

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for an : Case No. 17-32-EL-AIR
 Increase in Electric :
 Distribution Rates. :
 In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Tariff : Case No. 17-33-EL-ATA
 Approval. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Approval : Case No. 17-34-EL-AAM
 to Change Accounting :
 Methods. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Approval : Case No. 17-872-EL-RDR
 to Modify Rider PSR. :
 In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Approval : Case No. 17-873-EL-ATA
 to Amend Rider PSR. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Approval : Case No. 17-874-EL-AAM
 to Change Accounting :
 Methods. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Authority :
 to Establish a Standard :
 Service Offer Pursuant to :
 Section 4928.143, Revised : Case No. 17-1263-EL-SSO
 Code, in the Form of an :
 Electric Security Plan, :
 Accounting Modifications, :
 and Tariffs for Generation:
 Services. :

1 In the Matter of the :
Application of Duke Energy:
2 Ohio, Inc., for Authority :
to Amend its Certified : Case No. 17-1264-EL-ATA
3 Supplier Tariff, P.U.C.O. :
No. 20. :

4 In the Matter of the :
Application of Duke Energy:
5 Ohio, Inc., for Authority : Case No. 17-1265-EL-AAM
6 to Defer Vegetation :
Management Costs. :

7 In the Matter of the :
Application of Duke Energy:
8 Ohio, Inc., to Establish :
Minimum Reliability : Case No. 16-1602-EL-ESS
9 Performance Standards :
10 Pursuant to Chapter :
4901:1-10, Ohio :
11 Administrative Code. :

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13 PROCEEDINGS

14 before Mr. Nicholas Walstra and Ms. Stacie Cathcart,
15 Attorney Examiners, at the Public Utilities
16 Commission of Ohio, 180 East Broad Street, Room 11-A,
17 Columbus, Ohio, called at 9:00 a.m. on Tuesday,
18 July 24, 2018.

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20 VOLUME XII

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1 Tuesday Morning Session,
2 July 24, 2018.

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4 EXAMINER CATHCART: So we're back for
5 Day 11 of In Re: Duke -- Day 12 actually. Sorry.
6 Day 12 of In Re: Duke Energy, global stipulation.

7 I think first up today is Sierra Club's
8 first witness.

9 MR. MENDOZA: Your Honor, we call Jeremy
10 Fisher to the stand. Could we go off the record for
11 a second?

12 (Discussion off the record.)

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

15 (Witness sworn.)

16 EXAMINER CATHCART: Thank you.

17 - - -

18 JEREMY I. FISHER, Ph.D.
19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Mendoza:

23 Q. Would you please state your name and
24 business address for the record.

25 A. My name is Jeremy Fisher and I'm employed

1 at Sierra Club at 2101 Webster Street in Oakland,
2 California 94612.

3 Q. Thank you, Dr. Fisher.

4 EXAMINER CATHCART: Could you turn your
5 microphone on. Thank you.

6 Q. And do you have a copy of your direct
7 testimony filed in this proceeding?

8 A. I do.

9 Q. And if I asked the questions that appear
10 in that direct testimony today, would you give the
11 same answers?

12 A. Yes.

13 MR. MENDOZA: Your Honor, Dr. Fisher is
14 available for cross-examination.

15 EXAMINER CATHCART: Thank you. Are you
16 going to mark this?

17 MR. MENDOZA: Yes. Let's premark the
18 public testimony as Sierra Club Exhibit 4, thank you,
19 your Honor. And the confidential as Sierra Club
20 Exhibit 4A. Is that the convention?

21 EXAMINER CATHCART: Yes. Thank you.

22 MR. MENDOZA: Thank you.

23 (EXHIBITS MARKED FOR IDENTIFICATION.)

24 EXAMINER CATHCART: Any cross-examination
25 of this witness?

1 MR. MICHAEL: None, your Honor.

2 MR. MILLER: Brings it to us quickly.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Miller:

6 Q. Good morning, Mr. Fisher. How are you?

7 A. I am very well. Thank you.

8 Q. My name is Chris Miller and I'm a lawyer
9 for Duke Energy. I'm with the law firm of Ice
10 Miller. I think we met during your deposition, so I
11 am glad to meet you in person. Hopefully we will get
12 through this today pretty quickly. That's my intent
13 anyway.

14 You work for Sierra Club, right?

15 A. I do.

16 Q. And you've been with the Sierra Club
17 since late 2017; is that correct?

18 A. December 2017, correct.

19 Q. And my understanding is you have a
20 Bachelor of Science degree in Geology and one in
21 Geography?

22 A. That's correct.

23 Q. Both from University of Maryland.

24 A. That is also correct.

25 Q. And you have a Master's of Science, an

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1 M.S., and a Ph.D. in Geological Sciences from Brown.

2 A. That's correct.

3 Q. And you don't have any degrees or other
4 certification in the field of mathematics?

5 A. No.

6 Q. Economics?

7 A. No.

8 Q. Finance?

9 A. No.

10 Q. Law?

11 A. No.

12 Q. Regulatory policy?

13 A. No.

14 Q. Legislative analysis?

15 A. No.

16 Q. Or public policy?

17 A. No.

18 Q. And you are not an attorney, correct?

19 A. I am not an attorney.

20 Q. You say that with great happiness.

21 Are you appearing here today as an expert
22 on the regulatory aspects of public utility matters?

23 A. Yes, I am.

24 Q. And you are not an expert in the analysis
25 or interpretation of the utility credit ratings, are

1 you?

2 A. No, I am not.

3 Q. You are not testifying on how credit
4 ratings function or how they may apply in regards to
5 business or business regulated utilities?

6 A. I am testifying with respect to the way
7 that Duke has characterized their credit risk in this
8 case, but it is not the primary purpose of my
9 testimony.

10 Q. And you are not an expert in credit
11 ratings, correct?

12 A. I employ utility credit ratings as
13 necessary in my work, but it is not the primary area
14 in which I am an expert, no.

15 Q. And you prepared all of your testimony
16 submitted on June 25, 2018; is that correct?

17 A. I did, yes.

18 Q. Did you receive assistance or guidance
19 from anyone else in preparing that testimony?

20 A. I worked, as needed, with a team of both
21 other attorneys and analysts in various other pieces
22 but, no, for the most part everything in here is my
23 own analysis.

24 Q. And you prepared the questions and
25 answers?

1 A. Yes.

2 Q. Just to get an understanding of what you
3 may have reviewed, let me ask you a couple of
4 questions, a handful of questions.

5 In preparing your testimony that we
6 talked about you filed on June 25, did you review the
7 company's applications filed in the underlying
8 proceedings?

9 A. I reviewed components of the initial
10 application with respect to the rider, but aside from
11 that, no, with respect to PSR, but no.

12 Q. Did you happen to review the testimony
13 that the company put on in regards to that initial
14 application by any of its witnesses?

15 A. Just that of Judah Rose.

16 Q. Judah Rose.

17 Did you review the Stipulation and
18 Recommendation filed by the parties on April 13,
19 2018?

20 A. I did.

21 Q. And in its entirety?

22 A. I -- again skipped -- I discussed this
23 during deposition. I skipped the majority of the
24 stipulation and focused again on Rider PSR.

25 Q. And did you review any of the testimony

1 that was filed by the company that supported that
2 stipulation?

3 A. Again, the testimony of Mr. Rose,
4 Mr. Wathen, and Mr. Fetter.

5 Q. Did you review those in their entirety?

6 A. Those testimonies?

7 Q. Yes.

8 A. Yes.

9 Q. And you're appearing here today also as
10 an expert of public utility matters; is that correct?

11 A. That's fair, yes.

12 Q. And you provided this testimony and its
13 in opposition to the stipulation filed in this case,
14 correct?

15 A. That's correct.

16 Q. Do you know if the Commission in Ohio
17 conducts any particular analysis when reviewing a
18 stipulation in order to determine if it passes
19 regulatory muster?

20 A. I assume that both the Staff and other
21 parties do conduct various both analyses, both
22 regulatory and mathematical. But I'm not familiar
23 with a particular assessment that's conducted.

24 Q. Are you familiar with the Commission's
25 three-part test?

1 A. I am not.

2 Q. You've not testified in any other
3 proceedings, as I understand it, in front of this
4 Commission, correct?

5 A. Not in Ohio, no.

6 Q. Would you agree with me that you have
7 some familiarity working with several past PUCO cases
8 here in Ohio?

9 A. Again, as we discussed during deposition,
10 I reviewed and participated as a colleague with
11 others who have testified in Ohio.

12 Q. And that was in your role -- former role?

13 A. That was my role as a consultant. I was
14 at Synapse for 10 years, working on regulatory
15 matters for both regulators and intervenors in a
16 number of cases.

17 Q. And you previously worked, I think, on
18 behalf of the Sierra Club for proceedings here in
19 Ohio; is that right?

20 A. I worked with colleagues who are
21 testifying in Ohio, so yes, I worked on behalf of
22 Sierra Club in proceedings for Ohio.

23 Q. We talked a little bit about this before;
24 the work that you did was just limited to supporting
25 the analysis and testimony of other testifying

1 witnesses in Ohio?

2 A. For the Ohio matters, yes, that's
3 correct.

4 Q. And one of those Ohio matters was what is
5 commonly known as the AEP PPA case; is that correct?

6 A. Yes, that's correct.

7 Q. And in that case, the AEP PPA case, AEP
8 was asking the Commission to grant it a Purchase
9 Power Agreement Rider or a PPA Rider that was
10 substantially similar to what Duke is requesting here
11 with OVEC costs and Rider PSR; is that correct?

12 MR. MICHAEL: Objection, your Honor, to
13 Mr. Miller's characterization of the rider being
14 substantially similar. First off, I don't know what
15 that means. Second off, it's not true, so I object.

16 EXAMINER CATHCART: Overruled. The
17 witness can clarify.

18 A. I believe that the witness who was
19 testifying in that case was concerned actually with
20 the terminology of this case being called a PPA, and
21 I don't think that in this particular case it has
22 been called a PPA. But I did participate with that
23 witness in reviewing their testimony. Can you repeat
24 the portion of the question that -- if I haven't
25 answered your question, can you repeat the component

1 that you need?

2 Q. So were you asking me to repeat the
3 portion of the question that was objected to?

4 A. Can you repeat the question for me,
5 please?

6 Q. Okay. Mr. Michael objects to the entire
7 question.

8 A. That's fine.

9 Q. So I think we talked about the fact you
10 supported those witnesses. There was an AEP PPA
11 case, correct?

12 A. There was an AEP -- it was called the AEP
13 PPA.

14 Q. Called the AEP PPA.

15 A. That's right.

16 Q. And in that case, I believe AEP was
17 asking for something similar to what Duke is asking
18 for here, correct?

19 MR. MENDOZA: Same objection to the -- I
20 just want to object on a similar point as Mr. Michael
21 noted. It assumes facts that are not -- facts and
22 regulatory conclusion that are not in evidence.

23 EXAMINER CATHCART: Overruled. The
24 witness can clarify.

25 A. From my recollection there were broad

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1 similarities between the components of that case with
2 respect to OVEC in this case.

3 Q. Did you happen to review the Commission's
4 Entries and Orders in the AEP PPA case?

5 A. I did not.

6 Q. Are you aware if there was a stipulation
7 filed in the AEP PPA case?

8 A. I don't recall the specifics of the
9 outcome.

10 Q. Was there a stipulation filed? Do you
11 know?

12 A. I do not know.

13 Q. Do you know what happened to resolve that
14 case?

15 A. Again, I did not participate in the
16 outcome of that case. I supported the witnesses as
17 they submitted their testimonies in that case and was
18 not engaged thereafter.

19 Q. When we talked about it in your
20 deposition, did you indicate to me you knew that case
21 was settled?

22 A. I said I think it had, but I still am not
23 clear on the outcome of that case.

24 Q. And I think you said in your deposition,
25 I think you said we talked about a stipulation being

1 filed?

2 MS. BOJKO: Objection.

3 MR. MENDOZA: Objection, asked and
4 answered. The witness said he doesn't recall exactly
5 how that case was set out. I think the point
6 Mr. Miller is trying to make can be made in their
7 brief.

8 EXAMINER CATHCART: Sustained. I think
9 the witness has answered.

10 Q. Do you know what a stipulation is, sir?

11 A. I do.

12 Q. What is one?

13 A. It is an agreement of parties to various
14 components of a case or the entirety of the case for
15 a particular outcome.

16 Q. Was there an agreement of the parties in
17 the AEP PPA case?

18 MR. MENDOZA: Objection, your Honor.
19 We've covered this ground. The witness has said he
20 doesn't recall exactly how that case ended out.

21 EXAMINER CATHCART: I am going to sustain
22 that objection. I think the witness has answered to
23 his understanding.

24 Q. (By Mr. Miller) I believe there was
25 another case we discussed that you also participated

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1 in, in regards to your time at Synapse, here in Ohio?

2 A. Yes.

3 Q. That case was, I think came to be known
4 as the FirstEnergy SSO case?

5 A. I think that is correct, yes.

6 Q. And you performed substantially the same
7 work that you did in the AEP case in that case?

8 A. That is correct.

9 Q. And was that on behalf of Sierra Club?

10 A. Excuse me. So I believe the FirstEnergy
11 case that Synapse did was on behalf of Sierra Club,
12 and the AEP case was on behalf of the Office of
13 Consumers' Counsel.

14 Q. And in that FirstEnergy case, was
15 FirstEnergy, if you remember, asking the Commission
16 to grant it what it called a Retail Rate Stability
17 Rider, an RSR?

18 A. I don't recall the specifics of the
19 regulatory construct under which the application was
20 made.

21 Q. Was there --

22 A. It was not my charge -- to be specific,
23 that was not my charge in that case.

24 Q. Do you remember hearing about a Rider
25 RSR?

1 A. Again, I don't recall what the
2 terminology that was used in that case was.

3 Q. Do you remember discussing it at your
4 deposition?

5 MS. BOJKO: Objection, your Honor.
6 That's improper use of a deposition. He has to ask a
7 question and if he likes to impeach him he has to
8 show the witness the deposition and do it that way.
9 You cannot just ask if he talked about something in
10 the deposition.

11 MR. MENDOZA: And, in fact, the witness
12 already answered the question and said he didn't
13 recall what the rider was called in the other case.

14 EXAMINER CATHCART: Overruled. I'll
15 allow the question.

16 MR. MILLER: The question is pending,
17 isn't it?

18 THE WITNESS: I'm sorry. I apologize. I
19 thought I was waiting for you to -- could you please
20 repeat the question for me.

21 MR. MILLER: Could you read that back?
22 Sorry, I thought you were looking for
23 something.

24 THE WITNESS: No, I thought I was waiting
25 for you.

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1 MR. MILLER: We are both being too nice.

2 THE WITNESS: Can you please repeat the
3 question for me?

4 MR. MILLER: She'll read it back.

5 (Record read.)

6 A. I do not recall discussing the specific
7 terminology of the FirstEnergy case at my deposition.

8 Q. Is it your recollection that FirstEnergy
9 was asking for something akin -- something involving
10 the OVEC costs?

11 A. Yes.

12 Q. And those OVEC costs were something that
13 FirstEnergy was requesting the Commission to allow it
14 to be placed in a rider?

15 A. Substantially, yes.

16 Q. And what was going to happen with that
17 rider? Do you know?

18 A. I don't.

19 Q. You don't. Did you happen to review the
20 Commission's Entries and Orders in that case?

21 A. I did not.

22 Q. You relied -- let's look at page 2, I
23 guess, lines 23 and 24, if you would turn there for
24 me in your testimony.

25 A. I'm there.

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1 Q. And I think you indicate that one of the
2 primary objectives of your testimony is to review the
3 testimony of the Company Witness Judah Rose and
4 examine the value of the ICPA to Duke's ratepayers,
5 correct?

6 A. That's correct.

7 Q. And I think we cleared this up in our
8 discussion before, but when you say "ICPA" here, do
9 you mean Rider PSR?

10 A. The ICPA as used within the construct of
11 Rider PSR so, yes.

12 Q. Okay. I just want to be clear on that.
13 And you said you reviewed Mr. Rose's
14 supplemental testimony, correct?

15 A. That's correct.

16 Q. And in that testimony he included a
17 forecast regarding Rider PSR covering the time period
18 from January 1, 2018, I think through May 31, 2025;
19 is that correct?

20 A. That's my understanding, yes.

21 Q. And it's true you reviewed that forecast
22 regarding Rider PSR and the various inputs and
23 calculations he used to arrive at that forecast?

24 A. I did.

25 Q. And your testimony only analyzes the

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1 numbers and the formulas Mr. Rose used in creating
2 his forecast, correct?

3 A. Yes.

4 Q. And in preparing your testimony, you
5 didn't conduct any separate modeling from that which
6 was conducted by Mr. Rose in creating his forecast,
7 correct?

8 A. I did not conduct separate modeling. I
9 did review his inputs and outputs, and I made
10 modifications to one of his calculation workbooks as
11 provided in workpapers.

12 Q. And in preparing your testimony you
13 didn't use any different datasets from which were
14 employed by Mr. Rose? You didn't go out and get any
15 additional datasets?

16 A. I did. In one of the assessments that I
17 conducted with respect to environmental obligations,
18 I used additional information that was provided
19 through subpoena.

20 Q. But the remainder was simply Mr. Rose's
21 data and then you reviewed it and commented?

22 A. That's correct.

23 Q. And you relied on that data for your
24 assumptions; Mr. Rose's data?

25 A. Yes.

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1 Q. Okay.

2 A. Again, with those modifications that I
3 discuss in my testimony.

4 Q. And other than those modifications in
5 preparing your testimony, you didn't perform any
6 empirical studies or analysis regarding Rider PSR or
7 its impacts, correct?

8 A. When you say "its impacts," you mean its
9 impacts on ratepayers or its impacts on OVEC?

10 Q. Well, Rider PSR and how it operates.

11 A. No.

12 Q. And in preparing your testimony you
13 didn't mathematically test or check Mr. Rose's
14 calculations, did you?

15 A. I went through his workbooks and I
16 verified that I understood where his calculations
17 came from.

18 Q. So you understood the origin of the
19 calculations.

20 A. Those that were fully provided. There
21 were a number of calculations that I think emerged
22 out of Mr. Rose's IPM model and other models that he
23 used that the models themselves were not actually
24 provided. So I could not go through those
25 calculations. I had to rely instead on the

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1 information that had been provided as an output of
2 that model.

3 Q. And you didn't conduct any comparative
4 analysis to Mr. Rose's analysis, did you?

5 A. Well, I went through his inputs and
6 assessed those inputs against my understanding of
7 those same inputs. So commodity prices, energy
8 prices, potential outcomes, and reviewed each of
9 those individual components.

10 Q. And in your testimony I think you recite
11 numerous details regarding OVEC, and you know what
12 OVEC is, correct?

13 A. Yes, I do.

14 Q. How did you come to your understanding on
15 what OVEC is, maybe its history? Where did all that
16 substantive background come from regarding your
17 understanding of OVEC?

18 A. I reviewed OVEC's filings before -- or
19 OVEC FERC Form 1 and OVEC SEC filing and information
20 provided in this case and then other ancillary
21 research.

22 Q. And do you know who regulates OVEC?

23 A. I believe OVEC is regulated under this
24 Commission and I believe it is also regulated as a
25 FERC -- or, at least portions of the ICPA are

1967

1 regulated as a FERC tariff.

2 Q. And so, just to clarify, you believe it's
3 regulated by the Public Utilities Commission of Ohio?

4 A. Correct.

5 Q. And FERC.

6 A. I think the ICPA is regulated by FERC,
7 and OVEC is regulated by the Commission.

8 Q. And you mentioned the ICPA. So, in
9 regards to FERC, do you know what the ICPA is?

10 A. The Inter-Company Power Agreement.

11 Q. And do you know, has FERC reviewed or
12 approved the ICPA?

13 A. I believe its characterization is that
14 it's an approved tariff by FERC, but I do not know
15 the level of review that FERC went through on the
16 tariff itself.

17 Q. And besides OVEC -- and OVEC is the
18 principal entity, correct? Besides OVEC, who is a
19 party to the ICPA? Do you know?

20 A. I believe there are 13 co-sponsoring
21 companies that are part of the ICPA.

22 Q. And individually we can refer to those as
23 "sponsoring companies," correct?

24 A. That would be fine.

25 Q. And Duke is currently a sponsoring

1968

1 company of the ICPA?

2 A. That's correct.

3 Q. Historically, do you know when the ICPA
4 was drafted?

5 A. I believe the original version of it was
6 1953; July 1953.

7 Q. Did you review that 1953 agreement?

8 A. I did not.

9 Q. Has the ICPA changed over time? Do you
10 know?

11 A. The header to the ICPA indicates that it
12 has been reviewed and -- I'm sorry -- modified
13 numerous times. The most recent modifications were,
14 I believe, in 2004 and 2011.

15 Q. And do you know how many times it perhaps
16 has been modified over the years?

17 A. I don't have a recollection, no.

18 Q. Have you reviewed any of these
19 modifications?

20 A. I have only reviewed the most-recent
21 version.

22 Q. Of?

23 A. The ICPA.

24 Q. Are there multiple versions of the ICPA
25 or just one?

1969

1 A. I have only reviewed the version of
2 the -- I do not know if there are multiple versions
3 of the ICPA. I assume that the current version is
4 the one that's in force. And so, the 2011 as-amended
5 ICPA is the version that is in force.

6 Q. And in regards to that 2011 document,
7 it's your opinion that's the last document, the last
8 ICPA, last iteration?

9 A. Yes.

10 Q. On page 33, if you could turn there for
11 me. I'm looking at lines 4 through 6.

12 A. I'm there.

13 Q. I think you indicate here that Duke did
14 not seek the Commission's, the PUCO's approval when
15 the ICPA was extended in 2004 and 2011. Is that what
16 you state?

17 A. That is what I state, yes.

18 Q. Do you know, was Duke required to seek
19 the approval of the PUCO in 2004 or 2011?

20 A. I don't have specific knowledge of
21 whether it was required, no.

22 Q. And looking at page 3, line 22, sorry to
23 make you jump back, but let me know when you get
24 there.

25 MR. MENDOZA: I'm sorry, Mr. Miller. Can

1970

1 I get the page reference?

2 MR. MILLER: I'm sorry. Page 3, line 22.

3 A. I am there.

4 Q. On page 3, line 22, and several other
5 places in your testimony, you indicate that Duke's
6 participation in the ICPA was undertaken as a -- I
7 think I am quoting you correctly here -- a private
8 venture; is that correct?

9 A. That's correct.

10 Q. Would you agree with me that the creation
11 of OVEC arose from a national security need to
12 provide power to a uranium facility constructed by
13 the Atomic Energy Commission?

14 MR. MICHAEL: Objection to the form of
15 the question and the description as a national
16 security need. Talking to this witness, who is a
17 regulatory expert testifying to economic-related
18 matters, about what is or is not a national security
19 issue, is inappropriate and I object.

20 EXAMINER CATHCART: Overruled. The
21 witness can clarify.

22 A. My understanding is that the OVEC units
23 were built on behalf of the Atomic Energy Commission
24 in order to be able to provide uranium enrichment at
25 that time.

1971

1 Q. So let me reask the question and see if
2 you agree with me because that was my question.

3 Do you agree with me, OVEC arose from a
4 national security need to provide power to a uranium
5 facility constructed by the Atomic Energy Commission?
6 Is that fair? Is that a fair statement?

7 A. I don't know if I could characterize it
8 as a national security interest. I don't have
9 knowledge of the motivations of the Atomic Energy
10 Commission at that time. But my understanding is
11 that it was built to provide uranium enrichment
12 power.

13 Q. Would you agree with me that national
14 security, because we are talking about national
15 security here, or in our case the security of the
16 United States is an issue of public concern?

17 MR. MICHAEL: Objection, asked and
18 answered. The witness said he couldn't read into the
19 motivations behind the issue, and Mr. Miller is
20 trying to backdoor it, and I object to it.

21 EXAMINER CATHCART: Overruled. The
22 witness can answer.

23 THE WITNESS: Can you help me out with
24 restating the question or repeating the question for
25 me.

1972

1 (Record read.)

2 A. I don't think the case that we are
3 engaged in today is a question about the national
4 security of the United States.

5 Q. Is the national security of the United
6 States a public concern?

7 A. In general, yes.

8 Q. Do you know, did the Federal Government
9 make a request of the sponsoring companies to be part
10 of OVEC?

11 A. I don't have knowledge of the genesis of
12 the OVEC space with respect to what the federal
13 government's request was to the sponsoring companies.

14 Q. And you don't know if the sponsoring
15 companies had the ability to refuse participation in
16 OVEC?

17 A. I don't.

18 Q. Does the ICPA contain specific
19 contractual provisions that allow a sponsoring
20 company to divest itself of its relationship with
21 OVEC?

22 A. I have not read specific provisions of
23 the ICPA that allow a company to divest itself
24 independently, but I think there are mechanisms by
25 which the sponsoring companies can renegotiate the

1973

1 terms of the contract and there have been
2 opportunities in the past for the companies to
3 renegotiate the terms of the contract.

4 Q. Would you agree with me if I said that
5 for a sponsoring company to divest itself of its
6 interests, that such divestment requires the
7 agreement of all of OVEC's many and diverse owners?

8 A. I believe that a divestiture under the
9 current contract structure would require the consent
10 of all of the owners. But, again, I don't think
11 that's necessarily the only way that Duke could
12 extract itself from this contract.

13 Q. And turning to page 33, lines 10 and 11,
14 I think you state that you assumed that Duke and
15 other Sponsoring Companies looked at the ICPA as a
16 potentially profitable entrepreneurial venture. Is
17 that what you said?

18 A. This statement is specifically with
19 respect to the extension of the ICPA in 2004 and
20 2011. In 2004, the contract was extended to 2006 --
21 I'm sorry -- to 2026 from 2006. And in 2011, it was
22 extended again to 2040. So this statement is with
23 respect to those extensions and those extensions
24 only.

25 Q. Other than the ICPA itself, what

1 information, testimony, or documents or other
2 evidence did you review to arrive at your assumption?

3 A. Just the ICPA itself.

4 Q. And other than making that assumption,
5 you didn't review or don't have any specific
6 information regarding why the sponsoring companies
7 extended the ICPA in 2004 and 2011, correct?

8 A. No.

9 Q. On page 3, line 18, I think you claim in
10 2004 and 2011 Duke likely had a positive outlook on
11 the disposition of OVEC and the ICPA contract. From
12 what information, testimony, or document did you
13 arrive at that assumption?

14 A. Well, in 2004 and 2011, we still didn't
15 have the crash in electricity market prices or
16 natural gas prices or nonrenewable prices that we
17 have today.

18 And so, in 2004 and 2011, utilities --
19 and I have to assume that Duke is not unique here --
20 we're looking the coal units as still quite
21 profitable, particularly in market areas where
22 generators were independent. And so, I think it's
23 not unreasonable to assume that in that time period,
24 on a forward-looking basis, the company still had
25 that positive outlook. And when the -- when those

1975

1 contracts were re-upped, I think it's not
2 unreasonable to think they looked forward as having a
3 positive outlook.

4 Q. Other than making your assumption that
5 Duke likely concluded something, you didn't review or
6 you don't have any specific information regarding
7 Duke's outlook, do you?

8 A. No. Duke did not file anything with this
9 Commission, so I don't have a public record.

10 Q. On page 35, lines 7 and 10, I think you
11 state that Duke -- Duke and/or its predecessor was
12 fairly compensated through the agreement with the
13 Atomic Energy Commission and the Department of Energy
14 for its OVEC involvement; is that correct?

15 A. That's what I state, yes.

16 Q. Do you know how Duke was compensated?

17 A. I do not know the specifics of how it was
18 compensated, no.

19 Q. Do you know how much Duke was
20 compensated?

21 A. I do not know that, no.

22 Q. And how do you know Duke was fairly
23 compensated?

24 A. I again would have to assume that in
25 signing that contract with the Atomic Energy

1976

1 Commission, the Department of Energy signed it as a
2 full-service agreement in the same way that the ICPA
3 is a full-service agreement to Duke or that
4 equivalency and so, therefore, that would have meant
5 the costs were fully passed through.

6 Q. That's your assumption.

7 A. That's an assumption, yes.

8 Q. And so, you don't know how or what
9 compensation Duke received?

10 A. I don't know the specifics of the
11 compensation, no.

12 Q. On page 35, lines 11 through 13, I think
13 you state that "Duke's predecessor was provided an
14 opportunity to exit or sell that contract," and I am
15 referring to the OVEC ICPA, "but chose to retain its
16 ownership fraction as a speculative private venture";
17 is that correct? Is that what you said?

18 A. That is what I state, yes.

19 Q. Can you describe for me the opportunity
20 that Duke was presented with that would have allowed
21 it to exit or sell the contract?

22 A. At the time that the contract was
23 renegotiated in 2003, I believe one of the other
24 co-sponsors sold their share and I believe I discuss
25 that elsewhere in my testimony. The fact that

1977

1 another co-sponsor was able to sell their share at a
2 positive value suggests to me that there was an
3 opportunity for Duke to do the same.

4 Q. But, again, can you describe for me the
5 opportunity Duke was presented with? I think that
6 was your testimony, Duke was presented with an
7 opportunity?

8 A. Again, the contract had ended in 2003 and
9 the ICPA was due to finish by 2006. So the fact that
10 there was another co-sponsor that was able to exit
11 the ICPA at that time at a positive value suggests to
12 me that would have been the same for Duke as well.

13 Q. You really don't know if Duke was
14 presented with an opportunity that would have allowed
15 it to exit the contract, do you?

16 MR. MICHAEL: Objection, asked and
17 answered.

18 MR. MENDOZA: Asked and answered.

19 EXAMINER CATHCART: Sustained. I think
20 the witness has answered to his understanding.

21 Q. Dr. Fisher, do you know if Duke has ever
22 used OVEC load obtained through the ICPA to serve its
23 regulated customers?

24 A. I don't think so. I think the answer is
25 no.

1978

1 Q. Then looking at page 21, line 16, if you
2 would, I think here you're critical of Mr. Rose
3 alleging that he relies on no evidentiary record to
4 make his assessment that costs were prudently
5 incurred at the OVEC plants; is that correct?

6 A. That's correct.

7 Q. And in reviewing Mr. Rose's testimony in
8 preparing your testimony for this proceeding, did you
9 review any information regarding the prudence of
10 costs at OVEC?

11 A. I believe we asked both Duke and OVEC for
12 information with respect to the prudence of costs
13 incurred and received no information.

14 Q. And so, you did not conduct your own
15 prudence analysis of OVEC.

16 A. There was no information on which we
17 could actually conduct an assessment.

18 Q. You didn't conduct one.

19 A. No. The information was not provided to
20 us, so, no.

21 Q. No.

22 A. That information could not be
23 conducted -- or sorry, that assessment could not be
24 conducted.

25 Q. On page 9, line 7 and 8, turn there for

1979

1 me. I think you state if "OVEC's credit ratings
2 fall, borrowing costs increase, increasing the cost
3 of existing and new debt held by OVEC"; is that
4 correct?

5 A. I do state that, yes.

6 Q. And just so I understand, in your
7 experience do borrowing costs generally increase with
8 when a utility's credit rating falls?

9 A. Yes.

10 Q. And also just so I'm clear so I
11 understand what you're thinking here. Is the contra
12 position also true, if a utility's credit rating
13 increases, its borrowing costs, do they get better?

14 A. I assume there is a threshold, but
15 generally speaking, yes.

16 Q. Then again so I understand, you would
17 agree that a utility's credit rating has a direct
18 impact on the costs it incurs to service both that
19 existing and future debt?

20 A. Yeah.

21 MR. MENDOZA: Asked and answered.

22 EXAMINER CATHCART: Overruled. I'll
23 allow the question.

24 Q. On line -- I'm sorry. Page 5, lines 20
25 and 26.

1980

1 A. I am sorry. Can you repeat that?

2 Q. Page 5, lines 20 and 26. If you'll take
3 a look at that and I am going to give you another
4 quick reference. Just take a look at that.

5 A. Yes.

6 Q. Would you flip to page 40, lines 14 and
7 18, and it's just the same reference, I just want to
8 make sure you see both places.

9 A. Page 40?

10 Q. Lines 14 through 18.

11 A. Yes.

12 Q. And I think in both those places, same
13 recommendation, you are just kind of elaborating. In
14 both those places you recommend that the Commission
15 consider either a special purpose docket or use
16 Duke's general rate case to address the credit rating
17 issues that the Company Witness Fetter addresses in
18 his testimony; is that a fair statement?

19 A. That's correct, yes.

20 Q. And in your deposition, I believe we
21 agreed that what you meant was that the Commission
22 should open a separate proceeding for the specific
23 purpose of analyzing just Duke's credit ratings or
24 otherwise simply cover those issues in, I think, the
25 next distribution case, we talked about that,

1 correct?

2 A. I think I stated that to the extent that
3 the Commission thinks it's appropriate to address
4 those issues head-on, those should be addressed in a
5 separate docket or as a specific issue that the
6 Commission takes up, rather than being used as a
7 factor within this proceeding.

8 Q. Do you know in this proceeding is there a
9 distribution rate case?

10 A. Yes.

11 Q. Do you know of any jurisdictions that
12 have conducted focused proceedings limited to
13 specifically reviewing credit ratings of public
14 utilities?

15 A. Over the course of the last couple of
16 months, I know there are a number of states who have
17 looked at the Tax Reform Act of 2017 and looked at
18 the potential recovery of tax issues as with -- as
19 they impact utility risk from a credit standpoint.
20 But outside of that, I am not aware of specific
21 dockets that have been conducted by other states on
22 utility credit ratings specifically.

23 Q. Do you know, does Ohio have focused
24 proceedings that specifically review the credit
25 ratings --

1982

1 A. Actually, may I modify my previous
2 answer?

3 I have been aware -- I'm sorry, of other
4 proceedings in other states where Utility Commissions
5 have reviewed bankruptcy proceedings and similar
6 concerns that have been focused on credit and utility
7 credit scores. Sorry.

8 Q. Yeah. Let me ask my question again, my
9 second question, okay? Yeah. Does Ohio have -- do
10 you know, does Ohio have focused proceedings that
11 specifically review the credit ratings of its
12 regulated utilities?

13 A. I'm not aware of the specific regulatory
14 construct that would get used in Ohio.

15 Q. And so, you are not aware of the docket
16 structures here in Ohio?

17 A. Not specifically with respect to credit
18 ratings.

19 Q. With other things?

20 A. General rate case structures, but aside
21 from that, no.

22 EXAMINER WALSTRA: We'll go off the
23 record.

24 (Discussion off the record.)

25 EXAMINER WALSTRA: We can go back on the

1983

1 record.

2 Q. (By Mr. Miller) I believe we didn't have
3 a question pending, so I will ask the next one.

4 Do you know if the Commission normally
5 traditionally considers or reviews factors involving
6 credit ratings of its regulated utilities when
7 arriving at its decisions in cases regarding rate
8 revision in Ohio?

9 A. I'm afraid I missed the beginning part of
10 that statement and I'm sorry.

11 Q. Do you know if this Commission normally
12 considers or reviews factors involving credit ratings
13 of its regulated utilities when arriving at its
14 decisions in its cases regarding rate provisions?

15 A. Like other jurisdictions, I would have to
16 assume that it is one of the considerations that the
17 Commission takes into account. But, again, I've
18 worked in just about all 50 states, I have testified
19 in 13 of them. I don't track specifically how each
20 independent Commission works with respect to its
21 regulatory -- precise regulatory proceedings; so I
22 couldn't tell you with respect to Ohio exactly what
23 the Ohio Commission does.

24 Q. And we talked about this, I think, you
25 did review Mr. Fetter's testimony, correct?

1984

1 A. Yes.

2 Q. And you don't dispute that Mr. Fetter is
3 an expert in utility regulatory issues and has vast
4 experience in the evaluation or interpretation of
5 credit ratings as they apply to investor-owned
6 regulated utilities, do you?

7 A. I don't contest that he is an expert in
8 those matters, no.

9 Q. Turn to page 36 for me, if you would.
10 And on lines 18 and 19, I think you state that
11 Company Witness Fetter characterizes a rejection of
12 Rider PSR as -- I will make sure I have this
13 correct -- the straw that breaks the camel's back; is
14 that correct?

15 A. Yeah. And I'm discussing here the
16 logical error that I think Mr. Fetter has made here
17 with respect to the convolution of Rider PSR and
18 other potential impacts on Duke's credit ratings.

19 MR. MILLER: Can I move to strike
20 everything after "Yeah"?

21 MR. MENDOZA: Your Honor, he was asking
22 him about the meaning of a quotation, you know, an
23 analogy, and he was explaining why that language
24 appeared in his testimony.

25 EXAMINER CATHCART: Denied. I think the

1985

1 witness was clarifying his answer.

2 Q. (By Mr. Miller) Can you point out to me
3 in Mr. Fetter's testimony exactly where he states
4 "the straw that breaks the camel's back"?

5 A. This is using an analogy for the purposes
6 of illustrating a point. Mr. Fetter does not use the
7 term "the straw that breaks the camel's back." I am,
8 in fact, criticizing Mr. Fetter for inappropriately
9 convoluting multiple factors and characterizing it as
10 the element that would be the straw that breaks the
11 camel's back, so to speak, or the singular element
12 that otherwise causes Duke's credit ratings to fall.

13 MR. MILLER: Can I move to strike
14 everything after "does not use the term 'the straw
15 that breaks the camel's back'"?

16 MR. MENDOZA: Your Honor, it's the same
17 thing. He is asking him about a metaphor that was in
18 his testimony, and the question was what did you mean
19 by this metaphor essentially, and he explained it.

20 MR. MILLER: That's not what I said, your
21 Honor. What I said was can you provide me the
22 location where Mr. Fetter says exactly that in his
23 testimony. He previously indicated he was relating
24 to that as a potential metaphor, but I asked him to
25 specifically refer to the exact location and he said

1986

1 no, I can't do that, because it's not stated by
2 Mr. Fetter. That should have been the end of the
3 answer.

4 EXAMINER CATHCART: Denied.

5 Q. (By Mr. Miller) On lines -- I think even
6 sorry -- page 36, lines 24 through 25.

7 A. Yes.

8 Q. I think you say "the notion that the
9 Commission's primary objective should be to support
10 utility financial metrics at an unabated cost to the
11 public interest"; is that correct?

12 A. Yes, I do have that.

13 Q. Whose notion is that?

14 A. Again, characterizing Mr. Fetter's
15 testimony. If you take him at his word that the ICPA
16 must be accepted in order to preserve the company's
17 credit ratings, irrespective of the cost of the ICPA,
18 then it would appear to be Mr. Fetter's notion that
19 the Commission should ignore other factors, aside
20 from the utility's credit ratings, which I believe is
21 inappropriate.

22 MR. MILLER: So, your Honor, I would move
23 to strike everything after "it would appear to be
24 Mr. Fetter's notion...."

25 MR. MENDOZA: Same response, your Honor.

1987

1 He's explaining his testimony.

2 MR. MILLER: I would say he is
3 overexplaining his testimony. He's elaborating to a
4 great extent.

5 EXAMINER CATHCART: Denied. I think it
6 was an open-ended question.

7 Q. In Mr. Fetter's testimony he does not
8 specifically state that the Commission's primary
9 objective should be to support utility financial
10 metrics at an unabated cost to the public interest,
11 anywhere, does he?

12 A. He does not, no.

13 Q. On page 30, let's turn to page 30,
14 lines -- I guess on lines 6, I think you state
15 Mr. Fetter implies; is that correct?

16 A. I do not state Mr. Fetter implies on
17 line 6.

18 Q. Well, let's look at page 3, line 5.

19 A. I'm on -- line 5, yes.

20 Q. You state Mr. Fetter implies there,
21 correct?

22 A. I do.

23 Q. And in the question on page 34, line 1.

24 A. Just a moment, please.

25 Yes.

1988

1 Q. I think you again say Mr. Fetter implies,
2 correct?

3 A. I do.

4 Q. On page 34, line 14, you reference
5 Mr. Fetter's thoughts by stating "thereby implying,"
6 correct?

7 A. Yes.

8 Q. And finally on question -- on page 39
9 again, looking at line 13, it says "What role does
10 Mr. Fetter imply...." Do you see that?

11 A. I do.

12 Q. Now, sir, for those references that I
13 just pointed out to you, they appear as either
14 questions to you in your testimony or statements made
15 by you in your testimony addressing what Mr. Fetter
16 may have implied. But you don't actually quote or
17 recite specific statements Mr. Fetter made or facts
18 Mr. Fetter recited in his testimony, do you?

19 A. I think in each one of those
20 circumstances I am making reference to very specific
21 segments of Mr. Fetter's testimony, and then reading
22 in my interpretation of what his testimony then
23 implies, what the logical outcome is of that
24 testimony.

25 Q. So those are simply your interpretations

1989

1 of Mr. Fetter's testimony, correct?

2 A. As I think is appropriate. Again, it's
3 the logical outcome of Mr. Fetter's testimony, of
4 taking it to its logical outcome.

5 Q. And I know you reviewed his testimony.
6 Let me ask you if you remember. Does Mr. Fetter
7 actually state with specificity in his testimony that
8 he believes a utility's credit ratings have
9 significant impact upon their ability to raise
10 capital on a timely basis and with reasonable terms?
11 Do you remember him saying that?

12 A. I would need to see Mr. Fetter's
13 testimony again.

14 Q. Would you like to see it?

15 A. Sure. And since I think you are looking
16 for a fairly exact quote, if you wouldn't mind
17 repeating that quote.

18 Q. That would be great.

19 Would you look for me on page 7, lines 13
20 through 14, I believe.

21 A. I'm there.

22 Q. And what I asked you is does Mr. Fetter
23 actually state with specificity "A utility's credit
24 ratings have a significant impact on its ability to
25 raise capital on a timely basis and with reasonable

1990

1 terms"?

2 A. Yes. Mr. Fetter states that.

3 Q. Do you agree with Mr. Fetter's
4 assessment?

5 A. That is my understanding of the impact of
6 utility credit ratings on capital, yes.

7 Q. And let's move on. We are done with
8 that.

9 In regards to hedging, can we agree that,
10 generally speaking, a hedge is a means of protection
11 or defense against things like financial loss?

12 A. Yes, it is one of those means.

13 Q. Can we also agree in financial circles a
14 hedge is often defined as an investment taken out to
15 limit the risk of another investment?

16 A. Yes, that is a fair characterization.

17 Q. So I understand, is an insurance policy a
18 kind of hedge?

19 A. It is.

20 Q. And I got to ask this question. Those
21 warranties we all get offered when we go to Best Buy
22 and purchase electronics, are those kind of a hedge?

23 A. They are, yes.

24 Q. And will you agree that in those
25 circumstances, the purchaser incurs a cost initially

1991

1 in order to provide some protection against a
2 potential unknown set of costs or risks in the
3 future?

4 A. That's right. And to be specific, the
5 reason that insurance acts as a hedge is because in
6 the mind of the insured, the risk of whatever
7 catastrophic event occurring, multiplied by the cost
8 of that event has effectively a present value that's
9 better than the cost that would otherwise be incurred
10 to the consumer if they didn't take that insurance
11 policy.

12 Q. Can Rider PSR function as a hedge ever?

13 A. As it's been characterized in this case,
14 no.

15 Q. You didn't perform any independent
16 financial analysis, empirical calculations, or other
17 material analysis of the specifics involved with
18 Rider PSR, did you?

19 A. Outside of those that were provided in
20 workpapers and the testimony of Mr. Rose, no.

21 Q. And you didn't perform any independent
22 forecasts or modeling of the PJM energy markets over
23 the next seven years, did you?

24 MR. MENDOZA: Asked and answered.

25 EXAMINER CATHCART: Overruled.

1992

1 A. For the purposes of this case, I did not
2 perform any independent assessments.

3 Q. And did you perform any independent
4 forecasts or modeling of the PJM capacity markets
5 over the next seven years? For this case?

6 A. For this case, no. But as relates to
7 work that I have done and continue to do, the prices
8 of the PJM capacity market and other capacity markets
9 are a factor that I generally track and take into
10 account.

11 Q. But you didn't perform those analyses for
12 this case.

13 A. I did not perform a new independent
14 forecast for this case, no.

15 Q. And you simply relied on Mr. Rose's
16 numbers.

17 A. I, again, assessed Mr. Rose's numbers and
18 came to the understanding that I felt that they were
19 generally reasonable for the purposes of this case.

20 Q. And do you know if the Commission has
21 ever opined in any other proceedings as to whether a
22 rider that functions like Rider PSR, by using OVEC as
23 an insurance policy against market prices and market
24 price changes, is a hedge?

25 MR. MICHAEL: Objection, your Honor. I

1993

1 think Mr. Miller once again is trying to draw
2 inappropriate parallels between riders in a different
3 case with a different facts scenario, with different
4 testimony, different evidence, to the one at issue
5 here, and I object to his question.

6 EXAMINER CATHCART: Overruled. The
7 witness can answer.

8 A. Again, I don't have specific knowledge of
9 the outcome of other rider cases done by the Ohio
10 Commission or assessed by the Ohio Commission, but I
11 think the facts in evidence in this case are that
12 this particular Rider PSR, as assessed by Duke Energy
13 Ohio, could not act as a hedge. It is a loss under
14 all circumstances. It's a loss in every year and it
15 is a -- there is no circumstance that was put forward
16 by Mr. Rose that could potentially have it act as a
17 hedge.

18 MR. MILLER: So can I move to strike
19 everything after "I don't have specific knowledge of
20 the outcome of other rider cases done by the Ohio
21 Commission or assessed by the Ohio Commission"?

22 MR. MICHAEL: Your Honor, I would oppose
23 that motion to strike. Mr. Miller was trying to draw
24 a parallel by regarding what happened in other cases
25 and this case, and the witness I think accurately

1994

1 pointed out they are two vastly different records and
2 two vastly different things. So Mr. Miller is asking
3 questions, the witness is answering them right on
4 point, and he has got to live with what the truth is
5 and what the witness's answer is.

6 MR. MILLER: Your Honors, if he pointed
7 out the vast differences, he must understand the
8 underlying cases, and I would love to chat with him
9 about those, but I think what he said was no, I don't
10 know.

11 MR. MENDOZA: And he was answering the
12 question to his knowledge and he was focused on this
13 case and he is trying to provide helpful information
14 related to this case.

15 MR. MILLER: I didn't ask him for helpful
16 information. I just simply asked him if he knew.

17 EXAMINER CATHCART: I am going to deny
18 the motion to strike.

19 MR. MILLER: Could you give us a minute?
20 I think that might be all I have.

21 EXAMINER CATHCART: You may.

22 MR. MILLER: Thank you, Dr. Fisher. I
23 think that's it.

24 THE WITNESS: Thank you.

25 EXAMINER CATHCART: Staff?

1995

1 MR. BEELER: Nothing, your Honor. Thank
2 you.

3 EXAMINER CATHCART: Any other
4 cross-examination?

5 Any redirect?

6 MR. MENDOZA: Could we take a 5-minute
7 break?

8 EXAMINER CATHCART: You may.

9 Let's go off the record.

10 (Recess taken.)

11 EXAMINER CATHCART: So let's go back on
12 the record.

13 Any redirect?

14 MR. MENDOZA: No questions, your Honor.
15 Thank you.

16 EXAMINER CATHCART: Thank you.

17 Thank you.

18 THE WITNESS: Thank you.

19 MR. MENDOZA: And I would move to admit
20 Sierra Club Exhibit 4 and Sierra Club Exhibit 4A
21 which are the direct testimony and confidential
22 testimony of Dr. Fisher.

23 EXAMINER CATHCART: Any objections?

24 They will be admitted.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

1996

1 EXAMINER WALSTRA: Staff, would you like
2 to call your last witness?

3 MR. BEELER: Thank you. The Staff would
4 call Patrick Donlon. May I approach?

5 EXAMINER WALSTRA: You may.

6 (Witness sworn.)

7 EXAMINER WALSTRA: Thank you.

8 MR. BEELER: Your Honor, I would like to
9 have marked as Staff Exhibit 17, the Prefiled
10 Testimony in Support of the Stipulation of Patrick
11 Donlon.

12 EXAMINER WALSTRA: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MR. BEELER: Again, on the copies I
15 passed out to the Examiners and to the court
16 reporter, again the page numbers fell off of this set
17 too, so I have just handwrote some in. I have a few
18 extra copies here if somebody wants the handwritten
19 ones, but otherwise we can just go by question. I
20 apologize for that.

21 - - -

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PATRICK DONLON

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

DIRECT EXAMINATION

By Mr. Beeler:

Q. Please state your name for the record.

A. Patrick Donlon.

Q. Where are you employed?

A. Donlon, LLC, and Capitol Partners.

Q. Do you have -- do you have in front of
you what has previously been marked as Staff Exhibit
17?

A. I do.

Q. And what is that?

A. It's my prefiled testimony.

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

A. It was.

Q. Is it true and accurate to the best of
your knowledge?

A. It is.

Q. Do you have any corrections or changes?

A. I do have one. And it would be on, let's
see, what page number.

Q. Probably just do Question number.

1998

1 A. Question No. 24. The Answer to it. A
2 sentence got -- so it would be page 17, Question 24,
3 and line 16, a sentence was left off. The sentence
4 will start at the end of the paragraph.

5 "Additionally, the Company is required to
6 file at least one base D or distribution rate case
7 application on or before May 31, 2024, or lose the
8 DCI. This provision provides the opportunity to
9 quantify, through the natural course of a rate case,
10 the benefits of Rider PF and other initiatives
11 provided for in this stipulation." Sorry.

12 MS. WATTS: That was a lot.

13 THE WITNESS: That was a long run-on
14 sentence.

15 MS. FLEISHER: Would it be possible to
16 e-mail that to the parties?

17 MR. BEELEER: Yeah. I'll send an e-mail.

18 A. That's the only change or addition.

19 Q. With that change, if I asked you these
20 questions today, would your answers be the same?

21 A. Yes.

22 MR. BEELEER: Thank you.

23 I would move for the admission of Staff
24 Exhibit 17, subject to cross-examination.

25 EXAMINER WALSTRA: Thank you.

1999

1 Mr. Dove?

2 MR. DOVE: No questions, your Honor.

3 MS. LEPPLA: No questions.

4 EXAMINER WALSTRA: Ms. Fleisher.

5 MS. FLEISHER: I have a couple of
6 questions and I am going to reserve my right to ask
7 questions about the additional sentence once I have a
8 full understanding of what it was.

9 - - -

10 CROSS-EXAMINATION

11 By Ms. Fleisher:

12 Q. Mr. Donlon, I just want to clarify to
13 start with. So you're testifying on behalf of Staff
14 in this proceeding, correct?

15 A. Correct.

16 Q. So any answer you give represents Staff's
17 position, correct?

18 A. Correct.

19 Q. Okay. Do you believe there's a
20 correlation between wholesale market electricity
21 prices and prices paid by retail ratepayers?

22 A. Not a direct correlation, but there is a
23 effect on it, but it doesn't mean that if one -- if
24 wholesale goes up or down, it doesn't mean that
25 ultimately gets to residential customers.

2000

1 Q. And in your testimony, Question 17, you
2 on page --

3 A. I've got Question 17.

4 Q. Okay.

5 A. That's a good way to go by it.

6 Q. Sure.

7 You testify regarding PSR being in the
8 public interest, correct?

9 A. Correct.

10 Q. Okay. And if Rider PSR were to cost --
11 were projected to cost Duke's ratepayers a billion
12 dollars over the term of the rider, would that be in
13 the public interest?

14 A. I haven't seen that forecast.

15 Q. It's a hypothetical, so I am asking you a
16 hypothetical.

17 A. We would have to do that analysis as the
18 stipulation as a whole and I haven't done that
19 analysis.

20 Q. Okay. And is part of that analysis that
21 you're referencing -- does part of that analysis
22 pertain to the level of certainty regarding the
23 projected costs or credits of Rider PSR?

24 THE WITNESS: Could you repeat that,
25 please.

2001

1 (Record read.)

2 A. Well, it's the stipulation as a whole and
3 reviewing the stipulation as a whole and, yes, the
4 costs and expenses would be a part of that.

5 Q. Okay. Are you saying you wouldn't review
6 or you didn't -- let me start over.

7 Are you saying you didn't review Rider
8 PSR standing alone?

9 A. You have to -- you have to review the sum
10 of the parts to analyze the whole, but the test is
11 the stipulation as a whole.

12 Q. Okay. And as part of your analysis of
13 Rider PSR, did Staff consider the potential magnitude
14 of the impact of the purported hedge on ratepayer
15 bills?

16 A. As I state in my testimony, at the time
17 that I wrote this, the only forecast that was
18 available was Witness Rose's, so we looked at that.

19 Q. And I want to focus down your answer. As
20 part of looking at Witness Rose's forecast, did you
21 consider how that related to overall customer bills
22 in considering the value of PSR as a hedge?

23 THE WITNESS: Can you reread that again,
24 please.

25 (Record read.)

2002

1 A. Yes. Staff looked at bill impacts.

2 MS. FLEISHER: Okay. And may I approach,
3 your Honor?

4 EXAMINER WALSTRA: You may.

5 MS. FLEISHER: I would like to have this
6 marked as ELPC Exhibit 4.

7 EXAMINER WALSTRA: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. (By Ms. Fleisher) And, Mr. Donlon, giving
10 you a minute to look at this, do you recognize this
11 as the utility rate survey that Staff prepares both
12 monthly and annually for the EDUs in Ohio?

13 A. Yes, it appears so.

14 Q. Okay. And to be specific, is that the
15 Utility Rate Survey for all of 2017?

16 A. It looks like it has every month.
17 Quickly looking through it.

18 Q. Is that document publicly available on
19 the PUCO website?

20 A. Yes.

21 Q. And would you say that the bill estimates
22 in the Utility Rate Survey represent, you know, one
23 data point with respect to what customer bills in
24 Ohio might be?

25 A. At that point in time for an average

2003

1 customer, I think for residential I think we use
2 750 -- or, actually it looks like they changed it.
3 Yeah, so. Yep, 750 kWh.

4 MS. FLEISHER: Okay. That's all I have,
5 your Honor.

6 EXAMINER WALSTRA: Thank you.

7 MR. MENDOZA: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Mendoza:

11 Q. Good morning, Mr. Donlon.

12 A. Good morning. How are you?

13 Q. Good. How are you doing?

14 A. Well.

15 Q. Just a few questions. The facts of a
16 particular case are relevant to the Commission's
17 decision in that case, right?

18 A. I would hope so.

19 Q. Could I take that as a yes?

20 A. Well, what the Commission finds relevant
21 is their choice, so I would hope they would take the
22 facts and find the relevant ones.

23 Q. Thank you for that clarification.

24 So, in your opinion, the facts of a
25 particular case are an important thing for the

2004

1 Commission to think about, right?

2 A. Yes.

3 Q. And whether the proposed Rider PSR will
4 operate as a hedge is a factual issue, right?

5 A. It's a, as we've seen here, I think it's
6 a debatable fact, but.

7 Q. But it either will be a hedge or it won't
8 be a hedge, right? I mean, that's a factual
9 question. It's not a regulatory question. It's not
10 a legal question, right?

11 A. I'll agree.

12 Q. The answer was yes?

13 A. Yes, I agree.

14 Q. Thank you.

15 Let's look to Question 20, please. Do
16 you see in Question 20 where you talk about capacity
17 prices generally?

18 A. Yes.

19 Q. And it's correct, is it not, for the
20 majority of the period covered by Rider PSR, we
21 already know what the capacity price will be, right?

22 A. It's a little more than half, yeah.

23 Q. Okay. Thank you.

24 And in this -- this question set talks
25 about the difficulty of forecasting the impact of

2005

1 Rider PSR because of recent events, right?

2 A. Correct.

3 Q. And one of those recent events you refer
4 to is the PJM capacity auction, right?

5 A. Yes.

6 Q. And did you go back to do a historical
7 analysis of whether this -- the jump between 2021
8 and -- excuse me. Did you do a historical analysis
9 to look at whether the jump in prices between 2020
10 and 2021 on one hand, to the next delivery year,
11 '21-'22, is abnormal or how that compares to previous
12 jumps in historical -- in PJM capacity prices?

13 A. I have a general understanding of what
14 they've been in the past. I didn't necessarily go
15 back and look at a statistical analysis of what the
16 volatility of the PJM capacity prices are.

17 Q. Okay. Would you agree with me that PJM
18 capacity prices tend to -- historically have tended
19 to oscillate up and down? One year they might go up
20 and, if that's the case, the next year they will go
21 down, vice versa? Would you say, just generally
22 speaking, that oscillation is kind of the way that
23 the capacity market has functioned?

24 MR. D'ASCENZO: I am going to object,
25 your Honor. There was like three questions in there.

2006

1 MR. MENDOZA: I concede that was a
2 complicated question.

3 Q. If you are having trouble understanding
4 what I am getting at, just let me know, Mr. Donlon.

5 A. Can you repeat the question, please?

6 Q. Why don't I just try it again.

7 A. That's fine.

8 Q. Would you agree with me that capacity
9 prices historically have tended to go up and down and
10 in succeeding years? So there will be one year it
11 might go up and then the next year it would likely go
12 down? Isn't that generally how the market has
13 functioned?

14 MR. D'ASCENZO: Again, objection, your
15 Honor, as to form.

16 EXAMINER WALSTRA: The witness can
17 answer.

18 A. I would have to look if it changes every
19 single year. Obviously, the price is different every
20 year, but with specificity, sitting here today I
21 can't remember if it goes up and then down, up and
22 down, if there's a fluid pattern.

23 MR. MENDOZA: Okay. Thank you, your
24 Honor. No further questions.

25 EXAMINER WALSTRA: Thank you.

2007

1 MS. GLOVER: No questions.

2 EXAMINER WALSTRA: Mr. Michael.

3 MR. MICHAEL: Thank you.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Michael:

7 Q. Mr. Donlon, do you have the copy of your
8 testimony with the page numbers that Mr. Beeler put
9 on it?

10 A. Yes.

11 Q. Okay. Because I took the time and
12 counted the pages so I might refer to page numbers,
13 so I just wanted to see.

14 MR. BEELEER: Let me give you a copy
15 because our numbering might have differed.

16 A. Did you start with 1?

17 Q. Yeah, right.

18 MR. BEELEER: Start with 1.

19 Q. We will get through this one way or the
20 other. I would like to draw your attention first, if
21 I could, Mr. Donlon, to page 1, lines 9 through 11 of
22 your testimony.

23 A. Yes, sir.

24 Q. Are you testifying today in your capacity
25 as Owner and President of Donlon, LLC, or in your

2008

1 capacity as an employee of Capitol Partners?

2 A. Donlon, LLC.

3 Q. And have you discussed at all with your
4 colleagues at Capitol Partners your testimony in this
5 case?

6 A. No. I really just put the Capitol
7 Partners on there just for full disclosure, but
8 there's no part of that --

9 Q. Why did you deem it necessary to fully
10 disclose your association with Capitol Partners?

11 A. Just thought it would be clearer since --
12 so there would be no confusion.

13 Q. What is Capitol Partners?

14 A. It's a consulting firm.

15 Q. Does it lobby the Ohio General Assembly?

16 A. I believe they do.

17 Q. Does it lobby any State agencies?

18 A. PUCO.

19 Q. And among Capitol Partners' clients are
20 regulated public utilities, correct?

21 A. Some. I actually don't work on those
22 cases. Or on their public utility ones.

23 Q. Mr. Donlon, when you prepared your
24 testimony, were you ever preparing the testimony
25 while you were at Capitol Partners -- I mean

2009

1 physically?

2 A. No.

3 Q. And while you were preparing your
4 testimony, were you ever -- were you also at the time
5 an employee of Capitol Partners?

6 A. We have an agreement on how we'll solicit
7 clients. And if we solicit them together, then we
8 work together on those programs; if we don't, we
9 don't, and they are separated, so.

10 MR. MICHAEL: Okay. Your Honor, I would
11 like to move to strike that answer. I am happy to
12 have the court reporter read it back which I think
13 will confirm that answer was not responsive to it.
14 My question was did he prepare his testimony while he
15 was an employee of Capitol Partners at the same time.

16 MR. BEELER: I believe he answered the
17 question, your Honor. I would like the question and
18 answer reread if that's possible.

19 EXAMINER WALSTRA: I will deny the motion
20 to strike.

21 MR. BEELER: Thank you.

22 Q. (By Mr. Michael) Mr. Donlon, when you
23 prepared your testimony for this case, were you an
24 employee of Capitol Partners?

25 A. That's -- I am not sure how to answer it

2010

1 because it's an odd legal thing that I really don't
2 know if I am technically an employee of theirs or if
3 we have a contracting agreement together, so we
4 haven't fully flushed that out yet.

5 Q. Okay.

6 A. So I honestly don't know the answer to
7 that question.

8 Q. That's fine. So just for --

9 A. We had a mutual agreement which is what I
10 was trying to answer that the clients we pitch
11 together, we work together on. The clients we don't
12 pitch together, we don't work on. So any of Capitol
13 Partners' clients before I got there, like the other
14 utilities, I don't work on.

15 Q. Okay.

16 A. I have nothing to do with.

17 Q. Okay. So just for purposes of clarity
18 then, when you use the word "employed" there in your
19 testimony, you don't know if that's actually true,
20 correct?

21 A. Yeah. It's the legal definition versus
22 necessarily I work with them.

23 Q. Okay. So does -- does Capitol Partners
24 have any conflict policies in place?
25 Conflict-of-interest policies?

2011

1 A. I don't know. You would have to ask
2 someone there.

3 Q. So in your capacity as Director of
4 Regulatory Affairs for Capitol Partners, have you
5 taken any initiative with your colleagues at Capitol
6 Partners to ensure that you do not talk to them about
7 any public-utilities-related matters for preexisting
8 Capitol Partners' clients?

9 THE WITNESS: Can you restate that, I
10 think?

11 (Record read.)

12 A. So, yes, if there's a conflict between
13 our clients or an issue, we don't have that
14 conversation -- we don't talk about it.

15 Q. Okay. What specifically do you do to
16 ensure you don't talk about it?

17 A. Well, there's -- there's two of us, so we
18 don't talk about it, that actually deal with
19 regulatory issues.

20 Q. And in your capacity as President of
21 Donlon, LLC, are there any conflict-of-interest
22 policies in place?

23 A. I'm able to keep that straight with
24 myself.

25 Q. That's cute, but you are both at Donlon,

2012

1 LLC, and Capitol Partners, and I think the public has
2 a right to know about the interaction between those
3 two organizations given the type of work they do,
4 Mr. Donlon.

5 A. We keep them separate, as I've said
6 multiple times.

7 Q. You said that related to Capitol
8 Partners. I am now asking you regarding Donlon, LLC,
9 just so we're straight.

10 A. Yes, we do.

11 Q. So in your capacity as President of
12 Donlon, LLC, what do you do to ensure that you don't
13 talk about public utility matters brought in to
14 Donlon, LLC, with your colleague at Capitol Partners?

15 MR. BEELEER: I guess I will object at
16 this point. I believe the witness has answered this
17 line of questions. He said he's kept it separate
18 and --

19 MR. MICHAEL: Well, just to be clear,
20 your Honor, these are two separate legal entities.
21 My first line of questioning related to his capacity
22 at Capitol Partners. My second line of questioning,
23 which I am on now, relates specifically to Donlon,
24 LLC, which is apparently the entity with whom Staff
25 contracted in this particular case.

2013

1 Your Honor, as a lawyer, and recognizing
2 that different legal entities have different legal
3 obligations and responsibilities, they are not one
4 and the same unless this witness wants to stipulate
5 they are one and the same. They are not. So the
6 questions pertain to different entities and different
7 capacities in which the witness is working.

8 EXAMINER WALSTRA: I'll allow the
9 question.

10 A. I keep them separate.

11 MR. MICHAEL: Could you reread the
12 question, please.

13 (Record read.)

14 Q. Okay. What do you do, Mr. Donlon, to
15 keep them separate?

16 A. I understand what is separate, what is
17 not, and I compartmentalize those issues.

18 Q. Okay. Is there any written document
19 reflecting the processes and procedures by which you
20 keep them separate?

21 A. Not at this time.

22 Q. Mr. Donlon, are you -- were you put on
23 retainer to testify in this case for a flat fee?

24 A. No. It was an hourly.

25 Q. Okay. How many hours did you put into

2014

1 this case, Mr. Donlon?

2 A. I don't know that off the top of my head.

3 Q. What is your hourly rate?

4 MR. BEELEER: Objection. I mean, I'm not
5 sure the relevancy at this point.

6 MR. MICHAEL: Your Honor, I've
7 cross-examined many, many witnesses over the course
8 of my career, and part of the cross-examination of
9 expert witnesses often involves providing a
10 foundation for bias. The question about how much the
11 witness is being paid relates to that question. I've
12 asked him in these Public Utilities Commission
13 hearings and the witnesses have responded. I am
14 simply asking what he is charging an hour.

15 EXAMINER WALSTRA: I am going to sustain.
16 I don't see how that's relevant.

17 Q. (By Mr. Michael) Mr. Donlon, I realize
18 you don't recall how many hours you spent on this
19 case; however, would you know if you have spent more
20 or less than 50 hours in preparing your testimony?

21 A. I think by participating in the hearing
22 that's probably more than 50 hours there.

23 Q. Okay. So let me ask it this way: For
24 the entirety of your testimony here today, up to the
25 time you were engaged and when you're appearing here

2015

1 today, would you have spent more or less than 50
2 hours?

3 A. I would assume it's probably more than 50
4 hours.

5 Q. I want to draw your attention,
6 Mr. Donlon, if I could, to page 1, line 18 of your
7 testimony. And specifically your assertion in that
8 line, "I provide expert testimony for clients." Do
9 you see that?

10 A. Yes, sir.

11 Q. And when you provide expert testimony for
12 clients, Mr. Donlon, is it your independent testimony
13 that you are providing?

14 A. It's independent for the client, yes.

15 Q. Okay. Let's talk about that a little bit
16 then. Does it reflect your own independent objective
17 analysis?

18 A. Yes.

19 Q. Okay. So you don't simply become engaged
20 and parrot whatever the client tells you to say,
21 correct?

22 A. No, I do not.

23 Q. Okay. If you turn, Mr. Donlon, in your
24 testimony to page 3, lines 8 through 9. Let me know
25 when you are there, please.

2016

1 A. I'm there.

2 Q. In that part of your testimony you state
3 that the PUCO has asked you to support the
4 stipulation, correct?

5 A. That is what it says.

6 Q. Okay. So in this case you are not here
7 providing your independent objective analysis;
8 rather, your engagement was predetermined and that
9 engagement was to support the stipulation, correct?

10 A. I think that's a mischaracterization. In
11 -- as my role as Director when the stipulation was
12 going on, it's understood where I kind of fell. So
13 yes, it's my independent, but yes, I was also hired
14 to support the stipulation. If I could not have
15 supported the stipulation, I probably wouldn't have
16 been employed.

17 Q. Well, did you make the PUCO aware,
18 Mr. Donlon, that in your current capacity of, among
19 other things, providing testimony, that you would
20 arrive at whatever conclusion you arrived at
21 independently, objectively?

22 MR. BEELEER: Could I have that question
23 reread, please.

24 (Record read.)

25 MR. BEELEER: Thank you.

2017

1 A. Not in those words, but, yes, it would
2 have -- the conversation before we were ever engaged,
3 that would have came up.

4 Q. Okay. And you said I mischaracterized
5 something and I want to go back to that assertion you
6 made against the characterization I made.

7 I read right out of your testimony on
8 page 3, lines 8 through 9, which states "The Staff of
9 the Public Utilities Commission of Ohio has asked me
10 to support the Stipulation and Recommendation." I
11 read that correctly, right?

12 A. Yes.

13 Q. And you were not involved in the ESP
14 case, correct?

15 A. That's incorrect.

16 Q. When you were on Staff you were involved
17 in the ESP case?

18 A. Yes.

19 Q. Okay. And you left Staff at the end of
20 2017?

21 A. No. January 2, 2018.

22 Q. Okay. I want to draw your attention, if
23 I can, Mr. Donlon, to page 3, lines 13 through 14.
24 Let me know when you are there, please.

25 A. That's the same page, right?

2018

1 Q. Yes, sir, it is.

2 A. Yes.

3 Q. In analyzing whether an ESP is more
4 favorable than an MRO, it's the ESP's components that
5 are considered, correct?

6 A. As opposed to what?

7 Q. As opposed to what's going on in another
8 non-ESP case.

9 A. When you compare it to the MRO, a
10 hypothetical MRO. So you have to compare a
11 hypothetical MRO to an ESP.

12 Q. Right. But when doing that analysis, you
13 wouldn't look at, for example, a reliability case
14 that is separate and apart from a pending reliability
15 case, separate and apart from the ESP case, correct?

16 A. Not that specific case, but reliability,
17 depending on how it is involved in the ESP, can have
18 an affect on it.

19 Q. Right. You look at everything within the
20 bounds of the ESP, but you don't look beyond the
21 bounds of the ESP, correct?

22 A. Correct.

23 Q. We are going to stay on the same page,
24 Mr. Donlon. I want to draw your attention to
25 lines 21 and 22, if I can, and your reference to

2019

1 various cases there. Do you see that?

2 A. Correct.

3 Q. When you were on Staff, were you involved
4 in the 17-872 Duke case? That would have been the
5 PSR Rider case.

6 A. Yes, I would have had involvement in
7 that.

8 Q. Okay. What was your involvement while
9 you were on Staff, Mr. Donlon, in the ESP case?

10 A. Participating in negotiations, discussing
11 with Staff on positions where we thought it should
12 go, what should happen, all aspects of it.

13 Q. Okay. But you did not lead any Staff
14 audit related to that case, correct?

15 A. An audit to the ESP?

16 Q. Yes.

17 A. I am -- a lot of ESPs don't have audits
18 like rate cases, but if -- I am not sure what you
19 mean by "audit" --

20 Q. Well, I'll direct --

21 A. -- in that sense.

22 Q. Certainly. I'll direct your attention to
23 page -- or pardon me, line 20 on the same page where
24 you said you "led Staff in the audit." Do you see
25 that?

2020

1 A. Yes.

2 Q. And I want to use the word "audit" in the
3 same sense in which you are using it there, okay?

4 A. That would have been really on the AIR
5 case.

6 Q. That's correct, that's what your
7 testimony says.

8 A. That's what I'm saying I was using the
9 word "audit" in.

10 Q. Okay. And I want to know if you led
11 Staff in the audit, as you use the term right there,
12 in the ESP case.

13 A. Again, I really -- there's questions, you
14 are asking questions, you are doing DRs, so in that
15 sense, yes. But in a -- it's not the same as an
16 audit for the rate case, but, yes, in leading DRs,
17 items like that.

18 Q. When was the ESP case filed, Mr. Donlon?

19 A. I don't have that memorized.

20 Q. Did you lead Staff in the preparation and
21 negotiations of the ESP case?

22 A. In -- up until I left, yes.

23 Q. Okay. And --

24 A. Along with obviously Howard Petricoff who
25 was, you know, who I reported to.

2021

1 Q. Okay. And while you were on Staff, did
2 settlement -- all-party settlement negotiations occur
3 in this global case?

4 A. I would have to -- I would have to look
5 back at the calendar to really see if all parties for
6 all of the global settlement was in and which ones
7 were wrapped in and which ones weren't. There were
8 negotiations happening with various parties at
9 various times.

10 MR. MICHAEL: I will move to strike, your
11 Honor, and ask that the witness answer my question.

12 MR. BEELER: I believe he did answer the
13 question. He explained his knowledge.

14 MR. MICHAEL: I was focused on all-party
15 meetings.

16 EXAMINER WALSTRA: Denied.

17 MR. BEELER: That was not clear.

18 MR. MICHAEL: When I say "all," I mean
19 all-party meetings, so I don't know how I could be
20 any more clear. But, in any event, thank you, your
21 Honor.

22 Q. (By Mr. Michael) How many all-party
23 meetings on this global case, Mr. Donlon, occurred
24 before you left Staff?

25 A. Again, I would have to check the

2022

1 calendar.

2 Q. How many all-party meetings in this
3 global case occurred after you left Staff?

4 A. Again, I don't know.

5 Q. While you were on Staff and negotiating
6 in this global case, how many individual parties did
7 Staff meet with?

8 A. Off the top of my head, I don't know.

9 Q. Mr. Donlon, you don't know how many
10 parties appeared at any of the all-party meetings
11 after you left Staff, correct?

12 A. Correct.

13 Q. And you don't know what parties appeared
14 at any all Staff -- all -- let me backtrack.

15 You don't know how many parties appeared
16 at all-party settlement meetings before you left
17 Staff, correct?

18 A. I would have to look. It's not something
19 I commit to memory of who was at every single meeting
20 I had.

21 Q. So the answer is you don't know, correct?

22 A. That's correct.

23 Q. And part of the explanation for that, at
24 least as it leads to -- relates to all-party
25 settlement meetings that occurred after you left

2023

1 Staff, is because you didn't participate in those
2 meetings, correct?

3 A. That is correct.

4 Q. If I could turn your attention,
5 Mr. Donlon, to page 4, line 12 of your testimony.

6 A. That's regarding Question 10, correct?

7 Q. Yes, sir, it is.

8 A. Okay.

9 Q. And you make a reference there to the
10 company's electric service standards for 2016,
11 correct? In line 12?

12 A. Yes.

13 Q. Did you also review standards and the
14 degree to which the company met them for the year
15 2017, Mr. Donlon?

16 A. I personally did not.

17 Q. And why is that?

18 A. That is a different section of Staff and
19 they reviewed it and I talked with them. Or I
20 assumed they would. I am pretty sure that would be
21 Nicodemus or Craig Smith.

22 Q. And you are aware, Mr. Donlon, that the
23 company missed its CAIDI standard for 2016 and 2017,
24 correct?

25 A. Yes.

2024

1 Q. And you are aware that they missed their
2 SAIFI standard for 2017?

3 A. I believe that is accurate.

4 Q. Sticking on that same page, Mr. Donlon,
5 you have a series of bullet points there at the
6 bottom. Do you see those?

7 A. Yes.

8 Q. And I want to direct your attention to
9 the fourth bullet point, the "Overall base rate
10 reduction." Do you see that?

11 A. Yes.

12 Q. You don't know what Staff's range was in
13 the base rate case, correct?

14 A. Meaning the Staff Report?

15 Q. Yes, sir.

16 A. I think I remember -- I think I remember
17 that.

18 Q. Would you please tell me what it is?

19 A. I knew you were going to ask that
20 question. I think it was -- I want to say the lower
21 bound was 28 million. The upper bound would have
22 been up around 25 but -- or 22, but David Lipthratt
23 would know that for sure. There's like five rate
24 cases at the time going on, so I might have them
25 mixed up with other ones, but I think that's what it

1 was -- well, it was a reduction of 28.

2 MR. MICHAEL: Your Honor, I am going to
3 move to strike and ask that we have the court
4 reporter reread the question to the witness simply
5 for the purpose of clarity. I think things got
6 muddled up there in the response, so.

7 EXAMINER WALSTRA: Sure.

8 (Record read.)

9 Q. "It" is referring to Staff's range.

10 A. Right. I said what I thought it was and
11 then I clarified that I could be wrong and Witness
12 Lipthratt would know for sure.

13 Q. So you don't know what it was, correct?

14 A. I think I remember, which is what I said;
15 but for clarity, the Staff Report stands for itself,
16 and I would --

17 Q. Okay. You signed the Staff Report,
18 correct?

19 A. Correct.

20 Q. Okay. So my question is, you don't know
21 what the range was, correct?

22 A. I haven't looked at it in a while.

23 Q. You don't know what it is, correct,
24 Mr. Donlon?

25 MR. BEELER: Objection. He answered that

1 question.

2 MR. MICHAEL: Your Honor, his answer is I
3 haven't looked at it for a while. That doesn't tell
4 me whether he knows what the range is or not. It
5 just tells me he hasn't looked at the Staff Report
6 for a while.

7 MR. BEELER: He can refresh the witness's
8 memory with the Staff Report if he so chooses.

9 MR. MICHAEL: I am not under any
10 obligation to refresh this witness's recollection.
11 If Staff counsel wants to do that, that's fine. I
12 just want to know what the witness knows, and him
13 telling me when he read the Staff Report the last
14 time does not answer that question.

15 EXAMINER WALSTRA: Sustained.

16 Q. (By Mr. Michael) I would like to direct
17 your attention, Mr. Donlon, to the next bullet point
18 on line 20, "Return on Equity." Do you see that?

19 A. Yes.

20 Q. Do you recall what Staff's range on ROE
21 was? In the Staff Report?

22 A. That would be a better question for
23 Witness Buckley.

24 Q. If you would please turn to page 5,
25 Mr. Donlon. And I direct your attention to the first

2027

1 clear bullet point, "Caps on the amount." Do you see
2 that?

3 A. Referring to the Distribution Capital
4 Investment Rider?

5 Q. Yes, sir.

6 A. Yes.

7 Q. You don't know what those caps are,
8 correct?

9 A. I did not commit those to memory.

10 Q. And the next clear bullet point,
11 Mr. Donlon, you see reference to "Potential battery
12 storage recovery," correct?

13 A. Yes.

14 Q. And "potential" obviously means there may
15 or may not be battery storage recovery, correct?

16 A. Correct.

17 Q. And what does the degree to which Duke
18 recovers for battery storage depend on?

19 THE WITNESS: Can you reread that,
20 please.

21 (Record read.)

22 A. Well, first, that Duke puts in a battery.
23 Second, it would be to a prudency review. It has a
24 \$20 million cap that they can spend on it. So I
25 think those would be the main three.

1 Q. Does Duke have to come in to the
2 Commission under an RDR case, Mr. Donlon, to ask for
3 permission to implement battery storage and recover
4 any costs on that?

5 A. I don't believe that they have to get
6 pre-approval for it. It would be in the prudence
7 review after the fact. I am having trouble finding
8 the specific language in the stipulation. That's my
9 answer.

10 Q. Mr. Donlon, when were you contacted by
11 the PUCO to testify in this case?

12 A. I don't remember the exact month and
13 date. I am really bad with dates.

14 Q. I want to stay on page 5, Mr. Donlon, and
15 direct your attention to the bullet point regarding
16 the PowerForward Rider. Do you see that?

17 A. Yes.

18 Q. And the first bullet point regarding
19 recovery of costs. Do you see that?

20 A. Yes.

21 Q. And it's true that we don't know how much
22 costs will be recovered associated with Commission
23 directives resulting from the PowerForward
24 Initiative, correct?

25 A. Correct.

2029

1 Q. And similarly, we don't know how much
2 costs will be recovered associated with the
3 communications infrastructure needed to support
4 advanced metering infrastructure and data access
5 enhancement, as stated in that second bullet point,
6 correct?

7 A. Correct.

8 Q. And drawing your attention to the third
9 bullet point, Mr. Donlon. We don't know how much
10 cost will be recovered in connection with that,
11 right?

12 A. Correct.

13 Q. And on the next black bullet point where
14 it begins "Reduction of earnings-related incentives."
15 Do you see that?

16 A. Yes.

17 Q. What does that mean?

18 A. Those would be the capital bonus and
19 incentive pays.

20 Q. And how much are those?

21 A. That would be a better question for
22 Witness McCarter.

23 Q. Because you don't know, correct?

24 A. She testified to that.

25 Q. So you don't know, correct?

1 A. She is the one.

2 MR. BEELER: He answered the question,
3 your Honor.

4 EXAMINER WALSTRA: Overruled.

5 A. I don't have the specific numbers
6 committed to memory.

7 Q. If could I draw your attention,
8 Mr. Donlon, to the next page of your testimony,
9 page 6, specifically the first black bullet point.
10 Do you see that?

11 A. This is weird on how the bullets are, so
12 which -- which line are you referring to?

13 Q. Certainly. It's line 5.

14 A. Yes.

15 Q. And you begin that assertion with the
16 word "Modification," correct?

17 A. Yes.

18 Q. How is the Rider DSR modified as compared
19 to previous versions of that rider?

20 A. The specifics of those, I believe, was
21 David Lipthratt, or Witness Lipthratt testified to.
22 But the baseline change for one.

23 Q. Is it modified in any other way,
24 Mr. Donlon?

25 A. That would be a better question for

1 Witness Lipthratt.

2 Q. Because you don't know, correct?

3 A. He knows the details of it and the
4 specifics, so I wouldn't want to contradict
5 something.

6 Q. Okay. So you neither know the details or
7 the specifics of how Rider DSR was modified, correct?

8 A. I have the high level. I don't have the
9 specifics. That was Witness Lipthratt.

10 Q. And if you would direct your attention,
11 Mr. Donlon, to line 10, please.

12 A. Yes.

13 Q. And again you use the word "modification"
14 there, correct?

15 A. Yes.

16 Q. How was Rider BTR modified?

17 A. This was using it -- adjusting it to be
18 the one coincidental peak for the transmission costs.

19 Q. And is that different than the previous
20 Rider BTR, Mr. Donlon?

21 A. I am pretty sure it is.

22 Q. And I draw your attention to line 14, if
23 I could, Mr. Donlon, on that same page. And you see
24 a reference there to "net metering credits," correct?

25 A. Yes.

1 Q. And how does that work?

2 A. So again, the specifics of the net
3 metering was Witness Smith, so I wouldn't want to
4 contradict what he has already stated.

5 Q. And that's because you don't know the
6 specifics of the net metering credits, correct?

7 A. No. Because he was on the stand and
8 represented it, so I don't want to contradict what he
9 is saying.

10 Q. Drawing your attention to line 18,
11 Mr. Donlon, and the statement regarding the "Gradual
12 reduction to the backup delivery point tariff." Do
13 you see that?

14 A. Yes.

15 Q. What does that mean?

16 A. That's for the companies that take backup
17 delivery and it's adjusting the rider to -- for the
18 cost.

19 Q. How is the rider reducing for the cost?
20 How is that happening?

21 A. Let's see. So the Rider BDP will be
22 revised in three steps over a 24-month period
23 beginning no later than June 2008 -- '18, sorry.
24 Customers for Rate DS, the BT rates will be \$4.52
25 per kW per month for one year, \$4.09 per kW a month

1 for year two, \$3.23 per kW a month in year three.

2 Q. And what you are reading from,
3 Mr. Donlon?

4 A. The stipulation.

5 Q. Okay. And the company is going to make
6 that -- make up that reduced revenue from other
7 sources, correct?

8 A. Just to be clear, you cut me off before
9 the other rates, but --

10 Q. Oh, I'm sorry. I thought you were
11 through with your answer.

12 A. So --

13 Q. Read from the stipulation all you want.

14 MR. D'ASCENZO: Your Honor,
15 argumentative.

16 MR. MICHAEL: He said he was reading from
17 the stipulation. I cut him off.

18 Q. Proceed.

19 A. The rate for BDP so -- also, and it's
20 gradualism is in there as well.

21 Q. Okay. The company is going to make up
22 the gradual reduction to BDP elsewhere, correct?

23 A. I'm sorry. Can you clarify what do you
24 mean "elsewhere"?

25 Q. Certainly. Through another rider.

1 A. I don't believe that's the case.

2 Q. Through base rates?

3 A. I don't believe that's the case.

4 Q. If I could direct your attention,
5 Mr. Donlon, to page 7, line 3 of your testimony,
6 line 3.

7 A. Yes.

8 Q. And you're aware that Mr. Rose's forecast
9 of the expected value of Rider PSR in this case is
10 that it will be a charge on consumers, correct?

11 A. Yes.

12 Q. Did you read Mr. Wilson's testimony filed
13 on behalf of OCC in this case, Mr. Donlon?

14 A. Yes.

15 Q. And you are aware that Mr. Wilson's
16 expected value of Rider PSR is also a charge,
17 correct?

18 A. In what he stated on the stand as his
19 non-complete analysis or forecast, yes.

20 MR. MICHAEL: Move to strike, your Honor.

21 MR. BEELER: Just providing context, your
22 Honor.

23 MR. MICHAEL: Well, Mr. Wilson, I
24 guarantee he didn't characterize his own testimony as
25 non-complete. The cross --

1 MR. BEELER: Mr. Donlon was here when
2 Mr. Wilson testified and that's what he understood.

3 MR. MICHAEL: I can't allow the witness
4 to mischaracterize it, your Honor. The
5 cross-examination will stand. Staff can brief it,
6 that's fine. But to allow this witness to offer an
7 opinion about what he thinks Mr. Wilson said, that is
8 inaccurate, is not appropriate, and taken out of
9 context, I might add, as well.

10 MR. D'ASCENZO: Your Honor, I would
11 further add that Mr. Donlon is the expert on the
12 Staff in this case, and he is entitled to state what
13 his opinions are as an expert.

14 EXAMINER WALSTRA: Deny the motion to
15 strike.

16 Q. (By Mr. Michael) Would you say that
17 Mr. Rose's testimony, Mr. Donlon, is more complete
18 and detailed than Mr. Wilson's?

19 A. I did not go through a detailed analysis
20 of either forecast. We took the numbers as what they
21 were for our reviewing of the ESP-MRO test.

22 Q. And what those themes were showed a
23 charge under Rider PSR, correct?

24 A. Yes.

25 Q. Both Wilson's and Rose's?

1 A. Correct.

2 Q. As a matter of fact, the only evidence
3 the Commission has before it is that the expected
4 value of Rider PSR will be a charge, correct?

5 A. Correct.

6 Q. Staying on that page, Mr. Donlon, I want
7 to direct your attention to lines 14 and lines 16,
8 and you see you have a dollar value there on each one
9 of those lines?

10 A. Correct.

11 Q. That is shareholder dollars, correct?

12 A. No. That's ratepayers.

13 Q. So, in other words, Duke is going to
14 charge ratepayers \$522,000 for funding low-income
15 programs administered by PWC?

16 A. Correct.

17 Q. And they are going to charge consumers
18 \$250,000 in annual funding to the City of Cincinnati
19 for low-income programs, correct?

20 A. Correct.

21 Q. If I could direct your attention,
22 Mr. Donlon, to page 8, line 9 of your testimony. Let
23 me know when you are there, please.

24 A. Yes.

25 Q. And on that line, Mr. Donlon, you assert

1 that "The Signatory parties on the Stipulation
2 represent a diverse group of interests," correct?

3 A. Correct.

4 Q. And do you think it is important to --
5 for the Commission to consider the extent to which
6 the signatory parties represent a diverse group of
7 interests?

8 A. I think that's been -- while it's not
9 necessarily part of the three-part test, it's been
10 something we always state the Staff does look at.

11 Q. Okay. So when you said "we" there, were
12 you referring to Donlon, LLC, or were you referring
13 to Staff?

14 A. Staff.

15 Q. So you, in your expert opinion, believe,
16 and you include it in your testimony because you
17 believe that the Commission should consider the
18 extent to which the signatory parties on a
19 stipulation represent a diverse group of interests,
20 correct?

21 A. That's something we -- the Staff has
22 traditionally always stated.

23 Q. I would like to draw your attention,
24 Mr. Donlon, to page 9, lines 10 and 11 of your
25 testimony, please. Let me know when you are there.

1 A. That's Question 14, correct?

2 Q. Yes, sir, it is.

3 A. Yes.

4 Q. Now, because you didn't participate in
5 any of the all-party meetings, you do not know what
6 concessions were made by parties to mitigate the
7 litigation risk inherent in proceeding to a hearing,
8 correct?

9 A. I would disagree with that.

10 Q. Okay. Who told you what concessions were
11 made?

12 A. Well, one, I was part of the cases. I --
13 at the beginning I can read what people's filed
14 litigation standpoints were. And knowing the parties
15 very well from my four-and-a-half years as the
16 Director of Rates and Analysis and working on various
17 cases, I think I have a pretty good understanding of
18 where parties are.

19 Q. You didn't participate in any of the
20 all-party meetings, Mr. Donlon, correct?

21 A. Again, as I said before, I would have to
22 look to see if it was -- if I did or not.

23 Q. So to the extent any concessions were
24 made during those meetings, you don't know what they
25 were, correct?

1 MR. BEELEER: I would object, your Honor.
2 The witness said that he could determine whether
3 concessions were made on his own, without -- without
4 attending some of the all-party meetings, and that
5 was his testimony.

6 EXAMINER WALSTRA: I'll allow the
7 question.

8 THE WITNESS: Can you reread the
9 question, please.

10 (Record read.)

11 A. I wouldn't know specifically what
12 concessions were made in what meetings.

13 Q. What concession was made by the Ohio
14 Manufacturers' Association Energy Group in this case,
15 Mr. Donlon?

16 MR. BEELEER: I would object here again.
17 You know, that's not necessarily a product of the --
18 of the settlement -- of this particular point of
19 Mr. Donlon's testimony.

20 MS. BOJKO: Your Honor --

21 MR. D'ASCENZO: I would also object, your
22 Honor. That's also getting into confidential
23 settlement discussions which is clearly confidential
24 information under the Rules of Evidence.

25 MS. BOJKO: That would be my objection as

1 well, your Honor.

2 EXAMINER WALSTRA: I agree. That's
3 sustained.

4 MR. MICHAEL: Well, if I may be heard,
5 your Honor, that's precisely my point. Mr. Donlon
6 didn't participate in any of the meetings. Any
7 concessions that were made would have been covered by
8 the confidentiality privilege and, therefore,
9 Mr. Donlon couldn't possibly know what concessions
10 were made unless somebody disclosed them to him
11 inappropriately. I think we are entitled to know if
12 that happened, because if they were disclosed
13 inappropriately, then I think that opens the door for
14 OCC and other opposing parties to cross-examine the
15 witness about it.

16 MR. BEELER: Your Honor, you know, the
17 Staff participated in -- in settlement discussions
18 with parties. The witness here was retained and
19 updated on the case and he is here providing his --
20 using his knowledge from past experience to -- to
21 support the stipulation. That's what he is here for
22 and that's -- and that's proper. The Staff provided
23 the information to him, you know, with the
24 information that it had.

25 EXAMINER WALSTRA: I agree.

1 Q. (By Mr. Michael) So, Mr. Donlon, you
2 would agree that your experience and expertise based
3 on your prior work in this industry doesn't
4 necessarily mean you know what specific concessions
5 were made by specific parties in this specific case,
6 correct?

7 MR. D'ASCENZO: Same objection, your
8 Honor.

9 MR. MICHAEL: I am not asking about the
10 content of any concessions, your Honor. This witness
11 says based on previous cases he was involved in, he
12 can make this assertion, and I'm exploring that
13 comment that the witness made.

14 EXAMINER WALSTRA: I'll allow the
15 question.

16 A. Again, since I actually worked on these
17 cases before I left, I do understand where people
18 were starting out and had conversations with many
19 parties.

20 Q. Before you left the PUCO Staff?

21 A. Correct.

22 Q. But not after you left the PUCO Staff,
23 correct?

24 A. Correct.

25 Q. I want to draw your attention,

1 Mr. Donlon, to page 9, same page, lines 13 through
2 16. Let me know when you are there, please.

3 A. I am there.

4 Q. You say there that "Staff concludes" on
5 line 15, correct?

6 A. Yes.

7 Q. And I want to understand what you are
8 trying to communicate there. Are you relaying
9 Staff's position when you assert there about what
10 Staff concluded?

11 A. Well, since I was hired by Staff, this is
12 my testimony working with Staff, representing Staff.
13 So I am a representation of Staff, so just like an
14 independent auditor, they are Staff when they are
15 hired by Staff.

16 Q. Okay. I want to -- let's use that
17 analogy for a moment, if we could. You referenced an
18 independent auditor, correct? And -- but yet, in
19 your testimony here, you are relaying what Staff
20 concluded, correct?

21 A. In my view, I -- because I am retained by
22 Staff, I am part of Staff for this hearing.

23 Q. So when you say there that "Staff
24 concludes," are you saying that Patrick Donlon, in
25 his capacity as Donlon, LLC, independently and

1 objectively concluded?

2 A. Yes.

3 Q. Same page, Mr. Donlon, I would like to
4 draw your attention to lines 20 through 22.

5 A. Yes.

6 Q. The PSR is adjusted quarterly, correct?

7 A. I'm sorry. You said 21 and 22 on the
8 same page?

9 Q. Yes, sir. Same page, page 9, lines 20
10 through 22.

11 A. Okay. And your question was about the
12 PSR?

13 Q. Yes, sir, it is. Would you like me to
14 reask the question?

15 A. Just how it references what --

16 Q. Well, you assert there that the
17 Stipulation provides predictability for all parties,
18 correct?

19 A. Yes.

20 Q. And long-term certainty, correct?

21 A. Yes.

22 Q. And PSR is part of the settlement,
23 correct?

24 A. Yes.

25 Q. And you realize the PSR will be adjusted

1 quarterly, correct?

2 A. Correct.

3 Q. And you realize it will be trued up at
4 the end of each year, correct?

5 A. It will have the -- it will be trued
6 up -- well, it will be adjusted quarterly which is
7 kind of trued up, and then it will have an annual
8 prudence review.

9 Q. And as a result of that prudence review,
10 some cost recovery under Rider PSR could be
11 disallowed, correct?

12 A. Correct.

13 Q. And you assert there on line 20,
14 Mr. Donlon, that "The Stipulation supports and
15 advances the Commission's PowerForward Initiative."
16 You see that, correct?

17 A. On line 22, yes.

18 Q. Yes, sir. And you realize that component
19 of the PF Rider related to any directives is a
20 placeholder rider under the settlement, correct?

21 A. Correct.

22 Q. So that will be neutral, at least as it
23 stands now, related to long-term certainty and
24 predictability for all customers, correct?

25 A. Correct.

1 Q. And if and when that component of Rider
2 PF is populated, we are -- you are not able to say at
3 this point in time whether that will promote
4 long-term certainty and predictability, correct?

5 THE WITNESS: Could I have that reread,
6 please.

7 (Record read.)

8 A. I would assume that would be the goal of
9 the Commission.

10 Q. So you think one of the goals of the
11 Commission's PowerForward Initiative is to promote
12 long-term certainty and predictability for all
13 parties?

14 A. Well, I think it's to create a pathway to
15 initiate the grid of the future, and find and put
16 Ohio on the right path; so, yes, I do think it
17 creates long-term stability and a path forward.

18 Q. But because we have no directives yet
19 from the Commission, we can't say that with
20 certainty, correct?

21 A. Not with certainty.

22 Q. If you would turn to page 10, Mr. Donlon,
23 and I would draw your attention to lines 3 through 5,
24 if I can. Let me know when you are there, please.

25 A. And that's the continuation of the answer

1 to 16, correct?

2 Q. Yes, sir, it is.

3 A. Yes. 3 through 5?

4 Q. Yes. And you state there, among other
5 things, that the reality and safety of the grid is
6 properly accounted for, correct?

7 A. Yes.

8 Q. Does waiving -- waiving the company's
9 violations of its CAIDI and SAIFI standards, does not
10 promote either reliability or safety, correct?

11 MR. D'ASCENZO: Objection, your Honor.
12 Mischaracterizes the record.

13 EXAMINER WALSTRA: The witness can
14 clarify.

15 A. The specifics of the safety in the CAIDI
16 and SAIFI would be better for Witness Nicodemus, but
17 as a stipulation as a whole, it does clarify, it sets
18 a path forward and does help with reliability and
19 safety.

20 Q. Okay. So we established earlier,
21 Mr. Donlon, your knowledge that the company missed
22 its CAIDI standards in '16 and '17, and its SAIFI
23 standards in '17. Do you recall that?

24 A. Yes.

25 Q. And is it your testimony that waiving,

1 which is to say not enforcing against the company its
2 failure to meet those standards, promotes
3 reliability?

4 A. Yeah. It's looking and trying to move
5 forward to find out how best to serve the customers.
6 And in some cases, I think we have come up with and
7 the stipulation provides a path forward.

8 Q. Okay. So the fact that the Commission
9 isn't enforcing previous violations is good for
10 consumers as it relates to the reliability of their
11 distribution system, correct?

12 THE WITNESS: Can I have that reread,
13 please.

14 (Record read.)

15 MS. BOJKO: Consistently mischaracterizes
16 the record and his statements.

17 EXAMINER WALSTRA: The witness can
18 clarify.

19 A. Are you considering what the Commission
20 has done or what the stipulation is doing?

21 Q. Well, you are aware in the settlement,
22 Mr. Donlon, there is a provision that says that the
23 company's previous violations of its reliability
24 standards won't be used against them, correct?

25 A. That's what the stipulation says. Your

1 question was asking about the Commission. So that's
2 why I clarified.

3 Q. Okay. That's fine.

4 And because the settlement provides that
5 the company's previous violations will not be used
6 against them, that necessarily means that the
7 Commission cannot bring any sort of enforcement
8 proceeding against the company based on those
9 violations, correct?

10 MR. BEELER: I would object. You know,
11 the stipulation is a recommendation to the
12 Commission. I think OCC is asking about what the
13 Commission can and can't do. It calls for a
14 conclusion that Mr. Donlon -- a legal conclusion
15 basically.

16 MR. MICHAEL: That's a fair point, your
17 Honor. I'll clarify.

18 EXAMINER WALSTRA: Thank you.

19 Q. (By Mr. Michael) Mr. Donlon, were the
20 company to adopt the settlement, that necessarily
21 means that an enforcement action for Duke's previous
22 reliability violations could not be brought against
23 it, correct?

24 A. Not giving a legal opinion, that would be
25 my assumption.

1 Q. Okay. And my question now is, you
2 believe that not enforcing failures of a company --
3 of a utility to meet the reliability standards,
4 promotes the reliability for consumers of the
5 distribution grid, correct?

6 A. In certain aspects and times, it's the --
7 historically the Staff has found that it is a good
8 policy to work with the companies to improve, find
9 the solution, and move forward, rather than just
10 penalize and penalize.

11 MR. MICHAEL: I move to strike, your
12 Honor, and ask the witness to answer the question
13 that I asked of him. If they want to bring that
14 issue up on redirect, that's fine, but I am looking
15 for answers for my questions.

16 EXAMINER WALSTRA: Denied.

17 Q. (By Mr. Michael) Mr. Donlon, are you
18 aware of any other case in which the Commission has
19 waived a public utility's failure to meet its
20 reliability standard and not brought an enforcement
21 action against them?

22 A. Yes.

23 Q. Okay. Tell me what it is.

24 A. I don't have case numbers, but I am aware
25 of various issues where people have missed or had

1 issues with safety violations that have been worked
2 out and worked with the company.

3 Q. Now, you said "safety violations." I was
4 talking about reliability violations. So are you
5 aware of any cases in which the Commission has waived
6 a company's failure to meet its reliability
7 standards?

8 A. Not off the top of my head.

9 Q. Okay. And you are aware, Mr. Donlon, of
10 the matter in 2006 where the Commission brought an
11 enforcement action against AEP for its failure to
12 meet its reliability standards, correct?

13 A. I am not.

14 Q. I would like to draw your attention,
15 Mr. Donlon, to page 10, line 8 of your testimony.

16 A. And that would be in reference to the
17 answer of Question 17, correct?

18 Q. Page 10, line 8. It would.

19 A. Okay. I'm there, sorry.

20 Q. That's fine. And you'll see a reference
21 there to costs, Mr. Donlon, correct?

22 A. Yes.

23 Q. Are the costs which you are referring
24 there not recoverable in the market?

25 A. I am not sure I understand your question.

1 Q. What is it that you don't understand
2 about it, Mr. Donlon?

3 A. Well, which -- which market for one.

4 Q. You're familiar with how the PSR works,
5 correct?

6 A. Correct.

7 Q. Okay. So as it relates to the PSR, we
8 are talking about two markets; the wholesale market
9 and the retail market, correct?

10 A. Okay.

11 Q. So those are the markets to which I am
12 referring. Okay?

13 A. Okay.

14 Q. So you state there that "the Stipulation
15 proposes to allow the Company to populate Rider PSR
16 with the costs the Company has incurred related to
17 the Company's ownership percentages in OVEC units,"
18 correct?

19 A. Wait. I think you left out "and
20 associated revenues" but --

21 Q. At least in my copy that doesn't appear
22 in that, but your point is fair which is to say Rider
23 PSR passes along either costs or revenues from the
24 wholesale market, correct?

25 A. It's the net, yes.

1 Q. Okay. And the costs to which you are
2 referring there are costs that the company will not
3 recover when selling energy, capacity, and ancillary
4 services onto the wholesale market, correct?

5 A. No. I'm really talking about the costs
6 to operate the plant and the revenues associated that
7 they -- that the plant would receive or the units
8 would receive. So costs not recovered in the market,
9 that doesn't really make sense to me as much as it's
10 the net. So if you are talking about -- I'm talking
11 about the individual O&M expenses, the capital costs,
12 those, of the units, and their associated revenues.

13 Q. Okay. Where does the revenue come from?

14 A. The revenues come from the market.

15 Q. Okay.

16 A. And most likely there probably are some
17 off -- some sales, like byproducts, coal ash, some
18 things like that, that you can sell off that would
19 also come in.

20 Q. And the costs come from the ICPA,
21 correct?

22 A. That is the -- my understanding, that's
23 the document that specifies what costs are allowed.

24 Q. Right. So if the PJM wholesale revenue
25 is less than the costs of the ICPA, it will be a

1 charge on consumers, correct?

2 A. Correct.

3 Q. So if Rider PSR is a charge on consumers,
4 then that charge will reflect costs under the ICPA
5 that were not covered by market revenue, correct?

6 A. And other ancillary revenues.

7 Q. Correct?

8 A. Yes.

9 Q. I would like to draw your attention,
10 Mr. Donlon, to the same page, line 15, and you will
11 see a reference there to Case No. 14-841, correct?

12 A. No.

13 Q. Page 10, line 15. There is a reference
14 to Case No. 14-841.

15 A. That's the question that starts -- that's
16 the answer to Question 18?

17 Q. According to the document that Staff's
18 counsel provided to me, that's in answer to Question
19 17.

20 A. Okay. Sorry.

21 Q. That's all right.

22 Were you on Staff at the time that case
23 was decided, Mr. Donlon?

24 A. Yes.

25 Q. And that's the case in which Rider PSR

1 was initially approved as a placeholder rider,
2 correct?

3 A. Correct.

4 Q. And it was approved as a financial
5 limitation on customer shopping, correct?

6 A. What do you mean by "financial limitation
7 on customer shopping"?

8 Q. I mean -- the question is, Mr. Donlon,
9 whether or not you are aware that the Commission
10 approved Rider PSR in that case as a purported
11 financial limitation on customer shopping. Are you
12 aware of that?

13 A. I would have to look at the order to see
14 if they used that exact verbiage.

15 Q. Do you know what the cost of Rider PSR --
16 or, what the cost would be under Rider PSR since
17 January 2018, Mr. Donlon?

18 A. From what I've heard through Witness
19 Wathen, I think his projection was 18 million.

20 Q. And you don't dispute that, correct?

21 A. I don't have anything to dispute it with.

22 Q. Now, you say on page 10, Mr. Donlon,
23 line 20, that Rider PSR will be nonbypassable,
24 correct?

25 A. Correct.

1 Q. And because it's nonbypassable, that
2 means both shopping and nonshopping customers will
3 have to pay it, correct?

4 A. Correct.

5 Q. So the payment of Rider PSR will neither
6 advantage nor disadvantage those customers that
7 choose to shop, correct?

8 A. Compared to nonshoppers, correct.

9 Q. If you would turn to page 12, lines 10
10 through 18 of your testimony, Mr. Donlon. Let me
11 know when you are there, please.

12 A. Yes.

13 Q. And you say in that portion of your
14 testimony that the revenue requirements associated
15 with distribution rate -- related riders are the same
16 whether in an ESP or an MRO coupled with a rate case,
17 correct?

18 A. Correct.

19 Q. But you say Rider PSR does not fit that
20 analysis, correct?

21 A. Yes.

22 Q. And that's because it's not a
23 distribution-related rider, correct?

24 A. Correct.

25 Q. Turn to page 13 of your testimony,

1 please, Mr. Donlon, and I draw your attention to
2 page -- pardon me -- lines 8 through 10.

3 A. I'm sorry. Can you repeat where you are?

4 Q. Certainly. It's page 13, lines 8 through
5 10.

6 A. Okay.

7 MR. MICHAEL: Your Honor, could we go off
8 the record for a moment?

9 EXAMINER WALSTRA: Sure.

10 (Discussion off the record.)

11 EXAMINER WALSTRA: We'll go back on the
12 record.

13 Q. (By Mr. Michael) Mr. Donlon, I was asking
14 you to go to page 13, lines 8 through 10 of your
15 testimony.

16 A. Yes.

17 Q. And you cite some capacity payment
18 results in that part of your testimony, correct?

19 A. Correct.

20 Q. Are those capacity payments the figures
21 upon which you are relying to assert that there is
22 volatility in the market?

23 A. In the capacity market?

24 Q. Yes, sir.

25 A. Yes.

1 Q. Mr. Donlon, I would ask you to turn to
2 page 14, line 13 of your testimony. And you see a
3 reference there to "sunk cost," correct?

4 A. Yes.

5 Q. And you are aware that Duke will seek to
6 recover sunk costs through Rider PSR, correct?

7 A. Yes.

8 Q. And you read Mr. Rose's testimony filed
9 in this case, correct, Mr. Donlon?

10 A. Correct.

11 Q. And you saw that Mr. Rose does not take a
12 position on the extent to which Duke is permitted to
13 flow through, to customers, sunk costs associated
14 with OVEC, correct?

15 A. Right. And really, the reason I use
16 "sunk cost" there is so that everyone knew what I was
17 talking about. I was talking about, which now is
18 public, is the net present value of the negative 77.

19 Q. Unlike Witness Rose, Mr. Donlon, do you
20 take a position on the propriety of Duke seeking to
21 recover sunk costs through Rider PSR?

22 A. "Propriety," what do you mean by that?

23 Q. Whether it would be appropriate for Duke
24 to flow through to consumers the sunk costs of OVEC.

25 A. Well, that's the stipulation. Based on

1 what my understanding of what he's referring to as
2 sunk costs, it is -- that's what's going to happen,
3 so, yes, I think it's appropriate.

4 Q. I would like to draw your attention to
5 page 15, lines 1 through 12, Mr. Donlon.

6 A. Yes.

7 Q. And in this part of your testimony you
8 are talking about purported qualitative benefits,
9 correct?

10 A. Correct.

11 Q. Now, you are aware that Mr. Rose
12 forecasts the expected value of Rider PSR to be
13 \$77 million net present value, correct?

14 A. Loss, yes.

15 Q. Correct.

16 A. Or charge to the customers, correct.

17 Q. Correct.

18 And so, when you're analyzing qualitative
19 benefits here, wouldn't you concede that they are
20 actually not qualitative benefits because we know
21 consumers will be paying, at least according to the
22 evidence before the Commission presented by Duke, at
23 least \$77 million, whatever benefits may come out of
24 the settlement?

25 A. No.

1 Q. Okay. So you agree that the expected
2 value, according to Duke's witness, is \$77 million,
3 correct?

4 A. Yes.

5 Q. And you assert that there are qualitative
6 benefits under the settlement, correct?

7 A. Yes.

8 Q. Now, in order for the MRO versus ESP test
9 to be passed, wouldn't the value, the monetary value
10 of those purported qualitative benefits, have to be
11 greater than \$77 million then?

12 A. There is not -- I think Commission
13 precedent has been very clear that there is not two
14 different tests. It's in the aggregate. And in the
15 aggregate, my opinion is that it passes the MRO-ESP
16 test.

17 Q. And you arrive at that opinion,
18 Mr. Donlon, because you believe the purported
19 qualitative benefits are worth more than \$77 million
20 to consumers?

21 A. I think the benefits outweigh the
22 quantitative costs of the PSR, yes.

23 Q. Now, on page 15, line 8, Mr. Donlon, you
24 use the word there "include." Do you see that?

25 A. Yes.

1 Q. And then you reference enhancements to
2 the retail competitive market. Do you see that?

3 A. Correct.

4 Q. You're familiar with the Retail Energy
5 Supply Association, correct?

6 A. Yes.

7 Q. And you're familiar with IGS Energy,
8 correct?

9 A. Correct.

10 Q. And you're familiar with Direct Energy,
11 correct?

12 A. Correct.

13 Q. And you realize none of those parties
14 support the settlement, correct?

15 A. Correct.

16 Q. And you realize they filed testimony in
17 opposition to the settlement, correct?

18 A. Correct.

19 Q. And the "low income protections" in
20 line 9, do you see that reference, Mr. Donlon?

21 A. Yes.

22 Q. And are those referring to the 525,000
23 and 250,000 payments to PWC and Cincinnati
24 respectively?

25 A. Yes.

1 Q. And do you see the reference to "battery
2 storage options," correct?

3 A. Correct.

4 Q. And is that reference meant to be made to
5 the potential program we discussed earlier that you
6 cited to a \$20 million cap on?

7 A. Yes.

8 Q. And by "\$20 million cap," that would be a
9 cap on the charge that Duke could pass on to
10 consumers for battery storage options, correct?

11 A. Yeah, to use what other companies used in
12 the energy efficiency. It's a cap within a cap.

13 Q. In any event, just so the record is
14 clear, it's a cap on the charges that could be passed
15 on to consumers for battery storage options, correct?

16 A. Yes.

17 Q. And in the next line, 9, carrying on to
18 line 10, you reference "promotion of innovative
19 measures related to PowerForward initiatives,"
20 correct?

21 A. Correct.

22 Q. And those are any sort of initiatives
23 that will come as a result of directives from the
24 PowerForward Commission arising out of the
25 PowerForward Initiative, correct?

1 A. Correct.

2 Q. And we do not yet know what those
3 directives are yet --

4 A. Correct.

5 Q. -- or how much they will cost, correct?

6 A. Correct.

7 Q. And the vegetation management flexibility
8 on lines 10, going over through lines 11, Mr. Donlon,
9 do you see that?

10 A. Yes.

11 Q. And you are referring to Rider ESRR
12 there, correct?

13 A. Correct.

14 Q. And Rider ESRR will be a charged on
15 consumers for Duke's vegetation management, correct?

16 A. Yes.

17 Q. And what is the provision of equitable
18 treatment you are referring to, Mr. Donlon, on
19 page -- same page, lines 11 and 12?

20 A. It looks like it was not actually
21 supposed to be there. That actually is a typo that
22 was not supposed to be in that paragraph and I missed
23 that.

24 Q. That's fine. Would you care -- if I may
25 ask, Mr. Donlon, should that provision on 11 and 12,

1 after the comma, be stricken?

2 A. Yes.

3 Q. Is that what you are suggesting?

4 A. It was actually meant for the stipulation
5 as a whole, not the ESP-MRO test so.

6 Q. Okay. Thank you.

7 I would like to draw your attention to
8 page 16, if we can, Mr. Donlon.

9 A. I missed the line, I'm sorry. Page 16.

10 Q. I am just on page 16 for the time being,
11 and in that you are talking about various -- for
12 example, on line 12, making data available to
13 marketers, correct?

14 A. Correct.

15 Q. And do you know, Mr. Donlon -- let me ask
16 it this way: Should that data be protected by the
17 marketers?

18 A. Meaning should there be consumer
19 protections on allowing the data out?

20 Q. Absolutely.

21 A. Yes, yes.

22 Q. And do you know how, if at all, the
23 settlement addresses the consumer protection of that
24 data?

25 A. I think that will be in the actual filing

1 and how the company policy will do it and audit at
2 that point.

3 Q. If I could draw your attention,
4 Mr. Donlon, to page 17, lines 15 and 16, please.

5 A. Yes.

6 Q. And for purposes of completeness, I am
7 going to ask you questions regarding actually the
8 entire sentence which starts on line 13 and concludes
9 on line 16. And in that part of your testimony, you
10 assert, among other things, that DCI provides a
11 process that improves both safety and reliability of
12 the distribution system, correct?

13 A. Correct.

14 Q. And you recognize that Duke had a Rider
15 DCI in place in 2016, correct?

16 A. Yes.

17 Q. And they had a Rider DCI in place in
18 2017, correct?

19 A. Correct.

20 Q. If you would please turn to page 18,
21 lines 1 and 2, Mr. Donlon. And you will see a
22 reference there addressing distribution reliability
23 and poor-performing circuits, correct?

24 A. Yes.

25 Q. And you are referring there to what

1 battery storage has the potential to do, correct?

2 A. Correct.

3 Q. And will battery storage address
4 distribution reliability and poor-performing circuits
5 by stepping in to supply generation when the grid is
6 down?

7 A. Depending on how it's used, where it's
8 set up, it potentially could. But, you know, I think
9 it's really where batteries fall into is they're so
10 diverse in what you can use them for, it's -- and
11 with a lot of non-wires alternatives, it's what are
12 you actually using it for in that case that can
13 determine if it's going to be generation,
14 distribution, or transmission.

15 Q. Okay. And I want to focus, if I could,
16 Mr. Donlon, on your assertion they would address
17 distribution reliability, okay? So just as it
18 relates to that purported benefit, it would address
19 distribution reliability by stepping in to supply
20 generation when the grid is down, correct?

21 A. I think that's an interesting one. You
22 have to -- I would have to really kind of think about
23 how that would be and if that would be a distribution
24 or if that would be a generation function of that. I
25 think that one is kind of a unique circumstance of is

1 it generation or is it -- is it distribution.

2 Q. Is that scenario though, Mr. Donlon, what
3 you had in mind when you asserted that batteries have
4 the potential to address distribution reliability?

5 A. Not a full outage, no. It's more of you
6 can manage and adjust your load. You may not have
7 to -- you can put a battery onto -- into a certain
8 area with a circuit and that has a high load to it
9 and instead of replacing and putting a bigger
10 transformer on it, you can put the battery in, maybe
11 that's the least cost, or you don't have to upgrade
12 the substation or transformers, and you can do
13 batteries into that. So that's more of what I meant
14 by that.

15 Q. Okay. And what would the battery be used
16 for, under those circumstances you just described,
17 would be supplying electricity to the consumer,
18 correct?

19 A. I think it's more of mitigating the load
20 and the power on the system. So if you want to say
21 that's delivering power to the consumer, you know,
22 you can probably say that, but I think there's
23 also -- it's more nuanced than that.

24 Q. If you would turn to page 20, lines 2
25 through 6, of your testimony, Mr. Donlon. And on

1 line 4 there, you see a reference to "potentially
2 establish," correct?

3 A. Yes.

4 Q. And you concede that PowerForward right
5 now is simply an initiative; we have no directives
6 yet, correct?

7 A. Correct.

8 Q. So it's possible nothing comes out of the
9 PowerForward Initiative, correct?

10 A. Highly unlikely, but there is a
11 potential.

12 Q. So to the degree the PowerForward
13 Initiative has any qualitative benefits, they are, at
14 best, uncertain at this point in time, correct?

15 A. I think where we are with PowerForward,
16 what's happened, the comments that the Chairman has
17 made, I think it's -- you can see that there will be
18 a White Paper. There will be directives coming out
19 of this. So I think it's -- while there is the
20 possibility, I think it's pretty strong that
21 something will come out of the PowerForward and there
22 will be a path that Ohio should take.

23 Q. But you don't know what that White Paper
24 will say, correct?

25 A. I have not read the White Paper.

1 Q. And you don't know what those directives
2 will say, correct?

3 A. Not for a matter of fact.

4 MR. MICHAEL: I may be done, your Honor,
5 but I would like a couple of moments to talk with my
6 colleagues before I commit to that, if I might.

7 EXAMINER WALSTRA: Sure. We can go off
8 the record.

9 (Discussion off the record.)

10 EXAMINER WALSTRA: We will go back on the
11 record.

12 MR. MICHAEL: Thank you, your Honor. I
13 have just two very quick questions.

14 Q. (By Mr. Michael) Mr. Donlon, were you
15 engaged by the Staff through an RFP process or sole
16 source?

17 A. Sole source.

18 Q. And does Capitol Partners represent Duke
19 Energy Ohio?

20 A. Not that I know of.

21 MR. MICHAEL: Okay. Thank you. No
22 further questions, your Honor.

23 EXAMINER WALSTRA: Thank you.

24 MR. MICHAEL: Thank you, Mr. Donlon.

25 EXAMINER WALSTRA: Mr. Olikier, welcome.

1 MR. OLIKER: Thank you, your Honor. Good
2 to be here. Just maybe a few questions for
3 Mr. Donlon.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Oliker:

7 Q. Mr. Donlon, am I correct you are
8 testifying in support of the stipulation?

9 A. Correct.

10 Q. You're not being presented as a witness
11 to support the Staff Report or to respond to
12 objections, are you?

13 A. Correct.

14 Q. Okay.

15 A. No, I am not, so.

16 MR. OLIKER: Okay. Thank you, your
17 Honor. No more questions.

18 MR. MICHAEL: That was anti-climatic.

19 MS. WATTS: We waited for you for that?
20 Are you kidding me?

21 MR. OLIKER: Would you rather it was an
22 hour?

23 MS. WATTS: Yeah, ask some more
24 questions. Come on.

25 EXAMINER WALSTRA: Ms. Fleisher, do you

1 have any additional questions based off of those?

2 MS. FLEISHER: No, your Honor. Thank you
3 for asking.

4 EXAMINER WALSTRA: Duke, any questions?

5 MR. D'ASCENZO: No.

6 EXAMINER WALSTRA: Any redirect?

7 MR. BEELER: No redirect.

8 EXAMINER WALSTRA: Okay. Thank you,
9 Mr. Donlon.

10 THE WITNESS: Thank you.

11 MR. BEELER: At this time, Staff would
12 move for the admission of Staff Exhibit 17 into the
13 record.

14 EXAMINER WALSTRA: Any objections?

15 Hearing none, it will be admitted.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 MS. FLEISHER: And sorry, your Honor. I
18 would like to move for admission of ELPC Exhibit 4.

19 EXAMINER WALSTRA: Any objections?

20 MR. BEELER: No objection.

21 EXAMINER WALSTRA: That will also be
22 admitted.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 EXAMINER WALSTRA: Let's go off the
25 record for a second.

1 (Discussion off the record.)

2 EXAMINER WALSTRA: We'll go back on the
3 record.

4 And we had some discussion off the record
5 regarding rebuttal testimony. Any parties seeking
6 rebuttal testimony?

7 MR. MICHAEL: Your Honor, OCC would
8 request the opportunity to file rebuttal testimony.

9 EXAMINER WALSTRA: Okay.

10 MR. OLIKER: Your Honor, as would IGS.

11 EXAMINER WALSTRA: Briefly, what is this
12 regarding? What is your topic of rebuttal?

13 MR. MICHAEL: The topic of rebuttal,
14 stated generally, your Honor, is that which appears
15 in Mr. Hess's testimony.

16 EXAMINER WALSTRA: IGS?

17 MR. OLIKER: And, your Honor, Mr. -- IGS
18 would seek to enter rebuttal testimony, IGS and RESA,
19 to testimony submitted by Staff Witness Smith.

20 EXAMINER WALSTRA: Any objections
21 formally? No?

22 Okay. We will allow rebuttal testimony
23 as discussed off the record. Testimony should be
24 filed by July 30, and we'll be back for hearing on
25 August 6 at 10:00 a.m.

1 Then regarding briefing schedules, we
2 came up with a schedule off the record. And initial
3 briefs will be filed on September 11, and reply
4 briefs will be filed on October 2; is that correct?

5 MR. MICHAEL: That's correct, your Honor.

6 EXAMINER WALSTRA: Having said it, we are
7 adjourned, unless there is anything else.

8 All right. We are adjourned.

9 (Thereupon, at 12:42 p.m., the hearing
10 was adjourned.)

11 - - -

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1 CERTIFICATE

2 We do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by us in this matter on Tuesday, July 24, 2018, and
5 carefully compared with our original stenographic
6 notes.

7
8 _____
9 Karen Sue Gibson, Registered
Merit Reporter.

10
11 _____
12 Carolyn M. Burke, Registered
Professional Reporter.

13 (KSG-6587)

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Case No(s). 17-0032-EL-AIR, 17-0033-EL-ATA, 17-0034-EL-AAM, 17-0872-EL-RDR, 17-0873-EL-ATA, 1

Summary: Transcript in the matter of the Duke Energy Ohio, Inc. hearing held on 07/24/18 - Volume XII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.