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MC GINNIS & ASSOCIATES, INC.
COLUMBUS, OHIO (614) 431-1344

PUBLIC UTILITIES COMMISSION

STATE OF OHIO

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In the Matter of the Application of The Cincinnati Gas & Electric Company for Approval of its Electric Transition Plan, Approval of Tariff Changes and New Tariffs, Authority to Modify Current Accounting Procedures, and Approval to Transfer its Generating Assets to an Exempt Wholesale Generator.	Case No. 99-1658-EL-ETP Case No. 99-1659-EL-ATA Case No. 99-1660-EL-ATA Case No. 99-1661-EL-AAM Case No. 99-1662-EL-AAM Case No. 99-1663-EL-UNC

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Hearing Room 11-D
Borden Building
180 East Broad Street
Columbus, Ohio 43215
Tuesday, June 6, 2000

Met, pursuant to assignment, at 9:10 o'clock a.m.

BEFORE:

R. Russell Gooden and Scott E. Farkas, Attorney-Examiners.

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VOLUME V

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P R O C E E D I N G S

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Tuesday, June 6, 2000

Morning Session

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EXAMINER FARKAS: Why don't we go on the record. This is day five of the hearing in Case No. 99-1658-EL-EPT, et al.

MR. BOEHM: And I would like to proceed with the redirect, if I may, of Mr. Falkenberg.

EXAMINER FARKAS: Okay.

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RANDALL J. FALKENBERG

of lawful age, being previously duly placed under oath, as prescribed by law, was examined and testified as follows:

REDIRECT EXAMINATION

BY MR. BOEHM:

Q. Mr. Falkenberg, I'd like to follow up on some things that counsel went over with you yesterday and, in particular, with respect to gas price forecasts. And I'd like to go over -- I'd like you to turn to Company Exhibit No. 67?

A. Yes, I have it.

Q. You got that in front of you?

A. Yes.

Q. Let me get it in front of me. And if you recall, Mr. Falkenberg, Company Exhibit No. 67 was introduced by the company, it's entitled "Issues in Midterm Analysis and Forecasting, 1999" and it purports to be, among other things, an analysis of the historical accuracy of various forecasts that were used by EIA; isn't that right?

A. That's correct.

Q. And EIA was the forecast that you relied upon for your natural gas and, I think, was it coal or just natural gas forecasts?

A. No, it was natural gas, coal and oil.

Q. And what else?

A. And oil.

Q. Oil. Okay. Mr. Falkenberg, first of all, let's turn to Page 65 of Exhibit 67.

A. I have that.

Q. And so that we can get better at what this EIA forecast is that you've been using, is there a statement on Page 65 which essentially says who uses the EIA forecasts and for what reasons?

A. Yes, if you look on Page 65, the first full paragraph on the second column, it says, "These models are frequently used in studies conducted by the U.S. Congress, the Department of Energy, and other government agencies to analyze the impacts of changes in energy policies, regulations and other major assumptions on future energy supply, demand, and prices, typically using assumptions specified by the client. The most recent examples of analytical studies include an analysis of the Climate Change Technology Initiative and an analysis of the impacts of the Kyoto Protocol at the requests of the Committee on Science of the U.S. House of Representatives; an analysis of impacts of increased diesel penetration for the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy; an analysis of the Electric System Public Benefits Protection Act of 1997 at the request of Senator James R. Jeffords, Chairman of the Senate Committee on Labor and Human Resources; a study of carbon reduction policies for the U.S. Department of Energy, Office of Public -- Office of Policy and International Affairs;

a study on the costs and economic impacts of oil imports for the U.S. General Accounting Office; an analysis for Senator Jeffords on open access regulatory changes and their impacts on the electricity industry; and an analysis of carbon mitigation policies prepared for the U.S. Environmental Protection Agency."

Q. Now, Mr. Falkenberg, do you have any opinion as to whether or not natural gas, as a commodity, has experienced much price volatility over the years?

A. Yes, definitely. If you take a look, for example, at the table on Page No. 84 of Exhibit 67, Table 14, it does show the actual values of natural gas prices, and I believe that you can see that year-by-year changes in natural gas prices on the order of 25 percent or more are not uncommon. So natural gas is definitely an extremely volatile commodity in terms of its price.

Q. And with respect to the EIA forecast, is EIA's model for forecasting fuel costs, is that a stagnate model or has that changed over time?

A. No, the model has changed over time, as has been indicated in various portions of this report. I believe that perhaps the most significant item that's discussed in this exhibit can be found on Page 91.

Q. Let me back up a little bit, first, Mr. Falkenberg. I'd like to refer you to Page 67 --

A. Okay.

Q. -- of the company's exhibit and particularly the paragraph that is continued on the top left-hand column, does that address the question of the modeling and the model changes?

A. Yes, that's correct. It says that, "The models and assumptions used in the AEOs undergo continuous evaluation and change, in part because of changes in energy markets and in part as a result of internal assessment of the models' performance. Natural gas markets are an example of both points. The representation of natural gas markets has been revised significantly to reflect deregulation. In addition, the fundamental assumptions about the size and potential growth of natural gas resources have been revised because evaluations of past forecasts have shown that price projections for gas were too high."

Q. Thank you. Now, Mr. Falkenberg, has there been a fairly recent reevaluation of EIA concerning their forecasts which has significantly affected the accuracy of the forecast?

A. Yes, I believe that it's indicated in the report, again, on Page 91, that "The NEMS model was introduced in AEO94" and for background, the NEMS model is the National Energy Modeling System. This is the system that's now used by EIA to perform forecasts. And it says here on the second column on Page 91, that "the NEMS model was introduced in AEO94, and we have included in the design a structure that looks at technology in a more detailed fashion. This -- There has been an improvement in the capability to represent technological innovations. Examples of this are electricity generation and technological improvements in oil and gas supply."

Q. Okay. Mr. Falkenberg, I call your attention to the last paragraph on Page 91 of the company's exhibit, and does that reflect an assessment by EIA about what the changes in the modeling have done to improve the predictability of oil prices in more recent forecasts?

A. Yes. It says here that, "The most striking result of the moving average analysis described here is that the price predictions and the petroleum and natural gas consumption predictions became more accurate with more recent AEOs...."

Q. Okay. Now, let's go back to the actual -- to the actual forecast that Mr. Dortch was referring you to for natural gas, which I believe are found on Page 85; is that right?

A. I believe it's 84.

Q. 84. Now, let's take a look at the prices on Page 84 and the percent errors, and I note, Mr. Falkenberg, on the lower part of the chart shown on Page 84 of Company Exhibit 67, it shows, for instance, across the top, AEO82 and then there are a series of numbers that are entitled "percent error." And I note that in '85, that it was 65 percent error; in 1990 it was 315 percent error. Am I reading that correctly?

A. Okay. I'm just trying to follow this.

Q. Yeah. On Page 84?

A. Yes. For 1985, you have a 65 percent error based on AEO82, yes.

Q. Okay. Now, so that we can understand this, Mr. Falkenberg, why is -- In the left-hand margin it says AEO82?

A. Yes.

Q. Okay. And then across the top it's '85, '86, '87, '88, '89, '90. Is this a representation of how accurate the 1982 forecasts were about the gas prices in the years '85, '86, '87, '88, '89 and '90; is that what that is?

A. Yes, I believe that's what the comparison is.

Q. So that we can all follow along with this, in other words, in 1987, the 1982 forecast was off by 260 percent --

A. Yes, that's correct.

Q. -- is that right? Okay.

And when we go to the far right-hand column, it says "Average Absolute Error." For 1982 the EIA forecast was 232.7 percent out of whack; is that right?

A. That's correct.

Q. Okay. Now, let's look at the column along the right-hand side and at the bottom of there, there's an indication of Average Absolute Percent Error of 70 percent; do you see that?

A. Yes, I do.

Q. And I think Mr. Dortch called your attention to this and asked whether or not it were so that the EIA forecast had been off by an average absolute percent error of 70.2 percent; is that right?

A. Yes, I recall that question.

Q. Can you tell me looking at this chart how that 70.2 percent error was arrived at?

A. Yes, I believe it's an average of the absolute errors above that.

Q. Okay.

A. Averaging from 1982 forward.

Q. So all the way back from 1982 to 1999, we were averaging errors and that's how we came to 70.2 percent --

A. That's right.

Q. -- is that right?

Now, Mr. Falkenberg, you just read something that said that AEI as of, I think it was, '94 or '95 have changed their methodology for predicting gas prices, did you not?

A. Yes, I did.

Q. Is there a way to look at this chart and see what the percentage of error has been since 19 -- what was it -- '95?

A. Yes. In other words, you can really look at any year's forecast and see how well it's fared and if you start, for example -- If you look in the last five years, the average absolute percentage errors have declined substantially. If you look from 1995 to 1999, which is the most recent five years, the average absolute error is about 9.8 percent.

Q. Okay. Now, before we go any further, Mr. Falkenberg, would you tell me how you got that number, 9.8 percent?
A. I just got that by averaging the results from 1995, '96, '97, '98 and '99.
Q. And so we're absolutely clear on this, Mr. Falkenberg, those are the numbers starting with, what, is it 20 percent --
A. Well, that would be '94. It was 12.1 for '95; 11.5 for '96; 11.5 for '97; 5.8 for '98; and 8.3 for '99.
Q. Okay. So if you were using or tracking this error -- these errors from 1995 to present, it would have an average error of how much?
A. It was less than 10 percent, 9.8 percent.
Q. Okay. Now, you heard your forecast being criticized by the company on the basis that it was consistently too high, did you not?
A. Yes, I have.
Q. Will you look at the values that were being used for the forecast in 1995 through 1999, and would you look at the numbers that are negative?
A. Yes.
Q. Okay. Does that indicate, Mr. Falkenberg, that the -- the AEI forecast was in error and it was in error in that it underestimated the price of fuel for the periods indicated?
A. Yes. If you look at the last five years, again, there's a preponderance of cases where there was an

underestimate of the price of natural gas, not an overestimate.

Q. Okay. Now, Mr. Falkenberg, not that I think it's very germane to the case at hand, but do you have any idea or can you tell from -- can you tell from this document what was the cause of these enormous errors in 1982 and '3 and '4 and '5 which so heavily skewed these -- the numbers?

MR. DORTCH: Objection. It's a characterization. He can ask the question without characterizing.

MR. BOEHM: I'll be happy --

EXAMINER FARKAS: Rephrase your question.

MR. BOEHM: -- to rephrase it.

BY MR. BOEHM:

Q. Mr. Falkenberg, can you explain -- and does this document explain why it is for the years, say, '82, '83, '84, '85 that there are respective average absolute percent errors in those years of 232.7 percent, 155.7 percent, 125.7 percent, 100.6 percent; do you know why that happened?

A. Yes.

Q. Do you have an opinion?

A. Yes, that's discussed in here, and I'm generally aware of that also because of my experience working in the industry since 1977. Part of it has to do with the oil embargo of 1979, the Iranian oil crisis, which drove oil prices up substantially. That led many forecasters, including EIA, I believe, to forecast that natural gas prices would rise precipitously.

In addition, there was the fear after the increased oil prices subsided and natural gas prices subsided, that there was what they called a gas bubble. There was the fear that this gas bubble was going to burst and that we were going to see a sudden run up in prices, that was expected for quite some time.

In addition, the document indicates that in the 1980s, they made the assumption that natural gas contracts couldn't be abrogated, and, as we know, under some of the regulations and things that took place in the '80s, that there was an abrogation of take or pay in a lot of natural gas contracts.

So it was these kind of factors that led to the overforecasting of natural gas prices not only in EIA, but I believe in nearly all other forecasts that were being used at the time.

Q. And looking at these results in a very volatile -- I think you said volatile commodity for the last five years, are you satisfied that this is a reliable gas forecast?

A. Absolutely.

Q. And what did you say, again, was the average percent error in the last five years?

A. 9.8 percent.

Q. Now, one thing I want to make clear here, too, Mr. Falkenberg, this document, as I understand it and correct me -- I want you to correct me if I'm wrong, but this document does not compare EIA gas forecasts to gas forecasts by other forecasters, it's comparing EIA forecasts against actual over time; is that right?

A. That's correct. And it's possible that when I answered one of the questions, I had interpreted the question to mean whether I was aware of anybody or any organization that had compared one forecast to another to actual. This compares only EIA to actual.

Q. Okay. So we have no indication from this document, at all, whether -- how Mr. Speyer's forecasts, his, quote, consensus forecast, end quote, did against actual from, say, the year 1982 to 1999, do we?

A. No, we don't.

Q. And do we have any indication from this document how Mr. Speyer's forecast did in the last five years against actual?

A. No, we do not.

Q. Let's go to Page 85 of Company Exhibit No. 67, Mr. Falkenberg.

A. Yes.

Q. And I think I understood you to say that you used coal prices from this document as well?

A. That's correct.

Q. And I believe you were cross-examined on coal prices and your use of EIA forecast in coal prices yesterday?

A. Yes, I was.

Q. And I believe that you were referred to Page 86 of the document, which is a comparison of coal prices for electric utilities that have been made by AEO in the past and a comparison as to how those did against actual?

A. Yes, that's correct.

Q. And on Page -- Well, let me ask you this: I'd like to refer you to Page -- go back to 85 where it says "Coal Prices to Electric Utilities"?

A. Yes.

Q. Does that indicate that -- Do those two paragraphs under that indicate to you that there has been an improvement or a change -- a change and improvement in the AEO forecast for coal prices in more recent years?

A. Yes, once again --

Q. Would you read the portion where that's set forth?

A. "Although they are better than those for oil and gas prices, the AEO forecasts of coal prices to electric utilities still show an average absolute percentage error of 35.9 percent over the period studied (Table 15). All forecasts were overstated. The forecasts for 1995 had the highest absolute error of 57.3 percent. There was, however, significant improvement in the 1995 forecast over time, with the error improving from 137.7 percent in AEO83 to 10.5 percent in AEO95 (excluding AEO96, which provided an estimate for the historical year 1995 on partial year data). Across forecast years, the further out the forecast, the higher the error, with the lowest average absolute percent error shown for the year 1985 at 13.3 percent.

"The early AEOs, AEO82 through AEO86, tended to have the highest average absolute percent errors, exacerbated by their forecasts for 1995. There was steady improvement in the AEOs through AEO90, which had an average absolute percent error of 16.8. After AEO90, overestimates for 1995 through 1998 adversely affected the overall average errors for a number of the subsequent AEOs."

(Discussion held off the record.)

BY MR. BOEHM:

Q. Mr. Falkenberg, will you turn to Page 86 of Company Exhibit No. 67?

A. Yes, I have that.

Q. Now, I believe that this is a representation, Table 15, of the coal price forecast as to electric utilities and an analysis of past -- the accuracy of past AEO forecasts against actual amounts; is that right?

A. That is correct.

Q. And the top part shows the performance of the forecast -- or shows that nominal dollars per million Btu that actually occurred, and the bottom part, again, like the schedule for oil prices, attempts to track percentage error over years; is that correct?

A. That's correct.

Q. Okay. Now, I ask you, Mr. Falkenberg, whether or not like the gas forecast -- these forecasts tend to have much higher percentage of errors in the earlier years, in 1982 and 1983, et cetera?

MR. DORTCH: Objection, leading.

EXAMINER FARKAS: Sustained. Rephrase.

BY MR. BOEHM:

Q. Mr. Falkenberg, would you read the percentage error forecast for years, say, 1982 to 1987?

A. Yes. For example, the AEO 1982 forecast had an average absolute percent error of 44.2 percent, the AEO83 forecast was 57 percent, the AEO87 forecast was --

Q. Hard to track those lines.

A. -- 30.9 percent.

Q. Okay. Will you read the average absolute percentage error for the forecast for the years 19 -- beginning 1996?

A. Yes, the AEO 1996 forecast had a 7.3 percent error, the AEO97 had a .4 percent error -- I'm sorry, AEO96 was 7.3, AEO97 was .4, AEO98 was 4.3.

Q. Okay.

MR. DORTCH: We are referring to coal prices?

MR. BOEHM: Coal prices.

THE WITNESS: I'm sorry, I got the columns mixed up here, hold on. Okay. Now, I have it. AEO96 was 5.5, AEO97 was 7.3, AEO98 was .4, and AEO99 was 4.3.

BY MR. BOEHM:

Q. Now, Mr. Falkenberg, I think Mr. Dortch asked you whether or not it were true that the average absolute percentage error of the AEO coal forecast from the year 1982 to 1999 was 35.9 percent?

A. Yes, I recall that.

Q. Is that indicated on the chart?

A. Yes, it's shown here.

Q. Have you calculated, Mr. Falkenberg, what the average absolute percentage error is of this forecast since 1996?

A. Well, I've calculated the last five years, which averages out to be 6.4 percent; I believe that's '95 through '99.

Q. Okay. Is that beginning with the 5.5?

A. Yes.

Q. Okay. Now, Mr. Falkenberg, I believe it was six-point-what percent a year?

A. 6.4 percent.

Q. Okay. In your mind, is that a relatively good performance for an index of a volatile commodity?

A. Well, I think it's a reasonably good forecast. I think, also, it's significant that these forecasts have been overstated. To the extent that they're overstated, it means that we're going to be overprojecting the cost of operating CG&E's coal-fired generators --

Q. Okay.
A. -- which would net out to be an advantage over time --
Q. Okay.
A. -- for the company.
Q. For the company?
A. Yes.
Q. So the fact that these were overstated works to the company's benefit; is that right?
A. That's right.
Q. Okay. Now, I ask you again, Mr. Falkenberg, as I did with respect to the natural gas prices, is there anything in this document that shows what the performance over time of the AEO coal forecast was as compared to any of the forecasts that were used by the company in its coal forecast? And by that I suppose I mean Mr. Speyer.
A. No, there is no comparison to any other forecast. Of course, Mr. Speyer's coal forecast is not one of the recognized forecasts like EIA or GRI or DRI or WEFA or any of those sources. It's his own forecast that he's made up of his own sources.
Q. So presumably if he hasn't been tracking it, nobody has?
A. I would assume so, yes.
Q. I want to get into reserve margins and some of the questions that were asked by Mr. Dortch of you yesterday

concerning reserve margins. And we talked about installed reserve margin or installed capacity margin. We talked about actual reserve margin. We talked about planning reserve margin, operating reserve margin. I want to try to get some of these terms straightened out so we know what we're talking about here.

With respect to an actual reserve margin of a company, how is that calculated?

A. Well, the actual reserve margin would just be the amount of capacity available at the time of the peak, minus the peak demand, divided by the actual peak demand.

Q. And so that we make it absolutely clear about these terms, Mr. Falkenberg, the peak demand is the highest demand in kilowatts that the company experiences in its year; isn't that right?

A. That's correct.

Q. And why do you measure the reserve margin as compared to the peak demand and not the average demand?

A. You have to be able to serve the peak demand. It's no problem serving the average demand, the average demand is only 50 or 60 percent of the peak demand. On the hottest day of the year, though, everybody still wants to be able to want to run their air conditioners, industry still wants to be able to produce widgets, commercial operations still want to be able to keep their stores open, that sort of thing; so you have to serve the peak demand.

Q. If under a regulated regime, if the company built its generating power only to serve the average demand, what would happen to some or all of the load in times of peak demand?

A. Load couldn't be served.

Q. All right. And some people wouldn't have electricity, is that what you mean?

A. That's absolutely correct.

Q. Now, let's get into a planning reserve margin. What is a planning reserve margin as opposed to an actual reserve margin?

A. Well, a planning reserve margin is how much one would plan to build in the future to be -- to have available at the time of the peak demand in future years.

Q. And have -- have power companies and -- and some reliability councils historically included planning reserve margins in their forecast and generation planning?

A. Yes. Many power companies have specified percent reserve criteria, many reliability councils have specified reliability criteria of some sort including reserve margins.

Q. Okay. Now, in this case, how much of a reserve margin have you assumed in your economic forecast?

A. 15 percent.

Q. Okay. And why is it that you have assumed 15 percent reserve margin, Mr. Falkenberg; is this a result of some calculation on your part?

A. Well, this is a result of really experience and judgment in the industry and recognizing that 15 percent was traditionally the minimum level of reserves that a utility company would feel comfortable with, and it's not a difficult analysis to be able to come up with sort of an intuitive understanding as to why that's a reasonable level.

If you look in the workpapers that I did, there is one calculation that shows the average amount of capacity that's on outage in ECAR at any given point in time and it averages around 10 percent, the average forced outage rate for a typical generator in ECAR is right around 10 percent.

So that means on any given day, only about 90 percent of the capacity that's actually installed will be available to run. So we need at least 10 percent to cover outages of generating units, but on top of that, we have uncertainty in peak demand. The peak demand can easily fluctuate from one year to the next by at least a 5 percent. So if you assume you need 5 percent execution for hot weather, unexpected load growth and so on, and a 10 percent cushion needed to take into account outages of generators, that's 15 percent.

Q. Now, let me just go back to the West Penn decision that Mr. Dortch read yesterday, and I think he read from a provision of that decision where the recommended decision by ALJ Gesoff criticized your economic forecast because they included the 15 percent reserve margin. Do you recall that?

A. I recall that.
Q. And Mr. Pifer in that same case, what was his recommended reserve margin?
A. He approached it the same as in this case, which was to say that he didn't believe that there was any particular reserve margin that was needed.
Q. Okay. And in that case, ultimately, what did the Commission accept as a reasonable reserve margin for forecasts?
A. The Commission accepted an 8 percent reserve margin.
Q. Okay. So the Commission saw the need for a reserve margin in that case?
MR. DORTCH: Objection.
THE WITNESS: Absolutely.
MR. DORTCH: Leading.
EXAMINER FARKAS: I think he answered the question.
THE WITNESS: Yes, absolutely.
BY MR. BOEHM:
Q. Now, so that we're absolutely clear, with respect to this question of your approach in this case from Dr. Pifer's approach in this case, Dr. Pifer does not recommend -- or does not include in his economic forecast a reserve margin with respect to -- and what is the right word to use here, Mr. Falkenberg, is it the planning reserve margin or an actual reserve margin that we're talking about when we're talking about the economic forecasts?

MR. DORTCH: I'm going to object, your Honor. To the best of my knowledge, I never used either of these terms in the -- in cross yesterday.

MR. BOEHM: Your Honor, I'm talking about Dr. Pifer. The cross essentially, as I recall it -- as I recall it, and I can go through the transcript, I have it here, the cross was -- through no fault of Mr. Dortch's, was somewhat confused and we went back and forth about what capacity reserve and what I'm trying to do --

EXAMINER FARKAS: I'll let you go on.

MR. BOEHM: -- I'm trying to straighten out the record.

THE WITNESS: The proper term is the planning reserve margin for the purpose of doing long-term forecast electric prices.

BY MR. BOEHM:

Q. Let me ask you if you a planning reserve margin of 15 percent, does that mean in any particular year when you look at that year, backward, you're going to find that you had an actual reserve margin of 15 percent?

A. Absolutely not. You'll find, as I indicated before, that on average, 10 percent of the generators will be out on any given day; so the actual reserve margin would be much less and then you'll have fluctuations in the peak demand. So a 15 percent reserve margin could easily equate to something close to zero.

Q. Now, with respect to your reserve margin theory that you were cross-examined yesterday on by Mr. Dortch as compared to Mr. Pifer's theory, Mr. Pifer, does he not, relies on -- and I think you were asked a question on this with particular reference to AK Steel and AK Steel's interruptible contract by Mr. Dortch -- whether or not when AK Steel interrupts its load, it is making an economic decision?

A. I recall that question, yes.

Q. Okay. Now --

MS. ROBINSON-MC GRIFF: May I have that question and answer read, please.

(Record read back as requested.)

MR. DORTCH: If I asked that question, I apologize because I don't understand that question.

MR. BOEHM: Well, I don't either. Let me try again. I was trying to do too many things at the same time.

BY MR. BOEHM:

Q. Do you remember the question of asked of by Mr. Dortch about AK Steel's decision?

A. Yes.

Q. And I hope you remember a line of cross with respect to interruptible contracts?

A. Yes.

Q. Now, Mr. Falkenberg, with respect to Mr. Pifer's theory -- Let's go back to this again, and keep these other things in mind. Does Mr. Pifer believe that you need to have a planning reserve or an actual reserve?

A. I don't believe he thinks you need either.

Q. Okay. And what, if anything, in Dr. Pifer's theory would be a substitute in his mind for a planning reserve or an actual reserve?

A. Well, Dr. Pifer seems to believe that you can rely upon both interruptible or dispatchable demand-type customers and imports of non-firm economy power from other regions.

Q. Okay. Now, let's go through those. Traditionally a number of customers have had interruptible contracts; isn't that right?

A. That's correct.

Q. Including AK Steel?

A. Yes.

Q. Okay. And in a traditional interruptible contract is a customer given an advantage or a benefit in exchange for interrupting his load only when he interrupts his load?

A. Absolutely not. Normally, under an interruptible contract, and I guess if I can use the AK Steel contract as just an example, there is a credit that the customer receives --

MR. DORTCH: I'm going to object, your Honor. I asked this witness about the AK Steel contract yesterday. This witness informed me that he was unaware of the terms of the AK

Steel contract yesterday.

EXAMINER FARKAS: Okay.

MR. BOEHM: Let's not use the AK Steel contract.

THE WITNESS: Fair enough.

BY MR. BOEHM:

Q. Let's use -- Let's use interruptible contracts generally as you've known them historically. Have you known interruptible contracts?

A. Yes, I've testified regarding interruptible rates in a number of proceedings in various states.

Q. Now, do these seem to take, for the most part, across states and across companies a certain form, historically?

A. Yes, they do.

Q. Okay. And historically and traditionally with respect to an interruptible contract, is a -- is a customer that opts to use an interruptible contract, is he given a benefit in exchange for interrupting his load only at the time he interrupts his load?

A. No. Normally the way an interruptible contract works is there is a lower demand charge that is applicable all of the time. So, for example, a typical rate --

MR. DORTCH: Your Honor, I'm going to object. This is well beyond the scope of my cross-examination.

EXAMINER FARKAS: I'll --

MR. DORTCH: My cross on the end of this --

EXAMINER FARKAS: I'm going to let him answer the question.

MR. DORTCH: Thank you, your Honor.

THE WITNESS: A typical industrial rate might have a demand charge of, let's say, $10 a month. For an interruptible, it would be $5 a month, and they would receive that lower demand charge for every single month as long as they were on that tariff whether they were interrupted or not.

BY MR. BOEHM:

Q. And is it true that in some but not all interruptible contracts there's a limitation on how often that -- the company -- the consumer can be interrupted?

A. Yes. Frequently there is a limitation of a certain number of hours per year. It could be as few as a hundred hours per year. I've seen as many as 500 or 600.

Q. Okay. Now, with respect to Dr. Pifer's dispatchable power, in his model is a, quote, interruptible customer given a benefit in exchange for his willingness to interrupt all throughout the year or only at the moment of interruption?

A. No, in Dr. Pifer's approach, at least in the way in which he computed market prices, he assumes that the only benefit of interruption is avoiding a charge of approximately 5 to 7 cents per kilowatt-hour or more at the time of interruption. So that's a significant difference right there.

There is no -- There is no obligation, also, to interrupt. Under a typical interruptible tariff or interruptible contract, the customer does have an obligation to interrupt. It must interrupt or else they would face some kind of a penalty. Under Dr. Pifer's approach, there doesn't appear to be any obligation whatsoever to interrupt.

Q. And the sorts of penalties that you're talking about with respect to the failure of an interruptible customer to interrupt pursuant to his contract, are those typically severe monetary penalties?

A. Yes. I've seen cases where it was twice the monthly demand charge. Sometimes if you don't interrupt for more than a couple occasions, you get -- you're forced off the tariff or you have to pay some additional penalties.

Q. Now, in your mind and in your looking of your economic forecast and particularly Dr. Pifer's forecast, do you see that Dr. Pifer's customer would have -- well, under Dr. Pifer's view of these interruptible -- this dispatchable power, does the customer have the elec- --

MR. DORTCH: Objection. Objection, leading.

MR. BOEHM: I'm asking -- This will be a "yes" or "no" question, your Honor.

Does the customer have --

MR. DORTCH: There's no ruling.

MR. BOEHM: I'd like to finish the question before we rule on the objection.

EXAMINER FARKAS: Why don't you continue.

MR. BOEHM: Thank you.

BY MR. BOEHM:

Q. Does the customer have the option whether or not he will interrupt his demand at the point in time that prices get high?

A. It appears the customer does have the option, yes.

Q. Okay. So he can elect not to interrupt?

A. That would be the way I would interpret it.

Q. Okay. And is that a distinction between Dr. Pifer's dispatchable demand and the typical interruptible contract?

A. That's a very important distinction because it really reduces the reliability of dispatchable demand or interruptible demand substantially from the point of view of the utility operator.

The other problem with Dr. Pifer's approach is that because the utilities aren't assumed to have any reserves, they could conventionally choose to serve such customers.

MR. DORTCH: Your Honor, again, I must object. This is well beyond the scope of cross-examination.

EXAMINER FARKAS: I'll let him finish his answer.

MR. BOEHM: Thank you.

THE WITNESS: Because the utility under Dr. Pifer's approach would have no reserve margin to provide service to interruptible or dispatchable customers. In Dr. Pifer's modeling, they would have to be interrupted a lot more often than would be conventionally the case today under the existing system. So I believe interruptible power would be much less attractive to a customer.

BY MR. BOEHM:

Q. And one last question on this subject, so that we understand. If, in fact, there is no planning or actual reserve margin in Dr. Pifer's model and if, in fact, there is some unexpected hot weather and customers do not choose to interrupt their load to avoid that next moment's price increase and adjacent systems choose not to sell power to ECAR or to CG&E, what happens to the electricity?

A. There is a shortage of electric power, and what could happen could be anything from major inconvenience to something like the New York blackouts of the '60s and '70s.

Q. One more --

EXAMINER FARKAS: No, that was --

MR. BOEHM: That was it? Okay.

BY MR. BOEHM:

Q. Have you -- Are you familiar with any jurisdiction that has ever adopted a zero reserve margin either in proceedings for generation planning or in restructuring proceedings, et cetera, do you know any jurisdiction that says, yeah, we don't need a reserve margin in our planning?

A. No, I've never seen that in any case that I've been in. And the issue of appropriate reserve margin was something that I was involved in in many cases that were litigated, and normally, it was never even suggested that a reserve margin of, say, less than 15 percent was appropriate.

Q. But isn't it true, Mr. Falkenberg, that ECAR doesn't have a reserve margin, that they don't have a required reserve margin?

A. ECAR does not have an explicit stated reserve margin.

Q. Now --

MR. BOEHM: Your Honor, I would briefly like to get -- I think this will wind it up. I'd briefly like to get back into the questions that your Honor said I could get into to present the other side of Mr. Falkenberg's credentials with respect to the voir dire.

EXAMINER FARKAS: Okay.

MR. BOEHM: This will be very short.

BY MR. BOEHM:

Q. Do you remember, Mr. Falkenberg, in Mr. Dortch's voir dire of you yesterday concerning your expertise and in the environmental area, do you recall being asked about possible new regulations related to CO_2, Mercury and PM 2.5?

A. Yes, I do.

Q. Have you ever presented expert testimony related to environmental cost of these pollutants due to the production of electricity?

A. Yes, I have, and it's listed in my Exhibit 1, but the case is shown as E999-CI in Minnesota before the Minnesota Public Utilities Commission, where I testified as to the environmental cost of electricity as should be used for planning purposes.

Q. And in your -- Is it speculative in your estimation -- Tell me whether or not you think it's speculative, Mr. Falkenberg, to assess potential costs of new regulations from pollutants such as CO2, Mercury and PM 2.5?

A. Yes, it's very speculative for a lot of reasons. First of all, economic theory would say that whatever cost or tax or regulatory approach that's used should be based on the assessment of the cost of damages of various pollutants, and for these types of pollutants the cost of damages are exceedingly hard to quantify.

For example, CO2, there's a great debate to what the cost of the damage to the environment would be. When we're dealing with 2.5 micron particles, the debate comes down to what is the impact on health, does it impact on how long people live, what is the value of human life, and things that are just so speculative as to it becomes impossible to identify the things that it deals with.

Q. Now, you talked about in your testimony about the Kyoto protocol?

A. That's right.

Q. And is the discussion in your testimony intended by you to be a -- to be an analysis of an environmental expert on the Kyoto proposal, or is it intended to discuss from a political point of view what are the chances that it's going to be passed?

A. Yes, my testimony deals really with how realistic it is to assume that the Kyoto protocol will be enacted and whether or not that, from a policy point of view, should be assumed to be a fact for purposes of conducting this stranded cost evaluation.

And it's my view that, given the Senate already voting 95 to zero in favor of a resolution which would be tantamount to rejecting Kyoto, that it's very unlikely that this treaty will be ratified.

Q. But in any event, that's a matter in your mind of political speculation rather than environmental law?

A. Yes, I'm not claiming that I'm an expert on the environmental impacts of this issue.

Q. Nonetheless, on the Minnesota case that you had, you did calculate that economic impact that, once it was known, that a particular environmental provision was to be effective; is that right?

A. Well, in the Minnesota testimony, I had to -- we were required to recommend a range of values for things like CO2 taxes, and so I believe the range I recommended was between zero and $1 per ton.

Q. Okay. Now, I'd like to go to your -- You were asked some questions on voir dire, I believe, by Mr. Dortch concerning your expertise in the area of utility financing. Do you remember those?

A. Yes.

Q. Have you ever provided consulting services to project developers in the electric utility so that economic evaluations of the investment can be made?

A. Yes, I have provided assistance to project developers to industrial consumers and to various enterprises to evaluate various types of projects such as new generators, investments in electricity saving devices, boilers and that sort of thing.

Q. So you are knowledgeable on the financial criteria used by such developers to evaluate projects?

A. Yes, I am.

Q. Mr. Falkenberg, are you familiar with the fixed charge rates and their role in the economic analysis of generation unit investment decisions?

A. Yes, fixed charge rates have been a staple part of the utility planning analysis for as long as I've been involved in it. I've computed these types of things for well over 20 years now, I guess. I have provided training to utility companies, staff people and Public Service Commission staff people on how to calculate fixed charge rates.

Q. Okay. Referring to RJF-1 of your testimony, will you please point out the cases that you have testified in in which you have utilized discount rates and fixed charge rates?

A. Well, I'm afraid it would be easier to point out the cases that I didn't rely on those types of factors.

Q. Okay. Well, do that then. Can you do that quickly?

A. Okay. I think that the Duke Power, Case E7- Sub 408, in August 1986 had to do with an incentive fuel clause adjustment. I don't believe I did any fixed rate charge type analysis there.

In 7-87, Docket No. 9885 was involved in a financial workup plan for Big Rivers. I don't believe I calculated a fixed charge rate there.

I believe that 10-87, Docket No. 87220, nuclear power plant performance incentive program, I don't believe that involved a fixed charge rate.

5-88, Case 10217, debt restructuring agreement for Big Rivers. Again, I don't believe that involved a fixed charge rate.

Q. Excuse me, Mr. Falkenberg. Maybe we ought to shorten this up. You've got Pages 3 through 9 of your RJF-1 are cases wherein you have put in an expert testimony appearance, and I don't know, do you have a rough idea how many cases these are?

A. I stopped counting at 100.

Q. There's over 100 cases here?

A. Yes.
Q. Of those cases, just ballpark, Mr. Falkenberg, how many do you think of that weren't cases where you had discussed the utilized discount rates and fixed charge rates in your testimony?
A. Oh, I would say probably 20.
Q. Twenty?
A. Yes.
Q. So 80-plus you think you have?
A. Yes.
MR. BOEHM: I have no further --
EXAMINER FARKAS: Redirect.
MR. BOEHM: -- redirect, your Honor. Thank you.
MR. DORTCH: Your Honor --
EXAMINER FARKAS: I was just going to ask staff.
MR. NOURSE: You want to go next? I have one area.
MR. DORTCH: I can wait, your Honor, if we're conducting recross.

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RECROSS-EXAMINATION

BY MR. NOURSE:
Q. Good morning, Mr. Falkenberg. Would you agree with me that it's true that with any long-term forecast, it's likely to be more accurate -- let's say a ten-year forecast, likely to be more accurate in year one or two versus year nine or ten?

A. I think generally that's true. You know, one of the problems with natural gas is you can have very substantial fluctuations from one year to the next; so the very first year can be way off.

Q. Okay. But isn't it really the nature of the forecast, in a long-term forecast, that you're looking at data and facts from the past, basically extrapolating them into the future; is that a good description of a forecast?

A. Generally.

Q. And isn't it easier to be more accurate, generally speaking, as a general rule, in the short term versus the long term?

A. Well, I think that's true as a general proposition, but there's always counter examples. I mean, I think I can predict Shaquille O'Neal's scoring average in the year 2020 pretty accurately.

Q. Really?

(Laughter.)

MR. BOEHM: Zero.

MR. DORTCH: You are a basketball fan, aren't you, sir?

MR. NOURSE: That's a pertinent example, I appreciate that.

BY MR. NOURSE:

Q. Let me ask you to look at Company Exhibit 67?

A. Yes.

Q. Pages 84 -- Well, let's look at '84, the table you discussed with Mr. Boehm, that you went through a series of questions where you concluded that because of the average absolute error, that the extreme right-hand column was reduced over time that -- and you, in particular, I believe looked at the last five years and concluded that these forecasts have become much more accurate over time. Do you recall that?

A. Yes.

Q. And let me ask you -- If you look at again on Page 84, the bottom half of the chart, the percent error, and let's look at AE086.

A. Yes.

Q. Do you see that?

A. Okay.

Q. How many years of tracking were done to AE086 to come up with the average absolute error of 112.4?

A. About 13 years.

Q. Okay. And then comparing -- Let's take the example that you use of AE099, and the 8.3 average absolute error. How many years of sampling was used there?

A. One year.

MR. NOURSE: Okay. That's all I have.

EXAMINER FARKAS: Okay. Do you have any?

MR. DORTCH: Your Honor, I have very few questions.

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RECROSS-EXAMINATION

BY MR. DORTCH:

Q. Mr. Falkenberg, if you would -- since we left off with Page 84, if you would look at the chart on the bottom.

A. Yes.

Q. Are you -- You -- As I recall, you testified that the AEO adopted the NEMS model in 1994, correct?

A. Yes.

Q. Okay. So in 1994, the AEO in the 1994 study, presumably, uses NEMS?

A. Yes.

Q. Would you look at the second year of AEO94, and what was the percentage error in that forecast? It's 15.3, do you see that? I know it's hard to work with these.

A. Well, I thought -- Yes, the second year was 15.3.

Q. And if you look at the second year of AEO95, the percentage error is 28.4?

A. Yes.

Q. Those are both overstatements, correct?

A. That is correct.

Q. AOE96, the second year, here we have an understatement of 19.8 percent?

A. Yes.

Q. AOE97, here we have an understatement of 22.1 percent?

A. Yes.
Q. And the second year AE098, 10.4 percent?
A. Yes.
Q. Did you average those, by any chance? Do you have any idea what that average is?
A. No.
Q. It's -- Well, I don't have a calculator and just looking at it, I'd say that's, what, 19 percent, close to 20 percent?
A. In taking the second years?
Q. Yes.
A. I haven't calculated that.
Q. That's fine. That's fine. Another question on, I believe it's this exhibit, and I just wanted to clarify the record about something. You referred to Page 67, and there was a statement that you read off of Page 67 and, frankly, I don't -- I don't see the statement. Do you recall what it was?
A. Yes.
Q. You referred to deregulation and how the -- I believe it was -- was it the first paragraph, sir?
A. Yes.
Q. There was something that -- I'm sorry, sir, I just can't find the quote. There was something about the model's assumptions changed because of deregulation?
A. Right. I think it says here "the representation of

natural gas markets has been revised significantly --"
Q. Thank you, sir.
A. -- "to reflect deregulation."
Q. I have it now. We were talking about deregulation of the natural gas market there, correct, not the electric industry?
A. That's correct.
Q. Thanks. Sir, I want to talk about reserve margin for just a moment. My question to you yesterday that seemed to have prompted all of the -- the redirect today was whether AK Steel was exercising an economic decision to take curtailable power. Do you remember that?
A. Yes.
Q. Okay. Now, if there is a shortage of electricity in the year, what, 2005 in ECAR and if there's no reserve margin, what will that shortage -- how will that shortage be reflected in prices?
A. Prices will go up.
Q. Prices will go up. And whether companies particularly desire to curtail or not, as prices go up, prices for electricity increase, will there be increasing pressure on those companies to avoid that cost?
A. Well, I would think there will be a pressure from a lot of different directions. There will certainly be a little bit of public outcry and maybe outrage if the lights go out.

Q. Sir, let's answer my question. Will there be economic pressure on companies to avoid that cost?

MR. BOEHM: Excuse me, your Honor. I would ask counsel if I could know what companies are --

MR. DORTCH: Any companies, anybody who is out in industry.

MR. BOEHM: Consumers?

BY MR. DORTCH:

Q. Consumers, buyers, if you have the option, potential, is there a price pressure that the industry presumably will be considering amongst its costs?

A. Prices also go up. It won't --

Q. Prices also go up, does that mean that -- I'm sorry, I didn't mean to interrupt.

A. It doesn't mean all of a sudden, automatically, we'll be able to build capacity the next day and resolve that problem.

Q. But if the prices go up, suppliers will be interested in entering the market, won't they?

A. Presumably, they will.

MR. DORTCH: A moment, your Honor.

EXAMINER FARKAS: Yes.

MR. DORTCH: Your Honor, no further recross of Mr. Falkenberg.

EXAMINER FARKAS: Thank you.

MR. DORTCH: And my appreciation to the witness.

Thank you, sir.

EXAMINER FARKAS: Thank you for your testimony. You're excused.

(Witness excused.)

EXAMINER FARKAS: AK had moved for the admission of Exhibit 15, which was Mr. Falkenberg's testimony; 8, which was the errata sheet for Mr. Falkenberg; and 16, which was the Pennsylvania decision. Is there any objection to the admission of those exhibits?

MR. DORTCH: No, sir.

EXAMINER GOODEN: Then those will be admitted.

MR. BOEHM: Thank you, your Honor

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Thereupon, AK Steel Exhibit Nos. 15,
8 and 16 were received into evidence.

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MR. DORTCH: The company would move for the admission of Exhibits 67, 73, 74, and 75 identified yesterday.

EXAMINER FARKAS: Is there any objection to the admission of those?

MR. BOEHM: I'm afraid I don't know whether I objected to them before or not. If I didn't, there's no objection now, your Honor.

EXAMINER FARKAS: Okay.

EXAMINER GOODEN: What were the numbers again?

MR. DORTCH: Your Honor, they are 67, the EIA analysis; 73, the Annual Energy Outlook 2000; 74, which was the excerpt from the Annual Energy Outlook 1999; and 19 -- 75, which was Impacts of the Kyoto Protocols the EIA Analysis, I think we utilized excerpts, but I have represented that I would submit two copies in full to the record, and I apologize, I don't have those as of yet.

EXAMINER FARKAS: Okay. Then we'll admit 67, 73, 74, and 75.

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Thereupon, Company Exhibit Nos. 67, 73, 74 and 75 were received into evidence.

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EXAMINER FARKAS: Why don't we go off the record.

(Discussion held off the record.)

MR. COLBERT: Your Honor, the company would seek to do some limited rebuttal in this case. And we would propose to file the rebuttal testimony mid next week, Wednesday would be preferable for us.

And then I presume that Mr. Boehm would like several days to review rebuttal testimony before our experts go on, but we could certainly have them ready to appear by the end of -- of next week. The areas of rebuttal will not -- will not be in the transmission areas; so I -- I don't know that Mr. Campbell will be interested in it.

EXAMINER GOODEN: How many witnesses are you planning?

MR. COLBERT: We would propose to put on two witnesses, your Honor.

EXAMINER GOODEN: Who would they be?

MR. COLBERT: They would be Mr. Hriszko and Miss Pefley, and they would be in the areas of the various accounting rules addressed by Mr. Kollen in his testimony and the quantification of transition costs as addressed by Mr. Baron in his testimony.

MR. BOEHM: Your Honor, may I be heard on this subject?

MR. COLBERT: Now, we --

MR. BOEHM: Go ahead, counsel. I'm sorry. I didn't mean to interrupt.

MR. COLBERT: Regarding Mr. Boehm's request for surrebuttal, rebuttal testimony is permitted pursuant to 4901-1-29 at the discretion of your Honors; however, that section also says that additional testimony by the experts may not be had if such testimony could not, with reasonable diligence, have been filed or served within the time limits established by the Commission or the presiding officer and the presentation of such testimony will not unduly delay the proceeding.

MR. BOEHM: I'm sorry, counsel, could I have the citation for the rule again, please?

MR. COLBERT: Sure. It's 4091-1-29(A)(2) is where rebuttal testimony comes in and the limitations on discretion are in Part C of the same rule and listed in (C)(1) and (C)(2).

At any rate, in this particular case, the company filed its direct testimony on December 28th, 1999; it filed its supplemental testimony on February 28th of 2000 and May 1st of 2000; and then filed its second supplemental testimony, all in accordance with orders in this case, on May 17th of 2000.

Now, prior to that time, the intervenors had not filed or been required to file any testimony. They filed their testimony in this case on May 24th, 2000, after having an opportunity to review all of the company's testimony and without the company having any opportunity to review the issues that they raised or their testimony in the case.

The issues that we would raise on rebuttal are issues that were raised in the company's testimony that were not specifically addressed in the testimony of the -- of the company; so we did not seek to do cross-examination in these areas.

As the rebuttal practice would -- would -- has been conducted before the Commission, we would seek to -- to offer rebuttal in those areas. The company had -- or the intervenor in this case, AK Steel, has already had the opportunity to offer its testimony in these areas and we don't believe that it would be fair or reasonable to allow them to present additional testimony after they've had the opportunity to -- to file testimony concerning all of the issues in this case subsequent to the company's filing of testimony.

MR. BOEHM: If I may address that, your Honor?

EXAMINER GOODEN: Yes.

MR. BOEHM: I am dumbfounded at counsel's representations. Yes, the company filed its direct testimony December 28th and then it filed its supplemental, then it filed its second supplemental testimony, and then at the very last moment, it changed the entire game by filing a stipulation and not even telling us which of its original filings that it had withdrawn and which were substituted by the stipulation.

And your Honors have sat through the cross these past few days, many of which has been directed to try and discern which of the things the company says are in and which of the things the company says are now out. Now it seems none of that was enough. I know very well what the company wants to do when they talk about quantification of transition costs. This case has got a huge, gaping hole because the company never put anything in the record about what their transition costs are. And they never put anything in this case about what the transition revenues are. On the latter, the only thing in this whole case is Mr. Falkenberg's testimony of how he calculated the transition charge.

Now, at the 11th hour, the company wants to put duct tape on this baby by going through one more round and trying to do it in the rebuttal phase. Counsel has just read the rule and he read it very correctly, but you don't -- you're not allowed rebuttal testimony on things that you could have put on in the very beginning.

They want to patch up the fact that this whole ship leaks and is sinking. And they want to do it now, at the 11th hour, and I would -- I would certainly object to filing any rebuttal testimony in this case. And I -- my understanding is, your Honors, that a similar motion was made in the FirstEnergy case and the ALJ rejected it.

Certainly, if the company is allowed to have rebuttal, then I should be allowed to have surrebuttal. I mean, simple fairness. I would argue that we've gone through the company's case and it is too late to put holes -- to patch holes in this boat, and they've chosen what their case is going to be and it's on the record.

MR. NOURSE: Your Honor, could I be heard briefly?

EXAMINER GOODEN: Yes.

MR. NOURSE: The staff supports the company's request. I think clearly Mr. Colbert set out that it fits within -- procedurally within the rule of the Commission. And I would also oppose Mr. Boehm's request. I think it's premature. He hasn't identified any areas or witnesses that he would put up, unlike the company. He hasn't seen the company's rebuttal testimony, made any determination whether surrebuttal is -- is necessary or appropriate, and I think it's a premature request by AK Steel.

MR. BOEHM: Your Honor, I don't know how I could name witnesses for surrebuttal until I know what the company does on rebuttal. By definition, I'm limited to answering what the company does on rebuttal. I think this thing has gone on long enough.

(Hearing examiners conferring.)

EXAMINER GOODEN: I think we'll allow rebuttal testimony --

MR. COLBERT: Thank you, your Honor.

EXAMINER GOODEN: -- and see what surrebuttal does after the rebuttal.

MR. BOEHM: I'm sorry, I didn't hear.

EXAMINER GOODEN: We will allow rebuttal testimony.

MR. BOEHM: And surrebuttal?

EXAMINER GOODEN: We'll decide that after the rebuttal testimony, unless you want to give us a date. I guess we're not going to have any problem with you filing surrebuttal.

MR. BOEHM: I don't know what I'm going to be up against, your Honor. Right now, your Honor, I would object strenuously to any testimony that comes in this case with respect to the quantification of transition costs.

The company has had all this time to do it, and they have already put us on notice that that's one of the things they want to put in this, transition cost. That's their direct case. There's no question about it, your Honor, that's their direct case and they haven't chosen to put it on.

EXAMINER GOODEN: Thank you. I've heard that. Okay. By Monday.

MR. COLBERT: We will have the testimony filed by Monday, your Honor. When would you like to reconvene the hearing?

EXAMINER GOODEN: Wednesday.

MR. COLBERT: That would be fine, your Honor.

MR. BOEHM: They file Monday, and we have the rebuttal on Wednesday? We have the hearing on Wednesday?

EXAMINER GOODEN: Hearing on Wednesday, yes.

MR. COLBERT: Mr. Boehm, we will file the testimony with you electronically, and with all parties, so that you have it as soon as it's prepared.

MR. BOEHM: And just so that I understand what you said before, you are going to put Mr. Hriszko on concerning accounting rules and Miss Pefley is going to testify on what?

MR. COLBERT: Miss Pefley will testify on the quantification of the transition costs.

MR. BOEHM: And does that mean Miss Pefley is going to give us some numbers for transition costs for the first time, is that it?

MR. COLBERT: Her testimony has not been written yet, Mr. Boehm. As soon as it is written, I will give it to you.

MR. BOEHM: Your Honor, I don't want to beat a dead horse, but I'm telling your Honor, if the company comes up with a -- for the very first time with, quote, quantifications of transition costs, and I have to cross-examine a witness two days later on a brand new case -- a brand new case, there is no way I'm going to be afforded due process.

MR. COLBERT: Your Honor, I -- I am not disposed to respond to Mr. Boehm's characterization of testimony that has not yet been written and he has not seen. If he has objections and motions to strike to that testimony, he can make them and we will defend them.

MR. BOEHM: I don't know what I need to see, your Honor. If somebody tells me they're going to quantify transition costs and we can look at the record and see there isn't any quantification of transition costs all the way through to this very point in time, I don't know what I need to see.

EXAMINER GOODEN: Well, we'll deal with it when it comes up and we will see when it's filed.

Did you want to mention something about the -- your interlocutory appeal?

MR. BOEHM: Yes, your Honor. I was wondering how we might handle it if, in fact, the Commission grants my interlocutory appeal. Will we readjourn after we've had an opportunity to depose the witness, or would we be given an opportunity to cross-examine the witness? I don't need -- I don't need a deposition if I can have the witness on the stand, I'll do it on the record.

EXAMINER GOODEN: Obviously, we -- you would have an opportunity to cross -- to get the information. If the Commission overturns the Examiners' finding, you're entitled to that information, then the company will have to put a witness on and that may -- I don't know who it is, but maybe if they decide by next --

MR. BOEHM: I'm sorry, I didn't hear.

EXAMINER GOODEN: -- decide by later on this week. Depends when the Commission will decide that issue. If it's before next Wednesday, you may be able to -- I don't know if it would be Miss Pefley or not, but --

MR. COLBERT: It's very difficult to talk about who in the company is appropriate to go on regarding subject matters that may or may not exist. Obviously, if the Commission overturns the Attorney Examiners' ruling, then we will attempt to put on the appropriate witness.

EXAMINER FARKAS: Someone will be made available --

MR. BOEHM: Thank you, your Honor.

EXAMINER FARKAS: -- if they overturn it, the Examiners' ruling. And then I guess the briefing issue we'll wait and decide next week.

MR. BOEHM: I guess we'll have to.

MR. DORTCH: Your Honors, did you give us a time for the hearing on Wednesday, the 14th?

EXAMINER GOODEN: 9:00.

MR. DORTCH: 9:00. Thank you.

MR. BOEHM: And your Honor, with respect to any motions to strike that testimony, I would hope, given the short deadline, I could make those in front of the Commission --

EXAMINER FARKAS: Yes.

MR. BOEHM: -- with respect to the -- to the rebuttal testimony of the company?

EXAMINER GOODEN: Yes.

EXAMINER FARKAS: Yes.

MR. BOEHM: Okay.

THE WITNESS: Thank you, your Honor.

MS. MC GRIFF: Your Honor.

EXAMINER GOODEN: I'm sorry, you wanted to get on the record --

MS. MC GRIFF: Yes, please. Thank you, your Honor. May the record reflect that the Ohio Consumers' Counsel has moved its office. Our new office address, for the record, is 10 West Broad Street -- One Columbus Building, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215. Our phone numbers remain the same. Thank you.

EXAMINER FARKAS: Thank you. Why don't we take a ten-minute recess.

(Recess taken.)

EXAMINER FARKAS: Why don't we go back on the record. You can call your witness, I believe it's Mr. Solomon.

MR. CAMPBELL: Yes.

EXAMINER FARKAS: Why don't I swear him in.

(Witness called and placed under oath.)

EXAMINER FARKAS: Okay. You may proceed.

MR. CAMPBELL: Thank you, your Honor.

- - -

Thereupon, Buckeye Power/OREC Exhibit No. 2 was marked for purposes of identification.

- - -

J. BERTRAM SOLOMON

of lawful age, being first duly placed under oath, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Good morning, Mr. Solomon. Could you please state your name for the record?

A. Good morning. My name is J. Bertram Solomon.

Q. And by whom are you employed, and what are your responsibilities in that position?

A. I am employed by GDS Associates, Inc., and my position is Vice-President and Treasurer.

Q. Have you been engaged to provide testimony in this case?

A. Yes, sir, I have.

Q. And on whose behalf?

A. On behalf of Buckeye Power, Inc. and the Ohio Rural Electric Cooperatives, Inc.

Q. Can you please identify Buckeye Power Exhibit 2, which has been previously marked and submitted to you?

A. Yes, it's the direct testimony that I prepared and submitted for purposes of this proceeding dated May 24th, 2000.

Q. And was this prepared by you personally?

A. Yes, it was.

Q. If I were to ask you those same questions that are stated in that testimony again today, would your answers be the same?

A. Yes.

Q. Do you have any corrections or any other changes to Buckeye Power Exhibit 2 that you would like to make today?

A. No.

MR. CAMPBELL: Your Honors, I offer Mr. Solomon for cross-examination and ask that Buckeye Power Exhibit No. 2 be admitted into the record.

EXAMINER FARKAS: Thank you. You may proceed.

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CROSS-EXAMINATION

BY MR. FINNEGAN:

Q. Good morning, Mr. Solomon.

A. Good morning.

Q. Mr. Solomon, I would like to talk about the scope of your testimony. Your -- the focus of your testimony is CG&E's independent transmission plan only?

A. Yes.

Q. You were not involved in negotiating the stipulation of settlement of CG&E's transition case; is that correct?

A. That is correct.

Q. You don't know whether the bargaining that led up to that stipulation was the result of lengthy, serious, arm's length bargaining among capable and knowledgable parties?

A. No, I wasn't involved.

Q. You don't know whether the overall stipulation of settlement may or may not benefit ratepayers?

A. No.

Q. Sir, to put matters in perspective a little bit, can you tell me how much of Buckeye's load is within CG&E's service territory?

A. In the neighborhood of 5 percent, 4 or 5 percent.

Q. Sir, let's talk about the conclusions that you reached in your direct testimony. As I read your testimony, one of your opinions is that CG&E's transition plan filing fails to meet the requirements of Senate Bill 3 and the Commission rules because CG&E will not be in an independent transmission organization that meets the requirements for a qualifying transmission entity by January 1st, 2001 and, further, it's also your opinion that the Midwest ISO, even after it becomes operational, will not meet the requirements for a qualifying transmission entity?

A. Yes. That's correct.

Q. Okay. Sir, have you had the opportunity to review CG&E's stipulation of settlement of its independent transmission plan?

A. Yes, I have. Primarily, my review has been with respect to the independent transmission aspect of that.

Q. Would you agree that one of the commitments that CG&E made in the stipulation of settlement of its independent transmission plan was to try to get the Ohio transmission owners together into one regional transmission entity?

A. Our -- There was, yes, a discussion of -- of -- that it would attempt to meet with and -- with other entities and participate in a state hearing with all the remaining entities with utilities in the State of Ohio.

Q. Would you agree with me, sir, that if CG&E is successful in achieving its objective of having all the transmission owners in the State of Ohio organized into one regional transmission entity that meets the requirements of a qualifying transmission entity under the rules, that that would address your concerns about CG&E's independent transmission plan and that would comply with Senate Bill 3 and the Commission rules?

A. Yes.

Q. All right. Sir, would you agree that CG&E has been trying to achieve this objective of getting the Ohio transmission owners into one regional transmission entity over the last few years?

A. Yes. In that they've been trying to get all of the Ohio utilities into the Midwest ISO for the last few years.

Q. And how active would you characterize CG&E's efforts in that regard?

A. In my view, they've been very active in attempting to do that.

Q. Okay. Would you agree that they've taken reasonable steps to try to continue that objective?

A. I do think they have taken reasonable steps. As I also say in my testimony, I think there are a couple of key areas, and I think Mr. Procario agreed with those major two areas that separate the Midwest ISO and the Alliance, and I think there are -- is some room for the Midwest ISO to compromise in those areas in hopes of trying to -- to meld the two entities together. That is, the Midwest ISO and the Alliance.

So I think, and it's my understanding that there are discussions going on or plan to go on between the Midwest ISO and the Alliance that would include Cinergy or representatives of Cinergy and CG&E that will hopefully address those issues and -- and hopefully result in a compromise that will bring those two entities together.

Q. So even as we speak, CG&E's efforts are ongoing to try to get the two RTOs together?

A. I believe they are, yes.

Q. One of the things that CG&E or -- Strike that.

One of the things that the Midwest ISO has done recently is to make provisions for independent transmission companies to come under the Midwest ISO; is that correct?

A. Yes.

Q. Is that a reasonable step on the Midwest ISO's part to try to bring the Alliance and Midwest ISO together into one RTO?

A. It's one reasonable step, yes.

Q. One of your specific criticisms of CG&E's independent transmission plan was that it does not provide for independent operation of CG&E's transmission facilities by January 1st, 2001; is that correct?

A. Yes.

Q. Would you agree that after the Midwest ISO becomes operational, then CG&E will satisfy that requirement?

A. It will satisfy the requirement for independent operation of its transmission system. It, in my view, again, would not necessarily satisfy all of the requirements for a qualifying transmission entity.

Q. Well, let's stick to independent governance, that's the one I'm asking about at this point. We'll get to the other ones in a little bit. With regard to the Midwest ISO's scheduled date for commencing operations, it's supposed to begin operations sometime next year, in 2001; is that correct?

A. It's my understanding that Mr. Procario is projecting a target commercialization date of November 2001.

Q. And you don't have any reason to dispute that it will be fully functional and operational by some date in 2001; is that correct?

A. That's correct.

Q. Now, sir, let's talk about the legislative requirements with regard to the company's independent transmission plan. Would you agree with me that the Commission in this case has the approval -- has the discretion to approve CG&E's stipulation of settlement and to also order that CG&E is entitled to defer compliance with the independent transmission plan requirements?

A. It is my understanding it has the discretion to defer compliance on the independent transmission plan.

Q. And, in fact, the Commission could, in its discretion, push back the date for CG&E's compliance with the independent transmission plan requirements to whatever date it chooses; isn't that correct?

A. As long as it doesn't go beyond December 31, 2003; although, I guess there's a provision for perhaps even to go beyond that.

Q. It can even go beyond December 31, 2003, couldn't it?

A. I think so.

Q. In fact, there's no limitation on how far it can go; isn't that correct?

A. As far as I understand, there is not a limitation. Again, it requires a finding of a showing of good cause by the company, however.

Q. Sure. Now, if the Commission would exercise this discretion to allow CG&E to defer compliance with the independent transmission plan requirements, and if CG&E would be a member of an RTO that meets the qualifying transmission entity requirements by whatever date the Commission would defer compliance until, then that would comply with the requirements of Senate Bill 3 and the Commission rules?

A. If the Commission found -- so found, yes.

Q. All right. Sir, let's talk about the situation with the Alliance and the Midwest ISO and compare the status of the two. You recommended in your direct testimony that CG&E join the Alliance; is that correct?

A. That is one of the ways that I suggested it could comply with the requirements of the statute and the Commission's rules, yes.

Q. Okay. It's true that the Midwest ISO has received conditional regulatory approval from FERC; is that true?

A. Yes.

Q. In fact, the only step that the Midwest ISO has yet to accomplish to attain full regulatory approval from FERC is to make an explanatory filing that was required as a result of the FERC's recent order 2000; is that right?

A. That's my understanding, and getting the FERC's final approval after that.

Q. Yes. And in this explanatory filing, the Midwest ISO will be required to explain how its scope and size configuration meets the FERC's requirements in its order 2000?

A. Yes.

Q. And the FERC has already ruled that the Midwest ISO meets its requirements under Rule 888, as far as the size and scope configuration; isn't that correct?

A. Under Order 888, yes.

Q. Now, with regard to the size and configuration of the Midwest ISO, the members of MAPP have publicly committed to join the Midwest ISO; isn't that correct?

A. To the best of my knowledge, that is correct.

Q. Would you agree with me that it's likely to expect that the -- that the MAPP members will follow through on their stated intention to join the Midwest ISO?

A. As far as I know, it's likely that they will, yes.

Q. If, in fact, they do so, that would make the Midwest ISO the largest RTO in the United States, true?

A. Yes.

Q. Now, since the Midwest ISO would then be the largest RTO in the United States, would you think that there's reasonable possibility that the FERC would approve the Midwest ISO's size and configuration under Order 2000?

A. I think there is a possibility, as I told you in our -- in my deposition earlier. I can't say that that's highly probable. I think there are reasons for concern with respect to that, and I think we will just have to wait and see what the FERC finally does on that issue.

Again, I noted that the FERC in its December 20, 1999

Alliance order expressed concern with respect to the Alliance company's proposal to form the Alliance RTO, which would stretch in -- in an -- essentially a line going northwest to southeast that would cut off the Midwest ISO utilities from eastern markets, essentially, without crossing the Alliance RTO.

And the FERC expressed concerns with respect to that. I think those concerns could possibly extend themselves to concerns over the scope and configuration of the Midwest ISO apart from having the Alliance utilities as part of the Midwest ISO.

Q. And the concerns that you expressed in your deposition were that having the Midwest ISO and the Alliance RTO might disrupt established trading patterns; is that correct?

A. That's one of the things that the FERC cited in its -- in its order as being a concern. And, again, mentioned that that concern had not been allayed in their subsequent order on May 18th, 2000.

Q. Now, this concern could be addressed by having the Midwest ISO and the Alliance RTO come together into one RTO that meets the qualifying transmission entity test or by resolving the seams issues that exist between the two RTOs; is that correct?

A. It is correct with respect to the former, that is, they be placed in one RTO. With respect to the latter, that being a -- taking care of the quote-unquote seams issues, if that were appropriately done, I would say yes; however, there's been expressed both on the part of the FERC, as well as, I think, Mr. Procario, some concern over whether that might be able to be accomplished.

Q. But you testified at your deposition that that was one possible means of resolving the concern of having two RTOs that would otherwise potentially disrupt established trading patterns?

A. Just as I've done here this morning in my former answer, yes.

Q. Okay. Now, let's talk about the status of the Alliance a little bit. The FERC has issued a ruling, I believe it was May 17th of this year, on the status of the Alliance; is that correct?

A. May 17th or 18th, yes.

Q. And in that ruling, FERC rejected several parts of the Alliance's compliance filing?

A. Yes.

Q. Okay. In fact, one of the FERC commissioners at that time characterized the status of the Alliance's compliance filing as woefully inadequate, correct?

A. Yes.

Q. And would you agree with that characterization?

A. Yes.

Q. One of the important FERC requirements for a RTO is independent governance; is that correct?

A. Yes.

Q. And FERC ruled in its May 17th or 18th order that the Alliance failed to meet this independent governance requirement, true?

A. The FERC, in its May 18th order, said that with some changes that it directed in that order, it would allow the Alliance to go forward with respect to the ISO portion of its governance structure. It said, however, that it needed substantially more work with respect to the governance structure proposed for the Transco operation.

So the FERC has indicated that with a compliance filing that would make the changes that it outlined in the order with respect to ISO governance, that it would allow that to go forward and essentially sent the Alliance companies back to the drawing board with respect to governance under their proposed Transco structure.

Q. So the FERC did rule that the Alliance didn't meet its independent governance requirements?

A. Not as it was previously filed.

Q. The FERC has ruled that the Midwest ISO meets its independent governance requirements?

A. Yes.

Q. In fact, would you agree with me that as it presently stands, the Alliance has a long way to go before it would be able to meet FERC's independent governance requirements and would have to make substantial changes to its structure in order to meet that requirement?

A. I think it has a long way to go overall and I think that the Alliance companies would consider the changes that have to be made to be significant, yes.

Q. Now, let's talk about pricing. Would you agree with me that the pricing for transmission services within a RTO is another important requirement that a RTO must meet to be approved by FERC?

A. Yes.

Q. Has FERC approved the Midwest ISO's pricing structure?

A. Yes.

Q. Has FERC approved the Alliance's pricing structure?

A. No.

Q. What problem exists with the Alliance's pricing structure?

A. The original filing by the Alliance companies contained a pricing structure that would pancake rates within the Alliance RTO. And that pricing proposal was rejected by the FERC. It's my understanding the Alliance companies are working on a new pricing proposal, which they intend to file at some point in time which would eliminate, pursuant to the Commission's order, the FERC's order, the proposed pancaking that was included in their first filing.

Q. And even though they're working on it, that's really just in the talking stage, it's really an open issue as to whether they will be able to come up with some agreement among the members that would resolve FERC's objections to the pricing structure and whether that would then, in turn, be approved by FERC?

A. I think it's an open issue until it's filed at the FERC and approved, yes.

Q. Now, let's talk about the tariff and agreement for the two RTO entities. Has FERC approved the Midwest ISO's tariff and agreement?

A. Yes.

Q. Has FERC approved the Alliance's tariff and agreement?

A. No.

Q. Would you agree that having a FERC approved tariff and agreement that provides for one-stop shopping and resolves issues like congestion management is an important aspect of getting a RTO approved by FERC?

A. Yes.

Q. Now, let's talk for a moment about the strength of commitment of the transmission owners to the Midwest ISO and the Alliance. As far as the Midwest ISO is concerned, would you agree that it's reasonable to assume that the transmission owners in the Midwest ISO have contractual commitments that would contain penalty provisions that would apply if they tried to withdraw from the Midwest ISO?

A. Yes.

Q. And as a result, transmission owners that have part of the Midwest ISO like Cinergy, CG&E would incur adverse consequences in the form of breach of contract, invoking these penalty provisions if they try to withdraw from the Midwest ISO, isn't that correct?

A. It's generally correct, yes.

Q. Now, in the case of CG&E, CG&E is a subsidiary of Cinergy, which is a holding company with operations also in Kentucky and Indiana, isn't that correct?

A. Yes.

Q. And would you -- you wouldn't be surprised, would you, if Cinergy tried to pull out of the Midwest ISO, that they would also incur adverse consequences from the Commissions in those states?

A. I don't know if they would or not. It wouldn't surprise me terribly if there were some concerns by some of those states, especially Indiana.

Q. That's because the headquarters is located there?

A. That's correct.

Q. That's at least one reason why they would be expected to incur some adverse consequences. Now, in the case of the Alliance, the Alliance members don't have the same strengths of commitment to follow through with their membership in the

Alliance. Isn't it true that the Alliance members are permitted to withdraw from the Alliance unilaterally in the face of any adverse FERC ruling?

A. Yes. Any FERC ruling that the individual company determines to be adverse to its interests.

Q. And they could do that without any adverse consequences to themselves?

A. As far as I know, that's correct, yes.

Q. And the FERC just issued a ruling rejecting the -- some parts of the Alliance filing on May 17 or May 18th and that would give them grounds to pull out of the Alliance if they wanted to?

A. I think they could use that as grounds to pull out, yes.

Q. Without any adverse consequences to themselves?

A. Again, I think without significant adverse consequences. I think they've made commitments to certain funding that they would have to continue to meet at least through the time that they -- such time as they withdrew, but I think beyond that, there would not be significant consequences.

Q. And that's nothing on the magnitude of the consequences that we've talked about that Cinergy would incur if it were to pull out of the Midwest ISO?

A. That's correct.

Q. Are any of the Alliance members located in Virginia?

A. Yes.
Q. Which one is that?
A. Virginia Electric and Power.
Q. Isn't it true that the Virginia State Corporation Commission staff has publicly stated that Virginia Power's membership in the Alliance would not satisfy the Virginia Commission's requirements for belonging to a RTO?
A. I think they have said that it wouldn't satisfy the Virginia Commission's requirements as the Alliance was proposed at the time the comments were made.
Q. And would you agree with me that since the Virginia staff has publicly taken this position, that this makes it more unlikely that Virginia Power would follow through on its stated intention to join the Alliance?
A. I -- I -- Using the characterization that you do, making it more unlikely, I would certainly agree with that. Again, I think there's a possibility that the Alliance companies might change the Alliance and the proposed Alliance structure pursuant to the FERC order in a way that might make it more acceptable to the Virginia Commission staff.
Q. That's just speculation, isn't it?
A. You could characterize it to a degree as speculation, however, again, it is clear as we just discussed, that the Alliance companies are going to have to make some changes in their proposed structure in order to get it approved by the

FERC. So if they intend, as they have publicly said they do, to gain FERC approval, they will have to make those changes.

Q. But where the speculation comes in, wouldn't you agree with me, is whether they can come to some agreement on things like a pricing structure and, if so, whether that would be approved by the FERC?

A. Yes.

Q. And, in fact, that's really one of the toughest issues to -- in terms of bringing transmission owners together into an RTO, is to get an agreement on pricing structure?

A. Yes, it is.

Q. Are any of the Alliance members located in Michigan?

A. Yes.

Q. Has the Michigan Commission staff publicly stated that the Michigan utility companies' membership in the Alliance would not satisfy the Michigan Commission's requirements for belonging in an RTO?

A. Again, yes, based upon the proposal of the Alliance companies at the time those comments were made by the staff.

Q. Since the Michigan staff has taken this position, just as in Virginia, wouldn't you agree that that makes it more unlikely that the Michigan utility companies would follow through on their stated intention to join the Alliance?

A. Again, I would agree with the characterization of more unlikely, especially, again, as the Alliance was proposed at the time. Again, there is the possibility that the Alliance will make changes that might change the attitude of the State Commission staff.

Q. But as we just discussed, that's really just pure speculation whether they'll be able to come up with an agreement, whether it will be approved by the FERC?

A. At this point, I can't say whether they will or will not.

Q. Now, in the case of Virginia Power, if they were to pull out of the Alliance, wouldn't that make it less likely that the Alliance could satisfy the FERC's size and scope configuration requirements under Order 2000?

A. Yes.

Q. And would the same thing be true if the Michigan utility companies pulled out of the Alliance?

A. Yes.

Q. Are you aware that AEP is under a requirement as a condition of approval of its merger with CSW, that it has to be in a fully functional ISO by December 15, 2001, or thereabouts?

A. Yes.

Q. Would you agree that there's a very high probability that the Midwest ISO will receive full regulatory approval and be fully functional and operational by December 15th, 2001?

A. I think there's a high probability that it will, under the FERC requirements for an ISO. As we discussed earlier, I think the jury is still out with respect to whether it might be approved as an RTO or not.

Q. But in any event, the -- there's -- with regard to the Alliance, it's much less likely that the Alliance will be fully functional and operational by December 15th, 2001; wouldn't you agree with that?

A. I would agree that it's much less likely that the Alliance will, as it's been formulated, than will be Midwest ISO.

Q. And in terms of the physical standing of the two organizations, the Midwest ISO has selected a headquarters in Carmel, Indiana, correct?

A. Yes.

Q. And it's acquired land and a building there?

A. Yes.

Q. And it's hired its top senior management?

A. Yes.

Q. And it's hired a number of staff members?

A. Yes.

Q. And they're all presently working for the Midwest ISO as employees?

A. Yes.

Q. And they're in the process of making the decisions to obtain the hardware and software needs that they have to fulfill their responsibilities of an independent transmission operator?

A. Yes.

Q. And the Alliance has done none of that?

A. That's correct, to my knowledge.

Q. Now, are you aware that DP&L is under a commitment to be in a fully functional and operating RTO by December 15th, 2001, just as AEP is?

A. Did you say -- Excuse me, DP&L?

Q. DP&L, yes.

A. I think in their proposed stipulation in the proceeding currently before the Ohio Commission that it has, yes.

Q. Now, let's talk about the -- the one recommendation that you made that we touched on earlier in your cross-examination that the -- that CG&E join the Alliance. In reality, that's built on a series of inferences that build upon each other; isn't that correct?

A. I'm not sure I understand your question.

Q. Well, let me -- let me just ask you if the following are some of the inferences that form the basis for your recommendation that CG&E should join the Alliance.

One of the inferences you're making is that the Alliance members would agree to restructure their independent governance provisions?

A. Yes. Let me clarify one thing. You characterized it as the one recommendation. I made several recommendations, and

I gave them as alternatives that might be used to satisfy the requirements of the Act and the Commission.

Q. Well, I'm sorry, I didn't mean to characterize that as the one recommendation, and I know it's not. And if I did, I apologize.

A. Okay. I just wanted to be clear on that.

Q. I just wanted to talk about that as being one of your recommendations.

A. Okay.

Q. I certainly agree that you've made others and I'm going to try to talk about all of them.

A. Okay.

Q. I apologize if I characterized it as the one. I know it's not.

But with regard to that recommendation, one of several you made, it's built on several inferences, and I'd just like to go down the inferences that that is built upon, if I may.

One of the inferences that you're making there is that the Alliance would have to restructure its independent governance requirements and the members would have to come to some agreement on that?

A. Yes, in order to meet the requirements of the FERC.

Q. And the second inference that you make is that FERC then would approve whatever they would agree on for independent governance?

A. That's correct.
Q. And the third inference is that they would have to come to agreement on a new pricing structure?
A. Yes.
Q. And the fourth inference is that FERC would have to approve whatever they agree upon in terms of the pricing structure?
A. Yes.
Q. Another inference is that they can come to some agreement on a new tariff?
A. Yes.
Q. And that FERC would approve that tariff?
A. Yes.
Q. And another inference that you're making is that Virginia Power follows through and joins the Alliance even though its Commission staff has publicly stated that it wouldn't satisfy the Commission's requirements for being in an RTO?
A. Yes, again, at least as proposed at the time the Virginia staff made those comments.
Q. And the same thing would be true for -- for the Michigan utility companies, that you're inferring there that they're going to follow through and join the Alliance even though those Commission staff -- that Commission staff has also said that it wouldn't meet the Commission's RTO requirements?
A. Yes, with the same caveat.

Q. And another inference you're making is that the Alliance will be fully functional and operating by December 15th, 2001?

A. In order for those entities to -- to be members of a fully functioning RTO by then, yes.

Q. What is the likelihood, in your opinion, that the Alliance will be fully functional and operating by December 15th, 2001?

A. I can't give you a probability. It may be or it may not be.

Q. Would you -- Can you characterize it as something that is highly probable or highly improbable?

A. I wouldn't say that it would be highly probable. I would say, at this point, it looks to me as though it is unlikely that they will be fully functioning by December 15th, 2000. I can't say for sure that they will not be, however.

Q. I believe you said 2000. Did you mean 2001?

A. I'm sorry, I did mean December 15th, 2001.

Q. Now, even though one of your recommendations was that CG&E join the Alliance, you, yourself, have doubts that FERC would approve that?

A. Well, clearly, the FERC will not approve it in its current form, as it has so stated and as we have discussed this morning.

Q. Now, instead of CG&E joining the Alliance, wouldn't it be a lot easier if the Ohio transmission owners that are members of the Alliance simply joined the Midwest ISO?

A. It would be easier, yes.

Q. And wouldn't that also be a lot more practical than CG&E joining the Alliance?

A. I believe it would, yes.

Q. In fact, did one of the FERC Commissioners, Commissioner Massey comment on this, recently?

A. Yes, I think he did make public comments during the May 17th, 2000 meeting of the FERC --

Q. Okay. And what --

A. -- and in a separate concurring statement to the May 18th order of the FERC.

Q. And what was the gist of his comments in that regard?

A. He expressed skepticism that the -- that reciprocity agreements and seams coordination would ultimately result in meeting the scope and configuration requirements of the FERC, and expressed his view that the Alliance companies should explore the possibility of joining the Midwest ISO under its Attachment I provision, which would allow for independent transmission companies to join the Midwest ISO.

Q. Do you concur with the views expressed by FERC Commissioner Massey in that area?

A. Yes, I do.

Q. Let's talk about another recommendation or matter that you addressed in your direct testimony, reciprocity. I believe you said in your direct testimony that one of the ways that CG&E could overcome problems with its independent transmission plan was to enter into the proper reciprocity agreements?

A. Yes, that is one way, if it entered into the proper reciprocity agreements.

Q. Can you state what you mean by "reciprocity agreements"?

A. Yes. In a nutshell, I would say they are agreements that would be required to effectively eliminate the impacts of what we've been referring to as seams or interfaces between different entities within the State of Ohio. And in my view, that would include assuring that there would not be pancaked rate charges, which is the thing that, I guess, first comes to mind with respect to reciprocity agreements, but I think reciprocity and eliminating pancaking of charges or costs go beyond just the transmission access charge and the elimination of the pancaking of a transmission charge, and go also to the need for providing the ability to shop within the state by contacting a single entity and by eliminating the other problems that result from having interfaces between several entities in the state.

Q. And really, for reciprocity agreements to work properly, the Ohio transmission owners would not only have to have reciprocity agreements within themselves, but they would all also need to have reciprocity agreements with transmission owners located outside Ohio adjoining their transmission facilities?

A. I think that would be the most appropriate approach, yes.

Q. And, in fact, if that were not true, that is, if the Ohio transmission owners only had reciprocity agreements among themselves and not with the out-of-state transmission owners, that would create a pricing disadvantage for the out-of-state transmission customers, wouldn't it?

A. It would if you look at the region as a whole, yes.

Q. And it would be discriminatory as to them, wouldn't it?

A. It would within the region, yes.

Q. And as a result, wouldn't you agree that FERC would be highly unlikely to approve that kind of arrangement?

A. I think the FERC would be unlikely, I think, to approve that. I think it would evaluate the proposal and render its ruling based upon the facts. I think, however, it would be unlikely that they would approve such an arrangement because the FERC would tend to take a regional perspective rather than a State of Ohio perspective.

Q. And FERC approval would be required in order for the transmission owners to enter into that kind of arrangement?

A. I believe that it would, yes.

Q. I just have a few more questions for you, Mr. Solomon.
I'd like to talk a moment about the issue of reliability. That was one of the matters that you commented on in your direct testimony. Would you agree with me that reliability has to do with the continuous flow of electrical service?
A. Yes.
Q. And this has to do with the physical action of delivering transmission service from one area to another area?
A. It has to do with that and over a region it has to do with agreements among utilities to cooperate and coordinate with respect to that flow.
Q. So there are really two aspects to it, as we discussed at your deposition; one is the electrical engineering aspect of it, and the other is the economic aspect of it?
A. We agreed there were a lot of aspects and that they might be categorized into the physical aspect and the contractual or coordination aspects.
Q. And you certainly have some 25 years of experience in the economic aspect with regard to these agreements, but would it be fair to say that you're not an electrical engineer?
A. It would be fair to say I'm not an electrical engineer.
Q. And you don't have any experience on the electrical engineering aspect of reliability, of transmission service?

A. I don't have any experience by training. I do have experience in working with engineers within my firm and engineers in utilities across the country dealing with aspects of reliability.

Q. But just as an attorney, who works with a doctor, does not become a doctor, by working with electrical engineers, you're not an expert in electrical engineering?

A. I haven't claimed to be an expert in electrical engineering matters.

MR. FINNIGAN: May I have a moment, please.

EXAMINER FARKAS: Yes.

(Pause.)

MR. FINNIGAN: That's all I have. Thank you, Mr. Solomon.

THE WITNESS: You're welcome.

EXAMINER FARKAS: Does staff have any questions?

MR. NOURSE: Just a few questions. Thank you, your Honor.

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CROSS-EXAMINATION

BY MR. NOURSE:

Q. Good morning, Mr. Solomon.

A. Good morning.

Q. I represent the staff in the PUCO. I want to ask you some questions.

To clarify your recommendation regarding reciprocity agreements, let me just flush it out a little bit. Are you recommending that the Ohio Commission order the companies to enter into reciprocity agreements or to apply to FERC to get such agreements, you know, negotiate such agreements or apply to FERC to get them approved? What is it exactly that you're recommending the Ohio Commission do?

A. I made several recommendations. The first recommendation would be that the Ohio Commission require all of the utilities in Ohio to be a member of a single RTO.

The second recommendation would be that if they -- if the Commission does not require that, that, indeed, that it should require that they enter into reciprocity and coordination agreements and file those with the FERC in order to meet the objectives of Senate Bill 3 or promoting competition vigorously within the State of Ohio by January the 1st, 2000 -- 2001, excuse me.

Q. So -- and I think you recognized in your testimony, Pages 27, 28, where you discuss this, that there may be charges that -- you know, system losses or other things that aren't accounted for that you could go back and make sure the companies are compensated through those agreements; is that correct?

A. That is correct, yes.

Q. I mean, is it fair to say what your recommendation is -- in this regard is to kind of overlay over the Midwest ISO and the Alliance RTO, to overlay an Ohio reciprocity agreement that would -- basically for any customer in Ohio could buy power at the same rate, transmission rate; is that how it would work?

A. It would work close to that. It wouldn't, in my view, have to be necessarily exactly the same rate. It would be a single transmission access charge. It could be done on a -- if we can use the term zonal basis, as is done currently within the Midwest ISO and might be done in the Alliance ISO, which means that the single transmission rate that would be charged for access to all of the facilities in the state would be that transmission charge that is based on the facilities owned by the entity where the load is located; so that it might not necessarily be a single uniform rate that would cover all of the facilities in the state, but that it would be a single charge that would be based on one utility's facilities and that there would not be any charge added to that for the use of another utility's facilities.

Q. Okay. With respect to -- I'll give you an example, Cinergy that's involved in the Midwest ISO and covering other areas, obviously, than in the Ohio territory, that for those Ohio customers they would have this overlay reciprocity agreement that would impose that, if not uniform rates, uniform rate structure or zonal rates, irrespective of the other charges that might apply through the normal MISO transmission tariff?

A. Yes, and again, I think that would -- the right to make use of that would likely extend to all of the Midwest ISO and all of the Alliance RTO, not necessarily just the State of Ohio, but it would certainly accomplish granting transmission access to all of the facilities in the State of Ohio for one single transmission access charge.

Q. Is this idea of a reciprocity agreement something that Buckeye Power has explored or municipals may have explored with the Ohio utilities?

A. Using the term in the broadest sense, yes, they have explored it, as I think have others in the state. Like it's my understanding the staff has made certain suggestions along those lines and perhaps discussed some of those ideas with the utilities in the state.

My clients have, similarly, both through my testimony and through participation in other forums, suggested that those would be required and, in fact, should be developed and filed very, very soon in order for them to be in place in a timely way.

Q. Okay. Do you know if it has -- this arrangement has occurred or is being actively considered in any other jurisdiction or anywhere throughout the country?

A. Not on a specific state basis. It is being considered as part of the Midwest ISO collaborative discussions that are ongoing as a result of the FERC Order 2000 --

Q. And --

A. -- on a region-wide basis.

Q. And I gather, we understand Cinergy's position in this case, but what -- Do you know what the other Ohio utilities, you know, when you explored that with them, what's their basic position, if you know?

MR. FINNIGAN: I'm going to object on the grounds of hearsay.

EXAMINER FARKAS: If he knows, I'll let him answer.

THE WITNESS: Most of my knowledge with respect to that would come from two sources. The first source would be the documents that have been filed by those utilities in these transition proceedings before the Public Utilities Commission of Ohio, and that would be the primary source.

The other source would be discussions with principals at Buckeye regarding discussions that those principals might have had with principals of the utilities in Ohio.

And, I guess, really a third source would be my own experience in being a participant in the Midwest -- or so-called Cincinnati RTO collaborative meetings that have gone on among interested parties within the Midwest, again, as a result of the FERC's order No. 2000.

And in answer to your question, first of all, there have been -- I reviewed now all of the filings that have been made, the transition plan filings before this Commission, and there haven't been any utilities who have made a specific proposal with respect to a reciprocity arrangement.

The Alliance RTO companies have made a proposal that they would attempt to gain support among other Ohio utilities, as well as utilities outside of Ohio, to discuss the issues of reciprocity agreements and seams coordination. And I think that that concept of getting together somewhere down the road to discuss related issues and try to come up with a solution that would work to solve the seams issues including reciprocity and other things, has been joined by several of the other Ohio utilities through -- through stipulations that have been proposed in the transition cases in this proceeding. However, I have yet to see a concrete proposal by any of those utilities on reciprocity.

BY MR. NOURSE:

Q. Okay. Let me clarify something you addressed earlier. With respect to -- what I want to know really is the impact of that proposal and reciprocity agreement on the retail customer. You spoke earlier to the fact that it wouldn't be pancaking, but it would be -- it wouldn't necessarily be current transmission rates either because there might be additional charges that might apply. What's the impact on the retail customer?

A. The retail customer would be able to access generation supply sources both inside and outside of Ohio for a single transmission charge rather than multiple transmission charges. So it would make it much more economical for consumers in Ohio to access a wider range of supply options than they currently have.

Q. When you say "inside and outside Ohio," you're referring to, in the Cinergy example, a customer could obtain power from anywhere on the Midwest ISO as well as anywhere in the remaining part of Ohio; is that what you mean?

A. I think from a practical perspective that's how it would have to work.

Q. Okay. But in terms of -- that's what gives them, in terms of their ability to buy real power, but what about the rate structure, what's the impact -- can you compare --

A. Yes. Yes, it would be, again, much more economical for them to do that rather than having to pay multiple transmission access charges, they would only have to pay a single transmission access charge. So it would be much cheaper for them to do that.

Q. Okay.

MR. NOURSE: I think that's all the questions I have. Thank you.

EXAMINER FARKAS: Any redirect?

MR. CAMPBELL: May I confer with my witness?

EXAMINER FARKAS: Yes, let's take a short break.

COMMISSIONER GLAZER: Your Honor, could I just ask, for clarification, if we could -- I'm just picking up on the questions that were asked. I'm trying to understand the proposal.

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EXAMINATION

BY COMMISSIONER GLAZER:

Q. Right now, there is an out rate, if you will, as I understand it, if you transmit power out of the Midwest ISO, you pay a certain rate for that; isn't that correct?

A. That's correct.

Q. And those revenues, presumably, get mixed into the pool and hold down the revenue requirements that customers would otherwise pay within the Midwest ISO; isn't that right?

A. Yes, that's correct.

Q. How would your proposal work -- Let's say, I'm a power marketer. I'm moving power from St. Louis to New York City, going through the MISO and the Alliance. How would this work? What would I pay?

A. It would depend -- Given that stretch over which the power would be transmitted, it would depend on reciprocity agreements that might exist among not only the Midwest ISO utilities and the Alliance utilities, but if you're going all the way to New York, other utilities as well.

Q. But just moving it through the MISO and the Alliance, what I heard you to say is I wouldn't pay anything for that transaction?

A. Well, if the agreements are only among the Midwest ISO and the Alliance, then I think you would only pay -- if the transaction originates in one of those entities, if it originates in the Midwest ISO and goes through both the Midwest and the Alliance, then there would be one single charge for that, unless there were reciprocity agreements with someone up the line where the load were located.

In which case, your understanding would be correct, but my suggestion would be that only the utilities in whose control area the load resides would ultimately charge a transmission access charge.

Q. So there would be no charge, then -- I'm just trying to understand it. There would be no charge for moving power through the MISO and the Alliance because the load is outside of both of them?

A. That's right. If there was a reciprocity agreement that extended beyond the bounds of both the Midwest ISO and the --

Q. Even if there wasn't --

A. -- the Alliance.

Q. Even if there wasn't, if the reciprocity agreement says you only pay where the load is located, in this case the load is neither in the MISO nor the Alliance, then there would be no payment to either of them?

A. If you strictly went based upon the load, I think, if there were only reciprocity agreements between those two entities. However, that would have to be modified and so that -- Again, if you didn't have reciprocity agreements with the next entity that had to be crossed where the load was -- For example, if the load were in PJM and you went through the -- and there was no reciprocity arrangement with PJM, then I think it would -- the Alliance and the Midwest ISO would want to impose a charge on that transaction, and you'd have to figure out which one would be the most appropriate under the reciprocity arrangement to allow to make that charge.

Q. I'm just trying to understand. Given that our jurisdiction is limited to the Ohio utilities that are both members of the Alliance and the MISO, exactly what you would have this Commission order at this time relative to reciprocity, exactly what is your proposal because I'm not understanding?

A. Well, the proposal that I made in my testimony was that the reciprocity would extend to loads within the State of Ohio; so that -- that customers that reside within the State of Ohio would be -- would be charged only a single access charge and that it wouldn't necessarily extend beyond the State of Ohio.

However, I think, from a practical perspective in terms of getting that implemented by the FERC as well, it is my understanding that that sort of arrangement, indeed, would entail also jurisdiction by the FERC, and that those types of agreements would have to be approved by the FERC.

I do think, from a practical perspective, those would have to extend to both the remainder of the Midwest ISO as well as the Alliance RTO, assuming that it comes to fruition. So I do think, then, that those agreements would provide for, you know, loads within the other states covered by the Alliance and the Midwest ISO to have the same single transmission access charge.

So I would envision, as a result of that, the reciprocity agreements that the Ohio Commission would require would extend, basically, to Ohio and then by virtue of having to get approval by the FERC, for the remainder of the Alliance and the midwest ISO.

Q. But your proposal to us is that we order the Ohio utilities to provide that reciprocity to loads with -- retail loads within the State of Ohio?

A. That's right.

Q. I thought I heard you say in response to Cinergy that that would be discriminatory and FERC wouldn't approve that?

A. That's why I say from a practical perspective, I think it would have to be extended to all of the loads within the Alliance.

Q. How do we do that, given that our jurisdiction only extends to Ohio? How do we effectuate your proposal?

A. I think you require it for loads in Ohio, and I think as a result of that, when they make the proposals to the FERC, that would effectuate that; that they would either have to make the proposal that it extend to the whole of the Midwest ISO, as well as the Alliance, or the Commission -- the FERC would require them to do that. And that would precipitate from your order that they do it for loads within Ohio.

I don't think you have to order them to do it beyond Ohio. I think you have to order them to do it within Ohio and then they have to find out a way, a practical way to make that work, and I think that would -- again, it would be my expectation that that would have to extend to the whole of the Midwest ISO and the whole of the Alliance RTO, in practical terms, not that this -- the Ohio Commission would be ordering that or requiring that, but I think that would be the practical effect of the Ohio Commission requiring the utilities within Ohio to do that for loads within Ohio.

Q. If we eliminated the out rate in the Midwest ISO, which would be part of your proposal, wouldn't the effect of that be to increase the transmission rates that retail customers pay since they would have to pick up that portion that is now presently being paid for by marketers moving power through the state?

A. My answer would be that it might because -- it would actually depend, you know, on how the transactions ultimately flowed. There would be transactions going both ways; so that if there were countervailing transactions, there might actually be additional revenue picked up from transactions, the generation source for which was in Ohio and went out of state.

Q. Is Buckeye advancing a specific proposal here as to how we do this and what the revenue impact would be to customers?

A. Buckeye doesn't have the ability to calculate what the revenue --

Q. You're not proposing a specific proposal?

A. Other than to suggest that a specific way to do it would be to require that the utilities agree to only charge loads in Ohio based upon the transmission facilities on whose system that load resides; so that there would be a single charge.

Currently, within Ohio, at least for the retail service, that's how revenues are collected currently.

Q. So that could just apply to retail load as opposed to changing the whole system for wholesale load also?

A. Again, theoretically, it could, but practically, I think it probably could not because once competition is introduced in Ohio, the FERC, I think, would exercise some jurisdiction over the retail rates, retail transmission rates in Ohio and I think they would extend that, you know, require that that same reciprocity arrangement be extended to wholesale loads as well.

Q. But you haven't done this quantification to figure out the impact to res- -- or to retail customers in Ohio?

A. I have not, no. That's correct.

COMMISSIONER GLAZER: Okay. Thank you.

THE WITNESS: You're welcome.

EXAMINER FARKAS: Okay. Why don't we take a five-minute recess.

MR. CAMPBELL: Thank you. Thank you, your Honor.

EXAMINER FARKAS: Just go off the record.

(Discussion held off the record.)

EXAMINER FARKAS: Back on the record. Do you have any redirect?

MR. CAMPBELL: I have no redirect.

EXAMINER FARKAS: You're excused. Thank you very much.

THE WITNESS: You're welcome.

MR. FINNIGAN: May I have one minute?

EXAMINER FARKAS: He has no redirect.

MR. FINNIGAN: I just want to confer with co-counsel about matters that were raised in the AG's questioning.

MR. CAMPBELL: He can't recross, your Honor.

EXAMINER FARKAS: You can't do any recross if there's no redirect.

MR. FINNIGAN: Okay. That makes it easy. Thank you.

EXAMINER FARKAS: You're excused. Thank you for your testimony.

THE WITNESS: You're welcome, your Honor.

(Witness excused.)

EXAMINER FARKAS: Buckeye moved for the admission of their Exhibit No. 2. Is there any objection? Hearing none --

MR. FINNIGAN: No objection.

EXAMINER FARKAS: Okay. That will be admitted.

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Thereupon, Buckeye/OREC Exhibit No. 2
was received into evidence.

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EXAMINER FARKAS: Okay. Is there anything further at this time?

MR. FINNIGAN: None, your Honor.

MR. JOHNSON: No, your Honor.

EXAMINER FARKAS: Then we'll stand in recess until the 14th at 9:00 o'clock.

MR. CAMPBELL: Your Honor?

EXAMINER FARKAS: Okay.

MR. CAMPBELL: Can I ask something off the record?

EXAMINER FARKAS: Sure.

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(Thereupon, the hearing was adjourned at 12:06 o'clock
p.m., on Tuesday, June 6, 2000, to be reconvened at
9:00 o'clock a.m. on Wednesday, June 14, 2000.)

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C E R T I F I C A T E

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We, Candace M. Hammond, Registered Professional Reporter, and Rose Marie Prater, Registered Professional Reporter, hereby certify that the foregoing is a true and correct transcript of the proceedings before the Public Utilities Commission, State of Ohio, on Tuesday, June 6, 2000, as reported in stenotype by us and transcribed by us or under our supervision.

Candace M. Hammond, Registered
Professional Reporter

Rose Marie Prater, Registered
Professional Reporter

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