appear in your direct rehearing testimony that's been marked as OCC Exhibit No. 45, will your answers be the same?

A. Yes.

MR. SAUER: The OCC moves for the admission of OCC Exhibit 45 and tenders the witness for cross-examination.

EXAMINER PRICE: Thank you.

1 We will entertain any motions to strike.

2 MR. LANG: Yes, your Honor. We have a  
3 few broken into two groups.

4 The first is Question and Answer 8 which  
5 is on pages 5 and 6 of his testimony, as well as  
6 Question and Answer 11 on page 8 of his testimony,  
7 and Question and Answer 14 and 15 on pages 10 and 11.  
8 The --

9 EXAMINER PRICE: Could I have -- could I  
10 have the second and third?

11 MR. LANG: Sure. It's -- it's four  
12 Questions and Answers. It's Q and A at 8, 11, which  
13 is on page 8.

14 EXAMINER PRICE: Thank you.

15 MR. LANG: And then Question and Answers  
16 14 and 15 on pages -- on pages 10 and 11.

17 EXAMINER PRICE: Okay.

18 MR. LANG: Starting with the -- the  
19 unifying issue in all these Questions and Answers is  
20 reliance upon the reference that is no longer -- it  
21 is not put in the record of the 3,200 megawatts. The  
22 reference in his testimony is to Ms. Mikkelsen's  
23 testimony. It does not include that reference as  
24 we've reviewed several times previously over the last  
25 few days in this hearing.

1           Question and Answer 8, on pages 5 and 6,  
2   you'll see that on page 6, at lines 5 through 8, it  
3   has the reference to the 3,200 megawatts of  
4   generation. All of the -- all of the answer to the  
5   question, the four paragraphs above that, are  
6   essentially being -- he is using the 3,200 megawatts  
7   to bootstrap his discussion of the original rider RRS  
8   that has already been litigated.

9           So those four introductory paragraphs,  
10   which are, I would say, reheated original rider RRS  
11   statements are -- are beyond the scope of the  
12   hearing, cumulative, and are prompted by his reliance  
13   on facts not in the record which are no longer  
14   relevant, which is namely the withdrawn 3,200  
15   megawatts.

16           In addition, and then moving on to  
17   Question and Answer 11. Question and Answer 11 is  
18   specifically based on his understanding that modified  
19   rider RRS supports 3,200 megawatts. The statement is  
20   not in Ms. Mikkelsen's testimony.

21           And then further, Question and Answer 14  
22   on page 10 is, again, based on his reliance, his  
23   assumption that modified rider RRS is supporting  
24   generation through the 3,200 megawatt reference.

25           And then lastly, Question and Answer 15,

1 you see in his -- simply a continuation of his  
2 statement on line 10 -- I'm sorry, on page 10, lines  
3 14 through 16, about the plants -- because of that  
4 3,200 megawatts, the plants are similar to those  
5 other cases question.

6 Question and Answer 15 on page 11 asks  
7 him to further expand upon that thought of the  
8 utilities collecting similar stability charges  
9 because of the 3,200 megawatts support and that's why  
10 we are including Question and Answer 15 also in the  
11 motion to strike.

12 And that is the -- all of those, based on  
13 that both the Questions and the Answers are no longer  
14 relevant for purposes of this hearing, for purposes  
15 of this scope of rehearing. And that's the first  
16 set, your Honor.

17 EXAMINER PRICE: Mr. Sauer.

18 MR. SAUER: Your Honor, there are  
19 references to Ms. Mikkelsen's testimony. Those  
20 references could be removed without removing all the  
21 Questions and Answers as indicated. And his  
22 Questions would still be relevant and should be  
23 considered.

24 For example, on page 6, the motion to  
25 strike could be limited to just lines 7 and 8 where

1 he references Mikkelsen's support of 3,200  
2 generation. As well as on page 8, there is a  
3 reference to that, I think limited, lines 5 through 7  
4 with the footnote 10. And then again on line --  
5 page 10, lines 14 through 16, the motion to strike  
6 could be limited to just those lines on that page and  
7 where there is a direct reference. Otherwise, the  
8 Questions and Answers, themselves, can be --

9 EXAMINER PRICE: Those are all the  
10 underlying facts he cites in his testimony. I don't  
11 understand what we would do with his testimony once  
12 you take out the facts of these cites.

13 MR. SAUER: That may not be the only  
14 facts he relied upon. You can explore that with him  
15 on the stand, but at this point striking his entire  
16 Questions and Answers for those references is  
17 premature.

18 EXAMINER PRICE: If he had facts and he  
19 thought they were relevant, he would have put them in  
20 his testimony.

21 MR. SAUER: Maybe. Maybe not. I mean,  
22 he's the witness. You can ask him what he relied on.  
23 What he believes to be the basis of his Questions and  
24 Answers. Certainly, Ms. Mikkelsen's statement  
25 supports what he said, but at its heart it's still a

1 generation rider and he can tell you what he thinks  
2 the -- language --

3 EXAMINER PRICE: Mr. Lang, response?

4 MR. LANG: Two points on that, your  
5 Honor. With regard to Questions and Answers 11, 14  
6 and 15, which are entirely, you know, I think an  
7 obvious reading of his testimony, they are entirely  
8 based on that 3,200 megawatts, and the assumption  
9 that that's part of the case, that they are entirely  
10 based on that. There's no other basis for the  
11 testimony provided and, therefore, once the specific  
12 reference is stricken, there's no basis and no  
13 relevance for the remaining question and answers 11,  
14 14, and 15.

15 Question and Answer 8 is a little bit  
16 different. In that one, what would be remaining if  
17 the reference to 3,200 megawatts is stricken, would  
18 be testimony from the prior witnesses that you had  
19 struck on the ground it's become -- that it's beyond  
20 the scope of this hearing and cumulative because he  
21 is simply discussing his prior -- either his prior  
22 testimony with regard to the original rider RRS or  
23 other testimony with regard to the original rider  
24 RRS. It's not related to the modified rider RRS  
25 proposal.

1           MR. SAUER: If I could make one last  
2 point in regards to Dr. Choueiki was on the stand  
3 yesterday and had references to Ms. Mikkelsen's  
4 testimony in his testimony. That was taken out and  
5 he was asked if his opinions changed based upon the  
6 removal of that.

7           EXAMINER PRICE: That's not what  
8 happened. I asked him -- that's not all what  
9 happened. The exact opposite happened. I asked him  
10 shouldn't you correct this because of your reference  
11 to Ms. Mikkelsen's testimony, and he explained why he  
12 thought it -- why it should still remain in.

13           We are going to go ahead and grant the  
14 motions to strike at this time. The testimony is  
15 either one of two -- the sections of testimony are  
16 either one of two things. It is either irrelevant  
17 because it relates to a proposal that no longer  
18 exists; or it's cumulative, it's simply summarizing  
19 testimony that is already in the record in this  
20 proceeding, and the parties are free to cite to in  
21 their brief.

22           MR. LANG: Thank you, your Honor. And  
23 the second grouping of -- the second grouping with  
24 regard to the motion to strike would start on page 6  
25 on lines 10 through 21, all of Question and Answer

1 No. 9.

2 And then on page 7, lines 7 through 18 --

3 MS. BOJKO: I am sorry. Could you say  
4 the lines for page 6 again?

5 MR. LANG: Page 6, the lines were -- it's  
6 all Question and Answer 9, so it's lines 10 through  
7 21.

8 MS. BOJKO: Thank you.

9 MR. LANG: Then the third piece of this  
10 would be on page 9, all of Question and Answer 12,  
11 lines 1 through 19.

12 And, your Honor, the issue with each of  
13 these is on the basis that it's cumulative, not  
14 relevant. Question and Answer 9 on page 6 and the  
15 section on page 7 that I reference, lines 7 through  
16 18, is simply a restatement of Dr. Rose's direct  
17 testimony with regard to Senate Bill 3, as he  
18 actually says in both paragraphs in referencing his  
19 direct testimony. That is testimony with regard to  
20 rider RRS as approved by the Commission. It is not  
21 testimony with regard to modified RRS. It's beyond  
22 the scope of the rehearing; cumulative and  
23 irrelevant.

24 Question and Answer 12 on page 9 is, I  
25 would say, a little worse. It's cumulative and



1 irrelevant in that it's an argument that the March 31  
2 Order was wrong with regard to the legality of the  
3 original rider RRS. That the legality of the  
4 original rider, obviously, is not a component of  
5 rehearing and, again, is kind of legal argument after  
6 the fact and cumulative. And, for those reasons,  
7 should be stricken.

8 EXAMINER PRICE: Mr. Sauer.

9 MR. SAUER: Just a moment, your Honor.

10 To the extent that Mr. Rose is an expert  
11 witness, he was participating in the drafting of  
12 Senate Bill 3. He understands transition costs and  
13 that --

14 EXAMINER PRICE: Which case are you  
15 referring to the second -- to the third motion or the  
16 first two?

17 MR. SAUER: This goes more to Question  
18 and Answer 10 where he's going beyond just the  
19 original rider RRS, but he is speaking to the  
20 modified rider RRS, and the fact that, in his mind,  
21 it's a transition cost and it shouldn't be allowed  
22 and it's inconsistent with Ohio law. That is  
23 directly relevant to this case and should not be  
24 stricken.

25 MR. LANG: Your Honor, could I add one

1 point on that?

2 EXAMINER PRICE: Let's let him finish all  
3 of his points and then you will have a chance to  
4 respond.

5 MR. LANG: I'm sorry.

6 MR. SAUER: And to the extent that he's  
7 providing context and his understanding of -- of  
8 4928.38 and 39, based upon his --

9 EXAMINER PRICE: Where are you at now?

10 MR. SAUER: We're in still Question and  
11 Answer 12.

12 EXAMINER PRICE: Now you are talking  
13 about the question on 12?

14 MR. SAUER: Yes. Where he's -- again, he  
15 participated in the drafting of Senate Bill 3. He  
16 understands, as an expert, the issues behind what  
17 comprises the transition costs.

18 EXAMINER PRICE: That's not the issue.  
19 The issue is isn't he just providing testimony about  
20 an issue that the Commission decided and is currently  
21 on rehearing? I am sure lots of parties would have  
22 liked to have provided testimony to support their  
23 various assignments of error, but that's not the  
24 scope of this hearing. I am looking at 12 here.

25 MR. SAUER: Yes. Yeah, I will withdraw

1     that, your Honor.

2                 EXAMINER PRICE:   Okay.   Done, Mr. Sauer?

3                 MR. SAUER:    No, I'm done.

4                 EXAMINER PRICE:   Mr. Lang.

5                 MR. LANG:    Thank you, your Honor.

6                 With regard to Question and Answer 10, my  
7     motion to strike was limited to the second paragraph,  
8     recognizing that the first paragraph does refer to  
9     modified rider RRS.  The second paragraph, however,  
10    shall goes -- is a return to the argument against the  
11    initial rider RRS, the rider RRS as approved by the  
12    Commission.

13                And you can see at his conclusion on  
14    lines 16 through 18, he is referring to guaranteeing  
15    "the profitability of the Utilities' affiliate-owned  
16    generation units."  And to that extent, that's  
17    obviously a reference to the -- at least his prior  
18    testimony with regard to the rider RRS as approved by  
19    the Commission.  And that's -- that's -- that is why  
20    we believe that that paragraph, as with the other  
21    paragraphs I have cited, are cumulative and should be  
22    stricken.

23                EXAMINER PRICE:   We are going to grant in  
24    part and deny in part the motions to strike.

25                With respect to the Question and Answer 9

1 at page 6, the motion to strike will be granted.  
2 It's simply cumulative and discusses everything that  
3 he already testified before the Commission. It  
4 doesn't tie back at all to the new proposal.

5 Question and Answer 10, we will deny the  
6 motion to strike in part. We will strike the last  
7 sentence beginning at page -- or line 16 of page 7  
8 the word "Customers" and ending with "units." That  
9 will be stricken. However, the rest of the paragraph  
10 appears to be, notwithstanding his reference to, I  
11 think he was simply repeating, he is being consistent  
12 in his direct testimony. It clearly is related to  
13 the most recent proposal so we'll allow the rest of  
14 that paragraph.

15 MR. BATIKOV: Your Honor, could I get a  
16 line reference again to that last reference?

17 EXAMINER PRICE: Sure. It will be denied  
18 with respect to on page 7, line 7, through line 16  
19 ending with the word "market." It will be granted  
20 with respect to page 7, line 16, beginning with the  
21 word "Customers" and ending with the words "units."

22 MR. BATIKOV: Thank you.

23 EXAMINER PRICE: And then we will grant  
24 the motion to strike on page 9 related to Question  
25 and Answer 12 in its entirety. He is simply

1 providing evidence in support of an assignment, I  
2 presume an assignment of error that's currently on  
3 rehearing at the Commission which is totally  
4 improper.

5 Any other motions?

6 MR. LANG: Thank you, your Honor. That's  
7 all.

8 EXAMINER PRICE: Thank you.

9 Ms. Bojko?

10 MS. BOJKO: No questions, your Honor.

11 EXAMINER PRICE: Sierra Club?

12 MR. FISK: No questions.

13 EXAMINER PRICE: RESA?

14 MR. BATIKOV: No questions, your Honor.

15 EXAMINER PRICE: Ms. Glover? I almost  
16 said "Becky." Ms. Glover.

17 MS. GLOVER: No questions.

18 EXAMINER PRICE: Mr. Kurtz?

19 MR. KURTZ: No questions.

20 EXAMINER PRICE: Mr. Lang?

21 MR. LANG: No questions, your Honor.

22 EXAMINER PRICE: Thank you.

23 Dr. Rose, you are excused.

24 Mr. Settineri.

25 MR. SETTINERI: Your Honor, can we go off

1 the record?

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

3 (Discussion off the record.)

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

6 Mr. Sauer, you have a motion to admit  
7 Dr. Rose's testimony?

8 MR. SAUER: Thank you, your Honor. OCC  
9 would move to admit OCC Exhibit No. 45.

10 EXAMINER PRICE: Any objection to the  
11 admission of OCC Exhibit No. 45 subject to the  
12 motions to strike?

13 MR. LANG: Subject to the parts stricken,  
14 no, your Honor.

15 MR. SAUER: OCC would proffer the  
16 stricken portions of the testimony.

17 EXAMINER PRICE: Thank you. Your proffer  
18 is noted for the record. It's admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER PRICE: Let's go off.

21 (Discussion off the record.)

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

24 Mr. Settineri.

25 MR. SETTINERI: Yes, your Honors. I

1 would like to thank you for the courtesy of the time  
2 to review what has been stricken. We are --  
3 although, obviously we retain all rights to object  
4 and appeal the rulings, we are not going to parse  
5 through the language today.

6 But we would ask -- the Bench had  
7 previously noted we would be able to file a revised  
8 Attachment JPK-RH-3 that the Bench would take under  
9 advisement. We would like to essentially put that to  
10 bed here today. And we would propose that JPK-RH-3,  
11 every number under the 2019 column through the 2024,  
12 including the total, would be redacted -- or deleted.

13 We would delete the reference to "2016 to  
14 2024" in the title that states "Modified Rider RRS  
15 Impacts Based on March 2016 Energy Prices." And we  
16 would ask to do that because following the principle  
17 of the first -- the rulings that applied to RH-1 and  
18 RH-2, that those first three years are based on that  
19 information that's been allowed into the record from  
20 RH-1 and RH-2. Thank you.

21 EXAMINER ADDISON: Thank you.

22 Mr. Kutik.

23 MR. KUTIK: Your Honor, we would not  
24 agree to that proposal. Again, this is calculations  
25 with respect to rider RRS. The effect of rider RRS

1 are at large. That's beyond the scope of the  
2 hearing.

3 Further, the problem with these  
4 calculations is they are, in part, based upon  
5 forwards. Forwards change all the time. We could --  
6 if we submitted numbers today, they would be higher  
7 than these numbers. The question is when will it  
8 stop.

9 The Commission has already ruled on the  
10 effect of rider RRS. That issue is now settled. We  
11 should move on, so we would object.

12 EXAMINER ADDISON: Thank you, Mr. Kutik.  
13 Dr. Kalt, would you please take the  
14 stand.

15 Thank you. I will remind you you are  
16 still under oath.

17 THE WITNESS: Certainly.

18 EXAMINER ADDISON: Thank you.

19 MR. KUTIK: Your Honor, could we go off  
20 the record for a moment?

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

23 (Discussion off the record.)

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



1 Dr. Kalt, based on Mr. Settineri's  
2 proposed modification to your Attachment JPK-RH-3,  
3 were the numbers that he suggested including in  
4 a revised --

5 THE WITNESS: The first three years.

6 EXAMINER ADDISON: The first three years,  
7 those revised numbers, were those solely based on  
8 actual forward and capacity prices?

9 THE WITNESS: Yes.

10 EXAMINER ADDISON: Solely based?

11 THE WITNESS: Yes.

12 MR. KUTIK: Your Honor, and we should  
13 also point out that those are as of March of this  
14 year.

15 EXAMINER PRICE: As of March of this  
16 year?

17 THE WITNESS: Yes.

18 MR. KUTIK: Well, now I have cross.

19 EXAMINER PRICE: We understand that.

20 EXAMINER ADDISON: Mr. Settineri.

21 MR. SETTINERI: Yes, your Honor.

22 EXAMINER ADDISON: Mr. Settineri, we'll  
23 allow to you file a revised Exhibit JPK-RH-3 for  
24 those first three years noted by Dr. Kalt.

25 And, Mr. Kutik, you will have the

1 opportunity to cross-examine him on that portion of  
2 the exhibit.

3 MR. SETTINERI: Thank you, your Honor.

4 EXAMINER ADDISON: Ms. Bojko, any  
5 questions?

6 MS. BOJKO: Given that I haven't seen the  
7 document that was agreed upon or his highlighted that  
8 he showed, I'm not sure. I mean, could we maybe see  
9 the document or --

10 EXAMINER ADDISON: Let's go off the  
11 record for a moment.

12 (Discussion off the record.)

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

15 Mr. Kutik.

16 MR. KUTIK: Your Honor, since Dr. Kalt  
17 did have some new numbers, I assume that the  
18 newly-filed document will have the revised numbers?

19 MR. SETTINERI: That would be correct,  
20 Mr. Kutik. Thank you for that clarification.

21 EXAMINER ADDISON: Thank you, Mr. Kutik.

22 MR. SETTINERI: And --

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

25 (Discussion off the record.)

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

3 Ms. Bojko?

4 MS. BOJKO: No, I do not have questions.

5 EXAMINER ADDISON: Mr. Fisk?

6 MR. FISK: No questions.

7 EXAMINER ADDISON: Mr. Moore?

8 MR. MOORE: No questions, your Honor.

9 Thank you.

10 EXAMINER ADDISON: Ms. Glover?

11 MS. GLOVER: No questions.

12 EXAMINER ADDISON: Mr. Kurtz?

13 MR. KURTZ: No questions.

14 EXAMINER ADDISON: Mr. Kutik?

15 MR. KUTIK: Thank you, your Honor.

16 - - -

17 JOSEPH P. KALT, Ph.D.

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

20 CROSS-EXAMINATION

21 By Mr. Kutik:

22 Q. Dr. Kalt, in terms of the forwards you  
23 used for your -- well, I will call your third  
24 attachment, you used forward prices from March 4,  
25 2016, correct?

1 A. I believe that's correct, yes.

2 Q. And that wasn't a coincidence, was it?

3 A. I don't believe so, no.

4 Q. Because March 4 of 2016, those were the  
5 lowest spot prices for natural gas at the Henry Hub,  
6 were they not?

7 A. The first part of your question isn't  
8 true. I understand the companies were proposing to  
9 use March, 2016, and I used that date.

10 Q. All right. You used March 4, correct?

11 A. That's correct.

12 Q. And March 4 was the date where the Henry  
13 Hub gas spot prices were the lowest, correct?

14 A. I have no idea. I never looked at that.

15 Q. You do look at Henry Hub prices, do you  
16 not?

17 A. Occasionally, yes.

18 Q. And you are aware that the EIA publishes  
19 information on what these spot prices were for EIA --  
20 or for the Henry Hub?

21 A. I believe so, yes.

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

23 EXAMINER ADDISON: You may.

24 MR. SETTINERI: Mr. Kutik, did you mark  
25 this as an exhibit?

1 MR. KUTIK: No yet.

2 Your Honor, I would ask that the Bench  
3 take administrative notice of the EIA publications  
4 for natural gas prices in this document which goes  
5 back every business day to 1997.

6 EXAMINER ADDISON: Are there any  
7 objections to the Bench taking administrative notice?

8 MR. SETTINERI: I guess I just want to be  
9 clear on the request. Is it as of this date  
10 backwards is what we are saying?

11 MR. KUTIK: Yes. And the date that's  
12 shown in this document going backwards is -- the last  
13 date is July 11.

14 MR. SETTINERI: How far back are you  
15 saying?

16 MR. KUTIK: This goes back to January 6,  
17 1997.

18 MR. SETTINERI: I haven't had time to  
19 review this, so I won't say whether I object or not.  
20 I will just be silent on it at this point.

21 EXAMINER ADDISON: I'm sorry. What was  
22 that, Mr. Settineri?

23 MR. SETTINERI: At this time I won't say  
24 whether I object to it. I haven't had a chance to  
25 digest the document, but we will just defer to the

1 Bench's ruling on his request.

2 EXAMINER ADDISON: Thank you.

3 MS. BOJKO: Your Honor, I'm sorry. Are  
4 you asking if there are objections to administrative  
5 notice?

6 EXAMINER ADDISON: Yes.

7 MS. BOJKO: Right now before foundation  
8 or anything has been laid?

9 EXAMINER ADDISON: I made the request.

10 EXAMINER PRICE: It's EIA's Henry Hub  
11 spot prices. It's easily accessible. If you don't  
12 think this is the correct version, you can --

13 MR. KUTIK: And they are not disputed or  
14 disputable. It fits the definition of judicial  
15 notice, your Honor.

16 EXAMINER ADDISON: Thank you, Mr. Kutik.

17 We will be taking administrative notice.

18 Q. (By Mr. Kutik) And would it be correct to  
19 say, sir, that on March 4, 2016, the Henry Hub  
20 natural gas spot price was a \$1.49?

21 A. It looks to be, yes.

22 Q. Okay. Would it be fair to say that that  
23 Henry Hub natural gas spot price was not that low, as  
24 published by EIA, since December of 1998?

25 MS. BOJKO: Objection, your Honor.

1 EXAMINER ADDISON: Grounds?

2 MS. BOJKO: Now he is asking about a  
3 document the witness clearly said he did not use it  
4 or rely on it for purposes of his calculation, and he  
5 is asking questions about information that wasn't  
6 relied upon. And I think the standard yesterday was  
7 that if the witness didn't rely on the document in  
8 preparing their testimony, that it was not allowed to  
9 be -- allowed into the record or questions to be  
10 asked upon it.

11 EXAMINER ADDISON: Mr. Kutik?

12 MR. KUTIK: Your Honor, this witness says  
13 he looks at Henry Hub prices from time to time.  
14 You've taken administrative notice of the document.  
15 The question is fair game.

16 EXAMINER ADDISON: Overruled.

17 A. And your question was something about  
18 1998?

19 Q. Yes. We don't have a price as low as the  
20 price we see on March 4, 2016, since December of  
21 1998. December 7 to be exact.

22 A. That appears to be right.

23 MR. KUTIK: No further questions.

24 EXAMINER ADDISON: Thank you, Mr. Kutik.

25 Mr. McNamee?

1 MR. McNAMEE: No, thank you.

2 EXAMINER ADDISON: Thank you.

3 Mr. Settineri, redirect?

4 MR. SETTINERI: If I may have a brief 2  
5 minutes, your Honor.

6 EXAMINER ADDISON: You may.

7 Let's go off the record.

8 (Discussion off the record.)

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

11 Mr. Settineri.

12 MR. SETTINERI: Thank you, your Honor.

13 - - -

14 REDIRECT EXAMINATION

15 By Mr. Settineri:

16 Q. Dr. Kalt, did you rely on Henry Hub  
17 natural gas spot prices in your -- to develop the  
18 analysis in your third attachment, JPK-RH-3?

19 A. No, I did not. I relied on electricity  
20 spot prices as per the companies' -- not spot prices,  
21 electricity futures price at the AEP Dayton Hub and  
22 the ICE exchange reports as the companies had  
23 proposed to do so for March 2016.

24 MR. SETTINERI: No further questions on  
25 redirect. Thank you.



1 EXAMINER ADDISON: Thank you,  
2 Mr. Settineri.

3 Ms. Bojko?

4 MS. BOJKO: No, thank you.

5 EXAMINER ADDISON: Mr. Fisk?

6 MR. FISK: No, thank you.

7 EXAMINER ADDISON: Thank you.

8 Mr. Moore?

9 MR. MOORE: No questions, your Honor.

10 EXAMINER ADDISON: Ms. Glover?

11 MS. GLOVER: No questions.

12 EXAMINER ADDISON: Mr. Kurtz?

13 MR. KURTZ: No questions.

14 EXAMINER ADDISON: Mr. Kutik?

15 MR. KUTIK: One minute, your Honor.

16 No questions, your Honor.

17 EXAMINER ADDISON: Thank you, Mr. Kutik.

18 Mr. McNamee?

19 MR. McNAMEE: No questions, thank you.

20 EXAMINER ADDISON: Thank you.

21 Examiner Price?

22 EXAMINER PRICE: No questions.

23 EXAMINER ADDISON: I have no additional  
24 questions. You are excused, Dr. Kalt.

25 THE WITNESS: Thank you.

1 EXAMINER ADDISON: Thank you very much.

2 MR. SETTINERI: Your Honor, at this time  
3 we would move for the admission of Exhibit 17 --  
4 P3/EPSA Exhibit 17 and P3/EPSA Exhibit 18C, subject  
5 to the Bench's ruling today.

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

8 MR. SETTINERI: Thank you.

9 EXAMINER ADDISON: Are there any  
10 objections to the admission of these two exhibits  
11 subject to the motions to strike and additional  
12 instructions from the Bench earlier today?

13 MR. KUTIK: Well, may I propose this,  
14 your Honor, that you admit at this point only the  
15 text of the testimony, both versions, subject to the  
16 motions to strike and that you admit later the  
17 exhibits that will be filed with the revisions.

18 MR. SETTINERI: And, your Honors, I would  
19 be glad to simply -- I have already read one into the  
20 record, I could read the other two very easily if you  
21 would like.

22 MR. KUTIK: The problem is we don't have  
23 the document itself.

24 EXAMINER ADDISON: Right. I think that  
25 would be better for the record. Make sure everything

1 is clear.

2 At this time we will be admitting the  
3 text of the testimony subject to the various motions  
4 to strike, and we will defer ruling on the revised  
5 attachments.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 MR. SETTINERI: May I ask -- okay. And  
8 if we can go off the record.

9 EXAMINER ADDISON: Yes. Let's go ahead  
10 and go off the record.

11 (Discussion off the record.)

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

14 At this time we will break for lunch and  
15 return at 2 o'clock.

16 Thank you. Let's go off the record.

17 (Thereupon, at 1:24 p.m., a lunch recess  
18 was taken.)

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1 Friday Afternoon Session,  
2 July 15, 2016.

3 - - -

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

6 At this time we will resume the  
7 cross-examination of Staff Witness Choueiki.

8 Dr. Choueiki, I remind you you are still  
9 under oath

10 THE WITNESS: Yes.

11 EXAMINER PRICE: Ms. Bojko.

12 MS. BOJKO: Thank you, your Honor.

13 - - -

14 HISHAM M. CHOUEDIKI, Ph.D., P.E.  
15 being previously duly sworn, as prescribed by law,  
16 was examined and further testified as follows:

17 CROSS-EXAMINATION

18 By Ms. Bojko:

19 Q. Good afternoon, Mr. -- or Dr. Choueiki.

20 A. Good afternoon.

21 Q. Let's turn to page 11 of your testimony.  
22 Are you there?

23 A. Not yet. Okay. I'm there.

24 Q. The question is actually at the way  
25 bottom of page 10. But in the Question and Answer on

1 the bottom of page 10, flowing over to page 11, in  
2 your testimony you are describing the mod -- the  
3 modifications made to the original rider RRS by the  
4 companies' proposed modified rider RRS, correct?

5 A. Correct. I am describing staff's  
6 understanding of the pro -- I guess we are going to  
7 call it "proposal," the companies' proposal.

8 Q. Thank you. As we stated yesterday, I  
9 think in your testimony, the modified rider RRS is  
10 the companies' proposal?

11 A. That is the equivalent to the companies'  
12 proposal.

13 Q. And the staff's proposal for the new  
14 rider, we will call "staff's proposal"?

15 A. Okay.

16 Q. Under the second bullet point, is it  
17 staff's understanding that a new provision in the  
18 modified rider RRS is that the prices will be  
19 measured in dollars per megawatt-hour and will be  
20 determined on an actual monthly average on-peak and  
21 off-peak day-ahead LMP prices at AEP Dayton Hub; is  
22 that correct?

23 A. Yes.

24 Q. And that's different from the original  
25 RRS, correct?

1           A.    Yes.  The original was the actual,  
2   actually dispatched, hour by hour, whatever the price  
3   was at the time rather than.  And it was at the -- as  
4   I recall at the -- in FE zone.  This is more like a  
5   transparent index that anybody can go look up what's  
6   the actual day-ahead price at the AD Hub, so it's a  
7   bit different.

8           Q.    And you said that the approval of the  
9   prior rider RRS was based on the ATSI -- ATSI zone;  
10   is that correct?

11          A.    As I recall, it was the energy prices in  
12   the ATSI zone.

13          Q.    And have you done a comparison to what  
14   was approved in the previous calculation versus the  
15   companies' proposal for the prices measured as  
16   described on page 11 in your testimony?

17          A.    Did we look at the, like, what the  
18   revenues were versus what the revenues would be under  
19   this proposal?

20          Q.    Correct.

21          A.    We've done "back of the envelope"  
22   calculations.  I wouldn't call like we did, you know,  
23   actual, because you don't know what the actuals are,  
24   right?  So basically you have to simulate what would  
25   be the day-ahead monthly on-peak and off-peak prices

1 at the AD Hub using, like, the ICE, Intercontinental  
2 Exchange, forwards.

3 Q. Fair enough.

4 A. Yes.

5 Q. My apologies. Fair enough.

6 So could you tell us on the results of  
7 that analysis on a directional basis, are the prices  
8 proposed to be used in the companies' proposal  
9 greater than the prices that were used in the rider  
10 RRS approved by the Commission?

11 A. The actual -- so there aren't any actual  
12 prices. It's all in the future, right? So the  
13 company has revenue forecasts in the record, right?  
14 They dispatch, ran a simulation, and got their  
15 revenue estimates.

16 What -- what we did is just look at what  
17 is an estimate of what the forward prices would look  
18 like for the next 36 months because those are  
19 reliable prices to look just at the -- at the next 36  
20 months. I wouldn't go more than that.

21 Now, with these prices --

22 THE WITNESS: Your Honor, I'm not sure,  
23 some of the discussion might be proprietary. I don't  
24 know what's, like, I know the energy forecast for the  
25 company, for example, are under seal. So if I say

1 the difference, then folks would know what the energy  
2 price forecasts are.

3 MS. BOJKO: Your Honor, I was just asking  
4 for a directional, not actual prices.

5 A. Okay, okay.

6 Q. If that helps.

7 A. Yes. So the --

8 MR. KUTIK: Well, I'll object, your  
9 Honor. Since the forward prices are knowable, that  
10 indicates potentially where the energy prices that  
11 are proprietary are.

12 EXAMINER PRICE: I agree.

13 Ms. Willis, do you have very much  
14 testimony or cross-examination that would elicit  
15 confidential responses?

16 MS. WILLIS: I don't believe I do, your  
17 Honor.

18 EXAMINER PRICE: Do you have anything  
19 else that would elicit confidential responses?

20 MS. BOJKO: I don't believe so, your  
21 Honor.

22 EXAMINER PRICE: At this time, we will go  
23 to the confidential portion of our transcript. If  
24 you do not have a confidentiality agreement with  
25 the -- protective agreement with the company, we



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1 would please ask you to excuse yourselves.

2 (CONFIDENTIAL PORTION EXCERPTED.)  
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(OPEN RECORD.)

EXAMINER PRICE: You may continue.

Q. (By Ms. Bojko) Dr. Choueiki, we also know  
now -- we know the capacity prices through 2019 and  
'20; is that correct?

A. That is correct.

1 Q. And do you know what the 2019-'20  
2 capacity price is?

3 A. The -- there is \$100 a megawatt-day for  
4 capacity performance and there is \$80 a megawatt-day  
5 for base capacity.

6 Q. And is it your understanding that the new  
7 capacity prices will be used in the companies'  
8 proposal?

9 A. That is correct.

10 Q. So has staff done an analysis of the  
11 impact on the original rider RRS with regard to the  
12 new capacity prices?

13 A. Again, that's a very simple arithmetic  
14 problem.

15 EXAMINER PRICE: Can I have the question  
16 back, again?

17 MS. BOJKO: I can try again. I think I  
18 misspoke slightly.

19 EXAMINER PRICE: You may.

20 Q. (By Ms. Bojko) Has staff performed an  
21 analysis of the -- of the impact of the new capacity  
22 prices on the companies' proposal?

23 MR. KUTIK: Well, I'll object.

24 EXAMINER PRICE: Grounds?

25 MR. KUTIK: Beyond the scope, your Honor.

1 EXAMINER PRICE: Ms. Bojko?

2 MS. BOJKO: Beyond the scope of what?

3 MR. KUTIK: The hearing.

4 MS. BOJKO: Your Honor, it's not beyond  
5 the scope. I asked him if he did a projection of the  
6 new capacity prices on the companies' proposal. The  
7 companies' modified proposal is the exact subject.

8 EXAMINER PRICE: She corrected it. Do  
9 you still have your objection?

10 MR. KUTIK: No, your Honor.

11 EXAMINER PRICE: He withdrew his  
12 objection.

13 MS. BOJKO: Okay. Thank you.

14 THE WITNESS: So I can answer or I can't  
15 answer?

16 EXAMINER PRICE: You may answer. I don't  
17 know if you can answer, but you should try.

18 THE WITNESS: Well, I can answer.

19 A. So the price was -- so, basically, again  
20 you look at the difference between what the company  
21 projected in their original application and the  
22 actual clearing price. Now, you multiply that by the  
23 UCAP that is also fixed now in this new proposal.  
24 And that gives you the difference in revenues from  
25 capacity. What we discussed earlier was the

1 difference in revenues from energy.

2 Q. Right. And you said it's an easy  
3 calculation, but have you done that calculation and  
4 what were those results?

5 A. Again, that might disclose some --  
6 because the companies' forecasts for capacity are not  
7 in the public domain.

8 EXAMINER PRICE: Let's return to the  
9 confidential portion of our transcript.

10 MS. BOJKO: My apologies.

11 (CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

MS. BOJKO: Thank you.

Q. (By Ms. Bojko) Thank you, Dr. Choueiki.

Could we turn to page 14 of your testimony. There was some discussion yesterday and I just want to clarify on page 14, line 9, you say that "To the extent the Commission agrees with Staff Witness Buckley's recommendation and authorizes the ....rider...." Do you see that?

A. Yes.

Q. And then on page 15, line 4, you say, "Should the Commission agree with Staff Witness

1 Buckley's recommendation...." In both of these  
2 situation, are you stating if staff agrees with the  
3 recommendation of the amount proposed by Staff  
4 Witness Buckley?

5 A. So, yes, it's the credit support.

6 Q. You're -- you're the witness that's  
7 supporting the creation of the new rider; is that  
8 fair?

9 A. Correct.

10 Q. Okay.

11 A. We both refer to it as, you know, the  
12 new -- a new rider; although, he's the one that  
13 basically just testifies to the credit support, and  
14 then I'll carry that from that recommendation from  
15 that on -- from then on.

16 Q. And I know there was some discussion  
17 yesterday about the interplay between the grid  
18 modernization case and this new proposal, but I want  
19 to focus on the timing aspects, if you'll bear with  
20 me a little bit. As I understand your proposal, the  
21 staff is proposing that this new rider would take  
22 effect shortly thereafter the Commission issues its  
23 order adopting it; is that correct?

24 A. The Commission will decide when it will  
25 take effect, but, from the time it takes effect, for

1 36 months.

2 Q. Okay. And it's fair, I understand from  
3 your testimony yesterday, that the Commission has the  
4 ultimate authority to do what it wants to do. I  
5 think you said that. I want to focus on staff's  
6 proposal. So is it staff's proposal that this rider  
7 would go into effect as soon as possible regardless  
8 of what the resolution is of the modernization --  
9 grid modernization case pending under 16-0481?

10 A. I think we discussed that yesterday, but  
11 I'll try again. They are together so when the -- our  
12 recommendation is when the Commission authorizes this  
13 rider that, they also direct the company to commence  
14 the modernization. And it could start with the  
15 discussions that are currently happening in the case,  
16 the grid modernization case, or in that and in  
17 another case. So they will decide how to address the  
18 grid modernization.

19 Our recommendation is when they issue  
20 that order for the rider -- for allowing the company  
21 to recover the credit support recommended, that they  
22 also direct the company to modernize the grid at the  
23 same time, not just issue the -- the credit support.  
24 That wouldn't be our recommendation. It would be the  
25 Commission decided to disagree with us and do



1 something else.

2 Q. So let me ask it a different way. If the  
3 Commission needed additional time to decide what  
4 programs and what would occur under the grid  
5 modernization case, would staff be recommending that  
6 the Commission not begin the rider proposed in this  
7 case until it is decided how those dollars would be  
8 spent?

9 A. That's a recommendation I didn't think  
10 about. Our recommendation is to do them at the same  
11 time. So when they issue the order for the  
12 collection mechanism under the rider, they also  
13 address -- direct the companies to commence the  
14 modernization program.

15 Q. Okay. And the credit-support piece of  
16 that recommendation is regardless or doesn't rely on  
17 the AMI rider under the grid modernization plan in  
18 any way; is that correct?

19 A. No. They are tied, but it's not only  
20 tied to the AMI. So it's the AMI and other things.  
21 Because right now there is a business plan, right,  
22 that's being reviewed.

23 Q. And it isn't staff's intent to have both  
24 a rider RRS in place concurrently with the new DMR  
25 rider, correct?

1           A.    Again, the legal mechanics of it I'm not  
2   sure about.  But our recommendation is no to the  
3   proposed RRS; and yes to the DMR and network  
4   modernization.

5           Q.    I didn't hear the last.

6           A.    Network modernization.  Distribution  
7   network modernization.

8           MR. KUTIK:  May I have the answer read,  
9   please?

10          EXAMINER PRICE:  Let's have the question  
11   and answer read back, please.

12          (Record read.)

13          Q.    I have to ask a follow-up just because  
14   you're aware that there's a tariff approved and in  
15   place with regard to rider RRS; is that correct?

16          A.    That is correct.

17          Q.    So it would be staff's intent that that  
18   tariff be removed -- I am not sure what the proper  
19   word is.  That the rider RRS would no longer exist as  
20   its currently approved; is that correct?

21          A.    Again, I'm not sure about the legal  
22   mechanics because there is a rider, like I said there  
23   is a rider RRS that is approved that is blank right  
24   now.  So our -- whether it stays and it's invisible  
25   or it is gone, the Commission -- the legal department

1 and the Commission will decide what will happen.

2 Q. Okay. And, Dr. Choueiki, you're not here  
3 today to testify to the legality of providing credit  
4 support to a parent company via the proposed rider;  
5 is that -- staff's proposed rider; is that correct?

6 A. Staff believes it's legal. Now, I am not  
7 a lawyer, but if it was illegal, I'm pretty sure I  
8 wouldn't have been able to put it in our testimony.  
9 So staff's belief is that under -- we have the legal  
10 authority to -- to make that recommendation. If  
11 someone disagrees, then someone disagrees.

12 Q. But as you said, you are not an attorney,  
13 and you are not making a legal opinion here today.

14 A. No.

15 MS. BOJKO: I have nothing further.

16 Thank you, your Honors.

17 Thank you, Dr. Choueiki.

18 EXAMINER PRICE: Thank you.

19 THE WITNESS: Thank you.

20 EXAMINER PRICE: Ms. Willis.

21 MS. WILLIS: Thank you, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Willis:

25 Q. Good afternoon, Dr. Choueiki.

1           A.     Good afternoon.

2           Q.     Can I direct your attention to page 15.  
3       Specifically, I want to look at lines 8 through 11.  
4       And there you testify or you refer to Mr. Buckley's  
5       statement that credit support under the staff's  
6       proposal "will assist the Companies in receiving more  
7       favorable terms when accessing the capital markets."  
8       Do you see that?

9           A.     Yes.

10          Q.     You are not testifying today or offering  
11       an opinion on whether the companies need assistance  
12       in receiving more favorable terms, are you?

13          A.     No.   Mr. Buckley testified on that.

14          Q.     Now, in your footnote you refer to the  
15       extent that FE Corp. falls below investment grade,  
16       that future financing costs could increase. Do you  
17       see that?

18          A.     Yes.

19          Q.     And you are not testifying today that  
20       there is any emergency, financial or otherwise, for  
21       the companies; is that correct?

22          A.     It is whatever Mr. Buckley testified in  
23       his written and oral testimonies.

24          Q.     And you are not testifying that there is  
25       any financial -- emergency, financial or otherwise,

1 for FE Corp., correct?

2 A. I am not addressing it; Mr. Buckley is;  
3 I'm not. That's why I cite his testimony.

4 Q. Would you agree with me that the ability  
5 to attract capital for investment is linked to the  
6 financial integrity of a company?

7 A. Again, that's a question that should have  
8 been addressed with Mr. Buckley.

9 Q. Well, can you answer that for me?

10 MR. McNAMEE: Objection.

11 EXAMINER PRICE: Grounds?

12 MR. McNAMEE: Scope.

13 EXAMINER PRICE: Sustained.

14 Q. Dr. Choueiki, did you provide testimony,  
15 on behalf of the Commission staff, in the Dayton  
16 Power and Light Standard Service Offer case?

17 A. ESP II?

18 Q. Yes.

19 A. Yes.

20 Q. And as part of your testimony, do you  
21 recall testifying on a proposal called the rider RRS?

22 A. It was called RRS? I don't remember what  
23 it was called, but I remember I testified to a rider  
24 at the time. I don't remember what it was called.

25 Q. And was that -- would you agree that that

1 was a financial stability rider?

2 A. I can't recall what it was called, like  
3 whether it was a financial stability. You would have  
4 to refresh.

5 Q. Do you believe -- if you recall, do you  
6 recall it was a rider aimed at ensuring the financial  
7 integrity of the utility?

8 A. As I recall, there was another witness  
9 who testified on -- on the quantity like Mr. Buckley  
10 in this case, and then I just addressed the policy --  
11 the policy issues in that case. But I remember there  
12 was discussion of financial -- should the Commission  
13 find that there was a financial -- or the financial  
14 integrity of the company was compromised.

15 Then Mr. -- I can't remember who  
16 testified, whether Mr. Buckley or Mr. Mahmud, but one  
17 of them testified to a number. And then I testified  
18 that should the Commission agree with that number,  
19 then we had conditions. I can't recall what they  
20 were.

21 Q. And do you recall, during the course of  
22 your testimony, being cross-examined on what your  
23 definition of -- was of "financial integrity"?

24 A. Maybe. And I can't recall what I said at  
25 that time. Probably I punted to the Commission that

1 the Commission will decide what "financial integrity"  
2 is.

3 MS. WILLIS: If I may have a moment, your  
4 Honor?

5 EXAMINER PRICE: You may.

6 MS. WILLIS: May I approach the witness?

7 EXAMINER PRICE: You may.

8 Q. Unfortunately, since I didn't bring an  
9 extra copy, I am going to have to stand a bit over  
10 here.

11 A. Okay.

12 Q. Do you recall -- I want to give you a  
13 moment to look at the transcript. I am looking at  
14 Volume VII in the DP&L ESP -- EL-ESP proceeding,  
15 12-426-EL-SSO, and ask you if you would look at that  
16 and if that refreshes your recollection as to whether  
17 or not in the course of that proceeding you defined  
18 "financial integrity."

19 A. Okay.

20 Q. And you may want to turn to the next page  
21 as well. There is a little discussion there.

22 A. Okay.

23 Q. Now, at that time, as a witness for the  
24 staff, you defined "financial integrity" as "the  
25 ability of the company to satisfy its financial

1 obligations to operate efficiently, to provide  
2 adequate, reliable service, and the ability of the  
3 company to pacify Wall Street." Do you recall that?

4 A. No. After I read it, but the question  
5 before it was that's my definition just as an  
6 engineer.

7 Q. Yes, as an engineer.

8 A. It wasn't a legal definition of any sort.

9 Q. Understood. I am not asking for your  
10 legal definition. I am asking you, as a member of  
11 the staff, your definition of financial integrity.

12 A. I think Mr. Buckley, when he testified,  
13 he answered that question similarly.

14 Q. Would you include, in your definition of  
15 "financial integrity," the ability to attract  
16 capital?

17 A. At a reasonable price, yeah. Again,  
18 those are two different cases. You can't compare  
19 what Mr. Buckley is testifying to in this case to  
20 what the financial analyst in Dayton Power and Light  
21 testified to. Completely different cases; different  
22 circumstances.

23 Q. Now, would you agree with me that Mr. --  
24 I'm sorry, Dr. Choueiki, that through the staff's  
25 proposal in this case you are set -- you are



1 proposing to set rates to be collected from customers  
2 through a rider that's based on achieving or  
3 maintaining a credit rating for the utility or its  
4 holding company?

5 A. Again, what Mr. Buckley testified on that  
6 issue is exactly what we are agreeing to or  
7 recommending.

8 Q. Thank you.

9 And, Dr. Choueiki, are you aware of any  
10 prior PUCO ruling that set rates to be collected  
11 through a rider based on achieving or maintaining a  
12 credit rating?

13 A. I am not aware. That doesn't mean it  
14 doesn't happen, but I'm not aware and I can't recall  
15 if the Dayton case had an objective of that sort or  
16 not even.

17 Q. Without the staff's alternative, will  
18 FirstEnergy utilities' financial integrity be  
19 compromised?

20 MR. KUTIK: Objection.

21 MR. McNAMEE: Objection.

22 EXAMINER PRICE: Grounds, Mr. Kutik?

23 MR. KUTIK: Beyond the scope.

24 EXAMINER PRICE: Mr. McNamee?

25 MR. McNAMEE: I would say the same. This

1 is Mr. Buckley's area.

2 EXAMINER PRICE: Sustained. Mr. Buckley  
3 had a long day on the stand regarding these issues.

4 Q. (By Ms. Willis) Dr. Choueiki, does the  
5 PUCO have to find that the financial integrity of the  
6 FE Ohio utilities is compromised before it approves  
7 the staff's alternative?

8 MR. McNAMEE: Objection.

9 EXAMINER PRICE: Grounds?

10 MR. McNAMEE: Calls for a legal  
11 conclusion.

12 EXAMINER PRICE: Sustained.

13 Q. (By Ms. Willis) Now, on page 11, on line  
14 7 through 8, you indicate that the charges used in  
15 modified rider RRS are the estimated costs of the  
16 three power stations as represented in the record.  
17 Do you see that?

18 A. I'm sorry. What -- what lines?

19 Q. Lines 7 through 8. Do you have a  
20 reference to three power stations?

21 A. Yes.

22 Q. Are you referring to Davis-Besse, Sammis,  
23 and the OVEC entitlement there?

24 A. Yes.

25 Q. And so, any place in your testimony where

1 you refer to three power stations, you would be  
2 referring to those three sources?

3 A. That's why I had the previous history  
4 where I actually review what are the three power  
5 plants.

6 Q. And is your belief, Dr. Choueiki, that --  
7 let me strike that.

8 Let's go to page 15, lines 11 through 12.  
9 You cite that accessing the capital market "will  
10 enable the Companies to procure funds to jumpstart  
11 their distribution grid modernization initiatives."  
12 Do you see that?

13 A. Yes.

14 Q. And when you refer to the grid -- to the  
15 "distribution grid modernization initiatives," are  
16 you -- you are referring, are you not, to the  
17 initiatives as found in the Third Supplemental  
18 Stipulation?

19 A. Yes. So it would be the -- the AMI  
20 condition and also we had, like, battery storage.  
21 There is a bunch of commitments. Anything that deals  
22 with the distribution grid modernization or upgrade.

23 MS. WILLIS: May I approach the witness,  
24 your Honor?

25 EXAMINER PRICE: You may.

1           Q.    Dr. Choueiki, I've handed you what is the  
2   Third Supplemental Stipulation and Recommendation.  I  
3   believe it is already an exhibit and already marked  
4   and put into evidence in this proceeding.  And I  
5   would like to ask you some questions about that.  I  
6   would like you to specifically identify the grid  
7   modernization initiatives that you refer to in your  
8   testimony as -- that will be given the jumpstart  
9   through the staff's proposal.

10          A.    Definitely.  Section D on page 9.

11          Q.    Thank you.

12          A.    Section E, subsection 2 on page 11.

13          Q.    Thank you.

14          A.    Maybe Section -- Subsection 3, also of  
15   Section E on page 9, that deals with energy  
16   efficiency.  To the extent it deals with Volt/VAR  
17   which is tied in grid modernization, Section D on  
18   page 9.  I think that's it from the stipulation.

19          Q.    Are there any other grid smart  
20   initiatives -- distribution grid modernization  
21   initiatives that will be jumpstarted by the staff's  
22   proposal?

23          A.    There could be, but I think the biggest  
24   would be like the business plan that the companies  
25   agreed to when you talk about advanced meter

1 deployment, to provide the control data acquisition  
2 like STADA, Volt/VAR which is tied to energy  
3 efficiency, distribution automation system  
4 reconfiguration where you would develop the  
5 self-healing distribution grid, and battery storage.

6 Q. And all the items you mentioned are  
7 covered either by the grid modernization provisions  
8 under the stipulation or the resource diversification  
9 provisions you just discussed, correct?

10 A. I believe, yes, those would be the two  
11 sections of the stipulation.

12 Q. Now, you believe or staff believes it's  
13 necessary to jumpstart the distribution grade  
14 modernization initiatives; is that correct?

15 A. Correct. We are asking the Commission --  
16 we're recommending to the Commission that the  
17 Commission direct the companies to commence the  
18 modernization of the grid.

19 Q. Is it your opinion that without the  
20 jumpstart provided, the company will not pursue the  
21 distribution grid modernization initiatives in the  
22 stipulation?

23 MR. KUTIK: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. KUTIK: This question has been asked

1 and answered, especially from the Bench, who said you  
2 have asked other witnesses from the staff if the  
3 Commission orders a plan to go into effect, will the  
4 companies follow the plan.

5 EXAMINER PRICE: I'll sustain the  
6 objection. We have been over this.

7 MS. WILLIS: I'm sorry?

8 EXAMINER PRICE: I think we have been  
9 over this.

10 Q. Now, Dr. Choueiki, you looked at rider  
11 RRS and the modified rider RRS, correct, the  
12 companies' proposal?

13 A. Yes.

14 Q. And did you analyze either of those  
15 proposals to determine which alternative is most  
16 likely to result in reasonable rates for customers?

17 A. Which one of the two is --

18 Q. Yes. Did you do an analysis and  
19 determine which alternative is most likely to result  
20 in reasonable rates for customers?

21 A. No, we did not.

22 Q. And as part of the staff's  
23 recommendations for the companies to initiate grid  
24 modernization, am I correct that collections under  
25 the staff's proposals can occur before the first

1 dollar in investment is made by the company in  
2 grid -- the companies in grid modernization?

3 MR. McNAMEE: Objection.

4 EXAMINER PRICE: Grounds?

5 MR. McNAMEE: I believe we have been over  
6 this probably several dozen times at this point.

7 EXAMINER PRICE: Sustained.

8 Q. Dr. Choueiki, do you understand that  
9 under the Third Supplemental Stipulation and  
10 Recommendation that the grid modernization  
11 initiatives will receive specific rate treatment set  
12 forth in paragraph 3, page 10 of the stipulation?

13 A. Yes.

14 Q. Are you familiar with the delivery  
15 capital recovery rider that was approved as part of  
16 the stipulation, the Third Supplemental Stipulation?

17 A. Very little.

18 Q. Now, yesterday and today there has been  
19 some discussion about the companies' grid  
20 modernization business plan. Do you recall that  
21 discussion?

22 A. Yes.

23 Q. And you did testify you had seen that  
24 plan; is that correct?

25 A. That's correct.

1 Q. And have you reviewed that plan?

2 A. I reviewed it when it was filed. And I  
3 have not reviewed it since then, but I have reviewed  
4 it, so I know the concept.

5 Q. Okay. So you have an understanding as to  
6 that plan when that plan -- the -- let me strike  
7 that.

8 So is it correct that you have an  
9 understanding, under that plan, as to when deployment  
10 would begin under that plan under the various  
11 scenarios filed?

12 A. As I recall, there are, like, three  
13 scenarios and one of them is, like, very aggressive,  
14 one of them is medium, and the other one is a bit  
15 slower where they would modernize -- I know one of  
16 them was like 100 circuits a year. And they start  
17 with the circuits that have the most number of  
18 customers; the ones that are more cost-effective.  
19 The slower ones, you know, maybe 50 or 60 or 70  
20 circuits a year, but I don't know the details.

21 Q. Do you recall --

22 A. I don't recall the details.

23 Q. I'm sorry. I didn't mean to interrupt.

24 A. I don't recall the details.

25 Q. Do you recall, Dr. Choueiki, that under



1 any of the three scenarios that deployment would not  
2 begin until late 2017?

3 A. I accept it. I can't recall whether it  
4 was beginning, end, or how -- I know it wasn't this  
5 year.

6 Q. Now, under the rate recovery mechanism  
7 approved under the stipulation -- let me strike that.

8 You are familiar with the rate recovery  
9 mechanism approved under the stipulation for the grid  
10 modernization initiatives, correct?

11 A. A little bit. Are we talking like rider  
12 AMI?

13 Q. Yes, I was specifically talking about the  
14 rider that was -- that was approved as part of the  
15 stipulation and recommendation, specifically page 10  
16 of the supplemental stipulation and recommendation.  
17 If you would like to refresh your recollection by  
18 looking at that.

19 A. So it is rider AMI.

20 Q. So you are familiar with that rate  
21 recovery mechanism?

22 A. No. I'm not the rate guy, so I wouldn't  
23 understand exactly -- I don't have a full  
24 understanding of how it's recovered. I know the  
25 company spends it, how it could be based on a

1 forecast, too, like we expect to spend \$50 million  
2 next year. So you will get recovery; you collect it  
3 over the year. At the end of the year, the staff  
4 will do an audit. To the extent you spend 52, then  
5 you add 2 and keep going; have another forecast. But  
6 the mechanics, I'm not that familiar.

7 Q. Now, under the rate recovery mechanism  
8 approved under the stipulation, is it your  
9 understanding that that recovery could begin within  
10 three months of the PUCO authorizing the plan?

11 MR. McNAMEE: Objection.

12 EXAMINER PRICE: Grounds?

13 MR. McNAMEE: The witness has indicated  
14 his understanding of this area is somewhat limited,  
15 and the fact is it is whatever it is regardless of  
16 his understanding of it. So the question has no  
17 relevance.

18 EXAMINER PRICE: He can answer if he  
19 knows.

20 A. I am reading, "The companies" -- on  
21 page 10 it says "The Companies' recovery shall be  
22 through a rider, which would commence within three  
23 months of the issuance of a Commission order...."

24 Q. Thank you.

25 Now, the PUCO could -- let me strike

1     that.

2                     Could we potentially, Dr. Choueiki, be in  
3     a situation where customers are paying through the  
4     AMR rider for return -- let me strike that.

5                     Under the AMI rider, is it your  
6     understanding that customers would pay return on and  
7     a return of investment in grid modernization?

8                     A.     I mean the section says what it says.  It  
9     says "The return on equity shall initially be set at  
10    10.38 percent...plus an additional 50 basis  
11    point...."

12                    Q.     And could we be potentially in a  
13    situation where customers are paying a return on and  
14    of the investment at the same time they are paying  
15    for the -- paying \$131 million in -- under the  
16    staff's proposal?

17                    A.     If the Commission authorizes rider DMR,  
18    yes, they would be for different purposes.  One of  
19    them is for credit support and one of them for  
20    modernization at a lower interest rate than otherwise  
21    with more favorable conditions.

22                    Q.     Do you believe it would be reasonable to  
23    have customers pay, under rider AMI, a return on and  
24    return of the distribution modernization investments  
25    at the same time paying \$131 million per year for

1 credit support for that same program?

2 A. You have to look at them together.  
3 According to Mr. Buckley, it may be more expensive  
4 not to get the credit support and then to have to pay  
5 a higher interest rate and have more unfavorable  
6 terms and conditions from creditors on the company.  
7 So, you know, you have to take them and understand  
8 what each one of them is for. One of them is so that  
9 the companies will get more favorable, according to  
10 Mr. Buckley, terms and conditions and a lower  
11 interest rate than otherwise.

12 Q. And is it your -- I am sorry. Are you  
13 finished?

14 A. Yes.

15 Q. Is it your understanding, Dr. Choueiki,  
16 that the staff has determined how much the -- how  
17 much customers would save by -- by allowing or by  
18 assisting the company in getting more favorable terms  
19 for borrowing?

20 MR. McNAMEE: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. McNAMEE: Scope. This is  
23 Mr. Buckley's area.

24 EXAMINER PRICE: Can I have the question  
25 back again.

1 (Record read.)

2 MR. McNAMEE: I might note there was a  
3 fairly extensive discussion with Mr. Buckley about  
4 the difficulties in establishing specific amounts.

5 EXAMINER PRICE: Sustained.

6 MS. WILLIS: That's all I have. Thank  
7 you, Dr. Choueiki.

8 EXAMINER PRICE: Thank you.

9 Mr. Kutik.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Kutik:

13 Q. Dr. Choueiki, the staff was a signatory  
14 party to the Third Supplemental Stipulation, correct?

15 A. Yes.

16 Q. And the staff supported the concept of a  
17 hedge to provide stability for customers' retail  
18 bills, correct?

19 A. At that time, yes.

20 Q. Okay. Now, you testified, a little while  
21 ago, about your observations using more recent  
22 forward prices. Do you remember that?

23 A. Yes.

24 Q. Do you follow the forwards market?

25 A. Yes.

1           Q.    Okay.  Would it be fair to say that  
2           forwards change from day-to-day?

3           A.    Yes.

4           Q.    So what forwards for, say, March of 2017  
5           might be -- might have been in early June, may be  
6           different than they are today.

7           A.    Yes.

8           Q.    And forwards for -- forward prices, you  
9           would agree with me, are not necessarily an accurate  
10          predictor of actual prices.  That is actually LMPs;  
11          what LMPs might be.

12          A.    So we have been doing this exercise since  
13          we started in-house forecasting clearing prices in  
14          retail auctions.  We have been following ICE  
15          forecasts, ICE forwards, so that's how we develop our  
16          forecast just internally for the Commission.

17                 In the near term, in the period, like, 12  
18          months to 36 months are pretty reasonable.  Now, if  
19          you go farther than that, that's why I stayed within  
20          the 24- to 36-month range because further than that  
21          there is not a lot of contracts; there is not a lot  
22          of liquidity.

23          Q.    But things may change, right?

24          A.    Things may change, right.  You could have  
25          an event that changes things.

1           Q.    Now, you would agree with me that power  
2 prices, electric prices, energy prices, are somewhat  
3 influenced by natural gas prices?

4           A.    That is correct.

5           Q.    And you would agree with me that natural  
6 gas prices are influenced by weather.

7           A.    Yeah. In the old -- I mean, if you are  
8 talking before the shale -- shale gas boom, yes.  
9 Although -- although, recently there is an abundance  
10 of natural gas and even in the winter, with the  
11 exception of during the polar vortex. So we had  
12 during the polar vortex where you had specific days  
13 where the price of gas went up tremendously in  
14 specific regions.

15          Q.    But generally, yes.

16          A.    Again, during -- during unreasonable --  
17 or unseasonable, like polar vortex event, yes.

18          Q.    Okay. And you would agree with me that  
19 the winter of 2015 and '16 was the warmest winter on  
20 record?

21          A.    I'm not a meteorologist. So if it's a  
22 fact, then I will accept it.

23          Q.    Okay. Well, are you familiar with an  
24 organization called the "National Oceanic and  
25 Atmospheric Administration"?

1           A.    Yes.

2           Q.    And you are aware they publish reports,  
3 from time to time, about weather and temperature and  
4 records of temperatures?

5           MR. SOULES:  Objection.  This line of  
6 questioning is cumulative of issues that were  
7 addressed in the January hearing.

8           EXAMINER PRICE:  Overruled.

9           A.    I can't recall the question.  May I --

10          Q.    Are you aware that that organization,  
11 NOAA, publishes reports and keeps records and  
12 publishes those records as to temperature?

13          A.    Yes, they are experts in weather-analysis  
14 reports.

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

16          EXAMINER PRICE:  You may.

17          MR. KUTIK:  Your Honor, we ask that the  
18 Bench take administrative notice at this time of the  
19 National Overview, dated February, 2016, published by  
20 the National Oceanic and Atmospheric Administration.

21          EXAMINER PRICE:  We will take  
22 administrative notice of that.

23          Q.    Mr. -- Dr. Choueiki, excuse me, let me  
24 refer you to page 5 of 15.  Go to the upper  
25 right-hand corner to find the page numbers.



1           A.    I'm there.

2           Q.    And there is some commentary about  
3 temperature. Do you see that?

4           A.    Yes.

5           Q.    And it says "The September-February  
6 average temperature for the contiguous U.S. was 46.8  
7 degrees Fahrenheit, 3.9 degrees Fahrenheit above the  
8 20th century average. This was the warmest such  
9 six-month period on record and consisted of the  
10 warmest autumn and warmest winter on record for the  
11 Lower 48." Do you see that?

12          A.    Yes.

13          Q.    Were you aware of that?

14          A.    Was I aware it was the warmest?

15          Q.    Yes.

16               MS. WILLIS: Objection.

17               EXAMINER PRICE: Grounds?

18               MS. WILLIS: Relevance and beyond the  
19 scope of his testimony.

20               EXAMINER PRICE: Ms. Willis, you asked  
21 him about the analysis he had done. Mr. Kutik is  
22 simply exploring the issues that may or may not be  
23 related to his analysis. Overruled.

24          A.    I was not -- yeah, probably I remember  
25 that it wasn't as snowy because I didn't shovel a

1 lot, but -- but did I right away in my head say now,  
2 I am aware that it's the lowest on record, no, it was  
3 not.

4 Q. What I have read you, does that refresh  
5 your recollection that it was a relatively warm fall  
6 and winter?

7 A. It's an observation of the folks who do  
8 forecasts and analyze weather, so I am going to  
9 accept it.

10 Q. Are you also aware that in March of this  
11 year, natural gas inventories were at record highs?

12 A. I remember reading that.

13 Q. Would it also be correct to say that the  
14 trading volume on futures declines rapidly after a  
15 year?

16 A. It does decline, though my experience in  
17 looking at these futures, at least for even 24 months  
18 and 36 months, it's okay. Now, we might get, for  
19 example, during the polar vortex phenomenon, you had  
20 the price of natural gas right away, the forwards go  
21 up after the -- during the polar vortex.

22 But then after a month, it stabilize  
23 again. It went back to being like it was before the  
24 polar vortex. So folks react, of course, traders  
25 react, and prices go up, but then it comes down and

1 things come down again. So it's not long-term,  
2 especially when it's a weather related, it's not like  
3 it's going to be like this forever. So you will have  
4 that blip up and then you go back to normal.

5 MR. KUTIK: Okay. Your Honor, I move to  
6 strike the answer. I asked him if volume of trades  
7 goes down after a year and then I got how prices  
8 change.

9 EXAMINER PRICE: Can I have the question  
10 back again.

11 (Record read.)

12 EXAMINER PRICE: Mr. McNamee.

13 MR. McNAMEE: The witness is simply  
14 explaining that things change. They change in  
15 response to external events.

16 EXAMINER PRICE: But he doesn't talk  
17 about the trading volume. He talks about prices.

18 MR. McNAMEE: That's true, he did not.

19 EXAMINER PRICE: Motion is granted.

20 Dr. Choueiki, if you could please answer  
21 the question.

22 A. As you go further to the future, yeah,  
23 folks -- folks hedge in the near future more than, so  
24 the hedging volumes would be higher earlier on, than  
25 later on.

1           Q.    And I take it, from your answer, you've  
2    seen figures on trading volumes, correct?

3           A.    I have.   Not recently.   But I have.

4           Q.    And you are aware of, for example, an  
5    organization called the CME Group?

6           MR. McNAMEE:   Objection, your Honor.  
7    Didn't we have, perhaps, a day worth of  
8    cross-examination about this in the first part of  
9    this about trading volumes and how they change over  
10   time and how good -- or how reliable the trading  
11   volumes are across time?   Wasn't that covered  
12   extensively?

13          EXAMINER PRICE:   We absolutely did, but  
14   that was with respect to the credibility analysis and  
15   a different witness.   Your witness has given his  
16   analysis, and Mr. Kutik is certainly entitled to go  
17   over the credibility of his analysis.

18          Q.    Do you have the question in mind,  
19   Dr. Choueiki?

20          A.    May I hear it again.

21                (Record read.)

22          A.    So we subscribe to different data  
23   services.   I'm not familiar with the CME Group, but  
24   we have, like, for example velocity suites where we  
25   look at volumes and I'm not sure if the sources of

1 our data service is CME or someone else.

2 Q. You're heard of CME, have you not?

3 A. I don't -- I may have read their report,  
4 but I don't know the --

5 Q. Have you heard of the Chicago Mercantile  
6 Exchange?

7 A. Yes.

8 Q. Okay. Is it your understanding that CME  
9 is the Chicago Mercantile Exchange?

10 A. If you say so.

11 Q. All right. And with that assumption,  
12 sir, would CME be an organization that would be a  
13 reliable source of publishing information about  
14 trading volumes --

15 A. Of course.

16 Q. -- futures?

17 MR. KUTIK: May I approach?

18 EXAMINER PRICE: You may.

19 MR. KUTIK: Your Honor, at this time I  
20 would like to have marked, as I think we're at 190 --

21 EXAMINER PRICE: 199.

22 MR. KUTIK: 199, a document entitled "CME  
23 Group, Henry Hub Natural Gas Futures Settlements."

24 EXAMINER PRICE: It will be so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1           MR. KUTIK: And as 200, a document "PJM  
2           AEP Dayton Hub 5-megawatt Peak Calendar-Month  
3           Real-Time LMP Volume."

4           EXAMINER PRICE: Both documents will be  
5           so marked.

6           (EXHIBIT MARKED FOR IDENTIFICATION.)

7           MR. KUTIK: May I approach?

8           EXAMINER PRICE: You may.

9           MR. KUTIK: Your Honor, we ask that the  
10          Bench take administrative notice of CME Group's  
11          trading volumes for Henry Hub Natural Gas Future  
12          Settlements as of June 30, 2016, and the CME's  
13          compilation of data including volumes for PJM AEP  
14          Dayton Hub for real-time LMP volume.

15          EXAMINER PRICE: Objections?

16          MR. McNAMEE: Your Honor, I'm not sure  
17          what connection there is with this information and  
18          the witness's testimony.

19          EXAMINER PRICE: Well, I think that's a  
20          good question if he asks him a question about that,  
21          but, for now, he is just asking about taking  
22          administrative notice of this.

23          MR. McNAMEE: True enough.

24          MR. SOULES: Your Honor, could we have a  
25          recitation of what exactly the request for

1 administrative notice is?

2 MR. KUTIK: Of these documents.

3 EXAMINER PRICE: I believe we have  
4 Company Exhibit 199 is a compilation of the Chicago  
5 Mercantile Exchange Henry Hub gas futures and  
6 settlement gas future settlements. And I believe  
7 Company Exhibit 200 is a Chicago Mercantile Exchange  
8 compilation of PJM AEP Dayton Hub 5-megawatt hour  
9 peak calendar-month real-time LMP volumes.

10 MR. SOULES: Can we have just a moment or  
11 two to review the document?

12 EXAMINER PRICE: Let's go off the record.  
13 I'm sorry.

14 MS. WILLIS: I would ask that Mr. Kutik  
15 explain the basis of why this should be taken -- why  
16 this qualifies for being administratively noticed.

17 EXAMINER PRICE: Well, I don't think he  
18 needs to, because it's clear he asked the witness  
19 whether he was familiar whether the volume of futures  
20 goes down over time, and I suspect that if we look at  
21 this document, we are going to see that the volume of  
22 futures goes down over time.

23 MS. WILLIS: I'm sorry. I didn't mean --  
24 what I was going to was whether or not this is the  
25 type of information that should be properly

1     judicially noticed, that's what my point was, not to  
2     what the information shows and whether it's relevant.  
3     Whether it should and is reasonable and consistent  
4     with law to take administrative notice of this.

5                 EXAMINER PRICE:   It's the Chicago  
6     Mercantile Exchange.  It's just like doing a NYMEX  
7     future or --

8                 MR. KUTIK:   Or a stock price.

9                 EXAMINER PRICE:   A stock price.

10                MS. BOJKO:   Except the witness said he  
11     didn't -- wasn't familiar with this and that they  
12     don't subscribe to it.

13                EXAMINER PRICE:   He is not asking if he  
14     is familiar with it.  He is asking for judicial  
15     notice, administrative notice.  In a minute we will  
16     get to the question Mr. McNamee's raising when he  
17     asks him a question.  He hasn't asked him a question  
18     about this yet.

19                MR. SOULES:   Your Honor?

20                EXAMINER PRICE:   Sir.

21                MR. SOULES:   Sierra Club does not oppose  
22     taking administrative notice, but we would ask the  
23     prices associated with these volumes, which we don't  
24     have a hard copy of, obviously, also be taken  
25     administrative notice of.



1 EXAMINER PRICE: I am sorry. Can you --  
2 I didn't get the last -- you trailed off there.

3 MR. SOULES: I'm sorry, your Honor. So  
4 the PJM AEP Dayton Hub document shows the volumes of  
5 these forwards, but it doesn't include the prices.  
6 And so long as the Bench would take administrative  
7 notice of the prices, as well as the volumes, Sierra  
8 Club would not oppose.

9 EXAMINER PRICE: Mr. Kutik, do you have  
10 any opposition to taking administrative notice of the  
11 prices, as well?

12 MR. KUTIK: I do.

13 EXAMINER PRICE: Why?

14 MR. KUTIK: Since it's not been tendered  
15 as part of the examination of any witness. We could  
16 all think of good little facts we would like to put  
17 in the record untethered to witnesses.

18 MS. WILLIS: It has to do with the --

19 MR. McNAMEE: This hasn't been --

20 MR. KUTIK: It will be.

21 MS. WILLIS: It may have to do with the  
22 fact this is part of a document. It should be, you  
23 know, when you are considering the document, then  
24 entire document should be considered, not just  
25 portions.

1 EXAMINER PRICE: It's not a document.  
2 It's a compilation of data.

3 MS. WILLIS: Compilation.

4 EXAMINER PRICE: I will defer ruling on  
5 Sierra Club's request.

6 MR. SOULES: Thank you, your Honor.

7 EXAMINER PRICE: We are not nearly done  
8 with the examination of this witness, so we may get  
9 to that.

10 MR. KUTIK: Now, with regard to my  
11 question, your Honor?

12 EXAMINER PRICE: Yes, we will take  
13 administrative notice of these documents.

14 MR. KUTIK: Okay.

15 Q. (By Mr. Kutik) Dr. Choueiki, let's first  
16 look at the information with respect to natural gas  
17 futures settlements. We can see some information  
18 here with respect to estimated volume, do we not?

19 MS. BOJKO: Objection.

20 EXAMINER PRICE: Grounds?

21 MS. BOJKO: Now I think is the  
22 appropriate foundation objection, your Honor. He has  
23 not established, in fact, the reverse, the witness  
24 said that he's not familiar with CME. They don't  
25 subscribe. He's familiar with the name of the group,

1 but they don't subscribe to it, so he is not familiar  
2 with this particular document. There's been no  
3 foundation that he recognizes the document and he  
4 could be asked questions on the document.

5 Just as other witnesses were not  
6 permitted to -- we were not permitted to ask  
7 questions on publicly-available documents of  
8 FirstEnergy's with regard to investment calls and  
9 things of that nature. There has been no foundation  
10 laid for this document.

11 MS. WILLIS: Your Honor, if I might add,  
12 Dr. Choueiki said he has not looked recently at  
13 volume, so clearly he is not going to be familiar  
14 with this and hasn't looked at it, nor has he relied  
15 upon it in any analysis or any testimony, which seems  
16 to be part of the standard the Bench has followed in  
17 determining whether or not documents are --  
18 foundation is laid and whether documents come in or  
19 out.

20 EXAMINER PRICE: First of all, No. 1,  
21 with respect to CME Group, he may not have recognized  
22 that the CME Group is the Chicago Mercantile  
23 Exchange, but he certainly understood what the  
24 Chicago Mercantile Exchange was.

25 Mr. Kutik, if you care to lay a little

1 additional foundation for the benefit of this  
2 witness.

3 MR. KUTIK: Well, I should note, your  
4 Honor, I don't believe I do. Since you now have  
5 taken administrative notice, we are past that point.

6 EXAMINER PRICE: I understand.

7 Q. (By Mr. Kutik) My question, sir, is have  
8 you seen data like this; have you seen data similar  
9 to this?

10 A. I have.

11 Q. You know how to read a chart like this?

12 A. Yes.

13 Q. And now when you see the term "estimated  
14 volumes" on this, that has a meaning to you, does it  
15 not, as someone who follows the market?

16 A. Yes.

17 Q. And that's the volume of trades that are  
18 done for a particular month?

19 A. Correct.

20 Q. And do we see a pattern that's shown here  
21 with respect to volumes, correct?

22 A. That is correct.

23 Q. And would it be fair to say after the end  
24 of 2017, volumes of trades drop off pretty  
25 substantially?

1 MS. BOJKO: Objection.

2 EXAMINER PRICE: Grounds?

3 MS. BOJKO: Your Honor, he has not laid  
4 the foundation of the document.

5 EXAMINER PRICE: Overruled.

6 A. Are we looking at the gas or electric one  
7 now?

8 Q. We are looking at electric.

9 A. Oh, the electric.

10 Q. I'm sorry. Gas.

11 A. The electric?

12 Q. No. We are talking about gas. We are  
13 talking Henry Hub.

14 EXAMINER PRICE: Company Exhibit 199.

15 A. Yes, the prices go down.

16 Q. Not the prices. The volume.

17 A. I'm sorry. The volumes go down.

18 Q. Okay. Now, let's go to the information  
19 with respect to the PJM Dayton volume -- Dayton Hub.  
20 Would we make a similar observation with respect to  
21 trades, the volume of trades with respect to energy  
22 on the AEP Dayton Hub from this particular product  
23 that's shown?

24 A. Which is a 5-megawatt product?

25 Q. Yes.

1           A.     Generally we use the 50-megawatt product,  
2     but this is just a side note.  Yes, yes, the price --  
3     again, the volumes go down as you go further into the  
4     future.

5           Q.     And they go down pretty substantially  
6     after 2017, correct?

7           A.     Yeah.  They go below a thousand, although  
8     there are folks that trade.  You see there is some  
9     trading, but a lot less.

10          Q.     Now, your -- you are concerned, are you  
11     not, that rider RRS, as proposed, would be -- could  
12     potentially be considered a transition charge,  
13     correct?

14          A.     That is one of the reasons why we are  
15     recommending that the Commission deny it.

16          Q.     You would agree with me, would you not,  
17     that for something to be considered a transition  
18     charge, it would have to be a charge?

19                 MR. McNAMEE:  Objection.

20                 EXAMINER PRICE:  Grounds?

21                 MR. McNAMEE:  I think it asks for a legal  
22     conclusion as near as I can tell.

23                 EXAMINER PRICE:  Mr. -- Dr. Choueiki has  
24     already earlier in this proceeding, I believe  
25     yesterday, expressed his familiarity with 4928.38,

1 39, and 40. In fact, he came up with references  
2 unprompted. We understand he is not an attorney. He  
3 is not testifying to a legal conclusion. He is  
4 simply asking in his expertise what his regulatory  
5 interpretation is.

6 A. Here's the interpretation. It is -- it  
7 is tied to generation, and the Ohio Supreme Court  
8 just issued two orders, after the Commission order,  
9 remanding these specific charges back to the  
10 Commission in two other cases. So -- and given that  
11 it is tied to generation, the record is full of that,  
12 of that charge being tied to generation, that's why  
13 one of the reasons recommending the denial of this  
14 proposed RRS.

15 MR. KUTIK: I move to strike, your Honor.  
16 All I asked him was --

17 EXAMINER PRICE: I understand what you  
18 asked him and I understand your frustration, but I'm  
19 not going to strike his testimony, but I will direct  
20 him to answer your specific question and then,  
21 Mr. McNamee, on redirect, can expand on why they  
22 think these generation charges are at risk, if  
23 necessary, on redirect.

24 Q. (By Mr. Kutik) And the question to you,  
25 Dr. Choueiki, is would it be fair to say that to be a

1 transition charge, rider RRS would have to be a  
2 charge?

3 A. Correct. And it's staff opinion that it  
4 is going to be a charge.

5 Q. All right. And would it be fair to say  
6 if rider RRS was a credit, it would not be paying the  
7 companies any transition revenues?

8 A. It is not staff's opinion that it will  
9 not be a charge. It is staff's opinion it will be a  
10 charge.

11 MR. KUTIK: I move to strike, your Honor.

12 EXAMINER PRICE: I will grant the motion  
13 to strike this time.

14 Dr. Choueiki, please listen to Counsel's  
15 question and answer his question, only his questions.  
16 He is asking your interpretations, not what you think  
17 is going to happen in the future.

18 Q. And my question to you, sir, is, if rider  
19 RRS is a credit, it will not be paying the companies'  
20 any transition revenues; isn't that correct?

21 MR. SETTINERI: I'll just object, your  
22 Honor. It is ambiguous whether it is specific to a  
23 certain -- is it over the entire eight-year term or  
24 are we talking one year? Thank you.

25 MR. KUTIK: Whenever it's a credit, your



1 Honor.

2 EXAMINER PRICE: Thank you for the  
3 clarification.

4 A. So in year eight, if it's a credit, then  
5 for that year it will not be a charge.

6 Q. Okay. And you would agree with me that  
7 under the companies' proposal, no particular  
8 entities' generating costs are being recovered.

9 A. No, I do not agree.

10 Q. All right. Is -- do the companies have  
11 generation? They don't, do they?

12 A. No, but the charge is tied to generation.

13 Q. That's not my question. My question is,  
14 isn't it true that there is no entities' generation  
15 costs that are being recovered; isn't that true?

16 A. When you say "entity," you mean the three  
17 EDUs?

18 Q. Yes.

19 A. The transition -- the proposed RRS has  
20 nothing to do with the EDUs.

21 Q. Well, isn't it true that the rider RRS  
22 charge or credit will either be paid to or come from  
23 the three utility companies, correct?

24 A. I'm just struggling with the -- with your  
25 question because the charges that are in -- there are

1 charges and there are credits. The charges are tied  
2 to something that has nothing to do with the three  
3 companies.

4 Q. Why don't you try to listen to my  
5 question, sir.

6 MS. BOJKO: Objection.

7 MR. McNAMEE: Objection.

8 EXAMINER PRICE: That's very  
9 argumentative, Mr. Kutik, and I would also ask you to  
10 make sure that the witness has finished his answer  
11 and is not taking a brief pause.

12 MR. KUTIK: I am sorry.

13 Q. Have you finished your answer?

14 A. Yes.

15 Q. Dr. Choueiki, the companies do not own  
16 generation, correct?

17 A. That is correct.

18 Q. The companies do not have generation  
19 costs, correct?

20 A. They do not.

21 Q. Okay. So when the companies receive any  
22 type of charge, they are not recovering generation  
23 costs because they have none; wouldn't that be fair  
24 to say?

25 A. I cannot separate the original

1 application from the proposal in my mind because the  
2 numbers are identical on the charge side. So at one  
3 point in time these numbers were tied to generation.  
4 The only difference now is the company is, in their  
5 proposed rehearing, in the rehearing application,  
6 they are asking the Commission to forget about how  
7 the charges were developed. So that's what I am  
8 struggling with your question, respectfully.

9 Q. Well, respectfully, sir, I'm not sure you  
10 answered my question. And the question simply is  
11 this, because the companies have no generation costs,  
12 any charge that they would recover would not be to  
13 recover generation costs, correct?

14 A. I would agree with you with everything  
15 except proposed rider RRS.

16 Q. Okay. Would it be fair to say, sir, with  
17 respect to the staff's proposal, the amount of  
18 revenue -- the amount of the revenue requirement  
19 should be sufficient to support the needs to achieve  
20 grid modernization?

21 A. Are we talking about now rider DMR?

22 Q. Yes.

23 THE WITNESS: With that understanding,  
24 may I hear the question again?

25 EXAMINER PRICE: You may.

1 (Record read.)

2 A. No. Rider DMR is not a revenue  
3 requirements rider. But is rider DMR sufficient to  
4 achieve the objectives of grid modernization of the  
5 entire FE distribution system? And the answer is no.  
6 That is why there is another rider for that.

7 Q. This is a rider that's directed to make  
8 sure that the company can have sufficient access to  
9 capital, correct?

10 A. That's one of the reasons, yes.

11 Q. And we -- and part of the staff's  
12 proposal is trying to come up with a level of  
13 additional cash coming into the company that can  
14 secure an appropriate access to reasonably-priced  
15 capital, correct?

16 A. Correct. And I think Mr. Buckley  
17 discussed that.

18 Q. Right. So this --

19 MR. McNAMEE: Was the witness finished?

20 MR. KUTIK: I am sorry. I thought he  
21 was.

22 A. I'm finished.

23 Q. So this might be regarded as an effort to  
24 sort of prime the capital pump?

25 A. It's -- it's an incentive beside the --

1 the -- what is agreed in the stipulation on the 50  
2 basis points and -- and an infusion of cash to start  
3 as fast as the companies can and as fast as the  
4 Commission orders them to do so, to, upfront, with  
5 hopefully more favorable conditions and lower  
6 interest.

7 Q. So are you agreeing with me?

8 A. Yes.

9 Q. Okay. Now, this is a provision in the  
10 staff's proposal about assuring that FirstEnergy  
11 Corp.'s headquarters remains in Akron, corrects?

12 A. I think Mr. Buckley had that condition,  
13 yes, as a recommendation to the Commission.

14 Q. Okay. And that's part of the staff  
15 proposal that you are testifying here for, correct?

16 A. Correct.

17 Q. And would it be fair to say that the  
18 reason why that is in the staff's proposal is that  
19 staff recognizes there are substantial economic  
20 benefits for having the FirstEnergy Corp.'s  
21 headquarters in the City of Akron?

22 MR. McNAMEE: Objection.

23 MS. BOJKO: Objection.

24 MR. McNAMEE: I believe this was covered  
25 fairly extensively in cross-examination of

1 Mr. Buckley whose testimony it appears.

2 EXAMINER PRICE: Ms. Bojko.

3 MS. BOJKO: I was going to say the same  
4 thing, your Honor.

5 EXAMINER PRICE: Overruled. He's the  
6 overarching policy witness. He can answer this if he  
7 knows. If he doesn't know, he can say "I don't  
8 know."

9 A. I agree with Mr. Buckley actually that  
10 there is an economic positive to have the companies'  
11 headquarter be in Akron and employ all these  
12 thousands of employees.

13 Q. There's a substantial economic benefit,  
14 would you agree?

15 A. I agree there is -- I am not qualified to  
16 decide how big it is and what's "substantial," but it  
17 is -- this is an economic positive to have positive  
18 effect to have the headquarter of FirstEnergy Corp.  
19 stay in Ohio.

20 Q. It's big enough and positive enough that  
21 that's one of the conditions that the staff  
22 recommends?

23 A. Yes.

24 MS. BOJKO: Objection.

25 EXAMINER PRICE: Grounds?

1 MR. KUTIK: He already answered.

2 THE WITNESS: I'm sorry. I already  
3 answered.

4 EXAMINER PRICE: Dr. Choueiki, give  
5 everybody a chance, especially your own counsel, to  
6 make objections.

7 MR. McNAMEE: Actually, while we're --  
8 perhaps this would be a time to take a break?

9 MR. KUTIK: I literally have one question  
10 and then I would just like to confirm with my team  
11 and I think I would be done.

12 MR. McNAMEE: Okay.

13 THE WITNESS: I can handle that.

14 EXAMINER PRICE: Please proceed.

15 Q. (By Mr. Kutik) Would it be fair to say  
16 that the staff has not provided any evaluation of the  
17 impact to the greater Akron area or Ohio on keeping  
18 FirstEnergy Corp.'s headquarters in Akron?

19 MS. BOJKO: Objection.

20 EXAMINER PRICE: Grounds?

21 MS. BOJKO: Your Honor, this is the exact  
22 topic area that I tried to explore with Mr. Buckley  
23 and it was contained in his testimony and I was  
24 limited in my cross-examination. It is highly  
25 prejudicial to now let a different witness talk to

1 the same subject matter I tried to explore with  
2 regard to staff's analysis on this exact same issue  
3 after cross-examination has been completed by myself.

4 EXAMINER PRICE: Fair enough. Sustained.

5 Q. Did the staff do an analysis of the  
6 economic impact of keeping FirstEnergy's headquarters  
7 in Akron, the impact being on the greater Akron area  
8 or Ohio?

9 MS. BOJKO: Objection. Same objection.

10 EXAMINER PRICE: Sustain the objection.

11 I thought Mr. Buckley indicated they did  
12 not perform an analysis.

13 MR. KUTIK: They did not perform an  
14 analysis?

15 MR. McNAMEE: I thought that was right.

16 EXAMINER PRICE: I think that's what  
17 Mr. Buckley testified to.

18 MR. KUTIK: If we can stipulate to that.

19 MS. WILLIS: I think the record would  
20 speak to that. I don't think we need to stipulate  
21 things.

22 EXAMINER PRICE: The staff can stipulate  
23 to whatever they choose to.

24 MR. McNAMEE: I can't stipulate to it. I  
25 don't remember specifically; though, that does seem



1 right.

2 MR. KUTIK: And he's supposedly the  
3 catch-up, catchall --

4 THE WITNESS: Catchall.

5 MR. KUTIK: -- cleanup witness.

6 EXAMINER PRICE: We will investigate this  
7 question while you are conferring with your team, so  
8 we will defer ruling on this objection.

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

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

11 (Discussion off the record.)

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

14 MR. KUTIK: Your Honor, we have  
15 investigated the transcript, and your Honor, as  
16 usual, is correct. So I have no further questions at  
17 this time.

18 EXAMINER PRICE: Redirect?

19 MR. McNAMEE: If I could have a few  
20 moments to confer. I suspect not.

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

22 (Discussion off the record.)

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

25 Mr. McNamee, redirect?

1 MR. McNAMEE: No questions, your Honor.

2 Staff would move for the admission of  
3 Staff Exhibit 15.

4 EXAMINER PRICE: Thank you.

5 Mr. Soules, in light of the fact that the  
6 questioning did not come back around to you, we are  
7 going to deny your request to take administrative  
8 notice of the pricing information. I was hoping you  
9 would have the opportunity to ask questions, but it's  
10 not meant to be.

11 MR. SOULES: Thank you, your Honor.

12 MR. KUTIK: Your Honor, with respect to  
13 the staff's motion, may I be heard?

14 EXAMINER PRICE: For admission?

15 MR. KUTIK: Yes.

16 EXAMINER PRICE: Sure.

17 MR. KUTIK: Your Honor, we would not  
18 object, except to page 14, starting at line 6, after  
19 the word "charge" and through the end of line 7. We  
20 believe that that is inappropriate speculation for  
21 the witness, and it's an inappropriate topic for the  
22 Commission to consider matters of federal regulatory  
23 procedure, and rules and regulations and laws are  
24 matters for those entities to determine and not for  
25 the Commission.

1           You may remember previously, your Honor,  
2       with respect to testimony by Mr. Scarpignato, by  
3       Mr. Campbell, that I did move to strike certain  
4       issues with respect to preemption, and the Bench did  
5       grant those motions. And so, in that spirit, your  
6       Honor, we would move -- we would oppose the admission  
7       of this exhibit only with respect to those two lines.

8           EXAMINER PRICE: Could you give me the  
9       reference again? You caught me by surprise.

10          MR. KUTIK: Page 14, starting at line 6,  
11       after the word "charge" and through line 7.

12          And there's also -- I'm sorry. And also  
13       on page 16, similarly, on line 9, after the word  
14       "charge" through line 10.

15          MS. WILLIS: Is this a motion to strike?

16          MR. KUTIK: It's opposing the admission  
17       of those.

18          MR. McNAMEE: I'm sorry, what was the  
19       second thing?

20          MR. KUTIK: Sure. It's page 16.

21          EXAMINER PRICE: I think it's  
22       functionally the same, Ms. Willis.

23          MR. KUTIK: Yes.

24          MS. WILLIS: I guess I would have  
25       expected that to be at the beginning of Mr. --

1 Dr. Choueiki's testimony like the other motions to  
2 strike.

3 EXAMINER PRICE: I think it's our usual  
4 practice, but I can't say there is an actual rule  
5 saying you have to do it within that time frame or  
6 you waive for all times.

7 Mr. McNamee.

8 MR. McNAMEE: Your Honor, whether this is  
9 speculative or not doesn't really matter. What is  
10 being expressed here is the staff's concern that this  
11 modified proposal may be perceived as perhaps an  
12 inrun, if you will, around the FERC order, and it  
13 simply reflects part of staff's thinking. Whether  
14 that's valid or not is certainly something that can  
15 be discussed on brief. What implications that  
16 decision -- decision that FERC has or doesn't have  
17 would be matters that can be discussed on brief.

18 This simply reflects part of the staff's  
19 thinking process and leading to the conclusion that  
20 it -- that it reached. There's no request that the  
21 FERC do anything differently or -- or anything of the  
22 sort here. So I think it's a perfectly appropriate  
23 exposition of the staff's reasoning. Whether that  
24 was reasonable, is good or bad, is something for  
25 people to argue about.

1           MR. KUTIK: And that's exactly the point,  
2 your Honor. We should not have to argue about the  
3 merit of the staff's speculation about regulatory  
4 policy. That's an issue for federal regulators to  
5 determine and mull and have arguments; it's not this  
6 Commission.

7           EXAMINER PRICE: Anybody else --

8           MR. SOULES: Your Honor.

9           EXAMINER PRICE: -- want to speak to  
10 this? Mr. Settineri -- Mr. Soules beat you to it  
11 actually.

12           MR. SOULES: Just very briefly, your  
13 Honor. The FERC issues with respect to modified  
14 rider RRS certainly are relevant and within the scope  
15 of this hearing particularly given that  
16 Ms. Mikkelsen's rehearing testimony discusses the  
17 FERC problems associated with the original rider RRS.

18           EXAMINER PRICE: Mr. Settineri.

19           MR. SETTINERI: Your Honor, I would also  
20 say this argument has been waived. There was no  
21 objection when I asked specific questions of Mr.  
22 -- Dr. Choueiki of this language. The record  
23 contains questions and answers directed at this  
24 testimony, and to strike these sentences at this time  
25 would be confusing to the record and it's been

1 waived.

2 EXAMINER PRICE: Ms. Bojko.

3 MS. BOJKO: I would just say I think it's  
4 prejudicial to do it after people's cross, after  
5 parties' cross of the witness. Had it been -- had it  
6 been done prior to the cross-examination, people may  
7 have taken different questions -- or asked different  
8 testimony -- questions regarding the testimony and  
9 the proposal put before us. So I think it's  
10 prejudicial, at this late stage, to strike testimony.  
11 In addition to Mr. Settineri's testimony that --  
12 statement that they may already have testimony on  
13 these sentences.

14 EXAMINER PRICE: Mr. Kutik, final word.

15 MR. KUTIK: Well, your Honor, we  
16 certainly didn't waive it, and it certainly isn't  
17 prejudicial. If something isn't appropriate to be  
18 part of the record, because it's not appropriate for  
19 the Commission to consider, it's not appropriate for  
20 the Commission to consider whenever we raise it as  
21 long as this witness is on the stand before the  
22 document is admitted.

23 EXAMINER PRICE: Issues regarding FERC's  
24 authority over the wholesale markets are essentially  
25 questions of preemption -- preemption of essentially

1 questions that are constitutional. The Commission is  
2 an administrative agency with powers specifically  
3 granted by the Revised Code. It has no authority to  
4 declare matters of unconstitutionality, Reading  
5 versus Public Utilities Commission, 109 Ohio St.3d  
6 193, 195, (citing Panhandle, 56 Ohio St.2d 224, 346.)  
7 Mr. Kutik's motion is granted.

8 MR. McNAMEE: Thank you, your Honor.

9 Is my motion granted subject to that?

10 EXAMINER PRICE: Subject to that, staff's  
11 motion for admission is granted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 MR. McNAMEE: Nothing further.

14 EXAMINER PRICE: Dr. Choueiki, you are  
15 excused.

16 MR. KUTIK: I do have a matter to bring  
17 off the record.

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

19 (Discussion off the record.)

20 EXAMINER PRICE: Ms. Bojko.

21 MS. BOJKO: Thank you, your Honor. At  
22 this time OMAEG would like to proffer Dr. Choueiki's  
23 testimony in its entirety as filed in the record on  
24 June 29, 2016, under Ohio Rules of Evidence 103 and  
25 Rule 4901-1-15(F). Thank you.

1 MR. SOULES: Sierra Club would join that  
2 proffer.

3 EXAMINER PRICE: I am not sure of the  
4 propriety of proffering another party's testimony,  
5 but subject to that uncertainty, your proffer is  
6 noted for the record.

7 MS. BOJKO: Thank you, your Honor.

8 EXAMINER PRICE: Mr. Settineri.

9 MR. SETTINERI: Thank you, your Honor.  
10 Pursuant to the Bench's request we have prepared  
11 revised attachments from -- from Dr. Kalt's  
12 testimony, JPK-RH-1, JPK-RH-2, and JPK-RH-3. Because  
13 we have confidential material on two of the  
14 attachments, 1 and 2, 3 being public, I would assume  
15 at this time you would like us to go ahead and mark  
16 these as exhibits. These are -- I assume will be --  
17 they are part of Dr. Kalt's testimony.

18 EXAMINER PRICE: Yes. So we will mark  
19 the public version of the exhibits as P3/EP5A 19 and  
20 the confidential versions as P3/EP5A 20C.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 MR. SETTINERI: And, your Honors, at this  
23 time, if I could pass out to the Bench, if I could  
24 pass those exhibits out.

25 EXAMINER PRICE: And the court reporter.



1 MR. SETTINERI: And the court reporter as  
2 well.

3 EXAMINER PRICE: Any objection to the  
4 admission of these exhibits?

5 MR. KUTIK: No, your Honor.

6 EXAMINER PRICE: Seeing none, they will  
7 be admitted.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 EXAMINER PRICE: Let's go off the record  
10 for a second.

11 (Discussion off the record.)

12 EXAMINER PRICE: Let's go back on.

13 Mr. Kutik.

14 MR. KUTIK: Your Honor, we request that  
15 the Bench order any parties that have filed testimony  
16 today to provide -- to serve us with a copy with  
17 e-mail, to make sure that those copies include the  
18 confidential versions, and that we also receive  
19 workpapers, and we receive all those things by 5:30  
20 today.

21 EXAMINER PRICE: Any objections?

22 MS. WILLIS: Yes, your Honor. I would  
23 object to the provision of workpapers. I think it's  
24 a late-filed discovery request. But if your Honor so  
25 rules it is appropriate, we would have the

1 expectation that that ruling would apply to the  
2 companies' surrebuttal as well.

3 MR. KUTIK: I would think that's a matter  
4 of standard practice, your Honor.

5 EXAMINER PRICE: So you have no  
6 objection.

7 MR. KUTIK: I certainly do not.

8 EXAMINER PRICE: At this time the Bench  
9 is going to direct the parties filing rebuttal  
10 testimony to serve copies to all parties  
11 electronically by 5:30 including public versions,  
12 confidential versions, and all workpapers by 5:30  
13 today. And next Friday when the company files its  
14 surrebuttal by 4 o'clock, it will serve all parties  
15 by 5:30.

16 MS. WILLIS: Thank you.

17 MR. McNAMEE: When are we getting back  
18 together again?

19 EXAMINER PRICE: We are taking our  
20 rebuttal witnesses on Thursday and Friday.

21 MR. McNAMEE: At 9:00 or 10:00?

22 EXAMINER PRICE: Yeah, we will do  
23 Thursday at 9:00; witness order to be announced.

24 MR. McNAMEE: Okay.

25 MR. KUTIK: We can talk about that

1 scheduling off the record.

2 EXAMINER PRICE: All right.

3 MS. WILLIS: Your Honor, I would -- and I  
4 know what the reaction is going to be, but for the  
5 record I would note that we would believe it would be  
6 an appropriate ruling and practice to have motions to  
7 strike the testimony of the witnesses that are coming  
8 in from out of state filed and ruled upon before the  
9 witnesses take the stand simply because we've had two  
10 witnesses now where motions to strike were made, they  
11 were successful, and that witness came in from out of  
12 state. We spent the time and expense to bring them  
13 in, and two witnesses now have not been  
14 cross-examined and have been sent home.

15 So we would ask that the ruling be that  
16 motions to strike testimony be in writing and be  
17 presented before the witness takes the stand and  
18 ruled upon before the witness takes the stand and is  
19 brought into this jurisdiction in the name of  
20 administrative efficiency and cost savings.

21 EXAMINER PRICE: That's not been my  
22 practice and I am not going to make that ruling. I  
23 think it unfortunate what happened but there are --  
24 there are things that happen in litigation.  
25 Witnesses are prepared, brought in, and don't

1 testify. Hearings are settled at the last minute.

2 Things happen. It's life in litigation.

3 Mr. Fisk.

4 MR. FISK: Thank you, your Honors.

5 Sierra Club would respectfully move for  
6 reconsideration regarding the motion to strike -- the  
7 ruling on the motion to strike on limited portions of  
8 Mr. Comings' testimony that provide actual data -- or  
9 based on actual data regarding energy, capacity, and  
10 natural gas prices. They don't involve any  
11 forecasts. They don't involve any projections. It's  
12 simply here is the actual data.

13 My understanding, based on the  
14 discussions this morning, was that actual market  
15 prices have been deemed admissible in this hearing,  
16 and certain limited portions of the large sections  
17 that Mr. Kutik asked to strike actually included just  
18 such data.

19 Specific portions that we are requesting  
20 reconsideration on are page 2 starting on line 5, the  
21 sentence that starts "the ICF" and ending on line 7  
22 after it says "See confidential Table 1." Page 7 --

23 MR. KUTIK: I'm sorry. Can you say that  
24 again?

25 MR. FISK: So, yes, to page 2, starting

1 at line 5, the sentence at the very end that says --  
2 starts "the ICF," that complete sentence which then  
3 ends on line 7.

4 The second is page 7, lines 10 through  
5 16, which discuss how natural gas prices have changed  
6 since the companies submitted their proposal, and I  
7 would -- it would end on line 16 with confidential  
8 Table 1 at the end of that. So all of that  
9 information discusses just actual natural gas prices.

10 Page 8, lines 1 and 2, and first two  
11 lines of the table, the 2015 and 2016 data which is  
12 actual data, and then page 11 starting at line 9 and  
13 going over to page 12, line 11, all of that discusses  
14 actual energy prices and how they have compared to  
15 the forecasts that the companies relied on, as  
16 does -- we would also request for Figure 5 which  
17 compares the companies' forecast to the actual  
18 prices.

19 And then finally, page 17, lines 12  
20 through 24, only discusses comparison of actual --  
21 actual capacity prices compared to ICF's forecast,  
22 and so we believe that all of those fit within the  
23 earlier ruling today, the admission of various  
24 exhibits that have had actual prices, we are relying  
25 on P3/EPSA's testimony from Dr. Kalt.

1           And so consistent with all of those we  
2 believe those portions of Mr. Comings' testimony  
3 should be allowed into the record.

4           EXAMINER PRICE: We are not going to  
5 rule -- we are going to hear Mr. Kutik. We are not  
6 going to rule today, we will take it under  
7 advisement, but I do want to note that I did try to  
8 get you to distinguish between projections and actual  
9 prices. And, you know, sometimes you make decisions  
10 in litigation about what you are willing to argue,  
11 and it doesn't help you.

12           MR. FISK: Respectfully, your Honor, I  
13 did go back to the transcript and I -- when you asked  
14 that question regarding facts, actual data being  
15 facts, and my response was -- I started with "I  
16 believe those facts go directly towards what is  
17 likely to be the cost, and if charges -- charges and  
18 credits under the -- under the modified proposal...."  
19 I never made -- I never made the argument that those  
20 facts should not come in. In fact, the only person  
21 that did make that argument was Mr. Kutik. So I  
22 don't --

23           EXAMINER PRICE: I believe you have clung  
24 to your lifeline.

25           MR. FISK: What?

1 EXAMINER PRICE: I believe you've grabbed  
2 the lifeline.

3 MR. FISK: Yes.

4 EXAMINER PRICE: Mr. Kutik.

5 MR. KUTIK: Well, your Honor, I did make  
6 the argument that this material was not within the  
7 scope and that's still our position.

8 But understanding your ruling, there's a  
9 fundamental problem with raising this issue right now  
10 and that is the witness isn't here. You obviously  
11 raised the issue. Mr. Fisk, whatever his response  
12 may have meant, didn't argue enough to satisfy you  
13 that you should go ahead and admit this material.

14 If you had, or if you had denied our  
15 motion to strike, I had an extensive line of  
16 questions for Mr. Comings. We had an extensive  
17 discussion in his deposition about the prices and the  
18 effective prices. And so this is no different than  
19 coming in at some other point in time and saying, oh,  
20 by the way, we want these facts in without an  
21 opportunity for us to respond with the witness or  
22 the -- or the party that's sponsoring it, so it's  
23 fundamentally unfair to do that.

24 He made a litigation choice, you made  
25 your ruling, and that's the way we are, so the record

1     should stand.

2                   EXAMINER PRICE:   Okay.   We will take it  
3     under advisement, and we will let everybody know  
4     either when we reconvene or through a written entry.

5                   MR. FISK:   Thank you, your Honor.

6                   EXAMINER PRICE:   Anything else?

7                   Okay.   We will reconvene next Thursday,  
8     July 21, at 9 o'clock.

9                   Thank you, all.   We are adjourned  
10                   (Thereupon, at 4:12 p.m., the hearing was  
11     adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Friday, July 15, 2016, and carefully compared with my original stenographic notes.

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Karen Sue Gibson, Registered  
Merit Reporter.

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Carolyn M. Burke, Registered  
Professional Reporter.

(KSG-6222)

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/29/2016 4:21:26 PM**

**in**

**Case No(s). 14-1297-EL-SSO**

Summary: Transcript in the matter of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company hearing held on 07/15/16 - Volume V electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.