

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the :
 Commission's Review and :
 Adjustment of the Fuel and :
 Purchased Power and the : Case No. 07-723-EL-UNC
 System Reliability :
 Tracker Components of Duke :
 Energy Ohio, Inc., and :
 Related Matters. :

In the Matter of the :
 Application of Duke Energy :
 Ohio, Inc., to Adjust and :
 Set the Annually Adjusted : Case No. 07-973-EL-UNC
 Component of Its Market :
 Base Standard Service :
 Offer. :

In the Matter of the :
 Application of Duke Energy :
 Ohio, Inc., to Adjust and : Case No. 07-975-EL-UNC
 Set Its 2008 System :
 Reliability Tracker. :

PROCEEDINGS

before Ms. Jeanne Kingery and Mr. Scott Farkas,
 Attorney Examiners, at the Public Utilities
 Commission of Ohio, 180 East Broad Street, Room 11-F,
 Columbus, Ohio, called at 10 a.m. on Friday,
 December 14, 2007.

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9 On behalf of the Staff of the Public
10 Utilities Commission.

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1 Friday Morning Session,

2 December 14, 2007.

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4 ATTORNEY EXAMINER FARKAS: Let's go on
5 the record. At this point we will -- you can call
6 your next witness.

7 MR. COLBERT: Thank you, your Honor. At
8 this time Duke Energy Ohio would call Don Wathen to
9 the stand.

10 ATTORNEY EXAMINER FARKAS: I will just
11 note for the record you are still under oath.

12 - - -

13 WILLIAM DON WATHEN, JR.
14 being previously duly sworn, as prescribed by law,
15 was examined and testified further as follows:

16 DIRECT EXAMINATION

17 By Mr. Colbert:

18 Q. Good morning, Mr. Wathen.

19 A. Good morning.

20 Q. Mr. Wathen, can you state your name and
21 work address for the record, please.

22 A. My name is William Don Wathen,
23 W-A-T-H-E-N. My address is 139 East Fourth Street,
24 Cincinnati, Ohio 45202.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Thank you. And do you have before you
3 what has been marked as Duke Energy Ohio Exhibit 8?

4 A. I do.

5 Q. And is that your supplemental direct
6 testimony in these cases?

7 A. Yes, it is.

8 Q. And do you have any changes or amendments
9 to that testimony?

10 A. No, I don't.

11 MR. COLBERT: Your Honors, Mr. Wathen is
12 available for cross-examination.

13 ATTORNEY EXAMINER FARKAS: Thank you.

14 Mr. Small.

15 MR. SMALL: Yes. Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Small:

19 Q. Good morning, Mr. Wathen.

20 A. Good morning.

21 Q. Do you have the stipulation Joint Exhibit
22 1 with you on the stand?

23 A. I do. It's an attachment to my
24 testimony.

1 Q. I have the printed version from the
2 computer last night. I'm sorry. I didn't know that.

3 Would you please turn to page 4 of your
4 testimony and I will -- unless I say otherwise I am
5 always referring to the DE-Ohio Exhibit 8. Do you
6 have page 4?

7 A. I do.

8 Q. On lines 9 through 12 you state "the
9 stipulation is a result of discussions to which all
10 parties were invited"; is that correct?

11 A. That's correct.

12 Q. One of those parties was the OCC,
13 correct?

14 A. I believe they were invited.

15 Q. The OCC's opposition to the stipulation
16 can't be counted as a plus for adoption of the
17 stipulation, wouldn't you agree?

18 A. We would prefer to have everyone on
19 board.

20 Q. Would you have -- I don't believe that
21 answered the question, Mr. Wathen.

22 A. It's -- I can't say one way or the other
23 whether it's a plus or a minus. It's really up to
24 the Commission to approve it or not.

1 Q. I take it though from your opinion is
2 that it's -- it's not a plus for the stipulation.
3 Your response was you would rather have the OCC as a
4 party to the stipulation.

5 A. I think there is a higher probability of
6 the Commission approving a unanimous settlement, yes.

7 Q. Other parties that you referred to in
8 your -- in your testimony include the Ohio Energy
9 Group and Industrial Energy Users - Ohio, correct?

10 A. That's right.

11 Q. And the unwillingness of those parties to
12 execute a public document containing the stipulation
13 terms can't be a plus for adoption of the
14 stipulation.

15 MR. COLBERT: Objection, your Honor. The
16 witness can't know how the Commission is going to
17 weigh, you know, the signatures of the various
18 parties.

19 MR. SMALL: I am asking for the witness's
20 opinion which he has just stated with respect to the
21 OCC and unanimous stipulations.

22 ATTORNEY EXAMINER FARKAS: I will let him
23 answer.

24 A. I will repeat it. I think a unanimous

1 settlement is always going to have a higher
2 probability of being approved. No obvious opposition
3 is second best.

4 Q. The Ohio Partners for Affordable Energy
5 also signed the stipulation; is that correct?

6 A. They did.

7 Q. What or who as you understand it is Ohio
8 Partners for Affordable Energy?

9 A. I believe they represent a group of low
10 income customers, residential customers.

11 Q. Would you agree with me that OPAE is an
12 Ohio corporation that includes as members a number of
13 nonprofit organizations?

14 A. I honestly don't know the details of
15 their organization.

16 Q. Now, as I understand your testimony, you
17 were involved in the settlement discussions; is that
18 correct?

19 A. I have been involved, yes.

20 Q. Who for -- you will excuse me, but I
21 am -- Ohio Partners for Affordable Energy is a tongue
22 twister. I refer to them as OPAE. Do you understand
23 that reference?

24 A. I do.

1 Q. Who for OP&E representing OP&E discussed
2 the stipulation with the company?

3 A. I can't say who else was on the phone,
4 but during our physical meeting I know Colleen Mooney
5 was engaged, and I believe she was on the phone on
6 the conference call so.

7 Q. To your knowledge was a single word of
8 the stipulation changed or suggested by the
9 involvement of the -- of OP&E?

10 A. I honestly don't know since I didn't
11 actively write the stipulation. I wasn't the writer
12 of the stipulation, so I don't know if there was or
13 not so.

14 Q. To your knowledge do you know?

15 A. To my knowledge, no.

16 Q. Now, would you agree with me that staff's
17 involvement in at least one item of the stipulation,
18 that being the true up of the SRT, was compelled by
19 the order in what I refer to as the remand rider
20 case, 05-724, in the consolidated cases?

21 Let's step back for a second. You
22 testified in that case, didn't you?

23 A. Yes, I did.

24 Q. Okay. So just for reference I will call

1 that the remand rider case just for reference
2 purposes. Do you understand that reference?

3 A. I do.

4 Q. Okay. Going back to my question, staff's
5 involvement in at least the provision for the SRT
6 true up was commanded by the order in that case,
7 wasn't it?

8 A. I believe there was two orders that
9 really resulted in that and it was the order in the
10 case you mentioned and then the -- that might have
11 been the October order, but the November 20, 2007,
12 order in 06-1085 also proved the true up of the '07
13 SRT as well.

14 Q. And to the extend that the question goes
15 to staff's -- or the command of the Commission in
16 that second order that the staff meet with the
17 company in order to resolve the true up issue for the
18 SRT; is that correct?

19 A. I think it was more worded like the
20 company would meet with staff but, yes.

21 Q. Could you turn to provision 2 of the
22 stipulation. Now, I will be referring to them as
23 provisions, and when I call them provisions, I am
24 referring to the numbered paragraphs that start on

1 page 3 of the stipulation, so I am referring to
2 provision 2 which is at the bottom of page 3 of
3 the -- of the stipulation. Do you see that?

4 A. I do.

5 Q. And provision 2 has -- contains two
6 figures, two dollar figures. Where does the
7 documentation appear in the record of this case for
8 the two figures that are shown on -- in provision 2?

9 A. The \$16.8 million was -- would have been
10 in work papers that go along with the December filing
11 we made in the rider SRT. The comparable number that
12 we made -- that we filed end of September in this
13 docket, in the SRT docket, for 2008 was 17.8 give or
14 take, and it just updated with more -- better
15 information. The \$11.3 million, again, it's part of
16 the work papers. We typically don't provide that
17 when we file -- when we file the December rider, but
18 we can certainly make it available to anyone.

19 Q. All right. So I understand, when you say
20 work papers, you are not talking about things that
21 are -- where do the work papers appear? Where does
22 one go to find those work papers?

23 A. Well, in the -- I think it's in the
24 07-723 case you would see the work papers for the

1 prior year's SRT, and we have similar work papers
2 that we compute -- we use as a basis for developing
3 the SRT rate every quarter. Again, we don't
4 typically file those. A lot of that material is
5 confidential, but we make them available to the staff
6 upon request, and the OCC certainly has the
7 opportunity to request that information as well.

8 Q. Well, these numbers are not in the
9 testimony.

10 A. The figures you see here are not in --
11 are not in my testimony. The \$16.8 million number
12 there is a comparable number in my testimony from
13 September. Again, it's just been updated.

14 Q. That's the 17.8 number that you talked
15 about?

16 A. Yes.

17 Q. Turning to provision 4 of the
18 stipulation -- actually 4 and 6 both on page 4 of the
19 stipulation, those paragraphs do not adopt the
20 Liberty Consultants' recommendation that Duke prove
21 the effectiveness of its active management of
22 procurement policies; is that correct?

23 A. I mean, the provisions speak for
24 themselves. It says we will adopt the

1 recommendations related to documentation.

2 Q. Do you know the answer to my question?

3 A. I'm telling you that these -- you can --
4 I mean, it doesn't say in there that it adopts a
5 recommendation about proving anything, so by default
6 it does not include it.

7 Q. Now, are you familiar with the previous
8 auditor's recommendations? Have you seen the
9 previous audit report prepared by EVA?

10 A. I have. It's not particularly fresh in
11 my mind, but I have.

12 Q. And just as an overview though you are
13 aware that the EVA auditor -- I guess we took
14 administrative notice of it. The EVA auditor
15 recommended that Duke Energy halt its active
16 management of fuel -- coal procurement policy; is
17 that your understanding?

18 A. I would have to see the recommendation
19 again. I don't remember.

20 Q. Do you have the auditor's report before
21 you?

22 A. All I have got is my testimony and the
23 joint exhibit.

24 MR. SMALL: Do you have a copy you could

1 provide the witness?

2 MR. COLBERT: Which auditor's report?

3 MR. SMALL: The Liberty.

4 MR. COLBERT: The prior case?

5 MR. SMALL: The Liberty.

6 MR. COLBERT: The Liberty, I don't know.

7 ATTORNEY EXAMINER KINGERY: Let's go off
8 the record.

9 (Discussion off the record.)

10 ATTORNEY EXAMINER KINGERY: We can go
11 back on the record.

12 A. What page?

13 Q. Well, while I was getting you organized I
14 got a little disorganized myself.

15 If you could turn to page ES-4, that was
16 the executive summary. I am in the confidential
17 version.

18 A. Okay.

19 Q. Now, this page summarizes the
20 recommendations from the previous consultant, the EVA
21 Consultants; is that a fair statement of that -- of
22 that page?

23 A. I believe it's the -- I haven't compared
24 them exactly, but I believe it's a representation of

1 the EVA recommendations, yes.

2 Q. Right. And you see point No. 2?

3 A. I am reading it, yeah.

4 Q. And do you see the statement that "EVA
5 recommends" -- I am here at the second line on point
6 2 -- "that Duke Energy cease its active management."
7 Do you see that reference?

8 A. I see the reference, yes.

9 Q. Okay. So the previous auditor
10 recommended that Duke Energy change its policy
11 concerning coal procurement; is that correct?

12 A. That's what they say.

13 Q. You may want to keep it out. We will --
14 I will return to that in a little bit. Provision 4
15 in your -- in the stipulation deals with formalizing
16 procedures for procurement of fuel and emission
17 allowances. I think you just mentioned that. I
18 believe Mr. Whitlock -- would you agree with me
19 Mr. Whitlock testified yesterday that that had
20 already been adopted by the company without the
21 stipulation?

22 A. Well, I believe that Mr. Whitlock said
23 that we are -- that we already have processes and
24 guidelines, not necessarily formally documented, but

1 he uses those guidelines, and he is currently in the
2 process of creating those guidelines in a document.

3 Q. And he said that he was doing that in his
4 testimony that was filed before the stipulation
5 existed, right?

6 A. That's right.

7 Q. I will provide the document to you if you
8 wish, but Exhibit 3 of Mr. Whitlock -- DE-Ohio
9 Exhibit 3, Mr. Whitlock's testimony, says, "After
10 review of the audit report, DE-Ohio has decided to
11 adopt this recommendation and formalize these
12 protocols as a standard set of procedures." So
13 Mr. Whitlock and the company adopted that before the
14 stipulation existed; is that correct?

15 A. Apparently.

16 Q. Now, provision 5 refers to the evaluation
17 of forecasting coal. Again, and I can provide the
18 documentation if it's deemed necessary, but on page 3
19 of Mr. Whitlock's testimony he states, "In fact, the
20 company is constantly evaluating variances between
21 forecasted and actual consumption. The company
22 agrees with this recommendation." Again,
23 Mr. Whitlock's testimony was filed before the
24 stipulation existed, so it's not new to the

1 stipulation, is it?

2 A. It -- I mean, it's not new, no.

3 Q. Now, turning to ES-8, I am back into the
4 Liberty audit report, and on ES-8 at the very top of
5 that it states that "the -- "the auditor recommends
6 that Duke Energy" -- and here I am quoting --
7 "institute a security program to protect the
8 integrity of coal samples from the time samples are
9 bagged and ready for shipment until the samples
10 arrive at the Gibson laboratory." Do you see that?

11 A. I see it.

12 Q. Now, provision 7 of the stipulation
13 states that "DE-Ohio will" -- and this is a quote
14 from the -- from the provision -- "evaluate the need
15 and feasibility" of such a program. Why doesn't the
16 stipulation pro -- why does the stipulation provision
17 say that the -- that the security procedures will be
18 evaluated rather than instituted as recommendation by
19 the consultant -- I'm sorry, the auditor?

20 A. I can't speak for Mr. Whitlock, but I am
21 assuming there's some -- that we don't agree with the
22 auditor in terms of the mandatory need for that.
23 It's a matter of evaluation. That's all -- I don't
24 know what the rationale was for that.

1 Q. So here there is a conflict between the
2 company view and the auditor's view on the security
3 procedures for coal?

4 MR. COLBERT: Objection, your Honor. I
5 think he has characterized it as the company's view.
6 This is a stipulation among numerous parties.

7 ATTORNEY EXAMINER FARKAS: Do you want to
8 rephrase?

9 MR. SMALL: Well, he is a company witness
10 and I am asking whether there is a conflict between
11 the company's view and the auditor's view and I am
12 not asking him to represent it for all the other
13 parties. He is the company witness. He should be
14 able to answer the question.

15 A. Again, the parties involved in the
16 stipulation agreed that the mandatory nature of this
17 program was not necessary at the time. It's an
18 evaluation process.

19 Q. And are you saying it would be
20 Mr. Whitlock would know why that's true?

21 A. Mr. Whitlock could tell you whether the
22 company agrees with the -- the -- the direct
23 recommendation the auditor has here.

24 Q. Turning to page 2, line 11, of your

1 testimony, in this -- this portion of your testimony
2 you are discussing the Zimmer outage extension matter
3 that was mentioned in the auditor's report. And on
4 line 11 you say, "The stipulation preserves the issue
5 for the next audit period." Do you see that?

6 A. I see it.

7 Q. Now, would you agree with me that most of
8 your -- of the remainder of your response starting
9 with the number 1 on line 13 to the end of that
10 response is just a copy of the stipulation provision
11 8? I mean, it -- it's accurate because it's exactly
12 what the stipulation says, right?

13 A. Yeah. I am not sure if it's verbatim,
14 but it is essentially the same thing.

15 Q. And that has some directions -- would you
16 agree that has directions for how the auditor is
17 supposed to handle that Zimmer situation that you say
18 in the line 11 is being preserved?

19 A. It has some general direction, yeah.

20 Q. Right. Why doesn't the stipulation
21 simply say what you say in your testimony which is
22 the issue is preserved instead of giving some kind of
23 instructions on how -- how it's going to be handled?

24 A. Well, you are referring to item 8 in the

1 stipulation?

2 Q. Yes.

3 A. I mean, the parties agree that the
4 auditor shall in the next audit for the purposes of
5 recommending an appropriate adjustment, to me it's
6 implied, if not explicit, that it's preserved to the
7 next audit.

8 Q. Why all the added verbiage here?

9 A. Just wordy, I guess.

10 Q. So if this was to be interpreted later on
11 by somebody, say, in the next audit report, you are
12 saying that the paragraph 8 doesn't do -- your
13 interpretation of paragraph 8 is simply that it
14 preserves the issue that was raised in the auditor's
15 report?

16 A. I mean, the plain reading of that
17 paragraph does.

18 Q. It's -- were you aware of the discussions
19 with the OCC yesterday morning before the -- the
20 hearing convened?

21 A. Not all of them. There was a lawyers'
22 conference that I wasn't aware of.

23 Q. There was one out here in the open before
24 the lawyers got together.

1 A. And some of them were pockets instead of
2 a general discussion so I don't know if I remember
3 all the details.

4 Q. Do you remember there was a controversy
5 about the reading of this paragraph?

6 A. Not specifically.

7 Q. You are telling me the only way of
8 reading this it preserves the issue from the
9 auditor's report and that the rest of it is just
10 added verbiage?

11 A. It tells how we will extend it in the
12 next audit generally. It also says that it will be
13 done in the next audit, so you choose a word, but it
14 essentially preserves the issue.

15 ATTORNEY EXAMINER FARKAS: You are not
16 attempting to set a limit how the auditor can review
17 the Zimmer issue, are you?

18 THE WITNESS: Well, I mean, the -- the
19 items described here certainly do not limit.

20 ATTORNEY EXAMINER FARKAS: So the next
21 auditor can -- he is not -- he or she are not limited
22 to how they would do their audit in any way? Are you
23 saying that --

24 THE WITNESS: The three items listed

1 here --

2 ATTORNEY EXAMINER FARKAS: They are
3 suggestions?

4 THE WITNESS: Well, they are general
5 guidelines. I mean, it's extremely wide open how
6 they would go about their business of reviewing this.

7 MR. SMALL: Well, the problem I am -- I'm
8 sorry. Were you completed?

9 ATTORNEY EXAMINER FARKAS: I am just
10 trying to clarify here. You are not trying to direct
11 the auditor on how they would conduct their review,
12 are you? These --

13 THE WITNESS: I can't see a defined limit
14 on what they can look at.

15 ATTORNEY EXAMINER FARKAS: Okay.

16 Q. The problem I am having, and the Attorney
17 Examiner is directly on point, on line 4 it uses the
18 word "shall." It's a word of command. It says an
19 auditor will be doing this. It doesn't say you
20 preserve the issue and here is a few examples of how
21 it might be done. It's the use of the word "shall."
22 That's a word of direction, telling the auditor what
23 they are supposed to be doing.

24 A. The way I look at it the word "shall"

1 says the auditor will look at this issue again next
2 year for the benefit of the ratepayer.

3 Q. Okay. Now, one problem, wouldn't you
4 agree with the auditor's recommendation in the
5 current Liberty report is that there are no numbers
6 for the -- connected with the Zimmer outage? He
7 doesn't come up with any numbers. He recommends that
8 they be calculated actually.

9 A. Yeah. Can you bear with me for a second?
10 I wanted to.

11 Q. Sure.

12 A. Yeah. He recommended some general
13 guidelines for calculating but no specific numbers.

14 Q. I am looking at page V-4 in the audit
15 report, and it states, "Upon further questioning Duke
16 Energy Ohio did state that the replacement power cost
17 would have to be calculated hour by hour in the
18 market considering the day ahead market, the real
19 time market, and the day 2 market." Do you see that?

20 A. I do.

21 Q. And we haven't had an opportunity to
22 speak to the auditor, but I read that it's a
23 difficult calculation; is that a fair statement?

24 A. Depending on the assumptions it's a

1 difficult calculation, yes.

2 Q. Is there anything in the stipulation that
3 provides that Duke Energy will help in that
4 calculation of -- if it's required? You see, I am
5 getting at we don't really want to have another
6 auditor's report with no numbers in it, and I don't
7 see any provision in the statement for providing
8 those numbers. What is your reading about the
9 understanding of the parties here?

10 A. It says, "the auditor will make a
11 recommendation regarding the recovery of fuel and
12 purchase power costs associated with the outage."

13 Q. Have there been any discussions within
14 Duke Energy about whether the auditor will be
15 assisted in that regard?

16 A. The auditor has broad discovery rights.
17 They can ask questions, and we will try to respond to
18 them accordingly.

19 Q. If you could take a look at provision 9
20 on page 5 of the stipulation, it refers to a
21 recommendation --

22 A. I'm sorry. Item 9?

23 Q. I have been calling it provision 9.

24 A. Okay. Provision 9, okay.

1 Q. Page 5. And it refers to adopting the
2 auditor's recommendation regarding some disappointing
3 observations about a Duke Energy power plant. I'm
4 sorry. Could you help me pronounce the power plant's
5 name?

6 A. Beckjord.

7 Q. Now, provision 9 doesn't have any what I
8 would call action items, things that have to be done
9 or measurements that are going to be taken. Without
10 such items to act upon by Duke Energy, how can anyone
11 expect the stated improvement to take place?

12 A. Well, in my reading of item 9 I don't see
13 the word "disappointing" anywhere in here.

14 Q. That was definitely my characterization
15 of the auditor's report.

16 A. I mean, the item 9 adopts recommendation
17 2 on page V-16, and, you know, the nexus there it
18 clearly adopts the recommendation that they set for
19 an action item, if you will, to set high expectations
20 for issues of safety, cleanliness, and create a
21 program that will establish and maintain the
22 employees' attitudes, positive performance.

23 Q. What does Duke Energy intend to do to
24 carry out that performance?

1 A. Again, Chuck Whitlock would be the person
2 to talk to more definitively, but I understand we
3 have already engaged a consultant to do this work,
4 and they are in the midst of it now.

5 Q. The merger between the Duke organization
6 and Cinergy organization took place at about 2006; is
7 that correct?

8 A. April, 2006.

9 Q. Is it a fair statement that after the
10 merger, there were, well, some provisions in
11 management that placed new demands on the employees
12 of CG&E regarding safety?

13 A. I don't think that's a fair assertion at
14 all.

15 Q. Well, what was the change in the attitude
16 concerning safety?

17 A. I don't know. I am -- I am not at the
18 station, so I don't know what their life is like.

19 Q. I am not referring to station --
20 necessarily the station. I am talking about overall
21 management policy. Were you aware there were changes
22 made at the time of the merger?

23 A. Well, I do know that Duke Energy
24 Corporation puts safety in extremely high priority on

1 Duke Energy Corp.'s overall incentive and so on.

2 Every meeting has to start with a safety message.

3 Q. What happened at the power plant if that
4 message was conveyed by -- that seems greatly in
5 conflict with what the auditor is reporting for this
6 power plant?

7 A. Again, I don't work at the power plant,
8 so I can't tell you what happened at the power plant.

9 Q. Provision 10 states -- that sentence --
10 sentence says -- basically it says that the company
11 will maintain reliability and safety at the
12 generating station. Do you see that?

13 A. Well, it's broader than that but that's
14 the last part of the line, yeah.

15 Q. I will read the entire sentence, if you
16 would like. "The Parties agree that Duke Energy Ohio
17 shall fund all necessary capital and O&M required to
18 maintain reliability and safety at" your generation
19 station "in 2008." That's what it says, right?

20 A. That's what it says.

21 Q. Do you need a stipulation to require Duke
22 Energy to maintain liability and safety at its power
23 plants?

24 A. Well, the stipulation -- the language in

1 the stipulation was a reaction to the recommendation
2 made in the audit report that told -- that was
3 slightly different, so the stipulation was a
4 settlement on that recommendation.

5 Q. Well, my question is if we don't have --
6 if we don't have this provision in the stipulation,
7 is Duke Energy not going to maintain its plant
8 reliability -- reliably and safely?

9 A. Of course not. Again, it's just a matter
10 we try to respond to all the auditor's
11 recommendations directly. This is one we wanted --
12 we had a different view. We just documented it in
13 the stipulation to which most parties agreed.

14 Q. You are aware of there is an electric
15 regulation provision being considered by the Ohio
16 General Assembly?

17 A. Generally aware.

18 Q. I'll generally refer to it as Senate Bill
19 221. Have you had any contact with it, read any of
20 its provisions, followed it as it goes through the
21 General Assembly?

22 A. Mostly just high level briefing, briefs
23 of the materials.

24 Q. The briefings reflect that as the past

1 version of Senate Bill 221 has a special provision
2 what the rates are on February 1, 2008?

3 A. I don't specifically know that reference,
4 no.

5 MR. SMALL: With that that completes my
6 examination.

7 ATTORNEY EXAMINER FARKAS: Okay. Any
8 redirect?

9 MR. COLBERT: No redirect, your Honor.

10 ATTORNEY EXAMINER FARKAS: Okay. Thank
11 you.

12 MR. COLBERT: Your Honor, at this time I
13 would move into evidence DE-Ohio Exhibit 8 and Joint
14 Exhibit 1.

15 ATTORNEY EXAMINER FARKAS: Yeah. Any
16 objection?

17 MR. SMALL: Is Joint Exhibit 1 --

18 ATTORNEY EXAMINER FARKAS: Stipulation.

19 MR. SMALL: I thought it was moved and
20 entered previously but no objection.

21 ATTORNEY EXAMINER FARKAS: Okay. It will
22 be admitted.

23 MR. COLBERT: Thank you.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

1 ATTORNEY EXAMINER FARKAS: That completes
2 your witnesses.

3 MR. COLBERT: That does.

4 ATTORNEY EXAMINER FARKAS: Okay. And do
5 we have anything further? We have nothing further.

6 MR. COLBERT: Well, one item further, I
7 suppose, is that we do need to make sure that we get
8 the schedule for communications with the auditor.
9 The company would --

10 ATTORNEY EXAMINER FARKAS: Do you want to
11 go off the record? Let's go off the record first.

12 (Discussion off the record.)

13 ATTORNEY EXAMINER FARKAS: Let's go back
14 on the record. Off the record we had a discussion
15 and we have established the following dates for the
16 AAC briefs. They were going to be due on
17 December 21. And the conversation with the auditor
18 will take place on December 27 in the morning. And
19 the parties have agreed that OCC will go first with
20 its questions, and then at the conclusion of its
21 questioning, any other party can go forward, but each
22 party would -- only that party would ask questions.
23 And at the conclusion of their questions, the next
24 party would go forward and so on.

1 And then on January 2 or before, OCC
2 would notify the parties electronically and the Bench
3 whether or not they intended to go forward and call
4 the auditor for hearing. That date would be
5 January 17. They would also file a letter in the
6 docket on January 3 to that effect. If no auditor is
7 going to be called by OCC, then the briefing date
8 would be January 7 for initial briefs for the SRT and
9 FPP and January 15 for the replies and electronic
10 service also on the briefs. And the parties would
11 also cross-reference in their citations to the audit
12 report both the confidential version and the redacted
13 version since they had different page numbers. I
14 believe that is all.

15 MR. SMALL: No. I think we have a couple
16 more housekeeping tasks.

17 ATTORNEY EXAMINER FARKAS: Okay.

18 MR. SMALL: If I could go back, this is
19 not a problem with the AAC brief that's due on the
20 21st of December, but we are going to presumably be
21 dealing with some confidential information in our
22 briefs, reply briefs, whether they are done on the
23 7th or 15th or at a later point in time, and I would
24 like to put as a motion that the confidential

1 portions be filed under seal -- we have redactions of
2 the briefs and reply briefs to the extent needed to
3 preserve the confidential information and the Bench
4 order that so we don't have to go through the added
5 burden of every time filing something with motions
6 for protection and I would extend that motion to
7 include any other pleadings or submissions to the
8 Commission that would contain such information until
9 the conclusion of this case which would include any
10 apps for rehearing and so on and so forth so we don't
11 have to continually file motions for protection
12 basically on the same material over and over again.

13 ATTORNEY EXAMINER KINGERY: How would you
14 propose under that scenario to notify the Docketing
15 Division that this information is indeed
16 confidential? That is what the motion does as well
17 as to give us the arguments.

18 MR. SMALL: Are you asking how -- I mean,
19 the normal procedure -- normal procedures for filing
20 under seal with the redacted version in the public
21 domain would be followed. All I am saying is that we
22 wouldn't have -- essentially you would be granting
23 before the fact the motions for protection of this
24 nature by ordering this and then we would -- the OCC

1 at least would submit a simple letter instructing --

2 ATTORNEY EXAMINER KINGERY: That's what I
3 was asking.

4 MR. SMALL: Explaining to Docketing this
5 motion was made at the hearing and was granted and,
6 therefore, they should treat this consistent with the
7 Hearing Examiners' orders.

8 ATTORNEY EXAMINER FARKAS: Why can't you
9 just reference -- since I don't know that we can
10 actually grant the motion on something we haven't
11 seen yet so that why can't you just reference the
12 motion you made here and ask us to grant it?

13 ATTORNEY EXAMINER KINGERY: That way you
14 don't have to file another motion, that you have
15 already made the motion right now. It's just we
16 can't grant it because we have to review the material
17 to see what you are trying to redact.

18 MR. SMALL: Such a motion was granted
19 from the Bench in the 03-93 case for the briefing in
20 that case. I just had intended the same procedure
21 only I extended because unfortunately that
22 instruction from the Bench did not carry forward
23 after the briefing, and so we started having to file
24 motions for protection every time we filed something.

1 I keep on filing the same material over and over
2 again, and I have to have motions on every single
3 thing that I file with the Commission. I am trying
4 to unburden the process.

5 ATTORNEY EXAMINER FARKAS: We are as
6 pleased to see it as you are to write it.

7 ATTORNEY EXAMINER KINGERY: I don't
8 remember in 03-93 having granted a blanket one in
9 advance.

10 MR. SMALL: You did regarding the briefs
11 because we reference it in -- we submitted a letter
12 along with our brief explaining why we were
13 submitting this under seal because we have to have
14 such a thing for Docketing to treat it that way.

15 ATTORNEY EXAMINER KINGERY: Yes.

16 MR. COLBERT: Your Honor.

17 ATTORNEY EXAMINER KINGERY: Yes.

18 MR. COLBERT: If I may, and perhaps this
19 helps, I believe in 03-93 the motion had to do with
20 material that was already under seal with motions
21 granted and referencing that. And certainly in
22 regard to material that is already under seal and
23 references in future pleadings we would agree with
24 Mr. Small and think that makes sense as a procedure.

1 If somebody, however -- and perhaps this is what you
2 are struggling with. If somebody has new material
3 that is not already under seal, that is, if they are
4 referring to some new material, you know --

5 ATTORNEY EXAMINER KINGERY: Then it's not
6 covered.

7 MR. COLBERT: -- that's not covered and
8 would require a new motion.

9 ATTORNEY EXAMINER KINGERY: And we have
10 not granted motions in this case for protective
11 orders. There are a lot of motions pending but we
12 haven't issued an order on them.

13 MR. COLBERT: That's correct, your Honor.

14 MR. SMALL: Well, right. First of all, I
15 didn't think that I was asking for anything different
16 than Mr. Colbert stated. I wasn't going to start
17 redacting new material. I was going to redact
18 material that was already under seal.

19 ATTORNEY EXAMINER KINGERY: We
20 understand.

21 MR. SMALL: Second of all, the Bench is
22 correct, those have not been granted. Maybe it would
23 be enough to grant provisionally based on, you know,
24 provisionally until the Bench rules on the other

1 motions.

2 ATTORNEY EXAMINER KINGERY: That's
3 essentially what we were just debating, saying, yes,
4 we can grant it to the extent that we ultimately
5 grant the motions that are pending in this case for
6 protective orders.

7 MR. SMALL: And then --

8 ATTORNEY EXAMINER KINGERY: And to that
9 same extent. In which case you are welcome to file
10 any materials -- all of you are welcome to file
11 materials with just a cover letter referencing the
12 fact that a motion has been made and is pending for
13 protective treatment or it has been granted. We can
14 grant it provisionally.

15 MR. SMALL: I would like such a
16 statement.

17 ATTORNEY EXAMINER KINGERY: Okay.

18 ATTORNEY EXAMINER FARKAS: We will grant
19 it provisionally then, your motion.

20 ATTORNEY EXAMINER KINGERY: To the extent
21 that the underlying material is also ultimately
22 treated under seal.

23 MR. SMALL: You mean the final ruling
24 would be consistent between the two.

1 ATTORNEY EXAMINER KINGERY: That's right.

2 ATTORNEY EXAMINER FARKAS: Correct.

3 MR. SMALL: If you don't agree with some
4 of the motions for protection, then we would unredact
5 the material that we filed under seal, all of it.

6 ATTORNEY EXAMINER KINGERY: That's
7 correct.

8 MR. SMALL: Okay. I think that does it.

9 ATTORNEY EXAMINER FARKAS: Okay. All
10 right. Then we will be adjourned.

11 (Thereupon, the hearing was adjourned at
12 11:08 a.m.)

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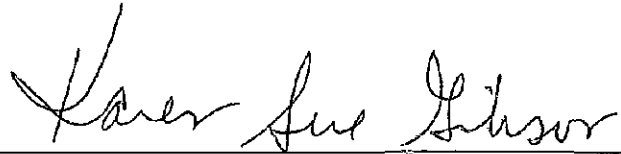
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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Friday, December 14,
2007, and carefully compared with my original
stenographic notes.



Karen Sue Gibson, Registered
Merit Reporter.

(KSG-4821)

- - -

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EXHIBIT

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The following exhibit(s) were prefiled and can be located with the pleadings:

Exhibits

Date Filed

JOINT EXHIBITS

1 - Recommendation and Stipulation

Dec 13, 2007

DE-OHIO EXHIBITS

8 - Prefiled Supplemental Testimony of
William Don Wathen, Jr.

Dec 14, 2007