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

BEFORE THE PUBLIC UTILITIES COMMISSION  
STATE OF OHIO

1 In the Matter of the Application)  
2 of The Cincinnati Gas & Electric) Case No. 99-1658-EL-ETP  
3 Company for Approval of its )  
4 Electric Transition Plan and )  
5 for Authorization to Collect )  
6 Transition Revenues. )  
7 In the Matter of the Application)  
8 of The Cincinnati Gas & Electric) Case No. 99-1659-EL-ATA  
9 Company for Approval of Tariff )  
10 Changes Required to Implement )  
11 Retail Electric Competition. )  
12 In the Matter of the Application)  
13 of The Cincinnati Gas & Electric) Case No. 99-1660-EL-ATA  
14 Company for Approval of its New )  
15 Tariffs. )  
16 In the Matter of the Application)  
17 of The Cincinnati Gas & Electric) Case No. 99-1661-EL-ATA  
18 Company for Authority to Modify )  
19 Current Accounting Procedures to )  
20 Defer Costs Incurred Arising )  
21 From the Implementation of its )  
22 Electric Transition Plan. )  
23 In the Matter of the Application)  
24 of The Cincinnati Gas & Electric) Case No. 99-1662-EL-AAM  
25 Company for Authority to Modify )  
26 Current Accounting Procedures to )  
27 Defer Transition Costs and )  
28 Continue to Defer the Unrecovered )  
29 Balance of Regulatory Assets. )  
30 In the Matter of the Application)  
31 of The Cincinnati Gas & Electric) Case No. 99-1663-EL-AAM  
32 Company for Approval to Transfer )  
33 Its Generating Assets to an )  
34 Exempt Wholesale Generator. )

20 Deposition of Stephen J. Baron, a witness herein,  
21 called by the Cincinnati Gas and Electric Company for  
22 examination under the statute, taken before me Rose Marie  
23 Prater, Registered Professional Reporter, and Notary Public in  
24 and for the State of Ohio, pursuant to notice and stipulations  
25 of counsel hereinafter set forth, at the offices of The  
Cincinnati Gas and Electric Company, 221 East Fourth Street,  
25th Floor, Cincinnati, Ohio, on Friday, May 26, 2000, beginning  
at 9:28 o'clock a.m. and concluding on the same day.

\* DEPONET AFFILIATE \* CERTIFIED MIN-U-SCRIPT PUBLISHER \*

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23 Robert Lee  
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S T I P U L A T I O N S

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1 It is stipulated by and among counsel for the  
2  
3 respective parties herein that the deposition of Stephen J.  
4  
5 Baron, a witness herein, called by the Cincinnati Gas and  
6  
7 Electric Company for examination under the statute, may be taken  
8  
9 at this time and reduced to writing in stenotype by the Notary,  
10  
11 whose notes may thereafter be transcribed out of the presence of  
12  
13 the witness; that proof of the official character and  
14  
15 qualification of the Notary is waived; that the witness may sign  
16  
17 the transcript of his deposition before a Notary other than the  
18  
19 Notary taking his deposition; said deposition to have the same  
20  
21 force and effect as though the witness had signed the transcript  
22  
23 of his deposition before the Notary taking it.  
24  
25

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4

1	I N D E X	
2	- - -	
3	WITNESS	PAGE
4	STEPHEN J. BARON	
5	Examination by Mr. Dortch	5
6	Examination by Mr. Hoersting	79
7	- - -	
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 STEPHEN J. BARON

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

4 EXAMINATION

5 BY MR. DORTCH:

6 Q. Morning.

7 A. Morning.

8 Q. Would you state your full name, please?

9 A. Stephen J. Baron.

10 Q. Mr. Baron, you're the same Stephen Baron who has  
11 prefiled direct testimony and exhibits in the matter of the  
12 application of CG&E for approval of its electric transition  
13 plan?

14 A. Yes.

15 Q. And I had made a request to your counsel for  
16 workpapers, documents revealing data inputs, assumptions and  
17 other things underlying your work. Have you brought those  
18 materials with you?

19 MR. BOEHM: We brought them in electronic form, and  
20 maybe Steve can explain to you what he's got here.

21 MR. DORTCH: Thank you.

22 THE WITNESS: This is a CD that has all of the active  
23 spreadsheets that were used to develop my analysis. Now,  
24 there's a couple of confidential sheets, I think four hard  
25 copies, that are not on here and those will accompany this; so

1 all the other workpapers are on this CD.

2 BY MR. DORTCH:

3 Q. And if I understood right, the confidential  
4 information is based upon information the company deemed  
5 confidential?

6 A. Yes.

7 MR. BOEHM: Yes.

8 THE WITNESS: Yes, it's all the company's information.  
9 As a matter of fact, some of the information was some sales  
10 forecast by class, and I don't even know if it was deemed  
11 confidential. I just made the assumption that it was.

12 BY MR. DORTCH:

13 Q. I see.

14 A. I did rely on some information, as I said, in my  
15 testimony from Dr. Pifer's exhibits and that, I know, the  
16 company's deemed confidential.

17 Q. Okay.

18 MR. BOEHM: If you hold on for a minute, I'm sure I  
19 brought that stuff, and I'm sure you have this stuff. Yeah,  
20 here it is because it's your stuff, and that's why it's  
21 confidential. Is that it, Steve?

22 THE WITNESS: Yeah, that's it. Yeah, the first two  
23 pages are actually directly taken from Cinergy's -- Dr. Pifer's  
24 analysis. The last two are spreadsheets that I developed using  
25 the sales forecast, which I don't know whether it is

1 confidential or not.

2 BY MR. DORTCH:

3 Q. Okay. Thank you. Just so that I'm clear, does this  
4 CD contain solely the data assumptions, inputs, et cetera,  
5 underlying your analysis or underlying your analysis,  
6 Mr. Falkenberg's and Mr. Kollen's?

7 A. This is only mine.

8 Q. Now, you're appearing here on behalf of AK Steel. I  
9 assume you're under contract to AK?

10 A. Yes. I mean, we've been retained by AK. I assume  
11 it's -- It's not a formal written contract, but we are retained  
12 by AK Steel.

13 Q. Okay. There's no formal written contract. What's the  
14 scope of the engagement?

15 A. Basically, we were retained to represent AK Steel in  
16 this proceeding and that included reviewing the company's  
17 filing, identifying issues that we thought were important to be  
18 addressed by AK Steel, performing analysis, assisting in  
19 discovery, performing an analyses, preparing direct testimony,  
20 appearing for cross-examination and assisting counsel in other  
21 matters relating to the case.

22 Q. Now, I'm not going to dwell on this, but I want to get  
23 it on the record. Could you briefly tell us your educational  
24 background?

25 A. I have an undergraduate degree in political science

1 from the University of Florida, a Master's degree in economics  
2 with a specialization in public utilities economics and with a  
3 strong emphasis on statistical analysis, also, from the  
4 University of Florida, and I took some coursework beyond that in  
5 time series analysis.

6 Q. What is time series analysis?

7 A. It's a statistical modeling technique to analyze time  
8 series data and develop -- identify from the data structure  
9 models that can be used for forecasting. That's all.

10 Q. I reviewed your list of publications, and I've seen  
11 that you've not published -- or at least you haven't identified  
12 anything that you've published since 1984; is that --

13 A. That's --

14 Q. -- is that accurate?

15 A. Yes, other than periodically speeches that I might  
16 give at a conference and so forth, but in terms of publishing  
17 any paper, that's right.

18 Q. Okay. Do you have any works in progress now or  
19 anything that you've submitted for publication?

20 A. No.

21 Q. Your articles were not in the areas of stranded costs  
22 or public policy; is that fair to say?

23 A. Certainly they weren't in the area -- They weren't in  
24 the areas of stranded costs because back in 1984, which is the  
25 date you identified, I don't believe anyone was talking about

1 stranded cost.

2 Q. Now, you also listed your testimonial experience, and  
3 you state that you have testified in 12 restructuring  
4 proceedings around the country. You state seven in  
5 Pennsylvania, but as I looked through Page 6 of your testimony,  
6 I only identified six. Would you help me with what I'm missing  
7 there? If it's helpful, I think it's Page 5.

8 A. Well, the best -- Let me look at my testimony  
9 experience, see if I can identify it.

10 (Witness reviewing documents.)

11 Well, let me just do it from recollection. We can  
12 check the thing.

13 Q. Okay.

14 A. My recollection is I was in a generic proceeding in  
15 Pennsylvania of restructuring where I represented the industrial  
16 group in preparing testimony to the Commission wherein they were  
17 considering implementing retail competition and preparing a  
18 report to the Governor, I believe.

19 And I was also in a PECO proceeding, as it was called,  
20 a QRO proceeding, qualified rate order, that had to do with  
21 securitization, that I was also in the PECO stranded cost  
22 proceeding, a PP and L stranded cost proceeding, Pennsylvania  
23 Electric stranded cost proceeding.

24 When I say "stranded cost," I should correct that,  
25 restructuring, because it was much more broad than stranded

1 cost. So it was Pennsylvania Electric, Metropolitan Edison,  
2 restructuring; Duquesne Light, restructuring; West Penn Power,  
3 restructuring. I thought -- How many did that add up to?

4 Q. If I got them all, and I think I did --

5 A. Let me write them down.

6 Q. -- Pennsylvania Power and Light, West Penn Power  
7 Company, Metro Edison, Pennsylvania Electric Company, Duquesne,  
8 and then you identified two proceedings for PECO Energy, QRO, or  
9 qualified rate order proceeding, and then apparently a company  
10 specific. I'm not certain I understand what the QRO is.

11 A. Yeah, and there -- So I did identify seven. There was  
12 a generic proceeding on restructuring and there were six  
13 restructuring cases, two of which involved PECO Energy.

14 Q. I see.

15 A. But they were separate proceedings.

16 Q. I see. You state that the purpose of your testimony  
17 is to provide AK Steel's overall recommendation. I just want to  
18 confirm that you're not offering opinions in certain areas that  
19 are important here in the Ohio proceedings; so just contradict  
20 me if I state anything that's inappropriate here.

21 I understand you're not offering an opinion regarding  
22 consumer education?

23 A. That's -- I have not addressed that, that's correct.

24 Q. Transmission issues?

25 A. Other than the embedded revenue requirement issues and

1 unbundling issues that impact the case with respect to  
2 transmission. I'm not offering any testimony or opinions  
3 regarding the policy issues associated with open access  
4 transmission or that may be affected by restructuring, for  
5 example.

6 Q. Employee assistance?

7 A. I'm not addressing that.

8 Q. Operational support plan?

9 A. I'm not addressing that.

10 Q. Corporate separation plan?

11 A. I'm not addressing that.

12 Q. Okay. Now, you haven't addressed that. You've not  
13 been asked to do so by AK Steel, or have no intentions of doing  
14 so, any of those topics that we covered?

15 A. That's correct.

16 Q. How about shopping credits?

17 A. Well, I do discuss -- address shopping credits  
18 directly and indirectly in a number of places in my testimony.

19 Q. And this is the GTC adjustment methodology?

20 A. That, plus basically the -- As a result of modifying  
21 the company's unbundling, the resulting shopping credits or --  
22 well, the resulting shopping credits are changed, and in that  
23 sense I'm certainly addressing the issue of shopping credits.

24 Q. I understand.

25 A. And I've also addressed it at least, you know,



1 implicitly in my discussion of the stipulation.

2 Q. You clearly are addressing the issue of stranded cost;  
3 so we won't ask you about that.

4 A. Yes.

5 Q. Are you currently preparing any additional testimony  
6 for use in this proceeding?

7 A. I'm not now, no.

8 Q. Okay. Have you been asked to do so?

9 A. No.

10 Q. Are you conducting any additional analysis or studies  
11 for use in this proceeding?

12 A. No.

13 Q. Again, have you been asked to do so?

14 A. No. Now, I -- Just to make sure it's perfectly clear,  
15 I may between -- at some point, provide additional assistance to  
16 counsel in preparation for cross-examination of company  
17 witnesses, not -- I'm not anticipating and have no plans to  
18 develop any additional analysis that I will present personally.

19 Q. Thank you. Going through your testimony, sir, you  
20 provide an extended discussion of netting. As we already  
21 discussed this morning, you're not an attorney; is that correct?

22 A. That's right.

23 Q. Well, how would you characterize your testimony?  
24 You're not offering a legal opinion, are you?

25 A. I'm offering an opinion as a regulatory expert and

1 regulatory policy expert. I have about 25 years experience in  
2 regulation. I have a significant amount of experience in  
3 participating in restructuring proceedings and am familiar with  
4 the policies that commissioned regulatory bodies have used, and  
5 based on the cases that I've been in, to evaluate utility  
6 stranded cost claims, and I'm basing it on that primarily.

7 But, also, to the extent that I have read the Revised  
8 Code associated with -- that would govern this, I was certainly  
9 influenced by reading and understanding the Revised Code, but  
10 primarily I'm basing it on my experience as an expert in this  
11 area.

12 Q. Now, I believe it's at Page 17, Lines 5 through 11,  
13 you acknowledge "Whether or not the Revised Code provides --  
14 permits the 'netting' of net other transition costs with net  
15 regulatory assets is ultimately a legal question...."

16 I'm just trying to understand the distinction between  
17 that acknowledgment and the other testimony that you offer  
18 regarding your interpretation of netting.

19 A. Well, I think any interpretation of the Revised Code  
20 on any issue is a legal question and, ultimately, it would be  
21 decided by the Commission and perhaps courts. I think on any  
22 issue, whether netting or any other factor in the case, and that  
23 would apply, I think, to any definition -- any aspect of  
24 netting.

25 I -- I specifically raised this -- or identified this

1           A.    I -- I don't read -- I have not identified any  
2   instance as a -- from a policy regulatory expert standpoint, any  
3   instance in the Revised Code, from my reading, that would  
4   preclude the Commission finding that it was appropriate to net  
5   generation stranded benefits against regulatory assets.

6           However, the Revised Code does draw a distinction  
7   between what other transition costs related to generation and  
8   regulatory assets -- And though the code specifically says that  
9   a utility's entitled to recover net transition costs, which I  
10   interpret as a total netting of all costs, there is a  
11   distinction made between the treatments for regulatory assets  
12   and other transition costs. And, as a result, I think the  
13   Commission will ultimately have to make that determination,  
14   along with many other determinations, but that's the basis for  
15   my testimony.

16          Q.    Did you compare the language of the Ohio statute  
17   against the language of any other statutes that you're familiar  
18   with?

19          A.    I did not do any type of analysis in that regard. As  
20   I said, I'm basing my opinions in this testimony on my expertise  
21   in regulatory policy issues as they are -- as applicable to  
22   restructuring proceedings.

23          Q.    Well, based upon that expertise, the fact that you've  
24   been involved in twelve of these proceedings and have testified  
25   in at least five states in these areas, you apparently are

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1 employed in two others, do the other statutes that you have  
2 looked at generally explain the concept of netting to any degree  
3 that is not provided in the Revised Code?

4 A. I have not -- As I said, at the times that I was  
5 participating in those proceedings, I was quite familiar with  
6 the statutory language. I did not go back and do any type of  
7 comparison in terms of the language.

8 My recollection, for example, in Maryland was that  
9 the -- there is a provision in the statute of restructuring that  
10 talks about net -- netting of stranded costs, but I don't -- My  
11 recollection is that it doesn't go much beyond that in terms of  
12 stating whether you would net regulatory assets with generation  
13 stranded costs. I don't recall with any specificity, certainly,  
14 in the Maryland code.

15 In Pennsylvania I just simply don't remember. I  
16 haven't reviewed that. It's just my experience -- Certainly in  
17 all the Pennsylvania cases there was -- even though, I think at  
18 least one utility that I'm aware of took the position in  
19 litigation that there should be no netting of generation  
20 stranded costs against regulatory assets -- or excuse me,  
21 generation stranded benefits against regulatory assets.

22 As a matter of fact, I think they took the position  
23 there should be no netting of stranded benefits of generation  
24 against stranded costs associated with purchase power contracts.  
25 The Commission did not agree with that, and I certainly opposed

1 that interpretation. And, again, I wasn't interpreting a  
2 statute. I was explaining, explaining why it was not in the  
3 public interest to have an interpretation such as that unless  
4 the code explicitly permitted that -- explicitly permitted that.  
5 It's certainly against the public interest not to have full  
6 netting.

7 Q. Why don't you explain what you mean by "the public  
8 interest" then?

9 A. My interpretation of that, in the context of the  
10 statement I just made, would be that customer -- as I discuss in  
11 my testimony, without full netting, customers are harmed. The  
12 company essentially would be recovering excess costs and over  
13 the life of its existing assets would, in fact, receive a  
14 windfall relative to what they would otherwise receive under  
15 regulation, and I don't believe that was the -- In general,  
16 that's not usually the intent of restructuring by various  
17 states.

18 Q. Explain a windfall to me. What do you mean by --  
19 Strike that. Let me try again.

20 When you say the company receives a "windfall," how  
21 so? Can you amplify that? Can you explain what it is you're  
22 talking about?

23 A. A wind -- My use of the term "windfall" in this  
24 context would be a windfall -- a benefit that the company  
25 receives that it otherwise would not be entitled to under

1 regulation associated with the assets that had been included in  
2 rates and been paid for by ratepayers all along.

3 For example -- Probably the best way to explain it  
4 would be to use an example. And I think the hypothetical that I  
5 placed in my testimony is probably the best one that I can come  
6 up with. But in essence, if a utility were to have substantial  
7 stranded benefits, meaning that the value of its assets under  
8 competition would be -- much exceeded the value of its assets  
9 under regulation, the company, obviously, would be better off,  
10 everything else being equal, over the remaining lives of those  
11 assets under competition were it not to compensate customers.

12 If at the same time -- but if the company, under the  
13 Commission's decision or the court's decision or statutory  
14 requirement, were to retain those benefits for the existing  
15 assets and at the same time charge customers for other stranded  
16 costs that they may have associated with regulatory assets or a  
17 particular generating unit whose market value is less than its  
18 book value, the company would basically be offering a "Heads, I  
19 win; tails, you lose" strategy.

20 Ratepayers would, under that scenario, be asked to pay  
21 for all of our potential costs but not be compensated for all of  
22 the benefits, and as a result, the company would receive  
23 unreasonable compensation, which I refer to as a "windfall."

24 Q. We'll talk about your unbundling analysis. At  
25 Page 40 of your testimony you state that "...the Revised

1 Code...incorporates a prohibition (to the extent possible)  
2 against cost-shifting among customer classes"?

3 A. Yes.

4 Q. Do you have a cite? What statute are you referring  
5 to, if you know?

6 A. If you give me a moment, I'll --

7 Q. Go right ahead.

8 A. Yes, I was referring to Section 4928.37(A)(1)(b).

9 MR. DORTCH: Actually, Dave, could I --  
10 (Handed.)

11 Thanks. I left mine in the other room.

12 MR. BOEHM: Are you looking for the "cost shifting"  
13 language, Mike?

14 MR. DORTCH: Yes, I am.

15 THE WITNESS: I was referring to the --

16 BY MR. DORTCH:

17 Q. Actually, would you quote it?

18 A. "The transition charge for each customer class shall  
19 reflect the costs allocation to that class as provided under  
20 bundled rates and charges in effect on the day before the  
21 effective date of this section."

22 And it goes on, "Additionally, as reflected in  
23 Section 4928.40 of the Revised Code, the transition charges  
24 shall be structured to provide shopping incentives to customers  
25 sufficient to encourage the development of effective competition

1 in the supply of retail electric generation service. To the  
2 extent possible, the level and structure of the transition  
3 charge shall be designed to avoid revenue responsibility shifts  
4 among the utility's customer classes and rate schedules."

5 Q. Thank you, sir. That's enough.

6 Now, you've -- I understand the section that you're  
7 citing to precludes, to the extent possible, cost shifting. The  
8 last sentence of what you've just read, and it begins with "to  
9 the extent possible," would you agree that that sentence also is  
10 designed -- requires the company to attempt to avoid shifts in  
11 revenue responsibility?

12 A. Yes, I'm -- That's how -- Well, let me -- It says  
13 "avoid revenue responsibility shifts" --

14 Q. Okay.

15 A. -- in the code and -- Is that what you're -- I'm not  
16 sure what language you're referring to as "revenue  
17 responsibility."

18 Q. I was about to ask you what your understanding of what  
19 "revenue responsibility" means.

20 A. My interpretation of revenue responsibility would be  
21 cost responsibility, and I interpret it as basically unbundling  
22 rates, assigning transition charges to prevent shifts so that  
23 one customer class is effectively harmed as a result of  
24 unbundling relative to other customer classes.

25 Q. Well, if the -- the first sentence that you read, "The



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1 transition charge for each customer class shall reflect the  
2 costs allocation to that class....", are you with me?

3 A. Yes.

4 Q. If that sentence precludes cost shifting, then is it  
5 your testimony that the -- the last sentence of what you've just  
6 read does exactly the same thing?

7 A. That's how I interpret revenue responsibility.

8 Q. So revenue responsibility, as contained in the last  
9 sentence of 4928.37(b), means the same thing as cost allocation  
10 contained in two or three sentences further -- or above that?

11 A. Yes, except that in the last sentence it also refers  
12 to the structure of the transition charge, and it refers to  
13 among the utilities' customer classes, rate schedules, it may --  
14 You know, I would interpret that somewhat broadly.

15 When it talks about "structure of the transition  
16 charge," perhaps it is even referring to the rate design of the  
17 rate itself to avoid shifting. I mean, it doesn't provide  
18 specificity, for example, that no customer within a class will  
19 be adversely affected, but I think it could be interpreted.  
20 That's at least a goal of the -- of the code.

21 Q. Now, as I understand your testimony, you are  
22 acknowledging that it was reasonable for the company in its last  
23 cost-of-service study to allocate net plan in service to rate TS  
24 in the fashion that it was done; is that accurate?

25 A. Yes. I'm not objecting -- I haven't provided any

1 objection to the company's 1993 cost-of-service study. As a  
2 matter of fact, my general belief is that previously approved  
3 cost studies that form the basis of current bundled rates,  
4 whether or not I agree with the method or not, should be the  
5 basis for unbundling so that it does not result in cost  
6 shifting.

7 The idea of restructuring is not to shift costs from  
8 one class to another and certainly nothing in my testimony would  
9 do that. My position is that the opposite should be done, that  
10 there should be no cost shifting among customer classes as a  
11 result of unbundling and restructuring. And the company has  
12 attempted to accomplish that on a total -- and has accomplished  
13 that on a total class basis, for the most part, except for some  
14 tax effects, but has not done that on an unbundled basis, and  
15 that's the concern that I've raised. And it's an important  
16 consideration. I think the company simply, in attempting to  
17 prevent cost shifting, has actually developed unbundled rates  
18 that are not reasonable.

19 Q. Well, was the company attempting to prevent cost  
20 shifting, or was the company attempting to prevent one rate from  
21 paying any more on a total dollar basis than it is paying today?

22 A. The company -- and that's -- I basically equate those  
23 two, that cost shifting -- basically -- Obviously, if you don't  
24 design the rates to reflect costs, then it doesn't really have  
25 any meaning to shift cost. So I equate prevention of cost

1 shifting with prevention of shifting the rate level itself in  
2 the context of this unbundling --

3 Q. Well --

4 A. -- and that was the company's objective.

5 Q. Sorry.

6 A. That was certainly my objective on a total rate basis.  
7 We basically have the same as allowed cost of service. I did  
8 not change one dollar, to the best of my knowledge, of costs  
9 between any class from what the company calculated.

10 My objection to the company's analysis is that in its  
11 unbundling of those costs, residential, transmission, small  
12 distribution, secondary, the company has inappropriately  
13 functionalized within the classes the costs assigned to the  
14 class between distribution, production, transmission.

15 Q. What we're talking about is the effect, in reality, of  
16 property taxes and, well, there are certain other things, but  
17 property taxes specifically you use as an example of a disparate  
18 effect, if that's fair, on rate schedule TS?

19 A. Property tax -- I've identified, I think, four  
20 different areas; property taxes, general plant, common plant and  
21 A&G expenses, and I think there was a small adjustment on a tax  
22 timing or appreciation adjustment that the Commission ordered,  
23 but that was very minor.

24 Q. Excuse me. Let me take a look at that, please.

25 (Pause.)

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1 Under the cost-of-service study, the '93  
2 cost-of-service study, it's my understanding, from your  
3 testimony, that the rate TS was allocated 8.59 percent, I think  
4 that was the number, of the total plant?

5 A. Do you have a reference? Oh, here.

6 Q. I'm sorry, I do.

7 A. I found it.

8 Q. It's 8.56 percent. Page 44, Line 17.

9 A. Line 17, right. Let me just read this for a moment.

10 Q. Certainly.

11 (Witness reviewing documents.)

12 A. Okay. I -- I've read this. Could you just repeat the  
13 question, please?

14 Q. I can try. What percentage did rate TS pay of the  
15 total plant or net plant in service, if you will, following the  
16 1993 cost-of-service study?

17 A. Well, the specific reference in my testimony was the  
18 amount of property taxes that rate TS was assigned in the 1993  
19 cost study and it was 8.56 percent. The total property taxes  
20 were 73 million, rate TS was assigned 6.2 million of that and  
21 that's 8.56 percent.

22 It is also the allocator -- It also reflects the  
23 amount of net plant that rate TS was responsible for, but the  
24 company -- In other words, the 8.56 percent is the amount of net  
25 plant that the rate TS was responsible for. That was used by

1 CG&E to assign property taxes, and rate TS was assigned 8.56  
2 percent of the property taxes used in the test year of the total  
3 73 million. In that test year it was assigned 8.56 percent, and  
4 I'm not disputing that.

5 I think that was reasonable, as a matter of fact. I  
6 think I say that somewhere in my testimony, the company's  
7 approach to that was reasonable, and the TS was responsible for  
8 the 6.2 million.

9 Q. Just so that I understand, the total net planning  
10 service that you're referring to, that's -- what is that? I  
11 mean, is that G, in the world of deregulation, or coming  
12 deregulation? That's G, that's T and D, and that's all of the  
13 things that might be encompassed within them, including general  
14 and common plant, A&G expense, property taxes and other taxes  
15 that might be imposed?

16 A. Well, you were right up to the last three items.

17 Q. Okay. You help me out, then.

18 A. It -- Basically, it reflects the -- Net plant, first  
19 of all, is gross electric plant of service less depreciation in  
20 reserve. It reflects the generation plant, which G or  
21 production plant are one in the same, transmission plant,  
22 distribution plant, general and intangible plant, common plant.

23 So all of the asset -- the plant or the plant in  
24 service under the various FERC accounts would be included in net  
25 plant. In your question you had referred to taxes, property

1 taxes and A&G expenses, those would not be included, those are  
2 not plant.

3 Q. I understand. The company allocated for rate TS 8.56  
4 percent, you agree that that was reasonable?

5 A. For -- On total property taxes.

6 Q. For total property taxes. And that was because the  
7 company represented or concluded that rate TS was responsible  
8 for 8.56 percent of total plant; is that correct?

9 A. Yes, or net plant, but yes, that's correct.

10 Q. Well, on a net-plant basis, total net-plant basis,  
11 after unbundling, what percentage will rate TS be paid?

12 A. 8.56 percent.

13 Q. So there will be no revenue shifts between classes  
14 utilizing the company's current unbundling proposal; is that  
15 fair?

16 A. Maybe I misunderstood your question.

17 Q. Well, maybe I -- Sorry. Go ahead.

18 A. Why don't you rephrase the question, or maybe restate  
19 it and I'll listen more carefully.

20 Q. Following unbundling, assuming that the company's plan  
21 is adopted, what will the percentage of the property tax that  
22 rate TS will pay be, based on the total property tax that will  
23 be paid?

24 A. Give me a moment, I'll try to actually check the -- I  
25 think I've got --

1 (Witness reviewing documents.)

2 Well, I believe, and I have to check -- and perhaps if  
3 we have a break, I can go through it more in detail, my  
4 workpapers. I believe that the company -- under the company's  
5 analysis -- Well, first of all, I have to clarify your question  
6 a little bit or ask the question.

7 The reference in the discussion in my testimony here  
8 refers to the -- what's called the "as allowed" cost and that  
9 would be the 73 million of 1993 cost-of-service study property  
10 taxes. In fact, the actual unbundled rates in this case are  
11 going to be based on the Revised Code-based property taxes, and  
12 those property taxes are about \$30 million lower than that. So  
13 they're about \$42 million after the adjustments are made, and I  
14 was trying to find -- and I've got it somewhere, a copy of the  
15 company's cost study that would show what percentage -- and --

16 MR. BOEHM: Is that it? That's the '93 study.

17 THE WITNESS: Yeah, I may -- Let me check.

18 (Witness reviewing documents.)

19 I don't think property taxes are in here. I've got it  
20 somewhere.

21 MR. BOEHM: Can we take a break for a minute.

22 MR. DORTCH: Go ahead.

23 (Recess taken.)

24 THE WITNESS: The company, the \$73 million in test  
25 year property taxes under the company's unbundling, TS would pay

1 8.56 percent.

2 BY MR. DORTCH:

3 Q. Okay.

4 A. But that -- The reason I was having a problem with  
5 your question is the final unbundled rates reflect the Revised  
6 Code impact, which is the second cost-of-service study that's  
7 built on that, and so I don't -- I don't recall whether TS would  
8 pay exactly 8.56 percent of the 42 million. It's approximately  
9 that, but I'm not sure.

10 Q. Okay. And that's what I'm driving at, and I think you  
11 understand that. And just to try to make this simpler, then, in  
12 1993 the company used these allocation factors which you agreed  
13 with, you think they were reasonable, and, today -- strike  
14 "today" -- prior to deregulation, immediately prior to  
15 deregulation, the company was paying 8.56 percent of a \$73  
16 million property tax bill; is that correct?

17 A. Yes.

18 Q. Okay. Utilizing the company's unbundling scheme,  
19 assuming that it is approved, there is a \$43 million tax bill,  
20 more or less, and the company will be paying 8.56 percent of the  
21 \$43 million; is that accurate?

22 A. That's what I'm -- I believe that's true. I want to  
23 just verify that before --

24 Q. Sure.

25 A. That's what I was trying to --



1 (Witness reviewing documents.)

2 I got a million excerpts from the company's  
3 cost-of-service study, but that particular page -- I'm certain I  
4 have it, I just can't find it. Let's try this.

5 MR. BOEHM: Can we go off the record for a minute.

6 (Discussion held off the record.)

7 BY MR. DORTCH:

8 Q. Let's see, before we went off the record, you told me  
9 that you believed it was correct that the company paid -- or I'm  
10 sorry, that AK Steel paid 8.56 percent of the \$43 million in  
11 property taxes that would be imposed upon the company, assuming  
12 that the company's unbundling plan is adopted.

13 You've now looked at something, I don't know what yet,  
14 if you will tell me what that is and explain the calculation you  
15 performed, can you confirm the percentage figure the company  
16 will be paying?

17 A. Yes, this is an -- What I was looking at was an  
18 excerpt from the company's UMB schedule 4.2, I believe, which is  
19 the -- it's an adjusted cost-of-service study that includes the  
20 effects of property tax reduction, municipal tax, franchise  
21 taxes and adjustment tax timing. It's from the company's  
22 calculations, and I was just referring to a page that shows  
23 taxes other than income taxes, and it shows the total amount of  
24 property taxes allocated to rate TS after the adjustment for the  
25 property tax reduction from the Revised Code.

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1           The retail level of property taxes after that  
2     adjustment would be 42,975,000; we refer to it as 43 million.  
3     According to this, the cost of service allocation in the  
4     company's unbundling cost study shows a little over 3 million  
5     allocated to rate TS and that's about 7 percent.

6           Now, the important thing to understand on this is it's  
7     not -- if the company were going to provide rate TS as a bundled  
8     rate -- or an unbundled rate or allow customers to take service  
9     under that rate in perpetuity, then, in fact, what this shows --  
10    and so, therefore, a customer who stays with CG&E and pays  
11    bundled rates would, in fact, pay rates based on \$3 million of  
12    property taxes.

13          The problem with it is that this is a restructuring  
14    case. Customers are going to be, at the end of the market  
15    development period, whether it's six months or five years,  
16    customers will be paying CG&E distribution charges but not  
17    generation charges. And so that it's not the totality of the  
18    costs assigned to the class that is critical now, it's the  
19    totality and, more importantly, how those are assigned to the  
20    various functions.

21          And the problem that I've identified is that the  
22    company has misallocated and overallocated those property taxes  
23    to the distribution function and under-allocated to the  
24    generation. And the problem, of course, is that by  
25    under-allocating to the generation, you, in fact, have reduced

1 the shopping credit; and by over-allocating to the distribution,  
2 you've actually charged -- you'll be charging customers on rate  
3 TS an inappropriately high distribution charge for which the  
4 company will continue to be the sole provider, and that's the  
5 concern I have. It's not the totality of the number; it's the  
6 distribution of it among the different functions.

7 Q. Let me back up because I need to -- I'm a simple guy.  
8 I need simple responses. Okay?

9 A. Okay.

10 Q. If I understood your answer, first, the company was  
11 paying 8.56 percent of the total property tax bill prior to  
12 deregulation?

13 A. Yeah, and when -- rate TS was paying that.

14 Q. Or I'm sorry. Thank you for correcting me. AK Steel  
15 was not paying that by itself, rate TS was paying 8.56 percent  
16 of the company's total property tax bill?

17 A. Yes. The retail portion of it, but yes.

18 Q. Okay. And post restructuring the company is going to  
19 receive 7 percent, more or less, of the company's total property  
20 tax bill?

21 A. Rate TS was assigned 7 percent --

22 Q. I did it again, thank you.

23 A. -- of the property taxes, the jurisdictional property  
24 taxes of about \$43 million.

25 Q. Okay. I did it again, and thank you. I apologize. I

1 again referred to "the company." Rate TS?

2 A. Yes.

3 Q. So there's been a relatively small revenue shift among  
4 classes -- Strike that.

5 There's been some revenue shift amongst classes, even  
6 under the company's plan?

7 A. I would not characterize it as a revenue shift. I  
8 mean, I think it is what it is. The responsibility has changed,  
9 but that is because property taxes, unlike any other cost,  
10 are -- well, property taxes are one of the exceptions to the  
11 rate cap.

12 In other words, the company in meeting the provisions  
13 of the Revised Code to remove the gross receipts tax, changed  
14 property taxes, add a Ohio franchise tax and so forth. Those  
15 are exceptions that allow rates to adjust to the new reality of  
16 the Revised Code, and the property taxes fall into that  
17 category.

18 Essentially, it's -- the company's calculation or  
19 interpretation of the Revised Code, which I agree with, is that  
20 there were no -- there will be no changes to the distribution  
21 property taxes as a result of the Revised Code. All of the  
22 changes occur on -- primarily on generation, and I think some  
23 general plant, but not T and D.

24 Well, obviously, if a -- if a customer class such as  
25 the residential class has a preponderance of the distribution

1 plant and there is no property tax reduction on distribution  
2 plant, you would expect that some of those factors are going to  
3 change. That is a result of the Revised Code, it's an exception  
4 in the code in terms of the impact of restructure, unbundled  
5 restructuring -- unbundling, you know, on cost shift. So I  
6 agree with you that if you look at it simply as an  
7 after-the-fact observation, yes, it's changed, but it's because  
8 of the Revised Code that it's changed.

9 Q. Well, and -- again, I understand you're not testifying  
10 as a lawyer, but will you agree with me that the changes that  
11 you've just described are legal changes that in the end are for  
12 the Commission to determine?

13 MR. BOEHM: Excuse me, Mike. When you say -- I  
14 don't -- I don't know if you understand the question. The  
15 "changes" you have identified? He's been talking for how long,  
16 which particular changes do you mean?

17 MR. DORTCH: That's fair. So I'll rephrase this  
18 question.

19 BY MR. DORTCH:

20 Q. Would you agree, sir, that the intent of the code  
21 section that we've been discussing -- or we discussed earlier,  
22 seems to be twofold; one, to avoid cost shifts among service  
23 classes; and, two, to avoid revenue shifts among different  
24 classes?

25 A. Yes, I would agree.

1 Q. Okay.

2 A. Again, I equate those two.

3 Q. I understand you equate those two, but they are two  
4 different goals expressed side by side?

5 A. Yes, and I agree. That's my understanding.

6 Q. Okay. And under the company's attempt to satisfy  
7 those two goals, rate TS obtains some diminution in the total  
8 property tax that it pays prior to deregulation and post  
9 deregulation relative to all the other classes?

10 A. On a relative basis and assuming that all rate TS  
11 customers continue taking service from CG&E; in other words,  
12 that they do not use an alternate supplier and, therefore, are  
13 responsible for paying CG&E distribution charges and  
14 transmission through the FERC tariff, but assuming -- not  
15 assuming that, assuming everyone remains a CG&E customer, that  
16 the market development -- during the market development period,  
17 however long it lasts, that would be true because -- under the  
18 CG&E methodology.

19 Q. Now, if I understand your concern with what the  
20 company has done, your concern is that the rate TS employs a  
21 very small percentage of the total property that can be  
22 allocated to distribution and pays a percentage of tax that is  
23 allocated to distribution that is disproportionate, correct?

24 A. Yes.

25 Q. Okay.

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1 A. I think I have a table in my testimony that I think  
2 pretty --

3 Q. If you can cite me to that table?

4 A. -- pretty, I guess I would say, graphically  
5 illustrates that. There's \$573 million of net distribution  
6 plant for all retail customers, the retail jurisdiction of CG&E  
7 in the cost study, \$573 million. The portion that rate TS  
8 customers are responsible for, based on CG&E's analysis, is  
9 \$15,700; so -- and, yet, the company allocated, as assigned,  
10 \$2.2 million of property taxes associated with that \$15,000  
11 asset and, obviously, that's, you know, ridiculous.

12 Q. You're struggling with that?

13 A. It's ridiculous. I'm not struggling with it. I think  
14 that CG&E would probably agree that that doesn't make sense.

15 Q. Well, using the same logic that you've employed in  
16 discussing the allocation of property taxes amongst classes to  
17 the property associated with distribution --

18 A. Did I refer you to -- it was Table 4, Page 46 of my  
19 testimony. I'm not sure I actually put that in.

20 Q. I'm not certain you did either.

21 A. I'm sorry.

22 Q. No problem. Okay.

23 Utilizing the same logic that you use to express your  
24 concern with the distribution plant, have you considered the  
25 portion of the generation plant that rate TS is responsible for

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1 in relation to all other classes or the total?

2 A. Are you talking about have I analyzed that? Have I  
3 reflected that in my revised cost study? I'm not sure --

4 Q. Have you given any thought to -- Strike all of this.

5 Do you know how much of a percentage of the total  
6 generation is devoted to rate TS?

7 A. I can answer that. Give me a moment.

8 (Witness reviewing documents.)

9 Rate TS is responsible for about 11.1 percent of the  
10 production plant, and that's the retail portion of production  
11 plant; so you get a slightly different number if you included  
12 all other category which is the non-retail, but of \$1.87 billion  
13 of net production plant, rate TS is responsible for about 11.1  
14 percent of that.

15 Q. And I won't even try to do the math myself because I'm  
16 incapable.

17 A. That would be 207,600,000 is the net production plant  
18 assigned to TS.

19 Q. What is the proportion of the property tax associated  
20 with the production plant as assigned to rate TS?

21 A. In CG&E's unbundling analysis?

22 Q. Uh-huh.

23 A. You'll have to give me a moment. I can do that  
24 calculation.

25 (Pause.)



1           Let me ask one clarifying question. Is that -- is  
2   that based -- Are you asking me before or after the property tax  
3   reduction has been implemented?

4           Q. I'm asking you after -- Well, gosh, I hate to do this  
5   on the record.

6           A. I can provide it both ways, if you like. That  
7   doesn't --

8           Q. That may be best.

9           (Pause.)

10          A. The assignment of -- Based on CG&E's functional  
11   cost-of-service study --

12          Q. That's the 1993 study? I apologize, I didn't mean to  
13   disrupt you.

14          A. Yes, it's the 1993 study, and we never really  
15   discussed this prior on the record, but it's the 1993 study.  
16   But in that study the company had not functionalized many of  
17   these items because there was no need to; so it has now  
18   subsequently gone back and done a functionalization of those  
19   costs, and that's really the issue that I'm addressing.

20                 It's the functionalization of the '93 cost study by  
21   class, but at any rate in the company's -- in what it's referred  
22   to as the "as allowed" cost study, this is before the property  
23   tax study, for generation functions on rate TS transmission  
24   customers they were assigned 8.56 percent of the retail property  
25   taxes associated with production based on the company's

1 analysis.

2 After the property tax reduction, rate TS was assigned  
3 minus .76 percent of the property taxes for generation, and that  
4 sort of points out the problem that I've identified; that from a  
5 generation standpoint, the company, as I think I said it  
6 earlier, had simply -- not simply -- had significantly  
7 under-allocated property taxes and has over-allocated property  
8 taxes to the distribution function on rate TS.

9 Q. I'm sorry, maybe I don't understand. How do you get a  
10 negative percentage when we're talking about the percent --  
11 Strike that. Let's try again.

12 Are you saying that rate TS is not paying for the  
13 generation function -- not paying any property tax associated  
14 with the generation function?

15 A. In the company's analysis -- Well, first of all, I  
16 think you have to distinguish between what rate TS is paying in  
17 current rates. TS is paying -- in current rate is paying \$6  
18 million of property taxes that was assigned in the '93 cost  
19 study. That's what they're paying.

20 Current rate TS customers are paying bundled rates and  
21 in that bundled rate is a \$6 million item for property taxes.  
22 That's the only information that we have before us as to what  
23 rate TS customers are paying for property taxes. The company  
24 has made --

25 Q. Let me stop you now. There's one other piece of

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1 information which is that the company -- rate TS users were  
2 paying 8.56 percent of the total property tax bill?

3 A. Yes, and that's what the \$6 million represented.

4 Q. Okay.

5 A. So that's what current rates are based on. The  
6 company has taken that 1993 analysis and has functionalized it,  
7 meaning that it has taken the amount of property -- the \$6  
8 million or \$6.2 million that rate TS customers were paying and  
9 has -- in using a method which I disagree with, has decided that  
10 8.56 percent -- has decided that 3 million of that was  
11 associated with generation before the property tax reduction,  
12 and that amounts to 8.56 percent of the amount of  
13 generation-related or production-related property taxes for the  
14 total company.

15 In other words, for the total company, CG&E has  
16 calculated -- I think actually Mr. Coyne did, calculated that of  
17 the \$73 million in property taxes, 35.5 was related to  
18 production. In the company's as-allowed functional cost study,  
19 it has assigned 3 million of that to rate TS, which is 8.56  
20 percent.

21 Now, that's despite the fact that rate TS is really  
22 responsible for 11 percent of the production plant, production  
23 net plant. Then the company made an adjustment to that to  
24 reflect the property tax reduction that we talked about earlier  
25 because their cost study for unbundling actually only reflects

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1 43 million. In that analysis, the -- the amount of the -- Well,  
2 let me just start -- state one other fact.

3 The property taxes before the property tax reduction  
4 were 73 million. After the property tax reduction, they were  
5 going to get reduced by 30 million to 43 or 42.9. What the  
6 company has done is it has said in its cost study that about,  
7 oh -- of that \$30 million overall reduction, about 27-some-odd  
8 million is associated with production. And of that, it has  
9 assigned 3.1 million of that reduction to rate TS, which is --  
10 let's see. Let me just stop one moment -- 11.4 percent, which  
11 is the -- approximately the net plant ratio.

12 In other words, the company has said property taxes  
13 are going down 30 million; 27 million of that is related to  
14 production plant per the changes in the Revised Code. We're  
15 going to assign about 11.3 percent of that to rate -- to  
16 transmission customers. The problem is, of course, they only  
17 assigned 8.56 percent of the old property taxes to TS generation  
18 and so when you -- when you do the -- when you actually figure  
19 out what is the amount of generation-related property taxes  
20 assigned to TS, it comes out to a negative \$62,000, and that's  
21 the essence of the problem that I've identified.

22 Q. Well, okay. Then, to be consistent with the logic you  
23 employ in your complaint regarding the allocation of  
24 distribution plant, the generation plant should also be  
25 reallocated?

1           A.   Yes, and I have done exactly that in my correction to  
2   the company's analysis.

3           Q.   And that is rough -- Are you referring to your  
4   Exhibits 5 and 6?

5           A.   Yes.

6           Q.   Okay. Could you, with reference to Exhibits 5 and 6,  
7   tell me the net dollars that you would assign to -- Strike that.

8                   First of all, why don't you tell me what Exhibits 5  
9   and 6 are?

10          A.   Exhibits 5 and 6 are excerpts from the overall  
11   cost-of-service study that I did. Exhibit 5 is for residential  
12   and Exhibit 6 shows the transmission or rate TS portion, but it  
13   basically reflects the corrected -- our corrected version of the  
14   company's UMB 4.2, which is the unbundled cost-of-service study  
15   adjusted for property taxes and municipal and Ohio franchise  
16   taxes, et cetera.

17          Q.   Now, do I understand that these are really related to  
18   only two rate schedules?

19          A.   The exhibits for presentation purposes only show --  
20   I've only included the results for the residential and  
21   transmission class. The CD that I provided you has the full  
22   study for all classes.

23          Q.   Thank you. Let me ask you, then, if you can tell with  
24   reference to Exhibits 5 and 6, how much total distribution plant  
25   taxes do we need to allocate away from the rate TS in order to

1 satisfy your concern?

2 A. Well, what I did -- Let me just explain what I did.  
3 Perhaps it might be easier to answer it. I will answer your  
4 question directly, but what I did was I took the company's  
5 calculations, I think Mr. Coyne did it, actually, of the -- what  
6 he calculates the new property taxes to be and basically made  
7 adjustments to the cost study to reflect that in a proper  
8 allocation, using net plant.

9 In other words, Mr. Coyne -- The company has  
10 calculated that \$26 million -- after the new taxes go into  
11 effect, the new Revised Code property taxes go into effect, \$26  
12 million will still be the amount of property taxes in the --  
13 associated with distribution, and I've allocated that to rate  
14 classes based on net distribution plant, reflecting the method  
15 that the company uses in its cost-of-service study. I've done a  
16 similar analysis for the generation portion and the transmission  
17 portion and the other portion.

18 Q. But these exhibits reflect only residential and  
19 transmission?

20 A. Yes, for illustration purposes. I just didn't want to  
21 burden the whole analysis with that.

22 Q. Okay. Now, with reference to Exhibit 5, can you tell  
23 me the total amount of dollars that need to be reallocated from  
24 distribution for rate TS?

25 A. Okay. That would be Exhibit 6. Exhibit 6 reflects

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1 rate TS. Let's see if I can find that.

2 (Witness reviewing documents.)

3 We have allocated \$800 of property taxes to the rate  
4 TS distribution function and that's \$458 directly to  
5 distribution, which would be the property taxes associated with  
6 the \$15,000 of meters, and then there's some additional \$300 of  
7 distribution-related property taxes associated with some other  
8 functions; so it comes out to a total of \$800 for the  
9 distribution.

10 Q. Okay. That's --

11 A. And that's in contrast to the 2 million or so that the  
12 company has assigned.

13 Q. So it is your testimony that there's roughly \$2  
14 million of property taxes that rate TS is paying related to  
15 distribution plant that it simply shouldn't be paying?

16 A. No. I think I just have to -- just to clarify it,  
17 again, remember current bundled rates contain \$6 million. There  
18 was never an allocation to different functions. The company's  
19 analysis is proposing to implement unbundled rates that would  
20 include \$2 million of distribution-related property taxes.

21 Those aren't -- that is under the company's proposal  
22 in this case, and that's the basis for the company's rate TS  
23 distribution rate. It has to -- about \$2 million of excess  
24 property taxes that should not be in there. Now, the customers  
25 aren't paying those yet. That's what I was trying to clarify.

1 That's the company's proposal in this case. It's not that rate  
2 TS customers are currently overpaying property taxes.

3 I had testified earlier that \$6 million is included  
4 based on the company's last cost study, and I agree that that's  
5 appropriate. It's the company's proposal to set a distribution  
6 rate going forward that I have an obvious, you know, problem  
7 with because you just simply can't have \$2 million of property  
8 taxes associated with \$15,000 in meter costs.

9 Q. Let's try to get to this again. How -- There are \$2  
10 million of property taxes associated with distribution plant  
11 that is assigned to rate TS, correct?

12 A. In the company's analysis?

13 Q. In the company's analysis.

14 A. Yes.

15 Q. And if I understand your complaint or your concern  
16 with that, you calculate approximately an \$800 figure that  
17 should be associated with that?

18 A. Yes.

19 Q. And the balance should be allocated to other rate  
20 users?

21 A. No, no. It should be allocated to other functions --  
22 well, some of -- excuse me. Some of it would get allocated  
23 because of the change in the Revised Code. The fact that there  
24 are no -- Of the \$30 million in total property tax reductions  
25 required under the Revised Code, none of it is associated with



1 distribution.

2 All of it is associated with generation and some  
3 general plant, and so some of the \$2 million gets -- in my  
4 analysis, gets assigned a rate TS generation cost, function  
5 cost. Some of it does get reassigned because of the Revised  
6 Code, but it does not all shift out.

7 So I don't know if I explained -- clarified that or  
8 not, but it's not a question of shifting \$2 million to another  
9 rate class. Some of it gets shifted to the generation function;  
10 some of it does get reallocated, consistent with the company's  
11 net plant allocation of property taxes, because the Revised Code  
12 doesn't give a rate reduction -- property tax reduction for  
13 distribution plant. Transmission voltage customers don't use  
14 distribution plants, so they're unaffected by that.

15 MR. DORTCH: Dave, I think I need a break here, sorry.

16 MR. BOEHM: I tell you what, if we -- Go off the  
17 record.

18 (Discussion held off the record.)

19 BY MR. DORTCH:

20 Q. Mr. Baron, if I understand correctly, 11 percent of  
21 the generation function -- Strike that.

22 Mr. Baron, given the change in the law, what would you  
23 do to correct the unbundling analysis provided by the company?

24 A. Well, I have presented a corrected unbundling analysis  
25 in my testimony and discussed the methodology, and I can -- I

1 have shown for -- Just for illustration purposes I have shown  
2 the results of that for the residential class and the  
3 transmission rate TS class I have done it and provided to the  
4 company my workpapers for the entire cost study. But the  
5 recommendation that we're making is we accept the company's  
6 analysis of the functional property taxes after the rate  
7 reduction that the Revised Code dictates.

8 In other words, Mr. Coyne, I believe, has determined  
9 that about \$26 million of the \$43 million in property taxes that  
10 the company will incur are related to distribution, and I don't  
11 have in front of me -- but similar, there's other amounts that  
12 the company has calculated for generation, transmission and  
13 other functions which are general plant and common plant, we  
14 accept that.

15 He's done an analysis based on taking the new property  
16 tax rates, applied it to the assessed values and so forth. Our  
17 basic recommendation is that those property taxes be used to set  
18 unbundled rates and so -- and they should be allocated function  
19 by function to rate classes based on the cost responsibility  
20 that each rate class has so that if distribution plant is  
21 assessed \$26 million of property taxes under the new tax law,  
22 that should be assigned to rate classes for unbundled rate  
23 design purposes based on the cost responsibility which the  
24 company and we both agree is net plant.

25 So that, for example, if residential customers are

1 responsible for 40 percent of distribution plant, they would  
2 also be responsible for that amount of property taxes, I'm just  
3 using that hypothetically, similar for all other rate classes.  
4 The same with the generation part, and that should be the basis  
5 for designing unbundled rates. If you don't do it that way, you  
6 end up with this anomaly where, in trying to preserve the  
7 overall level of property tax allocations from the last case,  
8 the company has ended up with something that is simply not  
9 credible because \$2 million of property taxes on \$15,000 of  
10 meters, it's simply not credible.

11 The result of that is the unbundled transmission rate  
12 that the company is asking the Commission to approve in this  
13 case, includes a 50 cent per kilowatt distribution charge for  
14 transmission customers. On the surface, these customers don't  
15 have any distribution plant, how could they have -- how could  
16 there be a distribution rate of that amount? And I'm saying we  
17 need to fix that.

18 Q. And in general, if I understand, you believe that the  
19 majority of that distribution would be reallocated to the  
20 generation function?

21 A. Some of it would be allocated to the generation  
22 function, based on Mr. Coyne's calculation of the  
23 generation-related property taxes, and there are -- there's  
24 about \$8 million, I think, of production or generation-related  
25 property taxes. TS would be responsible for its share of that,

1 but some of the -- what I call the error in the company's  
2 calculation would be assigned to other rate classes who actually  
3 have distribution plant and that occurs because there was no --  
4 the state did not reduce property taxes, the legislation did not  
5 reduce property taxes for distribution; so....

6 Q. So is the difficulty really -- is the difficulty  
7 really with the company's unbundling analysis, or is it with the  
8 changes in the tax law itself?

9 A. It's the unbundling analysis. We -- I accepted the  
10 company's calculation of the impact of the property tax changes  
11 as a result of the code. As a matter of fact, I total -- I  
12 accepted it, I relied on it and my testimony and analysis is  
13 simply we need to reflect that in the unbundled rates.

14 Q. In the short term, so long as everything else being  
15 equal, everybody is staying on the company's service, does this  
16 make any difference whatsoever?

17 A. No. As long as everyone is paying all unbundled rate  
18 elements, it would not make any difference; though, there is  
19 some -- there are some slight -- Actually, there are some  
20 differences even if you pay bundled rates, and that is  
21 because -- because the property taxes were an exception to the  
22 rate cap, and it actually results in a rate reduction. By  
23 changing the allocation, there is a -- some impact in the total  
24 cost of service for each rate class relative to the company's  
25 analysis and that's because of the fact that it was an exception

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1 to the rate cap; so that in this case, property taxes dropped,  
2 other taxes went up, there are various changes and so it -- it  
3 does have some impact.

4 When the Revised Code goes into effect, even if all  
5 customers continue taking bundled service, it has some impact,  
6 but the big impact occurs when you look at it on a functional  
7 basis, but it does have -- the total property taxes, by itself,  
8 is -- actually, for any rate class is actually different when  
9 you do the proper analysis.

10 And, again, it's going back to the fact that the state  
11 didn't lower property taxes for distribution; so if you have a  
12 lot of distribution, you're not getting the benefit of that \$30  
13 million property tax reduction. On the other hand, there are  
14 other taxes that went up and it -- they basically all have to be  
15 worked out in using a proper cost-of-service analysis.

16 Q. Mr. Baron, I want to move -- Off the record.

17 (Discussion held off the record.)

18 MR. DORTCH: Back on the record.

19 BY MR. DORTCH:

20 Q. I want to move to the concern you expressed regarding  
21 CG&E's proposed adjustment to GTC. I believe you state that  
22 that proposed adjustment violates the Revised Code?

23 A. In one as- --

24 Q. Again -- Go ahead.

25 A. I'm sorry. I'll let you finish.

1 Q. I was just going to point out, again, that I recognize  
2 you're not testifying as a lawyer, but I am curious as to what  
3 your interpretation of the Revised Code is.

4 A. I believe in my testimony -- And this was not my  
5 principal objection to the company's adjustment mechanism. But  
6 I believe my understanding is that the company's approach, it's  
7 proposal to adjust the GTC and market prices periodically for  
8 actual prices, was going to occur on a quarterly basis, and I --  
9 my reading of the Revised Code was that it requires no  
10 adjustments more frequently than annual.

11 At any rate, irrespective of whether the Revised Code  
12 requires that or not, I believe -- I believe that it would be  
13 inappropriate to make such an adjustment more frequently than  
14 annual if the Commission were actually to adopt an adjustment  
15 mechanism, and I spelled out the reasons in my testimony, that  
16 customers typically, in a restructure environment, would enter  
17 at least one-year contracts with suppliers.

18 And it's important for the customer to have some  
19 confidence as to the shopping credit that they're facing for  
20 that year when they negotiate with their alternate suppliers,  
21 and it's a -- I think if there was an adjustment mechanism, it  
22 should be no more frequently than annual. That's one of the  
23 issues that I did raise.

24 Q. Okay. Does the stipulation effectively moot your  
25 concern here?

1           A.    Since the stipulation does not include a charge that  
2   is labeled as GTC, but includes all of the company's transition  
3   cost recovery in an RTC charge, then I assume that the  
4   stipulation would no longer include an adjustment mechanism for  
5   GTC.

6           Q.    Well, in fact, it doesn't include an adjustment  
7   mechanism, does it?

8           A.    No, but --

9           Q.    Okay. And it doesn't include a GTC, does it?

10          A.    It doesn't include a GTC, but as I understand, as I  
11   read the stipulation -- as I read the stipulation, it basically  
12   accepts the company's filing unless it's modified in the  
13   stipulation.

14                I don't recall seeing in the stipulation that it  
15   explicitly removed that portion of the company's filed case.  
16   Implicitly, because there is no GTC designated charge in the  
17   stipulation, I would imagine that it would at least implicitly  
18   do that.

19                MR. BOEHM: Go off the record.

20                (Discussion held off the record.)

21   BY MR. DORTCH:

22           Q.    I want to talk about the specific concerns you have  
23   with the stipulation. Could you list those for me?

24           A.    I probably have to read my testimony line by line.

25           Q.    This isn't a memory test?

1 MR. BOEHM: Do you mean in addition to that? Okay.

2 Whatever.

3 BY MR. DORTCH:

4 Q. I'd like to know, would you state -- Would you  
5 identify your concerns with the stipulation?

6 A. Yes. My -- My concern is that it is not just and  
7 reasonable, it's not in the public interest. That's my overall  
8 concern, and the reasons for that are spelled out in my  
9 testimony.

10 But in the first instance I've identified that the  
11 company would be recovering, in my opinion, a substantial amount  
12 of transition costs that it's not entitled to, based on our  
13 analysis of the totality of transition costs in the case, the  
14 generation, the reg- -- the generation transition cost, the  
15 regulatory asset transition cost and the company's claimed  
16 implementation cost.

17 I've also, in addition to that, that it would  
18 over-recover a reasonable amount of transition costs. I've also  
19 identified a number of other specific concerns that I have with  
20 the stipulation. One of those is that it results in RTC charges  
21 that are different for different customers in the same class,  
22 and so we have a situation where similarly characterized  
23 customers, from a load characteristic standpoint, would pay  
24 different rates based on the stipulation, depending on whether  
25 they were first in line or 20 percent -- 21st percent in line to



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1 volunteer for access.

2 I don't believe that's consistent with normal rate  
3 making practices in Ohio and, certainly, my experience with 25  
4 years in regulation is that that is inconsistent with normal  
5 rate-making practice in terms of developing rates for customers.

6 There are -- There are other issues that I've  
7 identified in my testimony concerning the company's purchase  
8 power deferral provision that I believe is unjust and  
9 unreasonable and potentially would allow the company to double  
10 recover its purchase power costs. And it is inconsistent with  
11 provisions in the Revised Code that I've spelled out in my  
12 testimony.

13 Another provision that I've identified in the  
14 stipulation that is unreasonable and unjust is the inclusion of  
15 costs or the referral of costs associated with the litigation  
16 reimbursement payments to stipulation participants. This is not  
17 a normally recoverable cost under regulation. The Revised Code  
18 addresses that as one of the requirements for the inclusion of a  
19 cost in regulatory assets that are recoverable. Such a cost  
20 would not be recoverable under normal rate-making treatment.

21 I've also identified the fact that the RTCs -- that  
22 the unlucky 80 percent of the customers who don't -- who aren't  
23 in the first 20 percent of the line would receive -- are  
24 actually higher than they were under the company's originally  
25 filed case, and I've got a Table 6 in my testimony that

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1 clarify -- that shows that or demonstrates that.

2           There's another concern, a very important concern that  
3 I've identified on Page 74 of my testimony that results -- that  
4 actually places customers, again, who aren't lucky enough to be  
5 in the first 20 percent of the line, that CG&E and the parties  
6 have formed for load switching, if they're not in that line,  
7 they'll be subject to RTCs and shopping credits that are  
8 substantially -- RTCs that are higher and shopping -- higher  
9 because the first 20 percent pays zero percent in the first five  
10 years and lower shopping credits.

11           The 80 percent that doesn't get in the first part of  
12 the line is going to receive lower shopping credits, and you can  
13 have a situation for non-residential customers where the  
14 company, at its discretion, as I read the stipulation, chooses  
15 to end the market development period once 20 percent of a class  
16 shifts to alternate suppliers.

17           And so you could have a situation where those lucky 20  
18 percent actually receive savings because their shopping credits  
19 are relatively high, and they may be able to beat a market price  
20 and, thus, achieve savings. The remaining 80 percent are only  
21 protected from the market in the market development period based  
22 on the discretion of CG&E. And if CG&E chooses to end the  
23 market development period, as I understand it, at that point --  
24 they are entitled to do that, they're asking the Commission to  
25 give them pre-approval to end the market development period for

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1 any class once 20 percent shifting occurs, the remaining 80  
2 percent then will face market prices, and it may be that those  
3 market prices are substantially higher than the shopping credits  
4 that they have built into rates, and they will receive a rate  
5 increase while the first 20 percent are receiving rate  
6 reductions. And I consider that to be unreasonable and  
7 discriminatory.

8 I've also identified the fact that the company's  
9 proposing to include \$28 million of -- in a deferral associated  
10 with the implementation of exempt wholesale generator  
11 implementation costs. Mr. Kollen has addressed the specific  
12 issue as to why it is inappropriate to include the \$28 million,  
13 but I -- I've also addressed the fact that that is a wholesale  
14 cost of service. It's not associated with retail service and  
15 under the Revised Code, as I would read it, that is not a  
16 normally recoverable retail expense and, therefore, should not  
17 be included in regulatory assets which the company is asking the  
18 Commission to approve.

19 I believe I've got all of them, but I've --

20 Q. I think you have.

21 A. I'm not sure. I may have missed one, and so I just  
22 want to put a caveat on, in case I did miss it, whatever's in my  
23 testimony is still my testimony.

24 Q. I understand. I wasn't intending to exclude anything.  
25 I was just trying to have a list in front of me.

1           Moving through at least some items of this list, one  
2   of your objections is that the company failed to quantify the  
3   amount of its recovery; is that correct?

4           A.   Yes.

5           Q.   Okay. You were able to quantify that amount, though;  
6   is that fair?

7           A.   Yes, I -- I did an analysis which I believe to be  
8   reasonable of the present value of the revenues the company will  
9   receive through both its explicit RTC charges and its implicit  
10   RTC charges in the first five years.

11          Q.   And that was 600 -- Well, strike that.

12                As I understood your analysis, the quantification  
13   varies depending upon the number of people who switch?

14          A.   Yes. Assuming that 20 percent of the customers  
15   actually do switch, it would be \$650 million, and if none of the  
16   customers switched, it would be 764 million on a present-value  
17   basis over the period specified, the ten years specified in the  
18   stipulation.

19          Q.   And as I understand your testimony, your concern with  
20   these figures is they are higher than what the company initially  
21   asked for for RTC recovery or regulatory asset recovery?

22          A.   I have two concerns with the revenue recovery that the  
23   company would receive under the stipulation; one is that it  
24   substantially exceeds the level of transition costs that  
25   Mr. Falkenberg and Mr. Kollen have identified as being

1 reasonable based on their detailed analysis.

2 Q. Which is zero --

3 A. Which is zero.

4 Q. -- in their analysis?

5 A. It is also -- Even if there weren't netting of  
6 Mr. Falkenberg's stranded benefits against the regulatory  
7 assets, Mr. Kollen has identified regulatory asset revenue  
8 requirement on a present-value basis of only \$12 million; so,  
9 obviously, it would be substantially in excess of that even if  
10 there were no netting between stranded benefits on generation  
11 and regulatory asset transition costs.

12 It is also -- The second part of my concern, objection  
13 is that it is also significantly greater than the \$401 million  
14 of regulatory assets that the company is now claiming in its  
15 updated analysis.

16 Q. Do you have any explanation for the reason that it's  
17 greater than \$401 million?

18 A. Well, I -- The only explanation I have -- First of  
19 all, my understanding is it was a black-box type of settlement.

20 Q. True.

21 A. Based on my reading of the stipulation, the agreement  
22 itself doesn't state anything as to how those numbers were  
23 arrived at.

24 Q. Okay.

25 A. I saw Miss Pefley's second supplemental testimony

1 where she did some comparison, but that's not in the stipulation  
2 as the basis for the RTCs.

3 Q. I understand. Well, would you -- You did review the  
4 stipulation?

5 A. Yes.

6 Q. Okay. Does the stipulation identify any items that  
7 the signatories to it are requesting the PUC approve as new reg  
8 assets?

9 A. Well, I think the litigation reimbursement certainly  
10 is. I believe the purchase power deferral is. I don't  
11 recall -- I'd have to review it item by item, but those two I  
12 can think of right off the cuff, that those are new adjustments  
13 that the company wishes to add to its regulatory asset request,  
14 I assume.

15 Q. Can those regulatory -- Strike that.

16 Do those new regulatory assets for which the  
17 signatories to the stipulation are requesting approval, explain  
18 the increase in price or increase in the total recovery?

19 A. From the stipulation, obviously, the 1.5 million can't  
20 explain a jump from 401 to 650-or-so million. I don't know what  
21 the purchase power deferral amounts to. The company hasn't  
22 quantified it. It looks -- As I discussed in my testimony, it  
23 appears to be a blanket deferral that the company can decide  
24 what its purchase power costs that it wants to defer are and  
25 simply add it. So I can't answer that and the stipulation

1 certainly doesn't address it.

2 Q. The difference in your answer is you don't know; is  
3 that right?

4 A. I think I know that the stipulation itself does not  
5 address that, and I don't have any other basis other than the  
6 stipulation document for deciding that. I read the stipulation  
7 document. My understanding is it is what's referred to  
8 generally as a black-box settlement, meaning that there is no  
9 basis for it.

10 Q. Would you concede that the additional regulatory  
11 assets may be the difference between your quantification and the  
12 company's initial request?

13 A. The 1.5 million -- When you say "additional," you mean  
14 one point --

15 Q. We're not referring merely to the 1.5 additional. The  
16 additional regulatory assets that the signatories have sought  
17 approval for from the Commission.

18 A. Well, I had identified -- In order to answer that, I  
19 guess the answer is the stipulation doesn't say; so I would just  
20 have to speculate. Obviously --

21 Q. I'm not asking you to speculate. I'm just asking you  
22 would you concede that they may result in the different figure?

23 A. I could certainly agree that the company's purchase  
24 power deferral provision, depending on how big it is, could  
25 equal 200, \$300 million. I can agree to that because I don't

1 know; so I have no basis for disagreeing. I haven't seen any  
2 information to that effect, but I certainly -- I can't disagree  
3 that that could be the case.

4 Q. The increase in RTC charges that you identified  
5 between the stipulation as filed and the company's plan as  
6 filed, are they adequate and appropriate to amortize the total  
7 value that you've identified, \$650 to 764 million, depending on  
8 the levels you're switching?

9 A. Based on the -- Let me explain the analysis that I  
10 did, and it's in my workpapers that I provided you today. I  
11 basically took the sales forecast that the company had developed  
12 by rate class and applied year by year the RTCs under the two  
13 scenarios where there's 20 percent switching in each class -- up  
14 to 20 percent -- there could be more than 20 percent, but at  
15 least up to 20 percent -- they pay zero RTC in the first five  
16 years. The remaining 80 percent pay a certain level, and then  
17 after -- in Years 6 through 10 all customers pay a specified  
18 RTC.

19 I took those RTCs, calculated the revenues based on  
20 the company's sales forecast, and present valued them; so that's  
21 my -- If I understand your question, that's my expectation as to  
22 the revenues that the company would receive if those RTCs were  
23 approved and implemented by the Commission. Maybe I didn't.

24 Q. No, I think you've answered my question except that it  
25 may have been in reverse.



1 A. Okay.

2 Q. I asked if it was sufficient to amortize the figure,  
3 and you've said that it would amortize out to be that figure --

4 A. Yes, I didn't.

5 Q. -- is that right?

6 A. In other words, I started with the buildup of  
7 revenues, calculated a present value, but I believe at the --  
8 the same discount rate, it would effectively amortize that.  
9 Yes, that's what I -- I'm sorry, I misunderstood your question.

10 Q. You've also expressed concern because some customers  
11 won't pay an RTC; is that correct?

12 A. Yes.

13 Q. Isn't it true that all customers will pay an RTC, at  
14 least during Years 6 through 10?

15 A. Yes, that's my understanding.

16 Q. Okay.

17 A. And I focused on that in the first five years that you  
18 would have this disparity in treatment.

19 Q. So during the first five years, you will have a  
20 disparity in treatment, as you describe it. Has it been your --  
21 Based upon your experience in this area, have you seen similar  
22 disparities in treatments in other deregulation proceedings?

23 A. Within a rate class?

24 Q. Yes.

25 A. For determining the transition charge that a customer

1 would pay?

2 Q. Well, to incentivize the market?

3 A. Well, let me -- Let me -- I'll try to answer that  
4 question in two parts just to make sure I'm perfectly clear.  
5 The -- I don't recall in any case I've ever been in where  
6 customers within the same rate class have ever been charged  
7 different non-bypassable transition charges based on some  
8 provision.

9 So the answer on point with respect to my testimony  
10 is, no, I'm not familiar with any situation where customers have  
11 been given different non-bypassable rates depending on where  
12 they were in line in a first-come, first-serve line.

13 In some jurisdictions where there was a phase-in to  
14 competition, customers in the same rate class were given -- only  
15 a certain percentage of the customers in a particular -- in all  
16 rate classes were allowed to use alternate suppliers in  
17 different years.

18 In Pennsylvania, for example, I think under the  
19 statute there was a phase-in of 30 percent, 33 percent the first  
20 year, 66 the second, 100 percent the third. In fact, the  
21 Commission approved much more rapid participation levels than  
22 was allowed by the statute. In those cases, all customers  
23 continued were charged the same non-bypassable transition  
24 charges. There was just like a lottery type of arrangement for  
25 who -- which customers got to participate, and my recollection,

1 certainly my recommendation in those cases, and I think the  
2 Commission approved it, was that customers basically volunteered  
3 to nominate a certain amount of load that they would like to  
4 switch the first year. If it was oversubscribed in a particular  
5 rate class, it would be a pro rata deduction based on the  
6 nomination; so every customer got to participate. But in no  
7 event did customers get to pay different transition charges,  
8 different non-bypassable transition charges.

9 Q. Well, different incentives have been offered to  
10 different customers in your experience?

11 A. Not in the sense -- again, if you -- not in the sense  
12 of selecting out certain customers for special treatment. Every  
13 cust- -- In Pennsylvania, in terms of who -- which customers  
14 were permitted to switch in the first year. For example, if the  
15 Commission said 50 percent of each class' load could shift in  
16 the first year, if they chose to, all customers got to nominate  
17 load for shifting, and if it was oversubscribed, meaning it was  
18 greater than 20 percent or greater than 50 percent, if that was  
19 the number --

20 Q. Whatever the number?

21 A. -- it would be a pro rata reduction that was for  
22 shifting. It wasn't for the imposition of transition charges.

23 One of the tenets in all of the -- or most of the  
24 restructuring legislation that I've seen in other states, and  
25 Ohio is included, is that there's a provision to establish

1    what's called a non-bypassable transition charge. And my  
2    understanding of a non-bypassable charge is its plain language  
3    interpretation that it's non-bypassable. And what this  
4    stipulation does is it does bypass it for 20 percent of the  
5    customers in a class.

6            Q.    Does the statute in Ohio provide that the transition  
7    charge may be modified so as to incentivize the market?

8            A.    I recall that the Revised Code discusses incentivizing  
9    shopping credits to basically achieve the 20 percent shopping  
10   criteria, and I don't recall any provision of the Revised Code  
11   that says the Commission can approve different non-bypassable  
12   charges for different customers within the same rate class.

13           Q.    That's very precise language.

14                    What's your concern with the purchase power contract?  
15   You find that unreasonable, and I don't understand why. So  
16   would you explain that to me?

17           A.    Yes. Well, let me refer to my testimony on that.

18           Q.    Go ahead.

19                    (Witness reviewing documents.)

20           A.    The main concern -- I have a couple of concerns with  
21   purchase power. First of all, the -- that is not, as I would  
22   understand it, a regulatory asset that was on the books of the  
23   company at the time provided for in the Revised Code; so it's  
24   not a regulatory asset.

25                    The company is asking for a special approval to create

1 a regulatory asset for purchase power costs, and in the  
2 stipulation it's not even identified as -- it just simply says  
3 "purchase power costs necessary to meet a reserve margin," I  
4 believe is the language. The company -- As I read that  
5 provision in the stipulation, the company is basically given a  
6 blank check to defer any amount of purchase power costs that it  
7 deems appropriate. The company's collecting purchase power  
8 costs along, with its fuel costs in the rolled-in EFC, that's  
9 included in bundled rates.

10 It doesn't -- I don't understand how the stipulation  
11 can permit the company to both recover purchase power costs that  
12 are in bundled rates and to defer purchase power costs at its  
13 discretion for inclusion as a regulatory asset. This seems, on  
14 the surface, to be unjust and unreasonable.

15 Secondly, the Revised Code lists a number of elements  
16 of transition costs that need to be satisfied in order for the  
17 company -- in order for the company to recover transition  
18 revenues. One of those provisions is that these costs would  
19 normally be allocable to retail electric service. As I read the  
20 stipulation, if the company defers these purchase power costs as  
21 it's proposing to do and effectively then recovers them through  
22 the RTC, that is charged to all customers whether they shop or  
23 not.

24 What's happening is they're charging shopping  
25 customers for purchase power costs that the company's not

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1 incurring to serve them. They're buying their generation from  
2 somebody else. The company is proposing to charge these same  
3 shopping customers for purchase power associated with serving,  
4 presumably, customers that don't shop.

5 Those costs, under normal rate making, would not be  
6 allocable to customers that are not responsible to the costs  
7 and, therefore, it does not meet the criterion for the recovery  
8 of transition costs. And I think I indicated that to the extent  
9 that the company is already recovering fuel and purchase power,  
10 there would be a double recovery under this provision.

11 Q. Now, is it your testimony that the customers who shop  
12 receive no benefit from leased purchase power contracts?

13 (Pause.)

14 A. Just give me one moment.

15 (Witness reviewing documents.)

16 The answer to the question is the stipulation refers  
17 to granting the -- as I understand it, granting CG&E the  
18 approval to defer purchase power costs sufficient to maintain an  
19 adequate operating reserve margin as determined by CG&E. I  
20 don't know what that includes. Based on the stipulation, it  
21 appears that the company has the opportunity to defer any  
22 purchase power cost that it believes are necessary to maintain  
23 an adequate operating reserve.

24 Q. Let's go back to my question. Do you believe that  
25 shopping customers receive no benefit from purchase power

1 contracts?

2 A. In -- If we're not talking about the stipulation, I'm  
3 sorry, I miss- -- You're not talking specifically about the  
4 stipulation but just in general?

5 Q. You said one of your concerns is that the -- You said  
6 under your concern about the stipulation that shopping customers  
7 will be charged a RTC associated with these purchased power  
8 costs?

9 A. Costs.

10 Q. And I'm asking you if it is your testimony that  
11 shopping customers receive no benefits from purchased power  
12 contracts?

13 A. In that context, in the context of my earlier  
14 statement, yes, shopping customers would not receive any  
15 benefits if -- in the sense that they are no longer served by  
16 CG&E, if I understand your question.

17 My interpretation of shopping customers is a customer  
18 who no longer takes generation service from CG&E. Therefore,  
19 any purchased power that the company buys to provide service,  
20 generation service, would not be used to serve those customers.  
21 Those customers are no longer customers of CG&E for that  
22 purpose; so I -- I think logically they would not receive a  
23 benefit.

24 Q. Is CG&E required to provide default service to any  
25 shopping customers whose supplier may default?

1           A.   Yes, that's my understanding. I haven't focused on  
2   that, but in general, I understand that.

3           Q.   Is that a benefit to shopping customers?

4           A.   If they come back and take default service?

5           Q.   Simply having the obligation there, is that of benefit  
6   to shopping customers?

7           A.   I could see that -- that to the extent that the  
8   company -- There's a possibility that some amount of reserves to  
9   provide default service may benefit shopping customers because  
10   if they're treating it as some kind of -- in the context of some  
11   kind of stand-by provision, but as I understand it, to the  
12   extent that there is a relatively liquid competitive wholesale  
13   market, the company would be able to provide that power to  
14   default customers without continually maintaining reserves for  
15   those customers. I certainly don't interpret the stipulation as  
16   saying that the deferral is limited to that.

17          Q.   I didn't say that it was --

18          A.   Okay.

19          Q.   -- and I don't think the stipulation says that it was.

20          A.   Okay. Well, I think I answered your question the best  
21   that I can.

22          Q.   You can see that there is a benefit to shopping  
23   customers from purchased power contracts?

24          A.   I can envision a situation where the market develops  
25   in such a manner that the company would have to provide reliable



1 default service to some body of customers who may need it,  
2 chooses to contract for a small amount of power. Obviously,  
3 you're not going to provide reserves for all your shopping  
4 customers, that would not be reasonable, but there may be some  
5 provisions where the company purchases some reserves in  
6 anticipation of providing some default service.

7 I don't know, but I could envision that that's a  
8 possibility, and to the extent that some small percentage of  
9 shopping customers do require default service, it's a  
10 possibility that there's some benefit that's greater than zero.

11 MR. HOERSTING: Excuse me. Could we go off the record  
12 for a moment?

13 MR. DORTCH: Sure.

14 (Discussion held off the record.)

15 BY MR. DORTCH:

16 Q. Mr. Baron, would you refer to Page 73, Lines 13 and 14  
17 of your testimony?

18 A. Yes.

19 Q. You state "...purchased power costs at market rates  
20 would, everything else being equal, be recoverable in a  
21 competitive market...." How are they recovered?

22 A. Well, I think I was just sort of stating the obvious.  
23 If you buy purchased power at market rates and sell it at market  
24 rates, there's a wash.

25 Q. Well, since the company may be purchasing power to

1 serve frozen rates, is there still a wash?

2 A. For customers who are served under frozen rates, if  
3 they sell it for less than market prices, that would be -- I  
4 would guess that would be the case, assuming that --

5 Q. That would be the case, that there's a wash?

6 A. No, no, that there wouldn't be a wash, that frozen  
7 rights might be higher, might be lower. For -- So I -- I would  
8 say for customers who don't shop, that would be the case, but  
9 you had -- I think you had asked me earlier about the company  
10 buying purchased power for customers that do shop.

11 Q. That's correct.

12 A. On your provider of default service and to the extent  
13 that that -- if that was frozen, then that would also be true,  
14 but if it wasn't frozen like after the market development  
15 period, if they still provided that service, I presume that  
16 would be at market rates.

17 Q. Let me back up. Is it your testimony that purchased  
18 power costs at market rates would not necessarily be recoverable  
19 in a competitive market because of the company's obligation to  
20 serve?

21 A. Yes, I would agree to that. For the customers that  
22 the company is providing -- is serving for generation purposes  
23 during the market development period, to the extent that those  
24 are at frozen rates or capped rates -- frozen rates, I guess,  
25 they may or may not be able to recover those costs.

1 Q. Would you refer to your Exhibit 5, Page 11 of 18?

2 A. Yes.

3 Q. First grouping you have there, you have four lines  
4 concerning -- well, actually, I guess it's five lines concerning  
5 property tax credits?

6 A. Yes, there's -- I see the property tax credits, yes.

7 Q. You also have figures entered under residential.  
8 Frankly, I just don't understand. Why is -- Why are those --  
9 There are credits there and then clearly deductions there, as  
10 well.

11 A. This is the same format. We use the same format that  
12 the company used. In fact, we relied on the company's model to  
13 make -- to produce our adjusted analysis. What -- If you --  
14 What the company did was, again, we relied on the same format.  
15 In the top portion of that page, if you look at the -- We're  
16 referring to Page 11 of 18 of SJB 5, which is for the  
17 residential class, that -- the first one, two, three, four, five  
18 lines or rows shows our unbundling of the existing allocated \$73  
19 million in property taxes, and this is the -- this is the -- the  
20 sum of those numbers equals the amount of property taxes that  
21 the company allocated to residential customers in their 1983  
22 cost study.

23 MR. BOEHM: '93.

24 THE WITNESS: Excuse me, '93 cost study.

25 BY MR. DORTCH:

1 Q. I'm sorry, so to interrupt, would you say that again?  
2 These five lines represent what now?

3 A. The first five lines, when added together, equal the  
4 amount of property taxes that the company allocated to  
5 residential customers in the 1993 cost study based on total --  
6 on net plant of all functions. And the distribution of that  
7 number, which I haven't added it up, but it looks like it's  
8 about 44, 45 million or so in property taxes, that was assigned  
9 to residential.

10 The distribution of that is based on net plant of the  
11 different distribution functions, production transmission  
12 distribution and others, and this is consistent with the  
13 allocation method. So -- but -- So at that point, what we're  
14 showing there is how -- is a proper functionalization of the  
15 existing \$73 million for existing residential customers.

16 The next six lines shows our analysis of the effects  
17 of the Revised Code on property taxes. And, again, this is  
18 consistent with the way the company presented the property tax  
19 calculation. The company showed the amount that was allocated  
20 in the functionalizing, what's called the "as allowed" cost  
21 study. That's the first five rows.

22 And then the last set of rows that shows credits,  
23 shows the effect of the Revised Code, and that's what -- and  
24 this is the portion that has been assigned to residential  
25 customers, but it's -- it's consistent with the general

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1 framework that the company's used.

2 Q. What portion of the Revised Code are you talking about  
3 here? When you say this shows -- Are you talking about the  
4 taxation difference between the -- caused by the reduction of  
5 property taxes?

6 A. Yes, the \$30 million reduction that the company's  
7 calculated.

8 Q. Okay. And so these figures, the -- these five  
9 property tax credit items, what precisely do they represent?

10 A. On the credit portion?

11 Q. On the credit portion.

12 A. Those are the adjustments that are necessary, when  
13 added to the top five rows, to get the amount of property taxes  
14 associated with each function for residential customers. If we  
15 were to look at this for the total company, and I -- Let me see  
16 if I -- I don't believe I've got a -- I don't have a schedule in  
17 my exhibit that shows that.

18 It is in my workpapers, but if we were to look at --  
19 Well, I think I can explain it without referring to anything  
20 else. Let's take distribution. If we look at distribution, the  
21 amount of property taxes before the tax change that is  
22 appropriately assignable to residential customers for  
23 distribution was \$10.6 million.

24 Q. I'm sorry, sir -- Oh, I see. Okay. You are referring  
25 to the --

1 MR. BOEHM: Fourth line.

2 BY MR. DORTCH:

3 Q. -- the fourth line down, distribution,  
4 ten-million-six, right. I follow you.

5 A. Right, that's before the tax reduction or the tax  
6 change.

7 Q. Okay.

8 A. And that's -- Now, what that represents is we take the  
9 total amount of property taxes that was assigned to the  
10 residential class in the 1993 cost study and basically split  
11 those up among the various functions based on the net plant  
12 ratio.

13 So for example, like I said, I roughly added that  
14 residential customers would receive about 44 -- had been  
15 assigned to about \$44 million in property taxes if the -- in the  
16 1993 cost study, and assigning that to different functions would  
17 produce -- if you took the distribution net plant versus the  
18 total net plant for residential, you allocate 10.6 million.  
19 Then we calculated adjustments to that, such that if you look at  
20 distribution, the actual distribution adjustment -- the property  
21 tax credit for distribution is a positive 7.4 million.

22 So the amount of distribution property taxes that has  
23 been assigned to residential would be about \$18 million, and  
24 that \$18 million effectively represents the share of  
25 distribution net plant of the \$26 million in distribution

1 property taxes that Mr. Coyne calculated. He calculated that  
2 distribution plant is responsible for \$26 million of property  
3 taxes in the new tax law. If you look at what residential  
4 customers' share of that is, it's -- it would be the -- it would  
5 be about -- whatever, 18-or-so-million dollars, \$19 million.

6 Q. And I'm sorry, I don't see that figure here?

7 A. If you look over to the second-to-the-last column,  
8 total distribution --

9 Q. Uh-huh.

10 A. -- it's \$19 million. That's residential customers'  
11 share of the \$26 million in distribution property taxes. The  
12 preponderance of distribution net plant is in the residential  
13 class, and using net plant as the allocator of property taxes,  
14 the way the company has done, you would calculate or assign 19  
15 million of that to residential distribution customers and that's  
16 the base -- the sum of all these adjustments produces that.

17 I mean, I -- We could probably go through and, if you  
18 give me -- if you want me to, I could go through and look at  
19 what the distribution net plant for residential is as a percent  
20 of the total, if we took that factor -- Well, let me do just a  
21 rough calculation of that.

22 (Witness reviewing documents.)

23 Okay. I'm referring to the company's as-allowed cost  
24 study and it shows that there's \$573 million of net distribution  
25 plant for all retail customers. Residential customers have been

1 assigned by CG&E 397.7 million, which is 69 percent -- it's a  
2 little greater than that. And if you take 69 percent of the  
3 26-some-odd million of distribution property taxes that  
4 Mr. Coyne says is assignable to distribution, you get 18 to 19  
5 million. I mean, I'm rounding and it's a rough calculation, but  
6 that's essentially the basis for the calculation and that's what  
7 we did.

8 We relied on his calculation that distribution will be  
9 charged 26 million. Residential has 69-plus percent of the  
10 distribution plant. They would get that percentage, more or  
11 less, of the distribution property. It's very straightforward,  
12 follows the company's cost-of-service principles.

13 Q. I still have a question that I don't understand an  
14 answer to.

15 A. Yes.

16 Q. Which is: Why is the property tax credit negative for  
17 production, kilowatt, and positive for everything else -- Well,  
18 I guess general common is also negative, but --

19 A. I can explain that.

20 Q. Just generally, if you could explain that to me?

21 A. The first portion of the -- the first five rows shows  
22 the allocation of -- Remember, going back to my previous  
23 testimony, in the 1993 cost study that forms the basis for  
24 current rates, the company allocated \$73 million of retail  
25 property taxes on net plant. They didn't look at distribution,



1 generation. They just said what's the net plant for residential  
2 as a share of retail.

3 That time -- That percentage times 73, that's how much  
4 residential gets. They did the same for every class. We, you  
5 know -- That was the method the company used in the cost study.  
6 That's the method -- That's the amount of property taxes that  
7 underlies current rates.

8 We, then, took that and said, well, if \$45 million, or  
9 whatever the number is, of property taxes is assignable on net  
10 plant or residential, what would be the amount of that that  
11 would go to distribution? Well, if net plant is the criterion  
12 that is used, which it was reasonable as a cost-of-service  
13 allocator, then we would -- we simply took and logically  
14 followed that same theory and took residential distribution  
15 plant as a net plant, as a percent of total net plant assigned  
16 to residential and said, well, that's the amount that goes to a  
17 property taxes that goes to the distribution function.

18 In other words, we had to split that up, that's the  
19 functionalization process. That produced about \$15 million.  
20 Now, on a total company basis, Mr. Coyne has said there's no  
21 change in distribution property taxes as a result of the Revised  
22 Code, and he now calculates that, back in 1993, based on their  
23 tax returns, it was \$26 million in property taxes.

24 The company -- The current rates that residential  
25 customers pay reflects this aggregate net plant allocator, and

1 what's built into the current rates is residential customers pay  
2 \$15 million in distribution property taxes. The company is now  
3 saying, well, it really should have been 26, but we didn't do  
4 the study that way, but the current rates are based on the old  
5 method.

6 What we've done and -- and what the company had  
7 attempted to do but, I believe, has done wrong and I pointed  
8 that out hours ago, we have now taken Mr. Coyne's analysis of  
9 the property taxes from -- that he thinks are the responsibility  
10 of customers under the Revised Code, and we basically said, as I  
11 said before, if there's 26 million associated with distribution  
12 that Mr. Coyne now says, then residential customers are  
13 responsible for 69 to 70 percent of that because they have 69 to  
14 70 percent of the assessed value of plant that caused that  
15 property tax.

16 Well, when you do that, you end up with 19 million.  
17 What is built into the current rate for residential customers on  
18 property taxes is about the 15-some-odd million. So what  
19 happens is you've got to make an adjustment to bring that to the  
20 19. As a result, you get a positive factor for the tax -- for  
21 the property tax adjustment factor.

22 I don't know whether you follow. I mean, there is a  
23 logic to what we did, but the simplest way to think of it is we  
24 took Mr. Coyne's property tax calculations, he said 26 million  
25 for distribution, we now assigned that to each rate class based

1 on the distribution net plant and that's -- In order to sort of  
2 keep the same format as the company's model, we did it in two  
3 pieces; one what was in, you know, underlying original rates,  
4 and two, what adjustment do we need to get Mr. Coyne's number.  
5 And that's why it works out that way. But the idea is to fairly  
6 assign the new property taxes.

7 You can think of it -- I just want to add one other  
8 thing. You can think of it you pull the old property taxes out  
9 of the study and stuck in the new ones that the company now says  
10 are right.

11 MR. DORTCH: I have no more questions at this time,  
12 Mr. Baron, thank you.

13 THE WITNESS: Thank you.

14 MR. DORTCH: I do appreciate you coming in.

15 MR. HOERSTING: May I ask a couple of questions?

16 MR. DORTCH: Anybody?

17 MR. BOEHM: Steve, you have some?

18 MR. HOERSTING: I have a few, and it's just to fill in  
19 gaps. I'm going to work backwards in terms of your answers.

20 - - -

21 EXAMINATION

22 BY MR. HOERSTING:

23 Q. You mentioned earlier that in one other state, and I  
24 believe it was Pennsylvania, you said they didn't have a  
25 shopping system; they had a lottery system. And you were

1 talking, I think, on the point that there was no difference in  
2 the bypass -- non-bypassable charges that any similarly situated  
3 customer would have to pay. If you could speak on that, maybe  
4 I'll have some follow-up questions on that?

5 A. Yes, and perhaps it didn't -- I wasn't clear because I  
6 sort of assumed some things that perhaps weren't clear when I  
7 was giving my answer. The Commission set rates for each company  
8 with a transition charge. Those were non-bypassable transition  
9 charges. Every customer pays those transition charges whether  
10 they shop or not.

11 Q. Even during the market development period?

12 A. Yes. In Pennsylvania it's referred to as the  
13 transition period, but it's essentially the same thing. Every  
14 customer pays the transition charge whether or not they continue  
15 taking service from the company or purchase from an alternative  
16 supplier and during the entire transition period, and it varies  
17 by utility, they are entitled to keep taking service from the  
18 company. Now -- and there are various rate cap provisions that  
19 expire at different times for different utilities and so forth.

20 Under the statute, it's my recollection that there was  
21 a phase-in of the actual participation in the competitive  
22 market. Unlike Ohio, all customers were not entitled to  
23 participate on day one, and this was designed to give the  
24 utilities some breathing room on trying to set up infrastructure  
25 and so forth.

1 I believe the original statute was one-third of each  
2 class gets to shop the first year, one-third the second, 100  
3 percent -- an additional third the second, 100 percent the  
4 third. As one of the -- but the Commission had the authority to  
5 accelerate that, and I honestly don't remember right now whether  
6 the Commission did that on -- in its orders or whether there  
7 were subsequent settlements of litigation that approved it.

8 But nonetheless, those were accelerated and, again,  
9 the Commission may have approved the accelerated shopping  
10 participation. In other words, instead of only one-third the  
11 first year, two-thirds could shop the first year. Nonetheless,  
12 there could be an oversubscription. In other words, if you  
13 limit -- let's say residential -- Industrial customers, if the  
14 demand in the class was a thousand megawatts total, but -- and  
15 one-third of it was 333 megawatts; so that amount of load could  
16 shop the first year, let's say 500 megawatts of load was  
17 actually nominated by customers to shop; it wasn't a first come,  
18 first serve, certainly they nominated it, and that was my -- I  
19 know my recommendation in the case, and I believe this is what  
20 the Commission did, was to do some type of pro rata scaling back  
21 so that if only 350 megawatts was eligible to shop in the  
22 Class X, but 500 megawatts wanted to shop, they would pro rate  
23 the 350 based on the nominations or something like that. That,  
24 in no way affected the non-bypassable charge that any customer  
25 paid. It was only who could shop -- It didn't affect the rates,

1 it said who could shop and who could not.

2 Q. Were there any -- You said the non-bypassable  
3 transition charge was paid, I would gather, from day one and by  
4 all persons. Was there any deferral of costs? Is this -- Also,  
5 is this the Pennsylvania Commission you're talking about?

6 A. Yes.

7 Q. Was there any deferral of costs that they set up that  
8 would kick in at, say, Year 6?

9 A. The Commission, in its orders, established the  
10 shopping credits that it believed to be appropriate and the  
11 transition charges that it believed to be appropriate such that  
12 the transition charges recovered over the transition period on a  
13 present-value basis would recover the amount of stranded costs  
14 that the Commission found to be the case.

15 There was -- When the Commission set those shopping  
16 credits, it set them in a manner that tried to reflect  
17 expectations about the market prices, and the assumption was  
18 market prices would rise over time so that the shopping credits  
19 rose over time, and as a result, the transition charges declined  
20 over time.

21 I don't -- but the criterion, if I recall, was that  
22 the present value of the transition charges would recover the  
23 stranded costs, and it wasn't an explicit deferral, but it was  
24 such that given this fixed pattern of recovery, we'll get our  
25 money.

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1 Q. Those shopping credits that increased over time, those  
2 were -- I'm asking, were those only for the people that were  
3 within the lottery or accepted within the lottery at any point  
4 in time?

5 A. No, no, and those are the shopping credits everyone  
6 has.

7 Q. Okay.

8 A. Now, in the first -- I think -- and I do not remember  
9 the specifics, but I -- My recollection is that after the first  
10 year, after the -- by January 2nd of the second year, everyone  
11 was allowed to shop in most, or if not all, the utilities; so it  
12 was basically a one-year period where there was some restriction  
13 on shopping.

14 But the answer to your question is everyone faced the  
15 same rate, everyone faced the same shopping credit, everyone  
16 faced the same transition charge.

17 Q. But some were allowed to participate at a point in  
18 time and some were not?

19 A. No. Again, it was based on a voluntary -- you know,  
20 customer said "I want to shop" and it was only -- there was only  
21 a restriction if it was oversubscribed based on the constraint,  
22 and then there was some kind of pro rata so that everyone who  
23 wanted to shop, got to shop at least some of their load.

24 Q. And one last question with regard to that --

25 A. So there was no discrimination. That was the main

1 concern.

2 Q. Presumably, those who were shopping, who were allowed  
3 in the lottery at any particular time --

4 A. Can I object to your --

5 Q. Please, because I'm trying to understand this.

6 A. I don't think it was a lottery in the sense --

7 Q. That was your word.

8 A. If I say, look, there's 350 of these items available  
9 and, you know, we all say, well, he wants ten and you want 200  
10 and whatever, and lo and behold, it adds up to 600 and there's  
11 only 250 or whatever available, we all get scaled back based on  
12 what we nominated or something like that, I don't remember the  
13 specific --

14 Q. On a percentage basis or pro rata of available --

15 A. I don't remember what the final order was on that, but  
16 I know that there was some fair way of doing it in terms of who  
17 got to shop and who did not and, again, it was only -- it only  
18 pro -- I think it was really only effective for one year. After  
19 that, everyone got to shop all their load.

20 Q. Okay. And another -- the last question I was going to  
21 ask is -- with regard to this subject. I may ask you a couple  
22 more.

23 Those who were shopping, presumably, were saving money  
24 over those who were not, whether by lottery or by choice; is  
25 that true, that they were saving some money at the time that



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1 they were shopping that others were not? Is that right?

2 A. I -- I mean, obviously, I haven't done an analysis. I  
3 think logic would dictate that if you couldn't beat the shopping  
4 credit, you wouldn't do it; so I assume that's the case.

5 Now, in Pennsylvania, during the transition period,  
6 any customer is entitled to come back to the standard offer at  
7 any time during the transition period, they just have to commit  
8 for 12 months.

9 Q. But those savings were not based on some kind of  
10 suspension of the transition charge. So what were those  
11 savings, just generally? What constituted the savings?

12 A. They would be -- assuming that there was a savings,  
13 and I would agree that you wouldn't shop unless there was.  
14 Assuming you didn't have to shop, it was the difference between  
15 the shopping credit that was built into the rates and the price  
16 of power that you contracted for at market from an alternative  
17 supplier.

18 Q. Okay. With regard to the wholesale purchased power  
19 costs, we talked about -- you mentioned earlier that CG&E, in  
20 its stipulation, has reserved its right to preserve a margin --  
21 and these are my words now -- almost as it sees fit. Are you  
22 back to that subject now? Do you know sort of what I'm talking  
23 about?

24 A. Yes. I don't think I -- I wouldn't agree with your  
25 characterization.

1 Q. Right.

2 A. I think the actual language in the stipulation -- I've  
3 got it here, somewhere.

4 Q. I think you're going to find my question is more basic  
5 than even the specific language, and I'll just ask it while you  
6 look.

7 A. Sure.

8 Q. Somehow you mentioned a \$28 million figure associated  
9 with that. I believe you did?

10 A. The 28 million I referred to was the implementation  
11 costs that the company is claiming to implement its EWG.

12 Q. Okay.

13 A. And so that would not -- that's not the purchase  
14 power.

15 Q. Okay. Because you did also mention that the purchase  
16 power could be two or three hundred million, you couldn't be  
17 sure?

18 A. Yes, I think I was asked the question is it possible  
19 that purchase power deferral or some -- and I don't want to  
20 character -- The question, is as it shows in the transcript, but  
21 my understanding is, is it possible that that could explain the  
22 difference between what I've calculated and the 401 million  
23 claimed by the company, this 650 versus 401, and I said yes. I  
24 don't know what it is, but I suppose it could explain it, but  
25 the 28 million was EWG.

1 Q. Okay. And I wanted to ask you, very generally, you  
2 said you've been involved in other state transition cases, and  
3 also with the background that you have, you said that the reg  
4 assets here are zero. In those other states, what premium or  
5 what weight did they give to the concept of head room?

6 First of all, did they consider head room a reg asset  
7 that needed to be created and recovered by the incumbent  
8 company?

9 A. Well, head room, let's make sure we all agree on what  
10 "head room" means. Head room, to me, means the difference  
11 between the froze- -- it's basically the shopping credit --

12 Q. Right.

13 A. -- how much is available for the shopping credit. And  
14 that is what -- what's the amount of money that's at play that  
15 the customer can -- can save on his bill from his incumbent  
16 supplier like CG&E and substitute the charges that that same  
17 customer will receive from an alternative supplier.

18 So head room is basically that, the shopping credit,  
19 the total shopping credit. In the context of this case, it's  
20 the difference between the unbundled generation rate and the RTC  
21 charge and the GTC charge based on the company's filing.

22 Q. Okay. Let me ask the same line of questioning. If  
23 you look at the actual assets of the company based on the  
24 categorization that the Commission has set out generally, and  
25 you net those and you come up with a zero, shouldn't the -- is

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1 there still a factor of consideration here creating a market,  
2 and getting to competition and having large shopping credits,  
3 and should that be a cost that the Commission should look at  
4 that the company should recover and that should be sort of  
5 listed here?

6 A. Well, I haven't really -- I mean, you're talking about  
7 shopping incentives --

8 Q. That's right.

9 A. -- which is a little different.

10 Q. As aspect of credit?

11 A. I think what you're -- If I understand what you're  
12 saying, if there is a zero transition charge, in other words,  
13 the company has no stranded costs, basically at that point the  
14 only charge legitimately that CG&E would charge ratepayers would  
15 be distribution charges and -- you know, and transmission would  
16 come through the FERC OATT.

17 In effect, the entire unbundled generation rate would  
18 be the shopping credit at that point. If the market -- I mean,  
19 I don't believe that it should -- that the shopping credit  
20 should exceed that, and I think that's what you're -- If you're  
21 asking me if the unbundled generation rate is 5 cents, should  
22 the -- and if the Commission deems that they need 6 cents to  
23 create a competitive market, what do we do with the other one?

24 Q. Exactly.

25 A. Under that scenario, if there was basis for doing

1 that, then I think the company would be entitled to recover that  
2 deferral. However, as a policy matter, if the embedded  
3 generation rate were provided, the entirety was provided as a  
4 shopping credit and the only thing the company was asked to  
5 charge customers was its distribution rate, I think there would  
6 be a real problem because you're not really accomplishing -- In  
7 effect, by deferring that incentive that you're talking about, I  
8 think you're creating an even worse problem because ten years,  
9 seven years down the road, the market price is going to be  
10 greater and now you're stuck with the situation with when are  
11 you going to recover this deferral. It creates a real problem;  
12 so I would not advocate that at all, if you actually exceeded  
13 the unbundled generation right.

14 Q. Okay. But do you recognize that if you don't advocate  
15 that and that position were adopted, there's a chance that the  
16 market, presumably that the State House and the Commission are  
17 trying to build, could flounder?

18 A. I certainly -- As a matter of principle, I think maybe  
19 I could answer your question this way. Irrespective -- Let's  
20 ignore what the transition costs are. In general, if the  
21 company is required to basically fund shopping incentives for  
22 customers because of the Revised Code or the Commission deems  
23 that appropriate, I think that's a legitimate cost.

24 Q. Okay.

25 A. Just as a matter of general policy, not related to any

1 facts in evidence in this case, I think that's a legitimate cost  
2 if they have to basically bump that up to get the market to  
3 work --

4 Q. Okay.

5 A. -- if the Commission decides that's appropriate.

6 Q. And I understood from your testimony that one of your  
7 concerns in this case for TS rate is that the functionalized, I  
8 suppose the term is, allocation for D is higher than it is for  
9 other classes, or it's disproportionately higher relative to G,  
10 and that you perceive that CG&E will still be able to collect  
11 the high D from you in perpetuity?

12 A. No, I don't agree with that characterization. I went  
13 through and explained all the problems.

14 Q. Right.

15 A. It's not because the transmission class distribution  
16 charge is higher than other classes.

17 Q. Okay.

18 A. The transmission customers don't use any distribution.  
19 There shouldn't be any -- There isn't any charge and the company  
20 simply -- they unbundled their rate and found a charge because  
21 they made some logic errors in the analysis; that's what I'm  
22 saying.

23 Q. Right.

24 A. It's not that, well, it's higher than somebody else's.

25 Q. Okay.

1 A. If you don't use any, how could you be charged for it?

2 Q. All right. But I understood, also, and you mentioned  
3 perhaps there are some legitimate costs that a company should  
4 seek to recover with the goal of creating a market, and my  
5 question really is -- I understand that the company in this  
6 case --

7 MR. BOEHM: I'm sorry, I think that's a misstatement  
8 of what he said.

9 MR. HOERSTING: I'm sorry. I don't mean to put words  
10 in his mouth. I'm just trying to keep it moving so I can get to  
11 my question.

12 MR. BOEHM: I think what he was asked before was if  
13 the legislation really wanted to do this and create a market,  
14 and if you had a negative shopping credit, then you would  
15 recover. He wasn't advocating that you do that.

16 BY MR. HOERSTING:

17 Q. I agree.

18 A. Right. In other words, if the legislation requires it  
19 and the Commission determines that it's appropriate and says,  
20 look, we need to have some shopping incentive, I think, as it's  
21 referred to in order to induce switching and development of  
22 market, over and above anything that's otherwise justified based  
23 on the current rates, then I answered, as a matter of general  
24 policy, it would seem that if the Commission's ordering the  
25 company to pay out money, they would be entitled to recover it.

1 Q. Okay. You mentioned that -- and I hope I get this  
2 right -- that the D, functionalized D, that TS rate customers  
3 would have to pay relative to the G is pretty high; that when  
4 the company unbundled and set those two things, the D was in  
5 some sense higher than the G?

6 A. I was referring to -- No, I don't think I ever said  
7 that. I said that -- Basically what I said was there's \$15,000  
8 of meters that transmission customers are responsible for. The  
9 company's assigned \$2 million of property taxes to cover that,  
10 and they've taken that and they've said, okay, as a result, you  
11 guys have to pay a pretty -- a distribution charge. I'm saying  
12 that's just simply wrong, and I explained why it happened, and  
13 it's a mistake.

14 Q. Here's my question, and you can correct me all along  
15 the chain if you'd like to. I understand in this case that in  
16 order to get to 5 cents, the company has moved into D to create  
17 enough shopping credit, enough head room, and I was wondering if  
18 that move into D has any effect on the -- on your perception of  
19 the \$2 million, and the \$15,000 in metering is too high, or how  
20 that would effect Years 1 through 10 or something like that?

21 A. I think I understand where you're going with this.  
22 You're referring to the shopping credits that are included in  
23 the stipulation, correct?

24 Q. Uh-huh.

25 A. I didn't address -- My unbundling testimony and



1 analysis is based on the company's filing.

2 Q. Okay.

3 A. So what the company is proposing -- what the parties  
4 have agreed to in their joint stipulation doesn't have anything  
5 to do with functional unbundling or cost of service or anything  
6 else. It was just an agreed-to number, and that is not the  
7 basis for any of my testimony related to the flaws in the  
8 company's unbundling analysis.

9 MR. HOERSTING: Okay. Thanks very much. That's all  
10 the questions I have.

11 MR. SMART: Nothing from OCC.

12 MR. DORTCH: Nothing further from me.

13 MR. BOEHM: Okay.

14 - - -

15 (Signature not waived.)

16 - - -

17 (Thereupon, the deposition was concluded at  
18 12:45 o'clock p.m. on Friday, May 26, 2000.)

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A F F I D A V I T

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STATE OF \_\_\_\_\_, )  
COUNTY OF \_\_\_\_\_, ) SS:

Stephen J. Baron, having been duly placed under oath,  
deposes and says that:

I have read the transcript of my deposition taken on  
Friday, May 26, 2000, and made all necessary changes and/or  
corrections as noted on the attached correction sheet, if any.

\_\_\_\_\_  
Stephen J. Baron

Placed under oath before me and subscribed in my  
presence this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_.

- - -

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C E R T I F I C A T E

State of Ohio, )  
County of Franklin, ) SS:

I, Rose Marie Prater, Registered Professional Reporter and Notary Public in and for the State of Ohio, hereby certify that the foregoing is a true and accurate transcript of the deposition testimony, taken under oath on the date hereinbefore set forth, of

STEVEN J. BARON

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which the deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in the action.

*Rose Marie Prater*  
Rose Marie Prater,  
Registered Professional  
Reporter and Notary Public  
in and for the State of  
Ohio.

My Commission Expires:  
September 16, 2002.

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