

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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PROCEEDINGS

before Mr. Gregory Price and Ms. Megan Addison,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 10:00 a.m. on Monday,
July 25, 2016.

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REHEARING VOLUME VIII

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COMPANIES EXHIBITS

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202 - Direct Testimony of 1389 --
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203 - Excerpt from FERC Form 1, 1396 --
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Monday Morning Session,
July 25, 2016.

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EXAMINER PRICE: Let's go on the record.

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

My name is Gregory Price. With me is Megan Addison. We are the Attorney Examiners assigned to preside over today's hearing.

We'll dispense taking appearances this morning, and Consumers' Counsel can call our next witness.

MS. WILLIS: Thank you, your Honor. OCC calls to the stand Matthew I. Kahal.

(Witness sworn.)

EXAMINER PRICE: Please be seated and state your name and business address for the record after you turn on your mic, please. You need to press on again. There we go.

1 THE WITNESS: My name is Matthew I.
2 Kahal. Business address is 1108 Pheasant Crossing,
3 Charlottesville, Virginia 22901.

4 - - -

5 MATTHEW I. KAHAL
6 being first duly sworn, as prescribed by law, was
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 By Ms. Willis:

10 Q. Good morning, Mr. Kahal.

11 A. Good morning.

12 Q. For purposes of this proceeding, by whom
13 are you employed and in what capacity?

14 A. I'm employed as a consultant to the
15 Office of Consumers' Counsel.

16 MS. WILLIS: At this time, your Honor, I
17 would like marked for identification purposes as OCC
18 Exhibit No. 46, the Rehearing Rebuttal Testimony of
19 Matthew I. Kahal.

20 EXAMINER PRICE: It will be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Mr. Kahal, do you have in front of you
23 what has been marked for identification purposes as
24 OCC Exhibit No. 46?

25 A. Yes, I do.

1 Q. And can you identify that exhibit -- what
2 that document is, please?

3 A. Yes. That's my rehearing rebuttal
4 testimony.

5 Q. And was that rehearing rebuttal testimony
6 prepared by you or at your direction or supervision?

7 A. Yes.

8 Q. And do you have any corrections,
9 additions, or deletions to that testimony?

10 A. I don't.

11 Q. And if I were to ask you today the
12 questions posed in OCC No. 46, would your answers be
13 the same?

14 A. They would.

15 MS. WILLIS: Your Honor, at this time, I
16 would move for the admission of OCC Exhibit No. 46
17 subject to cross-examination.

18 EXAMINER PRICE: We'll defer ruling on
19 admission of the exhibit until the conclusion of
20 cross-examination.

21 MR. KUTIK: Your Honor.

22 EXAMINER PRICE: Motions to strike?

23 MR. KUTIK: We do have some motions to
24 strike.

25 EXAMINER PRICE: We will come back to

1 OMAEG.

2 MR. KUTIK: Your Honor, we have two
3 excerpts that we would move to strike, both on the
4 same grounds.

5 The first excerpt is on page 10. The
6 sentence starting on line 16 and going to the end of
7 that page. And then the next would be starting on
8 the following page, the Question and Answer No. 14
9 which starts at the top of page 11, line 1 and
10 continues on through page 12, line 5.

11 The basis for our motions, your Honor, is
12 that these comments by Mr. Kahal relate to alleged
13 past decisions that management made with respect to
14 the companies' financial circumstances or their
15 businesses.

16 As the Bench, I believe, has previously
17 indicated in its rulings, past decisions by
18 FirstEnergy management are irrelevant to this case,
19 and particularly in terms of the status where we are
20 now in terms of looking at rider DMR. So, you know,
21 our task is to look at the current status of the
22 companies, the future status of the companies, but
23 not in terms of extended discussion of where we are
24 and why we are here.

25 EXAMINER PRICE: Ms. Willis.

1 MS. WILLIS: Yes. Your Honor, the motion
2 to strike should be denied. The relevancy is clearly
3 that the company is in a -- is in a position, and
4 given that position, it's -- it's important and it is
5 relevant to look at how they got there, especially
6 when we are trying to determine what remedies, if
7 any, should be looked at and, in fact, what remedies
8 should customers be required to implement.

9 So the -- how we got here and how the
10 company got here is certainly relevant to whether or
11 not and what action should be taken and by whom and
12 whose responsibility that actually lies with. So I
13 believe it's highly relevant, especially given the
14 staff's position, the staff's proposal, as well as
15 the companies' proposal in this proceeding.

16 And I would add, your Honor, this is a
17 witness, an expert witness. He is entitled to
18 present his opinion. Part of his opinion relies upon
19 the fact that we have gotten here and that -- and the
20 responsibility for where FirstEnergy is lies with
21 FirstEnergy and not necessarily the customers that
22 are being asked to bail the utility out.

23 EXAMINER PRICE: Mr. Kutik, final word?

24 MR. KUTIK: Well, certainly, your Honor,
25 with respect to the companies' proposal regarding

1 rider RRS, it has nothing to do with the companies'
2 financial status in terms of where it is now.

3 EXAMINER PRICE: Well, this is rebutting
4 staff's --

5 MR. KUTIK: Right. She said it related
6 to the companies' proposal and I was pointing out it
7 doesn't relate to the companies' proposal.

8 EXAMINER PRICE: That's right. I think
9 she misspoke. She meant the proposal on the table.

10 MS. WILLIS: Thank you.

11 EXAMINER PRICE: Okay. We are going to
12 grant in part and deny in part the motion. The
13 motion will be granted with respect to page 10
14 beginning at line 16 beginning with the word "Rather"
15 and ending with the word "generation" on line 20.

16 It's going to be denied with respect to
17 page 11; although, I acknowledge the question is
18 concerned with financial decisions, I believe that
19 the answer just includes financial information about
20 what is and what is not within the companies'
21 financial control and is less -- is less an argument
22 about how they got there than where they are at right
23 now. So we will deny the motion with respect to
24 Question 14 on page 11 and -- or and page 12, lines 1
25 through 2. We will grant it with respect to page 12,

1 lines 4 and 5, just arguing about how we got here.

2 MR. KUTIK: So on -- you're striking
3 anything else -- anything other than on page 10, your
4 Honor?

5 EXAMINER PRICE: Page 12, lines 4 and 5,
6 "Customers should not be punished...."

7 MS. WILLIS: Your Honor, for the record,
8 we would proffer Mr. Kahal's testimony that has been
9 stricken.

10 EXAMINER PRICE: Noted. Thank you.

11 Mr. Kutik.

12 MR. KUTIK: That concludes our motions to
13 strike, your Honor.

14 EXAMINER PRICE: Okay. OMAEG?

15 MS. GHILONI: No questions, your Honor.

16 EXAMINER PRICE: RESA --

17 MS. PETRUCCI: No questions.

18 EXAMINER PRICE: -- EPSA, whoever?

19 The Company?

20 MR. KUTIK: Thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Kutik:

24 Q. Good morning, Mr. Kahal. Let me see if
25 we can agree on a couple of things.

1 A. Good morning, sir.

2 Q. You would agree with me that electric
3 utilities are capital intensive.

4 A. Yes.

5 Q. You would agree with me that companies --
6 businesses like the companies being capital
7 intensive, it's important they have access to
8 capital.

9 A. Yes, and as a clarification, "companies,"
10 we're referring to the three companies that are the
11 subject of this proceeding.

12 Q. Yes. And for businesses like the
13 companies, it's also important that they have access
14 to liquidity?

15 A. Yes.

16 Q. Now, one of the things that's important
17 in terms of having access to capital and having
18 access to liquidity is a company's credit rating,
19 correct?

20 A. Yes.

21 Q. You are aware, are you not, that both
22 Moody's and S&Ps have put -- and S&P have put
23 FirstEnergy Corp. and its affiliates on negative
24 outlook?

25 A. Yes.

1 Q. And the fact that these two ratings
2 agencies have put these companies on negative outlook
3 indicates a likelihood that the rating agencies may
4 downgrade the credit ratings within the next year.

5 A. It's a possibility.

6 Q. Well, it's an increased probability,
7 correct?

8 A. As compared to where they were before
9 they did the negative outlook as compared to that,
10 yes.

11 Q. Now, among the factors that could lead to
12 a downgrade are if the PUCO rejects or materially
13 modifies rider RRS.

14 A. Yes.

15 Q. Another factor that could lead to a
16 downgrade is if alternate measures would not enable
17 the companies to achieve client -- appropriate client
18 profile in a timely manner. In other words --

19 A. Did you say "client profile"?

20 Q. Or credit profile.

21 A. Credit profile, yes.

22 Q. And another thing that could lead to a
23 downgrade is if without rider RRS, the companies
24 would not be expected to maintain a CFO to debt ratio
25 greater than 14 percent.

1 A. That was Moody's. I don't recall a
2 statement by Standard & Poor's to that effect.

3 Q. But Moody's said that.

4 A. Yes.

5 Q. Now, you would agree with me that credit
6 ratings of triple B minus or baa3 are subpar for a
7 regulated utility, correct?

8 A. Yes, subpar in the sense of being below
9 average, yes.

10 Q. Well, you've used the term "subpar" to
11 describe utilities with -- subpar to describe ratings
12 that regulated utilities have had at the BBB-minus or
13 Baa3 level, correct?

14 A. Sure. And that's what I meant by
15 "subpar." It a below-average rating in the electric
16 utility industry.

17 Q. All right. And wouldn't you agree with
18 me that such ratings for a regulated utility are
19 relatively weak?

20 A. Relatively, yes. In the sense of being
21 below average, yes.

22 Q. And would you also agree with me that one
23 notch below that, that is at BB-plus, would be quite
24 unusual for a regulated utility?

25 A. Not unprecedented but unusual. There are

1 not too many electric utilities that are below
2 BBB-minus or Baa3. It happens occasionally but the
3 vast majority will, you know, BBB-minus or higher.

4 Q. All right. So it would be quite unusual,
5 correct?

6 A. Yes. It would be unusual, yes.

7 Q. Okay. Now, investors looking at a
8 utility subsidiary may take into account the strength
9 or weakness of its parent, correct?

10 A. Yes. Standard & Poor's more so than
11 Moody's, but it is taken into account.

12 Q. There could be a number of adverse
13 factors or adverse effects, rather, on the companies
14 if their credit ratings fell below investment grade,
15 correct?

16 A. Sure.

17 Q. And one of those things would be if
18 credit -- credit slippage could result in reduced
19 access to capital and sharp increases in the cost of
20 capital.

21 A. By "slippage" I assume you mean a credit
22 downgrading?

23 Q. I do.

24 A. I think that's what the term means, if
25 there is a credit downgrading below investment grade,

1 there could be adverse consequences, including an
2 increase in the cost of borrowing. It could happen.

3 Q. Okay. And when we say "increase," it
4 could be sharp increases, correct?

5 A. That would depend upon market conditions.

6 Q. So the answer would be "yes."

7 A. The answer would be possibly. It's
8 possible.

9 Q. Well, haven't you, in the past, talked
10 about credit downgrades from BB-minus as including
11 potentially sharp increases in credit -- in the cost
12 of borrowing?

13 A. I can't recall the specific instances,
14 but I don't -- I mean I don't disagree with the
15 statement that under certain circumstances it
16 could -- being downgraded below investment grade
17 could lead to a significant increase in the cost of
18 borrowing.

19 Q. Okay. Well, again, you have used the
20 phrase before, in terms of looking at utilities that
21 had credit ratings of BBB-minus, and if they fell
22 below that, they could suffer sharp increases in the
23 cost of capital, correct?

24 A. I'll take your word for it. I can't
25 remember specific instances. I have been testifying

1 on cost to capital and credit issues for about 30
2 years, so it's entirely possible I've used that term.

3 Q. Well, let's talk about that then.

4 A. Sure.

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

6 EXAMINER PRICE: You may.

7 MR. KUTIK: Your Honor, at this time I
8 would like to have marked as Company Exhibit 2000 --
9 202.

10 MS. WILLIS: It seems like 2000.

11 MR. KUTIK: More than a Freudian slip.
12 The direct testimony of Matthew I. Kahal in the
13 matter before the State of Maryland Public Service
14 Commission entitled "In the Matter of the Merger of
15 FirstEnergy Corp. and Allegheny Energy, Inc.," Case
16 No. 9233.

17 EXAMINER PRICE: It will be so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. (By Mr. Kutik) Mr. Kahal, I have handed
20 you what has been marked for identification as
21 Company Exhibit 202. Do you recognize this as your
22 testimony from a matter that you were involved in in
23 the State of Maryland?

24 A. Yes.

25 Q. And in this case you were looking at the

1 merger of FirstEnergy Corp. and Allegheny Energy
2 Inc., correct?

3 A. That's correct.

4 Q. And both of those companies had credit
5 ratings in the BBB to BBB-minus range, correct?

6 A. I'll accept that subject to check. I
7 can't recall what the credit ratings were five, six
8 years ago.

9 Q. Okay. And let me have you turn to
10 page 21 of your testimony.

11 A. Yes.

12 Q. And starting on line 18 -- excuse me,
13 page --

14 A. 21?

15 Q. On page 21, starting at line 12, you say
16 "In the short term, at least, it appears unlikely
17 that the merger will give rise to material
18 improvements in credit quality. Both companies are
19 at or close to the lowest rung of investment grade,
20 and this may be due in part to unregulated
21 operations. Any credit quality slippage could result
22 in reduced access to capital and sharp increases in
23 the cost of capital." That's what you said in
24 Maryland, correct?

25 A. Yes.

1 Q. Now, falling below investment grade
2 could, depending upon the debt instrument, limit the
3 pool of possible investors, correct?

4 A. Yes, in the sense that there are certain
5 mutual funds and pensions that, by their own
6 policies, will choose only to invest in investment
7 grade debt securities.

8 Q. Okay. And, again, falling below
9 investment grade, depending upon the instrument,
10 could lead to a less-liquid market being available to
11 the companies, correct?

12 A. It might or might not.

13 Q. But it might.

14 A. Might.

15 Q. Okay. It could also lead to a higher
16 cost of long-term debt.

17 A. Yes. I think I already said that, yes.

18 Q. And it could lead to an increase in
19 collateral requirements.

20 A. Yes. I'm not predicting that could
21 happen. That's a possibility, yes.

22 Q. And it could lead to more onerous
23 contract terms or conditions, correct?

24 A. Again, that's a possibility.

25 Q. Now, regarding the companies' secured

1 debt, you would agree with me that the amount of
2 secured debt is limited by a number of things,
3 correct?

4 A. It's limited by whatever the covenants
5 are for the indenture associated with that debt, yes.

6 Q. Okay. So, for instance, it's limited to
7 the indenture document, correct?

8 A. The indenture document is controlling.

9 Q. Okay. So the answer to my question is
10 yes.

11 A. Yes.

12 Q. It's limited by the amount of bondable
13 property available.

14 A. That's correct. Which is something that
15 changes over time.

16 Q. Right. And it's also limited by any lien
17 limitations in unrestricted debt indentures, correct?

18 A. Sure, yes.

19 Q. Now, you don't know the companies'
20 current balance to be able to draw on that debt,
21 correct?

22 A. Let me see if I understand the question.
23 If you are asking me if I know what their capability
24 is in terms -- the quantitative capability of issuing
25 secured debt at this time, no, I don't know that

1 number.

2 Q. Okay. And you don't know how much the
3 companies intend to spend on capital expenditures,
4 correct?

5 A. I don't know what their budgets are, no.

6 Q. And you don't know how much debt the
7 companies might need to refinance, correct?

8 A. Not off the top of my head. That's
9 information I think that's publicly available.

10 Q. Okay. Now, you also discuss the
11 possibility -- in your testimony, the possibility of
12 issuing more equity, correct?

13 A. Yes.

14 Q. And you are aware, are you not, that at
15 least one credit rating agency actually expects the
16 companies -- or FirstEnergy Corp., rather, to issue
17 more equity?

18 A. I don't recall seeing that statement. I
19 do recall the credit rating agency saying there is a
20 need to do that. I don't know if it's an out-and-out
21 prediction.

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

23 EXAMINER PRICE: You may.

24 MR. KUTIK: Mr. Kahal, I would like to
25 show you what's been previously marked and admitted

1 as Direct Exhibit 1.

2 Q. (By Mr. Kutik) Mr. Kahal, I have handed
3 you what's been marked and admitted as Direct
4 Exhibit 1. Do you recognize this as a report from
5 Moody's Investors Service?

6 A. I do. Thank you. I hadn't seen this
7 before so I appreciate this.

8 Q. Okay. And you would agree with me if we
9 look at the section that says "Ratings Rationale,"
10 the -- tell me when you are there.

11 A. Is that a heading? I'm having a
12 little -- oh, okay. It's at the bottom of the second
13 page, yes, I found it.

14 Q. Right. And I want to -- in looking at
15 that, in the last paragraph before "Liquidity
16 Analysis."

17 A. Yes.

18 Q. The second-to-last sentence reads "We
19 expect that FirstEnergy may undertake other actions
20 to support its credit profile in the absence of a PPA
21 including issuance of equity," correct?

22 A. Yes.

23 Q. And notwithstanding that expectation,
24 Moody's still has downgraded it in terms of its
25 negative outlook, correct?

1 A. It has. I think it's waiting to see
2 whether the issuance actually occurs.

3 Q. Now, I want to talk to you a little bit
4 about goodwill; I think you had mentioned in
5 testimony. You would agree with me that a majority
6 of that goodwill comes from the regulated entities of
7 FirstEnergy?

8 A. No. I wouldn't use the word "comes
9 from." I'm -- I would say that's where it is. It's
10 on the balance sheet of the subsidiaries.

11 Q. And you don't know where or of that
12 amount that is attributable to or on the balance
13 sheets of the regulated entities, how much of that
14 goodwill is the companies' goodwill.

15 A. Oh, by "the companies" you mean the Ohio
16 companies.

17 Q. Yes. As we have been using that phrase
18 throughout your examination.

19 A. Right. As I indicated in my deposition,
20 I know \$1.8 billion is on the books of JCP&L.
21 There's a total of 6 billion. So I don't know where
22 the other -- on which subsidiaries the other
23 4 billion is, and I specifically don't know how much
24 of that is on the books of the Ohio utilities.

25 Q. Okay. And you would -- you would look

1 for that information in the FERC Form 1s of the
2 various companies, correct?

3 A. I tried to look for it there. It turns
4 out that's not a very good source, but if one has
5 detailed balance sheets for the Ohio utilities, one
6 would look for it there.

7 Q. Okay.

8 MR. KUTIK: Your Honor, at this time I
9 would like to mark two documents. I would like to
10 mark as Exhibit -- Company Exhibit 203, a document
11 which is the -- an excerpt from the FERC Form 1 for
12 the Q4 2015 for Cleveland Electric Illuminating
13 Company; and as Company Exhibit 2004 -- 204, the FERC
14 Form 1 or an excerpt from the FERC Form 1 for the
15 Q4 2015 for The Toledo Edison Company.

16 EXAMINER PRICE: Both documents will be
17 so marked.

18 (EXHIBITS MARKED FOR IDENTIFICATION.)

19 MS. WILLIS: I'm sorry, Mr. Kutik, did
20 you say -- I lost the reference. The first 203 was
21 the Q4 for which company?

22 MR. KUTIK: CEI.

23 MS. WILLIS: And the 204 was for?

24 MR. KUTIK: Toledo Edison.

25 MS. WILLIS: Thank you.

1 MR. KUTIK: May I approach?

2 EXAMINER PRICE: You may.

3 MR. KUTIK: I would note, your Honor, the
4 FERC Form 1s have previously been marked as Direct
5 Energy exhibits and have been admitted into the
6 record.

7 EXAMINER PRICE: Thank you.

8 MR. KUTIK: These are just excerpts from
9 those.

10 Q. (By Mr. Kutik) Mr. Kahal, do you
11 recognize Exhibits 203 and 204 as excerpts from CEI
12 and Toledo Edison's FERC Form 1s?

13 A. I do. It's one page.

14 Q. Yes.

15 A. Yes.

16 Q. And we see on this -- on the page, the
17 second page of Exhibit 203, page No. 233 of the FERC
18 Form 1, correct?

19 A. Yes. It's Account 186.

20 Q. And that shows a number for goodwill,
21 does it not?

22 A. It does.

23 Q. And what's the number for goodwill?

24 A. Excuse me. I think it's Cleveland
25 Electric Illuminating Company. The statement is kind

1 of in the way of reading it. The number is in round
2 numbers, 1.7 billion. And for Toledo Edison, the
3 number is 500 million.

4 Q. Let me change topics. Would it be fair
5 to say that given the -- a given companies' financial
6 health may be affected by factors that affect the
7 market in which it does business?

8 A. Yes.

9 Q. And a given companies' financial health
10 may also be affected by factors that affect the
11 industry in which it is -- it does business.

12 A. Yes. I assume you mean industry generic
13 factors.

14 Q. Yes.

15 A. Yes.

16 Q. Now, you would agree with me for the
17 energy industry in the last few years, energy prices
18 have fallen and have remained low.

19 A. I would agree with that. They have.

20 Q. And you would also agree with me that
21 environmental regulations have made the cost of
22 purchasing power from other sources more expensive.

23 A. The cost of purchasing power?

24 Q. The cost of producing power.

25 A. Oh, producing. I thought you said

1 purchasing.

2 Q. From coal sources much more expensive.

3 A. As a broad generalization, yes; not in
4 every case.

5 Q. Okay. Now, you are aware, are you not,
6 that the FirstEnergy -- FirstEnergy Corp. and the
7 companies are taking steps to improve their
8 respective financial statements?

9 A. They are taking some steps. It remains
10 to be seen whether they take enough steps.

11 Q. Okay. And, for example, they currently
12 have rate case requests -- I'll back up.

13 There are rate case requests on file by
14 certain FirstEnergy affiliates, correct?

15 A. Yes, that have been filed, I think,
16 within the past two months.

17 Q. Okay. In Pennsylvania, there is a
18 request by a FirstEnergy affiliate for over
19 \$400 million in rate increases, correct?

20 A. I actually think it's for four. It's
21 either -- yeah four. I believe it's for four
22 affiliates. The four Pennsylvania utilities
23 subsidiaries of FirstEnergy.

24 Q. And the number is -- that they are
25 seeking is an increase of over \$400 million.

1 A. If you add them all up. It's not one
2 company that's seeking that, but I think the four of
3 them together are.

4 Q. And in New Jersey, there is also a
5 FirstEnergy affiliate rate case pending, correct?

6 A. Yes. It was recently filed. I think --
7 I can't remember the date it was filed, relatively
8 recently. It's for \$142 million rate increase.

9 Q. Thank you.

10 And FirstEnergy Corp. has reduced its
11 dividend in the last two years, correct?

12 A. I think it was in 2014 when it was
13 reduced, yes. It was reduced by roughly a third.

14 Q. Okay. And you are aware, are you not,
15 that there have been no dividends from CEI since
16 April of 2015?

17 A. CEI being Cleveland Electric.

18 Q. Illuminating, yes.

19 A. I'll accept that subject to check. I
20 haven't tracked their dividend payments.

21 Q. And you are aware there have been no
22 dividends from Toledo Edison since February of 2014,
23 correct?

24 A. Same answer. I'll accept that subject to
25 check.

1 Q. And you are also aware that throughout
2 the FirstEnergy Corp. subsidiaries, there is a Cash
3 Flow Improvement program, correct?

4 A. Yes. I think that's mostly focused on
5 the nonregulated operation, but there is a cash flow
6 improvement program, yes.

7 Q. And the goal is to achieve a substantial
8 amount of savings, correct?

9 A. Right. The target, I've seen, is
10 200 million; something along those lines.

11 Q. And you are also aware -- well, strike
12 that.

13 You are aware that, at one time, the
14 companies owned generation facilities, correct?

15 A. The companies owned, o-w-n-e-d,
16 generation facilities, yes.

17 Q. They were spun off to an affiliate.

18 A. Yes, FirstEnergy Solutions.

19 Q. And this, as far as you know, again being
20 a nonlawyer, was a requirement of state law.

21 A. That's correct.

22 Q. And the companies, again in your nonlegal
23 understanding, were -- have also been required to
24 have a corporate separation plan, correct?

25 A. Yes.

1 Q. Now, you haven't reviewed any statute
2 regarding corporate separation in Ohio, correct?

3 A. That's correct.

4 Q. Nor have you looked at any corporate
5 separation regulations in Ohio.

6 A. That's correct.

7 Q. You are aware that the companies have a
8 corporate separation plan.

9 A. Yes.

10 Q. But you haven't reviewed that plan.

11 A. That's correct.

12 Q. You would agree with me, would you not,
13 it is important that a utility's headquarters be
14 located in the state of its operations?

15 A. Not necessarily.

16 Q. Well, wouldn't you agree that -- would
17 you agree that's an advantage?

18 A. It could be. Some -- some observers
19 might see it as an advantage. I previously came from
20 Maryland, and my utility wasn't located in the -- its
21 headquarters weren't located in the state, and that
22 didn't present a problem, but some observers might
23 see that as an advantage. I couldn't say it's an
24 advantage or disadvantage.

25 Q. Well, might one observer find that

1 without headquarters in the state of operation, there
2 would be a risk that the utility would not be
3 sufficiently responsive to state regulators or to the
4 State's public policy priorities and objectives?

5 A. It's possible that some observers might
6 feel this way. I don't have any personal experience
7 that tells me that.

8 Q. Okay. Let me take you back to your
9 Maryland testimony.

10 A. Sure.

11 Q. Let me have you turn to page 42. By the
12 way, you recall the subject -- you commenting on the
13 subject of where the headquarters of the Maryland
14 utility should be in that case, correct?

15 A. I --

16 Q. Well, let me refresh your recollection,
17 sir.

18 A. Sure.

19 Q. Let's look at page 42, particularly at
20 line 18, and did you say there, sir, "Finally, the
21 proposed transaction imposes the additional risk that
22 Potomac Edison, as managed in Akron, would not be
23 sufficiently responsive to Maryland regulators (this
24 Commission in particular) and to the State's public
25 policy priorities and objectives....," and then you

1 give an example.

2 A. Yes, uh-huh.

3 Q. You would agree with me, would you not,
4 there is economic value to Akron and Ohio to have
5 having FirstEnergy Corp.'s headquarters in Akron and
6 Ohio?

7 A. I don't disagree with that.

8 MR. KUTIK: Okay. One minute, your
9 Honor.

10 No further questions. Thank you,
11 Mr. Kahal.

12 THE WITNESS: Thank you.

13 EXAMINER PRICE: Mr. McNamee?

14 MR. McNAMEE: Thank you.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. McNamee:

18 Q. Good morning.

19 A. Good morning.

20 Q. Just have a few questions for you.

21 MS. WILLIS: Your Honor, might
22 Mr. McNamee introduce who he is representing in this
23 proceeding, for the purposes of the witness, so the
24 witness understands who he is counsel for?

25 EXAMINER PRICE: Mr. McNamee, who do you

1 represent today?

2 MR. McNAMEE: I represent the staff of
3 the Public Utilities Commission of Ohio.

4 A. It's good to meet you.

5 Q. Good. And how are you this morning?

6 A. Fine.

7 Q. Excellent.

8 Mr. Kahal, are you familiar with the term
9 "run on liquidity"?

10 A. Run on liquidity, no.

11 Q. Okay. That's easy then. Let's talk a
12 bit about capital allocation. In a company that has
13 a number of divisions or subsidiaries, capital within
14 that structure is allocated based on anticipated --
15 let me rephrase this.

16 The divisions within a company or the
17 subsidiaries within a corporate structure compete for
18 capital within that structure, don't they?

19 A. There could be some competition among
20 subsidiaries. I wouldn't say that there's some --
21 there's always some fixed amount of capital and that
22 fixed amount of capital is immutable and would not be
23 modified by management based upon what the needs of
24 the subsidiaries are. So I think that the management
25 tries to be responsive to the capital needs of the

1 individual companies, but it also sets priorities.

2 Q. Okay. And capital is limited. It has to
3 be allocated.

4 A. Capital is not unlimited, that's --
5 that's true.

6 Q. Okay.

7 A. It's not fixed either.

8 Q. Okay. Do you know if the companies'
9 authorized rates of return are the highest authorized
10 by this Commission for utilities -- any utilities in
11 the State of Ohio?

12 A. Oh, no, I haven't -- I haven't compared
13 them to the other -- excuse me. I assume you are
14 talking about distribution service?

15 Q. Yes.

16 A. No. I don't know that. I don't know the
17 authorized returns on equity of every utility in Ohio
18 at the present time.

19 MR. KUTIK: Fair enough. Thank you.
20 That's all I have.

21 - - -

22 EXAMINATION

23 By Examiner Price:

24 Q. I just have a couple of questions before
25 redirect. Could you turn to page 8 of your

1 testimony.

2 A. Yes.

3 Q. And on line 12 you say "There is no
4 evidence that any rate or earnings enhancement
5 initiative in other jurisdictions will be forthcoming
6 comparable to the Ohio customer funding Staff has
7 proposed in this case. No such initiative outside of
8 Ohio was identified by witness Buckley, and I am not
9 aware of any." What did you do -- what was the basis
10 for making that statement that you are not aware of?

11 A. Because I'm familiar with the practices,
12 the regulatory practices in the other jurisdictions,
13 particularly in New Jersey. There was a
14 recently-completed rate case in 2015 in New Jersey
15 which I have firsthand knowledge of that, and what
16 went on there in that case. I've worked extensively
17 in Pennsylvania, and I'm familiar with the regulatory
18 practices in that state. And West Virginia less so.

19 All the statement says is I am simply not
20 aware of any. I didn't say I went out and researched
21 what every state has done or is prepared to do in the
22 future.

23 Q. So were you referring to the New Jersey
24 and Pennsylvania rate cases in that statement?

25 A. Yes, that's right, the most recent ones

1 that were completed, yes.

2 Q. No, the ones that were pending.

3 A. Oh, the ones that were pending. Well,
4 they have just gotten started. They are only
5 recently filed. They are at the very, very
6 beginning.

7 Q. So you were aware of them, but you
8 excluded them from your calculations because they
9 were beginning?

10 A. Well, I didn't do any ex -- any
11 calculation.

12 Q. Exclude them from your consideration.

13 A. No, of course not, no. The -- what I do
14 know, and I have seen what was filed in New Jersey,
15 is that the -- the only initiative along these lines
16 in New Jersey is that the rate of return witness, in
17 the New Jersey case, did include an adder, I think it
18 might have been like 40 or 50 basis points for credit
19 quality.

20 Q. So --

21 A. That was rejected in the last case.

22 Q. In this statement, then, you are not
23 talking about general rate cases such as the ones in
24 Maryland and New Jersey.

25 MR. KUTIK: Pennsylvania and New Jersey.

1 Q. Pennsylvania and New Jersey, I'm sorry.
2 In this statement, you are not referring to the
3 ongoing rate cases in Pennsylvania and New Jersey.

4 A. Oh, no. Those haven't even really gotten
5 underway yet.

6 Q. So you are aware of them --

7 A. Oh, I am aware of them, yes.

8 Q. -- but you are excluding them from your
9 consideration in this sentence.

10 A. No, this doesn't refer to any -- to
11 the -- specifically to the pending rate cases. It
12 simply refers to what the regulatory practices have
13 been in New Jersey and Pennsylvania.

14 Q. Okay. Let me try this one more time. At
15 the time you wrote this, you were aware that
16 Pennsylvania -- that FirstEnergy's affiliates had
17 filed for a rate increase in Pennsylvania.

18 A. That's correct.

19 Q. And at the time you wrote this, you were
20 aware that FirstEnergy affiliates had filed for a
21 rate increase in New Jersey.

22 A. That's right.

23 Q. And so this -- these sentences should not
24 be interpreted as you being unaware of those rate
25 cases at that time.

1 A. That's correct.

2 Q. You are talking about some other form of
3 rate enhancement.

4 A. Which could be as part of a rate case or
5 outside of a rate case, either one.

6 EXAMINER PRICE: Okay. Now I understand.
7 Thank you.

8 Ms. Willis?

9 MS. WILLIS: May I have a short break,
10 your Honor, 10 minutes?

11 EXAMINER PRICE: You may.

12 MS. WILLIS: Thank you.

13 EXAMINER PRICE: Let's go off the record.
14 (Discussion off the record.)

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

17 Ms. Willis?

18 MS. WILLIS: Thank you, your Honor. No
19 questions.

20 EXAMINER PRICE: Thank you.

21 Ms. Addison?

22 EXAMINER ADDISON: No questions.

23 EXAMINER PRICE: I have none. Thank you,
24 sir. You are excused.

25 MS. WILLIS: At this time we would

1411

1 re-move for the admission of OCC Exhibit 46.

2 EXAMINER PRICE: Any objections, subject
3 to the motions to strike?

4 MR. KUTIK: Subject to the motions to
5 strike.

6 EXAMINER PRICE: It will be admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 MR. KUTIK: We do not intend to move any
9 exhibits because most of them have already been
10 admitted into the record already.

11 EXAMINER PRICE: Okay. Thank you.

12 At this time we'll adjourn until Thursday
13 at 9:00, at which point we will take Company Witness
14 Murley.

15 We are off the record.

16 (Thereupon, at 10:47 a.m., the hearing
17 was 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 Monday, July 25, 2016,
and carefully compared with my original stenographic
notes.

Karen Sue Gibson, Registered
Merit Reporter.

Carolyn M. Burke, Registered
Professional Reporter.

(KSG-6226)

- - -

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Summary: Transcript in the matter of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company hearing held on 07/25/16 - Volume VIII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.