

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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2 In the Matter of the :
 Application of The East :
3 Ohio Gas Company d/b/a :
 Dominion East Ohio for :
4 Authority to Increase :
 Rates for its Gas :
5 Distribution Service, :
 Approval of an Alternative:
6 Rate Plan for its Gas :
 Distribution Service, :
7 Approval to Change :
 Accounting Methods, :
8 Approval of Tariffs to : Case Nos. 07-829-GA-AIR
 Recover Certain Costs : 07-830-GA-ALT
9 Associated with a Pipeline: 07-831-GA-AAM
 Infrastructure Replacement: 08-169-GA-ALT
10 Program Through an : 06-1453-GA-UNC
 Automatic Adjustment :
11 Clause, and for Certain :
 Accounting Treatment, and :
12 Approval of Tariffs to :
 Recover Certain Costs :
13 Associated with Automated :
 Meter Reading Deployment :
14 Through an Automatic :
 Adjustment Clause, and for:
15 Certain Accounting :
 Treatment. :

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 VOLUME VI - PROCEEDINGS

17
 before Ms. Christine M.T. Pirik and Mr. Scott Farkas,
18
 Hearing Examiners, at the Public Utilities Commission
19
 of Ohio, 180 East Broad Street, Room 11-C, Columbus,
20
 Ohio, called at 11:30 a.m. on Tuesday, August 27,

21

2008.

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1 Wednesday Morning Session,

2 August 27, 2008.

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4 EXAMINER FARKAS: Mr. Kutik.

5 MR. KUTIK: Your Honor, when we were off

6 the record yesterday we had discussed allowing us

7 some time after we had received Mr. Colton's rebuttal

8 testimony to determine what the company and staff

9 wanted to do, potentially to take a deposition of

10 Mr. Colton or to proceed with cross-examination.

11 It is our preference at this time, your

12 Honor, to make several motions to the Bench to strike

13 certain parts of Mr. Colton's testimony. We would

14 then propose that after the Bench rules on that, we

15 could then make a decision as to what would be the

16 most prudent course.

17 Our thinking on that is that if the Bench

18 grants most of our motions or all of our motions,

19 then the need to take Mr. Colton's deposition may be

20 obviated and the need to cross-examine him may be

21 obviated and we can move this case towards a quick

22 conclusion.

23 EXAMINER FARKAS: Okay. Why don't you

24 make your motions to strike.

1 MR. KUTIK: Okay.

2 MR. SAUER: Before Mr. Kutik starts I'd
3 like to get on the record that the attorney defending
4 Mr. Colton is not in the room and that these motions
5 are being made outside of his presence.

6 Second of all, I'd like to mention that
7 this is a witness who is rebutting staff witness's
8 testimony and not a company witness's testimony, and
9 I'm not -- it's not clear to me what the company's
10 interest in striking Mr. Colton's testimony is at
11 this point.

12 EXAMINER FARKAS: At this point we're
13 just hearing the motions and we're not ruling on them
14 right yet, so we're just going to listen to the
15 motions first.

16 MR. KUTIK: Okay. Your Honor, let me
17 start off by moving to strike the entire testimony on
18 the basis that it is entirely improper rebuttal
19 testimony.

20 We can start with the proposition that,
21 from Black's Law Dictionary, rebuttal testimony is
22 testimony that is tendered after a party closes its
23 case and after the opposing party closes its case.
24 OCC insisted that they go last in this case, so as a

1 matter of order there is -- this is not rebuttal
2 testimony. It is testimony that should have been
3 included as part of their direct case. That's number
4 one.

5 Number two, also kind of standard
6 hornbook law, the principle objective of rebuttal
7 testimony is to permit a party to counter new or
8 unforeseen facts. So I think it's a fair inquiry for
9 the Bench to determine whether the issue that's posed
10 by Mr. Colton's testimony, namely the alleged adverse
11 effect of SFV on low-income customers, is an issue or
12 is a fact that is new or unforeseen.

13 I'd like to take the Bench through a
14 short time line of this issue and where OCC -- and
15 OCC's knowledge with respect to that issue. If I may
16 approach the Bench with some attachments.

17 EXAMINER FARKAS: Yes.

18 MR. KUTIK: Your Honor, the issue of
19 straight fixed variable and its effect, good or bad,

20 on low-income customers has not been a new issue
21 before this commission. In fact, it started out or
22 the earliest that we could tell it was discussed was
23 in the testimony of Mr. Puican from the staff on
24 February 28th, 2008, in the Duke Energy case. We

1 have provided you a copy of that opinion or that
2 testimony.

3 Now, I have also given you a series of
4 press releases from OCC, and at the conclusion of
5 that case, of the Duke case, on May 28th, 2008, OCC
6 issued a press release which on page 2 of 2, third
7 paragraph down, the second sentence says, "However,
8 OCC said that the PUCO decision fails to balance
9 consumers' needs with the utility's or take into
10 account the current economic strains burdening
11 residential customers."

12 Now, in this case there was testimony
13 filed by Mr. Radigan, and I don't know if the Bench
14 has Mr. Radigan's testimony before it, but
15 Mr. Radigan at page 11, line 7, to page 12, line 6
16 discussed the issue or the alleged effect of SFV on
17 low-income customers, specifically citing a report or
18 data by the Energy Information Administration, data
19 also that Mr. Colton discusses.

20 So the issue of the alleged effect of SFV
21 on low-income customers was certainly something that
22 OCC saw fit on June 23rd to file testimony on.
23 Now, also on that day OCC issued a press
24 release in this case, and on the first page of that

1 press release, the fifth paragraph down, OCC said
2 "The level of the flat-rate customer charge is a
3 point of contention in the Dominion East Ohio rate
4 case as it has been in similar cases dealing with the
5 rates of Ohio's major natural gas utilities."

6 Skipping a paragraph, OCC then said, "The
7 OCC opposes raising the flat-rate customer charge
8 because such a change in the rate structure would
9 negatively impact customers who attempt to conserve
10 energy and results in low-use customers subsidizing
11 high-use customers."

12 Now, on June 10th, 2008, OCC issued
13 another press release in this case, and on the second
14 page the second-to-last paragraph before some
15 information about OCC the statements that I've just
16 read were repeated.

17 Now, Mr. Colton filed direct testimony in
18 the Vectren Energy case, and I've given you a copy of
19 that, he filed that testimony on July 23rd, 2008.

20 You can take that testimony and you can compare it to
21 the prefiled testimony, the prefiled alleged rebuttal
22 testimony that's been filed in this case, and but for
23 some references to Mr. Puican and but for some data
24 and discussions about Cuyahoga County as opposed to

1 Montgomery County, the testimony is word for word
2 identical.

3 On June 24th, the day after -- excuse
4 me, July 24th, the day after Mr. Colton's testimony
5 was filed in Vectren, OCC issued a press release in
6 Vectren or about the Vectren case and in that press
7 release, the fourth paragraph down, the OCC said,
8 "The OCC opposes raising the flat-rate customer
9 charge stating that this change will have an adverse
10 effect on lower-usage, lower income customers and
11 have a negative impact on energy efficiency efforts
12 by creating a disincentive to use less gas."

13 Skipping a paragraph there's a quote,
14 "'Increasing a flat-rate customer charge creates
15 undue hardship for people who can least afford it,'
16 said Janine Migden-Ostrander, Consumers' Counsel.
17 'Not only does this approach discourage residents
18 from conserving energy, but research supports the
19 conclusion that the low-income and elderly population

20 will be more at risk by adopting this approach."

21 On August 1st OCC issued yet another

22 press release, this one about this case, and in the

23 eighth paragraph down, the paragraph that begins "The

24 level of the flat-rate customer charge," the last

1 sentence says, "The OCC opposes raising the flat-rate
2 customer charge because such a change in the rate
3 structure would negatively impact customers who
4 attempt to conserve energy and result in low-income,
5 low-use customers subsidizing high-income, high-use
6 customers."

7 A few days later on August 6th they
8 issued another press release, this one about the
9 Vectren case, making a similar statement.

10 I would also point the Bench to -- well,
11 all of that indicates that OCC was well aware of the
12 issue of the alleged effect of SFV rates on
13 low-income customers, that they had the opportunity
14 and, in fact, took the opportunity with Mr. Radigan
15 to address that issue. The problem that OCC had was
16 apparently that wasn't good enough and so now they
17 want a second bite at the apple.

18 And, further, what they want to do is
19 they want to do it by way of ambush. They clearly

20 knew that this was an issue and they clearly waited.

21 And why do we think they waited? Well, one, because

22 they knew about this issue before now.

23 Second, you can look at Mr. Colton's

24 testimony. Mr. Colton's testimony at the end

1 discusses his attempt to reserve his right to
2 supplement his testimony if the staff fails to
3 support the Staff Report.

4 So this was testimony that was apparently
5 being prepared after the Staff Report was filed.
6 What we have here is clear prejudice to the company,
7 to the staff. We got this testimony yesterday, we're
8 given the opportunity potentially today or
9 potentially tomorrow to take Mr. Colton's deposition,
10 but if you look at Mr. Colton's testimony, it has
11 data point upon data point that we have to review, go
12 find, analyze, and then think up what questions we
13 want to ask him about.

14 To do all that in a day, to do all that
15 in two days, puts the company and the staff at a
16 severe disadvantage and it's a severe disadvantage
17 that's created not because of anything that any other
18 party has done other than OCC.

19 For all those reasons we would -- we

20 object to the tendering of this testimony and we

21 would move that it be stricken in its entirety.

22 EXAMINER FARKAS: Do you have a copy of

23 Mr. Radigan's testimony handy?

24 MR. KUTIK: I believe we do. Hold on a

1 minute.

2 Do you have Mr. Radigan's testimony?

3 MS. HAMMERSTEIN: Yeah. It's scribbled
4 in.

5 EXAMINER FARKAS: That's okay.

6 MR. KUTIK: The pages that I was
7 referring to for Mr. Radigan, page 11, line 7, to
8 page 12, line 6. That's our first motion, your
9 Honor.

10 EXAMINER FARKAS: Mr. Sauer, do you have
11 any response to the motion to strike?

12 MR. SAUER: Yes, your Honor. Again, I
13 want to emphasize that Mr. Serio is the attorney
14 defending Mr. Colton's testimony.

15 EXAMINER FARKAS: Well, I guess another
16 question, where is Mr. Serio? And I guess what did
17 you expect was going to happen this morning?

18 MR. SAUER: Well, my understanding was
19 the company was going to make a decision today

20 whether they wanted to depose or go straight into
21 cross-examination of Mr. Colton; that was what was
22 going to happen at 11:30. And again, that was my
23 understanding of what the process was for this
24 afternoon.

1 And again, I want to emphasize that
2 Mr. Colton's testimony is rebutting a staff witness,
3 not a company witness, and that specifically he is
4 rebutting Mr. Puican and he identifies the three
5 areas in which he's rebutting Mr. Puican's testimony
6 on page 3.

7 So this is absolutely proper rebuttal
8 testimony. Mr. Puican's testimony wasn't filed until
9 I believe July 31st in this case.

10 The time line that Mr. Kutik has tried to
11 run through, you know, the Duke case was decided at
12 the end of May, testimony in this case was due on
13 June 23rd. It wasn't until we lost the issue on
14 straight fixed variable in the Duke case that we have
15 reason to start looking for a witness who might have
16 the expertise to rebut what was the staff's arguments
17 in Duke.

18 And we found Mr. Colton and got his
19 contract in place in time to file testimony in the

20 VEDO case which had a later time line than this case.

21 In fact, with a week extension Mr. Colton was indeed

22 able to file his testimony in the VEDO case on July

23 23rd, a month after the testimony in this case was

24 due.

1 The language that Mr. Kutik is speaking
2 to in terms of reserving his rights is probably a
3 carryover language that was in the VEDO testimony and
4 it isn't that it was being prepared at the time or we
5 were in a position to file this on June 23rd; we
6 weren't. We barely got it filed in the VEDO case
7 near the end of July.

8 Again, this isn't an attempt to ambush,
9 it's an attempt to refute specifically statements the
10 staff was relying on in their support of the SFV rate
11 design. This is proper rebuttal testimony, and if
12 the staff or the company feels some of these issues
13 that Mr. Colton -- if his facts and information are
14 improper, then surrebuttal testimony on their part
15 would be an appropriate recourse, but absolutely this
16 is proper rebuttal testimony and should be admitted
17 into the evidence in this case.

18 EXAMINER FARKAS: Just a second.

19 Mr. Radigan's testimony has the same

20 discussion about low-income customers being

21 disadvantaged by straight fixed variable rate design.

22 MR. SAUER: It was similar arguments we

23 made in the Duke case, your Honor. Wilson Gonzalez's

24 testimony had similar statements in the Duke case.

1 We just didn't have the supporting data of
2 Mr. Colton and his expertise in studying not only
3 Ohio, but midwest and the United States census data
4 that demonstrates that the impact on low-income
5 customers is there. I mean, it's -- using PIPP as a
6 surrogate is improper reliance on what is happening
7 to the low-income customers in these cases. It's
8 just improper.

9 EXAMINER FARKAS: But Mr. Radigan
10 discusses that issue; does he not?

11 MR. SAUER: He discusses the issue, but
12 nowhere near the depth and with the data to support
13 the arguments that he's making in Mr. Colton's
14 testimony.

15 EXAMINER FARKAS: Okay.

16 MR. SAUER: And again, as a carryover
17 kind of argument that we made in the Duke case, but
18 didn't have a witness who had the expertise and the
19 knowledge of the low-income customer usage issues

20 this Mr. Colton has.

21 EXAMINER FARKAS: Okay. Ms. Hammerstein.

22 MS. HAMMERSTEIN: Thank you, your Honor.

23 First of all, staff would join the company in its

24 motion to strike the entirety of Mr. Colton's

1 testimony.

2 Secondly, as Mr. Kutik pointed out and I
3 think as Mr. Sauer's remarks just pointed to the
4 Bench that Mr. Radigan's testimony, as you seem to
5 recognize, addresses this very issue and his
6 testimony was filed after the Staff Report was filed
7 in this case and it is clearly improper rebuttal to
8 have Mr. Colton's testimony introduced just to
9 bolster OCC's case. The fact that they may or may
10 not have been able to obtain a witness that had
11 allegedly better information to share with the
12 Commission doesn't go to whether or not it's proper
13 rebuttal.

14 EXAMINER FARKAS: Mr. Serio, Mr. Kutik
15 has made a motion to strike the entirety of
16 Mr. Colton's rebuttal testimony that was filed.

17 MR. SERIO: Yes, your Honor. I
18 apologize, I was in the Vectren hearing and got over
19 here as quick as I could.

20 EXAMINER FARKAS: That's okay.

21 MR. SERIO: Our response is that

22 Mr. Colton in his testimony specifically identifies

23 aspects of Mr. Puican's testimony that he's

24 rebutting. Rebuttal testimony is designed to rebut

1 what another witness says. Mr. Puican made the
2 statement that he was using PIPP customers as a
3 surrogate for non-PIPP customers.

4 I specifically asked Mr. Murphy the same
5 question and the company indicated they were not
6 doing that. So our rebuttal testimony really goes to
7 the heart of the staff position and not necessarily
8 the company position.

9 We could not have filed rebuttal
10 testimony to Mr. Puican's testimony until
11 Mr. Puican's testimony was filed, until Mr. Puican
12 took the stand. We didn't have that opportunity
13 based on the timing of the proceeding. We identified
14 what we're rebutting and that's what was in
15 Mr. Puican's direct testimony. That's what rebuttal
16 testimony is supposed to do, and that's exactly what
17 we did in this case.

18 EXAMINER FARKAS: Mr. Kutik.

19 MR. KUTIK: Your Honor, certainly the

20 company has an interest in this issue and certainly

21 the company has standing to bring this type of

22 motion. We have an interest in the record in this

23 case regardless of what company -- what party

24 supports what witness.

1 What I heard Mr. Sauer say is basically
2 that they didn't have the time to present their
3 direct case and so what they're trying to do at this
4 point is to then rebut Mr. -- or use the rebuttal
5 technique to get this evidence in.

6 Mr. Sauer, neither Mr. Sauer nor
7 Mr. Serio, has given the Bench any indication that
8 this was a new or unforeseen issue which would be an
9 appropriate issue for rebuttal.

10 A fair and proper way to put this
11 evidence in if OCC wanted to would have been to
12 submit supplemental testimony in this case, and that
13 would have given us and the staff an opportunity
14 earlier in this case to consider the testimony, to
15 apply to the bench for an opportunity to take
16 depositions. We certainly had that opportunity. We
17 really don't have that opportunity at this point.

18 MR. SERIO: Your Honor, my understanding
19 was that the Bench was giving the company the

20 opportunity to take the deposition of Mr. Colton.

21 He's completed his testimony in Vectren. He's

22 available, he's here, if the company wants to take a

23 deposition. So it's not a question of having the

24 opportunity because they do have that opportunity by

1 the Bench's ruling.

2 MR. KUTIK: What Mr. Serio did not hear
3 me say, and I will repeat it for his benefit, is that
4 there is data point after data point cited in
5 Mr. Colton's testimony, there are a number of studies
6 cited in his testimony that we would have to get our
7 hands on that have not been made available to us as
8 required under the Rules of Evidence and under a data
9 request. So for him to say you can take discovery
10 and that would be adequate in a day and a half is
11 ludicrous.

12 EXAMINER FARKAS: We're going to have to
13 review that, the motion itself, but in the event that
14 that was not granted, what would be the other motions
15 to strike that you would have?

16 MR. KUTIK: Your Honor, our next motion
17 to strike would be to strike, and do you have
18 Mr. Colton's testimony?

19 EXAMINER FARKAS: Yes.

20 MR. KUTIK: Our motion would be to strike
21 section III, Roman numeral III of his testimony,
22 which would cover question and answer Nos. 9 through
23 and including 15 which would also include pages 4,
24 line 20 through page 10, line 16, and also would

1 include Schedules RDC-1, 2, and 3.

2 EXAMINER FARKAS: Okay. So your motion
3 would be to move to strike section III which would be
4 the Q and A 9 through 15 which is pages 4, line 20,
5 through page 10, line 16, and RDC-1, 2, and 3.

6 MR. KUTIK: Yes, that's correct. The
7 basis for the motion is that it is not proper
8 rebuttal testimony. As Mr. Serio said, Mr. Sauer has
9 said, in Mr. Colton's testimony he identifies three
10 statements made by Mr. Puican that they're attempting
11 to rebut. Those statements are that low-income
12 customers are not low-usage customers; that PIPP data
13 or data on PIPP customer usage is the best proxy on
14 low-income customer usage; and third, because
15 high-usage customers benefit from SFV and low-income
16 customers are high-usage customers, low-income
17 customers would benefit from SFV.

18 Section III deals with topics involving
19 things like the Home Energy Burden and the Home

20 Energy Affordability Gap, only a part of which

21 involves natural gas costs.

22 There is a discussion about, not just

23 low-income individuals, moderate-income levels,

24 question and answer 11 for example, and also the need

1 for affordable shelter and shelter costs, for example
2 question and answer 14, and those shelter costs
3 involve things like rent and mortgage payments and
4 the relationships of those things -- the relationship
5 of energy costs generally to fair market rents.

6 None of those things deals with whether
7 low-income people are high users or low users. None
8 of those things deals with PIPP and how PIPP
9 customers relate to other customers. And none of
10 those things deal with straight fixed variable and
11 how it relates -- and how it affects low-income
12 customers. For that reason, it doesn't rebut, even
13 under their theory of rebuttal, Mr. Puican's
14 testimony. Thank you.

15 EXAMINER FARKAS: Okay.

16 MR. SERIO: Your Honor, the testimony in
17 section III of Mr. Colton's testimony provides the
18 background and puts into context his conclusions and
19 analysis regarding the relationship between

20 low-income customers, gas usage, and the relationship
21 between low-income non-PIPP customers and PIPP
22 customers.

23 As has been practiced in administrative
24 proceedings, you don't force the witness to answer a

1 question with a specific without being given the
2 opportunity to put their answer into context.
3 Mr. Colton's testimony in section III provides the
4 context and background for the conclusions that he
5 reaches later in his testimony.

6 MR. KUTIK: If one looks at Mr. Colton's
7 testimony, it's basically in four sections after his
8 qualifications. First is on this Home Energy
9 Affordability Gap; second discusses low-income
10 customer usage, and by "usage" I really mean
11 expenditure because that really doesn't talk about
12 usage at all, and income, house size, household size.
13 That also -- he also talks in the second section
14 about federal data on generally the same topic.

15 The third topic deals with whether PIPP
16 data or PIPP customers are a good proxy for
17 low-income customers.

18 And the fourth is a general description
19 and some calculations which are known I think only to

20 Mr. Colton that allegedly demonstrate what the effect
21 of SFV is on low-income customers. None of those
22 three sections, those latter three sections, rely on
23 the first section.

24 Certainly Mr. Serio in his comments cited

1 you to nothing where he said, you know, the Home
2 Energy Burden, Home Energy Affordability Gap is a
3 necessary predicate for his discussion of
4 Ohio-specific data, federal data, PIPP data, or his
5 supposed calculations. It's independent of the rest
6 of the testimony and, therefore, should be stricken.

7 MR. SERIO: Your Honor, Mr. Colton takes
8 national data, compares it to regional data, compares
9 it to Ohio data. He puts things into context with
10 each other. He's trying to fill the gap with the
11 data that we don't have and which the staff relied on
12 PIPP customer usage for non-PIPP customer usage.

13 You can't take one piece of data and look
14 at it in a vacuum, they're all interrelated. What
15 Mr. Colton has tried to do in his testimony is
16 provide all the information that he looked at and
17 provide a basis for the analysis that he did.

18 The national data that he looked at does
19 have a correlation to the regional data, does have a

20 correlation to the state data. And he's making that
21 conclusion and explaining how three different
22 analyses by three different governmental agencies all
23 lead him to make the same conclusions. I think
24 that's absolutely pertinent and it gets to the heart

1 of the question in this proceeding as to how the
2 straight fixed variable rate design affects
3 customers.

4 We have on the record already that
5 low-usage customers are going to see a larger
6 increase from the move to straight fixed variable
7 than the average-use customer, so I think it's
8 absolutely appropriate for the Commission to have
9 before it the data that shows just how low-usage
10 customers are going to be impacted. And to the
11 extent that low-usage customers are going to be
12 impacted, the Commission should have the opportunity
13 to have the data in front of them that correlates low
14 usage with low income.

15 It's testimony that we heard repeatedly
16 at the local public hearings from hundreds of
17 witnesses and it's information that the Commission
18 should have before it in an administrative proceeding
19 before they make an important policy decision like

20 this one in a situation where the company never even
21 asked for this when they filed their thousand-page
22 application almost a year ago.

23 MR. KUTIK: Mr. Serio has now had two
24 chances to tell you where in the subsequent parts of

1 his testimony the data that's referred to in the
2 first section is relied upon; he couldn't do that.
3 And in fact, what I also heard him say is that this
4 testimony is basically a repetition of testimony
5 that's been heard from hundreds of witnesses and,
6 therefore, it's cumulative.

7 EXAMINER FARKAS: Okay. Thank you.

8 Ms. Hammerstein, do you have anything to
9 add?

10 MS. HAMMERSTEIN: No, your Honor.

11 EXAMINER FARKAS: The parts of his
12 testimony that I repeated, that was it?

13 MR. KUTIK: That was our second motion.
14 We have several.

15 EXAMINER FARKAS: Oh, you have -- okay.
16 All right.

17 MR. KUTIK: Our next motion, your Honor,
18 would deal with question and answer No. 26 through
19 and including 29 which starts on page 19, line 13.

20 I'm sorry. That's down the road. Let me
21 go to my next motion. I apologize for the confusion.
22 EXAMINER FARKAS: Okay.
23 MR. KUTIK: Our next motion deals with
24 section IV of his testimony, question and answer 16

1 through 29. That includes pages 10, line 18, through
2 page 21, line 14.

3 EXAMINER FARKAS: Just so I get this
4 right, Q and A 16 through 29 including pages 10, line
5 18, through 21, line 14.

6 MR. KUTIK: Yes. It would also include
7 Schedules RDC-4 through 13.

8 EXAMINER FARKAS: Okay.

9 MR. KUTIK: We have a fairly short
10 argument on this, your Honor. This discusses, as I
11 mentioned earlier, data supposedly involving Ohio and
12 from the federal government; none of it is specific
13 to DEO's territory. Mr. Puican's statements that are
14 supposedly rebutted or to be rebutted are statements
15 involving DEO customer usage. None of this deals
16 with DEO customers.

17 They've had an opportunity again to raise
18 this very point in terms of what low-income customers
19 use and don't use in Mr. Radigan's testimony and it's

20 merely an ambush attempt to supplement Mr. Radigan's
21 testimony.

22 EXAMINER FARKAS: Okay.

23 MR. SERIO: Your Honor, Mr. Colton shows
24 the relationship in section IV between income and

1 natural gas usage which is a direct link between
2 low-income customers and low-usage customers. He
3 makes the analysis based on the data that he provides
4 in his testimony.

5 You can't make the conclusion without
6 having the data. He has looked at the data here and
7 made the correlation between national data, state
8 data, and Ohio data. Ohio data does include data
9 from the Dominion service territory as well as other
10 areas in Ohio, and he's made the conclusion that
11 there's nothing in the data -- in the national data
12 that has a different correlation to the regional data
13 and there's nothing in the regional data that has him
14 draw a different conclusion to the state data and
15 then, to the extent that state data does include East
16 Ohio, it does include East Ohio information.

17 What we don't have is information just
18 for the East Ohio service territory and that would be
19 an area that the company could cross-examine

20 Mr. Colton on if it wanted to. But he's done the
21 analysis and reached the conclusion that there is no
22 difference in the analysis between national,
23 regional, and state, and the state data does include
24 Dominion East Ohio.

1 EXAMINER FARKAS: Okay.

2 MR. KUTIK: The statements that
3 Mr. Puican makes are regarding DEO's customers.
4 There's nothing in section IV relating to DEO's
5 customers.

6 In fact there's nothing in section IV by
7 Mr. Colton's own admission in answer to -- in answer
8 No. 17, line 11, it says that the data doesn't
9 contain -- the census data doesn't contain data on
10 usage.

11 MR. SERIO: Your Honor, the rest of the
12 sentence says, "While the . . . data does not contain
13 usage data, per se, the data on expenditures will,
14 nonetheless, provide reasonable insight into the
15 relative use of natural gas by income level." That
16 specifically is rebutting Mr. Puican's claim that
17 low-income customers are on average high-usage
18 customers.

19 Mr. Colton then goes through the data

20 here to show that there is the relationship between
21 low income and low usage. So that's absolutely
22 rebutting Mr. Puican's testimony and absolutely is
23 appropriate rebuttal testimony.

24 MR. KUTIK: Nothing in here relates to

1 DEO. He's had three opportunities to mention it and
2 he has yet to demonstrate that.

3 EXAMINER FARKAS: Okay.

4 MR. KUTIK: Our next motion, your Honor.

5 EXAMINER FARKAS: Wait.

6 MR. SERIO: Your Honor, I think I said it
7 three times. I'll say it a fourth, and I'll say it
8 slower.

9 MR. KUTIK: You don't have to say it
10 slower.

11 EXAMINER FARKAS: All right.

12 MR. SERIO: National data relates to the
13 regional data, the regional data relates to the state
14 data, East Ohio data is included within the state
15 data.

16 MR. KUTIK: He never says that in his
17 testimony. Mr. Serio just made that up.

18 EXAMINER FARKAS: Okay.

19 MR. KUTIK: Our next motion, your Honor,

20 deals with question and answer 19 on page 13, lines 1
21 through 16.

22 EXAMINER FARKAS: Okay.

23 MR. KUTIK: Your Honor, we believe that
24 this portion of his testimony is improper hearsay,

1 and in discussing why it's improper hearsay I'd like
2 to direct the Bench's attention to an opinion by the
3 Commission in I think it was March of 2006 or '7, I
4 can't read the date, in the case In the Matter of
5 S.G. Foods, Inc. versus FirstEnergy Corp., and I'd
6 like to, if I can, approach to provide the Bench with
7 the opinion.

8 EXAMINER FARKAS: Yes.

9 MR. KUTIK: Your Honor, the reason why
10 this testimony is inadmissible is that it is improper
11 hearsay under Rule 803 of the Ohio Rules of Civil
12 Procedure. One of the unique features of the Ohio
13 Rules of Civil Procedure, excuse me, Ohio Rules of
14 Evidence is that it differs from the Federal Rules of
15 Evidence in that the Federal Rules of Evidence under
16 803(8) allow reports with opinions and conclusions
17 while the Ohio rule does not.

18 And the opinion in S.G. Foods
19 particularly, your Honor, discusses this point at --

20 starting at page 27, and to give some context, the
21 Commission in S.G. Foods was considering a motion by
22 the respondents in that case relating to the blackout
23 of August 14th, 2003.

24 As part of an intergovernmental task

1 force there was a report that was prepared about the
2 blackout and the alleged causes of the blackout. The
3 complainants in that case wanted to introduce the
4 report and the respondents moved to strike that
5 report or any evidence about that report under --
6 because it was hearsay.

7 And in that case the Commission
8 specifically discusses the context and the contours
9 of Rule 803(8) and, specifically, at the bottom of
10 page 27 after discussing or quoting the rule, it says
11 "Under the Model Rules of evidence and those adopted
12 in most other jurisdictions including the rules for
13 federal courts, also include one other subsection
14 which is not in place in Ohio. Under Rule 803(8)(c)
15 of those Model Rules admissible documents include
16 factual findings resulting from the investigation
17 made pursuant to authority granted by law. Such
18 investigative reports generally are not held to be
19 admissible in Ohio courts."

20 In other words, reports that state

21 conclusions are inadmissible.

22 Now, turning to Mr. Colton's testimony,

23 and particularly question and answer 19, they cite a

24 report from DOE and IEA and they specifically cite a

1 conclusion from that report. It is not data. It is
2 a conclusion. Because it's a conclusion, it does not
3 properly fall within the public records exception to
4 the hearsay rule, therefore, it's hearsay and
5 inadmissible.

6 MR. SERIO: Your Honor, if we're going to
7 apply the rules, then I think we need to go back and
8 look at some of the studies that the company put into
9 the record where we didn't have the person that did
10 the study but we had the conclusions from the study
11 and we had a company witness testify regarding the
12 conclusions that that study reached and those were
13 admitted into the record.

14 It seems to me that if we're going to
15 apply that looser standard to the company documents,
16 that same standard should apply to documents that
17 other parties have in this proceeding.

18 MR. KUTIK: I only recall one objection
19 that Mr. Serio made and it was an objection that he

20 basically waived since he opened the door on that
21 particular piece of evidence.

22 MR. SERIO: Your Honor, I don't recall we
23 ever waived our objection to that. We raised the
24 objection, and I believe if you go back and look at

1 the transcript, we argued that point for a period of
2 time in the proceeding and I think your Honor finally
3 made the decision that you were going to allow that
4 into the record over OCC's objection. And OCC still
5 has the opportunity to argue that point in a brief
6 that we file with the Commission as to whether that
7 was a correct ruling or not.

8 However, to the extent that the Bench
9 allowed that, seems to me that the same standard
10 should apply here.

11 MR. KUTIK: Again, there's a difference
12 between then and here. We didn't open the door to
13 allow the DEO testimony in, DEO report in. The staff
14 didn't open the door to allow this record in.
15 Mr. Serio in his questioning allowed or opened the
16 door to allow the Black & Veatch report in.

17 EXAMINER FARKAS: Ms. Hammerstein, do you
18 have anything to add?

19 MS. HAMMERSTEIN: No, your Honor. The

20 staff would support this motion.

21 EXAMINER FARKAS: Okay. We're going to

22 take -- is that it?

23 MR. KUTIK: No, there are several others.

24 EXAMINER FARKAS: Okay.

1 MR. KUTIK: I can give you a number, but
2 there's at least about seven others.

3 EXAMINER FARKAS: Okay.

4 MR. KUTIK: Our next motion, your Honor,
5 relates to question and answers 26 through 29, that
6 relates to page 19, line 13, to page 20, line 14, and
7 RDC -- Schedule RDC-12 and 13.

8 This is a discussion of federal data, as
9 Mr. Colton admits in the answer to question No. 27,
10 page 20, line 8 to 11, this data is not specific to
11 Ohio. It is further attenuated from what's happening
12 in DEO's testimony than the supposed Ohio data. And
13 also the Department of Labor data is also not
14 specific to Ohio, it's only related to, quote, "the
15 midwest," end quote, in question and answer 28. So
16 for all those reasons we would respectfully move the
17 Commission to strike questions 26 through 29.

18 MR. SERIO: Your Honor, if you look on
19 question 26, the answer at line 17, the relationships

20 identified in the Ohio-specific data are the same
21 relationships identified by the U.S. Department of
22 Energy in its assessment. Again, what Mr. Colton's
23 doing is trying to draw the relationship between the
24 various levels of data to show that his analysis

1 isn't based on one piece of data or one governmental
2 agency, but it's based on the data and analysis of
3 three different governmental agencies and he's
4 showing the relationship between the federal, the
5 regional, and the state data.

6 EXAMINER FARKAS: Okay. Ms. Hammerstein.

7 MS. HAMMERSTEIN: Your Honor, I guess I
8 can just reiterate that the data that Mr. Colton uses
9 is nonspecific in terms of Dominion's territory and
10 isn't relevant to the Dominion specific territory
11 information that it's trying to rebut Mr. Puican's
12 testimony.

13 MR. KUTIK: We have nothing further to
14 add on that motion.

15 EXAMINER FARKAS: Okay.

16 MR. KUTIK: Our next motion, your Honor,
17 is question and answer 31 through 37, and that
18 includes page 22, line 1, to page 25, line 19. This
19 motion, your Honor, is based upon the fact that what

20 we're talking about is Ohio PIPP data. Mr. Puican's
21 testimony is about Dominion customers and Dominion
22 PIPP data and, therefore, it's irrelevant and it does
23 not rebut Mr. Puican's statements.
24 EXAMINER FARKAS: Okay. Mr. Serio.

1 MR. SERIO: Mr. Puican relied on PIPP
2 customers to be a surrogate for non-PIPP customers.
3 Mr. Colton in his testimony is identifying why using
4 Ohio PIPP customers as a surrogate for other Ohio --
5 for Ohio low-income non-PIPP customers isn't
6 appropriate.

7 There isn't any relationship that says
8 that using PIPP customer data for East Ohio customers
9 for non-PIPP customers is different than using Ohio
10 PIPP customer data for other Ohio non-PIPP customers.
11 It's a surrogate that the staff used in this case and
12 he's rebutting why it's not an appropriate surrogate
13 to use.

14 EXAMINER FARKAS: Okay. Ms. Hammerstein?

15 MS. HAMMERSTEIN: Thank you, your Honor.
16 I would join the motion, but as my argument's the
17 same I don't have anything to add.

18 EXAMINER FARKAS: Okay.

19 MR. KUTIK: I have nothing further on

20 that one.

21 EXAMINER FARKAS: Okay.

22 MR. KUTIK: Your Honor, our next motion

23 deals with question and answer 33, and also -- which

24 is on page 23, line 8, through page 24, line 7. It

1 would also include RDC-14. And the basis of that
2 motion, your Honor, is the Ohio Rules of Evidence
3 Rule 705. If I may approach.

4 EXAMINER FARKAS: Yes.

5 MR. KUTIK: Your Honor, this question and
6 answer refers to a study that Mr. Colton supposedly
7 was involved in. This is a study that has not been
8 provided to us and is not otherwise in the record.

9 Rule 705 applies to expert testimony, and
10 Rule 705 says an expert may testify in terms of an
11 opinion or inference and give the expert's reason
12 therefor after disclosure of the underlying data,
13 facts, or data -- that's after disclosure of the
14 underlying facts or data.

15 The case that I provided to you, Waters
16 versus Allied Machine & Engineering Corp., and there
17 are many others in Ohio law, basically stands for the
18 proposition or at least had decided on page, I
19 believe it is 20 of 29, in that case a party

20 attempted to have an expert testify about a study.

21 The study was not disclosed, not provided in

22 discovery. The court excluded the testimony, and the

23 appellate court upheld the exclusion.

24 The same rule and same principle would

1 apply here. He's talking about some study that he
2 did, we haven't seen it, it's not been disclosed to
3 us, it's too late in the day now for us to get it.

4 MR. SERIO: Your Honor, as far as it
5 being too late in the day, it seems to me that if the
6 company wants additional time to look at studies like
7 this one, OCC has no objection to that. My
8 understanding is that we were on an expedited
9 schedule to get Mr. Colton here, deposed, and on the
10 stand as quick as possible at the company's request.

11 Mr. Colton informed me the study's
12 available on the internet and can easily be
13 downloaded and had we had more time, rather than
14 filing this even a day earlier than your Honor
15 initially requested, we would have made every attempt
16 to provide additional information to the company as
17 wanted.

18 However, it's been my experience in
19 rebuttal testimony in proceedings before the

20 Commission that we rarely get the opportunity to do
21 separate discovery of witnesses before they take the
22 stand when they provide rebuttal testimony, and we're
23 generally required to take the witness with their
24 rebuttal testimony within a day or two of them

1 providing the testimony, and that's been the practice
2 of this Commission.

3 Now, if the company wants additional
4 time, we're willing to give them the time, we have no
5 objection to that. It's a question of whether the
6 company wants to take the time in order to do that or
7 if the company wants to rely on an artificial
8 deadline that the company's created. And to the
9 extent that the proceeding has gone long, it's
10 because the company chose to file the PIR filing six
11 months into the regular rate case proceeding that
12 there was the delay that we're faced with today.

13 EXAMINER FARKAS: Ms. Hammerstein.

14 MS. HAMMERSTEIN: Thank you, your Honor.

15 Staff also was not provided this study that's
16 referred to in the testimony and, obviously, we
17 haven't had an opportunity or time to find it
18 ourselves. Staff would join the motion to strike.

19 MR. KUTIK: Your Honor, the company

20 should not be put to the Hobson's choice of further
21 delaying this case which will reach its one-year
22 anniversary Friday or dealing with improper rebuttal
23 testimony. That's all I have to say about that.
24 For our next motion, we would move to

1 strike question and answer 34, page 24, lines 9
2 through 13. This, again, refers to -- or this refers
3 to and is in fact the only reference to the materials
4 and the discussion in section III. For the reasons
5 which we stated with respect to section III this
6 question and answer should also be stricken.

7 EXAMINER FARKAS: Okay.

8 MR. SERIO: Your Honor, we believe that
9 it absolutely responds to Mr. Puican's reliance on
10 PIPP customers in lieu -- as a surrogate for
11 low-income customers.

12 EXAMINER FARKAS: Okay. Ms. Hammerstein.

13 MS. HAMMERSTEIN: Thank you, your Honor.
14 Nothing to add.

15 EXAMINER FARKAS: Okay.

16 MR. KUTIK: Your Honor, our next motion
17 relates to question and answer 35 and 36 which is on
18 page 24, line 15, through page 25, line 2. Excuse
19 me, line 12. Line 12. And the footnote on page 25 I

20 believe.

21 This refers to a third-party study. It

22 is not a study that was done by Mr. Colton. It was

23 not a study that was done by any governmental agency.

24 It does not qualify in any way, shape, or form as a

1 public record, it is hearsay and, therefore, should
2 be excluded as hearsay.

3 Further, it should be excluded because it
4 does not -- because OCC has not complied and
5 Mr. Colton has not complied with the requirements of
6 rule 705.

7 MR. SERIO: Your Honor, it's my
8 understanding that that's a study done by the state
9 of Ohio regarding Ohio weatherization, so it is a
10 known study and it's a governmental study.

11 It was done by a private consultant for
12 the state of Ohio.

13 MR. KUTIK: Yes, that is for the state of
14 Ohio, not by the state of Ohio.

15 EXAMINER FARKAS: Okay. Ms. Hammerstein?

16 MS. HAMMERSTEIN: Thank you, your Honor.
17 The staff agrees that this is hearsay and believes
18 that it should be stricken.

19 EXAMINER FARKAS: Okay.

20 MR. KUTIK: Your Honor, our next motion
21 deals with section VI, Roman numeral VI of
22 Mr. Colton's testimony, which includes page 27, line
23 1, through page 34, line 15. This deals with the
24 general issue of the alleged effect of SFV rates on

1 low-income persons. That is certainly a topic that
2 was discussed by Mr. Radigan, could have been
3 discussed by Mr. Radigan or any other witness as part
4 of OCC's direct case and, therefore, it is improper
5 rebuttal testimony.

6 MR. SERIO: Again, your Honor, we
7 identified sections of Mr. Puican's testimony that
8 this testimony specifically rebuts.

9 EXAMINER FARKAS: Okay. Ms. Hammerstein?

10 MS. HAMMERSTEIN: Thank you, your Honor,
11 but as is exemplified by Mr. Radigan's testimony, the
12 issue came up even before Mr. Puican's testimony was
13 filed and could have been addressed in additional
14 supplemental testimony by OCC.

15 EXAMINER FARKAS: Okay.

16 MR. KUTIK: Your Honor, our next motion
17 deals with question and answer 42. This is at page
18 28, lines 7 through 19. This refers to earlier
19 testimony, so to the extent that the Bench would

20 strike that earlier testimony, it should also strike

21 this testimony.

22 EXAMINER FARKAS: Mr. Serio.

23 MR. SERIO: Give me just a second, your

24 Honor.

1 MR. KUTIK: Your Honor, for our -- I'm

2 sorry, are you still waiting for Mr. Serio?

3 MR. SERIO: Your Honor, what Mr. Colton

4 is doing in this piece of testimony is he is

5 responding to the conclusions in Mr. Puican's

6 testimony that the straight fixed variable rate

7 design does not negatively impact low-usage customers

8 in a disproportionate manner. He's put that into

9 context and done an analysis and gone step by step

10 for how that additional harm is caused as a result of

11 the change to the straight fixed variable rate design

12 that's suggested in staff's testimony.

13 For example, in his question and answer

14 43, he's explaining how by --

15 MR. KUTIK: I'm sorry. The motion deals

16 with question and answer 42.

17 MR. SERIO: I'm sorry, 42. I got it

18 confused with another one. I was going beyond it.

19 What he's done, Mr. Puican on the stand

20 actually indicated that the larger the gap between a
21 low-usage customer away from the average usage of a
22 hundred that was on his Exhibit, I think it was his
23 Exhibit 1 and 3, the further you got away from that,
24 the greater the impact on either the low-usage or the

1 high-usage customer.

2 The testimony in question and answer 42
3 directly relates to the conclusions reached by
4 Mr. Puican in that chart and the testimony that he
5 gave yesterday.

6 MR. KUTIK: Your Honor, the testimony
7 particularly starting at line 12 talks about "As I
8 described in detail above." So to the extent his
9 description of whatever he describes above is
10 stricken, this should be stricken as well.

11 Our next motion, your Honor --

12 EXAMINER FARKAS: Ms. Hammerstein, do you
13 have anything to add?

14 MS. HAMMERSTEIN: No, thank you, your
15 Honor.

16 EXAMINER FARKAS: All right.

17 MR. KUTIK: Our next motion, your Honor,
18 deals with questions and answers 43 through 45. Your
19 Honor, this deals with an apparent analysis by

20 Mr. Colton, and I defy the Bench as the reviewer of
21 this testimony to be able to understand the basis of
22 this testimony.

23 It is certainly not provided in the
24 testimony. It has certainly not been provided to any

1 other party and, therefore, it's improper expert
2 testimony under Rule 705.

3 MR. SERIO: Your Honor, Mr. Colton
4 describes his methodology item by item in explaining
5 what he did in his analysis. If the company doesn't
6 understand it, cross-examination is the opportunity
7 to question why he did what he did, but what he's
8 done in his testimony is explaining it.

9 It's no different than what any other
10 witness does when they explain how they did their
11 analysis and then if you don't understand it, you
12 have the opportunity to ask the witness that when he
13 takes the stand.

14 MR. KUTIK: It is not up to the company
15 to discern the bases on the record for a study. It
16 is the proponent, OCC's burden to do that. They have
17 not done that.

18 MR. SERIO: Your Honor, I don't see how
19 that's any different than a cost-of-service study

20 that the company puts in the record and we have the
21 opportunity to ask them questions about it. If I
22 don't understand the cost-of-service study, I ask
23 them what the cost-of-service study did and how it
24 did it. The fact that I may not understand it

1 doesn't mean that it's an inadequate or improper
2 cost-of-service study. The same should apply here.

3 If the company doesn't understand what he
4 did in his analysis, they should ask him directly and
5 give him the opportunity to explain exactly what he
6 did and why he did it.

7 MR. KUTIK: Basic facts are disclosed,
8 the basic calculations are disclosed in a
9 cost-of-service study, they haven't been done here.

10 EXAMINER FARKAS: Okay.

11 MR. SERIO: Your Honor, I disagree. I
12 think he explains basic facts. He identifies the
13 different dollar amounts and those are the facts that
14 he uses in his analysis.

15 EXAMINER FARKAS: Okay.

16 MR. KUTIK: We'll leave it up to the
17 Bench to make that determination.

18 EXAMINER FARKAS: Ms. Hammerstein.

19 MS. HAMMERSTEIN: Thank you, your Honor,

20 I don't have anything to add at this time.

21 EXAMINER FARKAS: Okay.

22 MR. KUTIK: And for our last motion we

23 would move to strike question and answer 50, page 36,

24 line 1 through 11. This asks a question about a

1 pilot low-income tariff such as approved in the Duke
2 case. Well, we're not in the Duke case and nobody's
3 proposing a pilot program, and certainly Mr. Puican,
4 the alleged witness to be rebutted, said nothing
5 about a pilot program.

6 MR. SERIO: Your Honor, question and
7 answer 50 was an attempt to provide the Commission
8 with an additional clarification regarding a program
9 that the Commission I believe expanded in the order
10 in the Duke proceeding. To the extent that the
11 Commission was going to consider doing something like
12 that on their own in this proceeding, it was an
13 attempt to provide the Commission with an explanation
14 and analysis as to whether that would rectify the
15 problems identified in Mr. Colton's testimony in
16 response to Mr. Puican's testimony.

17 EXAMINER FARKAS: Ms. Hammerstein.

18 MS. HAMMERSTEIN: Your Honor, this
19 clearly doesn't respond to anything in Mr. Puican's

20 testimony and it's just not relevant to this case.

21 EXAMINER FARKAS: Okay.

22 MR. KUTIK: What the Commission might do

23 and the response -- helpful suggestion as to what the

24 Commission might do is not a rebuttal to Mr. Puican's

1 testimony. But what this really shows is what the
2 game afoot really is, which is to supplement their
3 direct case.

4 EXAMINER FARKAS: Okay.

5 MR. SERIO: Your Honor, it's an attempt
6 to provide an explanation as to why in the context of
7 describing the reaction to Mr. Puican's testimony
8 even going to the extent of a pilot program wouldn't
9 cure the problems caused by the move to strike fixed
10 variable rate design.

11 EXAMINER FARKAS: Ms. Hammerstein?

12 MS. HAMMERSTEIN: I don't have anything
13 to add, thank you, your Honor.

14 MR. KUTIK: Mr. Serio's just repeated
15 himself, and I have nothing further to add.

16 EXAMINER FARKAS: Okay.

17 MR. KUTIK: That's all the motions that
18 we have at this time.

19 EXAMINER FARKAS: All right. Thank you.

20 MR. SERIO: Your Honor, to the extent

21 that the motions were as extensive as they were, we'd

22 like the opportunity to respond in writing. If the

23 Commission's going to --

24 EXAMINER FARKAS: We've heard the

1 responses to the motions.

2 Is there anything else?

3 MR. KUTIK: That's all we have at this
4 time.

5 EXAMINER FARKAS: Anything else?

6 MS. HAMMERSTEIN: Nothing further, your
7 Honor, thank you.

8 EXAMINER FARKAS: Anything else?

9 MR. SERIO: No, your Honor.

10 EXAMINER FARKAS: Then we'll stand in
11 recess until 2. Come back at 2 -- 3 o'clock.

12 (At 12:45 p.m. a recess was taken until
13 3:00 p.m.)

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1 Wednesday Afternoon Session,

2 August 27, 2008.

3 - - -

4 EXAMINER FARKAS: Why don't we go on the
5 record.

6 During the recess we reviewed the
7 company's motions to strike and we have the following
8 rulings: The first motion to strike was to strike
9 the entire testimony of Mr. Colton, we're denying
10 that. Let me say as a preface we reviewed these --
11 we made these rulings based on the three purposes of
12 the rebuttal testimony as stated on page 4 which were
13 to rebut certain portions of Mr. Puican's testimony.

14 The first motion we're denying. The
15 second motion was to strike section III which was
16 question and answer 9 through 15, page 4, line 20,
17 through page 10, line 16, and including RDC-1, 2, and
18 3, and we are granting that motion.

19 Number three was to strike Section IV,

20 and we are denying that motion.

21 Number four was to strike question and

22 answer 19, and we're denying that motion.

23 Number five was to strike Q and A 26

24 through 29, and we are denying that motion.

1 Number six was Q and A 31 through 37, and
2 we are denying that motion.

3 Number seven was Q and A 33, and we are
4 denying that motion.

5 Number eight was to strike Q and A 34,
6 which is page 24, line 9 through 13, we are granting
7 that motion.

8 Number nine was the motion to strike Q
9 and A 35 and 36 which was page 24, line 15, through
10 page 25, line 12 including the footnote on page 25,
11 and we are granting that motion.

12 Number six was to -- excuse me, strike
13 section VI, and we are denying that motion.

14 Number 11 was to strike Q and A 42, and
15 we are denying that motion.

16 Number 12 was to strike Q and A 43
17 through 45, and we are denying that motion.

18 And the last motion was to strike Q and
19 A 50, which is page 36, line 6 through 11, and we are

20 granting that motion.

21 MR. KUTIK: I believe, your Honor, I

22 think the last motion was lines 1 through 11.

23 EXAMINER FARKAS: I'm sorry, 1 through

24 11, that's correct. So we're granting that motion to

1 strike 1 through 11, lines 1 through 11.

2 MR. KUTIK: Your Honor, in light of your
3 rulings, I wonder if we might be able to take maybe a
4 five-, ten-minute break just to see what we have and
5 then make our determination of how we'd like to
6 proceed.

7 EXAMINER FARKAS: Okay. Let's go off the
8 record.

9 MR. SERIO: Your Honor, before we go off
10 the record, I didn't keep track of exactly where they
11 fall but there were two reports that there was a
12 question as to whether OCC provided them in
13 discovery, and it's my understanding that before you
14 strike there should be a motion to compel, and before
15 there's a motion to compel there should be a request.
16 We never got it.

17 We do have both of those reports here
18 available. If you want us to distribute them to the
19 parties and yourself, I quite frankly didn't catch

20 where they fell and whether that was denied or
21 granted on the motion to strike. I just want it
22 noted for the record that we do have those two
23 reports here, it's the Ohio Home Weatherization
24 Assistance Program Impact Evaluation and the Ohio

1 State report that Mr. Colton participated in
2 preparing.

3 EXAMINER FARKAS: Okay.

4 MR. KUTIK: We're more than glad to look
5 at that information.

6 EXAMINER FARKAS: Okay. I would say why
7 don't you provide it to the parties.

8 MR. SERIO: Did your Honors want a copy?

9 EXAMINER FARKAS: Yes.

10 We're still on the record.

11 EXAMINER PIRIK: Before we go off the
12 record, I don't know that you wanted them to leave
13 the room on this, but before we go off the record so
14 that you can discuss the rulings that were just made
15 and Mr. Colton's testimony, the Bench also wanted to
16 bring up another issue that arose out of our review
17 of the stipulation itself.

18 After looking at the stipulation we noted
19 that there is a rate of return that was agreed to by

20 all of the parties in that stipulation, and in light
21 of the fact that we have the straight fixed variable
22 issue that is still out there that is the issue that
23 is being debated amongst the parties and that the
24 Commission will be deciding, we did have some

1 questions with regard to that and, as you all know,
2 we literally had a very limited amount of time, as
3 you did, to actually look at this stipulation; "we"
4 the Bench.

5 But in looking at it we do have a
6 question and the question has to do with whether or
7 not the rate of return that is in the stipulation
8 took into account the possibility that the straight
9 fixed variable was being considered by the Commission
10 or being proposed to be considered by the Commission,
11 and the examiners are interested in having those
12 questions answered on the record before we close the
13 record.

14 MR. KUTIK: Sure. Your Honor, it's the
15 understanding of the company that the rate of return
16 that's stipulated in the stipulation would be
17 unaffected by the outcome of the rate design issue.

18 EXAMINER PIRIK: Yes, I know that that is
19 a stipulated rate of return that is in the

20 stipulation, but our question goes more to the
21 question of -- our question goes more to the question
22 of with the straight fixed variable rate design,
23 whether or not that affects the rate of return.
24 MR. KUTIK: To our view, your Honors, it

1 reflects the rate of return that's appropriate for
2 either outcome that's been proposed in this case.

3 EXAMINER PIRIK: And I do appreciate that
4 comment on behalf of counsel for the company, but we
5 actually need evidence on the record that actually
6 states that. So at the time when we would actually
7 bring Mr. Colton back for rebuttal, that's why we're
8 posing it to you now. When you take the break, we
9 will need, I don't know who, but someone from one
10 party, two parties, three parties, however many
11 parties want to testify to it, we would appreciate
12 having witnesses on the stand to actually clarify
13 that for us on the record.

14 MR. KUTIK: We will certainly make a
15 witness available for you.

16 EXAMINER PIRIK: So as we go off the
17 record and you're determining how to handle this
18 rebuttal witness, if you could also discuss that, we
19 would appreciate it.

20 Mr. Reilly.

21 MR. REILLY: We will do that, your Honor,

22 we will be prepared to put a witness on the stand.

23 Depending on the length of time with Mr. Colton, we

24 would be prepared to put a witness on the stand yet

1 today with that question you just raised.

2 EXAMINER PIRIK: Really, I don't know,
3 OCC, would you have someone that would be responsive
4 to that?

5 MR. SERIO: Your Honor, when we're off
6 the record, I think once we talk to the staff and the
7 company and make sure we understand the position that
8 the witness is taking, it may well be that OCC is
9 comfortable with the staff witness covering it from
10 our perspective also. We just need to make sure that
11 the language is clear and that whatever testimony the
12 witness is going to give does reflect our
13 understanding as well.

14 EXAMINER PIRIK: Okay. I just want to be
15 sure that whatever is put on the stand is in fact the
16 understanding of all the parties and how the straight
17 fixed variable effects the rate of return as set
18 forth in the stipulation.

19 MR. SERIO: I would add, your Honor, to

20 the extent that we rely on the staff witness, if your

21 Honor wanted when the witness was done, we'd be happy

22 to represent on the record that that did reflect our

23 understanding as well.

24 EXAMINER PIRIK: We would appreciate

1 that.

2 MR. SERIO: To the extent that it
3 requires us to bring a witness back into town, it's
4 really difficult for us to have our consultant come
5 back into town for that limited basis.

6 EXAMINER PIRIK: We appreciate that.

7 MR. SAUER: Before we go off the record,
8 your Honor, the matter of we had a motion to -- a
9 renewed motion yesterday to admit Roycroft's
10 Attachment 8 and the table of contents page as well
11 and I've given that to the parties earlier. I think
12 everyone is okay with that, and I'm not sure how you
13 want this marked. We reserved I think 14A maybe as
14 an exhibit for that, or we could put a renewed
15 exhibit number on it.

16 EXAMINER PIRIK: It has already been
17 marked and it's already been admitted into the
18 record, so you just need to provide a copy to the
19 court reporter.

20 MR. SAUER: Might I approach?

21 EXAMINER FARKAS: Yes.

22 We're off the record.

23 (Off the record.)

24 EXAMINER FARKAS: Let's go back on the

1 record. Mr. Kutik.

2 MR. KUTIK: Yes, your Honor. Subject to
3 the rulings that you've made on our motions to
4 strike, and of course subject to the objections we've
5 made in our motions to strike, we would be prepared
6 to stipulate to the admissibility of Mr. Colton's
7 testimony without any further cross-examination.

8 EXAMINER FARKAS: Do you have a response?

9 MR. SERIO: Obviously, your Honor, we're
10 not going to require the company to cross-examine
11 Mr. Colton; however, in order to preserve the
12 opportunity to make an argument in brief before the
13 Commission we would like to proffer questions 9
14 through 16 and 34, questions and answers, so that we
15 would have the opportunity to make argument to the
16 Commission. It's my understanding that questions 9
17 through 16 and 34 were stricken on the grounds that
18 it was not appropriate rebuttal testimony.

19 I believe I misstated, your Honor. It's

20 9 through 15 and question 34.

21 And in an attempt to fully disclose what

22 we would argue in brief, it would be our argument in

23 brief that to the extent that we're told that this

24 was not appropriate rebuttal testimony and should

1 have been done as supplemental testimony, it's my
2 understanding of reviewing the entries that were
3 issued in this proceeding there was never any
4 deadline provided by the Bench or the Commission as
5 to a deadline for supplemental testimony being
6 filed.

7 Therefore, inasmuch as the Commission
8 rules also don't provide a deadline for any
9 supplemental testimony, we would turn around and
10 take those portions of Mr. Colton's testimony and
11 resubmit them as supplemental and make the argument
12 that they should have been allowed into the record
13 accordingly. And, again, I understand your ruling.
14 We just want to preserve the argument so we can make
15 it in brief.

16 MR. KUTIK: I'm not really sure what the
17 purpose of the proffer is, especially when we're
18 talking about prefiled testimony.

19 If the witness was not going to be able

20 to testify about it orally, then a proffer would be
21 appropriate. The record stands as it is. The
22 document is what it is. We're saying the document
23 can certainly be offered and admitted subject to the
24 rulings on the stipulations -- on the motions to

1 strike.

2 With respect to Mr. Serio's comments
3 about it being appropriate supplemental testimony,
4 it's a little too late in the day for supplemental
5 testimony with regard to something that they knew
6 about many, many months ago.

7 MR. REILLY: Your Honor, we would just
8 join with the company in their response and we would
9 just note with regard to the question of whether it's
10 supplemental testimony or not, that everybody has
11 rested their case in chief, I mean that was clear
12 before we came back here today, and that this was
13 clearly the rebuttal phase we were in. I don't think
14 there was any doubt in anybody's mind and in the
15 Bench's discussion of that in previous hearings as to
16 the fact that the cases in chief, the direct cases,
17 had closed.

18 We were clearly in the rebuttal phase
19 today, so filing supplemental testimony at this point

20 in time would be improper.

21 EXAMINER FARKAS: Okay.

22 MR. REILLY: Thank you.

23 EXAMINER FARKAS: I think at this point

24 the first thing we need to do is mark the testimony

1 so why don't we do that first.

2 MR. SERIO: We would mark that as OCC
3 Exhibit 21, your Honor. I stand corrected it's 22,
4 your Honor.

5 EXAMINER FARKAS: Okay.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 EXAMINER FARKAS: Is there any objection
8 to the admission of the testimony subject to the
9 Bench's rulings on the motions to strike?

10 MR. KUTIK: As long as, certainly, which
11 I think the record does reflect, that we did have
12 objections pursuant to our motions to strike and
13 those objections were overruled.

14 EXAMINER FARKAS: Okay.

15 MS. HAMMERSTEIN: No objections subject
16 to the Bench's rulings.

17 EXAMINER FARKAS: Then we will admit the
18 rebuttal testimony of Mr. Colton, OCC Exhibit 22,
19 subject to the Bench's rulings on the motions to

20 strike.

21 MR. KUTIK: Thank you, your Honor.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 MR. KUTIK: Your Honor, at this time we

24 would move for leave to file surrebuttal testimony,

1 and we are prepared to file that testimony right now
2 or to put Mr. Murphy on right now.

3 The prefiled testimony is in substance
4 less than three pages and we believe that we can
5 proceed expeditiously today to get Mr. Murphy on and
6 off the stand.

7 EXAMINER FARKAS: Okay. Prior to
8 addressing that I just want to address Mr. Serio's, I
9 don't know if it was a motion, but it was a request
10 to offer supplemental testimony and/or a proffer,
11 and we're going to deny that motion, both the motion
12 to provide supplemental testimony and to make a
13 proffer.

14 MR. SERIO: Thank you, your Honor.

15 EXAMINER FARKAS: Now, you want to do
16 surrebuttal testimony?

17 MR. KUTIK: Yes. And we can provide a
18 copy to the bench if the Bench would like to review
19 it before ruling on our motion.

20 EXAMINER FARKAS: Why don't you provide a

21 copy to all parties and we'll look at it.

22 MR. KUTIK: Okay.

23 EXAMINER FARKAS: Why don't we go off the

24 record when we get it.

1 MR. KUTIK: Sure.

2 (Off the record.)

3 EXAMINER FARKAS: Why don't we go back on

4 the record. We are going to allow this testimony in,

5 and the only issue would be giving OCC and staff

6 appropriate time to review the testimony before

7 cross-examining the witness. His testimony is fairly

8 circumscribed, so I would say --

9 How much time do you believe you need?

10 And then I can make a ruling.

11 MR. SERIO: I'd like about half an hour.

12 EXAMINER FARKAS: Okay. We'll do that.

13 We'll adjourn till 25 after.

14 (Recess taken.)

15 EXAMINER FARKAS: We'll go back on the

16 record. Mr. Kutik.

17 MR. KUTIK: Yes, your Honor. Pursuant to

18 our motion to leave to file surrebuttal we at this

19 point in time call Jeff Murphy for surrebuttal.

20 EXAMINER FARKAS: Okay. I believe you've

21 been sworn in already, you're still under oath.

22 You can proceed.

23 - - -

24

1 JEFFREY A. MURPHY

2 being previously duly sworn, as prescribed by law,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Kutik:

6 Q. Mr. Murphy, do you have before you what's
7 been marked for identification as DEO Exhibit 1.5?

8 A. Yes, I do.

9 Q. What is that, please?

10 A. That is the surrebuttal testimony that I
11 filed in this proceeding.

12 Q. Do you have any additions or corrections
13 to make to that testimony?

14 A. Yes, I do. I have one minor correction.

15 Q. What is that?

16 A. On page 4 of my testimony, line 8, answer
17 A9, I would like the first portion of that response
18 to read "An analysis of a valid proxy for these
19 low-income non-PIPP DEO customers," et cetera. I

20 would like to insert the word "these" prior to

21 "low-income."

22 Q. Do you have any other additions or

23 corrections to make?

24 A. No, I do not.

1 Q. If I asked you the questions that appear
2 in Exhibit 1.5, would your answers be as they appear
3 in Exhibit 1.5 with that correction?

4 A. Yes, they would.

5 MR. KUTIK: I have no further questions.

6 EXAMINER FARKAS: Okay. Staff have any
7 questions?

8 MS. HAMMERSTEIN: I'd like to but I think
9 Mr. Serio might object.

10 EXAMINER FARKAS: Okay.

11 MS. HAMMERSTEIN: Thank you.

12 EXAMINER FARKAS: Mr. Serio.

13 MR. SERIO: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Serio:

17 Q. Good afternoon, Mr. Murphy.

18 A. Good afternoon.

19 Q. Can you tell me when you did the analysis

20 that's contained in your surrebuttal testimony?

21 A. This analysis was initiated yesterday and
22 completed very early this morning.

23 Q. And as I understand it, on page 2 of that
24 testimony you identified three criteria to identify

1 the accounts that you reference, correct?

2 A. Yes. These three criteria were used to
3 identify accounts that were eligible for the
4 residential moratorium disconnection that was
5 instituted last winter.

6 Q. Is it your position that all low-income
7 residential customers were eligible for the
8 moratorium last winter?

9 A. No, it was not. The moratorium applied
10 only to those customers at or below 175 percent of
11 the poverty level. Those customers can include both
12 PIPP customers as well as non-PIPP customers, but
13 this analysis is focused on those low-income non-PIPP
14 customers that were eligible for the residential
15 moratorium on disconnections.

16 Q. I think we just crossed each other. What
17 I wondered was is it your testimony that the 167,000
18 accounts that you've identified, does that make up
19 the entirety of low-income customers on the Dominion

20 system?

21 A. No, it does not. It only makes up those
22 customers that we've identified as being in this
23 group.

24 Q. Do you know how many low-income

1 residential customers there are on the Dominion
2 system?

3 A. Could you identify what you mean by
4 "low-income"?

5 Q. Well, my previous question to you was did
6 the 167,000 constitute all low-income, and your
7 response to me was no. So I guess I'm -- what did
8 you mean by "low-income" in response to my question
9 when you said "no"?

10 A. The initial response that I provided
11 indicated that not all customers at or below
12 175 percent of the poverty level may in fact apply
13 for either PIPP or have been receiving HEAP benefits.
14 There may be some customers at or below 175 percent
15 of the poverty level that choose not to do either of
16 those actions.

17 Q. Okay. So it is possible -- scratch that.

18 The 167,000 accounts that you identify
19 are the accounts that are at or below 175 percent of

20 the poverty level that fall in the three criteria,

21 correct?

22 A. That is correct, as identified in our

23 system. And I would note that that's approximately

24 15 percent of our entire customer base.

1 Q. Yet you've indicated that there could be
2 other low-income customers that are at or below
3 175 percent of the poverty level that are not
4 included in that 167,007 correct?

5 A. That's correct. The company in
6 partnership with community action agencies and the
7 Ohio Department of Development do our best to reach
8 out to those customers that may be in that income
9 category to make them aware of the benefits and to
10 encourage them to apply for and potentially receive
11 those benefits. So there's a significant amount of
12 outreach, but certainly there may be customers within
13 that category who nonetheless still choose not to
14 receive that sort of benefit.

15 Q. Do you have any kind of estimate as to
16 the number of customers that either don't get that
17 information or choose not to apply for any of the
18 assistance that's available?

19 A. No, we don't. And we don't know of any

20 studies that have been performed to assess that

21 particular amount.

22 Q. Now, your third criteria was the listing

23 of HEAP eligible accounts provided by the Ohio

24 Department of Development. Do you know how the

1 Department of Development determines HEAP

2 eligibility?

3 A. Yes. For the most part that HEAP

4 eligibility is established by virtue of an

5 application process done in what are called community

6 action agencies. Those agencies work in tandem with

7 the Ohio Department of Development in order to gather

8 up that information and then determine whether or not

9 the household is income eligible for certain

10 benefits.

11 Q. Now, you've indicated that you had

12 12-month usage data for the remaining 59,000

13 accounts.

14 A. That's correct, for the 59,000 accounts

15 that are at or below 175 percent of the poverty level

16 but not on the PIPP program. We looked at that

17 12-month billing period for the year ending July

18 2008.

19 Q. Did you have any low income, which would

20 be 175 percent or below of the poverty level, that

21 you didn't have a full 12 months worth of data on

22 that were not included here?

23 A. No. It was all of those accounts that

24 are currently active accounts on the system that were

1 flagged, if you will, as one of those types of
2 accounts; again, that is the accounts that were in
3 that residential moratorium.

4 Some of those accounts may have had zero
5 consumption for some of those months, but they were
6 all of the active accounts that were evaluated and
7 identified not just on an account basis, but on a
8 premise basis. Because there may be change of the
9 account holder, we wanted to make sure that we
10 tracked consumption at the premise as a whole, not
11 just with that particular account holder.

12 Q. Okay. I think you indicated previously
13 that the 167,000 low income constitutes about
14 50 percent of your customer base.

15 A. That's correct.

16 Q. Do you have any idea how that 15 percent
17 compares to census data analysis as to what the
18 poverty level, 175 percent or below poverty level is
19 for the area served by Dominion East Ohio?

20 A. No, I don't. What I can state is this is
21 the information contained in our billing system for
22 our customers receiving service under our rate
23 schedules.

24 Q. Do you recall in your, I think it was

1 your very first testimony, your direct testimony,
2 there was some testimony regarding the economic
3 conditions in Cleveland and Cuyahoga County? Do you
4 recall that?

5 A. Yes, I do.

6 Q. Do you recall that there have been
7 surveys or analysis done that indicate that Cleveland
8 may be the poorest large city in the United States?

9 MR. KUTIK: Objection; beyond the scope
10 of surrebuttal.

11 EXAMINER FARKAS: I'll sustain the
12 objection.

13 Q. You indicate that the test year average
14 residential customer usage was 99.1 Mcf. What was
15 the test year that was used?

16 A. It was calendar year 2007.

17 Q. And I believe you indicated that the 12
18 months' data that you used to investigate low-income
19 customers was July 2008, 12 months ended July 2008.

20 A. Yes, that's correct. We wanted to use
21 the most readily available and recently available
22 data that we had and specifically be able to use that
23 information that was generated for the moratorium
24 that I spoke of earlier.

1 Q. So the test year and the year that you
2 used for low-income customers are two separate
3 periods, correct? They're different.

4 A. Yes. That is correct.

5 Q. Do you know how the weather for the test
6 year was compared to normal weather?

7 A. For test year we adjust the volumes to
8 reflect normal weather.

9 Q. Okay. The 99.1 Mcf that average
10 residential customers use, is that a normalized
11 number?

12 A. Yes, it is.

13 Q. And the 95 Mcf for the 59,000 customers,
14 is that a normalized number?

15 A. No; that is just actual data. Given the
16 time frame that we were working under we wanted to
17 get the actual billing information for the latest
18 available period.

19 Q. So if I want to compare two numbers, I'm

20 comparing a normalized number to a non-normalized
21 number, correct?
22 A. You are. But the differences you would
23 have between the two is very minor because the number
24 of degree days over this period, again the 12-month

1 period ending July 2008, was only 2 percent colder
2 than normal, and so even if you were to attribute all
3 of the usage to weather related consumption, you
4 would only adjust the volumes by a scant 2 percent.
5 So the final conclusions would remain the same as
6 what are stated in the testimony.

7 Q. So you're saying that if I look at the
8 six months of data that's different between the two
9 years which would be the January through July of 2008
10 period --

11 A. That would be seven months.

12 Q. Seven months. You're saying that at most
13 that was 2 percent colder than normal?

14 A. What I was specifically saying was for
15 the 12-month period of August 2007 through July 2008
16 that the weather over that entire 12-month period was
17 only 2 percent colder than normal meaning that,
18 again, that the volumes that are in this testimony
19 would be very close to the volumes you would get if

20 you were to normalize all of the data.

21 Q. You made a correction on page 4 of your
22 testimony, inserted the word "these." Explain to me
23 the intent behind adding that word.

24 A. Certainly. I just wanted to make sure

1 that parties understood that the analysis of this
2 valid proxy is associated with these particular
3 low-income customers. We weren't trying to suggest
4 that it covered the entire universe. We would
5 suggest, however, that it's the vast majority of
6 those customers primarily because of the outreach
7 efforts that we have to make customers aware of those
8 programs.

9 Q. Okay. Just so I'm clear on what you just
10 said, you think the analysis of a valid proxy for the
11 59,000 accounts is the low-income, non-PIPP DEO
12 customers, right?

13 A. Those low-income non-PIPP DEO customers
14 at or below 175 percent of the poverty level.

15 Q. Which would be 59,000, correct, that
16 weren't PIPP customers?

17 A. That's correct. When you include the
18 PIPP customers, of course, you're at the 167,000
19 levels.

20 MR. KUTIK: Just to make sure, Mr. Serio,

21 you said "that weren't."

22 MR. SERIO: That were not.

23 MR. KUTIK: Your answer was right, but

24 I'm not sure I heard Mr. Serio's question, that's

1 all.

2 MR. SERIO: Let me clarify.

3 Q. There's 167,000 accounts that are at
4 175 percent of the poverty level or below, correct?

5 A. Yes. If you'll look at Exhibit JAM-1.8,
6 there's a summary there that might make the
7 discussion a little easier.

8 Q. Right. And 108,000 are PIPP accounts
9 which leaves 59,000 that are low-income non-PIPP, and
10 you're indicating that you don't know that that's all
11 of them but you believe that's the majority of
12 low-income non-PIPP.

13 A. Yes, I do. Once again, because we're
14 focusing on a group of customers that the company
15 community action agencies and the Ohio Department of
16 Development do a substantial amount of outreach to in
17 order to make them aware of these kind of benefits.
18 In fact, In our call center one of the winter
19 preparation training courses that are provided is a

20 session wherein the agents are informed to provide
21 customers with that kind of information should they
22 call in seeking payment assistance.

23 Q. What was the number of residential
24 customers for the test year, if you recall? Total

1 residential customers.

2 A. I don't know the precise number, but it's
3 between 1.1 and 1.2 million customers, I believe, as
4 an order of magnitude.

5 Q. So if I divide the number of customers by
6 the number of residential customers, that gives me
7 the percentage, your belief of the percentage of
8 low-income customers in your service territory,
9 correct?

10 A. Certainly gives a reasonable measure of
11 that figure.

12 Q. Could you look at JAM-8 for a second?

13 A. Sorry, JAM-1.8?

14 Q. Yes, 1.8. I'm sorry.

15 A. Yes.

16 Q. Now, you indicate there the top three
17 lines of data is number of customers or number of
18 accounts --

19 A. Yes.

20 Q. -- and then your averages there are
21 average premise usage. So the premise usage is not
22 necessarily usage for each individual account,
23 correct?

24 A. Yes. Let me explain the use of these

1 particular terms. What we did was we went into the
2 billing system and identified specific accounts and
3 then what we did was track the consumption at that
4 premise because, of course, you may have a change of
5 account holder. So what we wanted to do was use the
6 billing system to identify the number of accounts and
7 the specific accounts and then we simply tracked
8 usage at the entire premise, at that premise level I
9 should say, for the prior 12 months.

10 Q. So if you had an apartment and there was
11 a customer living in that apartment and they left and
12 another customer came to that apartment and they were
13 both low-income, they would count as one under the
14 premise usage, correct?

15 A. That's right, because what we did is we
16 identified the premise through the account review.

17 Q. But in actuality you could have had two
18 low-income customers there, so doesn't the premise
19 average understate the low-income customers?

20 A. No, I wouldn't say that it does because,
21 once again, we've identified the number of customers
22 on the system at this point in time. Those are, in
23 effect, all of the ones that we know of, if you will,
24 and so what we're saying in this analysis is simply

1 that that's a good proxy for the number and type of

2 low-income non-PIPP customers that we serve.

3 Q. Under your analysis, though, isn't it

4 possible that you could have had non-low-income

5 customers in the premise and then a low-income

6 customer in that same premise during that 12-month

7 period?

8 A. Yes, it is. And what we're doing here,

9 again, by using the premise-level information is

10 really picking up in part the type of housing stock

11 that low-income customers would occupy, and that's,

12 again, why we focused on the low-income segment in

13 this fashion.

14 Q. Okay. But by doing the premise and doing

15 it on active accounts, if you're a low-income

16 customer renting and didn't have an active account,

17 you wouldn't have been included in the customer count

18 at that time, correct?

19 A. That's correct, because we don't have

20 usage data. And the reason that we include this
21 asterisk saying it includes records with zero Mcf is
22 to indicate that some of these accounts may have been
23 off for a period of time. So what we tried to do is,
24 again, with the number of accounts that we currently

1 have active in the system, to even include those
2 accounts when they may have been disconnected for
3 nonpayment or through a disruption in service or some
4 other reason over the last 12 months.

5 Q. To the extent that you had zero Mcf for
6 some months' usage, was that generally nonwinter
7 heating months?

8 A. I don't know. I didn't ask for that
9 particular analysis under the time constraints. I
10 would suggest, however, that many of these customers,
11 because they're eligible for emergency heat, would in
12 all likelihood be coming back onto the system in the
13 winter under the special Commission winter reconnect
14 rules.

15 Q. Would you agree with me that low-income
16 customers are probably more transient than
17 higher-income customers when it comes to residence?

18 A. I haven't performed that analysis.

19 Q. Mr. Murphy, do you know what the poverty

20 level is in the city of Cleveland or in Cuyahoga

21 County?

22 A. No, I --

23 MR. KUTIK: Objection; beyond the scope.

24 EXAMINER FARKAS: Did he answer the

1 question?

2 THE WITNESS: No, I do not.

3 EXAMINER FARKAS: Well, he did now.

4 MR. SERIO: I think that's all I have,
5 your Honor.

6 Thank you, Mr. Murphy.

7 EXAMINER FARKAS: Any redirect?

8 MR. KUTIK: Your Honor, at this time we
9 move for the admission of DEO Exhibit 1.5.

10 EXAMINER FARKAS: Any objection?

11 MS. HAMMERSTEIN: No objection.

12 MR. SERIO: No objection, your Honor.

13 EXAMINER FARKAS: Okay. Then it will be
14 admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER FARKAS: Thank you.

17 (Witness excused.)

18 MR. KUTIK: That's it.

19 EXAMINER FARKAS: Ms. Hammerstein.

20 MS. HAMMERSTEIN: Thank you, your Honor.

21 In response to the Bench's question regarding rate of

22 return, the staff calls Staff Witness Stephen E.

23 Puican.

24 EXAMINER FARKAS: Okay. And I believe

1 you were previously sworn in so you're still under

2 oath.

3 THE WITNESS: I understand.

4 EXAMINER FARKAS: Proceed.

5 MS. HAMMERSTEIN: Thank you, your Honor.

6 - - -

7 STEPHEN E. PUICAN

8 being previously duly sworn, as prescribed by law,

9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 By Ms. Hammerstein:

12 Q. Mr. Puican, can you please state and

13 spell your name for the record?

14 A. Yeah, Stephen E. Puican. First name

15 S-t-e-p-h-e-n. Last name P-u-i-c-a-n.

16 Q. And you are the same Steve E. Puican that

17 offered testimony through Staff Exhibits 3, 3A, and

18 3B in this proceeding?

19 A. Yes.

20 Q. And do you recall the question that the

21 Bench asked earlier regarding rate of return?

22 A. I frankly was not -- I missed the

23 beginning of the discussion so if it could be

24 re-asked.

1 MS. HAMMERSTEIN: Your Honor.

2 EXAMINER PIRIK: Essentially, the
3 question relates to the rate of return that is stated
4 in the stipulation and whether or not the straight
5 fixed variable rate design, if that is utilized,
6 whether or not that rate of return takes that rate
7 design into consideration.

8 THE WITNESS: The Staff Report, although
9 it recognized that there is reduced risk associated
10 with the SFV rate design, it did not make an explicit
11 recommendation in that regard. Subsequent to the
12 filing of the Staff Report staff recalculated the
13 return on equity range to reflect a 25 basis point
14 reduction in that range to attempt to account for
15 that reduced risk.

16 Even though the ultimate rate of return
17 that was recommended in the stipulation is a part of
18 an overall settlement package, nonetheless that rate
19 of return falls within that recalculated staff range.

20 EXAMINER FARKAS: Okay.

21 MS. HAMMERSTEIN: Staff has nothing

22 further to offer.

23 EXAMINER FARKAS: Is that also the

24 company's understanding?

1 MR. KUTIK: May I have a moment?

2 EXAMINER FARKAS: And OCC.

3 MR. KUTIK: Yes, it is, your Honor.

4 EXAMINER FARKAS: Okay.

5 Mr. Serio?

6 MR. SERIO: Yes, it is, your Honor.

7 EXAMINER FARKAS: Thank you.

8 Thank you.

9 THE WITNESS: Thank you.

10 (Witness excused.)

11 EXAMINER FARKAS: Why don't we go off the
12 record at this point.

13 (Discussion off the record.)

14 EXAMINER FARKAS: Let's go back on the
15 record.

16 We will have a briefing schedule and also
17 we will identify for the parties that there will be a
18 date set for oral arguments. So we would have
19 initial briefs would be due September 10th and

20 reply briefs would be due September 16th. Those
21 briefs would address the sole issue of rate design.
22 We would not need to have procedural history
23 discussed or the table of contents, simply that
24 issue.

1 And we would also have a 15-page limit on
2 this brief, normal 12 font and standard margins.

3 MR. WHITT: Single sided.

4 EXAMINER FARKAS: Next. The oral
5 argument would be September 24th following the
6 Commission meeting and the Commission and/or the
7 examiners will establish what the time limits will be
8 for that and also the format for the oral argument.
9 What I've just said will memorialize by
10 attorney-examiner entry so that you'll have it and
11 all the other parties will have it.

12 And the oral argument at this point would
13 be any party to the case would be allowed under
14 current, you know, the way it's framed would be
15 allowed to orally argue that issue because that's the
16 issue that the Commission has right now before it.

17 MR. SERIO: So that I'm clear, your
18 Honor, that means that to the extent that the city of
19 Cleveland or OPAE or Mr. Meissner care to

20 participate, they would be given the opportunity to

21 participate and it wouldn't necessarily limit the

22 time that OCC has.

23 EXAMINER FARKAS: Correct. Any party

24 would be allowed to, at the oral argument, to orally

1 argue the issue.

2 MR. KUTIK: So it's -- go ahead, Joe.

3 I'm sorry.

4 MR. SERIO: Are we going to get an
5 understanding of who all those parties are ahead of
6 time, and were you going to establish an order in
7 which the parties would present argument?

8 EXAMINER FARKAS: I think at this point
9 we're working the details out at this point, but
10 there will be advance notice to the parties as to
11 what those opportunities would be.

12 EXAMINER PIRIK: We anticipate that there
13 will be a time limit, but we also anticipate that
14 there will be questions because all five
15 commissioners will be present and they could
16 potentially ask questions.

17 MR. KUTIK: I might suggest, your Honor,
18 that that oral argument might be limited to those
19 parties that submit briefs, but that's certainly for

20 your consideration.

21 EXAMINER FARKAS: Okay.

22 EXAMINER PIRIK: We can take that under

23 consideration, actually put that in the entry that

24 memorializes the whole process.

1 MR. SERIO: So it's my understanding that
2 you're limiting both the initial and rely briefs to
3 15 pages?

4 EXAMINER FARKAS: Yes.

5 MR. SERIO: I understand you're still
6 working through some of the other matters, but
7 inasmuch as the company is a proponent of the rate
8 design, since I assume you didn't want to break this
9 into reserving time for rebuttal, can we presume that
10 the supporters of the straight fixed variable would
11 be arguing first and then the opponents would go
12 after?

13 EXAMINER FARKAS: I think that, as I
14 said, the details of who goes first we still are
15 working out, so I understand that there's a concern
16 or interest in who goes first.

17 MR. KUTIK: Right. Well, our preference,
18 your Honor, would be that the proponents'
19 stipulation, the mini stipulation, Joint Exhibit 1-A,

20 would go first and that we would have the opportunity

21 for rebuttal.

22 EXAMINER FARKAS: Okay.

23 And your preference is?

24 MR. SERIO: Well, I guess our preference

1 is to the extent the process in the proceeding is
2 those that bear the burden of proof go first and
3 those that are opposed go second, we'd propose that
4 the company, staff, and other supporters go first and
5 then parties that are opposed to it would go last.

6 I do need to state for the record I'm not
7 empowered to indicate at this point that OCC wouldn't
8 have an objection to the 15-page limit. Obviously,
9 if that's the Bench's ruling, we'll take that back,
10 but, you know, I may be overruled and they may decide
11 to --

12 EXAMINER PIRIK: File an interlocutory
13 appeal?

14 MR. SERIO: Yes, your Honor. I'm just
15 not in the position to --

16 EXAMINER PIRIK: I would hope -- in this
17 proceeding I believe we've had enough process issues
18 that I can't believe with both a written brief and an
19 oral argument, that there wouldn't be sufficient

20 opportunity, an oral argument that will be
21 transcribed, that there wouldn't be sufficient
22 opportunity. So I would hope we wouldn't have any
23 more procedural documents that would further burden
24 both your staff, other staffs that would reply, as

1 well as attorney-examiners that are likewise spread
2 very thin.

3 MR. SERIO: I understand, your Honor. I
4 just needed to point out I'm not empowered to make
5 that decision so I needed to put on the record that
6 that could be a concern.

7 MR. KUTIK: Just following up from the
8 first of Mr. Serio's comments, as the proponent I
9 think we should have the opportunity to open and
10 close. Thank you.

11 EXAMINER FARKAS: As I said, I appreciate
12 your positions. We don't know at this point how it's
13 going to be structured, so you'll be second to know
14 after we know.

15 MR. KUTIK: Thank you.

16 EXAMINER FARKAS: Okay. Is there
17 anything further?

18 MR. SERIO: I guess the only other
19 comment I'd have is that I think it was our thought

20 to try to coordinate our brief with the other parties
21 that were opposing the straight fixed variable rate
22 design and, obviously, under the schedule that you've
23 laid out trying to coordinate among four parties
24 becomes much more difficult rather than just letting

1 the four parties do separate briefs. So I guess
2 there's a trade-off there of number of briefs that
3 you might get versus how much quicker it's done under
4 this schedule.

5 If we had additional time to coordinate
6 the brief, we might be able to do that, but again, I
7 just want to point out to you that that's something
8 we had talked to some of the other parties about, but
9 with the schedule this tight it becomes almost
10 impossible to do that.

11 EXAMINER FARKAS: That's the schedule
12 we're going to work from.

13 Anything further?

14 MR. KUTIK: No, thank you, your Honor.

15 EXAMINER FARKAS: Anything further?

16 MS. HAMMERSTEIN: Thank you, your Honor,
17 no.

18 EXAMINER FARKAS: Okay. We're adjourned.

19 Thank you.

20 (The hearing adjourned at 5:00 a.m.)

21 - - -

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CERTIFICATE

I do hereby certify that the foregoing is a
true and correct transcript of the proceedings taken
by me in this matter on Wednesday, August 27, 2008,
and carefully compared with my original stenographic
notes.

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

My commission expires June 19, 2011.

(MDJ-3247)

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