

FILE

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the :
Application of American :
Municipal Power - Ohio, :
Inc. for a Certificate :
of Environmental : Case No. 06-1358-EL-BGN
Compatibility and Public :
Need for an Electric :
Generation Station and :
Related Facilities in :
Meigs County, Ohio. :

PROCEEDINGS

before Mr. Gregory A. Price and Ms. Kimberly W.
Bojko, Hearing Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-C,
Columbus, Ohio, called at 9:00 a.m. on Friday,
January 4, 2008.

VOLUME VI

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1 Friday Morning Session,
2 January 4, 2008.
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4 EXAMINER PRICE: Let's go on the record.
5 Good morning. The Ohio Power Siting Board has set
6 for hearing at this time and this place case number
7 06-1358-EL-BGN being In the Matter of the Application
8 of American Municipal Power - Ohio, Inc. for a
9 Certificate of Environmental Compatibility and Public
10 Need for an Electric Generation Station and Related
11 Facilities in Meigs County, Ohio.

12 My name is Gregory Price. With me is
13 Kimberly Bojko. We are the administrative law judges
14 assigned to preside over today's hearing.

15 Let's begin by taking appearances
16 starting with the company.

17 MR. BENTINE: Thank you, your Honor.
18 Same appearances on behalf of the applicant, American
19 Municipal Power - Ohio, Inc., the law firm of
20 Chester, Willcox & Saxbe by John Bentine, April Bott,
21 Steve Fitch, Nate Orosz, and Matt White.

22 EXAMINER PRICE: Intervenors.

23 MR. FISK: Shannon Fisk from the Natural
24 Resources Defense Council on behalf of the citizen

1 groups.

2 EXAMINER PRICE: Staff.

3 MR. JONES: Good morning, your Honor. On
4 behalf of the staff of the Ohio Power Siting Board,
5 Marc Dann, Attorney General, William Wright and John
6 Jones, assistant attorneys general, 180 East Broad
7 Street, Columbus, Ohio. Mr. Wright will be joining
8 us after a while.

9 MS. MALONE: Margaret A. Malone and
10 Christina Grasseschi, 30 East Broad Street, Columbus,
11 Ohio.

12 EXAMINER PRICE: The record will also
13 reflect that Ms. Young did call and tender her
14 address that she would not be able to attend the
15 hearing today.

16 With that, Mr. Bentine, do we have any
17 procedural issues?

18 MR. BENTINE: Just one item of note.
19 Yesterday we filed in Docketing our remaining
20 required notices under the Board's rules. We served
21 those only by paper since they probably would have
22 choked everybody; the set of notices is the required
23 notice for each landowner on the site, and those were
24 filed yesterday, your Honor. And I'll move those

1 notices and have more to say about those later.

2 EXAMINER PRICE: Thank you.

3 Anything else?

4 MR. BENTINE: We have a copy here if
5 anybody needs it. It would have choked anybody to
6 send them --

7 EXAMINER PRICE: Sure.

8 MR. BENTINE: -- electronically.

9 EXAMINER PRICE: Anything else?

10 (No response.)

11 EXAMINER PRICE: Mr. Bentine, call your
12 first witness.

13 MR. BENTINE: Yes, your Honor. At this
14 time I would call on rebuttal Mr. Ivan Clark.

15 EXAMINER PRICE: Let's go off the record
16 for one second.

17 (Discussion off the record.)

18 (Witness sworn.)

19 EXAMINER PRICE: Please be seated. State
20 your name and business address for the record.

21 THE WITNESS: Ivan Clark. My business
22 address is 1801 California Street, Suite 2800,
23 Denver, Colorado.

24 EXAMINER PRICE: Mr. Bentine.

1 MR. BENTINE: Thank you.

2 Your Honor, could we ask that the
3 previously distributed copies of Mr. Clark's
4 testimony, we have a nonconfidential version and a
5 confidential version, I believe we're on No. 16, so
6 perhaps we could mark these as AMP-O Exhibit 16 for
7 the nonconfidential version and perhaps AMP-O Exhibit
8 16C, the "C" representing confidential, for the
9 confidential version?

10 EXAMINER PRICE: It will be so marked.

11 (EXHIBITS MARKED FOR IDENTIFICATION.)

12 - - -

13 IVAN CLARK

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

16 REBUTTAL DIRECT EXAMINATION

17 By Mr. Bentine:

18 Q. Mr. Clark, do you have before you what
19 has now been marked as AMP-Ohio Exhibits 16 and 16C?

20 A. Yes.

21 Q. And could you tell us what those two
22 documents are, please?

23 A. Yes, I have Exhibit 16 and 16C. Those
24 are my rebuttal testimony, and one is confidential

1 and one is not.

2 Q. Now, do you have any additions or
3 corrections to that testimony as we sit here today?

4 A. Yes. I'd like to make one minor
5 correction. On page 2, the very last line --

6 Q. That's 16C?

7 A. Yes, in 16C there's reference to an
8 inflation rate of 2.4 percent.

9 MR. BENTINE: For this correction it's
10 not a confidential number.

11 EXAMINER PRICE: Okay.

12 THE WITNESS: It's just a number. In our
13 analysis that we had supporting the testimony we used
14 2.3 percent, so I want to make sure that's correct.

15 EXAMINER PRICE: Thank you.

16 Q. With that correction, Mr. Clark, if I
17 were to ask you the questions contained in AMP 16 and
18 AMP 16C today here as you're under oath, would your
19 answers be as indicated in AMP-Ohio 16 and 16C?

20 A. Yes, they would.

21 Q. And they would be true to the best of
22 your knowledge and belief?

23 A. Yes.

24 MR. BENTINE: That's all I have for this

1 witness.

2 I would indicate for the record and for
3 your Honors' benefit, as I had indicated we would do
4 if Mr. Fisk withdrew their objection to our putting
5 on rebuttal, I did make my witnesses available for
6 informal discovery and that took place on both
7 Mr. Clark as well as Mr. Meier and Mr. Marquis
8 yesterday by telephone for several hours, and also
9 after our discussion on the telephone with your
10 Honors we made available Mr. Clark's work papers to
11 Mr. Fisk and the citizen groups.

12 EXAMINER PRICE: Thank you.

13 EXAMINER BOJKO: So, Mr. Fisk, are you
14 withdrawing your objection to rebuttal?

15 MR. FISK: As we noted previously, we do
16 not object to the concept of rebuttal, and we
17 understand and realize that the Board allows for
18 rebuttal testimony we believe by both applicants and
19 intervenors.

20 We do maintain our objection with regards
21 to not having discovery, full discovery, of the
22 rebuttal testimony; we believe that that is not
23 proper, that we are entitled to the right to do an
24 actual deposition and do discovery, especially with

1 regards to Mr. Clark's testimony where there's a new
2 cost analysis, and we haven't been able to fully
3 evaluate the various assumptions in that testimony
4 without having full discovery towards that.

5 And we also do maintain our objection
6 with regards to the short period of time to prepare
7 for cross-examination in terms of having three
8 business days to address 40 pages of testimony.

9 EXAMINER BOJKO: But just so the record
10 is clear, when we departed our last day of hearing
11 before the Christmas break, the citizen groups were
12 aware and did agree to a December 28th rebuttal
13 testimony filing date and a January 4th hearing
14 date; is that correct?

15 MR. FISK: Yes. Yes, your Honor, and I
16 believe we did not, I guess we thought rebuttal
17 testimony would have been much more limited and did
18 not realize we would get 40 pages of testimony. It's
19 almost as long as the direct in this proceeding. And
20 to have only three business days given the length of
21 that filing we believe is prejudicial.

22 EXAMINER BOJKO: But you were also aware
23 at that time that there were three witnesses that
24 were going to be presented.

1 MR. FISK: Yes, your Honor.

2 EXAMINER PRICE: As to the discovery
3 issue, just let me note again for the record that we
4 did establish a discovery cutoff in this proceeding
5 and that discovery cutoff was well into the past and,
6 again, there's just no provisions for reopening
7 discovery after that.

8 And with that we will let Mr. Fisk
9 proceed with cross-examination.

10 MR. FISK: We do have one other issue to
11 raise before cross. We object to the claim of
12 confidentiality with regards to the updated cost
13 analysis. We believe this is an updated cost
14 analysis that was in the feasibility study that AMP's
15 own members made public, this is an update of that
16 cost analysis which, therefore, we believe there is
17 not an entitlement to confidentiality on that.

18 We believe the public has a right to have
19 this information, and we'd note that AMP does have
20 the burden of demonstrating their entitlement to
21 confidentiality. We'd be happy to brief that next
22 week if you'd like, but we'd like to note that
23 objection on the record.

24 EXAMINER PRICE: Mr. Bentine.

1 MR. BENTINE: Well, let me say a couple
2 things about that. Number one, our estimates of
3 costs of this AMPGS plant and alternatives including
4 market power have great commercial value to us. To
5 the extent that those that sell us power, and the
6 record in this case is absolutely clear, we are on
7 the market for massive amounts of power and a market
8 that, at least we have indicated, and there's no
9 evidence to the contrary, is one which is increasing
10 and increasingly volatile.

11 So the idea that our numbers with regard
12 to what we think the market prices are going to be
13 and what generation alternatives we might build are
14 going to cost would be available for everybody,
15 including those people that are currently preparing
16 EPC bids for the AMPGS, is highly, highly hurtful to
17 us and I think falls squarely within the trade secret
18 exception under Ohio law.

19 Secondly -- secondly -- I would point out
20 that the citizen groups and those that are allied
21 with them want to use this information to attempt to
22 get every one of our city councils not to go along
23 with this project, and that's really why they want
24 it. They don't want it for this proceeding. They

1 want to be able to use it.

2 So I object. I believe clearly this
3 information does fall within the confidential/trade
4 secret exception for Ohio law for a number of
5 reasons, and the fact that one or more of our
6 municipalities chose to respond to massive public
7 records requests and didn't get all of this redacted
8 I don't think -- with regard to this follow-up
9 study -- makes it in any way a public record.

10 I also may point out that that
11 information was filed in this case without any
12 contact with us to determine whether or not we still
13 had a claim of confidentiality with regard to that.
14 NRDC and Sierra Club simply assumed that because it
15 was released as a public record, that that broke all
16 confidentiality, a position that I don't necessarily
17 agree with.

18 There is inadvertent disclosures in this
19 state and that could have been one, but we didn't get
20 a chance to argue that. So for all those reasons I
21 think that, if that was a motion to remove
22 confidentiality, it should be denied.

23 EXAMINER PRICE: We will deny the motion
24 at this time. The parties can raise this in their

1 briefs before the full board if we ever get to merit
2 briefs, or when we get to merit briefs; the Board
3 will take that up at that point.

4 MR. FISK: Thank you, your Honor.

5 EXAMINER BOJKO: Wasn't the feasibility
6 study in part still under seal in this case?

7 MR. BENTINE: Yes.

8 MR. FISK: In this proceeding it was.
9 The part that was obtained from public records
10 requests, this part, was not confidential.

11 EXAMINER BOJKO: In this proceeding,
12 though.

13 MR. FISK: In this proceeding, yes.

14 EXAMINER BOJKO: It was deemed
15 confidential. When you put it in the record, you
16 marked it as confidential.

17 MR. FISK: I can't remember.

18 MR. BENTINE: The reason that both of us
19 I think are confused, there were portions of those
20 studies that were redacted even from the portion that
21 was the executive summary portion which was the
22 portion that was put in NRDC, Sierra Club, and OEC's
23 motions to intervene, so that had information
24 redacted from it in and of itself.

1 MR. FISK: And that was the portion we
2 got from the city councils.

3 MR. BENTINE: Yes. But we did claim
4 confidentiality on some of that same information that
5 was put in here I believe to be the case.

6 EXAMINER PRICE: All of which is why
7 we'll just deal with this on the briefs and that way
8 we can make sure everybody can keep it straight.
9 That's not something I want to rule on from the bench
10 at this point.

11 MR. FISK: Okay.

12 MR. BENTINE: And it is confusing.

13 MR. FISK: Yes. Thank you, your Honors.

14 - - -

15 REBUTTAL CROSS-EXAMINATION

16 By Mr. Fisk:

17 Q. Hello, Mr. Clark. If you could please
18 turn to page 5 of -- I'm working off your
19 confidential version, but it's not a confidential
20 portion of your testimony. In that top paragraph you
21 describe there what you called the difficulty in
22 predicting cost of emission allowances in a cap and
23 trade system, correct?

24 A. Yes.

1 Q. And you analogize the possible cost of
2 CO2 emissions under a cap and trade system to the
3 cost of SO2 allowances under the SO2 cap and trade
4 system, correct?

5 A. Yes.

6 Q. And the initial cost estimates for an SO2
7 allowance was in the range of \$300 per ton, correct?

8 A. That's correct.

9 Q. And you state that the cost of an SO2
10 allowance gradually declined to less than \$200 per
11 ton and then as low as a hundred dollars per ton,
12 correct?

13 A. Yes.

14 Q. And those prices were in the late-1990s,
15 correct?

16 A. That's correct.

17 Q. And the price of an SO2 allowance today
18 is approximately \$580, correct?

19 A. I believe that's correct; the last I
20 checked.

21 Q. So the price today is approximately
22 double the initial SO2 allowance estimates, correct?

23 A. Yes. Over 12 years it's increased,
24 that's correct.

1 Q. And if you could turn to page 2 of
2 Exhibit 10.

3 MR. BENTINE: This is confidential.

4 EXAMINER PRICE: I don't believe we have
5 anybody in the room that's not subject to the
6 confidentiality agreement. We'll close the door and
7 note in the transcript that we're now in the
8 confidential portion.

9 (CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

Q. (By Mr. Fisk) Page 11 of your testimony you reference that the EPC contract proposals will be received in late-January 2008, correct?

A. Yes. They're scheduled to be received this month, that's correct.

Q. And on the basis of those contract proposals AMP will be issuing an updated cost estimate for the AMP coal plant in February 2008, correct?

A. That's the expectation, that's correct.

Q. The February 2008 cost estimate will not be the final project cost estimate, correct?

A. No, because the open-book design is still to be done, that will refine that cost estimate.

1 Q. And the final project cost estimate won't
2 be issued until early-2009, correct?

3 A. Final cost estimate. I think that may be
4 somewhat misleading to say the "final" cost estimate.
5 To clarify there, we will have an estimated cost
6 based on proposals from vendors this month, that will
7 be evaluated, and we will provide an updated cost
8 estimate for the project.

9 Then the open-book design phase is a
10 eight-month process of doing a preliminary design
11 that's approximately 30 percent of the design of the
12 project. When you go through such detail, you're
13 able, then, to refine the cost estimate for the
14 project, and the expectation then is we will use that
15 cost estimate for final contracting of the EPC
16 contracting.

17 Q. And that final contracting will not occur
18 until early-2009?

19 A. That's correct.

20 Q. So the final cost will not be determined
21 until early-2009.

22 A. Yes. And this is a typical process that
23 you see for design of a facility of this type.

24 MR. FISK: No further questions.

1 EXAMINER PRICE: Thank you.

2 Staff?

3 MR. JONES: No questions, your Honor.

4 EXAMINER PRICE: Mr. Bentine, redirect?

5 MR. BENTINE: If I might have one moment,
6 your Honor.

7 EXAMINER PRICE: Certainly.

8 MR. BENTINE: A couple questions on
9 redirect if I might.

10 - - -

11 REBUTTAL REDIRECT EXAMINATION

12 By Mr. Bentine:

13 Q. Mr. Clark, first of all, I want to take
14 you to page 5 I believe it was. Mr. Fisk asked you a
15 couple questions about where the CO2 values were
16 today versus the numbers that are talked about in
17 your testimony on page 5. Could you talk about some
18 of the things that have happened since 1995 that
19 affects the SO2 allowance cost?

20 A. Yes. In my testimony I noted there were
21 a variety of variables that affect a cap and trade
22 program, and those are noted in the response on
23 question 9 in my testimony.

24 What happened in 1995 in the cap and

1 trade program was existing facilities were issued
2 allowances for their emissions, and some -- depending
3 on the nature of, well, in this case in SO2, some
4 facilities got more allowances than others, some
5 facilities installed scrubbers, some did not, some
6 used various alternatives to control their emissions,
7 but the bottom line is the way the legislation, I'm
8 sorry, the way the regulations were set up, the
9 market responded by going lower, and that's just
10 because of the mechanisms that were set up in the
11 regulations.

12 That is very likely to be something
13 similar to what we're going to see on CO2. We're
14 going to see a variety of variables affecting the
15 market price, how many allowances the individual
16 sources would get, allowances that new facilities
17 would get, credits for renewables, offset emissions
18 by certain types of CO2 offsets, all of those are
19 going to be variables that are going to be important
20 to how the market responds.

21 I wanted to illustrate what happened on
22 SO2 because it's the best example of why cap and
23 trade works fairly effectively.

24 Now, I should comment, today you

1 commented that today's price is 500. Well, it
2 responded very quickly, in a matter of months, two
3 years ago because of some declaration of different
4 entities responding to new CAIR regulations. It
5 stayed flat, though, for the last year and a half
6 now, fairly flat, and that's probably because various
7 sources are holding allowances in preparation for
8 what occurs in 2010.

9 So it really is a very dynamic situation
10 with a cap and trade program. So there's lots of
11 variables that could affect pricing, and for us to
12 predict how it's going to respond in the future for
13 CO2 is extremely difficult.

14 Q. What's CAIR?

15 A. CAIR is the Clean Air Interstate Rule,
16 that is a new regulatory program issued by EPA, a
17 regulation by EPA that mandates existing power plants
18 further reduce SO2 in 2010.

19 Q. And what's the magnitude, approximately,
20 of that reduction, if you know?

21 A. It's 60 percent reduction from current
22 levels, I believe.

23 Q. Mr. Clark --

24 MR. BENTINE: And this is going to be

1 confidential; if we could.

2 EXAMINER PRICE: Let's go on the
3 confidential portion of the transcript.

4 MR. BENTINE: And it will be pretty
5 quick. I'll watch out for somebody at the door to
6 save you the walk.

7 (CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

EXAMINER PRICE: Mr. Fisk, recross?

MR. FISK: Just a couple questions.

- - -

REBUTTAL RECROSS-EXAMINATION

By Mr. Fisk:

Q. You referenced CAIR being more stringent than the initial SO2 cap and trade program, correct?

A. That's correct.

Q. So the fact that it was more stringent has driven up the prices of allowances for SO2?

A. It did affect the pricing of allowances, that's correct.

Q. And made them higher, correct?

A. Correct.

Q. And turning to page 1 of IC-10.

MR. FISK: I guess we're back on confidential.

EXAMINER PRICE: Let's go back on the confidential portion of the transcript.

(CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

EXAMINER PRICE: Nothing I say will reveal details, but on Exhibit IC-10, have portions of that previously been given to NRDC?

MR. BENTINE: IC-10 in terms of the numbers were given to NRDC the last day of hearing, and there are a couple of words changed on it; the only reason I say that. But in substantive form it was given to them that day.

EXAMINER PRICE: That's when it was given to them.

MR. BENTINE: And then, of course, the

1 few word changes that are on here, I think that it
2 says "attorney requested work product" instead of
3 "attorney work product" on this one, and there may be
4 a couple page numbers added, but other than that,
5 this was given to them that last day of hearing.

6 EXAMINER PRICE: Okay.

7 MR. BENTINE: In its entirety.

8 EXAMINER PRICE: Not previously
9 discovered.

10 MR. BENTINE: Not previously discovered.
11 It was given voluntarily to NRDC and citizen groups.

12 EXAMINER PRICE: Thank you.

13 MS. MALONE: Could I just ask a
14 clarifying follow-up question?

15 EXAMINER BOJKO: Yes, but you're going to
16 have to speak up because the heater kicked in.

17 MS. MALONE: Maybe we could just read
18 back his last question and answer because -- maybe I
19 heard it wrong.

20 EXAMINER PRICE: Let's have back the last
21 question and answer.

22 (Record read.)

23 MS. MALONE: Okay. And you could tell he
24 was asking a question with regard to page 1 of the

1 exhibit?

2 MR. BENTINE: Yeah, that was clear.

3 MS. MALONE: No questions.

4 EXAMINER PRICE: I have no questions,
5 Mr. Clark. You may step down.

6 (Witness excused.)

7 MR. FISK: Can we go off the record?

8 EXAMINER PRICE: Pardon me?

9 MR. FISK: Can we go off the record?

10 EXAMINER PRICE: Sure. Five-minute
11 break.

12 (Recess taken.)

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

15 Mr. Bentine, next witness.

16 MR. BENTINE: Yes, your Honor, at this
17 time we would call on rebuttal Mr. Larry Marquis,
18 please.

19 (Witness sworn.)

20 EXAMINER PRICE: Please be seated. State
21 your name and business address for the record.

22 THE WITNESS: Name's Larry Marquis,
23 business address, 2600 Airport Drive in Columbus,
24 Ohio.

1 EXAMINER PRICE: Mr. Bentine, please
2 proceed.

3 MR. BENTINE: Yes. Mr. Marquis, would
4 you -- before we do that, could we have what we have
5 in front of us and was previously distributed as
6 Rebuttal Testimony of Larry Marquis marked as AMP-O
7 17, please?

8 EXAMINER PRICE: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 - - -

11 LARRY MARQUIS

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

14 REBUTTAL DIRECT EXAMINATION

15 By Mr. Bentine:

16 Q. Now that we have that marked,
17 Mr. Marquis, do you have in front of you a copy of
18 what has been marked as AMP-Ohio Exhibit 17?

19 A. I do not.

20 Q. You do?

21 A. I do not.

22 Q. Oh, you do not.

23 MR. BENTINE: If I might approach, your
24 Honor.

1 EXAMINER PRICE: You may.

2 MR. BENTINE: I told the witness not to
3 take anything to the stand with him and he believed
4 me.

5 Q. Now do you have a copy of what has been
6 marked as AMP-O 17?

7 A. I do.

8 Q. Thank you.

9 And what is that document, please?

10 A. A copy of my rebuttal testimony.

11 Q. And do you have any additions or
12 corrections to that testimony as we sit here today?

13 A. No, I do not.

14 Q. If I were to ask you the questions
15 contained in what has now been marked as AMP-O
16 Exhibit 17, Mr. Marquis, would your answers be as
17 contained in AMP-O 17?

18 A. Yes, they would.

19 Q. And would they be true to the best of
20 your knowledge and belief?

21 A. Yes.

22 MR. BENTINE: Mr. Marquis is available
23 for cross-examination.

24 EXAMINER PRICE: Mr. Fisk.

1 MR. FISK: Thank you.

2 - - -

3 REBUTTAL CROSS-EXAMINATION

4 By Mr. Fisk:

5 Q. Good morning, Mr. Marquis.

6 A. Good morning.

7 Q. You testified that for wind generation
8 and landfill gas generation, transmission and grid
9 access can be expensive, correct?

10 A. I do.

11 Q. Transmission and grid access can be
12 expensive for coal-fired generation also, correct?

13 A. That's correct.

14 Q. Transmission and grid access would not be
15 expensive for energy efficiency alternatives,
16 correct?

17 A. That's correct.

18 Q. And why not?

19 A. Energy efficiency alternatives are
20 affecting the end use of energy consumption and,
21 therefore, should be reducing the reliance on the
22 transmission system and distribution systems.

23 Q. And for wind generation AMP-Ohio has only
24 one operating wind farm, correct?

1 A. That's correct.

2 Q. And AMP is only directly involved in
3 three other wind farms?

4 A. That is the only wind farm that we
5 currently have in operation.

6 Q. AMP is currently involved in proposed
7 wind farms, three other proposed wind farms?

8 A. That is correct.

9 Q. Are they currently operational?

10 A. No.

11 Q. Do you know when they will go on line?

12 A. We are --

13 MR. BENTINE: You're going to have to
14 keep your voice up, Mr. Marquis, I think Mr. Fisk as
15 well, because I think you two are having trouble
16 hearing each other.

17 A. We are working on one in Berlin,
18 Pennsylvania, that should be on line in 2010, another
19 one that may be on by that time, although we don't
20 have a definite schedule for the other two, for the
21 other two wind farms that we're working on.

22 Q. And those other two are Great Lakes and
23 Clyde?

24 A. Yes.

1 Q. And so those two are not definite.

2 A. They are in the wind monitoring and
3 project development phases right at the moment.

4 Q. So it's still too early to tell if those
5 two projects will go on line?

6 A. That's correct.

7 Q. And AMP-Ohio is not directly involved in
8 any other wind projects?

9 A. Not directly involved.

10 Q. So the other projects referenced in your
11 testimony are being initiated by AMP's members?

12 A. We have a number of AMP members that are
13 monitoring for wind feasibility and are in various
14 stages of that, yes.

15 Q. Those projects weren't initiated by AMP.

16 A. No, they were not.

17 Q. And did you discuss renewables with R.W.
18 Beck with respect to the proposed AMP coal plant?

19 A. No, I did not.

20 Q. In your answer to question 5 of your
21 testimony you stated that the purpose of your
22 rebuttal testimony is, quote, "To rebut
23 Mr. Schlissel's argument that AMP-Ohio has not
24 considered 'other alternatives'"; is that correct?

1 A. That's correct.

2 Q. Is it your opinion that AMP has
3 considered other alternatives?

4 A. Not only have we considered other
5 alternatives, we have them in operation.

6 Q. And as part of your job are you -- you
7 are responsible for energy conservation and energy
8 efficiency for AMP-Ohio?

9 A. For a portion of the activities that go
10 on in AMP-Ohio related to energy efficiency.

11 Q. And with respect to energy efficiency,
12 you work with member communities in the industrial
13 sector by making efficiency recommendations about
14 lighting and compressed air; is that correct?

15 A. That's correct.

16 Q. AMP-Ohio doesn't have an efficiency
17 program for appliances, correct?

18 A. Not directly, no, we do not.

19 Q. And AMP-Ohio doesn't currently have an
20 energy efficiency incentive program for residential
21 customers, correct?

22 A. No, we do not.

23 Q. And with regards to energy efficiency,
24 you haven't considered programs that other companies

1 are implementing, correct?

2 A. Not at the present time, although we do
3 have a study ongoing now with a consultant who is
4 analyzing various energy efficiency and conservation
5 options that we could offer our members who could
6 offer that to their end-use customers.

7 Q. And that program is just beginning right
8 now?

9 A. Yes.

10 Q. And for energy efficiency you haven't
11 considered programs from the U.S. Department of
12 Energy and U.S. EPA's National Action Plan on Energy
13 Efficiency, correct?

14 A. Correct.

15 Q. And for energy efficiency you haven't
16 considered programs from the American Council for an
17 Energy Efficient Economy, correct?

18 A. That's correct.

19 Q. And once implemented, savings from energy
20 efficiency programs begin immediately, correct?

21 A. Yes.

22 MR. FISK: Nothing further.

23 EXAMINER PRICE: Staff?

24 MR. JONES: No questions, your Honor.

1 EXAMINER PRICE: Mr. Bentine.

2 MR. BENTINE: Yes.

3 - - -

4 REBUTTAL REDIRECT EXAMINATION

5 By Mr. Bentine:

6 Q. You indicated in response to Mr. Fisk
7 that AMP-Ohio had only one wind farm. How many
8 utility commercial wind farms are there in Ohio
9 currently?

10 A. That's the only one.

11 Q. I want to ask a couple questions about,
12 you indicated in response to a question by Mr. Fisk,
13 talked about landfill gas and wind can be expensive
14 to connect to the grid. Do you recall that?

15 A. Yes.

16 Q. On a per kW or per kWh basis, is that the
17 relative expense that you were talking about in that
18 answer?

19 A. Yes.

20 Q. And could you expand on that as
21 comparing, for example, the relatively small megawatt
22 and megawatt-hours that one might get out of landfill
23 gas versus a larger baseload generation such as a
24 coal generation in terms of connecting to the grid

1 and the cost for transmission and distribution per kW
2 or kWh?

3 A. Whereas with landfill gas, wind
4 generation, those are typically smaller size of farms
5 in terms of kilowatts, and at the same time their
6 cost to interconnect to the transmission system is
7 significantly less than it would be for a coal-fired
8 power plant such as AMPGS.

9 When you have a large coal-fired power
10 plant, you may spend tens of millions of dollars
11 connecting to the system. For a smaller renewable
12 project you may only spend a million or less,
13 perhaps. But on a per-unit basis, per kilowatt the
14 cost can be comparable, however, typically for a
15 smaller unit, when you get smaller units, the
16 transmission per unit is usually a little bit larger.

17 EXAMINER BOJKO: Are you saying that the
18 equipment or the process to connect will be similar
19 for a coal plant versus a wind or landfill gas, it's
20 just because of the lower number of kilowatts the
21 price per kilowatt is higher to connect?

22 THE WITNESS: Correct.

23 Q. Mr. Fisk asked you a couple questions
24 about what your responsibilities were with regard to

1 conservation at AMP-Ohio; could you expand on what
2 your responsibilities are in that regard?

3 A. Within AMP-Ohio my department provides
4 energy conservation -- energy efficiency audits for
5 industrial customers and business customers of our
6 member communities. As part of that we contact the
7 industrial customers with our member communities,
8 provide an energy audit that looks at their
9 compressed air leaks, looks at their lighting, looks
10 at their motors, and makes recommendations to those
11 industries and businesses for efficiency improvements
12 and thereby encouraging them to save energy by
13 improving the efficiencies, and they also save money.

14 Q. Does AMP-O track those savings?

15 A. We do.

16 Q. And can you tell us what, for example,
17 the last -- give us some estimate of what those
18 savings have been?

19 A. In the last -- in about the last year our
20 recommendations have shown that the industry could
21 save about 3 million dollars from improving their
22 energy efficiency.

23 Q. Now, you're Vice President of Technical
24 Services?

1 A. Correct.

2 Q. And does your shop also do system
3 improvements for our member systems?

4 A. We do.

5 Q. And could you tell us what system
6 improvements might have to do with energy efficiency?

7 A. We are responsible for assisting our
8 members with improving their systems by replacing
9 old, worn-out conductors, for example, and
10 transformers with perhaps larger conductors, better
11 transformers that reduce their line losses within
12 their systems. In doing so, you know, we can usually
13 obtain a percent or 2 of energy efficiency
14 improvement for our systems by making those
15 improvements.

16 Q. Now, does AMP-Ohio have any retail
17 electric customers?

18 A. We have no retail customers.

19 Q. And does AMP-O have the ability to
20 directly contact retail customers of its members
21 other than through its members?

22 A. No, we do not. Our members definitely
23 want us to work with our members in order to work
24 with their customers.

1 EXAMINER BOJKO: And just to be clear,
2 the members you're referencing are the actual
3 communities.

4 THE WITNESS: Our member communities,
5 yes.

6 Q. Now, others at AMP-Ohio are responsible
7 for the noncommercial/industrial and nonmember system
8 improvement kinds of energy efficiencies?

9 A. Yes.

10 Q. And that's not under your supervision?

11 A. That is not.

12 Q. So you can't testify as to some of those
13 other things as we sit here today.

14 A. No, I can't.

15 MR. BENTINE: Just a moment.

16 Q. Mr. Fisk asked you a couple questions
17 about whether or not a particular project was
18 initiated by AMP-Ohio or its members. Do you recall
19 that?

20 A. Yes.

21 Q. Is that uncommon for members to ask
22 AMP-Ohio to help with projects that they believe are
23 appropriate?

24 A. Our members don't necessarily contact

1 AMP-Ohio to investigate projects, especially within
2 their local utilities that they want us to look at,
3 although we are there to support them. If they do
4 ask, we will certainly step up to help them.

5 Q. And that's true with landfill gas, wind,
6 and other kinds of potential resources?

7 A. Any kinds of services that we might offer
8 to our members we're there to support them, yes.

9 MR. BENTINE: That's all I have.

10 EXAMINER PRICE: Mr. Fisk?

11 MR. FISK: Nothing further.

12 EXAMINER BOJKO: There were some
13 questions asked by Mr. Fisk regarding energy
14 efficiency and what AMP-Ohio is doing with regards to
15 energy efficiency. In your opinion, could the load
16 that is being expected to be fulfilled by this plant
17 be met by energy efficiency, energy efficiency
18 programs or any kind of energy efficiency efforts?

19 THE WITNESS: My opinion is it could not,
20 definitely not, it's an important function, that
21 there's just not enough there to supply a thousand
22 megawatts of energy to our members.

23 EXAMINER BOJKO: And what about for wind,
24 could using all wind meet that kind of capacity that

1 would be produced by the AMPGS?

2 THE WITNESS: No.

3 EXAMINER BOJKO: That's all I have.

4 EXAMINER PRICE: You may step down.

5 (Witness excused.)

6 MR. BENTINE: If we could have two
7 minutes, Mr. Meier just showed up.

8 EXAMINER PRICE: We're going to go off
9 the record for about five minutes.

10 (Recess taken.)

11 EXAMINER BOJKO: Let's go back on the
12 record.

13 Mr. Meier has come up to the stand.
14 Mr. Meier, could you raise your right hand?

15 (Witness sworn.)

16 EXAMINER BOJKO: Could you please state
17 your name and your address for the record?

18 THE WITNESS: Sure. My name is Phillip
19 E. Meier, and my business address is 2600 Airport
20 Drive, that's Columbus, Ohio 43219.

21 EXAMINER BOJKO: Mr. Bentine.

22 MR. BENTINE: Thank you.

23 Mr. Meier, I'm going to ask that the
24 nonconfidential version of your testimony be marked

1 as AMP-O Exhibit 18.

2 EXAMINER BOJKO: It will be so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. BENTINE: And ask that the
5 confidential version of your testimony be marked as
6 AMP-O Exhibit 18C.

7 EXAMINER BOJKO: It will be so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 - - -

10 PHILLIP E. MEIER

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

13 REBUTTAL DIRECT EXAMINATION

14 By Mr. Bentine:

15 Q. Mr. Meier, do you have in front of you
16 what has been marked as AMP-O Exhibits 18 and 18C?

17 A. Yes, that's correct.

18 Q. And what are those, please?

19 A. That's my direct testimony in regard to
20 the rebuttal for this case.

21 Q. Mr. Meier, do you have any corrections to
22 this testimony?

23 A. I do under just question 4Q, the last
24 sentence, I was with the Honeywell Corporation from

1 1985 to 1987-'88 time frame, I'm not exactly a
2 hundred percent sure on the date which I ended there.

3 EXAMINER BOJKO: And that would be the
4 same for both your nonconfidential version as well as
5 the confidential version?

6 THE WITNESS: Yes.

7 Q. With that modification to Exhibits 18 and
8 18C, Mr. Meier, if I were to ask you the questions
9 contained in those exhibits here on the stand while
10 you're under oath today, would your answers be as
11 contained therein?

12 A. Yes, they would.

13 Q. And would they be true to the best of
14 your knowledge and belief?

15 A. Yes, they would.

16 MR. BENTINE: That's all I have on direct
17 for Mr. Meier. He's available for cross-examination.

18 EXAMINER BOJKO: Mr. Fisk.

19 MR. FISK: Thank you, your Honors.

20 - - -

21 REBUTTAL CROSS-EXAMINATION

22 By Mr. Fisk:

23 Q. Good morning, Mr. Meier.

24 A. Good morning.

1 Q. If you could turn to page 3 of your
2 testimony, question 10 -- I'm working off the
3 confidential one but it's a nonconfidential portion.

4 A. Okay.

5 Q. And you discuss here the environmental
6 advantages of hydro resources, correct?

7 A. Right.

8 Q. And if you flip the page to the top of
9 page 4, you state that one of the advantages of hydro
10 generation is it did not produce any air emissions
11 such as SO2, NOx, or CO2, correct?

12 A. Correct.

13 Q. And you testify that the lack of CO2
14 emissions from hydro, therefore, provides
15 environmental benefits, correct?

16 A. Correct.

17 Q. And one of the environmental benefits of
18 avoiding CO2 emissions is reducing global warming,
19 correct?

20 MR. BENTINE: Objection.

21 EXAMINER BOJKO: Basis?

22 MR. BENTINE: I don't think there's any
23 foundation that Mr. Meier is a global warming expert,
24 certainly nothing in his rebuttal on this. And I

1 might add that on rebuttal the scope of
2 cross-examination is necessarily more narrow under
3 Ohio rules than a direct witness. In other words,
4 it's not "any" relevant evidence, it's limited to the
5 scope of rebuttal.

6 EXAMINER BOJKO: Mr. Fisk.

7 MR. FISK: Mr. Meier's rebuttal testimony
8 specifically states that the fact that hydro does not
9 emit CO2 provides an environmental benefit, and I'm
10 trying to determine what environmental benefit he's
11 referring to.

12 EXAMINER BOJKO: I'm going to overrule
13 the objection. I think that if Mr. Meier knows, he
14 can explain more of what he meant by "environmental
15 benefits."

16 A. Sure. My testimony is that to the extent
17 that there was a future impact associated with CO2,
18 some other allowance impact that was associated with
19 hydro, because it wouldn't produce any CO2, wouldn't
20 be as impacted by that.

21 Q. And when you say "impact," you're
22 referring to cost impact?

23 A. Cost or any other associated impact
24 associated with it.

1 Q. But here you refer to environmental
2 benefit, and so what environmental benefit are you
3 referring to?

4 A. Well, to the extent that there was a
5 detriment caused by CO2 and the fact that the hydro
6 didn't produce it, that would be the environmental
7 benefit.

8 Q. Do you know if there's an environmental
9 impact or detriment caused by CO2?

10 A. I do not.

11 Q. Do you have an opinion as to whether
12 there is one?

13 MR. BENTINE: Objection.

14 EXAMINER BOJKO: I think he just answered
15 that question. Sustained.

16 MR. FISK: Your Honor, he stated that
17 there is an environment benefit.

18 EXAMINER BOJKO: No. No. He just
19 answered the question that he didn't know.

20 Can you reread the question and answer,
21 please?

22 (Record read.)

23 Q. Have you seen studies that suggest that
24 there's an environmental impact of CO2?

1 MR. BENTINE: Objection.

2 EXAMINER BOJKO: I'm going to allow it.
3 Overruled. If he knows. Or I think the question was
4 "Have you seen studies."

5 A. I have not.

6 Q. Do you know anything about the
7 environmental impacts of CO2 emissions?

8 MR. BENTINE: Objection.

9 A. General knowledge that I --

10 MR. BENTINE: Objection.

11 EXAMINER BOJKO: He can answer as to
12 whether he knows; I think that was the question.

13 Do you know anything about the
14 environmental impacts of CO2 emissions?

15 THE WITNESS: General public knowledge
16 would be the extent of my knowledge of CO2.

17 Q. And what is that general public
18 knowledge?

19 MR. BENTINE: Objection.

20 EXAMINER BOJKO: What's your basis?

21 MR. BENTINE: I think we've gone as far
22 on this issue as we ought to go. Now, we've
23 already -- he's indicated that the only thing that he
24 might know is some general public knowledge, and he's

1 not here testifying on general public knowledge, he
2 shouldn't, he's here testifying about hydroelectric.

3 I think we've gone as far as we ought to
4 go on this. This witness has indicated he's not an
5 expert, he doesn't know, and in answer to the last
6 question the only thing he said he does know is
7 what's general public knowledge about that, which I
8 don't think that gets us anyplace in terms of this
9 proceeding any more than a public witness testifying
10 down in Meigs County in the public hearing.

11 EXAMINER BOJKO: Mr. Fisk, do you have a
12 response?

13 MR. FISK: Your Honor, he stated that the
14 fact that hydro does not emit CO2 provides an
15 environmental benefit, in his testimony, and now he's
16 saying that he doesn't --

17 EXAMINER PRICE: I understand, but,
18 Mr. Fisk, it seems to me all you're doing is
19 impeaching his credibility for making that statement,
20 and I'm not sure what benefit that does for your side
21 of the case.

22 MR. FISK: Well, I'm trying to figure
23 out --

24 EXAMINER PRICE: If he wasn't qualified

1 to say it made CO2, then, you know, certainly you've
2 impeached his credibility on that and the Board would
3 consider that as the weight or the value of that
4 particular portion of his statement, but I think
5 that's all you're going to be able to do with it.

6 EXAMINER BOJKO: Let's ask Mr. Meier one
7 more time. I think he said this.

8 What was the underlying premise for your
9 statement that it would provide environmental
10 benefit?

11 THE WITNESS: The fact that the plants
12 don't produce SO2, NOx, or CO2, none of the hydro
13 plants produce that, and to the extent that in the
14 future there was some CO2 impact that came out or
15 that was developed legislatively, that because the
16 hydros don't produce that, that they would benefit as
17 a result or provide that environmental benefit.

18 EXAMINER BOJKO: If you have another
19 question based on his underlying knowledge of his
20 statement, ask it, but other than that, I think we
21 need to move forward.

22 MR. FISK: And as for the pending
23 question regarding what the general public knowledge
24 that he referred to is?

1 EXAMINER BOJKO: I'm going to sustain the
2 objection. I think you can ask him about his
3 knowledge of why he wrote that statement in his
4 capacity of his testimony.

5 EXAMINER PRICE: I'd like to go off the
6 record for one minute.

7 (Discussion held off the record.)

8 EXAMINER PRICE: Let's go back on the
9 record.

10 Q. (By Mr. Fisk) You testified that AMP has
11 negotiated leases for three hydro projects and is
12 pursuing two others, correct?

13 A. That's correct.

14 MR. BENTINE: Excuse me, leases or -- did
15 you say "leases" or "licenses"?

16 MR. FISK: I meant licenses.

17 A. Licenses, yeah.

18 Q. Okay. And AMP-Ohio didn't evaluate using
19 wind as a firming source in evaluating these hydro
20 projects, correct?

21 A. That is correct.

22 EXAMINER PRICE: I'm sorry, can I have
23 that question again please, and answer.

24 (Record read.)

1 Q. And AMP-Ohio didn't consider using
2 natural gas as a firming source in evaluating hydro
3 projects, correct?

4 A. I think early on we looked at differing
5 options for firming the hydro capacity, but in the
6 end we decided that it probably wasn't economical to
7 do that to the hydro facilities.

8 Q. And natural gas was one of the options
9 you considered as a firming source?

10 A. You know, it's been long enough I don't
11 recall if natural gas was.

12 Q. And in evaluating the feasibility of
13 hydro projects AMP did not factor in carbon costs,
14 correct?

15 A. I think it states that in the feasibility
16 study, that we didn't project any carbon impact.

17 Q. And the only discussions you had with
18 R.W. Beck regarding hydro and the proposed AMP coal
19 plant is that you provided R.W. Beck with cost
20 estimates for the hydro proposals, correct?

21 A. I provided them a cost analysis
22 associated with the hydro projects, that's correct.

23 Q. And you weren't involved in the planning
24 process for the AMP coal plant, correct?

1 A. That is correct.

2 Q. You started serving as AMP's Director of
3 Information Systems in 2000, correct?

4 A. Yeah, within a year, that's correct.

5 Q. You were in that position for three
6 years, correct?

7 A. Yes.

8 Q. And then your position changed to Chief
9 Information Officer, correct?

10 A. That's correct.

11 Q. And you served in that position until
12 July 2007, correct?

13 A. Correct.

14 Q. And in those positions from 2000 to July
15 2007 you were responsible for AMP's information
16 systems and telecommunications, correct?

17 A. That's correct.

18 Q. And during that 2000 to 2007 time frame
19 you spent at best 5 percent of your time on hydro
20 projects, correct?

21 A. Yeah, and that may be a little higher
22 percentage as it got closer to the late-2006/
23 early-2007 time frame.

24 Q. And aside from your work at AMP-Ohio you

1 have no other past work experience in hydro power,
2 correct?

3 A. That is correct.

4 Q. And no other past experience with
5 renewable energy, correct?

6 A. That is correct.

7 Q. And you're not a registered professional
8 engineer in any state, correct?

9 A. That is correct.

10 Q. And you testified that hydro power is
11 less affected by inflationary pressure than most
12 other types of generation, correct?

13 A. That is correct.

14 Q. And in making that statement do you
15 consider coal one of those other types of generation?

16 A. I would say that any other type of source
17 that has a fuel component to it, that would be
18 correct.

19 Q. And that would include coal?

20 A. Coal, yes.

21 MR. FISK: Nothing further.

22 EXAMINER BOJKO: Mr. Bentine, redirect?

23 MR. BENTINE: Yes, your Honor.

24 EXAMINER BOJKO: I'm sorry.

1 MR. JONES: No questions.

2 MR. BENTINE: I'm sorry.

3 - - -

4 REBUTTAL REDIRECT EXAMINATION

5 By Mr. Bentine:

6 Q. Mr. Meier, let's go at this a little
7 backwards. Mr. Fisk asked you about your hydro
8 experience.

9 A. Yes.

10 Q. In the last -- well, strike that. Let me
11 ask the question this way: Approximately how many
12 unconstructed licenses are there on the Ohio River
13 for hydroelectric facilities to be put in at existing
14 locks and dams?

15 A. There may be somewhere between 10 and 15
16 in various states of issuance.

17 Q. And since 1990 how many of those have
18 been built?

19 A. One, only one, the Belleville hydro
20 project.

21 Q. And who was the project manager on the
22 Belleville hydro project?

23 A. I was.

24 Q. And could you expand a bit on what your

1 experience was as the manager of the Belleville hydro
2 project starting at its inception?

3 A. Yes. I started in late-'91/early-'92 on
4 the environmental compliance side in the Federal
5 Energy Regulatory Commission license aspect of it;
6 from there we went into the marketing phase where we
7 marketed to Ohio's municipalities; and then after the
8 marketing phase we went through a 18- to 24-month
9 design and engineering phase as well as FERC
10 licensing phase; and then the construction phase
11 lasted approximately four years.

12 And then in the postconstruction,
13 preoperation, and early operation phases I was
14 involved in that facility.

15 Q. And what was the approximate budget of
16 that project?

17 A. It was approximately 153,415,000 I think
18 was the last official statement.

19 Q. And you were project manager on that.

20 A. That is correct.

21 Q. And has that project been a success?

22 A. It has been, yes.

23 Q. How do you define "success" when you
24 answer that question?

1 A. Success, I define it as the plant coming
2 on line, producing its projected annual energy, and
3 providing that to member communities throughout Ohio.

4 Q. Can you tell me, with regard to firming
5 up, to use Mr. Fisk's phrase, was there a firming up
6 of the Belleville hydro project capacity?

7 A. There was through backup generation that
8 was provided as part of that project.

9 Q. And why was that done?

10 A. The Ohio River hydro plants have an
11 average annual capacity factor of between 50 and
12 60 percent, and with the plant being the
13 run-of-the-river type of facility, there's times of
14 extreme low flows and high flows when the plant is
15 not generating, which amounts to that 45 percent of
16 the time. The result is, is that the plant doesn't
17 produce any output or produces a reduced output other
18 than its capacity rating.

19 So the backup generation is to provide
20 some firming of that when the plant is not producing
21 its full capacity.

22 EXAMINER BOJKO: What type of generation?

23 THE WITNESS: For the backup?

24 EXAMINER BOJKO: Yes.

1 THE WITNESS: It was diesel generating
2 units.

3 Q. At the time the Belleville project was
4 constructed did AMP-Ohio own a lot of peaking
5 generation?

6 A. Early on in that time frame we had some
7 peaking generation in Cuyahoga Falls, but it was
8 small compared to the peaking generation we have
9 today.

10 Q. Now, as AMP-Ohio approached the current
11 projects that you testify about in Exhibits 18 and
12 18C, you indicated that you did consider looking at
13 some firming capacity for those projects, correct?

14 A. Correct.

15 Q. Could you tell the administrative law
16 judges in more detail exactly why AMP-O determined
17 not to firm these three projects?

18 A. Sure. The main reason was the hydros are
19 pretty capital-intensive projects, and adding the
20 additional cost of providing the firming for the
21 hydro plants themselves would simply raise the entire
22 cost of the project significantly and the result of
23 which may have made some members choose not to
24 participate because of the cost associated with it.

1 And we saw the hydros as maybe being a
2 little bit more of an easier sell to our participants
3 if it was just the hydro capacity itself.

4 EXAMINER BOJKO: What type of firming did
5 you look into for those three?

6 THE WITNESS: The firming I recall
7 looking at was some existing diesel units we had, and
8 because AMP-Ohio had a lot of existing peaking
9 generation already, there was some belief that maybe
10 some of that peaking capacity could be used to
11 provide that firming capacity for the hydro projects
12 without purchasing new -- additional new backup or
13 peaking capacity.

14 Q. And that additional peaking capacity is
15 diesel and natural gas?

16 A. Yes.

17 Q. Now, Mr. Meier, other than simply your
18 efforts as project manager for the Belleville project
19 and as project manager for the ongoing projects, you
20 have stayed in touch with hydro developments in the
21 United States; have you not?

22 A. I have.

23 Q. And during that time in which you were
24 the chief information officer did AMP-O investigate

1 new or different technologies for hydro?

2 A. We did, we looked at some concepts that
3 were proposed by the manufacturer for, it was called
4 Hydro Matrix, which was a lot of small microturbines
5 placed in the plants and the resultant outcome that
6 turned out to be not feasible.

7 Q. And you were in charge of that even
8 though your title was Chief Information Officer,
9 correct?

10 A. Yes, that is correct.

11 Q. Now, at least by his question Mr. Fisk
12 has suggested that perhaps AMP-O should have looked
13 at wind as a firming resource for the hydro; do you
14 believe that that would be prudent?

15 A. No, I do not.

16 EXAMINER PRICE: Could you expand on why
17 you don't think that would be prudent?

18 THE WITNESS: Yeah. We have four
19 existing wind turbines in northwest Ohio and the
20 annual capacity factor on those is about 25 percent.
21 If you look at the hydros producing at 50 percent,
22 the three plants combined are about 191 megawatts.

23 Well, the cost to put in that much wind
24 capacity with only a 25 percent capacity factor on

1 the plants really wouldn't have provided a
2 significant benefit for firming up the hydro capacity
3 itself.

4 The second factor is the wind wouldn't
5 necessarily be dispatchable because you couldn't
6 predict necessarily when the winds were going to
7 generate their full capacity amount. For those two
8 reasons it probably wouldn't be economical.

9 EXAMINER PRICE: So it is possible there
10 are times when neither resource would be available.

11 THE WITNESS: That is correct.

12 Q. And to follow up, Mr. Meier, neither the
13 hydro, run-of-the-river hydro as we have here in the
14 midwest, nor the wind is dispatchable, correct?

15 A. That is correct.

16 MR. BENTINE: That's all I have for
17 Mr. Meier.

18 EXAMINER BOJKO: Any recross, Mr. Fisk?

19 MR. FISK: Nothing.

20 EXAMINER BOJKO: Anything from staff?

21 MR. JONES: No.

22 EXAMINER BOJKO: I have a few questions.

23 - - -

24

REBUTTAL EXAMINATION

By Examiner Bojko:

Q. I'm not sure if you were here for the previous witness, Mr. Meier, but I'm going to ask you the same question. Could all hydro meet the load that's expected to be fulfilled by the new AMPGS plant?

A. I don't think there's enough capacity in the midwest that could meet that need.

Q. And turning specifically to page 3 of your testimony, the confidential version I believe --

A. Okay.

Q. -- the answer to question 9, you reference studies and analyses described by Clark and Kiesewetter.

A. That's correct.

Q. Were you just speaking generally about their testimony, or were you referencing specific studies?

A. My recollection was R.W. Beck was hired to do a load study, a member study, so my recollection is that that was looked at in that study, but that's the extent of my knowledge.

EXAMINER PRICE: You're referencing the

1 power supply plans that they prepared.

2 THE WITNESS: Yes.

3 Q. Now I'd like to talk a few minutes about
4 the FERC license process and the hydro licenses in
5 general because I'm not quite as familiar with hydro.
6 You talked about there were 16 licenses and that
7 you're pursuing to try to obtain those or take those
8 away from somebody else that currently owns them.

9 Explain to me, does FERC only issue so
10 many at a time? Are there only 16 available? Or is
11 it just at this time there are 16 available? What
12 does that mean?

13 A. Sure. In 1989 the FERC looked at 16
14 hydro projects in the upper Ohio River basin --

15 MR. BENTINE: And could you keep your
16 voice up, Mr. Meier?

17 THE WITNESS: Sure.

18 -- and when those 16 projects were
19 issued, some of the projects went forward through
20 marketing phases and some preliminary design phases,
21 but in the early-'90s the only project that went
22 forward was the Belleville project of those 16.
23 Various developers weren't able to market those to
24 people that wanted the power, and so their licenses

1 kind of laid dormant.

2 And then FERC more recently started
3 terminating some of those licenses because nothing
4 had happened with them for such a long time, and we
5 didn't actively or aggressively try to acquire the
6 licenses as much as developers approached us, had
7 interest in selling us in marketing the capacity, and
8 we proceeded with Smithland and Cannelton that way.

9 Recognizing the value here in the 2006
10 time frame, then we started seriously looking at
11 those projects that the licenses had expired and were
12 now available for development, and so we pursued one
13 project, the R.C. Byrd project, which is at the
14 Gallipolis lock and dam, and we are currently
15 competing for the preliminary permit for that project
16 as well.

17 Q. But could you go and seek a new license
18 from FERC, or are you saying all the areas basically
19 that would be appropriate for this kind of facility
20 already have licenses?

21 A. Along the Ohio River there's a lot of
22 projects that are in various stages, there may be an
23 existing license but it's not a developed project,
24 that may be held by another entity.

1 As an example, the city of New
2 Martinsville has the New Cumberland license, and so
3 while there is another licenseholder with that
4 project, you can't walk in as a developer and acquire
5 that unless FERC would allow that, and typically they
6 don't allow you just to take over a license.

7 Typically they want it to go through the
8 whole licensing process and giving the existing
9 licensee the opportunity to develop it, and then if
10 they don't develop it in a certain time period, then
11 they start moving to terminate the license and then
12 you start the new application process and the new
13 license acquisition process as a result.

14 Q. But I guess my question is, is there an
15 infinite number of licenses that can be obtained, or
16 are there a finite number?

17 A. No, there's a limited -- on the Ohio
18 River there's maybe 16 to -- 16 sites, potential
19 sites for hydro projects. We recently did the study
20 to look at the top ten of those, and in our screening
21 study we looked at those top ten and selected --
22 right now we're involved in the acquisition of
23 working with the current licenses or we are the
24 licensees of the top five of those ten.

1 EXAMINER PRICE: So the 16 sites that --

2 MR. BENTINE: I think, if I can ask a
3 question, I think I can get to what the
4 administrative law judge is going for.

5 EXAMINER PRICE: You're okay?

6 MR. BENTINE: Is it okay if I ask a
7 question here? I think I can get to where you're
8 going.

9 EXAMINER BOJKO: Sure.

10 MR. BENTINE: These licenses that you're
11 talking about, Mr. Meier, are all associated with
12 existing locks and dams on the Ohio River.

13 THE WITNESS: That is correct.

14 MR. BENTINE: And there is not available
15 licenses to build a whole new dam --

16 THE WITNESS: No.

17 MR. BENTINE: -- that's not existing and
18 put in hydroelectric on the Ohio River, correct?

19 THE WITNESS: Absolutely correct.

20 EXAMINER BOJKO: Thank you. That
21 clarifies it.

22 Q. (By Examiner Bojko) Then given all that,
23 given the licenses being tied to the locks and dams,
24 on page 8 you talked about you're pursuing a non-FERC

1 licensed project and I guess my question is what's
2 the difference between -- I would have assumed all
3 would have to be FERC licensed; is it the age or
4 something that it didn't have to be and it's
5 grandfathered in?

6 A. No. There's a couple different types of
7 projects that are FERC licensed. The one I was
8 thinking of here was one on the Bluestone Dam, West
9 Virginia, and it's not currently under FERC mandated
10 jurisdictions, it was done with the U.S. -- it was
11 coordinated with the U.S. Army Corps of Engineers and
12 some legislative efforts in West Virginia to keep it
13 out of FERC jurisdiction.

14 And then there's several smaller projects
15 that are less than 5 megawatts that can be exempted
16 from the FERC licensing process because of their
17 size, so that would be another example of those that
18 would be non-FERC regulated.

19 EXAMINER PRICE: And they would be, by
20 definition, less than 5 megawatts.

21 THE WITNESS: I think that the regs say
22 it is less than 5 megawatts.

23 EXAMINER PRICE: There's no potential for
24 55-megawatt licenses left.

1 THE WITNESS: Unless there was some
2 legislative workaround that happened, that is
3 correct.

4 Q. And what is the current output of the one
5 hydro plant that's operational?

6 A. It's currently 42 megawatts is the max
7 capacity output rating on the units, and then the
8 annual energy average is around 245,000/246,000
9 megawatt-hours annually.

10 EXAMINER BOJKO: I think we have no
11 further questions for you. You may step down,
12 Mr. Meier.

13 (Witness excused.)

14 EXAMINER PRICE: Let's go off the record.

15 (Discussion off the record.)

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

18 Mr. Bentine, you have a motion?

19 MR. BENTINE: Yes, your Honor. I would
20 move at this time AMP-O Exhibits 16, 16C, being the
21 testimony nonconfidential and confidential versions
22 of Clark's rebuttal; AMP-O 17 which is Larry Marquis'
23 rebuttal; and AMP-O 18 and 18C being respectively the
24 rebuttal testimony nonconfidential and confidential

1 of Mr. Meier.

2 EXAMINER BOJKO: Any objections?

3 MR. FISK: Subject to the objections I
4 made earlier, no other objections.

5 EXAMINER PRICE: Which we'll note. Okay,
6 all five of those exhibits will be admitted.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 MR. BENTINE: And while we're moving,
9 your Honor, just to get it on the record, although
10 I'm not sure it is required, I would move the
11 application and supplements that we have previously
12 filed and formed the basis for this proceeding, and I
13 would also move the notices that have all now been
14 filed in Docketing into evidence including those
15 individual notices that we filed yesterday.

16 With regard to those individual notices
17 that were filed yesterday, those notices were
18 inadvertently tardy by us and they're the individual
19 notices to the individual property owners on site for
20 the actual plant.

21 All of those property owners we have
22 options with, and all of those property owners have
23 executed waiver of any of those notices, so we would
24 ask that under 4906-5-08 that those notices, along

1 with the other notices which there were no problems
2 with, would be moved into evidence and that the ALJs
3 would find substantial compliance with the notice
4 requirements.

5 EXAMINER PRICE: Objections?

6 MR. FISK: No objection.

7 EXAMINER PRICE: Those notices will be
8 admitted. Were you going to mark those or just move
9 them in?

10 MR. BENTINE: I can, your Honor. Around
11 here I've been in proceedings in which that kind of
12 stuff was marked and that kind of stuff was --

13 EXAMINER PRICE: Let's go ahead and mark
14 them AMP-Ohio 19, the notices; it's the next number.

15 MR. BENTINE: We have really three sets
16 of notices, we've got the notices I will call A and
17 B, which are the notices of the public hearings that
18 we published in the newspaper twice, those were
19 separate.

20 EXAMINER PRICE: I'm not worried about
21 those.

22 MR. BENTINE: Then the later exhibits,
23 and there were a bunch of them, there's 19 or 20 of
24 those collectively, we can call those AMP 19, I'd be

1 happy to do that.

2 EXAMINER PRICE: They will collectively
3 be AMP 19, that's fine.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 EXAMINER BOJKO: And are they in two
6 categories? I thought I received two bundles. Are
7 they two categories?

8 MR. BENTINE: There's also a requirement
9 for letters to the local officials notifying the
10 local officials that you notified the property
11 owners, and that was included in that filing as well.

12 EXAMINER BOJKO: Okay.

13 EXAMINER PRICE: Just to clarify, AMP 19
14 will be admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER PRICE: And any objections to
17 the admission of the application as supplemented? We
18 will go ahead and admit that at this time, too.

19 MR. BENTINE: One final matter then, your
20 Honor. To the extent with the exception of AMP-O 14
21 and AMP-O -- we're not sure as to whether or not
22 AMP-O 4 was admitted. That was the original
23 testimony of Ivan Clark. To the extent it wasn't, I
24 would move it.

1 And AMP-O 14 is the only marked AMP-O
2 exhibit that we did not move and are not going to
3 move, but if we missed any of the AMP-O now 1 through
4 19, I would move them just to make myself safe at
5 this time.

6 EXAMINER BOJKO: AMP-O Exhibit 4 was
7 moved and admitted.

8 MR. BENTINE: Thank you, your Honor.

9 And one final matter, then, to the extent
10 that any of our application, even though it has been
11 held to be substantially complete already, would be
12 found to be technically deficient in any way, I would
13 put on the record at this time a motion to the
14 administrative law judges and the Board to find good
15 cause for waiver for any inadvertent technical defect
16 that we had in our application and supplements
17 thereto.

18 EXAMINER PRICE: We will note that, and
19 the Board can take that up if it considers it
20 necessary.

21 MR. BENTINE: That's all I have right
22 now. Thank you, your Honor.

23 EXAMINER BOJKO: Mr. Fisk, do you have
24 any administrative --

1 MR. FISK: No, no administrative matters.

2 EXAMINER PRICE: Let's break for 15
3 minutes, come back at 11:10 and we'll take up the
4 surrebuttal and rebuttal.

5 (Recess taken.)

6 EXAMINER PRICE: Let's go back on.

7 Let's begin with the outstanding motion
8 for surrebuttal filed by Mr. Fisk on -- Tuesday?
9 Wednesday?

10 MR. FISK: Wednesday.

11 EXAMINER PRICE: Wednesday.

12 Mr. Fisk, if you'd like to briefly
13 summarize your argument, please.

14 MR. FISK: Certainly. Thank you, your
15 Honor. We are moving to present surrebuttal
16 testimony from Mr. Schlissel in order to respond to
17 the new updated and additional analyses and
18 information that AMP-Ohio presented regarding costs
19 and alternatives in their rebuttal testimony from
20 three witnesses.

21 We believe that such a request is
22 appropriate under Jackson County Power which states
23 that the proper response to an applicant getting
24 rebuttal testimony is for the intervenors to re-call

1 a witness in order to address those issues.

2 We think it's especially appropriate
3 here, given that AMP-Ohio's witness, Mr. Clark, has
4 specifically stated that he is using Mr. Schlissel's
5 CO2 numbers to do an updated cost analysis and if he
6 is going to use Mr. Schlissel's numbers, we think
7 it's very appropriate for Mr. Schlissel to have the
8 opportunity to respond to that and address the use of
9 those numbers and the cost analysis that goes along
10 with that.

11 In addition, there's been in AMP-Ohio's
12 rebuttal testimony various other issues addressed
13 regarding the use of natural gas, construction cost
14 risks, and the pursuit of renewable energy that we
15 think it is appropriate to allow Mr. Schlissel the
16 opportunity to respond to.

17 EXAMINER PRICE: Mr. Bentine.

18 MR. BENTINE: Thank you, your Honor. Let
19 me just say I think in this case, first of all, the
20 reliance on Jackson County Power is completely
21 misplaced. Jackson County Power was a situation in
22 which the ruling was you should have raised this at
23 trial and you should have asked to put on rebuttal
24 witnesses. It does not in any way, shape, or form

1 stand for a right to put on surrebuttal, but simply
2 says you blew it by not asking for it.

3 So all that means is that from a
4 procedural standpoint, as I read that Jackson County
5 case, is that you waived your right, don't raise it
6 on rehearing if you don't raise it at hearing.

7 So that's not the situation here. The
8 situation here is they've raised it, so then the
9 analysis goes to whether or not it is appropriate to
10 put on surrebuttal testimony.

11 First of all, I think we've indicated as
12 usual procedure here and in Ohio the party with the
13 burden of proof has the right to both open and close,
14 and what that means in this circumstance is what
15 Mr. Fisk is asking for is really the right to close,
16 either that or we're going to have some right to come
17 back and argue that Mr. Schlissel's testimony is
18 inappropriate and we would have sur-surrebuttal, I
19 guess, since we would have the last bite at the
20 apple.

21 But more importantly, surrebuttal
22 testimony, at least as I understand it, is limited to
23 matters which are first raised during rebuttal
24 testimony. All of the matters that have been

1 discussed by our rebuttal witnesses were first raised
2 by Mr. Schlissel; every one of them.

3 If we turn to Mr. Schlissel's testimony,
4 which I had here just a moment ago, if we look first
5 at Mr. Schlissel's testimony and look at page 3 where
6 he begins his conclusions -- and while you're getting
7 that out, your Honors, I would for my foundation for
8 my point with regard to matters that were raised on
9 rebuttal being appropriate for surrebuttal rather
10 than matters that were raised earlier, I would cite
11 to Morris versus Faurot, that's, F-a-u-r-o-t (1871)
12 21 Ohio St. 155 at 162.

13 What our testimony in rebuttal has done
14 is answered and narrowly answered criticisms first
15 raised by Mr. Schlissel, not first raised by us in
16 our rebuttal testimony.

17 If you look at the conclusions that are
18 discussed there, conclusion No. 2 is "The most
19 significant uncertainties and risks associated with
20 the proposed AMPGS are the potential for future
21 federal restrictions on CO2 emissions and further
22 increases in the project's capital cost."

23 No. 4, "In particular, it is important
24 for AMP-O and its member communities to examine their

1 involvement in the AMPGS Project in light of coming
2 federal regulation of greenhouse gas emissions. It
3 would be imprudent for AMP-O and its members to
4 continue their participation in the Project without
5 fully considering the risk of significantly higher
6 CO2 prices in its resource planning process. To
7 reflect the uncertainties and risks, AMP-O should use
8 a broad range of possible CO2 prices in resource
9 planning such as the forecasts presented by Synapse
10 in this Case"; exactly what we did.

11 No. 5, and I won't read all these into
12 the record, but No. 5 talks about soaring power plant
13 costs and that we didn't take those into account, we
14 needed to update our numbers later on in this
15 testimony.

16 No. 6, the methodology used by AMP-Ohio
17 and R.W. Beck last winter to prepare, it used a
18 single load forecast for CO2 prices and a year-old
19 capital cost for the AMPGS project. Clearly,
20 clearly -- and it goes on that we didn't consider
21 other resources in looking at -- somewhere here I
22 have some cites for that, throughout his testimony,
23 but there are numerous places in his testimony where
24 he says we didn't consider other alternatives, we

1 didn't consider other kinds of generation in coming
2 up with this.

3 So all of these issues were squarely put
4 in and brought into this case in the direct testimony
5 and, to a lesser extent, cross-examination of
6 Mr. Schlissel.

7 Our testimony by Mr. Clark addressed the
8 construction cost -- increasing construction cost
9 issues directly, it utilized Mr. Schlissel's midpoint
10 of his range and found that the conclusions did not
11 change. There was an opportunity for Mr. Fisk to ask
12 all the questions he wanted about whether or not that
13 was properly used, that is, in other words, did we
14 use wrong numbers for Mr. Schlissel?

15 There wasn't one question about that, not
16 one, on cross-examination. Not one. And now they
17 want to bring on Mr. Schlissel to put on surrebuttal
18 to further make arguments with regard to the original
19 arguments that they raised which I don't think is
20 appropriate surrebuttal.

21 Appropriate surrebuttal is if issues are
22 raised for the first time on rebuttal. Obviously, we
23 didn't do that, there wasn't an objection that it was
24 inappropriate rebuttal and so, therefore, I think

1 that closes the door on whether or not there should
2 be surrebuttal allowed.

3 EXAMINER BOJKO: Mr. Fisk, I was a little
4 confused by your statement. Are you saying that your
5 surrebuttal witnesses would be responding to all
6 three of AMP-Ohio's rebuttal witnesses or just to
7 Mr. Clark?

8 MR. FISK: We believe it would be
9 appropriate that Mr. Schlissel would be able to
10 respond to all three.

11 EXAMINER PRICE: And what matters were
12 first raised on rebuttal that you would be responding
13 to for all three?

14 MR. FISK: We believe that they have
15 referred to, especially Mr. Clark, but have referred
16 to providing new and updated information and
17 additional analyses that had not been previously
18 provided that, as a simple matter of fairness,
19 Mr. Schlissel should be permitted to respond to.

20 Essentially, AMP has known since our
21 intervention papers were filed CO2 costs and
22 alternatives were going to be an issue in this
23 proceeding, and they waited until rebuttal to provide
24 a new CO2 analysis, cost analysis, that we then have

1 no chance to respond to at all.

2 EXAMINER PRICE: That's one of the three
3 areas. What matters were first raised with respect
4 to -- I mean, doesn't Mr. Bentine have a point?
5 Mr. Schlissel said AMP-Ohio didn't properly consider
6 the alternatives, they put on two witnesses
7 indicating the alternatives that they had considered,
8 how is that first raised on rebuttal?

9 MR. FISK: Well, we believe that those
10 alternative issues should have been raised in their
11 direct and they saved it to rebuttal when we have no
12 chance to respond, and we should have a chance to
13 respond to that.

14 MR. BENTINE: Could I have that reread?
15 I missed the --

16 MR. FISK: I'm sorry.

17 EXAMINER BOJKO: Would you speak up,
18 please?

19 MR. FISK: We believe that those
20 alternative issues were clearly at issue and should
21 have been raised on direct, and instead they've been
22 raised in rebuttal where we have no chance to respond
23 to it. And that's most clear with regards to
24 Mr. Clark's testimony, but we believe it also applies

1 to all three.

2 MR. BENTINE: If he's done, I would like
3 a chance to respond.

4 MR. FISK: And I would also note when we
5 spoke with Mr. Clark, you know, he seemed to be
6 unaware of the details of much of his new cost
7 estimate, so our ability to cross him on that was
8 quite limited.

9 EXAMINER PRICE: Mr. Bentine.

10 MR. BENTINE: Very briefly, your Honor.
11 First of all, we didn't sandbag this. They raised
12 this for the first time. We're allowed to put it on.
13 If it was inappropriate rebuttal, they should have
14 objected. They didn't object. So to argue now that
15 this should have been in our direct and, therefore,
16 they have a right for surrebuttal --

17 EXAMINER PRICE: Well, I think they did
18 object to the idea of rebuttal, period.

19 MR. BENTINE: They withdrew that
20 objection, your Honor.

21 EXAMINER PRICE: That's a good point.
22 Okay. Fair enough.

23 MR. BENTINE: So I think it inappropriate
24 on the whole to argue that, well, it should have been

1 direct, your rebuttal was improper, I didn't object,
2 and now -- so that I'm allowed to do that.

3 Secondly, I would say this, I think it
4 wholly inappropriate to allow surrebuttal on issues
5 that they didn't even cross on. They didn't ask any
6 questions, so there's no ability to tell whether or
7 not this witness could have answered the questions
8 that he may have posed on any of the issues that he
9 claims are new information. But it's not really new
10 information, it's doing exactly what Mr. Schlissel
11 suggested ought to be done with regard to the, quote,
12 new and updated information.

13 EXAMINER PRICE: Doesn't he make a good
14 point that it was a new analysis? It was a new
15 analysis that Mr. -- leave aside the alternative
16 issues, the one issue is the new run of numbers by
17 Mr. Clark. Doesn't he make a good point that was a
18 new analysis that was introduced on rebuttal?

19 MR. BENTINE: It was an analysis that
20 used some new numbers.

21 EXAMINER PRICE: Okay.

22 MR. BENTINE: And I would suggest that if
23 there is surrebuttal on that, it should certainly be
24 strictly limited to you didn't use the right numbers

1 from my testimony. Anything else could have been
2 asked on cross. And I'm not admitting that that
3 ought to be correct, because I don't think so.

4 EXAMINER PRICE: I was about to ask if
5 you were conceding that.

6 MR. BENTINE: I think that clearly we
7 have only raised on our rebuttal case issues that
8 were first raised in their case and, therefore, we
9 have a right to rebuttal, and they aren't raising new
10 issues, and absent raising new issues, they don't
11 have any right to surrebuttal.

12 And I would also, again, point out that
13 they had plenty of opportunity to cross-examine on
14 these issues that now they want to bring
15 Mr. Schlissel in for and really didn't do it.

16 EXAMINER PRICE: I'm not sold on the idea
17 that just because they didn't ask questions on
18 cross-examination, that concludes the surrebuttal. I
19 mean, if we allow rebuttal testimony, irrespective of
20 whether or not they had actually asked questions on
21 cross-examination on the direct, so I'm not sold that
22 that's -- do you have any --

23 MR. BENTINE: That's a different
24 standard, your Honor. We're talking about using your

1 discretion --

2 EXAMINER PRICE: I understand that.

3 MR. BENTINE: -- to allow surrebuttal,
4 which is extraordinary. Surrebuttal, there's no
5 right to it. There's not a right to rebuttal.

6 EXAMINER PRICE: I certainly would agree
7 that surrebuttal is discretionary. I'm not
8 disagreeing with that at all.

9 EXAMINER BOJKO: Do you have the Morris
10 case for the Bench?

11 MR. BENTINE: No, but I can certainly --

12 EXAMINER BOJKO: That's the first I've
13 heard of that case.

14 MR. BENTINE: Well, it was the first I
15 heard of it too, until we started looking at it.

16 MR. FISK: The first I heard of it, too.

17 MR. BENTINE: We can certainly get a copy
18 of that right away for the Bench.

19 But, again, if the issue is they say
20 anything different on rebuttal, then you can always
21 have surrebuttal. There has to be, I think,
22 discretion. I think discretion here clearly is that
23 these issues were first raised by them, we're
24 entitled to rebut it. But I don't know how you would

1 preclude us from doing sur-surrebuttal, then, on
2 anything that Mr. Schlissel said.

3 EXAMINER PRICE: Well, again, I think
4 it's a matter of discretion. The one thing --

5 MR. BENTINE: We're entitled to close,
6 your Honor.

7 EXAMINER PRICE: The one thing you've
8 convinced me of is that nobody's entitled to anything
9 right now and everything is at the discretion of the
10 administrative law judges.

11 MR. BENTINE: But we are entitled to
12 close.

13 EXAMINER PRICE: I'm not sold about that
14 either, on the sur-surrebuttal.

15 One second.

16 We're ready to rule on this. I think
17 we've heard enough on this topic. Again, I certainly
18 agree with the arguments that Jackson County doesn't
19 entitle anybody to anything, and I certainly, you
20 know, at this point we are within the discretion of
21 the administrative law judges, and I don't need to
22 address at this point questions of sur-surrebuttal
23 because you're not asking for that yet, but we will
24 grant surrebuttal, but it's going to be narrowly,

1 narrowly restricted to the new analysis that
2 Mr. Clark testified on.

3 He had a new set of assumptions, there
4 were new natural gas prices, there was new use of the
5 Synapse, so surrebuttal is granted, but this is not
6 the three issues that you asked for, it is solely the
7 new analysis presented by Mr. Clark.

8 At the conclusion of surrebuttal if
9 AMP-Ohio wants to move for sur-surrebuttal at that
10 point, then we'll take it up at that point. I'm not
11 totally sold that your right to close overrides our
12 right to start limiting the scope of this hearing.

13 MR. FISK: Thank you, your Honor.

14 MR. BENTINE: I understand your ruling,
15 your Honor.

16 MR. FISK: Thank you, your Honor.

17 MR. BENTINE: Can we talk about timing?

18 EXAMINER BOJKO: Let's rule on the other
19 motion first.

20 EXAMINER PRICE: We also have a motion
21 for rebuttal testimony.

22 EXAMINER BOJKO: What is your basis for
23 this motion, Mr. Fisk, summarized?

24 MR. FISK: Right. We have three bases,

1 the first is we believe it's directly responsive to
2 testimony presented -- direct testimony presented by
3 AMP's witness and the staff witness. Essentially,
4 Kieseewetter, Meyer, Couppis, and the staff witness
5 all testified that they determined the probable
6 environmental impacts of the proposed AMP coal plant,
7 all testified -- or they testified that it was
8 minimum adverse environmental impacts.

9 EXAMINER BOJKO: Why wouldn't that have
10 been part of your direct case? If AMP-O has the
11 right to open, and we don't know about the right to
12 close, but they have the right to open, why would
13 that not have been a part of your direct case? Why
14 would you not have already had a witness that would
15 speak to those issues? I do not understand that.

16 MR. FISK: We believe it became clear
17 after these witnesses testified about the
18 environmental impacts and that they had not
19 considered CO2 impacts or climate change impacts.

20 EXAMINER BOJKO: Can you direct me to
21 something specific that was said, because I'm
22 struggling with that. The only testimony I recall is
23 you questioning staff's witness about a sentence that
24 we think you agree with.

1 MR. FISK: We also questioned
2 Kieseewetter, Meyer, and Couppis regarding their
3 statements that they have determined the
4 environmental impact and/or that they had determined
5 it was a minimum adverse environmental impact, and we
6 asked them "In making that determination did you
7 consider CO2?"

8 EXAMINER BOJKO: And wasn't that in
9 your -- weren't those statements in everybody's
10 direct testimony or in the Staff Report?

11 MR. FISK: The statements regarding the
12 environmental impacts were. The questions as to
13 whether they had considered the CO2 impacts in
14 making --

15 EXAMINER PRICE: What would you be
16 rebutting even though they testified they did
17 consider it? I don't understand that.

18 MR. FISK: We would be rebutting that
19 they had determined the environmental impacts of the
20 plant. They said --

21 EXAMINER BOJKO: You'd be rebutting what?
22 I'm sorry.

23 MR. FISK: They say they've determined
24 the environmental impacts of the plant and that it's

1 a minimum adverse environmental impact. On our
2 cross-examination we determined that they did not
3 include CO2 impacts in that determination.

4 EXAMINER BOJKO: Okay.

5 MR. FISK: So we would be rebutting their
6 statement that they had determined the environmental
7 impacts.

8 EXAMINER BOJKO: Didn't you already rebut
9 that statement via what you just said via
10 cross-examination?

11 EXAMINER PRICE: Certainly impeached the
12 witness.

13 MR. FISK: We've impeached, but evidence
14 showing the environmental impacts of CO2 and climate
15 change to rebut that.

16 EXAMINER PRICE: But in their application
17 it was clear what their position was. In the Staff
18 Report, which was issued six weeks before the
19 hearing, it was clear what the staff's position was.
20 I'm struggling to understand what came out on direct
21 that you're entitled to rebut.

22 MR. FISK: Direct made it clear that they
23 had not considered those things, and I believe it's a
24 matter of consistency. In our intervention motions

1 we made clear that CO2 costs and alternatives were at
2 issue --

3 EXAMINER BOJKO: You should have put
4 witnesses on to say that.

5 MR. FISK: -- and that AMP put on
6 rebuttal witnesses to address those things.

7 EXAMINER PRICE: My understanding is you
8 want to put a witness on, not about costs, we've had
9 lots of witnesses about CO2 costs, my understanding
10 is you want to put on a witness about global warming.

11 MR. FISK: Right. But I'm saying it's a
12 matter of consistency. AMP knew from our
13 intervention papers that CO2 costs --

14 EXAMINER PRICE: We're not talking about
15 CO2 costs. We're talking about global warming.

16 MR. FISK: I'm just saying they knew that
17 CO2 costs and alternatives were at issue and now
18 they're presenting rebuttal witnesses to address
19 those things. So our argument is that we're in the
20 same position here.

21 EXAMINER BOJKO: They have the burden of
22 proof in this case. You saw their application, you
23 picked your witnesses that you would like to put on
24 to refute their application --

1 EXAMINER PRICE: And the Staff Report.

2 EXAMINER BOJKO: -- and the Staff Report,
3 and you could have brought in a witness on climate
4 change. Granted, we would have had arguments, I'm
5 sure, about relevancy and all those good things, and
6 scope of the hearing, but you could have made that
7 witness file direct testimony the same as all your
8 other witnesses, and that should have been part of
9 your direct case.

10 MR. FISK: I guess we believe it's a
11 matter of consistency that we're entitled to rebut
12 those statements.

13 EXAMINER BOJKO: Consistency to what?

14 MR. FISK: It's consistent with the
15 allowance of three rebuttal witnesses by AMP on
16 issues that were clearly relevant --

17 EXAMINER PRICE: They directly testified
18 as to matters that your witnesses testified.
19 Schlissel testified X, that they hadn't studied,
20 properly studied renewable alternatives; we had two
21 witnesses today discussing what they had done on
22 renewable alternatives. Schlissel testified that
23 they hadn't adequately considered a new carbon cost;
24 they put on a witness today with a new carbon

1 analysis.

2 MR. FISK: Right.

3 EXAMINER PRICE: Those were absolutely
4 directly rebutting actual testimony.

5 MR. FISK: Right.

6 EXAMINER PRICE: I don't know where
7 you're coming from on what testimony you want to
8 rebut.

9 MR. FISK: And their witnesses testified
10 that they have determined the environmental impacts
11 of the proposed AMP coal plant.

12 EXAMINER BOJKO: And you knew that that's
13 what they were going to testify during prefiled
14 testimony which was filed before your testimony, so
15 then you should have put on your witness --

16 MR. FISK: They were filed at the same
17 time.

18 EXAMINER BOJKO: That's correct. Well,
19 their application was filed.

20 EXAMINER PRICE: Again, what I'm
21 struggling with is I don't recall anybody
22 disputing -- you're saying you want to put something
23 not on cost, but on global warming and climate
24 change.

1 MR. FISK: Impacts.

2 EXAMINER PRICE: And it seems to me that
3 although Mr. Bentine argues that that's not relevant
4 to the Board's determination, that AMP-Ohio has never
5 testified that global warming is not happening and
6 global warming is not being caused by carbon dioxide
7 emissions. The staff in the Staff Report did not
8 acknowledge that.

9 It seems to me you want to put on a
10 witness to testify to an issue that's not in dispute
11 whatsoever.

12 Mr. Bentine.

13 MR. BENTINE: Well, your Honor, very
14 quickly, with regard -- I certainly, my first
15 struggle was what is he rebutting and what are they
16 asking to rebut, because I think, as your Honor just
17 indicated, we didn't put into issue global warming
18 and we didn't say that we did consider, quote, global
19 warming in this. In fact, I think as the Bench
20 knows, we have taken the position that global warming
21 as an issue is irrelevant to this proceeding.

22 I would also point out that Mr. Fisk did
23 try to put in some information on global warming in
24 his testimony, and that testimony was stricken. So

1 this, in my view, is they've got it stricken the
2 first time, so now they want a second bite at the
3 apple to try to bring it in.

4 Clearly, if you look at their
5 intervention, they raised issues with regard to
6 global warming. In fact, that was the subject of one
7 of our motions in limine in this proceeding was to
8 make sure that all of that stuff that got put in
9 there on global warming was not going to be part of
10 the evidentiary record in this proceeding as opposed
11 to whatever they had attached to their intervention.

12 So this one is completely out of line, in
13 my view. There's nothing to rebut on this record, it
14 is irrelevant on this record and, in fact, the
15 attempt to put it in the first time in their direct,
16 which is where it should have been if they were going
17 to try to raise it, was stricken.

18 I may have had a tougher time had they
19 brought an expert on global warming, and maybe you
20 would have allowed that to be on, but the fact is
21 there wasn't, there's nothing to rebut, and this
22 ought to be denied quickly.

23 EXAMINER BOJKO: Mr. Fisk, if the point
24 of this --

1 EXAMINER PRICE: Staff.

2 MR. JONES: Staff would just echo the
3 same comments that Mr. Bentine has offered on behalf
4 of AMP-Ohio, that their motion for doing rebuttal
5 testimony is not appropriate.

6 EXAMINER BOJKO: Mr. Fisk, I think that
7 you attempted to get a document in on global warming,
8 that you could have very well have known that that
9 was an exhibit you wanted to put into the record and
10 that you could have had a witness support that
11 document and you chose not to, you thought you could
12 do it another way, and that didn't work because of
13 the objections raised at the time of how you were
14 attempting to use that document.

15 You knew that you wanted to use that
16 exhibit, you should have brought somebody in to
17 support that exhibit, and you did not, and it is
18 inappropriate to try to do that at this late date.

19 The applicant puts on their witnesses,
20 then you have a chance to put on your witnesses, and
21 even though the order was a little mixed up in this
22 case because we were trying to work around all of
23 your experts and all your flight schedules and
24 everything, that's how it usually ends up.

1 EXAMINER PRICE: And constructively
2 that's how it is.

3 EXAMINER BOJKO: Right.

4 EXAMINER PRICE: The Board will read
5 their testimony in the proper order.

6 EXAMINER BOJKO: Right. So we are going
7 to deny your motion for rebuttal.

8 EXAMINER PRICE: Move on to our next
9 motion.

10 MR. FISK: Okay.

11 EXAMINER PRICE: We have a motion for
12 reconsideration. I guess depending on how we come
13 out on the motion for reconsideration it may make the
14 motion to strike moot, so let's go ahead and deal
15 with the motion for reconsideration.

16 EXAMINER BOJKO: Again, I think this was
17 Furman and I think that this stems from, if I may
18 quickly try to put us all on the same page, this
19 stems from motions that were granted with regard to
20 certain exhibits attached to Mr. Furman's testimony.
21 Is that right?

22 MR. FISK: Yes, your Honor.

23 EXAMINER BOJKO: Okay. Well, and then
24 out of that stemmed AMP-Ohio's motion to strike

1 portions of his actual testimony that related to
2 those exhibits.

3 MR. FISK: Yes, your Honor. And I was
4 not clear if that motion had already been granted.

5 EXAMINER BOJKO: It's still pending. No.
6 No. It's still pending.

7 MR. FISK: Okay.

8 EXAMINER BOJKO: Then what in turn
9 happened was AMP-Ohio then filed -- I think you
10 filed? Did you actually file or just provide? -- the
11 list of proposed sentences or line numbers that they
12 would want to strike because we thought it would be
13 too burdensome to do it orally at that time.

14 MR. FISK: Yes, your Honor.

15 EXAMINER BOJKO: So that's what they
16 provided.

17 MR. FISK: Yes.

18 EXAMINER BOJKO: So I would take, first
19 of all, your motion for reconsideration as really a
20 memo contra the motions to strike. So I think it's
21 more -- in part.

22 MR. FISK: Yes.

23 EXAMINER BOJKO: So I think it's more
24 advantageous at this point to kind of separate the

1 issues. They have not yet been granted motions to
2 strike exact testimony except for one page that was
3 granted during the hearing. They have not been
4 either granted or denied those motions to strike with
5 regard to certain lines of their testimony. We did
6 exhibits, right, but this is based on testimony based
7 on the exhibits.

8 Your second part is a motion for
9 reconsideration of the actual exhibits.

10 MR. FISK: Yes.

11 EXAMINER BOJKO: So before we rule on
12 striking the lines in the actual testimony that
13 they're requesting be stricken because of the ruling
14 on the exhibits, let's address the motion for
15 reconsideration of the exhibits only because I think
16 your motion was really two-fold.

17 MR. FISK: Yes, your Honor.

18 EXAMINER BOJKO: I just wanted to
19 separate those out for clarity purposes. So first
20 let's talk about the motion for reconsideration of
21 striking Furman's exhibits.

22 MR. FISK: Okay. Thank you, your Honor.
23 Yes, we are moving for reconsideration of the prior
24 rulings to strike RCF-4, -7, -8, -12, -13, and

1 portions of -11. We believe they're admissible under
2 two separate bases.

3 First, all of the exhibits at issue we
4 believe are admissible under the expansive rule of
5 evidence that's directly applicable in this
6 proceeding. As we previously discussed, OAC
7 4906-7-09(A) provides that the ALJ shall admit all
8 relevant and material evidence, except evidence
9 that's unduly repetitious, even though inadmissible
10 under the Rules of Evidence applicable to judicial
11 proceedings.

12 The word "shall" in this rule is
13 mandatory. The ALJs must admit evidence that is
14 relevant and material. We believe all the exhibits
15 are directly relevant to the proceeding as they
16 address cost of emissions of an IGCC power plant
17 which is an alternative to AMP's proposed coal plant.

18 With the exception of RCF-8, I believe
19 all of the exhibits that we're referencing here were
20 struck as hearsay and OAC 4906-7-09(A) does not
21 require the exclusion of an exhibit as hearsay.

22 As for RCF-8, which I believe was struck
23 on the grounds of relevance, and that is the exhibit
24 that compares the cost of pulverized coal versus IGCC

1 plants burning petcoke in Florida, Ohio Rule of
2 Evidence 401 states that evidence is relevant if it,
3 quote, has any tendency to make a material fact more
4 or less probable.

5 As I noted, RCF-8 demonstrates the
6 advantage of an IGCC over a PC plant is the ability
7 of an IGCC to burn petcoke rather than coal. The
8 fact that it's a chart for Florida rather than Ohio
9 isn't a ground for making it irrelevant, it simply
10 goes to the weight of the evidence that should be
11 given to this exhibit, but it doesn't make it
12 irrelevant.

13 And I would note, for example, that AMP
14 itself provided cost data from other states in Ivan
15 Clark's Exhibit, I believe 1 with a map listing the
16 cost of power and the cost of -- or the percentage of
17 coal from every state in the country.

18 So we believe that this exhibit should be
19 allowed back in because it is relevant.

20 EXAMINER PRICE: There you're just
21 disagreeing with the original ruling. There's
22 nothing new that you're adding to the record that you
23 hadn't previously argued. I understand that you
24 hadn't made an argument as to 4906-7-9(A) at the time

1 of the hearing.

2 MR. FISK: Okay.

3 EXAMINER PRICE: But there's nothing
4 new --

5 EXAMINER BOJKO: You did argue relevance.

6 EXAMINER PRICE: You did argue relevance
7 there. That's simply -- you still don't agree with
8 our decision on relevance.

9 Aren't you being inconsistent, though? I
10 mean, at the hearing when Mr. Bentine's witnesses
11 were up, you moved to strike portions of their
12 testimony. So isn't it being inconsistent now to
13 come to us, having moved to strike and
14 successfully had some of their exhibits withdrawn or
15 stricken, to come to us now and say, "Hey, all
16 evidence has to come in"?

17 MR. FISK: I'm trying to remember what we
18 moved to strike.

19 EXAMINER PRICE: Mr. Colangelo moved to
20 strike one of his witness's testimony, one of his
21 witness's exhibits, and Mr. Bentine withdrew the
22 exhibit on the motion to strike.

23 MR. FISK: I'm sorry. Could you refresh
24 which exhibit that was?

1 EXAMINER PRICE: Couppis, I believe. It
2 might have been Couppis, it might have been Clark,
3 I'm not sure.

4 MR. BENTINE: I don't recall. We can
5 find out real quick. I think it was Mr. Meyer.

6 EXAMINER PRICE: Oh, Mr. Meyer. I'm
7 sorry.

8 EXAMINER BOJKO: I think it was
9 Mr. Meyer, actually.

10 EXAMINER PRICE: Mr. Bentine's
11 recollection is far better than mine.

12 MR. BENTINE: Let's don't give
13 Mr. Bentine credit for remembering that.

14 EXAMINER PRICE: It doesn't change the
15 fact that aren't you being inconsistent to come now
16 and say, after moving to strike their testimony, to
17 come in and say all relevant evidence should come in?

18 EXAMINER BOJKO: It was Meyer RM-5.

19 MR. FISK: RM-5. I would have to refresh
20 my memory as to what the basis for --

21 EXAMINER PRICE: Hearsay.

22 MR. FISK: -- moving to strike that was.

23 EXAMINER PRICE: Hearsay.

24 EXAMINER BOJKO: It was because he didn't

1 look at the numbers himself. He couldn't verify
2 where the numbers came from.

3 MR. FISK: We believe the rule is clear
4 here, we had to -- given your ruling on our exhibits
5 I believe we had to make that motion with regard to
6 their exhibits, but we do believe that the overall
7 rule of evidence here is very clear and that all
8 relevant evidence shall be admitted.

9 EXAMINER BOJKO: So are you suggesting
10 that we should now let Mr. Meyer's exhibit come in?

11 EXAMINER PRICE: We can always reconsider
12 it sua sponte.

13 MR. FISK: I'm certainly not going to
14 move to reconsider it. We believe that all of these
15 are relevant and should be allowed in.

16 EXAMINER PRICE: Mr. Bentine.

17 MR. BENTINE: First of all, your Honor, I
18 think motions of reconsideration are disfavored. In
19 fact, I think your Honor has popped me on that in the
20 past on filing a motion for reconsideration. So I
21 don't think that's the appropriate way to do this
22 under the Board's rules. I think you make the
23 proffer and you go on with it.

24 With regard to the idea that all you have

1 to do is bring in a piece of coal or a bottle of CO2
2 and that can become an exhibit and evidence in this
3 proceeding without more is ludicrous. At least in
4 Ohio law the word "shall" doesn't mean shall. In
5 fact, Ohio law says that "shall" must be interpreted
6 as permissive or advisory, however, if it appears
7 from the wording, sense or policy that in this case
8 was discussing a statute, but it goes for rules as
9 well, that the legislature so intended, and that's
10 Woodman versus Tubbs Jones, a 1995 case out of the
11 Cuyahoga County Circuit Court, 103 Ohio App.3d 577 at
12 581.

13 The idea that the administrative law
14 judges have no discretion with regard to -- other
15 than if it's cumulative or repetitive you can't keep
16 it out, goes against the precedent at this Board and
17 at the related Public Utilities Commission since at
18 least 1973 when I first stepped my foot in the doors
19 here.

20 It is absolutely ludicrous to think that
21 all we have to do is establish by some iota,
22 regardless of credibility, regardless of materiality,
23 regardless of other admissibility, if it's relevant,
24 it gets in and you folks have no discretion. I

1 think, as you pointed out, certainly the NRDC has
2 taken that step in the past as well.

3 EXAMINER BOJKO: Just for the record, we
4 need to add that we also struck some of Miss Young's
5 exhibits for these very same reasons.

6 EXAMINER PRICE: We would argue at least
7 we've been consistent regarding our principles here.

8 EXAMINER BOJKO: Staff, do you have
9 anything to add?

10 MR. JONES: Nothing else to add.

11 EXAMINER BOJKO: We believe that citizen
12 groups are reading the rule 4906-7-09(A) extremely
13 broad and that it was never intended to be that
14 broad, that you could bring anything under the sun
15 into the record.

16 And we also feel that your interpretation
17 of the federal Rules of Evidence and the Ohio Rules
18 of Evidence is misplaced, there are specific
19 provisions about learned treatises and expert
20 testimony and what they can testify to versus what is
21 actually brought in as evidence, and I think that
22 citizen groups are misconstruing those rules and are
23 not making the proper distinction between testimony
24 and charts and documents that were not constructed by

1 any witness or supported by any witness of what can
2 be brought into the record and what cannot be in the
3 record.

4 At this time we are going to deny citizen
5 groups motion to reconsider striking certain exhibits
6 to the testimony of Mr. Furman. And we would also
7 note that the one exhibit, as you pointed out, was
8 made based on relevancy, and we will affirm that
9 decision as well.

10 So Exhibits RCF-4, RCF-7, RCF-8, RCF-12,
11 RCF-13 remain stricken from the record. I apologize,
12 if anybody can't hear me, my throat and a cough drop
13 are not working well together today.

14 Now let's move to the second piece of
15 this which is actual testimony that AMP-Ohio moved to
16 strike. I don't believe this was actually filed,
17 Mr. Bentine.

18 MR. BENTINE: Your Honor, I think there
19 was one more. On RCF-11 there was a partial strike.

20 EXAMINER BOJKO: I'm sorry. Portions of
21 RCF-11, you're right.

22 MR. BENTINE: Thank you.

23 EXAMINER BOJKO: I think it was the
24 bottom portion, if I recall, of RCF-11, that that

1 would also remain stricken.

2 EXAMINER PRICE: And the crux of the
3 ruling is the motion for reconsideration was denied,
4 all of our previous rulings stay in place.

5 EXAMINER BOJKO: Okay. We're just going
6 to have to go through these one by one.

7 MR. FISK: I believe, your Honor, they
8 have a motion as to whether or not any of this should
9 be struck that needs to be argued first.

10 EXAMINER BOJKO: No, I believe they moved
11 to strike and we said provide the lines and the
12 testimony and we will consider it one by one.

13 MR. FISK: So the motion to actually
14 strike part of the written testimony has already been
15 granted?

16 EXAMINER BOJKO: No. We need to read
17 each one to determine whether that motion pertained
18 to that specific testimony as granted or denied.

19 MR. FISK: We had in our motion for
20 reconsideration, we had the argument that even if the
21 exhibits are struck, the actual testimony should not
22 be struck.

23 EXAMINER BOJKO: I understand that. And
24 then you also did an alternative of you went through

1 each one. I want to go through each one and make
2 that determination.

3 MR. FISK: Okay.

4 EXAMINER BOJKO: They did a broad motion
5 to strike that they kind of deferred, I guess, until
6 they produced actual lines to be struck, and we just
7 have not yet ruled on that. So we need to go through
8 each one and they're going to do little individual
9 motions to strike for each one of these.

10 EXAMINER PRICE: I just don't think we're
11 going to take any more arguments, though.

12 Are we?

13 EXAMINER BOJKO: Yes.

14 EXAMINER PRICE: Oh.

15 EXAMINER BOJKO: I'm sorry.

16 MR. BENTINE: Might I make one more
17 point, then? Because I did have one other point that
18 goes to these as opposed to the other stuff.

19 EXAMINER BOJKO: Okay.

20 MR. BENTINE: And that is this, in
21 looking at this I would urge your Honors to keep in
22 mind the difference between the federal rule relied
23 on heavily by NRDC and the citizen groups and the
24 Ohio rule with regard to appropriate testimony by

1 experts, and there's a case that I think falls right
2 on point here on a couple points, Azzano versus
3 O'Malley-Clements, it's a 1998 case, 126 Ohio
4 App.3d at 368 -- at 374, this consistently I think
5 states the difference between the Ohio Rules of
6 Evidence and the federal rules, again, relied on
7 heavily by the citizen groups.

8 And I'm quoting under this quote, "Ohio"
9 rule, unlike Federal Rule of Evidence 703, "expert
10 opinions may not be based on other opinions and may
11 not be based upon hearsay evidence which has not been
12 admitted."

13 Now, admittedly, experts in the course of
14 proceedings such as this are not strictly held to
15 this standard at this commission, our experts and
16 their experts, so I'm not saying that that is the
17 absolute rule for this proceeding, but what I am
18 saying is that there is a much narrower Ohio rule on
19 what experts can do.

20 And the reason I'm pointing it out now is
21 to the extent that there is no support other than
22 those exhibits that have been stricken within this
23 testimony, at least the Ohio rule would say that
24 testimony based on that hearsay, et cetera, ought to

1 also be excluded. In other words, it can't
2 independently exist. So that's the only point I
3 wanted to make as we go through these.

4 EXAMINER BOJKO: Except for I believe
5 that there are hearsay objections that could -- you
6 mentioned hearsay, they can't be based on hearsay,
7 but there are hearsay exceptions. I'm sorry, I said
8 "objections."

9 MR. BENTINE: Absolutely.

10 EXAMINER BOJKO: Hearsay exceptions to
11 those rules.

12 MR. BENTINE: That is true in the rule
13 that I cited as well.

14 EXAMINER BOJKO: Right.

15 MR. FISK: And I'd like to respond to
16 that.

17 EXAMINER BOJKO: Sure.

18 MR. FISK: Mr. Bentine refers to us
19 relying heavily on Federal Rules of Evidence. We've
20 also quoted in our -- cited in our brief state cases
21 and references to the state Rules of Evidence that we
22 believe make it appropriate to preserve all of
23 Furman's written testimony even if the exhibits are
24 struck.

1 First of all, once again, the OAC
2 4906-07-09(A), specifically Ohio Supreme Court case
3 State versus Solomon which says that an expert can
4 testify as to facts or data received by him, and with
5 regard to RCF-12 there's testimony in the record that
6 Mr. Furman confirmed 50 percent of the numbers in
7 that exhibit and, therefore, those are facts received
8 by him.

9 And then thirdly, the case of Nilavar
10 versus Osborn, which is 137 Ohio Appellate 3d 469 in
11 which the Ohio appellate court made clear that Ohio
12 Rule 703's requirement that testimony be based on
13 facts or data perceived by the witness is limited to
14 the facts or data in the particular case and that
15 it's still appropriate for a witness to rely on
16 charts and other things that have not been prepared
17 by him and is not in evidence the case.

18 In Nilavar that involved an actuarial
19 chart prepared by A.M. Gamboa that was not in
20 evidence in the case, but that witness was allowed to
21 rely on that actuarial chart for his written
22 testimony and his written testimony stayed in.

23 EXAMINER BOJKO: Okay. I have thoroughly
24 read your motions and your briefing of that issue, I

1 have thoroughly reviewed the rules, and I've heard
2 Mr. Bentine's response on the general.

3 I think some of the issues that we're
4 talking about go to specific sentences and that's why
5 we need to go through it. I think you're using words
6 of, you know, perceived by him while there's a
7 question about whether he could state that this was
8 valid or not.

9 I mean, that's why we need to go through
10 each one and that's why we're not going to make a
11 general ruling, we need to make specific rulings
12 about each one.

13 MR. FISK: Okay. Could we go off the
14 record?

15 EXAMINER BOJKO: Sure.

16 (Recess taken.)

17 EXAMINER BOJKO: We can go back on the
18 record, and just to clarify now that I've heard some
19 general oral arguments, we don't necessarily have to
20 argue fully in length and at length about each and
21 every one of these. Some of these are easy to rule
22 on and we can do that quickly.

23 The first one I have, Mr. Bentine, is on
24 page 3, line 17 through 19, the sentence that starts

1 with "My testimony."

2 MR. BENTINE: Yes, your Honor.

3 MR. FISK: Your Honor, could I request
4 that we go by exhibit?

5 EXAMINER BOJKO: Well, some of these I'm
6 not sure attach to necessarily an exhibit.

7 MR. FISK: Okay. I was just asking
8 because I know AMP wrote their motion in terms of
9 exhibit, we wrote our response, but --

10 EXAMINER BOJKO: We could do that. We
11 could start with -- I think it will be clearer for
12 the record if we just go through by pages.

13 MR. FISK: Okay. That's fine.

14 EXAMINER BOJKO: I'll reference back, I
15 have both of your motions in front of me -- well,
16 maybe AMP-O for this one can do a basis.

17 MR. BENTINE: RCF-13 was stricken and the
18 reference here is "My testimony shows that an IGCC
19 plant can eliminate between 40 and 93 percent of
20 various air pollutants that the proposed PC plants
21 will emit." That testimony was taken directly and
22 relied upon Exhibit RCF-13 which has now been
23 stricken. Absent that, it has no foundation in this
24 and should be stricken as well.

1 I would also point out that there was an
2 attempt on redirect to rehabilitate these numbers;
3 that didn't work. So standing on its own I believe
4 it has no foundation now and it needs to go out as
5 RCF-13 did.

6 EXAMINER BOJKO: This sentence, it
7 doesn't reference specifically RCF-13. I believe
8 that this could be his opinion, his expert opinion,
9 based on information he has reviewed in this process,
10 so the motion to strike with regard to the sentence
11 is denied.

12 The next one I have is on page 6.

13 MR. BENTINE: If I might, your Honor. I
14 believe my cross-examination probably showed that
15 this was tied to this exhibit.

16 EXAMINER BOJKO: But I think just because
17 the exhibit is deleted doesn't mean an expert cannot
18 study learned treatises and make his own expert
19 opinions.

20 MR. BENTINE: I understand that, but I
21 believe my cross-examination showed that he relied on
22 RCF-13 to make this statement, and John Thompson did
23 this. In other words, there was cross-examination on
24 this that I don't think that we can simply say "Well,

1 he could have based this on something else." My
2 belief is that my cross-examination showed that he
3 relied on RCF-13 to come to this conclusion.

4 I agree it's not cited here. I think
5 that's what my cross-examination did.

6 EXAMINER BOJKO: Mr. Fisk, do you have a
7 response? I cannot see where the numbers even come
8 from the exhibit.

9 MR. FISK: Your Honor, I believe, A: It
10 is based on his expert opinion and could have come
11 from other learned treatise or other knowledge he's
12 gained as an expert; I believe it's also consistent
13 with RCF-14 which discusses the comparison of the
14 AMP-O plant versus the Taylorville plant.

15 I understand that you struck RCF-12, but
16 I believe it's consistent with the permit levels
17 there and that he, Mr. Furman, has testified that he
18 verified that we presented those, so he has
19 significant knowledge that he's even personally
20 verified about the comparative emission rates of an
21 IGCC versus a PC plant and that for all those reasons
22 this line should stay in.

23 MR. BENTINE: We're going to try to find
24 that in the testimony, your Honor. Maybe we can come

1 back.

2 EXAMINER BOJKO: We can come back to that
3 one.

4 EXAMINER PRICE: If you can find the
5 cite.

6 MR. BENTINE: I think a number of these
7 may be like that.

8 EXAMINER BOJKO: That was on page 6.

9 MR. BENTINE: Page 6? I'm sorry.

10 EXAMINER BOJKO: Yes, page 6, lines 21 to
11 23, that sentence in that testimony presents
12 comparisons, those comparisons no longer exist
13 because they were struck, so the motion to strike
14 them at issue will be granted.

15 MR. FISK: Your Honor, there is still the
16 comparison between the AMP coal plant and the
17 Taylorville plant. In addition, I would note once
18 again that Mr. Furman verified 50 percent of the data
19 in RCF-12.

20 MR. BENTINE: Is the new standard in Ohio
21 50 percent? If it's 50 percent, it's okay?

22 MR. FISK: Well, he's personally verified
23 that information and shown that and, therefore, that
24 forms a basis for him to be able to compare IGCC

1 versus PC.

2 EXAMINER BOJKO: This one referenced --
3 this one was asked to be stricken based on RCF-12 as
4 the basis. My motion stands, this one is stricken,
5 but I can see from counsel that this is not going to
6 be easy to go through each one quickly, so I guess I
7 will have to take a quick brief argument basis and a
8 defense for each and every one and then I'm going to
9 make my ruling and we're not going to continue to
10 debate each issue as, again, I have reviewed this and
11 I have looked through all the other things and I
12 would like to move through this quickly.

13 So lines 21 through 23, the sentence
14 starting with "My testimony" ending with "plants"
15 will be struck. Motion is granted.

16 Let's move on to page 10. Maybe in your
17 bases if you can say what table you thought it was
18 referencing, Mr. Bentine, it will move this along
19 quicker.

20 MR. BENTINE: I believe that the record
21 shows that the language there was from RCF-4 and -12.
22 I'm sorry. I'm sorry. Our motion had things
23 identified by the exhibit number, not page number, so
24 yes, I believe RCF-12 is what is being referred to on

1 page 10, lines 11 through 15.

2 EXAMINER BOJKO: Mr. Fisk, do you have a
3 response?

4 MR. FISK: I would note that Mr. Furman
5 in lines 12 through 15 actually presents a source
6 right there, the air construction application for
7 Tampa Electric, which is RCF-12. And, once again, we
8 believe that since Mr. Furman verified RCF-12, that
9 it should stay in.

10 EXAMINER BOJKO: With this I think that
11 this one is in two parts. I think that he is an
12 expert and he can give his opinion, but there's a
13 difference between allowing an unverified exhibit
14 into the record as evidence and him just drawing
15 conclusions based on his expertise.

16 So the sentence "The majority of recent
17 final permits for IGCC plants in the U.S. have
18 included SCR for lower NOx emissions," I think that's
19 his conclusion and that can stand because he is an
20 expert. The source, however, will have to be
21 stricken because that is reference to the exhibit.

22 EXAMINER PRICE: So we'll strike
23 everything on line 12 beginning with "Source" and
24 ending with line 15.

1 EXAMINER BOJKO: Again, the rules are
2 clear about hearsay exceptions and the difference
3 between exhibits as evidence and testimony.

4 Down below we have another situation
5 where there's a specific reference to Exhibit RCF-4
6 on line 19, page 10. Motion to strike will be
7 granted. That portion that's highlighted "as shown
8 in Exhibit RCF-4" will be stricken. The rest of the
9 sentence remains.

10 I'm assuming I don't need arguments on
11 that one.

12 Page 14, lines 12 through 24, I was a
13 little confused about why this was necessarily tied
14 to an exhibit. This was already granted, a motion to
15 strike was already granted during the testimony, I
16 believe it was based on numerous items, one being
17 lack of expertise regarding health costs.

18 MR. BENTINE: I think you're right on
19 that one, your Honor.

20 EXAMINER BOJKO: So lines 12 through 24
21 will remain stricken from the record as ruled upon
22 during the hearing.

23 MR. FISK: Your Honor, I would just note
24 that 15 through 17 does not rely on the exhibit that

1 was struck. It's simply his opinion.

2 EXAMINER BOJKO: Right, and that's the
3 opinion that was struck because he didn't have
4 expertise as to whether he -- health costs. We
5 talked about this during the hearing.

6 MR. FISK: Right. But he's not saying,
7 in lines 15 through 17 he's not stating what those
8 health costs are, he's just simply stating his
9 opinion that health costs should be considered.

10 EXAMINER BOJKO: Right. And there was an
11 argument made it's not related, as I stated before,
12 it's not related to any exhibit. I said I was
13 confused as to why this was tied to an exhibit. The
14 argument at hearing was that this should be stricken
15 because he was not qualified as a health care expert,
16 and that was granted, so that ruling will stand.

17 Next is the entire page 15. I think this
18 is one we're going to have to take in parts.
19 Mr. Bentine, would you like to explain what this is
20 tied to?

21 MR. BENTINE: Yes, your Honor. The
22 question here is "Have you compared the cost of
23 electricity produced from a new IGCC plant using
24 petcoke with the cost of electricity from a new

1 pulverized coal plant?"

2 The answer is "Yes. I prepared Exhibit
3 RCF-8" -- which has been stricken from this record,
4 and then he goes on to talk about what RCF-8 shows.
5 Again on line 10, "Exhibit RCF-8 shows," and more
6 discussion of RCF-8. And then beginning on line 24,
7 then, "Therefore," he finds, based on the above,
8 et cetera.

9 So then beginning on line 9 on page 16 he
10 starts discussing the sources of data, again, which
11 was stricken for what's going on with regard to RCF-8
12 and obviously, then, simply repeating those sources
13 on an item that has been excluded is not appropriate.

14 EXAMINER BOJKO: Mr. Fisk, I know you
15 addressed this significantly in your motion.

16 MR. FISK: Right. And I guess we would
17 just, you know, reiterate that, that only 5 through
18 12 on page 15 and 9 through 22 on page 16 actually
19 rely on RCF-8. The rest is based on his expert
20 opinion and knowledge regarding the use of petcoke in
21 an IGCC plant.

22 EXAMINER BOJKO: I'm going to agree with
23 both of you in part, so we are going to grant the
24 motion to strike in part. The question and answer,

1 lines 1 through 4, can stand, that is just whether
2 he's done something or not. That will remain.

3 Lines 5 through 12 with the sentence
4 ending "petcoke" will be stricken because that
5 discussion is based on Exhibit RCF-8.

6 The discussion starting on line 12
7 regarding petcoke is just a discussion about sources
8 or types of petroleum coke and that will be within
9 his expertise, so that will stand. We will go all
10 the way through, I think that the conclusion that
11 Mr. Bentine mentioned can be made using his general
12 expertise, so we will leave in everything until line
13 25 ending with "to a pulverized coal plant."

14 And then, again, we're back to talking
15 about Florida plants which is --

16 MR. BENTINE: I'm sorry, your Honor, I'm
17 not following you. At the bottom of page 15?

18 EXAMINER BOJKO: The part will remain
19 from line 12 beginning with "Petroleum coke" and it
20 will end with line 25, "coal plant."

21 EXAMINER PRICE: It will not be struck.

22 EXAMINER BOJKO: It will not be struck.
23 The conclusion can be based on his expertise.

24 MR. BENTINE: I understand that, your

1 Honor, but now what, again --

2 EXAMINER BOJKO: I'm sorry if the
3 question doesn't make sense now, but there is no
4 other way that this could be done.

5 MR. BENTINE: How does, then, the
6 statement "Therefore an IGCC plant utilizing petcoke
7 is a lower cost alternative" now flow from what is
8 left in here?

9 EXAMINER BOJKO: Well, it goes to the
10 question, and he can make his expert opinion known
11 about the plants.

12 MR. BENTINE: But it's clear it was all
13 based on RCF-8.

14 EXAMINER PRICE: And you can make that
15 argument as to the weight the Board should grant that
16 because there's no proper foundation for his
17 conclusions if you choose to make that.

18 MR. BENTINE: I understand. I'm sorry, I
19 don't mean to argue. I guess maybe I do mean to
20 argue, but I'll try to restrain myself --

21 EXAMINER BOJKO: I'd carefully considered
22 all of your arguments before I came into this room
23 and weighed --

24 MR. BENTINE: Yes, your Honor.

1 EXAMINER BOJKO: -- both arguments.

2 MR. BENTINE: Zipping.

3 EXAMINER BOJKO: Starting with line 25,
4 "For the past 10 years," we get back into a
5 discussion of Florida that I think goes back to
6 RCF-8, that will be stricken all the way from line 25
7 to line 4 on page 16 inclusively.

8 Lines 5 through 8 is just a statement of
9 plans announced, that can stand. As an expert he
10 should know what the plans are. That will not be
11 stricken.

12 And then again starting with "The sources
13 of data" on line 9 to the end of this question ending
14 on line 22, that will all be stricken.

15 Moving on, the next one I have is page
16 18. This is based on RCF-11, I believe, that's a
17 partial motion to strike granted in part, it is
18 partially stricken. Is there a basis for these last
19 two sentences?

20 MR. FISK: The basis for the sentences?

21 EXAMINER BOJKO: No. No. To strike.

22 MR. FISK: Oh, striking. Okay.

23 EXAMINER BOJKO: Seems to me that these
24 two sentences reference the first half of the chart

1 which is in the record.

2 EXAMINER PRICE: And it's the U.S. EPA
3 report.

4 EXAMINER BOJKO: Right, it's the EPA
5 report.

6 MR. BENTINE: I will withdraw that. They
7 always say when you're run out of town, get out in
8 front and make it look like a parade.

9 EXAMINER BOJKO: Okay. And then the next
10 one I have is on the same page, 18, question and
11 answer starting on line 22 that goes clear over to
12 page 19 I guess -- no, to 20. So a long question and
13 answer, page 18 to 20.

14 Mr. Bentine.

15 MR. BENTINE: Yes, your Honor. This all
16 clearly is based on RCF-12. And -13. Miss Bott
17 points out Exhibit 13 as well.

18 EXAMINER PRICE: Significant cutting and
19 pasting on this.

20 EXAMINER BOJKO: This one we're going to
21 grant in part and deny in part the motion to strike.
22 I think that the question and answer 22 through 25 on
23 page 18, lines 22 through 25, can stand, the question
24 and answer "Yes."

1 Going over to page 19, lines 1 through 3
2 reference RCF-12 and need to be stricken.

3 Lines 4 through 7 ending with
4 "Kentucky)." will remain in the record.

5 Then the next sentence of the conclusion
6 with the numbers that are based on the chart will be
7 stricken, that sentence being the one starting on 7,
8 ending on 8.

9 Next paragraph, "As this table shows,"
10 that will have to be stricken, but the conclusion --
11 or, not the conclusion, but the statement after that
12 based on his expert opinion may remain.

13 And we go to line 13, the rest of that
14 sentence can stand.

15 Then the next sentence starting --

16 MR. BENTINE: I'm sorry, your Honor. I'm
17 not going to argue with you --

18 EXAMINER BOJKO: No; that was my fault.

19 MR. BENTINE: -- although I think you
20 were wrong.

21 EXAMINER PRICE: No motions to
22 reconsider.

23 MR. BENTINE: Your Honors, 9 through 16,
24 can you go through those?

1 EXAMINER BOJKO: Yes. I was unclear, I
2 apologize. The phrase "As this table shows" will be
3 stricken. The sentence will now read "A majority of
4 the plants that have filed applications," blah, blah,
5 blah.

6 MR. BENTINE: So all you're striking is
7 "As this table shows"?

8 EXAMINER BOJKO: Right. The rest of the
9 sentence remains. And then the next sentence
10 remains; "These include."

11 MR. BENTINE: Okay.

12 EXAMINER BOJKO: And then the next
13 sentence, "Since the preparation of this table," that
14 can be stricken, but the remaining part of the
15 sentence stands. Just because he referred back to
16 his table to try to be helpful doesn't mean he
17 couldn't have made the assertions as an expert on his
18 own.

19 And then the last sentence, the
20 conclusion with the numbers will be stricken. The
21 last sentence of that paragraph, I'm sorry, line
22 14 --

23 MR. BENTINE: Starting on line 14?

24 EXAMINER BOJKO: -- "The" ending with

1 line 16, "gasifier."

2 MR. BENTINE: "Since the preparation of
3 this table," is that in or out?

4 EXAMINER BOJKO: That is out.

5 Then the next paragraph --

6 MS. MALONE: The sentence -- the other
7 part of the sentence is in.

8 EXAMINER PRICE: Yes.

9 MS. MALONE: Or is the whole sentence
10 out?

11 EXAMINER BOJKO: No. The rest of the
12 sentence remains. It's a fact.

13 MS. MALONE: I don't really want to be
14 argumentative because it's not even my motion, but I
15 have to say I'm confused how we can strike the
16 numbers which come out of the chart and not strike
17 all the other information that comes out of the chart
18 which is why I'm kind of confused.

19 EXAMINER PRICE: Because there's no
20 indication he couldn't have testified to those based
21 on his own expertise.

22 EXAMINER BOJKO: He could have testified
23 to recent applications without referencing the chart.
24 He was an expert. We all have to realize that nobody

1 challenged his expertise in this matter. Well, you
2 may have impeached him or tried to cross, but you
3 didn't challenge whether he was an expert or not.

4 MR. BENTINE: I would only be rearguing,
5 so I'm not going to do that.

6 EXAMINER BOJKO: Just because an exhibit
7 is a hearsay exhibit does not mean that he couldn't
8 testify about it as a expert.

9 MR. BENTINE: I agree, your Honor, but he
10 didn't. He said here's my exhibit, which was shown
11 to be hearsay, and then here are my conclusions, so
12 there's no foundation about how he came to these
13 conclusions because that stuff is gone.

14 EXAMINER PRICE: That's the argument you
15 can make on brief --

16 MR. BENTINE: I understand.

17 EXAMINER PRICE: -- as to the weight that
18 should be given to what's left of testimony.

19 EXAMINER BOJKO: Ideally, in a perfect
20 world, had we stopped and made these motions to
21 strike at the beginning -- I mean, in all fairness,
22 Mr. Bentine, if we would have made these motions to
23 strike in the beginning before the witness even went
24 on the stand, which is a lot of times the course

1 before this agency, then Mr. Fisk would have had the
2 opportunity to ask the witness these exact things
3 without that underlying foundation or he could have
4 tried to make a foundation, and we didn't do that.
5 The witness isn't here now, so we're trying to do the
6 best that we can.

7 MR. BENTINE: I understand that, your
8 Honor, and I take Judge Price's admonition, I am --
9 it's just hard for me, you know that.

10 MR. FISK: Your Honors, I would just like
11 to note for the record with regards to the foundation
12 here, and especially with regard to the lines with
13 the specific numbers, Mr. Furman did testify that he
14 personally verified at least half of the data in
15 RCF-12, so he has a personal basis of knowledge for
16 those numbers and for the information here. So we
17 believe those lines shouldn't be struck.

18 EXAMINER PRICE: All you're saying is
19 there's a 50/50 chance those numbers are correct, and
20 I don't think that's sufficiently reliable.

21 EXAMINER BOJKO: Right.

22 MR. FISK: He verified half of that, so
23 he verified a number of the permits in that to
24 confirm that the information is correct and it shows

1 that he has actually reviewed a number of those
2 permits.

3 EXAMINER BOJKO: The number is out, but
4 factual statements such as the Taylorville plant now
5 has a final permit is a fact that you can either
6 prove or disprove in your brief.

7 Starting with line 17, I believe that's
8 where we are, this paragraph deals with EPA's report
9 and that paragraph on line 17 to 23 will remain.

10 The next paragraph begins on line 24 --

11 MR. BENTINE: Your Honor, the "As this
12 table shows" sentence?

13 EXAMINER PRICE: Oh, you're correct.
14 Line 22.

15 EXAMINER BOJKO: I'm sorry, I missed
16 that. The last sentence should be stricken; that
17 conclusion is based on the table.

18 MR. FISK: And I would just note my
19 continuing statement about RCF-12, that he
20 verified --

21 EXAMINER BOJKO: Half.

22 MR. FISK: -- half of the data and,
23 therefore, has a basis for concluding that the
24 technology's moving faster than EPA would like it.

1 EXAMINER BOJKO: Just so the record is
2 clear, we are leaving in lines 17 through 22 ending
3 with "date," and then the last sentence in that
4 paragraph, line 22 through 23, will be stricken. I
5 apologize, I missed that one. Thank you.

6 The paragraph beginning on line 24 on
7 page 19 and going over to line 4 on page 20 will
8 remain in.

9 Now we have a new question and I believe
10 this was referenced in a different exhibit.

11 Mr. Bentine, do you have a basis for the question
12 beginning on line 5, page 20? RCF-13 it looks like.

13 MR. BENTINE: RCF-13, your Honor, this
14 was prepared by John Thompson of the Clean Air Task
15 Force, it wasn't verified by the witness, and it was
16 stricken. The entire discussion there references
17 that table. I would point out line 11, "Exhibit
18 RCF-13 shows that," and then all of those conclusions
19 clearly flow from an examination of RCF-13.

20 MR. FISK: I would just state that, you
21 know, first we repeat our argument that the
22 information should stay even if the table were
23 stricken and, secondly, we definitely think that the
24 sentence starting on line 9, "An IGCC plant" down to

1 "AMPS-Ohio," line 9 and 10 there should definitely
2 stay because that is expert opinion regardless of the
3 chart.

4 EXAMINER BOJKO: And we can consider that
5 option, but I believe this is all conclusory based on
6 RCF-13, so we're going to delete the whole question
7 and answer. Beginning on line 5 to line 22, the
8 motion to strike is granted.

9 I believe that's all I have. Is that all
10 of it?

11 MR. BENTINE: Mercifully, I believe
12 that's correct, your Honor.

13 EXAMINER PRICE: That wasn't so terrible.

14 EXAMINER BOJKO: A little bit of
15 happiness and a little bit of anger going around, so
16 that means we did our job right.

17 EXAMINER PRICE: The last motion we have
18 is a three-part motion to strike part of
19 Mr. Schlissel's testimony, three particular phrases.
20 The three I have, and correct me if this is not
21 correct, is page 9, part of line 9 and all of line
22 10; page 15, line 6 and 7; and page 15, lines 20 and
23 21. Is that correct?

24 MR. FISK: What was the third one? I'm

1 sorry.

2 EXAMINER PRICE: Page 15, line 20 and 21
3 beginning with the phrase "combined with the growing
4 scientific understanding of."

5 MR. BENTINE: Page 9. Can we go back to
6 page 9?

7 EXAMINER PRICE: Sure. What I have is
8 page 9, the phrase beginning at line 9 "given the
9 reductions in CO2 emissions that will be necessary to
10 stabilize atmospheric conditions."

11 MR. BENTINE: I'm sorry.

12 EXAMINER PRICE: The motion to strike on
13 that one will be granted. He is not an expert on
14 that particular field of climatology.

15 MR. FISK: And we note our objection from
16 previously; we believe it's within his expertise.

17 EXAMINER PRICE: Noted. Thank you.

18 On page 15, line 6, the phrase "and the
19 resultant widespread climate changes," we're going to
20 deny the motion to strike.

21 Line 20, the phrase beginning -- yeah,
22 the phrase "combined with the growing scientific
23 understanding of," the motion to strike is going to
24 be denied.

1 EXAMINER BOJKO: Did you have any further
2 ones? Did you have any additional ones?

3 MR. BENTINE: No.

4 EXAMINER PRICE: Let's go off the record
5 for one minute.

6 (Discussion off the record.)

7 EXAMINER PRICE: Let's go back on the
8 record. We are adjourned for today. Thank you all.

9 (The hearing adjourned at 1:13 p.m.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by me in this matter on Friday, January 4, 2008, and
5 carefully compared with my original stenographic
6 notes.

7 Maria DiPaolo Jones
8 Maria DiPaolo Jones, Registered
9 Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

10 My commission expires June 19, 2011.

11 (MDJ-3119)

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NON-CONFIDENTIAL

**BEFORE THE
OHIO POWER SITING BOARD**

In the Matter of the Application of)
American Municipal Power-Ohio, Inc., for)
a Certificate of Environmental)
Compatibility and Public Need for an)
Electric Generation Station and Related)
Facilities in Meigs County, Ohio.)

Case No. 06-1358-EL-BGN

REBUTTAL TESTIMONY OF IVAN CLARK

2007 DEC 28 PM 4:35
PUCO

1Q. Please state your name and business address.

A. My name is Ivan Clark. My business address is 1801 California Street, Suite 2800, Denver, Colorado 80202.

2Q. Are you the same Ivan Clark that previously testified in this case?

A. Yes.

3Q. What is the purpose of your testimony today?

A. At the request of AMP-Ohio's legal counsel we are providing "certain" testimony in response to the positions taken by Mr. Schlissel and to a lesser extent, Mr. Furman, including: (i) new and updated information concerning currently estimated power supply costs for alternative generation technologies and for the AMPGS Project assuming higher CO2 emission allowance cost assumptions; (ii) additional information concerning AMP-Ohio's on-going consideration of natural gas-fired combined cycle generation; (iii) testimony regarding the power supply plans AMP-Ohio has recommended to its Members; and, (iv) explanation of R.W. Beck's position regarding potential construction cost increases for AMPGS.

EXHIBIT

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AMP-016

4Q. Have you analyzed the impact of CO2 emission cost assumptions in connection with the AMPGS Project that are higher than the R.W. Beck estimates contained in the AMPGS Feasibility Study that were criticized by Mr. Schlissel?

A. Yes.

5Q. Please explain.

A. To address the concerns expressed by Mr. Schlissel with respect to potential future CO2 emission allowance values, at counsel's request, R. W. Beck prepared an updated sensitivity analysis as follows:

- Comparative projected bus bar cost analysis for four alternative generation technologies, 1) subcritical boiler (the current proposed AMPGS technology) coal plant, 2) supercritical boiler technology coal plant, 3) Integrated Gasification Combined Cycle ("IGCC") plant, and 4) natural gas-fired combined cycle plant;
- The analysis assumed current projected capital costs for each technology;
- Fuel costs were updated based the latest information secured by AMP-Ohio for coal costs in the region of the AMPGS project and R. W. Beck's most recent natural gas price forecast.
- CO2 emission allowance costs were assumed to be consistent with Mr. Schlissel's mid-range projections for 2010-2037 as shown in Mr. Schlissel's Figure 3 of his testimony adjusted for inflation. Exhibit IC-10 (confidential) summarizes the assumptions and input parameters for the analysis and Exhibit IC-11 (confidential) illustrates the comparative bus bar costs for the four alternatives investigated.

CONFIDENTIAL PORTION FOLLOWS:

[REDACTED]

NON-CONFIDENTIAL PORTION CONTINUES:

8Q. Given that this updated sensitivity analysis uses Mr. Schlissel's CO2 values are you endorsing them?

A. No, and Exhibits IC-10 and IC-11 should not be construed as R.W. Beck's prediction or forecast of costs for AMPGS or the other alternatives.

9Q. Why not?

A. Actual CO2 values in a final cap and trade market may be considerably different from the values stated by Mr. Schlissel, due to variety of variables, including the final total emission cap, the allowance allocations to existing and new sources, price ceilings (if any are set), cost of technology to capture and sequester carbon, other fuel prices, and the cost of new technologies to replace conventional technologies. The experience of the electric power industry associated with the SO2 cap and trade system implemented under the Clean Air Act in 1995 illustrates the difficulty in predicting costs in a cap and trade system. At the initial start of the SO2 cap and trade program, SO2 allowance values were predicted to be in the range of \$300 per ton or more based on the estimated emission reduction costs at that time. Shortly after the program started the SO2 emission allowance values gradually declined to less than \$200 per ton and went as low as less than \$100 per ton. Clearly these allowance values were well below the actual control costs, but a range of market variables influenced the price.

10Q. What are your conclusions with respect to this updated bus bar analysis assuming Mr. Schlissel's CO2 cost estimates?

A. Overall, the results of the updated analysis on a relative basis are similar to the results included in the Initial Project Feasibility Study. As the cost of CO2 emissions increase, however the overall costs of the alternatives become closer. It must be remembered, however, that non-cost considerations, such as reliability and dispatchability, played important roles in AMP-Ohio's choice of pulverized coal technology utilizing Powerspan as a part of AMPGS' emission controls for AMPGS.

11Q. In your opinion, is it still prudent for AMP-Ohio to move forward with the AMPGS Project as proposed, considering uncertainty with respect the potential CO2 emission regulations?

A. Yes. AMP-Ohio and its Members' need for base load generation will remain regardless of the CO2 emission costs. To delay the decision to move forward with this Project will only serve to increase costs and subject the Members to additional higher power supply costs from the regional power market, which is projected to be adversely affected (i.e. higher costs) by any higher CO2 emission costs.

12Q. During previous testimony there have been suggestions that AMP-Ohio should consider natural gas-fired combined cycle generation to satisfy its power needs. Can you comment on AMP-Ohio's on-going investigations in this area?

A. Yes, but initially I must explain why gas-fired combine cycle is not economical for base load purposes for AMP-Ohio at this time. Natural gas-fired combined cycle generation was considered as an alternative in the power supply plans prepared for the individual Members which was completed in February 2007. The bus bar analysis conducted as part of the power supply studies was updated in the Initial Feasibility Report completed in June 2007. These analyses considered CO2 emission costs. One conclusion of those analyses was that natural gas-fired combined cycle generation would have higher bus bar costs as compared to coal-fired base load generation, primarily because of higher fuel costs. This conclusion remains unchanged by the assumption of higher CO2 emission costs, as detailed above in this testimony and as illustrated in Exhibit IC-11.

While natural gas-fired combined cycle generation is not considered economical for base load generation in this region, it is a viable intermediate capacity and energy generation alternative ("5x16" as detailed in Mr. Kiesewetter's testimony). The power supply portfolio analysis investigated in the February 2007 Power Supply Report concluded that AMP-Ohio and its Members currently depend on the existing regional power market to

satisfy their intermediate power supply needs and are therefore subject to the existing power market price risks. Participation in or development of a natural gas-fired generation project was identified as a possible alternative to supply the Members intermediate power supply needs and to reduce their exposure to market price risks.

13Q. How is AMP-Ohio addressing these intermediate capacity and energy generation needs?

- A. Because of the needs for intermediate capacity and energy generation, AMP-Ohio has investigated and evaluated the Fremont Energy Center Project. This project is located near Fremont, Ohio and is a partially completed natural gas-fired combined cycle project that Calpine Energy developed, but discontinued construction in 2004 due to the Calpine bankruptcy filing. The Fremont Energy Center is rated at 544 MW with an additional 163 MW of duct-firing capability for peaking generation. Construction of the project is roughly 50 percent complete. As part of Calpine's bankruptcy proceedings this asset is being sold "as is", with the purchasing entity taking on all the requirements and costs for completing construction and bringing the project to commercial operation. AMP-Ohio has offered a purchase price to Calpine in the bankruptcy proceeding. Based on that offer, the bankruptcy court has declared AMP-Ohio as the lead bidding party ("the stalking horse") to be considered for final purchase offers for the project sale. Additional bids from all interested parties are due on January 21, 2008, and final award of sale is anticipated to be January 31, 2008.

14Q. If AMP-Ohio is able to complete the purchase of the Fremont Energy Center, how will it affect its Member's on-going power supply costs?

- A. If AMP-Ohio purchases the Fremont Energy Center, it is expected that it would provide AMP-Ohio Members a near term and long term intermediate power generation addition that would be more cost effective than capacity and energy purchases from the existing power market.

15Q. Would the purchase of the Fremont Energy Center affect the need for the AMPGS base load project?

A. No. As explained above the Fremont Energy Center would be used as an intermediate generation resource and would not be used as a base load generation resource. The addition of the AMPGS base load generation would still be needed regardless of whether the Fremont Energy Center is purchased.

16Q. Mr. Schlissel has indicated AMP-Ohio has not provided a least cost, least risk power supply plan to its Members. Do you agree?

A. No.

17Q. Why not?

A. Detailed individual power supply planning and alternative evaluations were conducted for 119 AMP-Ohio Members as detailed in, for example, the February 2007 Cleveland Power Supply Plan (AMP-Ohio Exhibit 15). This included evaluation of generating resource options, including generic base load coal, natural gas-fired combined cycle generation, natural gas-fired peaking generation, the AMPGS Project, the Prairie State Energy Campus Project, AMP-Ohio hydroelectric plants along the Ohio River, and future wind generation. In preparing the power supply analysis for each Member, R. W. Beck utilized its Stochastic Econometric Regional Forecasting model, which provides projections of fuel and power prices, utility loads and corresponding power costs for multiple portfolios of power supply resources. As described in the analysis the majority of the power supply needs of the Members are currently being supplied by the aging Gorsuch coal-fired power plant which is scheduled to be retired or repowered more or less contemporaneously with the in service date of AMPGS, and from purchased power contracts many of which expire by 2012. The resulting need for future generating capacity over the period 2013 through 2027 is over 3000 MW. In developing the power supply plans for the AMP-Ohio Members both costs and risks were considered. As a

result, the power supply plans include a diverse mix of resources which mitigate risks by avoiding reliance on any one type of fuel and/or technology. Additional Member beneficial use analyses were conducted which reflected updated AMPGS costs as part of the Initial Feasibility Study completed for the Project in June 2007. The updated bus bar analysis results discussed above further support the conclusions of the previous studies and investigations.

Finally, I would be remiss if I did not point out that in my opinion, the amount of "due diligence" AMP-Ohio, its Members and project partners, Blue Ridge Power Agency and Michigan South Central Power Agency, has undertaken with regard to the prudence of the AMPGS project is extraordinary. In addition to significant internal review and due diligence by AMP-Ohio, its Members and project partners, the number of recognized electric power consulting and engineering firms that have been involved in review of the project for AMP-Ohio, its Members and its partners is truly impressive. In addition to R.W. Beck, the following firms have been involved in the AMPGS project.

- Sargent & Lundy
- Black & Veatch
- Burns & Roe
- J.S. Sawvel & Associates
- Courtney & Associates
- GDS Associates
- Orbital Technical Solutions

To state or imply that the AMPGS project has not been well planned, that alternatives have not been appropriately evaluated, or that costs are not reasonably or appropriately estimated is simply not true.

19Q. Can AMP-Ohio require its Members to take or not take any particular power supply or power supply mix?

A. No, it can only recommend.

20Q. Mr. Schlissel indicated that AMP-Ohio's and R.W. Beck's construction costs estimates did not properly take into account risks of rising construction costs. Do you agree?

A. No.

21Q. Why not?

A. The recent trends associated with rising construction costs were considered and factored into the capital cost estimates prepared for AMPGS Project, including:

- Major equipment procurement costs were estimated in-line with latest vendor estimates;
- Equipment and commodity escalation were included at rates in-line with recent trends;
- Labor escalation costs were estimated in-line with region labor markets;
- Cost contingencies were included to account for procurement and construction uncertainties;
- Assumption of conservative interest rates for the bond financing of the Project; and,
- Inclusion of detailed owner's costs reflecting a thorough inventory of the overall Project development costs, interconnection costs, construction monitoring, testing and commercialization, initial inventories and operation funding and financing costs.

In addition, the plan for EPC contracting and early design provides an open and visible Project design and cost plan that the Members will be able to use to decide participation choices in the Project. The first step of this plan will be available in late January 2008 after receipt of EPC Contract proposals which will include updated cost estimates for design, equipment procurement and construction.

22Q. Does this conclude your rebuttal testimony?

A. Yes.

CONFIDENTIAL EXHIBIT IC-10

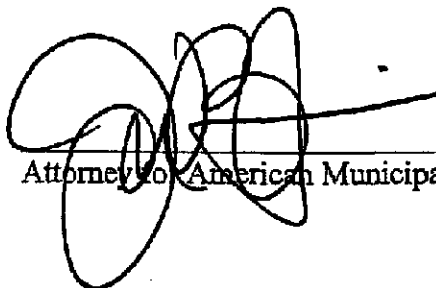
REDACTED

CONFIDENTIAL EXHIBIT IC-11

REDACTED

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing American Municipal Power-Ohio, Inc.'s Rebuttal Testimony of Ivan Clark, for Case No. 06-1358-EL-BGN was served upon the following persons via electronic mail and/or via postage prepaid U.S. Mail on December 28, 2007:



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**BEFORE THE
OHIO POWER SITING BOARD**

In the Matter of the Application of)
American Municipal Power-Ohio, Inc., for)
a Certificate of Environmental)
Compatibility and Public Need for an)
Electric Generation Station and Related)
Facilities in Meigs County, Ohio.)

Case No. 06-1358-EL-BGN

06-1358-EL-BGN
PUC
March 1, 2007

REBUTTAL TESTIMONY OF LARRY MARQUIS

1 Q. Please state your name and business address.

A. My name is Larry Marquis. My business address is 2600 Airport Drive, Columbus, Ohio 43219.

2 Q. By whom are you employed and in what position?

A. I am employed by American Municipal Power-Ohio, Inc. ("AMP-Ohio"), the Applicant in this proceeding, as Vice President, Technical Services.

3 Q. What are your responsibilities regarding AMP-Ohio's power supply?

A. In addition to other duties, I am currently responsible for project development for certain generation resources for AMP-Ohio and its Members, including landfill gas and wind generation.

4 Q. Please describe your educational and professional experience.

A. I received both a Bachelor and Master of Science Degrees in Electrical Engineering from the University of Nebraska in 1970 and 1975, respectively. I have been with AMP-Ohio since 2003. Previously I served as the Administrator of the City of Columbus, Division

EXHIBIT

AMP-OH 17

of Electricity and Vice Chairman of the AMP-Ohio Board of Trustees. I have held engineering positions with the Nebraska Municipal Power Pool, the Northern California Power Agency, the Lincoln (Nebraska) Electric System, and the Omaha Public Power District. I am a registered Professional Engineer in Nebraska and Ohio. My resume is attached as Exhibit LM-1.

5 Q. What is the purpose of your rebuttal testimony?

A. To rebut Mr. Schlissel's argument that AMP-Ohio has not considered "other alternatives" and options, including renewables, other than the proposed AMPGS as a part of a portfolio including "reasonable amounts...of renewable resources."

6 Q. Please describe AMP-Ohio's and its Members' efforts regarding landfill gas generation.

A. AMP-Ohio has been utilizing landfill gas generation since 1998 and recently entered into an agreement with Bio Energy Ohio, LLC to increase that capacity from 27.783 MW to 49.783 MW. Further, we are assisting a number of Member communities in the evaluation of over 100 MW of additional landfill gas, biomass and municipal solid waste energy projects.

7 Q. Can landfill gas generation be viewed as a base load resource?

A. Yes, although because gas production is variable throughout the life of the landfill and gas storage is not economically feasible, it is not dispatchable so the amount in a power supply portfolio must be limited.

8 Q. What factors affect the economics and availability of landfill gas generation in Ohio?

- A.
- (i) The gas is "dirty" and must be cleaned. Operating and maintenance expenses can be high.
 - (ii) Gas production is variable due to numerous environmental factors such as waste composition, landfill depth, moisture content, age of the waste and landfill design.
 - (iii) Generation can be limited as (a) the methane gas fuel may be limited by the age, size and design of the landfill, and (b) by the number of landfills that can be utilized.
 - (iv) The generation is usually available in smaller increments and is not dispatchable.
 - (v) Transmission/grid access can be expensive.

9 Q. Please describe AMP-Ohio's and its Members' efforts regarding wind generation.

- A. AMP-Ohio developed, constructed and currently operates, on behalf of a subset of ten (10) of its Members known as OMEGA-JV6, Ohio's first, and to date only, utility scale commercial wind farm. That 7.2 MW facility consisting of four (4) wind turbine generators was constructed in two (2) phases beginning in 2003 and completed in 2004.

10 Q. What is the capacity factor of the OMEGA JV6 project?

- A. Approximately 23.5% through November 2007, and it has been in the 21-23% range in prior years.

11 Q. Is wind generation considered a reliable base load resource?

A. No, although it can provide energy during both on and off-peak periods, it cannot be counted on to be available when needed – it is not dispatchable.

12 Q. What factors affect the economics and availability of wind generation for AMP-Ohio in Ohio?

- A.
- (i) Lower average wind speeds resulting in lower capacity factors than some other regions;
 - (ii) Inability to dispatch;
 - (iii) Size of wind farms may be limited in more populous states like Ohio due to significant concerns of local land owners regarding siting of the farms;
 - (iv) Transmission/grid access can be expensive;
 - (v) Long lead times for delivery of wind generating equipment and materials;
 - (vi) Escalating capital cost of wind generating equipment;
 - (vii) The life-expectancy of wind generating equipment is much shorter than traditional generating equipment; and
 - (viii) Availability of tax credits. As a non-profit organization, tax credits are of little value to AMP-Ohio.

13 Q. What are AMP-Ohio and its Members doing regarding development of additional wind generation?

- A. First, AMP-Ohio is working with a Member, the Borough of Berlin, Pennsylvania, to develop a 5.4 MW wind farm near Berlin, Pennsylvania. The wind monitoring studies, noise studies, and initial environmental impact studies have been completed. The PJM Interconnection studies are underway, and additional environmental studies are planned in the near future. AMP-Ohio has been awarded an allocation of \$3 million in Clean Renewable Energy Bonds for this Project from the Federal Government.

Second, AMP-Ohio has entered into a Memorandum of Understanding with JW Great Lakes Wind to develop up to an additional 49.5 MW of wind generation in the Wood County, Ohio area (the location of the OMEGA JV6 wind farm). JW Great Lakes is in the process of performing the feasibility study for the project.

Finally, wind monitoring studies are underway or have been completed in and around several other Member communities, including Wapakoneta, Bryan, Cuyahoga Falls, Oberlin, Elmore, Cleveland and Clyde, Ohio.

14 Q. Are there advantages to landfill gas and wind generation?

- A. Yes, but there are also disadvantages. They are environmentally sound and can be a part of the diversified portfolio that AMP-Ohio recommends for its Members. Landfill gas can be an economic source of energy, but in Ohio wind usually remains an option that will result in higher costs to consumers at this time so one must be prudent about how much is added at one time to the power supply mix. In fact, the more low cost sources in the portfolio, the more wind or other higher cost resources may be prudently added. Neither landfill gas nor wind generation is dispatchable, and wind, with less than a 25% capacity factor in our experience, is not a replacement for a base load resource such as AMPGS.

15 Q. Is AMP-Ohio pursuing other generation resources?

A. Yes. In addition to AMPGS, the Fremont Energy Center Natural Gas Combined Cycle generation discussed by Witness Clark, the hydroelectric generation discussed by Witness Meier, wind and landfill gas, AMP-Ohio is involved in confidential discussions regarding potential cogeneration applications with several entities.

16 Q. Do you have an opinion, based upon your knowledge, experience and qualifications, as to whether or not AMP-Ohio could prudently pursue and develop additional significant landfill or wind generation as base load resources at this time?

A. Yes.

17 Q. What is that opinion?

A. AMP-Ohio has and will continue to pursue a portfolio of generation resources. The complexity of developing wind and landfill resources, in relation to the amount of MW available, their lack of dispatchability and their cost do not make them a substitute for a base load resources such as AMPGS. However, having lower cost, reliable, dispatchable resources such as AMPGS enhances AMP-Ohio's ability to make these kinds of resources available to its Members.

18 Q. Does this conclude your rebuttal testimony?

A. Yes.



LARRY L. MARQUIS, P.E.
VICE PRESIDENT – BUSINESS & TECHNICAL SERVICES

PROFESSIONAL EXPERIENCE

Nov. 2003- Present **American Municipal Power-Ohio**

Vice president – Business & Technical Services

Responsibilities include providing direction & guidance for AMP-Ohio Technical Services and Key Accounts Services to members including transmission and distribution engineering and mapping, substation and relay engineering, power plant engineering, construction management, field engineering, environmental affairs, power quality services and economic development.

2001 – Nov. 2003 **City of Columbus, Ohio Division of Electricity**

Administrator

Responsible for providing leadership and management of a municipal utility operating a transmission and distribution system serving retail customers including functions of transmission and distribution planning, engineering operation and maintenance, power supply planning, customer service and financial responsibility.

1970-2001 **Professional Public Power Experience**

Primary responsibilities have included the following: relay and control system engineering; transmission & distribution engineering; power supply planning; power supply feasibility studies; design and construction of power supply facilities; energy control center operation; power supply and transmission service negotiations; legislative and regulatory activities; and joint action agency operation.

These responsibilities have been successfully fulfilled while serving in the respective capacity for the following public power utilities: Vice President of Energy Operations for AMP-Ohio, Executive Director of the Nebraska Municipal Power Pool (NMPP Energy), Manager of Engineering for the Northern California Power Agency, Chief Engineer for the Lincoln, Nebraska Electric System, and as Relay Engineer for the Omaha Public Power District.

EXHIBIT

LM-1

EDUCATION

Bachelor of Science in Electrical Engineering,
University of Nebraska

Master of Science in Electrical Engineering,
University of Nebraska

Registered Professional Engineer – Nebraska & Ohio

PROFESSIONAL ACTIVITIES

Institute of Electrical and Electronic Engineers
National Society of Professional Engineers
American Public Power Association Committees
Ohio Fuel Cell Coalition

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing American Municipal Power-Ohio, Inc.'s Rebuttal Testimony of Larry Marquis, for Case No. 06-1358-EL-BGN was served upon the following persons via electronic mail and/or via postage prepaid U.S. Mail on December 28, 2007:



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NON-CONFIDENTIAL

**BEFORE THE
OHIO POWER SITING BOARD**

In the Matter of the Application of)
American Municipal Power-Ohio, Inc., for)
a Certificate of Environmental)
Compatibility and Public Need for an)
Electric Generation Station and Related)
Facilities in Meigs County, Ohio.)

Case No. 06-1358-EL-BGN

REBUTTAL TESTIMONY OF PHILLIP E. MEIER

1 Q. Please state your name and business address.

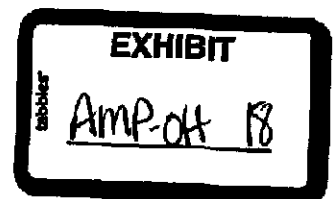
A. My name is Phillip E. Meier. My business address is 2600 Airport Drive, Columbus, Ohio 43219.

2 Q. By whom are you employed and in what position?

A. I am employed by American Municipal Power-Ohio, Inc. ("AMP-Ohio"), the Applicant in this proceeding, as Assistant Vice President – Hydro Development.

3 Q. What are your responsibilities regarding AMP-Ohio's power supply?

A. I am responsible for overall development of hydroelectric resources for AMP-Ohio and its Members. This includes identification of potential resources, evaluation of the same, overseeing outside consultants, responsibility for Federal Energy Regulatory Commission ("FERC") relations and compliance and project management duties relating to land acquisition, required modeling and other studies, preparation of construction related documents and eventual construction.



4 Q. Please describe your educational and professional experience.

A. I received a Bachelor of Science Degree in Electronic Engineering Technology from the DeVry Institute of Technology in 1985. I have been with AMP-Ohio since 1989 and served in various capacities including the project manager of the Belleville Hydro Project for nearly 6 years of my career. I also served as AMP-Ohio's Chief Information Officer until I began my full time hydroelectric development duties again in June of 2007. In my previous role as the Chief Information Officer at AMP-Ohio, I was responsible for all of AMP-Ohio's information systems. This included all software, hardware, telecommunications, and supervisory and control of data acquisition systems. I supervised a staff of network administrators and application developers. I have also been a Project Development Manager for AMP-Ohio where I was responsible for new project development. From 1985 to 1989, I was with the Honeywell Corporation, my last position being a software specialist.

5 Q. What is the purpose of your rebuttal testimony?

A. To rebut Mr. Schlissel's argument that AMP-Ohio has not considered "other alternatives" and options, including renewables, other than the proposed AMPGS as a part of a portfolio including "reasonable amounts...of renewable resources."

6 Q. Please describe the Belleville Hydroelectric Project.

A. The Belleville Hydro Project is a 42 MW run of the river hydroelectric power plant on the Ohio River near Belleville, West Virginia. The Project included the construction of a concrete enclosed powerhouse with two 21 MW hydro turbine/generator sets at the existing Belleville Locks and Dam operated by the U.S. Army Corps of Engineers ("USACE"). This over \$150 M project also included 26.5 miles of 138 kV transmission and fossil fuel fired back up generation. The Belleville Project was developed on behalf of a subset of 42 AMP-Ohio Members known as OMEGA JV5. The Belleville Project is a Federal Energy Regulatory Commission ("FERC") licensed project that had to be constructed, operated and maintained in strict compliance with the FERC license

("License") for that project, as well as the requirements of the USACE.

7 Q. What were your responsibilities as Project Manager on the Belleville Hydroelectric?

A. I began the planning phases of the Belleville Project regarding FERC license acquisition and compliance and continued as the Project Manager through the design, engineering and construction of the Project. I was responsible for all contracts and for primary in-house construction management duties of that Project up until commercial operation. After commercial operation, I retained responsibility for continuing warranty and FERC License compliance issues related to the Project after commercial operation.

8 Q. How has AMP-Ohio approached development of hydroelectric generation?

A. Beginning in the early 2000's, AMP-Ohio's CEO and Board recognized (i) the need for additional generation resources and the desire to diversify those resources; (ii) the environmental desirability of hydroelectric generation; (iii) the limited opportunities for hydroelectric generation in this region; and, (iv) the potential for future regulation of CO2 emissions. As a result, AMP-Ohio began an active and aggressive effort to identify, analyze and acquire potential hydroelectric resources.

9 Q. How was the overall need for diversified resources established?

A. Through a number of studies and analyses described by Witnesses Clark and Kiesewetter.

10 Q. What does AMP-Ohio believe are the environmental advantages of hydroelectric resources?

A. Hydroelectric resources available in our region have a number of advantages including:

- (i) The primary available resources are "run of the river" projects to be located at existing locks and dams on the Ohio River, thereby lessening the environmental impact of the construction and operation of these facilities;

- (ii) Hydroelectric generation does not produce any air emissions such as SO₂, NO_x or CO₂ and therefore provides environmental benefits. It also tends to increase the dissolved oxygen content in the Ohio River. Additionally, the FERC License procedures require License holders to undertake environmental and wildlife studies that many state agencies could not independently afford. Those studies yield data and reports gathered and financed by AMP-Ohio, to the benefit of those agencies and the environment; and
- (iii) There are limited potential renewable projects that are currently developable and economically viable. There simply are not enough economically feasible renewable projects in the Midwest. As discussed by Witness Marquis, wind generation is limited due to the lack of sufficient and consistent wind, and landfill gas is limited, among other things, by the size and age of the landfill. Today, in the Midwest, AMP-Ohio believes hydro is the best renewable resource.

11 Q. What is meant by "run of the river"?

- A. The USACE controls all water flows on the Ohio River for flood control and navigation. The amount of water flow through each dam, including any hydroelectric facilities, is strictly regulated with navigation and flood control as the top priorities. The USACE determines how much water can be put through the hydroelectric portion of each dam with such a facility. Whatever run of river water flow there is that is made available by the USACE can be used when and as available to make electricity. "Pooling" water to make additional generation when needed is not an option. These kinds of facilities are not, therefore, dispatchable.

12 Q. Can hydroelectric generation produce cost advantages as well?

- A. Yes, although hydroelectric projects are very capital intensive and expensive to construct, our experience has shown a well planned and constructed hydroelectric project can trend below market prices within 5-10 years of commercial operation. The end result is that

hydroelectric projects can be attractive from a power supply cost basis. Hydroelectric generation does have inherent construction risks that must be carefully managed, however.

13 Q. What are those advantages?

A. Advantages include:

- (i) The expected life of hydro generation is extremely long, well over 50 years, providing lower cost output after debt service is paid off;
- (ii) With no fuel costs, lower relative operating and maintenance costs, and fixed debt service, the cost of the output of hydroelectric projects over time are much less affected by inflationary pressure than most other types of generation;
- (iii) Special funding can be available for hydroelectric facilities. For example, AMP-Ohio has applied for and obtained special Clean Energy Renewable Bonds ("CREBs"). AMP-Ohio has already been allocated over \$15 M in such bonds for our hydroelectric projects; and
- (iv) Finally, hydroelectric generation will help hedge the potential impact of CO₂ or other emissions costs on our Members as part of their overall power supply portfolio.

14 Q. What are the limitations on the availability and economics of hydroelectric generation in this region?

A. Absent new dam construction or creation of pumped storage, both of which involve numerous environmental impacts, cost and other feasibility issues, the hydroelectric generation available in this region principally consists of a number of licenses issued by the Federal Energy Regulatory Commission ("FERC") on the Ohio River that remain undeveloped. The FERC issued 16 Licenses in 1989. Only one of those 16 have been

built, Belleville, and AMP-Ohio and its Members are pursuing to the development of 5 others. Additionally, as mentioned above, hydroelectric generation in this region is very capital intensive and for the most part, non-dispatchable. Also, the capacity factors are low - in the 50-60% range - compared to coal-fired generation.

15 Q. What has AMP-Ohio done to pursue those licenses?

A. A number of things. Initially, AMP-Ohio identified certain FERC licenses that were held or controlled by a private developer and successfully initiated negotiations to purchase those licenses in order to develop them. Concurrently, AMP-Ohio engaged one of the nation's foremost hydroelectric engineering firms, Montgomery Watson Harza ("MWH"), to evaluate the technical and economic feasibility of 10 potentially available, undeveloped Ohio River licenses. That Study is a confidential document, the confidential conclusions of which is marked as Exhibit PM-1 attached hereto. That report was undertaken and completed under my direction and supervision.

CONFIDENTIAL PORTION FOLLOWS:

[REDACTED]

NON-CONFIDENTIAL PORTION CONTINUED:

17 Q. What has AMP-Ohio done with regard to development of the available and technically and economically viable licenses?

A. On behalf of its Members, AMP-Ohio has acquired control of the following FERC licenses and is pursuing development and construction of the same.

(i) Cannelton, Hydroelectric Project (FERC License No. 10228) - an 81 MW project located at the Cannelton Locks and Dams. This License was acquired from the previous license holder that had not undertaken adequate development;

- (ii) Smithland, Hydroelectric Project (FERC License No. 6641) - a 73 MW project located at the Smithland Locks and Dams. This License was acquired from the previous license holder that had not undertaken adequate development; and
- (iii) Willow Island, Hydroelectric Project (FERC License No. 6902) - a 37 MW project located at the Willow Island Locks and Dams. This License was held by AMP-Ohio Member, the City of New Martinsville, West Virginia, and the License will eventually be transferred to AMP-Ohio for development on behalf of its Members, including New Martinsville.

These Projects total 191 MW and are currently under development. Preliminary site work has begun on these Projects and the initial requests for proposals for manufacture of the eight (8) turbine generators for the three (3) Projects have been issued. The FERC Licenses required hydraulic modeling studies and that has been contracted for and the models are being constructed. Testing will begin on these models in late January and early February. Bid specifications for the remaining site preparation and civil construction and installation are being prepared.

18 Q. Have AMP-Ohio's Members contracted for these projects?

- A. Yes, over 67 Member municipalities, including 61 in Ohio, have executed agreements for construction and operation of the projects. Additional Members may also join the Projects over the next few months. In fact, we are already over-subscribed, that is we have greater demand for the projects' capacity (197 MW) than what is currently available (191 MW).

19 Q. What are the estimated capital costs of those three Projects?

- A. AMP-Ohio's consulting engineer, J.S. Sawvel & Associates ("J.S. Sawvel"), estimates approximately \$760 M. The development of these Projects is outlined in our confidential consulting engineers feasibility report by J.S. Sawvel, the Executive Summary containing

the conclusions of which are attached as Exhibit PM-2. That report was undertaken under my direction and supervision.

20 Q. What other hydroelectric projects are AMP-Ohio and its Members pursuing?

- A. AMP-Ohio Member, City of Hamilton, Ohio, with AMP-Ohio's support, is pursuing the FERC License for the Meldahl Hydroelectric Project, a 105 MW project at the existing Captain Meldahl Locks and Dams on the Ohio River. AMP-Ohio expects a portion of that Project will be available to other AMP-Ohio members. Hamilton also owns and operates the 70.2 MW Greenup Hydroelectric Project. AMP-Ohio and its Member, the City of Wadsworth, Ohio, are also pursuing the FERC License for the R.C. Byrd Hydroelectric Project, a 48 MW project located at the R.C. Byrd Locks and Dams near Gallipolis, Ohio. AMP-Ohio is also pursuing one additional non-FERC licensed hydroelectric project at an existing dam of approximately 25 MW, currently controlled by three municipalities, one of which is an AMP-Ohio Member.

21 Q. Is there competition for those FERC Licenses?

- A. Yes. A private utility also filed for the Meldahl License but has since abandoned that effort. Two Kentucky communities are competing with AMP-Ohio and its Member, the City of Wadsworth, Ohio for the R.C. Byrd License. That is still being litigated. Brookfield Power has filed a permit for the Olmstead Project. There was additional competition for other licenses.

CONFIDENTIAL PORTION FOLLOWS:

[REDACTED]

NON-CONFIDENTIAL PORTION CONTINUED:

23 Q. Do you have an opinion, based upon your knowledge, experience and qualifications, as to whether or not AMP-Ohio could prudently pursue and develop additional significant hydroelectric generation at this time?

A. Yes.

24 Q. What is that opinion?

A. Given the economic and technical aspects of the additional potential developments, the significant financial commitment represented by the 5 projects being pursued and the different logistics of developing multiple projects, it would not be prudent. Before pursuing additional potentially available hydroelectric projects of any size, the projects currently being developed or pursued should be moved significantly toward completion or a determination that one or more should not, for some reason, be further pursued or developed. Only then should AMP-Ohio pursue additional hydroelectric projects.

25 Q. Are there others that are developing hydroelectric projects in this region?

A. Not that I am aware of in this region and of comparable size. There have been many developmental attempts, but none that are at the stage of AMP-Ohio's projects.

26. Q. Does this conclude your rebuttal testimony?

A. Yes.

EXHIBIT PM-1

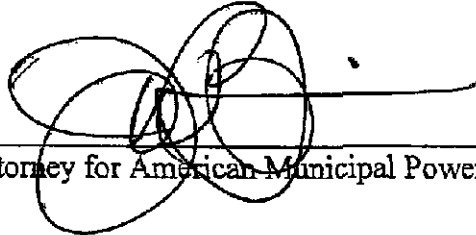
REDACTED

EXHIBIT PM-2

REDACTED

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing American Municipal Power-Ohio, Inc.'s Rebuttal Testimony of Phillip E. Meier, for Case No. 06-1358-EL-BGN was served upon the following persons via electronic mail and/or via postage prepaid U.S. Mail on December 28, 2007:



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