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12 On behalf of the Applicants.

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24 On behalf of the Staff of the Public
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16 On behalf of the The Kroger Company.

17 Brickfield, Burchette, Ritts & Stone, PC
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23 On behalf of the Nucor Steel Marion, Inc.

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On behalf of Ohio Energy Group.

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7 Inc., and Gexa Energy Holdings.

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14 On behalf of City of Cleveland.

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25 On behalf of Constellation Energy
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32 On behalf of Council of Smaller
33 Enterprises.

34

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6 On behalf of Dominion Retail, Inc., and
7 Ohio Environmental Council.

8 Mr. Craig I. Smith
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10 Cleveland, Ohio 44120

11 On behalf of Material Science
12 Corporation.

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1 Tuesday Morning Session,
2 September 16, 2008.

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4 EXAMINER PRICE: Let's go on the record.
5 The Public Utilities Commission has set for hearing at
6 this time and place Case No. 08-936-EL-SSO, In the
7 Matter of the Application of Ohio Edison Company, The
8 Cleveland Electric Illuminating Company, and The
9 Toledo Edison Company for Approval of a Market Rate
10 Offer to Conduct a Competitive Bidding Process for
11 Standard Service Offer Electric Generation Supply,
12 Accounting Modifications Associated with
13 Reconciliation Mechanism and Tariffs for Generation
14 Service.

15 My name is Gregory Price. With me is
16 Christine Pirik. We are the Attorney Examiners
17 assigned to preside over this hearing. Let's begin
18 by taking appearances starting with the company.

19 MR. BURK: Thank you, your Honor. On
20 behalf of Ohio Edison Company, The Cleveland Electric
21 Illuminating, and The Toledo Edison Company, enter
22 the appearance of James W. Burk, Mark A. Hayden, and
23 Ebony L. Miller. Also on behalf of those companies I
24 enter the appearance of David A. Kutik of the law

1 firm of Jones, Day -- well, first enter the
2 companies' address as 76 South Main Street, Akron,
3 Ohio 44308. For Mr. Kutik, his address is North
4 Point, 901 Lakeside Avenue, Cleveland, Ohio. Also
5 enter the appearance of Mark A. Whitt of the law firm
6 of Jones Day. His address is 325 John H. McConnell
7 Boulevard, Suite 600, Columbus, Ohio.

8 EXAMINER PRICE: Thank you.

9 MR. BURK: I can go through the witness
10 list.

11 EXAMINER PRICE: We will take the rest of
12 the appearances. Consumers' Counsel.

13 MR. SMALL: Thank you, your Honor. On
14 behalf of the residential customers of FirstEnergy
15 companies, Janine L. Migden-Ostrander, Consumers'
16 Counsel, Jeffrey L. Small, counsel of record. With
17 me today Richard C. Reece, office of the Ohio
18 Consumers' Counsel, 10 West Broad Street, Columbus,
19 Ohio 43215.

20 EXAMINER PRICE: Mr. Stinson.

21 MR. STINSON: Thank you. On behalf of
22 FPL energy Power Marketing, Inc., and Gexa Energy
23 Holdings, Bailey Cavalieri, LLC, by Dane Stinson, 10
24 West Broad Street, Suite 2100, Columbus, Ohio 43215.

1 EXAMINER PRICE: Keep working our way
2 back. Mr. Royer.

3 MR. ROYER: Thank you, your Honor. Let
4 the record show the appearance of Barth E. Royer with
5 the firm Bell & Royer Co., LPA, 33 South Grant
6 Avenue, Columbus, Ohio, on behalf of Dominion Retail,
7 Inc., and the Ohio Environmental Council.

8 And I've also been asked to enter the
9 appearance on behalf of Material Science Corporation
10 for Craig I. Smith, 2824 Coventry Road, Cleveland,
11 Ohio 44120.

12 EXAMINER PRICE: Thank you.

13 MR. RINEBOLT: On behalf of Ohio Partners
14 for Affordable Energy, David C. Rinebolt, trial
15 counsel, and Colleen L. Mooney, 231 West Lima Street,
16 P.O. Box 1793, Findlay, Ohio 45839.

17 MS. McALISTER: Thank you, your Honors.
18 On behalf of Industrial Energy Users-Ohio, McNees,
19 Wallace & Nurick, by Lisa McAlister and Sam Randazzo,
20 21 East State Street, Columbus, Ohio 43215.

21 MR. PETRICOFF: Your Honor, on behalf of
22 Constellation Energy, M. Howard Petricoff and Michael
23 Settineri from the law firm of Vorys, Sater, Seymour
24 and Pease, 52 East Gay Street, Columbus, Ohio. I

1 would also like to enter the appearance of Cynthia
2 Fonner, 550 West Washington Street, Suite 300,
3 Chicago, Illinois. She is in-house counsel.

4 EXAMINER PRICE: Thank you.

5 MR. BOEHM: Good morning, your Honor, I'm
6 David Boehm with the law firm of Kurtz & Lowry at 36
7 East Seventh Street, Cincinnati, Ohio 45208. I am
8 here on behalf of the Ohio Energy Group, which
9 includes the following companies: Air Products &
10 Chemicals, AK Steel, ALCOA Inc., ArcelorMittal,
11 BP-Husky Refining, Brush Wellman, Chrysler, DuPont,
12 Ford Motor, Johns Manville, North Star BlueScope
13 Steel, PPG Industries, Republic Engineered Products,
14 Sunoco Toledo Refinery, Severstal Warren, Worthington
15 Industries and Linde, Inc.

16 EXAMINER PRICE: Thank you.

17 MR. KURTZ: Mike Kurtz, Ohio Energy
18 Group.

19 MR. LAVANGA: Good morning, your Honor.
20 On behalf of Nucor Steel Marion, my name is Michael
21 Lavanga of the law firm of Brickfield, Burchette,
22 Ritts & Stone, 1025 Thomas Jefferson Street
23 Northwest, 8th Floor West Tower, Washington, DC, zip
24 code 20007. I would also like to enter an appearance

1 on behalf of Garrett A. Stone of Brickfield,
2 Burchette Ritts & Stone.

3 EXAMINER PRICE: Thank you.

4 MR. YURICK: Good morning, your Honors.

5 On behalf of The Kroger Company the law firm of
6 Chester, Willcox & Saxbe, Mark Yurick, Y-U-R-I-C-K.
7 I would like to also enter an appearance for John
8 Bentine and Matthew White.

9 EXAMINER PRICE: Thank you. Any
10 intervenors I've missed?

11 MR. DUNN: Your honor, on behalf of the
12 City of Cleveland, the firm Schottenstein, Zox &
13 Dunn, I am Gregory Dunn, Andre Porter, and
14 Christopher Miller.

15 EXAMINER PRICE: Thank you.

16 MR. WELDELE: Your Honor, on behalf of
17 the Council of Small Enterprises, law firm of Tucker,
18 Ellis & West, 41 South High Street, Columbus, Ohio,
19 Suite 1225, 43215.

20 EXAMINER PRICE: Thank you. Staff.

21 MR. JONES: Good morning, your Honors.
22 On behalf of the staff of the Public Utilities
23 Commission of Ohio, Ohio Attorney General Nancy
24 Rogers, Bill Wright, John Jones, Assistant Attorneys

1 General at 180 East Broad Street, Columbus, Ohio.

2 EXAMINER PRICE: Is that everybody?

3 Thank you. Do we have any preliminary
4 matters before we take our first witness?

5 Mr. Burk.

6 MR. BURK: Your Honor, just to put on the
7 record, the parties did have discussions prior to the
8 hearing and have, I believe, come to an agreed upon
9 witness list for this proceeding. And if I can just
10 read that into the record. Today the first witness
11 will be James Reitzes on behalf of the companies and
12 then following him will be Kevin Warvell on behalf of
13 the companies and then Kevin Norris on behalf of the
14 companies.

15 Tomorrow will be staff witnesses and
16 there hasn't been a designated order. But those
17 witnesses would include Joe Buckley, Dan Shields, Ray
18 Strom, and Bob Fortney.

19 And on Thursday the schedule is -- first
20 would be Mr. Courtney representing City of Cleveland,
21 second would be Mr. Goins representing Nucor, third
22 would be Mr. Murray representing IEU-Ohio. And I
23 would note that Mr. Murray has encountered some
24 personal circumstances, so his appearance and order

1 of appearance is flexible, and we will kind of deal
2 with it as we need to. Finally, on Thursday would be
3 Mr. Gonzalez from the Office of Consumers' Counsel.

4 And then on Friday the first witness will
5 be Mr. David Fein from Constellation, second would be
6 Mr. Baron from OEG, third would be Ms. Alexander
7 representing OPAC, and fourth would be Mr. Higgins
8 representing Kroger.

9 And then following those witnesses the
10 company would offer their rebuttal testimony, if any.

11 EXAMINER PRICE: Okay. Thank you.

12 MR. BURK: And the only one other matter
13 I wanted to raise was we have had a preliminary
14 discussion with Mr. Yurick about Mr. Higgins and the
15 companies have offered to waive cross-examination of
16 Mr. Higgins if we can have his deposition that was
17 taken of Mr. Higgins just placed into the record and
18 that would be in lieu of live testimony, and we are
19 still talking with Mr. Yurick about that. I just
20 wanted to note that for the record.

21 EXAMINER PRICE: Thank you.

22 MR. BURK: The other thing I would note
23 for the record, although we didn't get an opportunity
24 to discuss it with their counsel, is the --

1 Mr. Courtney, the witness for the City of Cleveland,
2 we would be willing to waive cross-examination of
3 Mr. Courtney as well if it's -- if there are no
4 questions from any other parties for Mr. Courtney.

5 EXAMINER PRICE: Thank you. Any other
6 preliminary matters before we begin?

7 Let's go off the record for one minute.

8 (Discussion off the record.)

9 EXAMINER PRICE: Let's go back on the
10 record. Mr. Burk, call your first witness.

11 MR. BURK: Thank you, your Honor. At
12 this time, I turn it over to Mr. Hayden to call the
13 companies' first witness.

14 MR. HAYDEN: Thank you, your Honor. The
15 companies call Dr. James Reitzes.

16 (Witness sworn.)

17 EXAMINER PRICE: Please be seated and
18 state your name and address for the record.

19 THE WITNESS: My name is James Reitzes.
20 My address is 1850 M Street Northwest, Washington,
21 DC.

22 MR. HAYDEN: Your Honor, I would ask to
23 mark for identification the direct testimony of
24 Dr. Reitzes as Company Exhibit 3.

1 EXAMINER PRICE: It will be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. HAYDEN: I would also ask to have
4 marked for identification the list of errata items
5 that I believe was filed and distributed on Friday as
6 Company Exhibit 5.

7 EXAMINER PRICE: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 - - -

10 JAMES D. REITZES

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

13 DIRECT EXAMINATION

14 By Mr. Hayden:

15 Q. Good morning, Dr. Reitzes.

16 A. Good morning.

17 Q. Do you have before you what we have
18 marked as -- what has been identified as Company
19 Exhibit 3?

20 A. Yes, I do.

21 EXAMINER PRICE: Dr. Reitzes, I am going
22 to ask you to make sure you bring the microphone a
23 little closer and project because we have a very
24 crowded room today.

1 THE WITNESS: Okay.

2 A. Yes, I do.

3 Q. And is that your direct testimony in this
4 proceeding?

5 A. One second here to find it. Yes, it is.

6 Q. And do you have before you what has been
7 marked as Company Exhibit 5 which is the list of the
8 companies' errata filings that has been filed in this
9 proceeding?

10 A. Yes, I do.

11 Q. Are you responsible for those items on
12 that errata list that have your name next to it?

13 A. Yes, I am.

14 Q. Okay. Do you have any other
15 additional -- additions or corrections to your
16 testimony at this time?

17 A. No, I don't.

18 Q. Mr. Reitzes, if I were to ask you the
19 questions contained in your testimony today, would
20 your answers be the same?

21 A. Yes, they would.

22 MR. HAYDEN: Your Honor, the witness is
23 available for cross-examination.

24 EXAMINER PRICE: Thank you.

1 Mr. Stinson.

2 MR. STINSON: No questions of this
3 witness, your Honor.

4 EXAMINER PRICE: Mr. Dunn.

5 MR. DUNN: No questions, your Honor.

6 EXAMINER PRICE: Mr. Rinebolt.

7 MR. RINEBOLT: Yes, your Honor, I have
8 several questions.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Rinebolt:

12 Q. Good morning, Doctor.

13 A. Good morning.

14 Q. Normally no one has any problems hearing
15 me but let me know if you do.

16 On the bottom of page 3 and page 4 of
17 your testimony you discuss that -- indicate that the
18 proposal you believe to be compliant with state law.
19 Does the auction product that you are dealing with in
20 this case include energy efficiency, renewable
21 energy, or demand response?

22 A. The auction products as defined in
23 procurement is a slice of system load, SSO load, as
24 spelled out, the product that is part of the

1 competitive bidding procurement is a slice of system
2 tranche product as explained and defined in the
3 master supply agreement.

4 Q. When determining what system you are
5 slicing up, did the -- did it take into account
6 energy efficiency and the impact of the laws,
7 provisions related to reductions in sales?

8 A. That's not an issue that my testimony
9 covered.

10 Q. All right. Have any descending clock
11 auctions in other jurisdictions for standard service
12 offer or provider of last resort included energy
13 efficiency, renewable energy, or demand response as
14 products?

15 A. I don't know the answer to that. I know
16 that, you know, New Jersey conducts a similar auction
17 which, again, is -- it's done by customer class as a
18 percentage of load and in that sense I don't know
19 whether that allows for those programs or not.

20 Q. When -- are you familiar with the
21 utilization of a request for proposal process to
22 determine -- to develop a standard service offer or
23 provider of last resort price?

24 A. I am familiar with what a request for

1 proposal process may be. It's a fairly general term,
2 but if you are referring to a process where potential
3 suppliers submit bids to supply power, I am
4 familiar -- in a sealed bid fashion, I am familiar
5 with that process.

6 Q. Have you analyzed that process in any
7 other states?

8 A. I'm aware of that process. I have done
9 some work in Maryland. They use a process similar to
10 that, so I am familiar with that process to some
11 extent, yes.

12 Q. You bring up Maryland. Did Maryland
13 originally use a descending clock option to select
14 SSO suppliers?

15 A. I'm not sure but to my knowledge they
16 have typically used an RFP -- what I would call a
17 sealed bid auction process or first price auction
18 process.

19 Q. But, now, do you know how they are
20 purchasing power in Maryland now for SSO service?

21 A. To my knowledge, they are still using
22 that process but -- but considering changes to that
23 process.

24 Q. In your work for the company, did you

1 conduct any comparison between a descending clock
2 auction and other methodologies for obtaining
3 standard service offer or POLR service?

4 A. We basically considered a -- what you saw
5 in my testimony, which is a simultaneous multi-round
6 descending clock auction, and we also considered
7 other alternatives, primarily a sealed bid
8 procurement similar to what they have in Maryland.

9 Q. Did you look at all in a -- at a bidding
10 process that was built around an integrated portfolio
11 of multi-year, short-term, medium-term contracts?

12 A. We did not look at -- I did not look at a
13 portfolio management process.

14 Q. Since you are familiar with a descending
15 clock auction in the RFP approach, in your opinion as
16 an expert, which of those approaches results in the
17 lowest price for customers?

18 A. I think that both approaches could
19 potentially be good approaches for procuring power.
20 And they can both produce a low price outcome. It's
21 hard to say in advance -- I don't think anybody could
22 say in advance that there is a specific form of
23 procurement that's going to guarantee the lowest
24 price. However, in this context there were -- there

1 are advantages to using a simultaneous multi-round
2 descending clock auction. One of the advantages in
3 particular is it fosters competition by allowing
4 bidders -- participants in the procurement process to
5 effectively observe the price coming down -- going
6 down and looking and responding to what their
7 competitors are doing directly.

8 If you are in a sealed bid process like
9 in Maryland, you are basically submitting a bid where
10 you are sort of trying to guess on some level what
11 the price is that would be accepted rather than
12 actually watch the price tick down, like in a
13 simultaneous descending clock auction where you'd see
14 the price go down, you'd see what your competitors
15 are doing, and can react aggressively to that.

16 Another advantage to the simultaneous
17 auction is that when you are selling multiple
18 products at once, which is going to be the case in
19 the first procurement here, whether there's a
20 17-month product, there is a 29-month product, and
21 there is a 41-month product, the descending clock
22 simultaneous auction you have the ability of
23 switching from one product to another in response to
24 price differences. If you try to use a sealed bid

1 approach by contrast, then the bidder would have to
2 decide in advance how much they are going to devote
3 to each product and how to price it and that can lead
4 potentially to less efficiently outcome and less low
5 cost outcome compared to what you might find in a
6 descending clock auction.

7 Q. What about an ascending clock auction?
8 What if you had bidders bidding at the lowest
9 possible price they could provide to tranche, have
10 you seen that used in any other state?

11 A. There are -- I haven't seen a descending
12 clock auction used to purchase power. I have
13 ascending clock auction -- I have seen ascending
14 clock auction used to sell things. The FCC, the
15 Federal Communications Commission, uses an ascending
16 clock simultaneous multi-round auction to sell off
17 spectrum for providing wireless telecommunication
18 services on their services.

19 Alberta, I was involved in a matter in
20 Alberta where the generators in Alberta were selling
21 off the rights to the output of their power plants
22 and that was done in ascending clock auction because
23 people were selling things as opposed to buying
24 things. If you are buying things, it's more natural

1 to use a descending clock auction where the price is
2 ticking down.

3 Q. But is there any reason why you couldn't
4 use an ascending approach so that you would ferret
5 out the lowest cost suppliers as the price ascends?

6 A. It's possible. I haven't really looked
7 at what the outcome would be from that.

8 Q. All right. With your understanding of
9 this process and the potential manager of this
10 process, will customers be able to monitor the
11 bidding?

12 A. Will customers be able to monitor the
13 bidding?

14 Q. Yes. Will customers be able to observe
15 the bidding process and look at prices that come up?

16 A. No. They won't be able to observe the
17 bidding process while it's happening, no.

18 Q. That isn't particularly transparent, is
19 it, from the standpoint of the customers who are
20 ultimately going to pay for this product?

21 A. The transparency of the customer is the
22 price that results from the auction that, you know,
23 ends up going into the rates.

24 Q. So transparency is taking whatever comes

1 out at the end of this process?

2 A. Well, the auction is transparent to the
3 participants. In order to get a low price you want
4 the bidding process to be transparent to the
5 participants. The participants in the CBP know
6 exactly what price is being offered because the clock
7 is ticked down to a specific price. They have some
8 information on the amount of supply that's being bid
9 at that price. The products are clearly defined and
10 the process is transparent to the suppliers in that
11 fashion.

12 Q. So what you are saying is that a bidding
13 process is not analogous to a rate case where
14 customers have at least the right to look at all the
15 documents provided by the company to justify the cost
16 that they ultimately charge customers?

17 MR. HAYDEN: Objection, your Honor. That
18 question is argumentative.

19 EXAMINER PRICE: Overruled.

20 A. Could I have the question again, please?
21 I'm sorry.

22 Q. I'll simplify it, if I may. So you would
23 say then that a bidding process is not analogous --
24 not analogous to a rate case where customers have

1 access to all the documents that ultimately justify
2 the price that is charged those customers?

3 A. I don't know how to draw a comparison to
4 the auction competitive bidding process and a rate
5 case.

6 MR. RINEBOLT: No more questions, your
7 Honor.

8 EXAMINER PRICE: Thank you.
9 Mr. Royer.

10 MR. ROYER: No questions.

11 EXAMINER PRICE: Ms. McAlister.

12 MS. MCALISTER: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. McAlister:

16 Q. Good morning, Dr. Reitzes.

17 A. Good morning.

18 Q. My name is Lisa McAlister, and I am here
19 on behalf of Industrial Energy Users of Ohio. I have
20 the opposite problem of Mr. Rinebolt in that my voice
21 drops, so if you cannot hear me, please let me know.

22 The Brattle Group didn't design the
23 descending clock option, did it?

24 A. We did design the descending clock

1 process. It's not original to the Brattle Group.

2 The process has been used before in New Jersey, in
3 Illinois, and different manifestations in other
4 places, but that was the one that we designed for
5 purposes of the CBP.

6 Q. Do you know at what point in time you
7 designed the descending clock auction process?

8 A. We -- in I think late June, early July,
9 we became involved in the design process.

10 Q. So did the Brattle Group also design the
11 tranches that respective bidders are required to bid
12 on?

13 A. We were asked to -- I was asked to design
14 a procurement process that was competitive with
15 respect to the product where the product was a full
16 requirements product across, you know, full
17 requirements slice of system load. I -- I agreed for
18 purposes of having this type of procurement that that
19 was an appropriate product as opposed to potentially
20 breaking out a slice of load product for different
21 customers classes because if you go to a slice of
22 load product, there are concerns that for certain
23 customer classes, you know, the more products you
24 create, the more concern there is that you might not

1 have enough participation for any single product.

2 And so it made sense to sort of blend the shopping
3 risk across customer classes together into a slice of
4 system product.

5 Q. Turning to page 5 of your testimony,
6 there you indicate that "all necessary information
7 related to the competitive bid process will be
8 provided on the website," right?

9 A. Yes.

10 Q. And the website was not developed and
11 will not be managed by the Brattle Group, right?

12 A. The website will be managed by the Ohio
13 utilities, but the information that gets provided to
14 the website will be basically supervised by Brattle.

15 Q. And if you know, the descending clock
16 option included in FirstEnergy's application is not
17 designed to produce the least cost price, is it?

18 A. It's with that intention that I designed
19 the descending clock option. Nobody can guarantee
20 that a specific procurement method is going to for
21 sure give you the lowest price as opposed to another
22 method but this method is designed to encourage
23 participation among suppliers and then it chooses
24 among those suppliers those suppliers that are

1 offering the products at the least cost, so in that
2 sense it is a least cost procurement.

3 Q. Isn't it likely that a mix of fixed block
4 and load following requirements would produce a lower
5 cost result than slice of a system tranches?

6 A. I haven't really analyzed that specific
7 issue, but the reason for having a slice of system
8 full requirements competitive bidding process through
9 a descending clock procurement is to basically --
10 what you are doing is you're getting suppliers to
11 compete against one another with respect to their
12 ability to manage the portfolio of products that are
13 required to support standard system offer load so, in
14 essence, you are having a competition to see who can
15 do that at the lowest cost. So I would assume that
16 that process is going to potentially lead to a lower
17 cost outcome than having a portfolio management
18 proposal.

19 Q. But including fixed blocks wouldn't
20 change the process that you just described, would it?

21 A. To have a fixed block procurement?

22 Q. A mix of fixed block and load following
23 requirements.

24 A. Well, you could -- you could -- you are

1 going to have load following. The problem that I see
2 for having a load following is a load following
3 requirements, whoever is absorbing that, is
4 sustaining a lot of risk if you have, in fact,
5 offered -- if you've had a lot of supply coming from
6 fixed blocks, it's almost like whoever is supplying
7 the load following -- in some sense it's almost like
8 they are very highly leveraged and they are the ones
9 who absorb all the variability in load and that could
10 be -- that could be a highly risky product to supply,
11 and I don't know how costly it would be to supply
12 that.

13 MS. McALISTER: I have no further
14 questions, your Honor.

15 Thank you, Dr. Reitzes.

16 EXAMINER PRICE: Thank you. Marketers.

17 MR. SETTINERI: No questions.

18 MR. BOEHM: Mr. Kurtz will be conducting
19 the cross for OEG.

20 EXAMINER PRICE: Mr. Kurtz.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Kurtz:

24 Q. Good morning, sir.

1 A. Good morning.

2 Q. Where is the Brattle Group currently
3 employed by any of the FirstEnergy affiliates or
4 operating companies besides here?

5 A. I don't know. We may be doing some work
6 for some of the FirstEnergy companies in
7 Pennsylvania.

8 Q. Where has in the past the Brattle Group
9 worked for any of the FirstEnergy operating companies
10 or affiliates?

11 A. We have worked for FirstEnergy in
12 Pennsylvania. I've worked on a matter involving Penn
13 Power. We've also, I think, done work in New Jersey
14 a while back related to the auction process, the BGS
15 process.

16 Q. I know you can't speak -- I know you are
17 speaking for yourself and not necessarily the
18 utilities, but as long as the utilities get
19 reimbursed for their costs of the auction manager,
20 why should they care who the auction manager is?

21 MR. HAYDEN: Objection, your Honor. That
22 is way outside the scope of Mr. Reitzes' testimony.
23 It has nothing to do with anything he has filed in
24 this proceeding.

1 EXAMINER PRICE: Sustained.

2 Q. Why should the utilities care about what
3 type of competitive procurement process is -- is
4 approved by the Commission?

5 MR. HAYDEN: Same objection, your Honor.
6 Mr. Reitzes cannot opine on what the companies'
7 opinion is.

8 MR. KURTZ: That's essential to his
9 testimony, what kind of competitive bidding process
10 there should be.

11 EXAMINER PRICE: The objection is
12 overruled. I've heard enough. Thank you.

13 Q. Do you remember the question?

14 A. No. Could I have the question again,
15 please?

16 Q. Let me frame it a little differently.
17 The companies don't make any markup or profit on the
18 generation in a competitive procurement, do they?

19 A. No.

20 Q. Why should the companies care how the
21 Commission orders the generation be supplied for
22 nonshopping customers? Why should they care if --
23 why should the utilities care if it's a reverse
24 auction or a portfolio?

1 A. I guess I can't answer on the companies'
2 behalf. I can say from Brattle's behalf, we, you
3 know -- I was asked to design a procurement that
4 would -- would produce a least cost outcome and that
5 has been used in other places and that was the intent
6 is to produce a competitive low cost procurement that
7 conforms with the statute.

8 Q. Who at the utilities did you work with in
9 designing this process?

10 A. I talked with various people at the
11 utilities.

12 Q. Do you remember their names?

13 A. Yeah, Kevin Warvell, Dave Blank, and
14 other folks, Jim Burk.

15 Q. Do you know who the president of Ohio
16 Edison is?

17 A. Ohio Edison? Not necessarily off the top
18 of my head, no.

19 Q. I assume you didn't have any interaction
20 with the president or CEO of any of the operating
21 companies?

22 A. No.

23 Q. In various parts of the competitive
24 bidding process your -- the CBP, competitive bid

1 process, manager is to interact with the FirstEnergy
2 Ohio utilities, are you aware of that general
3 process?

4 A. Yes.

5 Q. Who at the utilities has expertise in
6 generation?

7 A. I don't know.

8 Q. Are you aware that in their application
9 and the related ESP document they state that none of
10 the employees of the utilities have any expertise in
11 generation?

12 MR. HAYDEN: Objection again, your Honor.

13 MR. KURTZ: I asked him if he is aware of
14 it.

15 MR. HAYDEN: Relevance.

16 EXAMINER PRICE: He can answer if he
17 knows.

18 A. I wasn't aware of it.

19 Q. In order for this interaction to be
20 meaningful, shouldn't you be consulting with someone
21 who knows something about generation?

22 A. I am not sure I understand exactly why
23 that would be the case.

24 Q. Well, if you are going to get their input

1 on how to act in certain types in the action process
2 or how -- what decisions to make at certain phases of
3 the auction, wouldn't it be helpful to be consulting
4 with somebody who knows what they are talking about?

5 A. I'm sure there are various sources of
6 expertise in the company that potentially could be
7 useful, but the auction process we are the manager
8 of, Brattle is the manager of, and to carry out the
9 auction successfully, I am not sure who we would need
10 to consult during the auction process to make that
11 so.

12 Q. The -- the product that is being bid out
13 in your proposal is full requirements service; is
14 that correct?

15 A. That's correct.

16 Q. And that is composed of energy and
17 capacity, specified ancillary and transmission
18 services, then current MISO resource adequacy
19 requirements and other services necessary to serve
20 the load of retail customers; is that correct?

21 A. That sounds correct, but I would have to
22 check it off the definition of the master supply
23 agreement.

24 Q. It's on page 62.

1 A. Page 62 of?

2 Q. Of the master supply -- well, of the
3 competitive bidding -- of Exhibit 2 to the
4 application, the Rules for Competitive Bidding
5 Process.

6 A. Yes, I have got that.

7 Q. Did I read it correctly?

8 A. "Full requirements service includes
9 energy and capacity, specified ancillary and
10 transmission services, then current MISO resource
11 adequacy requirements and other services necessary to
12 serve the load of retail customers of the FirstEnergy
13 Ohio utilities."

14 Q. Would you turn to page 2 of the document
15 you are looking at.

16 A. Okay.

17 Q. Are you there?

18 A. Not yet. Yes.

19 Q. There is a definition of full
20 requirements service that is the same except it
21 specifies firm transmission. Do you see that?

22 A. Yes.

23 Q. Does a bidder need firm transmission
24 service to bid in this auction?

1 A. The bidder needs to pay network
2 transmission services and, you know, any related
3 congestion costs of getting power to the delivery
4 area.

5 Q. My question is do they -- do they have to
6 have firm transmission service in hand before making
7 a bid?

8 A. I think as long as they are a MISO
9 participant, the answer is no.

10 Q. They do not need firm transmission?

11 A. No.

12 Q. How can the utilities be assured that a
13 bidder will actually be able to move the electricity
14 into the control areas of the utilities without firm
15 transmission?

16 A. Because they have to be a MISO
17 participant which will allow them to do that.

18 Q. Well, is this a mistake then on page 2 of
19 the rules where it says you have to have firm
20 transmission?

21 A. I think the source I would go to is the
22 master supply agreement.

23 Q. So explain to me how this will work then.
24 How will a generation owner outside of the control

1 areas of the utilities bring power in to serve the
2 utilities if they don't have firm transmission?

3 A. I think, first of all, that you are
4 assuming that you have to be a physical owner of
5 generation to participate in this bidding process
6 which is -- which is not the case. Anybody who can
7 potentially purchase power in MISO for delivery to
8 the Ohio utilities' service territory can participate
9 in this procurement.

10 Q. Well, if I purchase my -- purchase
11 electricity at the Cinergy hub but I have no way to
12 get it to the FirstEnergy service territory, would I
13 be allowed to bid? Would that be a qualified bid?

14 A. If you -- if you bid and you end up
15 signing a supply agreement, you have to be able to,
16 you know, take the obligations involved in getting
17 the power delivered.

18 Q. Well, how can I deliver it if you don't
19 have firm transmission? How can I -- how can the
20 utilities be assured that I'll deliver it if I don't
21 have firm transmission?

22 A. You would arrange for that through MISO.

23 Q. How much firm transmission capability is
24 there right now into the first -- into the service

1 territories of Ohio Edison, Cleveland Electric, and
2 Toledo Edison?

3 A. I don't know off the top of my head.

4 Q. Well, doesn't that -- wouldn't that limit
5 the universe of bidders to -- if -- depending on how
6 much firm transmission there is available?

7 A. Not in my mind because you -- you can
8 participate in this procurement if you have the
9 ability to basically purchase power on a forward or
10 spot basis.

11 Q. But if the utilities need the electricity
12 to serve the needs of nonshoppers, electricity has to
13 be there, how -- how can you accept a bid of somebody
14 who cannot deliver?

15 A. Because that supplier ability to bid for
16 power on the MISO market and obtain supply in that
17 fashion.

18 Q. Again, if they -- they can obtain
19 generation at PJM, Cinergy hub, Columbia hub in
20 Washington State, but they can't get it to the
21 utilities, what good is it to Ohio Edison, Cleveland
22 Electric, and Toledo Edison as the provider of last
23 resort?

24 A. I don't know the answers to that.

1 Q. Do you know how much generation FES has
2 in the control areas of the three utilities?

3 MR. HAYDEN: Objection. It's not in the
4 scope of Mr. Reitzes' testimony.

5 MR. KURTZ: Let me explain it.

6 Q. Did you design this provider of last
7 resort auction for the utilities without any
8 investigation as to the generation resources located
9 in their control area?

10 A. I did not specifically look at that
11 question, no.

12 Q. In designing the auction for the provider
13 of last resort, don't you think that would have been
14 appropriate to understand the physical realities of
15 the system you were designing it for?

16 A. The supply into the CBP is going to be
17 provided by the -- on some level you are going to --
18 either you have generation supplies or you purchase
19 them in the wholesale market in MISO, and I haven't
20 even investigated, you know, in extreme detail the
21 circumstances of the wholesale market within MISO.

22 I am familiar with the operation of the
23 wholesale market within MISO, but I didn't look
24 specifically at generation within FirstEnergy service

1 territory. I think for purposes of looking at -- at
2 the wholesale market relevant to FirstEnergy service
3 territory you have to look at -- at generation not
4 necessarily within FirstEnergy service territory but
5 also other generation that can possibly get into that
6 service territory.

7 Q. Do you know the total import capabilities
8 of the transmission system -- systems of the three
9 operating companies?

10 A. Not off of the top of my head.

11 Q. Do you know the total export capabilities
12 on the transmission systems of the three operating
13 companies?

14 A. No.

15 MR. BOEHM: Can we confer for a moment,
16 your Honor?

17 EXAMINER PRICE: Certainly.

18 MR. KURTZ: No questions, your Honor. No
19 more questions.

20 EXAMINER PRICE: Thank you.

21 Nucor.

22 MR. LAVANGA: I have no questions, your
23 Honor.

24 EXAMINER PRICE: Mr. Yurick.

1 MR. YURICK: I just have a couple.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Yurick:

5 Q. Doctor, thank you for testifying. I want
6 to ask you a couple of questions. If could you turn
7 to page 13 of your testimony. And the question that
8 I am going to ask you has to do with THE question
9 posed on line 10 and then the answers on lines 11
10 through 16. Okay?

11 A. Okay.

12 Q. Are you there?

13 A. Yeah. I can't see the line numbers on my
14 page.

15 Q. The question is, "Has a descending clock
16 format been used before in the energy sector?" And
17 your answer is, "Yes, on several occasions." And
18 then you say, "New Jersey has successfully used the
19 descending clock format for a number of years in
20 multiple solicitations." Do you see that?

21 A. Yes.

22 Q. I think you said on response to the
23 question by Mr. Rinebolt that had to do with
24 ascending clock bids, that you designed a system but

1 you can't really guarantee that the system, whatever
2 bidding system that you come up with, comes up with
3 the least cost alternative; am I stating that
4 correctly?

5 A. You can't guarantee it, but certain
6 systems are likely to, you know, produce a better
7 result than others and will produce a least cost
8 result.

9 Q. I just wanted to make sure, I am
10 clarifying, when you say "New Jersey has successfully
11 used a descending clock bid," you're not guaranteeing
12 that that bid process used in New Jersey resulted in
13 the lowest price alternative?

14 A. When I used the term successfully there,
15 I was referring to the fact that New Jersey has used
16 the BJS descending clock process, it has been
17 approved by the New Jersey Public Utilities. They
18 have used it, I think, since 2003, so that's what I
19 meant by the term successfully in that context, and I
20 presume it's producing a low cost result.

21 Q. I appreciate that. And really all I am
22 asking you clarifying -- I'm just trying to clarify
23 your testimony, is that when you say that it's
24 successful, you are not saying necessarily that it's

1 the lowest price alternative?

2 A. I didn't do an empirical investigation
3 whether another alternative would have potentially
4 led to a lower price, no.

5 MR. YURICK: Okay. I have no other
6 questions.

7 EXAMINER PRICE: Thank you.

8 Mr. Weldele.

9 MR. WELL: No further -- no questions,
10 your Honor.

11 EXAMINER PRICE: Mr. Small.

12 MR. SMALL: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Small:

16 Q. Dr. Reitzes, Jeff Small, sorry I'm
17 difficult to see, Office of the Ohio Consumers'
18 Counsel.

19 In preparing your work, did you study the
20 materials and the presentation of materials by
21 FirstEnergy in PUCO Cases 07-796 and 07-797 where
22 FirstEnergy presented an auction-type process for the
23 standard service offer? Are you aware of those
24 cases?

1 A. I don't know them by number.

2 Q. By description though it's the generation
3 standard service offer and it was filed roughly a
4 year ago; does that sound familiar?

5 A. We reviewed some materials relate --
6 related to that filing, yes.

7 Q. And you say that you began the process of
8 working with FirstEnergy in June, July of 2008. Is
9 it fair to say that the elements that are in the
10 bidding process that has been proposed in the MRO of
11 this case, that you've rejected elements of the
12 FirstEnergy proposals in those cases?

13 A. You know, we came up with a specific
14 design in this case. I know it's different from the
15 one that was used in that case. We did look at some
16 of the documents submitted in those cases, and
17 considered certain alternatives against what we ended
18 up proposing, yes.

19 Q. Are the elements that are different
20 between the proposal last fall and the ones that are
21 at issue in this particular case, are those -- those
22 differences in the elements, are those attributed to
23 your group and your design of the bidding process?

24 A. They were -- I don't -- I didn't do

1 exactly a line-by-line comparison between what was
2 proposed before and what's being proposed now, so I
3 am not sure I am aware of each and every element
4 that's different.

5 Q. Are you aware of the a portion of the
6 proposal having to do with the contingency plan?
7 That is basically a situation where a supplier for
8 one reason or another does not show up with the power
9 that was bid? Are you aware of that portion of the
10 companies' submissions?

11 A. I am generally aware of that.

12 Q. Okay. And generally in the contingency
13 plan there is arrangements for the company to make
14 arrangements for the supply of power if -- if a
15 bidder does not show up; is that correct?

16 A. If a supplier doesn't?

17 Q. If a bidder doesn't. I am using bidder
18 and supplier interchangeably.

19 A. So the supplier doesn't meet its
20 obligation?

21 Q. That's correct.

22 A. Yeah, there are arrangements for that.

23 Q. Okay. Now, who at the FirstEnergy
24 companies makes those arrangements?

1 A. I'm not aware of the position. I am
2 aware generally.

3 Q. Well, I am concerned a little bit about
4 the question that was asked by counsel for OEG that
5 there are -- that you were aware that -- and your
6 response that you are aware there are not -- that
7 there are no personnel at the companies capable of
8 dealing with wholesale transactions and generation
9 supply. Under those circumstances who is it that's
10 supposed to be making the arrangements?

11 A. I don't know. My involvement in that
12 aspect was only as it relates to how and whether it
13 would affect the competitive bidding process and
14 whether that supply obligation would be shifted to
15 the competitive bidding process at a future date.

16 Q. So your responsibility ends at the end of
17 the bidding process; is that -- or maybe -- I will
18 just ask this other question. Where does your
19 responsibility end?

20 A. I think my responsibility is outlined in
21 the testimony as CBP manager.

22 Q. Well, apparently -- am I correct from
23 your responses that that doesn't include dealing with
24 the contingency plan?

1 A. To the extent that it involves and
2 affects the competitive bidding process procurement.

3 Q. But you and your group are not going to
4 be around to -- for consultations to implement the
5 contingency plan if it needs to be implemented?

6 A. I'm not aware of the length of our
7 arrangements in terms of when that contingency plan
8 arises.

9 Q. Would you please turn to page 5 of your
10 testimony. At the very top there is a reference to
11 making modifications of the proposed CBP in light of
12 the discussions with the Commission and its staff and
13 interested stakeholders. I am reading that on lines
14 1 and 2 of your testimony, page 5. Does that portion
15 of your testimony mean that modifications could be
16 made outside the -- those decisions that are made in
17 the PUCO's entries and orders in this case? Are you
18 suggesting a process outside the entries and orders
19 of the PUCO?

20 A. Can you restate the question, please?

21 MR. SMALL: Could we have it read back,
22 please.

23 EXAMINER PRICE: Yes.

24 (Record read.)

1 A. No.

2 Q. Would you please turn to page 15 of your
3 testimony and in particular line 10 where there is a
4 reference to individuals in FirstEnergy obtaining
5 information and your words, "need-to-know basis." Do
6 you see that? I am on page 15, line 10.

7 A. Yeah. I'm sorry, my lines aren't
8 numbered because of the -- yes, as described by the
9 communication protocols.

10 Q. Okay. At this -- at the current time do
11 you know -- do you have an idea of who the personnel
12 at the companies are who would be on a need-to-know
13 basis?

14 A. We haven't had those discussions with the
15 companies.

16 Q. You were not at the technical conference;
17 is that correct?

18 A. I attended the technical conference.

19 Q. You were in the audience?

20 A. Yes.

21 Q. And another member of your Brattle Group
22 was on the -- made a presentation; is that correct?

23 A. Coleman Bazelon made a presentation.

24 Q. Were you involved in the preparations of

1 the -- for the technical conference with your -- with
2 your colleague?

3 A. I -- I may have reviewed some slides he
4 put together, but it was mainly done at -- by
5 Coleman.

6 Q. Okay. Were you involved -- were you
7 involved in discussions with FirstEnergy concerning
8 preparation for the technical conference?

9 A. Other than the discussion that there was
10 going to be a technical conference and a presentation
11 needed to be made, that was basically it.

12 Q. What communications did you have with
13 FirstEnergy regarding preparation for your testimony
14 here today?

15 A. I had communications with them regarding
16 when the testimony was going to be and some -- and
17 some discussions surrounding the testimony.

18 Q. Regarding the preparation of the written
19 testimony, what communications did you have with the
20 company regarding the preparation of the written
21 testimony that you have -- that we have before us
22 today?

23 A. Whether there were any errata and the
24 need to be put in, that sort of thing.

1 Q. So there were no discussions concerning
2 its content?

3 A. There was probably discussions concerning
4 the content, but more just -- nothing really that
5 specific.

6 Q. Did you engage in any communications with
7 FirstEnergy concerning your presentation here on the
8 stand today?

9 A. We had conversations regarding that I had
10 to be here and testify and, you know, as I mentioned
11 before, some general discussion around the testimony.
12 That was it.

13 MR. SMALL: I have no further questions.
14 Thank you.

15 EXAMINER PRICE: Thank you.
16 Staff.

17 MR. JONES: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Jones:

21 Q. Good morning, Dr. Reitzes. I am John
22 Jones and I represent the Staff and I have a few
23 questions for you.

24 Dr. Reitzes, I wanted to get back to an

1 issue raised by counsel for OEG as to transmission
2 capability, and I wanted to go back to the exhibits,
3 to the application, that was cited here, Exhibit 2,
4 pages 62 and page 2. If you could look at that,
5 please, page 2 and page 62 of Exhibit 2 to the
6 application.

7 A. That would be the rules? You are
8 referring to the rules?

9 Q. Yes, yes.

10 A. Okay.

11 Q. And your testimony regarding the full
12 requirements service, you see there -- is that a
13 definition on page 2 of full requirements service on
14 page 2 of the rules?

15 A. All right. Let me look at the right
16 page. That is -- that is a definition but I think
17 it's clarified in the master supply agreement.

18 Q. That's my next question. If you would
19 look at Exhibit F and look for definitions on page 2,
20 can you tell me where to find the definition for full
21 requirement service?

22 A. I was referring when I referred to the
23 master agreement to the definition of the tranche on
24 page 10.

1 Q. Page 10 of Exhibit F?

2 A. Of Exhibit F. Complimented by the
3 definition of SSO load on page 8.

4 Q. So, Dr. Reitzes, then on page 8 firm
5 transmission is included then as one of the
6 requirements, right?

7 A. Yeah, yes, as purchased from MISO
8 effectively.

9 Q. Continuing to look at Exhibit F, is there
10 also a definition for firm transmission service
11 provided?

12 A. On page 4?

13 Q. Yes. So that the definition for that
14 service as it's used in the description of full
15 requirements service on page 2 of the rules in
16 Exhibit 2?

17 A. Yes, I believe so.

18 Q. Okay. Dr. Reitzes, moving on here to the
19 design of the competitive bid process, when did you
20 start designing this process?

21 A. Late -- I think I said previously late
22 June, early July.

23 Q. And did you use or adopt what FirstEnergy
24 had used in the past for competitive bid process with

1 the Commission?

2 A. I reviewed the -- some of the documents
3 submitted in 2007 related to the procurement then. I
4 mean, to do this process from my standpoint more
5 efficiently in terms of designing a competitive
6 bidding process, we didn't want to create something
7 from scratch so it was natural for us to refer to
8 others since, you know, we liked -- I liked the use
9 of the descending clock auction in this context, it
10 was useful to rely on other circumstances -- other
11 documents that could produce surroundings that -- for
12 the format rather than devise an entire process by
13 scratch, including the rules and the communications.

14 Q. So did you make many changes or additions
15 to what was already used by FirstEnergy?

16 A. Made changes as -- as we deemed
17 appropriate.

18 Q. And as to evaluating an alternative
19 process, you testified about the concealed bid
20 process. How much time did you spend in evaluating
21 that process as an alternative to descending clock
22 auction?

23 A. I don't know specifically. I have been
24 involved in these procurement processes in other

1 jurisdictions, so some of these debates surrounding
2 doing a descending clock versus a sealed bid, you
3 know, I am sort of familiar based on that experience
4 when you might want to go with one versus the other.

5 Q. Okay. Now, referring to your testimony
6 on page 4, one of the components that you included
7 for the -- for the process -- the competitive bid
8 process is that "developing competitive safeguards to
9 guard against anti-competitive behavior during
10 bidding," and that's on page 4, lines 5 and 6. Can
11 you more fully describe the competitive safeguards
12 that were -- that you would include?

13 A. The competitive safeguards include
14 bidders cannot communicate with one another, bidders
15 have to attest to their independence from other
16 bidders. And in the procurement process itself,
17 which is the actual bidding process itself where the
18 price ticks down, everybody is aware of what the
19 price is and that excess supply is reported, so
20 participants can look and say, gee, there is a -- you
21 know, there is a lot of excess supply for this, this
22 may be less costly to supply than I was figuring, and
23 that may encourage participants to bid more
24 aggressively. So those safeguards are in there to

1 encourage a competitive result of the auction.

2 Q. Dr. Reitzes, moving on to page 11 of your
3 testimony, lines -- line 14. Tell me when you are
4 there.

5 A. Yeah, I am there.

6 Q. You talk about providing feedback to the
7 bidders to help produce more effective results for
8 bids. How -- can you give us more on that, how
9 that's helpful?

10 A. I think I just described part of it.
11 It's meant to provide some feedback as to the amount
12 of excess supply and it's not specifically going to
13 give ranges of excess supply once the auction is in
14 progress. That's done to encourage bidders to be
15 more aggressive once they have some limited aggregate
16 information on what their competitors are doing.
17 This is what one refers to as a common value auction
18 or bidding process where -- where the participants
19 are evaluating a common opportunity and in those sort
20 of settings there may be situations to act reticently
21 in their bidding process and not bid as aggressively
22 to lower the price without some information being
23 revealed about what your -- what your competitors may
24 be doing.

1 Q. Thank you. When you have the multiple
2 rounds of bidding, how much time is there between
3 bids? Is there a set time or not?

4 A. That's to be determined. Bidders can ask
5 for pauses though to -- if they need more time to
6 evaluate their bids, and as the process -- as the
7 bidding progresses, the auction manager has the
8 ability to adjust the time in between rounds.

9 MR. JONES: That's all I have. Thank
10 you.

11 EXAMINER PRICE: Thank you.
12 Redirect?

13 MR. HAYDEN: Your Honor, can we take a
14 short 5-minute break?

15 EXAMINER PRICE: Let's return at 25
16 after. Thank you. Off the record.

17 (Recess taken.)

18 EXAMINER PRICE: Let's go back on the
19 record.

20 MR. HAYDEN: Yes, your Honor, just a
21 couple of quick questions.

22 - - -

23

24

1 REDIRECT EXAMINATION

2 By Mr. Hayden:

3 Q. Mr. Reitzes, during your
4 cross-examination counsel asked you some questions
5 about firm transmission service and the necessity for
6 firm transmission in the competitive bid process.
7 Could you clarify your answer on that line of
8 questioning, please?

9 A. Yes, I can. Firm transmission service is
10 required, but the winners of the competitive bidding
11 procurement, those who are the low cost bidders that
12 are awarded tranches as load serving entities within
13 MISO can purchase transmission service from MISO. It
14 is available to them.

15 Q. Thank you. And you were also asked some
16 questions about who can see the bidding process and
17 whether customers can see the bidding process as it
18 occurs, and you indicated they could not. Could you
19 expand on that answer as well, please?

20 A. Yes. Customers cannot observe the
21 bidding process as it unfolds, but PUCO staff and any
22 consultants that they wish to retain are able to
23 observe that process and can be in their offices as
24 the bidding takes place.

1 MR. HAYDEN: Thank you. No further
2 questions, your Honor.

3 EXAMINER PRICE: Thank you.

4 Mr. Royer.

5 MR. ROYER: No questions.

6 EXAMINER PRICE: Mr. Dunn.

7 MR. DUNN: No questions.

8 EXAMINER PRICE: Mr. Rinebolt.

9 MR. RINEBOLT: No questions, your Honor.

10 EXAMINER PRICE: Ms. McAlister.

11 MS. McALISTER: No questions, your Honor.

12 EXAMINER PRICE: Marketers.

13 MR. SETTINERI: No questions, your Honor.

14 EXAMINER PRICE: Mr. Kurtz.

15 MR. YURICK: No questions, your Honor.

16 Thank you.

17 EXAMINER PRICE: I was talking to Mr.

18 Kurtz.

19 MR. YURICK: Oh, I'm sorry. Couldn't
20 hear you, sorry.

21 MR. KURTZ: No questions, your Honor.

22 EXAMINER PRICE: Mr. Yurick.

23 MR. YURICK: And, again, no questions,
24 your Honor. Thank you.

1 EXAMINER PRICE: Staff.

2 MR. JONES: Nothing, your Honor.

3 EXAMINER PRICE: Mr. -- or Dr. Reitzes --

4 oh, I'm sorry, Mr. Small.

5 MR. SMALL: No questions, your Honor.

6 EXAMINER PRICE: You're throwing me off

7 by not going first.

8 - - -

9 EXAMINATION

10 By Examiner Price:

11 Q. Dr. Reitzes, I am turning to page 3 of
12 your testimony. Mr. Kurtz asked you about which --
13 whether you had worked for any of the affiliate --
14 regulated affiliates of the companies outside of the
15 state. Can you tell me which affiliates your
16 company -- your firm has worked for?

17 A. We've worked for Penn Power -- outside of
18 Ohio?

19 Q. Outside of Ohio.

20 A. Yeah, Penn Power, Penn Elect and Met Ed.

21 Q. Are those all in the past or are you
22 currently performing work for those affiliates?

23 A. I believe we may be performing work for
24 some in Pennsylvania affiliates presently, maybe Penn

1 Elect.

2 Q. You also indicated that you performed
3 work on a contract basis for the companies. Does any
4 of that work relate to any Commission proceedings --
5 proceedings before this Commission just to clarify?

6 A. Other than this proceeding?

7 Q. Yes.

8 A. And ESP?

9 Q. Well, ESP would be a separate proceeding,
10 yes.

11 A. Yeah. We have done work related to the
12 ESP, yes.

13 Q. Can you tell us the scope of that work?

14 A. Some of my colleagues have put in
15 testimony -- I don't know exactly what issues. Mike
16 Vilbert has put in testimony as well as Frank Graves.

17 Q. And Dr. Vilbert, is that the same
18 Dr. Vilbert who testified before the Commission in
19 the first pending FirstEnergy distribution rate case?

20 A. I would believe that would be the same.

21 Q. Are you familiar at all with the ESP
22 case?

23 A. In a general sense, yes.

24 EXAMINER PRICE: That's all I have.

1 Thank you.

2 MR. HAYDEN: Your Honor, we would move to
3 admit the direct testimony of Dr. Reitzes as Company
4 Exhibit 3, please.

5 EXAMINER PRICE: Exhibit 3?

6 MR. HAYDEN: Yes.

7 EXAMINER PRICE: Any objection to the
8 admission of Company Exhibit 3?

9 Hearing none, that will be admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 MR. KUTIK: Your Honor, may we go off the
12 record for moment?

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

15 (Discussion off the record.)

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

18 Mr. Burk, call your next witness. I'm
19 sorry.

20 MR. BURK: Mr. Kutik, thank you.

21 MR. KUTIK: Your Honor, the companies
22 called Kevin Warvell.

23 (Witness sworn.)

24 EXAMINER PRICE: Please be seated and

1 state your name and address for the record.

2 THE WITNESS: My name is Kevin Warvell.

3 I am the Director of Rate Strategy for FirstEnergy
4 service company at 76 South Main Street in Akron.

5 EXAMINER PRICE: Please proceed,
6 Mr. Kutik.

7 MR. KUTIK: Thank you, your Honor.

8 - - -

9 KEVIN T. WARVELL
10 being first duly sworn, as prescribed by law, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 By Mr. Kutik:

14 Q. Mr. Wavell, do you have before you
15 Company Exhibit 1?

16 A. Yes.

17 Q. What is that?

18 A. That's my direct testimony.

19 Q. You also have before you what's been
20 marked for identification and provided to the court
21 reporter as Company Exhibit 4.

22 A. Yes.

23 Q. What is that?

24 A. That's the application.

1 Q. And does that Exhibit 4 also include all
2 of the exhibits to the application?

3 A. Yes, it does.

4 Q. Now, Mr. Warvell, do you also have before
5 you Exhibit 5, the errata sheet?

6 A. Yes, I do.

7 Q. Do you adopt the various items on that
8 errata sheet that bear your name?

9 A. Yes.

10 Q. And that includes item numbers 5 and 9
11 through 16?

12 A. Yes.

13 Q. Mr. Warvell, do you have any other
14 corrections or additions to make to your testimony?

15 A. Yes, I do. In my direct testimony, if
16 people want to turn to page 9 of my direct testimony,
17 on line 13 the date there indicates "January 1." If
18 everybody is there, that actually should be -- that
19 date should be May 1.

20 Q. Do you have any other additions or
21 corrections?

22 A. No, I do not.

23 Q. If I asked you the questions that appear
24 in Exhibit 1, would your answers be the same as

1 appear in that exhibit subject to the additions and
2 corrections on the errata sheet and the addition that
3 you've made today?

4 A. They would.

5 MR. KUTIK: No further questions.

6 EXAMINER PRICE: Thank you.

7 Mr. Dunn.

8 MR. DUNN: No questions, your Honor.

9 EXAMINER PRICE: Mr. Royer.

10 MR. ROYER: No questions.

11 EXAMINER PRICE: Mr. Rinebolt.

12 MR. RINEBOLT: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Rinebolt:

16 Q. Mr. Warvell, good morning.

17 A. Good morning.

18 Q. I would like to turn to page 2 of your
19 testimony, please.

20 A. Okay.

21 Q. I am looking at the first question and
22 answer. You reference that you are here to discuss
23 among other things No. 5, the master standard service
24 offer supply agreement, correct?

1 A. That is true.

2 Q. All right. Who wrote this agreement?

3 A. The master supply agreement was written
4 by a combination of people at FirstEnergy. It was
5 initially started as an agreement sponsored by I
6 believe an attorney and has been modified for
7 different applications throughout the company by
8 various attorneys and credit people of FirstEnergy.

9 Q. Now, are these attorneys employees of the
10 distribution company, or are they employees of the
11 services company?

12 A. I don't know that answer.

13 Q. Do you know who represents FirstEnergy
14 Solution?

15 A. No, I do not.

16 Q. Let's turn to page 3 and I am down about
17 lines 18, 19, where you discuss the authority to
18 mitigate and address the conduct of market
19 participants and the exercise of market powers. Can
20 you give me some examples of when this authority has
21 been exercised in MISO?

22 A. I'm sorry, could you give me that
23 reference again, where you are referring to, or is
24 that just general?

1 Q. I'm sorry. It's 19 through 22 is the
2 sentence to which I am referring. And could you give
3 me any examples of where the authority to mitigate
4 and address the conduct of market participants to
5 help prevent the exercise of market power has
6 occurred?

7 A. I don't know of any specific examples
8 that I could reiterate. This is the issue regarding
9 module D for the market monitor and its ability to do
10 so. I don't have any specific examples I could give
11 you.

12 Q. So you don't know that this authority has
13 ever been utilized regarding FirstEnergy Solutions or
14 ATSI, A-T-S-I?

15 A. I am not aware of any market power
16 mitigation issues that have been done.

17 Q. All right. Let's turn to page 4, please,
18 where you discuss the availability of published
19 resources that provide pricing on contracts for
20 future delivery. Let's start with ICAP.

21 A. Okay.

22 Q. How far out or how many months or years
23 forward does ICAP identify prices?

24 A. ICAP does monthlies, quarterlies, and

1 then it will go out as far as, I believe, the last
2 one I looked at it had a calendar strip for the next
3 three years, on-peak and off-peak pricing.

4 Q. Do you have any idea what the volume of
5 trades are that are reported through ICAP?

6 A. I do not know the volume at this time.

7 Q. All right. Let's look at ICE, how far
8 out, how many months forward does ICE identify
9 prices?

10 A. ICE, I believe, goes out about four years
11 rather than the three.

12 Q. And do you have any idea of the volume of
13 trades reported by ICE?

14 A. The volume of trades are indicated every
15 day by ICE. If you are a subscriber to that
16 subscription, you can get the volume every day,
17 forwards and dailies, quarterlies. The volumes are
18 available. I specifically have not memorized those
19 or know what they are specifically for any particular
20 year.

21 Q. Do you have any idea of the range of
22 volumes?

23 A. No. I don't keep track of that, I'm
24 sorry.

1 Q. All right. How about PLATTS, how many
2 years or months forward does PLATTS identify prices?

3 A. Four years for PLATTS on- and off-peak
4 forward looking.

5 Q. And, again, do you have any idea of
6 volume of trades reported?

7 A. No. I have limited knowledge of PLATTS.
8 I referenced it in my Attachment A as a public
9 available information that people could look at as
10 far as types of items that could be gone out for
11 subscription oriented, but I have limited knowledge
12 of their specific subscription.

13 Q. And we will run through the last one.
14 How about NYMEX, do you have a sense of those
15 products at all?

16 A. Not at all. I really couldn't even --
17 have not been on the site recently to tell you how
18 many years out that is at this point. The last time
19 I had looked at it, I believe it was a three or four.

20 Q. All right. Let's move then to page 5.
21 On lines 12 through 15, there is a discussion of full
22 requirements SSO supply. Did you look at any other
23 options other than bidding for full requirements as a
24 means to provide your MRO price?

1 A. And, I'm sorry, could you ask that one
2 more time? I was referencing the number, and I got
3 lost.

4 Q. My apologies for being too quick. Did
5 you look at any other options beyond a full
6 requirements bid to procure power for the
7 FirstEnergy's proposed MRO?

8 A. No, we did not.

9 Q. Let's look at page 6, please, sir, at the
10 last answer, lines 20 through 22. Did -- why did you
11 choose slice of system as the product that you would
12 procure?

13 A. The company along with Brattle had
14 discussions as to particular products and the slice
15 of system was chose to spread the risk involved with
16 shopping throughout our load process and also due to
17 the fact that we believe the slice of system would
18 bring more bidders to the table for the amount of
19 volume that was going to be created through this
20 descending clock option process.

21 Q. So your orientation in choosing this was
22 to reduce the risk on the bidders?

23 A. The orientation would be to reduce the
24 risk and the assumption is reducing that risk the

1 overall price for the customer would be down reducing
2 the overall risk for the slice of system load.

3 Q. You indicated that that was the
4 assumption. Have you conducted any analysis of
5 whether slice of system results in the lowest price?

6 A. No, I have done no type of analysis.

7 Q. So you didn't look at whether a slice of
8 system would result in lowest price for residential
9 or small commercial customers?

10 A. Once again, we are looking at slice of
11 system being total for the company to acquire roughly
12 60 million-megawatt hours of supply and that slice of
13 system is spreading the risk over that entire load
14 instead of in particular segments of the load.

15 Q. If you could turn to page 7, lines 5
16 through 8.

17 A. Okay.

18 Q. Could you tell me why you picked these
19 intervals?

20 A. These intervals were picked basically to
21 coincide with the MISO -- MISO year starting June 1,
22 so we wanted to make sure people had the ability to
23 hedge different items that would be looked at as far
24 as congestion was concerned to meet the planning

1 years within MISO. Since this process has to start
2 January 1, the product coincides with the planning
3 year of the RTOs, both MISO and PJM.

4 Q. Did you look at any other intervals?

5 A. We examined -- we looked at different
6 intervals, but this made the most sense to match with
7 the planning years and we would -- we would look at
8 adjusting those as we talk about in Exhibit I.
9 Depending on the short-term ESP plan, these intervals
10 could be adjusted to still match the planning year of
11 both MISO and PJM.

12 Q. If you could turn to page 11, sir. And I
13 will tell you that these questions don't really
14 relate to your text. They relate more to the
15 descending clock option concept.

16 Could you tell me, if you know, where
17 else the descending clock auction has been used?

18 A. To my knowledge, the descending clock
19 auction has been used in different regions being New
20 Jersey, Illinois, and the process itself has been
21 approved twice by the Commission in Ohio previously.

22 Q. To your knowledge, have any states
23 subsequently rejected the use of a descending clock
24 approach and turned to another method for procuring

1 SSO or POLR service?

2 A. Not knowing the intimate details of all
3 the issues, but in Illinois the process -- the price
4 was rejected, and they are going about procuring
5 their power in a different manner.

6 Q. What other approaches are there to
7 procuring SSO or POLR service that you are aware of?

8 A. There could be an increment in number of
9 approaches. That I am aware of have been stated
10 earlier; the active portfolio management approach
11 with different products and the ERP approach was
12 brought up here earlier today.

13 Q. Did you and/or FirstEnergy analyze those
14 various approaches to determine which one would
15 produce the least cost outcome?

16 A. The approach to the least outcome for
17 customers we looked at the descending clock auction
18 to be the most competitive process and that's why we
19 looked at it from a perspective to the customer that
20 due to the transparency and the competitive nature of
21 the descending clock rounds, we believed that this
22 would be a competitive price procurement process.

23 Q. You indicated that FirstEnergy has
24 conducted these auctions twice before in Ohio. Did

1 those auctions produce a price lower than the prices
2 being offered by the company?

3 A. If I could state your question just a
4 little different way, the -- as far as the
5 FirstEnergy doing that procurement process, that was
6 with the process of the Commission oversight asking
7 FirstEnergy to make that process available.

8 Q. But did it result in a lower price than
9 was otherwise available?

10 A. I don't particularly recall the price,
11 but I believe there was other circumstances as far as
12 the threshold in which that auction was taking place
13 and a price to compare through a regulatory agreement
14 process that was done, so I would not say that they
15 were on an apples-to-apples basis.

16 Q. All right. Let's turn to page 17,
17 please, sir, and I am going to focus on the last
18 question that begins at line 14, where you list the
19 topics covered within the master SSO supply
20 agreement.

21 A. Okay.

22 Q. Are there any requirements in the supply
23 agreement related to renewable energy, energy
24 efficiency, or demand response?

1 A. Not being an attorney but reading the
2 statute, the company didn't believe that there was a
3 requirement in filing the MRO that those items be
4 included in the MRO process.

5 Q. But -- and I understand that you are not
6 a lawyer. Is it your understanding of Senate Bill
7 221 that there are requirements for renewable energy
8 and there are requirements for energy efficiency and
9 for demand response?

10 A. Yes, that are being looked at currently
11 and those rules should be finalized, and when they
12 are finalized, we will have a rider or an attached --
13 attachment addressed with the MRO process to account
14 for those items.

15 Q. Let's turn to page 18 and this relates to
16 the first question and answer. Initially you
17 indicated that the supplier agreement includes
18 provisions that result in damages from improper or
19 early termination. Would those damages flow through
20 to SSO customers?

21 A. I don't quite understand your question.
22 Could you repeat it again?

23 Q. If the company collects damages for the
24 failure of a supplier to deliver power to the

1 company, would those damages flow back to customers
2 in some way?

3 A. In some way, yes. They should flow back
4 to the customers. The issue would be is timing of
5 that to take place and the mechanism in which they
6 would flow back through would have to be decided at
7 that point in time when that happened.

8 Q. So there is no particular approach in
9 this filing as to how those damage funds would flow
10 through to customers?

11 A. It hasn't been specified at this point.

12 Q. Now, if you have provisions in the master
13 supply agreement that relate to damages for default
14 by a supplier, then why does the company need a
15 reconciliation rider to collect damages -- or to
16 collect shortfalls from customers?

17 A. If I understand your -- your question
18 properly, the way the reconciliation mechanism comes
19 into play is through the default supplier. If the
20 company had to go to the market and -- either through
21 a new competitive bid or through obtaining power
22 through MISO, that reconciliation compared to the
23 SSO's cost that was given to the supplier and the
24 credit limit that that supplier had, those

1 differences would flow through the reconciliation
2 mechanism to the customer to make the company whole
3 for generation service.

4 Q. Why don't the damage provisions in the
5 master supply agreement perform that function?

6 A. The damages, No. 1, you don't know if you
7 are going to get them from the supplier; and, No. 2,
8 it would be a timing issue of when that happens as
9 far as going to court, making all that happen at the
10 same time. Customers need energy and that needs to
11 be supplied by the company and from a solvency
12 perspective the company would need to receive their
13 money to keep that process going.

14 Q. So in a sense you are setting up --
15 through this rider you're setting up customers as the
16 insurer against any risks by the distribution entity?

17 A. I would -- I don't know if I would claim
18 it that way, but --

19 Q. Well, then let's look at what you just
20 said. If there is any shortfall in recovery from
21 customers because of a failure of a supplier to
22 perform, then that difference will be collected from
23 the customers; is that correct?

24 A. If a supplier defaults in its service and

1 that service cannot be replaced by other suppliers at
2 that same price and a competitive bid is not done and
3 the company has to go to the hourly market, the net
4 difference between the credit worthiness of that
5 customer, the SSO price would be borne through the
6 CRT reconciliation, yes.

7 Q. Would you characterize the reconciliation
8 rider as essentially eliminating all risk for the
9 distribution company associated with the provision of
10 SSO service?

11 A. The risk would be borne by the SSO
12 supplier, not by the distribution company.

13 Q. And by the customers to the extent that
14 they may well have to pay under the reconciliation
15 rider, don't they bear the risk or some portion of
16 the risk in default?

17 A. They bear a small portion of the risk, I
18 would say, yes.

19 MR. RINEBOLT: Thank you, Mr. Warvell. I
20 have no more questions.

21 EXAMINER PRICE: Ms. McAlister.

22 MS. MCALISTER: Thank you, your Honor.

23 - - -

24

1 CROSS-EXAMINATION

2 By Ms. McAlister:

3 Q. I am going to follow up on a couple of
4 questions Mr. Rinebolt just asked you. You talked a
5 little bit about the slice of the system approach.
6 Who was it that chose the slice of system approach?

7 A. The company looked at the slice of system
8 approach and addressed it with Brattle, and Brattle
9 and the company came to that conclusion.

10 Q. Together?

11 A. Yes.

12 Q. Okay. At page 2 of your testimony you
13 state that you believe that FirstEnergy's MRO
14 application meets all applicable requirements; is
15 that correct?

16 A. I'm sorry, I haven't gotten there yet.

17 Q. Okay.

18 A. Okay. Once again, I'm sorry, can you
19 tell me where you are at?

20 Q. You state, I think it's line 16 and 17,
21 that you believe the MRO application meets all
22 applicable requirements?

23 A. Yes.

24 Q. In preparing your testimony, did you

1 review Amended Substitute Senate Bill 221 which I
2 will refer to as SB-221?

3 A. Yes, I reviewed it.

4 Q. And you talked a little bit with
5 Mr. Rinebolt that you are aware there are other
6 requirements in SB-221 that pertain to the electric
7 supply required for FirstEnergy's standard service
8 offer that aren't contained in Section 4928.142 of
9 the Revised Code, right?

10 A. I'm sorry. Could you repeat that? I
11 guess I am a little hard of hearing, so could you
12 speak up just a little?

13 MS. McALISTER: Sure. Could you read it
14 back, please.

15 (Record read.)

16 A. If you are referring to the discussion
17 that we talked about on the renewable energy portion,
18 I know a limited about that -- limited knowledge,
19 yes.

20 Q. For example, you are aware that the
21 Revised Code requires FirstEnergy to provide a
22 portion of its supply from alternative energy
23 resources?

24 A. I do not believe that that pertains to

1 the MRO process that we're discussing here today.

2 Q. So you don't believe that FirstEnergy has
3 to meet those requirements regardless of whether it
4 goes forward with an ESP or an MRO?

5 A. As I stated earlier, our proposal would
6 be once the rules have been finalized as far as the
7 section you are referencing in regard to renewable
8 energies, we would have a separate filing that would
9 address those items for this process.

10 Q. Okay. And you said it would be attached
11 to the MRO as a rider; is that right?

12 A. It would be a separate filing for the
13 whatever the provisions come up with as far as the
14 statute is concerned.

15 Q. Okay. You envision a separate case all
16 together? I just want to make sure I understand what
17 you are envisioning.

18 A. I would assume a separate filing that we
19 would have for this process.

20 Q. Okay. So, right now, FirstEnergy's MRO
21 application doesn't include any provisions that
22 address the alternative energy resources or the
23 energy efficiency requirements or the peak demand
24 reduction programs at all?

1 A. In this MRO application, no, they do not.

2 Q. Okay. Are you aware that Senate Bill 221
3 requires the competitive bid process to have clear
4 product definition?

5 A. Yes.

6 Q. Okay. And the product for this
7 particular application it's defined in Exhibit 2 as
8 the standard service offer or SSO load for a specific
9 supply period; is that correct?

10 MR. KUTIK: May I have the question read,
11 please.

12 EXAMINER PRICE: Yes. Please read it
13 back.

14 (Record read.)

15 A. I guess I would look at the master supply
16 agreement as was discussed earlier in Section 2.2 as
17 what's required as supply and the definition of SSO
18 supply in regards to that in the master supply
19 agreement.

20 Q. Okay. But there are only three products
21 that are being offered in the first solicitation,
22 right?

23 A. In the first solicitation there are three
24 products being offered, that being 17-month,

1 29-month, and a 41-month and those products are slice
2 of system products.

3 Q. Okay. And then the SSO load will be
4 divided into tranches with each tranche representing
5 100 megawatts of peak demand, correct?

6 A. That is correct.

7 Q. Okay. Do you have Exhibit F to the
8 application in front of you?

9 A. Yes, I do.

10 Q. Would you please turn to page 14.

11 A. Okay.

12 Q. The first paragraph under 2.3, MISO
13 services, states that the operating companies let
14 MISO know each supplier's actual supply share of the
15 SSO load, right?

16 A. I'm sorry. Where are you at again? I'm
17 sorry.

18 Q. I am under paragraph 2.3.

19 A. Uh-huh.

20 Q. And it says that operating companies will
21 let the Midwest ISO know each suppliers actual share
22 of the ISO load. Second full sentence.

23 A. I don't see where it references the
24 operating companies, I'm sorry.

1 Q. In the second sentence it says, "As MDMA
2 for settlement purposes, the companies will advise
3 MISO of the magnitude of each SSO supplier's actual
4 SSO supplier responsibility share." Have I read that
5 correctly?

6 A. Yes. And that would be our settlement
7 department would be giving that information out and
8 they are part of the shared service group.

9 Q. But once the Midwest ISO knows the
10 supplier's share, it's the Midwest ISO that
11 calculates the energy obligation; is that correct?

12 A. That is true.

13 Q. And also the resource adequacy
14 requirement obligation?

15 A. That would be true.

16 Q. Ancillary services obligation?

17 A. All things regarding MISO billed would
18 come from MISO.

19 Q. And it says that the suppliers are
20 subject to other Midwest ISO requirements as may be
21 amended from time to time by the Midwest ISO, right?

22 A. The supplier would be responsible for any
23 changes that occur in the MISO rules.

24 Q. If you know, are the details of how the

1 Midwest ISO's planning reserve requirements will
2 operate known and finalized?

3 A. They are not finalized. There are
4 options on the table that are being discussed in
5 subcommittees. I don't know the exact details of all
6 those items, no.

7 Q. Are you aware that FirstEnergy's witness
8 in its ESP proceeding testified that Midwest ISO's
9 resource adequacy program is a work-in-progress and
10 that the circumstances present uncertain risks to
11 suppliers of full requirements service?

12 A. I would have to see that testimony.

13 Q. Are you also aware that the Midwest ISO
14 has proposed significant changes in how the ancillary
15 services procured and priced?

16 A. I'm sorry. Could you repeat that?

17 MS. McALISTER: Could I have the question
18 reread, please.

19 (Record read.)

20 A. MISO has filed new tariffs regarding
21 ancillary services and those would go into effect as
22 soon as the ancillary service market goes into
23 effect, which is scheduled right now for December 9.

24 Q. The tranches that bidders will bid on are

1 load following, right?

2 A. That is true.

3 Q. Okay. And at page 10 of your testimony
4 you state that what load following means is that
5 although tranche size is set to be 100 megawatts the
6 actual load obligation will vary on an hourly basis,
7 right?

8 A. I'm sorry, I am not there yet. Page 10,
9 once again.

10 MS. McALISTER: Can I have the question
11 reread, please.

12 (Record read.)

13 A. The way load following works is a
14 supplier that gets a tranche will receive .87 percent
15 of the load of any particular hour in that process.

16 Q. Okay. So just so I understand, what the
17 suppliers are actually being asked to bid on is a
18 percentage of the total system load?

19 A. Yes.

20 Q. Okay. I am going to have you turn back
21 to Exhibit F, the Appendix A.

22 A. Okay.

23 Q. That's just a placeholder for FirstEnergy
24 to insert the supplier's name and the price per

1 megawatt-hour and the percentage share, right?

2 A. That is true.

3 Q. So the actual quantities of electricity
4 that a winner will have to provide are not known at
5 the time of bidding, are they?

6 A. This slice of system approach and load
7 following approach is pretty much standard through
8 other auction processes in the process, so as far as
9 the suppliers that are bidding, this is a
10 commercially known product that would take place. So
11 as far as knowing every hour what individual
12 megawatts that they would have to supply, that is not
13 known, but this is a standard product.

14 Q. Okay. So FirstEnergy's actual system
15 peak load of customers served through the MRO is
16 subject to change over the three-year term, right?

17 A. That will be addressed -- as shopping
18 occurs and things happen, that will be supplied
19 through the website that will be provided for
20 suppliers of tranches.

21 Q. Okay. So bidders have no direct
22 knowledge of how the load served through the MRO may
23 be fluctuating except perhaps through the website
24 that you just mentioned?

1 A. They have knowledge based on the
2 information that would be provided through the
3 website just as any other supplier of the tranches
4 would have.

5 Q. But FirstEnergy won't provide load
6 forecasting services, right?

7 A. FirstEnergy -- the operating companies
8 today do not provide load forecasting currently today
9 to any suppliers, and they would not do it in the
10 future.

11 Q. Okay. I would like to turn your
12 attention now to the topic of the published
13 electricity prices that you talked a little bit about
14 with Mr. Rinebolt. You cited several sources of
15 published information that represent contracts. In
16 Attachment A to your direct testimony is information
17 that's obtained from a PLATTS website as an example
18 of the type of information that can be obtained,
19 right?

20 A. That is an illustrative of a public
21 website you could go out and get on-peak and off-peak
22 information for a forward look of two years or more.

23 Q. Okay. But in the information that you
24 provided, there aren't any transactional volumes or

1 quantities, are there?

2 A. No, there is not.

3 Q. Okay. So it doesn't actually represent
4 pricing for actual contracts for delivery, does it?

5 A. The only subscription website that I
6 am -- or subscription that I know of that lists out
7 contracts is ICE.

8 MS. MCALISTER: I have no further
9 questions. Thank you.

10 EXAMINER PRICE: Thank you.

11 Marketers.

12 MR. SETTINERI: No questions, your Honor.

13 EXAMINER PRICE: Ohio Energy Group.

14 MR. KURTZ: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Kurtz:

18 Q. Good morning. You are an employee of
19 FirstEnergy Service Corporation.

20 A. Yes.

21 Q. Service company.

22 A. Service company, yes.

23 Q. Okay. First of all, what is your title?

24 A. Director of rate strategy.

1 Q. Okay. Are you an expert in generation,
2 do you believe?

3 A. No, I do not.

4 Q. Okay. Who does FirstEnergy service
5 company provide services to?

6 A. FirstEnergy service company is the
7 corporate entity that is basically providing service
8 as needed for the operating companies and the
9 corporate staff.

10 Q. Do you provide services to any other
11 affiliate?

12 A. I personally do not.

13 Q. Does FirstEnergy service company provide
14 any services to FirstEnergy Solutions?

15 A. Not that I am aware of as far as
16 information is concerned.

17 Q. FirstEnergy Service does accounting?

18 A. Yes, it does.

19 Q. And legal?

20 A. Yes.

21 Q. Where does First -- doesn't FES get its
22 accounting and legal services from the service
23 corporation?

24 A. I believe some of the accounting

1 functions at corporate level are done as a roll-up
2 from FirstEnergy as part of that service.

3 Q. Who at the utilities did you consult with
4 in developing the reverse auction?

5 A. When you say the utilities, the Ohio
6 operating companies?

7 Q. Yes.

8 A. The Ohio operating companies from a rate
9 strategy perspective fall on the rate department, so
10 we did not consult with anybody other than the rate
11 department.

12 Q. I am asking for names of utility
13 employees, Toledo Edison, Ohio Edison, Cleveland
14 Electric, who was involved in putting together this
15 strategy for the MRO --

16 MR. KUTIK: Objection.

17 Q. -- if anyone?

18 MR. KUTIK: Objection. Asked and
19 answered.

20 EXAMINER PRICE: Overruled.

21 A. I'm sorry, could you repeat your question
22 one more time?

23 Q. Who from Toledo Edison, Ohio Edison, or
24 CEI, was involved with you in putting together the

1 strategy for this MRO filing?

2 A. The strategy for the filing was developed
3 through a management team that was addressed not only
4 from the rate department but from the legal
5 department. I don't know if any particular person
6 was from the operating company.

7 Q. Is it -- so you don't know who from the
8 utilities, if anyone, worked on this MRO?

9 A. I couldn't name a particular person, no.

10 Q. Okay. Is anyone from the utilities in
11 the room today?

12 A. I don't know everybody in this room, so I
13 couldn't answer that question. And I couldn't know
14 all 14,000 employees so --

15 Q. I'm not asking you to identify everyone
16 in the room. I'm asking you if anyone who works for
17 the utility is in the room to your knowledge.

18 MR. KUTIK: Objection. What's the
19 relevance of that, your Honor?

20 MR. KURTZ: Well, the relevance is the
21 application of Toledo Edison, Ohio Edison, and
22 Cleveland Electric and apparently no one from any of
23 those companies worked on this MRO application or is
24 even in the hearing room.

1 EXAMINER PRICE: I will allow it.

2 A. To my knowledge I don't recognize any
3 person that's from our operating companies.

4 Q. Do you recognize anyone from FES as being
5 in the room?

6 A. Not to my knowledge but that doesn't mean
7 they couldn't be an employee of FES and be sitting
8 there.

9 Q. Who do you report to?

10 A. I report to Dave Blank.

11 Q. Who does Mr. Blank report to?

12 A. Dave Blank reports to, I believe, to Mark
13 Clark.

14 Q. Do you know who he reports to?

15 A. No. I would have to see the chart to
16 make that happen.

17 Q. What is Mr. Clark's title?

18 A. I don't know that.

19 Q. What is Mr. Blank's title.

20 A. He is vice president of FirstEnergy
21 service company.

22 Q. Now, you've testified about the contract
23 that the suppliers -- the SSO agreement -- will be
24 required to enter into; is that correct?

1 A. Yes, I did, yeah.

2 Q. Okay. Now, you understand that somebody
3 bidding to supply in this reverse auction needs and
4 is required to have firm transmission; is that
5 correct?

6 A. Based on my knowledge of the contract,
7 once a supplier has been chosen as winning a tranche,
8 as part of the application process, they will be a
9 MISO participant, and as a MISO participant, you are
10 guaranteed the ability to serve as a load serving
11 entity to acquire network services so that would have
12 firm transmission with it.

13 Q. So you are saying any winning bidder will
14 automatically get firm transmission?

15 A. As long as they are a MISO participant
16 which is part of their requirement so, yes.

17 Q. Firm transmission from where to where?

18 A. Within the MISO grid.

19 Q. So they have to be -- they have to be
20 in -- they have to have generation in the MISO
21 footprint?

22 A. There is no need for generation. They
23 just have to be a MISO participant.

24 Q. How much firm transmission capacity is

1 currently available into the operating companies'
2 service territories?

3 A. I don't know that answer, but once again,
4 I guess I am not sure that that's relevant from a
5 standpoint in this agreement. Once you are a MISO
6 participant you acquire the ability to serve that
7 load automatically. It has nothing to do with
8 generation and that network service will be available
9 from MISO. That is their responsibility.

10 Q. The -- the Brattle Group, were you
11 involved in selecting the Brattle Group?

12 A. I was part of the group that evaluated
13 the Brattle Group, yes.

14 Q. Do the utility -- should the utilities be
15 indifferent who the auction manager is, as long as
16 that auction manager is qualified?

17 A. As long as the auction manager performs
18 the duties that are required that have been approved
19 by the Commission, I am not sure that the name of that
20 auction manager -- as long as the process has been
21 approved, I'm not sure that that makes a difference
22 as long as they are following the process and
23 procedures approved.

24 Q. So the utilities, or actually FirstEnergy

1 service company, would have no objection if the
2 Commission chose a different auction manager as long
3 as that auction manager met the requirements you just
4 set forth?

5 A. As long as they follow the procedures
6 that were approved, I don't think Brattle in
7 particular or any company in particular would make
8 that difference.

9 Q. So there would be no objection by the
10 utilities?

11 A. I don't think I can state that for the
12 utilities sitting here, but I don't see why that
13 would make a difference as long as the process and
14 procedure that was approved is followed. The utility
15 is only looking for the transparency and competitive
16 process that was approved.

17 Q. Why can't you say that on behalf of the
18 utilities? Who are you testifying on behalf of?

19 A. I don't know if I have that authority to
20 do that.

21 Q. But you are testifying on behalf of the
22 utilities, aren't you?

23 A. Yes, I am.

24 Q. Okay. Should -- if the -- the utilities

1 don't make any profit off this generation supply for
2 provider of last resort load, do they?

3 A. No, although they are passing on costs.

4 Q. So the utilities should be economically
5 indifferent about the type of competitive
6 procurement, should they not, economically
7 indifferent?

8 A. The process in which the utility procures
9 as -- the process itself is to provide the least
10 costs for all the customers involved. The company is
11 looking for recovery of all generation costs related
12 to that procurement process.

13 Q. So am I correct then that the utilities
14 would be economically indifferent to the type of
15 competitive procurement?

16 A. When you mean by type of, could you give
17 me an example of what you are --

18 Q. Reverse auction versus active portfolio
19 management, for example.

20 A. The utility is -- would be very concerned
21 about an active portfolio management process, No. 1,
22 from an expertise level the utilities don't have such
23 expertise to do that; and, No. 2, based on the
24 statute itself the MRO process is looking for a

1 competitive bid process for the entire load and
2 active portfolio management may be doing different
3 processes than a competitive bid process.

4 Q. All right. You misunderstood. Let me
5 clarify. I did not mean that the utilities would
6 actively manage the portfolio, but the utilities
7 would competitively bid out that service so that
8 somebody with expertise would do that job.

9 A. I have not considered that and nor have
10 anybody in the utility that I know of have considered
11 that at this point.

12 Q. What standards do you think the
13 Commission should use for judging which type of
14 competitive procurement it approves?

15 A. I guess I don't think I am qualified to
16 answer that question.

17 Q. Don't you think the Commission should
18 look at -- should consider what is in the best
19 interest of consumers?

20 A. I would say the Commission needs to look
21 at it from the perspective of not only the consumers
22 but also the viability of the utility itself as well.

23 Q. Right. Should the Commission consider
24 the profitability of the generation owners when

1 choosing the competitive procurement in your opinion?

2 A. I don't think my opinion on that from the
3 generation side -- we're here to talk about the MRO
4 process not necessarily the suppliers.

5 Q. Right. I mean, so your answer is the
6 Commission should not -- shouldn't consider that
7 perspective?

8 A. That would be up to the Commission.

9 Q. So do you think the Commission should
10 consider the profitability of the generation owner?

11 A. I don't have an opinion on that, I'm
12 sorry.

13 MR. KURTZ: Thank you, your Honor. Those
14 are all my questions.

15 EXAMINER PRICE: Thank you.

16 Mr. Lavanga.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Lavanga:

20 Q. Good afternoon, Mr. Warvell.

21 A. Good afternoon.

22 Q. My name is Mike Lavanga. I am an
23 attorney for Nucor Steel Marion.

24 Mr. Warvell, in the initial CBP

1 solicitation there are going to be three products
2 corresponding to three different supply periods;
3 17-months, 29-months, and 41-months; is that correct

4 A. That is correct.

5 Q. And the auction is going to result in
6 three different clearing prices, one for each of
7 these supply periods?

8 A. That is true, yes.

9 Q. And then the retail price that's going to
10 be charged to customers is going to be calculated as
11 a seasonally adjusted tranche weighted average of the
12 clearing prices?

13 A. That is partially correct. It would be
14 voltage adjusted plus seasonally adjusted for those
15 average prices, yes.

16 Q. So the voltage adjustment and the
17 seasonal adjustment, those are the only adjustments
18 that are going to be made to the --

19 A. Yes. And that's also covered in Kevin
20 Norris' testimony.

21 Q. You define the product as the hourly load
22 following requirements of SSO load in either a
23 17-month, 29-month, or 41-month period, correct?

24 A. Yes.

1 Q. And as other parties have already talked
2 about, this product is a full requirements product
3 which means it includes energy, capacity,
4 transmission, ancillary services; is that correct?

5 A. Yes. And also one point in there would
6 be all MISO charges relating to congestion as well.

7 Q. So the distribution utilities, what they
8 are going to pay to the winning supplier is a flat
9 price to supply this full requirements product over a
10 17-month, 29-month, or 41-month period, correct?

11 A. No. That is not correct. The operating
12 companies has a combined -- will pay the winning
13 suppliers seasonally adjusted prices for that
14 average.

15 Q. So clarify for me, the bid -- if I am a
16 supplier and I make a bid and the market clearing
17 price is, say, \$80 a megawatt-hour, the price that I
18 am going to get paid as a supplier is going to be
19 seasonally adjusted?

20 A. Yes. It's based on the factors that are
21 in the testimony.

22 Q. Okay. Let's assume that the clearing
23 price in the first phase of the auction is \$80 a
24 megawatt-hour. Now, this -- and this \$80 a

1 megawatt-hour is seasonally adjusted as well. So you
2 have maybe \$80 per megawatt-hour in the off-peak hour
3 in the summer and maybe 70 in the winter period.

4 A. Okay.

5 Q. Okay. So let's say we are talking about
6 the summer period. What the supplier is -- the
7 supplier is going to get paid \$80 per megawatt-hour
8 over those entire, let's say, 17 months, correct, for
9 each hour?

10 A. On average, yes.

11 Q. But this -- I mean, this \$80 per
12 megawatt-hour isn't necessarily the supplier's cost
13 to supply that generation service in a particular
14 given hour of a given day.

15 A. It is a flat product that is paid out to
16 the supplier for every hour. If we are using the
17 averages, that would be \$80 for every hour, so all 24
18 hours, whatever his requirement for load would be,
19 they would get \$80.

20 Q. That's right, but my question is whether
21 that \$80 represents the supplier's actual cost in a
22 given hour to produce that generation. In other
23 words, I understand that the \$80 is the -- is the
24 summer -- the summer price that's paid to the

1 supplier as an average over the 17 months. But my
2 question is whether that cost or that \$80 actually
3 represents the cost to the supplier to provide that
4 generation service in a given hour.

5 A. I don't -- I don't know or assume to know
6 what that supplier's cost is going to be.

7 Q. Isn't it true that the costs that a
8 supplier is going to incur will vary based on a
9 number of factors including seasonality, time of day,
10 whether it's off-peak or on-peak during the day and
11 the characteristics of the load they are serving?

12 A. Once again, the supplier's cost side, I
13 am not privy to all that information to agree or
14 disagree with what you've just noted.

15 Q. You wouldn't agree with the general
16 proposition that it's going to be -- it's going to
17 cost a supplier more to provide generation service in
18 an off-peak period than it would for that supplier to
19 provide service in an on-peak period?

20 A. Based on market and market information
21 that I've seen, on-peak periods would be at a higher
22 cost than off-peak periods in the marketplace, but as
23 to particular compared to the average price, I don't
24 know where that cost would fall.

1 Q. Now, the reason why the supplier is
2 providing a flat price is to provide the generation
3 service over the 17-month, 29-month, or 41-month
4 period, is that -- this is how the product has been
5 defined in your proposal, correct?

6 A. That is true, yes.

7 Q. You could have designed it differently?

8 A. Well, based on information Brattle and
9 the company had worked on, this approach was most
10 effective to spread the risk of shopping throughout
11 all the load instead of and in particular class of
12 customers being looked at individually and could
13 cause higher shopping risks for just those specific
14 customers. This was a way that I believe this would
15 spread the risk throughout all the load that's being
16 served.

17 Q. Okay. So going back a little bit. The
18 supplier is going to be paid a flat seasonally
19 adjusted price over -- for the product over the three
20 product periods.

21 MR. KUTIK: Mr. Warvell, you need to
22 answer out load.

23 A. Sorry. That answer would be yes, for the
24 product time and term, it would be seasonally

1 adjusted, and they would be paid on average that
2 price.

3 Q. Okay. Is it reasonable to assume that
4 suppliers in formulating their bids are going to
5 consider how the seasonal rate differentiation will
6 affect customers usage patterns when they formulate
7 their bids?

8 A. In the formulation of their bids, the
9 company perceives that the seasonal adjustment factor
10 will be favorably looked at from a standpoint of
11 matching costs and revenues for the supplier
12 adjusting on the assumption that the cost in the
13 summer months would be higher for the suppliers thus
14 getting more bidders to the table and reducing risk
15 in the supplier's portfolio.

16 MR. LAVANGA: That's all I have. Thank
17 you, Mr. Warvell.

18 EXAMINER PRICE: Mr. Yurick.

19 MR. YURICK: I just have a couple of
20 questions for you, Mr. Warvell.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Yurick:

24 Q. Let's see, on page 3 of your testimony,

1 you are talking about -- I guess the question starts
2 lines 11 through 14 and then your answer lines 15
3 through 23 and 1 through 4 on the next page. You are
4 talking about MISO's market monitor function,
5 independent market monitor function; do you see that?

6 A. Yes.

7 Q. You are not suggesting that that
8 independent market monitor function is 100 percent
9 effective, correct?

10 A. I'm not stating anything as far as
11 guaranteeing any responsibility of the market
12 monitor.

13 Q. Okay. And then, bear with me here.
14 You -- I am going to get to the part in your
15 testimony where you are talking about this, but you
16 talked about having an independent -- here it is on
17 page 5, you talk about on line 18, kind of at the end
18 there, lines -- and then going down to line 20, you
19 say, "An independent competitive bidding process" --
20 "bidding process manager, a CBP manager, will be
21 retained," correct?

22 A. That is true.

23 Q. And then you go on to say that the
24 companies have chosen the independent competitive

1 bidding process manager as the Brattle Group,
2 correct?

3 A. Yes.

4 Q. So it's your testimony that the
5 independent competitive bidding process manager
6 should be chosen by the company?

7 A. For the processes of filing -- purposes
8 of filing this MRO process, we had to go out and find
9 a competitive bid manager not only to do the process
10 but also be ready to go in the process format to
11 provide power on January 1. With the limited time
12 frame, somebody needs to be involved in that process
13 and right now to be prepared for that to happen, the
14 company has gone out and worked with Brattle at this
15 point.

16 Q. Yeah. My question just is that you --
17 it's your testimony that the independent competitive
18 bidding process manager should be chosen by the
19 company; is that right?

20 A. I'm not saying it should be chosen by the
21 company. I'm saying due to the time constraints and
22 where we needed to be for this process to occur, the
23 power to flow on January 1, we've looked for
24 Brattle's assistance to make this happen.

1 Q. So are you suggesting that maybe the
2 independent competitive bidding process manager
3 should be chosen by somebody else?

4 A. Once a process has been designed, the
5 competitive bid manager is just a formality as far as
6 that is concerned. As long as the process has been
7 approved and the design has been approved, the
8 manager themselves will be required as far as
9 somebody having the ability to run the auction with
10 the software and work with the company and the staff
11 to make that happen.

12 MR. YURICK: I appreciate your testimony.
13 Thanks.

14 I have no further questions.

15 EXAMINER PRICE: Thank you.

16 Mr. Weldele.

17 MR. WELDELE: No questions, your Honor.

18 EXAMINER PRICE: Mr. Small.

19 MR. SMALL: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Small:

23 Q. Mr. Warvell, Jeff Small, OCC. I have
24 just a couple of questions for you.

1 Would you please turn to page 2 of your
2 testimony and in particular line 16. There you --
3 you make reference to the applicable Commission's
4 proposed rules. Do you see that?

5 A. Yes.

6 Q. Are you familiar with the PUCO's existing
7 rules on competitive bidding?

8 A. I can't say that I am, no.

9 Q. And is it fair to say that the
10 Commission's existing rules were not considered in
11 the preparation of the company's MRO?

12 A. We are trying to follow the -- the
13 company's filing is being consistent with the new
14 statute.

15 Q. Is that a yes to my question? You were
16 not -- the existing rules were not considered in the
17 MRO application?

18 MR. KUTIK: Objection. Asked and
19 answered.

20 EXAMINER PRICE: He didn't answer the
21 question. Please answer the question directly.

22 A. Could you repeat it? I'm sorry. Just to
23 make sure I get it right.

24 EXAMINER PRICE: Repeat the question,

1 please.

2 (Record read.)

3 A. The company did not review existing rules
4 in filing the MRO statute -- or MRO filing to meet
5 the current statute.

6 Q. Does that mean in your current filing --
7 I am a little bit confused by your reference to the
8 statute.

9 A. In Statute 221 is what the MRO filing
10 is -- what our filing is basing its application on.

11 Q. Okay. Are you familiar with the
12 companies' filing in 07-796, that was a case filed
13 about a year ago for generation extended service
14 offer before Senate Bill 221 was enacted?

15 A. I am familiar with it, yes.

16 Q. And are you familiar that there was a --
17 there were two options offered by FirstEnergy in that
18 case; one slice of system and one bidding where it
19 would bid out in two pieces?

20 A. Yes, I am familiar with that.

21 Q. And are you -- why is FirstEnergy in this
22 instance taking out one option and only offering the
23 slice of system in its MRO?

24 A. The company is looking at the current

1 statute, No. 1, was trying to follow that current
2 statute, which did not mean it had to provide more
3 than one option in that process and the company felt
4 that this was the best option going forward to meet
5 the statute as far as required number of bidders,
6 transparency, to get the most competitive bid for the
7 customer.

8 Q. Is there some statutory provision that
9 changed between SB-3 and SB-221 that has a bearing on
10 whether slice of system or multiple bids would be
11 desirable?

12 A. I have not read anything in the statute
13 as far as what would be required as far as either
14 option is concerned.

15 Q. Would you please turn to page 13 of your
16 testimony. In particular I have a few questions
17 concerning your response around line 14 where you
18 refer to the data room. Do you see that reference on
19 line 14?

20 A. Yes, data room.

21 Q. I'm sorry.

22 A. I was just catching up to you, I'm sorry.

23 Q. Yes, line 14, page 13. FirstEnergy's
24 existing tariffs for generation service contain

1 demand charges for some tariffs for some customers;
2 is that correct?

3 A. I believe that is correct.

4 Q. And with it change -- and the MRO
5 proposed by the company would do away with that
6 structure, that is, there would be no demand charges
7 any longer as part of the MRO; is that correct?

8 A. In our filing, based on this being a
9 market product and that product being energy only,
10 there are really no fixed costs associated with that,
11 that would associate to a demand type of charge.

12 Q. And with the change in the tariff design,
13 there being demand charges and a variety of other
14 time of day and other features existing and that
15 being changed to do away with that to just going to
16 energy only, would that change in design, the
17 historical load shapes that you mention would be in
18 the data room, those would be -- those would be
19 unreliable load shapes under the new structure; do
20 you agree?

21 A. No, I don't necessarily agree.

22 Q. You don't -- you don't agree that there
23 would be a change in the load shapes if we had a
24 completely different structure and tariffs?

1 A. I have done no type of study that would
2 suggest that the load shape would change.

3 Q. You are the Director of Rate Strategy for
4 FirstEnergy?

5 A. Yes.

6 Q. And you have done no study of the impact
7 of various rate designs on customer demands for
8 electricity?

9 MR. KUTIK: Objection. He asked -- he
10 answered that very question.

11 EXAMINER PRICE: Sustained.

12 Q. What is the purpose of the demand charges
13 in the current FirstEnergy generation tariffs?

14 A. I guess the purpose of the demand tariffs
15 currently are to account for the fixed portion of
16 costs that are associated with the generation that's
17 being procured.

18 Q. So demand charges are for fixed costs,
19 don't the demand charges depend on the amount of
20 demand and, therefore, they are not fixed at all?

21 A. I am not understanding.

22 Q. Let me clarify. I understand how a fixed
23 charge, you know, \$12 could be for a fixed cost for
24 the company. Could you explain how a charge per kW

1 for demand would be for a fixed cost of the company?

2 A. I'm sorry. I don't understand the
3 question. I'm sorry.

4 Q. What fixed charges are you referring to
5 that you just referred to in your answer when you
6 said that the demand charges are there to cover fixed
7 charges of the company? What fixed charges were you
8 referring to?

9 A. Fixed costs associated with any of the
10 generation service data that we receive.

11 Q. Could you give me an example?

12 A. No. I don't have that reference.

13 Q. Would you agree with me that the existing
14 tariffs contain demand charges that recognize the
15 added costs of higher demands for a given energy that
16 a customer uses?

17 A. I would agree with you, yes.

18 Q. Is there anything in the passage of SB-3
19 or SB-221 that changed that situation? That's an
20 economic -- that's an underlying economic phenomenon,
21 it has nothing to do with the law, right?

22 A. I'm not understanding your question, I'm
23 sorry.

24 Q. That's all right. The question is

1 withdrawn.

2 Please turn to page 14 of your testimony.

3 In here there is a discussion of the situation --
4 contingency plan, for lack of a better term,
5 regarding situations where there would be a default
6 on the obligation by the bidders. Do you see that?

7 A. Yes.

8 Q. And on line 15 there is a reference to
9 the companies' option. Do you see that?

10 A. Yes.

11 Q. Why shouldn't the PUCO be involved in
12 that decision?

13 A. I believe, as stated in our contingency
14 plan, the option would be, No. 1, to go back to the
15 winning bidders of other tranches to see if they
16 would supply at the same price, which would hold
17 customers harm free at that point. The second
18 process would be a bidding process and to go out and
19 secure a -- those tranches as soon as possible, and
20 the third would be going to the marketplace. I would
21 assume that there would be conversation as to timing
22 with the PUCO as far as going out for the rebid and
23 also the amount of time in that process that would be
24 at the market or spot market.

1 Q. I have to admit, I am a little bit
2 confused about this part of your testimony. At
3 first -- and on line 15 going back to where we
4 started there is -- you refer to a companies' option
5 and then thereafter you describe how the company
6 would -- would do it. Is it completely at the
7 companies' option, as you state on line 15, or is
8 there a process that the company has committed to do
9 certain things first and other things second; in
10 other words, first offer to any other remaining
11 standard service suppliers? Is that a commitment by
12 the company or is it completely the companies'
13 option, which it appears to be your statement on line
14 15?

15 A. The first line would be the company would
16 be going to the way we have laid out the options, the
17 No. 1 option, from a perspective to serve customers,
18 would be go back to the winning bidders that would be
19 most advantageous as far as timing is concerned to
20 fulfill those tranches.

21 Q. So the company will not do it in some
22 other order; is that what you are testifying?

23 A. We've laid out the options in this order
24 so that's what I am testifying to.

1 EXAMINER PRICE: But you are testifying
2 it's the companies' option?

3 THE WITNESS: Yes.

4 EXAMINER PRICE: So the company has the
5 discretion which option to exercise under your
6 application?

7 THE WITNESS: At this point, yes.

8 EXAMINER PRICE: Thank you.

9 Q. (By Mr. Small) On the same page, line 21,
10 there is a reference -- lines 20 and 21, there is a
11 reference to "the companies' will procure." Do you
12 see that?

13 A. Yes.

14 Q. There's been some concern expressed
15 earlier in this proceeding about whether the EDUs
16 have personnel to perform this procurement process.
17 Do the EDUs have the personnel to make such
18 procurements?

19 A. Currently right now the operating
20 companies do not have the personnel that would do
21 this function.

22 Q. What are the plans to enable the company
23 to fulfill the contingency plan obligations that are
24 stated in your testimony?

1 A. There are personnel in other parts of the
2 organization that perform similar services to this
3 function. It would be up to the management's
4 discretion on how to move those people around or hire
5 new people to perform this function.

6 Q. When you refer to other parts of the
7 organization, what organization are you talking
8 about?

9 A. It would be the organization for the
10 FirstEnergy service company for other states.

11 Q. So these are the shared services
12 personnel?

13 A. Some of them are shared service
14 personnel, yes, I believe so.

15 Q. And they could be assigned to this task
16 and assigned their time and, therefore, the cost of
17 their services to the operating company; is that what
18 you are saying?

19 A. That would be up to the management at
20 this point but that hasn't been determined yet but
21 that could happen.

22 Q. Is there any other plan in place?

23 A. I don't know of any management plans in
24 regards to that.

1 MR. SMALL: Thank you. That concludes my
2 examination.

3 EXAMINER PRICE: Thank you.

4 Mr. Kutik, redirect?

5 Oh, I'm having a terrible day. Staff.

6 MR. JONES: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Jones:

10 Q. Good afternoon, Mr. Warvell.

11 A. Good afternoon.

12 Q. My name John Jones and I am counsel for
13 Staff and I have a few questions for you.

14 First of all, I would like to ask you,
15 who else was considered besides the Brattle Group for
16 the CBP process manager?

17 A. We had also talked to Lexicon, NERA,
18 Brattle, and I believe Black and Veach.

19 Q. What was the last one?

20 A. Black and Veach.

21 Q. And what was the process you went through
22 to select the Brattle Group from that group?

23 A. Mainly it was conversations as to how
24 they reviewed the statute and to meet the MRO

1 application.

2 EXAMINER PRICE: I'm sorry. Can you
3 explain your last answer for me? I didn't understand
4 it.

5 THE WITNESS: We talked to all the
6 companies in regards to how they viewed the statute
7 and how they would go about working through the
8 process to develop a process to meet the requirements
9 of the statute.

10 EXAMINER PRICE: Thank you.

11 Q. Mr. Warvell, the part of the process
12 looking as to if there is a default in the delivery
13 by the supplier winning bidder, who designed that
14 part of the process as to, you know, what's laid out
15 on page 14 of your testimony under contingency plans?

16 A. The operating company, or I did.

17 Q. Now, looking at page 9 of your testimony,
18 you testified there on that page about the short-term
19 ESP plan. Are you asking the Commission to consider
20 this plan within 90 days, the same time frame of the
21 MRO being deliberated and considered here by the
22 Commission?

23 A. To restate your question just so I have
24 it correctly is --

1 Q. You mentioned the short-term ESP plan and
2 you have two exhibits, Exhibits H and I, that
3 provides two different timelines based on whether or
4 not the MRO proceeds under, for Exhibit H you would
5 have it in place by January 1, and then on Exhibit I
6 there is an expanded timeline provided, that the
7 Commission were to approve a short-term ESP plan. So
8 are you asking the Commission to rule on your
9 short-term ESP plan in the same time frame as the
10 MRO?

11 A. I don't know that the specific time frame
12 that's been referenced in another application for the
13 ESP. All we are looking for today is the MRO ruling
14 in that 90-day term. I would have to go look at
15 Attachment I and H to be specific as far as where
16 that time frame is on the short-term ESP plan.

17 Q. But you raised the short-term ESP in your
18 testimony, correct?

19 A. Yes. The reason why I raised the
20 short-term ESP in my testimony is that the product
21 design would move if a short-term ESP plan was
22 created and the MRO process went into effect after
23 the short-term ESP, so the product design timing and
24 as far as information to the data warehouse, the

1 application process, all those things move in
2 relationship if a short-term ESP was approved and
3 then the MRO process needed to go into effect after
4 that.

5 Q. Mr. Warvell, would you agree with me then
6 based on your testimony on page 9 that the timeline
7 that's provided here in Exhibit H from now until
8 January 1 to have a market rate option, that's not a
9 typical time period for solicitation for having an
10 open and fair competitive solicitation process?

11 A. It's a very condensed version to hit the
12 time frame to supply power on January 1. Some items
13 would have to be very much condensed for that to
14 happen in our timeline, yes.

15 Q. But you would agree that that's -- this
16 is not a typical solicitation period for a
17 competitive bid process to take place between now and
18 January 1; is that correct?

19 A. I would say that as far as a typical,
20 there is no typical. The time frame is very
21 shortened, and the last part as far as signing the
22 SSO agreement and things of that nature are very much
23 condensed compared to a solicitation that would
24 happen down the road.

1 Q. Well, not only condensed, Mr. Warvell,
2 but you also point out on page 9 that the bidding
3 would take place during the holiday season, was that
4 December 29?

5 A. Based on the 150 days, it couldn't take
6 place before that unless the Commission approved it.

7 Q. And the actual auction would only be
8 scheduled for one day as opposed to typically three
9 days; is that correct?

10 A. That is correct. To maintain supply for
11 generation services on January 1 as stated earlier,
12 this would be greatly condensed.

13 EXAMINER PRICE: Excuse me, Mr. Jones.

14 Mr. Warvell, don't you lose some of the
15 benefits then of the declining clock option? The
16 previous witness had testified that would allow
17 companies -- declining clock auction would allow
18 companies to reevaluate their positions based upon
19 how the bidding goes. Don't you lose that benefit if
20 you do a one-day bid?

21 THE WITNESS: No. The rounds would still
22 be consistent. We would just hope that the bidding
23 rounds would go quickly.

24 EXAMINER PRICE: You hope that the rounds

1 would go quickly?

2 THE WITNESS: Yes.

3 Q. And, Mr. Warvell, also that the -- this
4 has a detriment on the bidders participating because
5 doesn't it take three months to become a registered
6 MISO market participant and using this time frame
7 that there could be others that would be -- wouldn't
8 be able to participate because of that?

9 A. With this first process there are --
10 there are currently right now suppliers that are
11 registered with MISO and the feeling is that we would
12 still get significant bidders in this process because
13 of all the registrants at MISO are ready to -- that
14 concern is only for market participants that have not
15 registered with MISO already to serve a load.

16 Q. Now, Mr. Warvell, referring to page 14 of
17 your testimony under -- you talk about the
18 contingency case one where winning bidders default
19 for -- either before delivery or during delivery; do
20 you see that?

21 A. Yes.

22 Q. It starts at on page 14.

23 A. Yes.

24 Q. On line 17 you say that you would offer

1 that -- offer that bid to the remaining suppliers
2 participating in the bid process at the approved
3 average price. What does that mean?

4 A. What's stated there is if a supplier
5 defaulted and they had a 17-month tranche product,
6 that would be offered back to them at whatever the
7 clearing price was for that 17-month product.

8 Q. So the clearing price was the winning
9 bid?

10 A. For that product.

11 Q. For that product?

12 A. Yes.

13 Q. And how about if you were like a quarter
14 of a way into the 17 months during the delivery from
15 that supplier and there was a default, then would you
16 then go to the MISO spot market or would you turn
17 around and have another bid process?

18 A. If there was a default, current process
19 that's laid out would be we would go back and offer
20 it to the winning bidders and those bidders would
21 pick it up. If you are saying we are three quarters
22 into that 17 months, they will pick up the tranche
23 product for the remaining period at the price that
24 was cleared at in the original process.

1 If those winning bidders elected not to
2 do that, we would go through -- at this point in time
3 we would go through a bidding process, and at the
4 same time since that bidding process would be taking
5 time, we would be buying product from the spot market
6 to fulfill the customers' needs.

7 Q. So the first step would be you would ask
8 those other bidders to accept the procuring price?

9 A. Yes.

10 Q. And if that failed, you would open it up
11 for new bids from those other bidders?

12 A. New bids period. We would hold a new
13 process for that process, and as that process was
14 going on, we would be communicating with the
15 Commission and others as far as the time frame is
16 concerned depending on situations in the market and
17 continue buying from the spot market during that
18 process.

19 Q. Mr. Warvell, if you would now please
20 refer to page 16 of your testimony, line 3. Are you
21 with me there?

22 A. Yeah.

23 Q. Okay. You start out there, "All costs
24 associated with implementing the above

1 contingencies." Would you please define what all
2 costs could be included?

3 A. All costs that would be included would be
4 any MISO charges that would be associated with
5 acquiring the power, any penalties that would occur
6 through MISO from the supplier not supplying that
7 would be associated to the utility with the load
8 coming back to the utility's responsibility and
9 energy and congestion and ancillaries that all would
10 be required and any other costs that would come from
11 the MISO market.

12 Q. How about cost of personnel time?

13 A. That would be also associated depending
14 on how that personnel was put into place to serve
15 this load.

16 MR. JONES: One moment, please.

17 That's all I have, your Honor. Thank
18 you.

19 EXAMINER PRICE: Thank you.

20 Now, Mr. Kutik, redirect?

21 MR. KUTIK: Your Honor, may I take a few
22 minutes?

23 EXAMINER PRICE: Let's take a 10-minute
24 break. Get back at 1:20. Thank you.

1 Off the record.

2 (Recess taken.)

3 EXAMINER PRICE: Let's go back on the
4 record.

5 Mr. Kutik, redirect?

6 MR. KUTIK: Thank you, your Honor.

7 - - -

8 REDIRECT EXAMINATION

9 By Mr. Kutik:

10 Q. Mr. Warvell, there was some discussion in
11 your cross-examination about reconciliation of costs
12 that the company would incur as a result of a
13 supplier's default. Do you recall that discussion?

14 A. Yes.

15 Q. What is the purpose of that part of the
16 companies' proposal?

17 A. The main purpose for the reconciliation
18 is to make the company revenue neutral in the entire
19 process of procuring power.

20 Q. With respect to what would happen on a
21 default, there was some discussion about what the
22 company would commit to and what the company's option
23 might be. Could you clarify what the companies'
24 position is on that, please?

1 A. Yes. The company would submit to the
2 process of going to the winning bidders to supply
3 those tranches first at the product supply price.
4 Then moving forward to developing a procurement
5 option process at the same time while communications
6 with staff and others supplying power through MISO
7 spot marketing.

8 Q. And could you turn in the application to
9 paragraph 77, please.

10 MR. KUTIK: And does the Bench need a
11 copy?

12 EXAMINER PRICE: No. I'm fine. I have
13 the application.

14 A. Okay.

15 Q. Would you describe paragraph 77, please.

16 A. Paragraph 77 basically explains that for
17 the renewable energy resources and renewable energy
18 credits, that the company would have a separate
19 filing to meet those standards.

20 MR. KUTIK: That concludes my redirect.
21 Thank you.

22 EXAMINER PRICE: Thank you.

23 Mr. Royer.

24 MR. ROYER: Thank you, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Royer:

Q. With respect to the first option in the case of a default, how are you going to divvy up the tranche, the supplier that has defaulted held among all the other winning bidders?

A. It would be based on the number of winning bidders that would want the remaining tranches, and then the independent competitive bid manager would choose if there was more than one winning supplier to fulfill those tranches.

Q. So it's only going to be one supplier that gets it?

A. No. It could be multiple suppliers. That would be up to the independent competitive bid manager to make that determination depending on the number of bidders that would want those remaining tranches. It could be one if only one stepped up to the plate.

Q. Would it be based on the -- based on the number of bidders or based on the number of tranches that the winning bidders held in terms of dividing up the responsibility, or is that not in the ground

1 rules?

2 A. We have not developed specifically those
3 ground rules, and once again, it would be up to the
4 bidder. The company, understanding your question,
5 the company is not spreading that and cannot make the
6 bidders take the tranches. The bidders would have to
7 want the tranches at the price that the product was
8 basically fully subscribing.

9 Q. I understand. But so let's say we have
10 two bids -- two suppliers that want it. They both
11 want all of it. Is it divided 50/50 between the two,
12 or is it divided based upon the relative number of
13 tranches?

14 A. Those rules have not been developed yet
15 for me to answer.

16 MR. ROYER: Okay.

17 EXAMINER PRICE: Mr. Porter.

18 MR. PORTER: No questions.

19 EXAMINER PRICE: Mr. Rinebolt.

20 MR. RINEBOLT: Yes, thank you.

21 - - -

22 RECROSS-EXAMINATION

23 By Mr. Rinebolt:

24 Q. In reference to Mr. Kutik's questions you

1 referred to the application regarding the renewable
2 energy issues. Now, if you -- if, say, Toledo Edison
3 were to go out into the market in order to fulfill
4 its obligations, and I am just picking a number out
5 here, and bought 100 megawatts worth of renewable
6 power, wouldn't that reduce the amount of power that
7 it was necessary to bid?

8 A. At this point in time, the company hasn't
9 determined if -- right now, the -- the company is
10 looking at more of a rec structure than energy itself
11 as far as an RFP type of process.

12 Q. Well, then what about energy efficiency,
13 say you reduced the overall energy used within the
14 system, would you need to procure as much power
15 through the MRO bid?

16 A. Based on your assumption, the MRO may be
17 modified as far as total load profiles are concerned
18 into the data warehouse based on any future filing
19 that would be created through the statute for energy
20 efficiency or renewals.

21 Q. And I presume the same would be true for
22 demand response which would after all reduce the peak
23 load that you need to serve?

24 A. All adjustments for the load considering

1 any shopping or any of those risks would be published
2 on the -- in the website for the suppliers to look
3 at, yes.

4 Q. As a part of the bidding process?

5 A. As a part of the bidding process, yes.

6 MR. RINEBOLT: Thank you very much,
7 Mr. Warvell.

8 EXAMINER PRICE: Ms. McAlister.

9 MS. MCALISTER: Thank you, your Honor.

10 - - -

11 RECROSS-EXAMINATION

12 By Ms. McAlister:

13 Q. Without the MRO containing a filing at
14 this point that includes the alternative energy
15 resources and energy efficiency requirements and peak
16 demand reduction programs, is it your opinion that
17 the Commission has enough information to make a
18 comparison to the ESP to determine that it's more
19 favorable in the aggregate?

20 MR. KUTIK: May I have the question read,
21 please.

22 EXAMINER PRICE: Yes.

23 Please reread the question.

24 (Record read.)

1 MR. KUTIK: Your Honor, I think that
2 misstates the legal tests. The legal tests were for
3 the comparison in the ESP process, not the MRO
4 process.

5 EXAMINER PRICE: Ms. McAlister.

6 Q. (By Ms. McAlister) You said you reviewed
7 Senate Bill 221 in preparation for your testimony; is
8 that correct?

9 A. Yes, I reviewed it.

10 Q. Do you have it in front of you?

11 A. No, I do not.

12 MS. McALISTER: May I provide the
13 witness?

14 EXAMINER PRICE: You may.

15 MR. KUTIK: Are you showing a particular
16 section?

17 MS. McALISTER: Yes. 4928.142 -- I'm
18 sorry, it's 4928.143(C)(1).

19 EXAMINER PRICE: Mr. Kutik.

20 MR. KUTIK: I object, your Honor. This
21 case is not being filed under that statute. This is
22 an MRO that's guided by 142.

23 MS. McALISTER: Yes, but, your Honor, 143
24 references 142 as well to make a comparison between

1 the two.

2 EXAMINER PRICE: I believe Mr. Kutik's
3 point of this question might be proper in the 143
4 case, but it's not proper today, and his objection is
5 sustained.

6 MS. McALISTER: No further questions,
7 your Honor.

8 EXAMINER PRICE: Thanks.
9 Marketers.

10 MR. SETTINERI: No questions, your Honor.

11 EXAMINER PRICE: OEG.

12 - - -

13 RECROSS-EXAMINATION

14 By Mr. Kurtz:

15 Q. Very quickly. The request for proposal
16 that you referred to in paragraph 77 of the
17 application, do you remember your answer to your
18 counsel's question?

19 A. Not -- I mean, I need it read back to me.

20 Q. Do you have paragraph 77?

21 A. Yeah, I still have it open. I'm sorry.

22 Q. Okay. The request for proposal is it's
23 not a reverse auction; is that correct?

24 A. Currently right now we have not made an

1 official decision, but as stated here, the idea would
2 be somewhat of a -- could be possibly an RFP process.

3 Q. Well, that's what it says, "Request for
4 proposal." Does that mean a sealed competitive bid?

5 A. That was what we were considering at the
6 time, yes.

7 MR. KURTZ: Thank you.

8 EXAMINER PRICE: Mr. Lavanga.

9 MR. LAVANGA: No questions, your Honor.

10 EXAMINER PRICE: Mr. Yurick.

11 MR. YURICK: No questions, your Honor.

12 EXAMINER PRICE: Mr. Weldele.

13 MR. WELDELE: No questions, your Honor.

14 EXAMINER PRICE: Mr. Small.

15 MR. SMALL: Thank you, your Honor. Just
16 one quick question.

17 - - -

18 RECROSS-EXAMINATION

19 By Mr. Small:

20 Q. You stated in response a question on
21 redirect the company made the commitment to pursue
22 the certain process for the contingency plan; do you
23 recall that?

24 A. Yes.

1 Q. And you believe that you're authorized to
2 make that commitment for the FirstEnergy companies?

3 A. Yes.

4 MR. SMALL: Thank you, your Honor.

5 EXAMINER PRICE: Thank you.

6 Staff.

7 MR. JONES: Nothing from staff, your
8 Honor.

9 MR. KUTIK: Your Honor, at this time we
10 move for the --

11 EXAMINER PRICE: I have a couple of
12 questions.

13 MR. KUTIK: Oh, I'm sorry.

14 - - -

15 EXAMINATION

16 By Examiner Price:

17 Q. The -- in your testimony at page 13 you
18 talk about the website that will be maintained for
19 the bidders.

20 A. Yes.

21 Q. Is it your understanding, if you know,
22 will -- who is going to provide the website services?
23 Is that going to be company employees or would that
24 be FirstEnergy Service employees?

1 A. That will be -- right now, we haven't
2 made that determination, but I would assume that it
3 would be FirstEnergy service company employees.

4 Q. FirstEnergy service company employees
5 perform most of the information technology tests for
6 your organization?

7 A. Yes.

8 Q. Do they provide information technology
9 services to FirstEnergy Solutions as well --

10 A. Yes.

11 Q. -- if you know? Do they provide all of
12 the information technology services to FirstEnergy
13 Solutions; if you know?

14 A. I don't know that for a fact.

15 Q. One more question, the selection -- you
16 mentioned four companies that the company spoke to
17 for consulting firms the company spoke to to be the
18 CBP manager; is that correct?

19 A. Yes.

20 Q. The selection of those four entities was
21 totally at the discretion of the company?

22 A. Yes, it was.

23 EXAMINER PRICE: Thank you. You are
24 excused.

1 Mr. Kutik.

2 MR. KUTIK: Your Honor, at this time the
3 companies move for the admission of Company Exhibit 1
4 and Company Exhibit 4.

5 EXAMINER PRICE: Any objection to Company
6 Exhibits 1 and 4?

7 MR. SMALL: What is 4?

8 MR. KUTIK: The application.

9 ATTORNEY EXAMINER: The application.
10 Hearing none, those exhibits will be
11 admitted.

12 (EXHIBITS ADMITTED INTO EVIDENCE.)

13 ATTORNEY EXAMINER: Let's go off the
14 record.

15 (At 1:37 p.m., a lunch recess was taken
16 until 2:45 p.m.)

17 - - -

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1 Tuesday Afternoon Session,
2 September 16, 2008.

3 - - -

4 EXAMINER PRICE: Let's go back on the
5 record.

6 Ms. Miller.

7 MS. MILLER: Thank you, your Honor. At
8 this time the companies call Kevin L. Norris.

9 (Witness sworn.)

10 EXAMINER PRICE: Please be seated and
11 state your name and business address for the record.

12 THE WITNESS: My name is Kevin Norris.
13 My business address is 76 South Main Street, Akron,
14 Ohio 44308.

15 EXAMINER PRICE: Please proceed.

16 MS. MILLER: At this time, your Honor,
17 before we begin we would like to premark the direct
18 testimony of Kevin L. Norris along with Attachments
19 1, 2, and 3 as Company Exhibit 2.

20 EXAMINER PRICE: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 - - -

23

24

1 KEVIN L. NORRIS

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

4 DIRECT EXAMINATION

5 By Ms. Miller:

6 Q. Good afternoon, Mr. Norris.

7 A. Good afternoon.

8 Q. Do you have before you what has just been
9 premarked as Company Exhibit 2?

10 A. I do.

11 Q. And is that your direct testimony along
12 with your attachments for this proceeding?

13 A. Yes, it is.

14 Q. And do you have any changes or --
15 actually do you also have in front of you what has
16 been premarked as Company Exhibit 5 which is the
17 companies' errata?

18 A. Yes, I do.

19 Q. Do you have any changes or modifications
20 to make to your testimony or to your attachments
21 other than what's been set forth in the errata?

22 A. Yes, I do. I just wanted to note that I
23 recently assumed a new position, the title being
24 Manager of Markets and Transmission Support, and I

1 also would point out that in the testimony I filed on
2 page 7, line 21, there was a typo. The word
3 "transmission" needs another S in it right after the
4 N.

5 Q. In between the N and the M?

6 A. Yes.

7 Q. Thank you. Do you have any other changes
8 or modifications?

9 A. No, I do not.

10 Q. And if you were asked today the same
11 questions that you set forth in your testimony
12 considering the modifications that you made today and
13 the errata, would your answers be the same?

14 A. Yes, they would.

15 MS. MILLER: The witness is ready for
16 cross, your Honor.

17 EXAMINER PRICE: Thank you.

18 Mr. Weldele.

19 MR. WELDELE: No questions, your Honor.

20 EXAMINER PRICE: Mr. Yurick.

21 MR. YURICK: No questions, your Honor.

22 EXAMINER PRICE: Mr. Lavanga.

23 - - -

24

1 CROSS-EXAMINATION

2 By Mr. Lavanga:

3 Q. Good afternoon, Mr. Norris.

4 A. Good afternoon.

5 Q. My name is Michael Lavanga. I am an
6 attorney for Nucor Steel Marion. Mr. Norris, you
7 have your testimony up there?

8 A. Yes, I do.

9 Q. Can you turn to Attachment 1 KLN-1, page
10 1.

11 A. It's also marked Schedule 1A. Is that
12 the same page you are referring me to?

13 Q. Yes.

14 A. Okay.

15 Q. Now, Mr. Norris this shows under MRO Ohio
16 Edison's rates projected to increase for the G and T
17 class by about 50 percent; is that correct?

18 A. For the GT classes, you said?

19 Q. Yes.

20 A. Yeah. Based on the assumptions that are
21 behind this being a representative of market price
22 estimate for illustrative purposes, that would
23 reflect a 50 percent increase, that's correct.

24 Q. And this market price was developed by

1 the expert witnesses in the FirstEnergy companies'
2 ESP proceeding, correct?

3 A. The value that was used in here was
4 consistent with some of the numbers that they had
5 considered early on. I am not saying it's consistent
6 with the exact numbers that are in ESP filing.

7 Q. Okay. Can you explain to me how the
8 current average rate was calculated on this chart?

9 A. That would be largely based on rates that
10 are currently in effect for Ohio Edison.

11 Q. So it's an average of all the rate
12 schedules in the G and P class or that would be in
13 the G and T class?

14 A. Yes, that's correct.

15 Q. Mr. Norris, would you agree that a
16 customer currently on an interruptible rate or rider
17 is likely to be paying a lower rate than the current
18 average rate shown on your chart?

19 A. It would be my assumption that that price
20 would be captured in that line shown on this exhibit.

21 Q. Okay. Assume that an interruptible
22 customer would be paying less than this current
23 average rate under G and T. Isn't it also correct
24 that in that case that customer would be looking at

1 an increase in excess of 50 percent?

2 A. You would have to be careful and make
3 sure on both the proposed side and the current side
4 you took the proper numbers into effect. In other
5 words, their current side might not be equal to the
6 average standard tariff rates.

7 Q. Let's say an average interruptible
8 customer on an interruptible customer rate or rider
9 is paying 5 cents. They are going to be looking at
10 an increase, or they could possibly be looking at an
11 increase in excess of 50 percent.

12 A. Yeah. Given your assumption of currently
13 paying 5 cents, yes.

14 Q. Did you perform any analysis for what the
15 rate impact of the MRO would be for just
16 interruptible customers?

17 A. No, I did not.

18 Q. Mr. Norris, would you agree with me
19 50 percent is a pretty big rate increase?

20 A. It's a significant number, and it's
21 taken -- it has to take into account where the
22 customer is coming from again. It's a big increase
23 over the current levels which have been kept
24 relatively low by the companies' efforts in their RSP

1 and RCP plans.

2 Q. Are you aware whether there has ever been
3 such a large rate increase approved by the Commission
4 in Ohio?

5 A. No, I am not aware whether there has been
6 one that large or not.

7 Q. Mr. Norris, in the MRO you don't propose
8 any mechanisms to mitigate the projected rate
9 increase for G and T customers, do you?

10 A. What I do in the MRO with the rate design
11 is my goal is to have an SSO charge, a retail charge
12 that is aligned with market energy price for
13 generation.

14 Q. So would the answer to my question be no?

15 A. There would be no need to do that. I
16 want my rate to reflect the manner which we procure
17 our power, what the cost is of that power.

18 Q. Would you agree with me that a rate
19 increase of 50 percent or more for the G and T class
20 which includes large -- large industrial customers
21 could have a negative effect on economic development
22 in FirstEnergy's service territory?

23 MS. MILLER: Objection, your Honor.

24 EXAMINER PRICE: Grounds?

1 MS. MILLER: The witness as part of his
2 testimony is not testifying in any regard regarding
3 economic development nor does he express any
4 expertise on the economic development.

5 EXAMINER PRICE: Overruled.

6 A. Could you repeat the question or have it
7 reread?

8 MR. LAVANGA: Could you repeat the
9 question.

10 (Record read.)

11 A. If it was left to that, the large
12 customer faced a 50 percent, I am sure it would have
13 some kind of possible negative impact, but I also am
14 aware that there are other means to -- special
15 arrangement provisions that are proposed for those
16 kinds of customers to seek other provisions.

17 Q. So is it your testimony that all economic
18 development concerns are going to be addressed
19 through the special -- a special rate or some kind of
20 special contract?

21 A. I'm not sure I am prepared to identify
22 where economic development will take place.

23 Q. That's fine. Wouldn't you agree that a
24 50 percent increase for the G and T class won't help

1 attract new industries to FirstEnergy's service
2 territory?

3 A. I would think that would depend a lot on
4 what's happening in other places where there would be
5 alternatives to go.

6 Q. Mr. Norris, you don't propose any
7 interruptible rates in the MRO proposal, correct?

8 A. Not in my rate design conversion process,
9 no.

10 Q. Are you familiar with the competitive
11 bidding proposal FirstEnergy filed last year in Case
12 No. 07-976?

13 A. Generally familiar, similar aspects of
14 the rate design.

15 Q. Okay. Did you have a role in designing
16 the rates contained in that proposal?

17 A. I played a role in doing the
18 reconciliation component.

19 MR. RINEBOLT: Excuse me, your Honor.
20 Could you ask the witness to get closer to his
21 microphone?

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

23 (Discussion off the record.)

24 (Record read.)

1 A. To finish that thought, the
2 reconciliation component but not the time of day
3 pieces of that filing.

4 MR. SMALL: Not much help.

5 EXAMINER PRICE: You need to pull the
6 microphone closer.

7 MR. KUTIK: You need to speak up.

8 EXAMINER PRICE: Do you want to repeat
9 the answer? Do you want us to repeat the answer?
10 Could you read the answer back.

11 (Record read.)

12 Q. Are you aware that FirstEnergy proposed
13 an interruptible rate in that proposal?

14 A. Yes, I am.

15 Q. Would you agree with the following
16 statement: An interruptible credit effectively
17 reduces the net cost of electricity and to the extent
18 participants reduce their hourly demand, the
19 wholesale market price will tend to be reduced
20 benefiting all customers?

21 MS. MILLER: Objection, your Honor. It's
22 obvious he is reading from a document. Can we have a
23 reference to what he is reading from?

24 MR. LAVANGA: I am reading from the

1 application that we were just discussing in the
2 07-796 proceeding.

3 MS. MILLER: The companies' application?

4 MR. LAVANGA: Yes.

5 A. And, I'm sorry, from the last year's
6 filing?

7 Q. Yes.

8 A. Well, again, I don't feel comfortable
9 responding to that because that wasn't a part of that
10 document I was responsible for. I would just add
11 that that probably, taken by itself, could be true
12 but there would be a lot of other circumstances that
13 are unknown.

14 EXAMINER PRICE: Keep trying to speak up.

15 Q. Just to be clear, Mr. Morris, I wasn't
16 referring to -- I wasn't asking you that just in the
17 context of that filing. As the person that developed
18 these rates, I am asking your opinion as somebody who
19 has knowledge and expertise on developing rates
20 whether interruptible rates provide those benefits.

21 A. And if I remember, the question is
22 whether or not those interruptible positions would
23 reduce the overall wholesale price.

24 Q. You want me to read it back?

1 A. That's not a good characterization of it,
2 yes.

3 Q. Okay. Well, the quote I was reading, an
4 interruptible credit effectively reduces the net cost
5 of electricity, and to the extent participants reduce
6 their actual hourly demand, the wholesale market
7 price will tend to be reduced benefiting all
8 customers.

9 A. Again, I think that could be true but
10 there could be things related to time -- to
11 interruptible customers that could work in the
12 opposite direction that might not be a benefit to
13 customers.

14 Q. Would you agree that an interruptible
15 rate could play an important role in maintaining bulk
16 power system reliability and could result in better
17 use of system capacity and a more efficient use of
18 the system?

19 A. I would not have -- I would not have an
20 opinion on that, outside my area of expertise.

21 Q. Have you ever designed an interruptible
22 rate before, Mr. Norris?

23 A. I don't believe so, no.

24 Q. Mr. Norris, are you familiar with rate

1 design in FirstEnergy's ESP proposal?

2 A. Just superficially, I wasn't responsible
3 for doing it or developing it.

4 Q. So you didn't help design the rates in
5 that proposal?

6 A. No.

7 Q. And are you aware that an interruptible
8 rate has been proposed in that?

9 MS. MILLER: Objection, your Honor. The
10 witness has already identified he was not familiar
11 with that proceeding.

12 EXAMINER PRICE: He can answer if he
13 knows.

14 A. I don't know for sure.

15 Q. Mr. Norris, do you agree that FirstEnergy
16 could have proposed an interruptible rate in the MRO?

17 A. They could have. They had no obligation
18 to. And by not it probably increased the competitive
19 environment for that service, if there is a value in
20 it.

21 Q. That answer supposes that a -- that there
22 would be competitive bidders or competitive suppliers
23 that would be interested in providing that service,
24 correct?

1 A. Correct.

2 Q. Now, Mr. Norris, the MRO rates are
3 seasonal rates; is that a correct characterization?

4 A. That is, yes.

5 Q. Okay. And is it correct aside from
6 seasonality there is no other time variation such as
7 on-peak or off-peak that's included in the proposed
8 MRO rates?

9 A. That's correct too.

10 Q. So under the MRO the price a customer
11 will see, for example, in the month of August will be
12 the same at 3 in the afternoon as it is 3 in the
13 morning?

14 A. Yes, that's right.

15 Q. Mr. Norris, do you think it's important
16 that electricity rates send accurate price signals so
17 that customers would have an economic incentive to
18 cut back on their usage in times of peak demand?

19 A. I think in the context of what I'm
20 supporting, that what is important is that we develop
21 a price that reflects the cost that we incur. And I
22 would assume that those costs reflect issues of load
23 characterization. I would assume the supplier has
24 factored those kinds of things, so I recognize that

1 they have an impact and is most likely very
2 important, but they are done on the supplier's side
3 of the equation.

4 Q. Would you agree with the general
5 proposition when rates are higher during on-peak
6 periods than they are on off-peak periods, then
7 customers would have an incentive to shift their
8 usage from on-peak to off-peak periods?

9 A. I think that would be an incentive, and I
10 also think that customers might have an incentive if
11 they are looking for rate relief, they could look to
12 ways to reduce consumption generally.

13 Q. So when you say it would be an incentive,
14 are you agreeing that customers would respond to
15 price in that way or that they might?

16 A. That they might.

17 Q. In designing MRO rates, did you perform
18 any study or analysis to determine the impact of more
19 price variation in the rates such as the inclusion of
20 an on-peak and off-peak rate on the bids that
21 suppliers are likely to make in the auction?

22 A. No, I did not.

23 Q. Would you agree that suppliers would take
24 into account time differentiation in their bids in

1 the auction?

2 A. I'm not familiar with that side of the
3 equation enough to be able to respond to that.

4 Q. Mr. Norris, isn't it correct that
5 FirstEnergy -- excuse me -- FirstEnergy proposed
6 on-peak and off-peak rates in both its 2007
7 competitive bidding proposal and in its ESP proposal?

8 MS. MILLER: Objection, your Honor. I
9 think that's irrelevant.

10 EXAMINER PRICE: Overruled.

11 THE WITNESS: Could you repeat the
12 question?

13 (Record read.)

14 A. In the competitive bid proposal that you
15 are referring to, yes, they did. In ESP I am not
16 sure.

17 Q. Mr. Norris, nothing about the way that
18 FirstEnergy proposes to acquire standard service
19 offer supply in the MRO would preclude FirstEnergy
20 from including more time differentiated rates in its
21 rate design, correct?

22 A. I guess I just have to go back to my
23 prior response that I don't see any need for a time
24 differentiated pricing. Once we get the gen -- or

1 the market energy price I simply convert that to a
2 charge for all customers.

3 Q. But isn't it true that -- if bidders are
4 going to take into account the characteristics of the
5 load in making their bids?

6 MS. MILLER: Objection, your Honor.
7 Mr. Warvell already testified to bidder
8 considerations on that side of what bidders would
9 consider. Mr. Norris is just offered for the rate
10 design. It's after that component and the price has
11 already been distributed.

12 EXAMINER PRICE: Mr. Lavanga?

13 MR. LAVANGA: That's okay. I'll move on.

14 EXAMINER PRICE: Thank you.

15 Q. (By Mr. Lavanga) Mr. Norris, under the
16 MRO proposal, under your proposed rates, you develop
17 a class-specific generation rate by applying a
18 distribution loss factor to the blended competitive
19 bid price to determine the generation charge for each
20 class; is that correct?

21 A. Yes, it is correct.

22 Q. And it's correct that the only proposed
23 differentiation among the gen -- in the generation
24 rate -- I'm sorry. And it's correct that this is the

1 only proposed differentiation in the generation rate
2 among customer classes.

3 A. Yes, that's correct. There are other
4 adjustments to that price but they are equal -- same
5 value of cost across all classes so, yes.

6 Q. So in developing the standard service
7 generation charge for each customer class, you didn't
8 use class allocation factors reflecting the different
9 peak demands and load factors of the various customer
10 classes, correct?

11 A. That's correct, because my pricing is a
12 function of the market price from the CBP, not the
13 function of any of those factors.

14 Q. Would you agree with me that all of the
15 customer classes have different class load factors?

16 A. Yes, I would.

17 Q. And would you agree that the cost to
18 serve each customer class generally varied by class
19 load factors and class usage characteristics?

20 A. No. The cost for the Ohio companies
21 would not vary by those characteristics.

22 Q. So the cost to serve all customer classes
23 are exactly the same?

24 A. The cost we incur for the generation

1 would be the same except for that loss factor we
2 talked about.

3 Q. What about the cost to the suppliers?

4 A. I'm not involved in determining costs for
5 the supplier, so I don't know.

6 Q. Did you do any study or an analysis in
7 developing the MRO rates of how the rates would
8 differ by class if rates were designed to reflect
9 load factor?

10 A. No, I did not.

11 MR. LAVANGA: That's all I have. Thank
12 you, Mr. Norris.

13 EXAMINER PRICE: Thank you.

14 Let's go off the record again.

15 (Discussion off the record.)

16 EXAMINER PRICE: Back on the record.

17 Mr. Kurtz.

18 MR. KURTZ: Thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Kurtz:

22 Q. Good afternoon, Mr. Norris.

23 A. Good afternoon.

24 Q. Following up a little bit, did I

1 understand your testimony to be you designed rates on
2 a straight energy basis, straight kWh because that's
3 the way the power will be procured on a wholesale
4 basis?

5 A. That's the way it will come out of the
6 competitive bid process, yes.

7 Q. If the Commission ordered the utilities
8 to procure supply for nonshopping customers in this
9 MRO with an on-peak, off-peak supply characteristic,
10 could you design retail rates to reflect that
11 wholesale pricing?

12 A. Given that example, yes, I believe so.

13 Q. If the Commission ordered that the
14 procurement be done on a demand charge energy charge
15 basis, could you design retail rates to reflect that?

16 A. I guess under your hypothetical, not
17 agreeing that that is what we would want to do, but
18 it seems like you could design the rates to reflect
19 that.

20 Q. If the Commission ordered that MRO
21 procurement include an interruptible product, could
22 you design retail rates to reflect an interruptible
23 product?

24 A. Yes, I would believe so.

1 Q. Would you turn to page 5 of your
2 testimony, please, where you discuss the CRT rider.

3 A. Okay. I am on page 5.

4 Q. At the bottom where you discuss the CRT.
5 Are you there?

6 A. Yes.

7 Q. Okay. This charge is nonbypassable?

8 A. That's correct.

9 Q. Why is it nonbypassable?

10 A. It's my understanding that all the cost
11 to implement the competitive bid process and procure
12 the power is recoverable by the utilities, and it
13 seems as though making this charge not bypassable is
14 a very good way to help make sure these costs are
15 recovered and further the costs that are included in
16 this CRT rider, I guess in the case of the delta
17 revenue, it reflects a cost from which all customers
18 benefit.

19 Q. I guess my question a little more broad.

20 MS. MILLER: Excuse me, your Honor. I
21 don't think the witness has finished his response.

22 THE WITNESS: Yeah. I was going to add
23 that the other factor to keep in mind is that all
24 customers benefit from having a competitive bid

1 process in place including shopping customers because
2 they have a backstop to come back to.

3 Q. Well, let me just ask this, you could
4 recover the costs incurred here or discussed here
5 through a rider or you could also recover them in
6 distribution rates, and you would get full recovery,
7 could you not?

8 A. The way I have proposed it obviously is
9 that I want to recover it through this proceeding.
10 Your example is I could either get it here or in a
11 distribution proceeding?

12 Q. Distribution rates, all customers pay
13 distribution rates.

14 A. Yes, if that was approved.

15 Q. Okay. Let's take them one at a time.
16 The first element of the CRT competitive bidding
17 process expenses not recovered through the tranche
18 fees paid by SSO suppliers. Did I read that right?

19 A. Yes.

20 Q. Couldn't you simply increase the tranche
21 fees and collect this cost -- these costs from the
22 competitive suppliers?

23 A. I think one thing that could happen that
24 wouldn't make that possible is there could be some

1 fees that come in after the tranche fee has to be
2 determined and this provision would make sure we
3 didn't -- you know, that we did not lose recovery of
4 that cost.

5 Q. But assuming you do your pricing right,
6 you could charge the competitive suppliers the actual
7 costs that we are talking about and not need to
8 recover it from consumers; isn't that correct?

9 A. If you knew the actual cost in a timely
10 manner to make sure that happened, you could.

11 Q. Okay. Let's talk about No. 2, working
12 capital adjustment to account for the lag between the
13 occurrence of SSO supply cost and collection of SSO
14 customer revenues --

15 MS. MILLER: Objection, your Honor. That
16 item is part of our errata.

17 MR. KURTZ: What does it say now?

18 MS. MILLER: That item has been removed
19 in connection with our errata.

20 Q. Okay. Let's go to No. 3, uncollectible
21 amounts associated with SSO generation service. What
22 does that mean?

23 A. It means the rider would include
24 generation-related uncollectible costs.

1 Q. I still don't understand. What does that
2 mean, uncollectible? The costs that the customer
3 didn't pay?

4 A. Yeah. Customers did not pay their bill,
5 and it becomes uncollectible.

6 Q. Well, isn't the risk of collectibility on
7 the SSO wholesale supplier?

8 A. No, because as part of the filing, we
9 agreed to take on all the uncollectible risk so that
10 the supplier would have less risk and, therefore,
11 possibly lower price.

12 Q. So let me ask it this way, if I am a
13 shopping customer, I have to pay my competitive
14 supplier to get electricity presumably, correct?

15 A. Yes.

16 Q. Okay. Then also you are saying that on a
17 nonbypassable basis I have to pay because some
18 nonshopping customer may not pay its bill to the
19 utilities; is that correct?

20 A. That could be part of the uncollectible,
21 a shopping customer that, using your example, also
22 could have been on our system and created some
23 uncollectibles before they shopped. And further, as
24 I mentioned, this uncollectible component, as the

1 other components of the rider, are costs that put the
2 competitive bid process in place to the benefit of
3 all customers.

4 Q. Why don't you have the competitive
5 suppliers take the risks of uncollectible FES, for
6 example, assuming that they bid? Why should
7 utilities take on that risk?

8 A. It was an effort to take some risk away
9 from suppliers so that the bid could be possibly
10 lower, bid price or resulting bid price.

11 Q. And that uncollectible price you propose
12 to charge to shoppers and nonshoppers alike?

13 A. That's correct, yes, for the reasons I
14 stated.

15 Q. Let me ask it slightly different. If I'm
16 a shopper, how did I cause the uncollectible expense
17 that somebody else -- that somebody else incurred by
18 not paying their bill to the utility?

19 A. I think I need that question repeated.

20 Q. If I am a shopping customer, how did I
21 cause this uncollectible expense?

22 A. I'm saying that you may not necessarily
23 have caused it. You could have, but you may not
24 have. But this uncollectible in total, whoever

1 caused it, is a cost of providing the competitive bid
2 process.

3 Q. It's a cost of providing generation
4 service to nonshoppers; isn't that what this is?

5 A. The competitive bid?

6 Q. This uncollectible fee, isn't this a cost
7 of providing generation service to nonshopping
8 customers?

9 A. No. Like I stated, the uncollectible
10 expense I look at it as being a cost of the
11 competitive bid process that all customers should
12 share in paying because they have the benefit of the
13 competitive bid process.

14 Q. All else equal, if you make shoppers pay
15 this uncollectible fee, that will be a deterrent to
16 shopping, won't it?

17 A. I guess you could characterize it as a
18 deterrent to shopping, but it would have to be taken
19 in context with all the other components of the
20 competitive bid.

21 Q. Let's go to No. 4. Is No. 4 still in
22 your recommendation in the delta revenue?

23 A. Yes.

24 Q. Okay. Let me just focus on so the idea

1 here is there would be an economic development
2 schedule; is that a tariff?

3 A. I believe that the items mentioned in
4 this response are basically the items that are in the
5 proposed special arrangements section and I at this
6 point don't know if they are going to be tariffs or
7 riders. I just don't know.

8 Q. Well, it says economic development
9 schedule. You don't know if that's a tariff?

10 A. No, I don't.

11 Q. Do you know if an energy efficiency
12 schedule is a tariff?

13 A. No, I don't.

14 Q. Do you know if a reasonable arrangement
15 is a special contract?

16 MS. MILLER: Objection, your Honor.

17 EXAMINER PRICE: Grounds?

18 MS. MILLER: Could we have clarity on
19 what a special contract is?

20 MR. KURTZ: Well, the same special
21 contract that he uses twice in the rest of the
22 sentence, special contract, special contracts.

23 EXAMINER PRICE: You can answer.

24 MS. MILLER: Are you saying is it --

1 Q. Is it a reasonable arrangement an
2 individually -- individualized rate agreement between
3 a particular customer and the utility, or is it the
4 result of a generalized tariff that says if you meet
5 certain parameters, you qualify for this tariff and
6 you get whatever the tariff provides for? That's the
7 distinction I am making.

8 A. It's my understanding that the reasonable
9 arrangement and the unique arrangement would probably
10 be contracts and be specific to the customers.

11 Q. Okay. Would a governmental special
12 contract be a special contract?

13 A. By definition, I think so, yes.

14 Q. Would a unique arrangement?

15 A. That's my understanding, yes.

16 Q. Now, so you don't know if any of these --
17 now, the special contracts, do you know if they would
18 need commission approval, or do you know if they
19 would need specific Commission approval in a docket
20 with a case number?

21 A. I don't know for certain.

22 Q. Okay. And you don't know if a tariff of
23 general applicability would need specific Commission
24 approval to implement that tariff?

1 A. It's my understanding and it may -- it
2 may incorporate all of these items that you are
3 referring to, but it seems as if they would need
4 Commission approval.

5 Q. Okay. Even if there was a tariff, a
6 tariff that caused delta revenue would need
7 Commission approval of the particular transaction
8 causing the delta revenue?

9 A. That would be my understanding, yes.

10 Q. Is there anyone at Ohio Edison who is
11 particularly expert in economic development matters?

12 A. I would say there is. I wouldn't know
13 who that would be though.

14 Q. How do you know there is a person then?

15 A. Because I know there's been economic
16 development issues in the past.

17 Q. What do you mean, issues?

18 A. The company is interested in economic
19 development, and I guess I am drawing my conclusion
20 on that fact that I would believe there would be
21 someone who would take on that responsibility.

22 Q. Let me just see if I correctly summarize.
23 It's your understanding that the -- there would need
24 to be special Commission approval for any provision

1 under No. 4, something that caused delta revenue,
2 whether it would be by special contract or tariff.
3 Is that a correct summarization?

4 A. That's my understanding.

5 MR. KURTZ: Thank you, your Honor.

6 EXAMINER PRICE: Thank you.

7 Marketers.

8 MR. SETTINERI: No questions.

9 EXAMINER PRICE: IEO-Ohio.

10 MS. McALISTER: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. McAlister:

14 Q. Good afternoon, Mr. Norris.

15 A. Good afternoon.

16 Q. Got just a couple of questions for you.

17 The competitive bidding process expenses that we
18 talked about with Mr. Kurtz and the rider CRT, do you
19 have any estimate of how much those costs will be?

20 A. Not at this time, I really don't.
21 There's -- you can make estimates based on estimates.
22 We don't know, for example, how many special
23 contracts there might be. Then you would have to
24 assume an estimated generation component for that

1 calculation, so I really don't.

2 Q. Okay. And talking now more specifically
3 about the costs that are incurred in the form of
4 fines, penalties, or damages arising from or
5 associated with the use of a descending clock option
6 or requests for proposal format to fulfill the
7 statutory requirement of requiring power through a
8 competitive bidding process that will be included in
9 the rider CRT, what types of fines do you anticipate
10 there?

11 A. First, could you give me the reference
12 from which you read that?

13 Q. Yeah. I believe it's on page -- let me
14 just double-check my reference before I give it to
15 you. It's in Exhibit C, page 3 of 4. That describes
16 the rider CRT.

17 A. Okay. I see it. And, I'm sorry, I am
18 going to have to get you to read the question back
19 now. I just wanted to make sure I knew the verbiage.

20 Q. Sure. I was just asking what types of
21 fines were contemplated in that section.

22 A. There's really not any known items or
23 fees or penalties that are known. It's just we are
24 operating under a new law so with that uncertainty we

1 were attempting to get some standard indemnity
2 language in here.

3 Q. And do you have any idea who would levy
4 any types of fines?

5 A. Who has levied them?

6 Q. Who may should you incur them.

7 A. I guess the only example I could think of
8 would be MISO could possibly levy some kind of charge
9 or fee.

10 Q. To your knowledge has the Midwest ISO
11 ever levied such a fine in the past?

12 A. I do not know.

13 Q. And then based on the errata corrections
14 that you filed, the companies contemplate making a
15 separate filing that will address the alternative
16 energy resource sections of the law; is that correct?

17 A. The renewable -- which includes the
18 renewable?

19 Q. Yeah.

20 A. Yes.

21 Q. Do you have any idea when the companies
22 may make such a filing?

23 A. No, I do not.

24 MS. McALISTER: I don't have any further

1 questions.

2 Thank you, your Honor.

3 EXAMINER PRICE: Thank you.

4 OPAE?

5 MR. RINEBOLT: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Rinebolt:

9 Q. Good afternoon, Mr. Norris.

10 A. Good afternoon.

11 Q. I want to make sure I understand this
12 correctly. How many tranches will the company be
13 bidding?

14 MS. MILLER: Objection, your Honor.

15 EXAMINER PRICE: Grounds?

16 MS. MILLER: That's a matter -- that's
17 material that was in Mr. Warvell's. He was the
18 witness for that. Mr. Norris does not have that in
19 his testimony, nor is he being offered as the witness
20 for that.

21 EXAMINER PRICE: Sustained.

22 Q. Okay. Well, however number of tranches
23 you have, are they being bid individually?

24 MS. MILLER: Objection, your Honor. Same

1 grounds.

2 MR. RINEBOLT: Your Honor, they talk --
3 the testimony on page 4 talks about testimony
4 averaging the number of tranches purchased at each
5 price. I am simply trying to understand whether they
6 are bidding the tranches individually or whether they
7 are bidding them in groups. What are you averaging?

8 MS. MILLER: Exactly, your Honor. That
9 was for Mr. Warvell. That was material Mr. Warvell
10 covered. He discussed that in his testimony.

11 Mr. Norris makes that reference --

12 EXAMINER PRICE: I think he is simply
13 asking how the calculation was made.

14 MS. MILLER: If he asks that question, I
15 am fine with it, your Honor.

16 MR. RINEBOLT: It is essentially
17 foundation for some additional questions, your Honor.

18 EXAMINER PRICE: We will give
19 Mr. Rinebolt some leeway and allow this question in
20 the hopes he will true it up here.

21 MR. RINEBOLT: Thank you, your Honor.

22 THE WITNESS: Can I have it reread,
23 please?

24 (Record read.)

1 A. I'm not sure of the answer to that.

2 Q. All right. Well, then what are you going
3 to average to determine the blended competitive bid
4 price?

5 A. Of the first product which I guess I will
6 say is the 17-months product, whatever the average
7 price that comes out of that product and the number
8 of tranches there would be averaged with the what I
9 will call the second product which is the 29 months.

10 Q. But I am trying to understand what are
11 you averaging.

12 MS. MILLER: Your Honor, objection. Can
13 we assume the foundation, get to the price, and then
14 Mr. Rinebolt can ask his question once we've arrived
15 at the price?

16 EXAMINER PRICE: No. Overruled.

17 Q. And for your reference this is on page 4
18 at lines 9, 10, and 11.

19 A. I will take another shot at it. And I
20 think -- I think it's in line with what I said
21 before. The clearing prices that come out of each of
22 those what I call products, and when I am doing that,
23 I am referring to what I believe appears on Schedule
24 B, I'm averaging the results of those three products,

1 the 17-month, a certain clearing price came out of
2 that; a certain clearing price came out of the
3 29-month; and a certain clearing price came out of
4 the 41-month product. And it's taking an average of
5 those.

6 Q. Now, is that average across all three
7 distribution companies, or is it per individual
8 distribution company?

9 A. It's across all companies.

10 Q. Okay. Would you say that the seasonal
11 application factor is comparable to the current
12 summer/winter differentials?

13 A. You would have to tell me what you mean
14 by the current seasonal differential, I guess.

15 Q. Well, you -- the companies currently have
16 rates in place, and they have summer rates and winter
17 rates. Do you view these new rates as comparable to
18 the existing rate structure that you have in place,
19 that your company has in place?

20 A. I guess I would answer that by saying I
21 know they are based on different things. The
22 seasonal factors are based on averaging LNPs, and I
23 am not sure what the basis was of the current tariff
24 seasonality. So I think I can say that they are not

1 the same.

2 Q. Explain to me what you mean by averaging
3 LNPs.

4 A. In the seasonal adjustment factor that we
5 use it's based on weighting or averaging of LNP
6 factors.

7 Q. Well, doesn't LNP depend on delivery
8 point?

9 A. I don't know.

10 Q. But you are going to average them?

11 A. Right.

12 Q. Okay. On page 5 at line 12 -- strike
13 that. I believe you already answered it.

14 Let's look at the prices that you add in
15 through the rider CRT. And this begins at the bottom
16 of page 5 and moves into page 6, and I may be
17 overlapping some questions you got before, but I want
18 to make sure I understand this. Why do you need
19 working capital?

20 MS. MILLER: Objection, your Honor. That
21 was one question we had talked about being on the
22 errata.

23 Q. I'm sorry, I am just working my way
24 around here.

1 EXAMINER PRICE: Sustained.

2 Q. At line 10 -- 9 and 10 you talk about
3 alternative energy resources being included in the
4 rider CRT. Can you tell me why those alternative
5 energy resource costs aren't a component of the bid
6 process?

7 A. Are you on page 6?

8 Q. I am indeed on page 6, and I am at line 9
9 and 10.

10 A. And, again, those lines were stricken by
11 our errata.

12 Q. Okay. Sorry. I missed that. At the
13 bottom of page 6 moving in and carrying over to line
14 7, you talk about --

15 EXAMINER PRICE: Excuse me, Mr. Rinebolt.
16 One minute, please.

17 MR. RINEBOLT: I'm sorry.

18 EXAMINER PRICE: That's okay. I am
19 having trouble finding the errata, the last one. Can
20 you direct me to which errata number takes out page 6
21 part of lines 8 and 9?

22 THE WITNESS: I think it's No. 3. Yes,
23 it is, No. 3, the last sentence.

24 EXAMINER PRICE: Okay. Thank you very

1 much.

2 Please proceed, Mr. Rinebolt.

3 MR. RINEBOLT: Thank you very much, your
4 Honor.

5 Q. (By Mr. Rinebolt) Beginning at -- there's
6 a discussion beginning at line 20 on page 6 related
7 to fixed price CEI's special contracts and that the
8 delta revenue would be acquired from CEI customers
9 only and that requires a second component for the
10 rider CRT. Is that rider to be collected from all
11 customer classes or only the classes under which the
12 fixed price contracts were granted?

13 A. It is proposed to be collected from all
14 classes of customers within CEI.

15 Q. If you know, why doesn't the change in
16 legal and regulatory framework not abrogate those
17 contracts? Why do you still feel the need to honor
18 those contracts?

19 MS. MILLER: Objection, your Honor. It's
20 beyond the scope of the witness's testimony.

21 EXAMINER PRICE: Sustained.

22 Q. On your -- we are going to KLN Attachment
23 1, page 2. This is Schedule 1A, page 2 of 12. And I
24 am looking specifically at line 19 demand-side

1 management energy efficiency rider. Now, you
2 indicate on that schedule that the collection will be
3 \$1,845,196. Could you tell me the justification for
4 that number? How is that number arrived at?

5 A. I believe this item on line 19 is a -- is
6 a line item that comes out of our distribution case
7 that has been -- that is proposed before the
8 Commission, and I am not familiar with the basis for
9 it. I think that's the source of it.

10 Q. You don't know what necessarily it's for
11 other than demand-side management generically?

12 A. That's correct.

13 MR. RINEBOLT: No more questions, your
14 Honor.

15 EXAMINER PRICE: Thank you.

16 Mr. Royer.

17 MR. ROYER: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Royer:

21 Q. Back to the CRT on page 5 on line 15, you
22 describe a CRT as being includable in charges to SSO
23 customers, correct?

24 A. Line 15?

1 Q. Yep, end of the line page 5.

2 A. Yes.

3 Q. Okay. Are you with me?

4 A. Yes.

5 Q. Okay. But that actually isn't entirely
6 accurate, is it? Shouldn't it be charges to all
7 customers?

8 A. Yes.

9 Q. Okay. So, now, I note that you -- your
10 errata indicates you have stricken item No. 2 that
11 was previously started on line 23, and why did you
12 remove that item?

13 MS. MILLER: Objection, your Honor. That
14 item was removed before the witness took the stand or
15 even --

16 MR. ROYER: Well, if your Honor, please,
17 there are charges here that seem to me to be clearly
18 should not -- should be -- should clearly be
19 bypassable charges. I would like to explore the
20 reason they took that out was because they regarded
21 it as a by -- finally figured out it should have been
22 a bypassable charge, and it's recovered elsewhere.

23 EXAMINER PRICE: We will give Mr. Royer
24 some leeway. Overruled.

1 A. Can you repeat the question?

2 Q. Sure. Why was the decision made to
3 remove item No. 2, which was the working capital
4 adjustment to account for the lag between supply
5 costs and collection of SSO revenue?

6 A. It was determined that as part of the
7 distribution -- distribution proceeding, that
8 recovery was covered there.

9 Q. Does FirstEnergy provide billing services
10 for -- or billing services for CRES providers?

11 A. I assume they do, yes.

12 Q. And do they purchase the receivables of
13 CRES providers, if you know?

14 A. I do not know.

15 Q. With respect to item No. 1 on line 22 of
16 page 5, again, I heard your earlier answer, but I am
17 not quite sure what expenses are involved here. What
18 expenses are there that are cost of the competitive
19 bidding prices that aren't recovered through the fees
20 paid by the wholesale supplier?

21 A. I think, as I mentioned before, part of
22 it could be if those tranche fees that are developed
23 don't cover all the costs. It could be a late
24 invoice from the CBP manager, for example, or this

1 could also include cost of consultants used by the
2 Commision.

3 Q. And those would be -- and those would be
4 chargeable to shopping customers for what reason?

5 A. Shopping customers have the benefit of
6 being able to return to the competitive bid at any
7 point in time.

8 Q. Well, shopping customers previously could
9 have returned to -- to FirstEnergy service, could
10 they not, if there was no competitive bid process, if
11 we were in the old regime?

12 A. I'm not sure. That may be true in the
13 old regime, as you call it. I am just not sure.

14 Q. You don't know if shopping customers once
15 they -- once they take service from a marketer could
16 not ultimately come back to FirstEnergy?

17 A. FirstEnergy as in the operating
18 companies?

19 Q. Well, yeah, my mistake, in the operating
20 company, yes.

21 A. That, yes, they could.

22 Q. Okay. So just so we are clear about
23 this, the competitive bidding process is a wholesale
24 process, correct?

1 A. It creates a wholesale price.

2 Q. Right. Which you convert into a retail
3 rate, correct?

4 A. Correct.

5 Q. And then the customer -- the ultimate
6 customers pay the retail rate to you, correct?

7 A. Correct.

8 Q. Okay. Now, and I believe you said that
9 the reason -- I want to understand this other
10 rationale you gave. The reason you would pass these
11 costs on to retail customers of marketers is because
12 those customers benefit from this competitive bidding
13 process, competitive wholesale bidding process; is
14 that right?

15 A. They benefit by having a backstop, a
16 place to come back to if for any reason the shopping
17 situation doesn't work out.

18 Q. But they could have come back regardless
19 in the -- under -- well, under the previous regime,
20 correct?

21 A. They could have come back with
22 limitations and stipulations.

23 Q. Well, yeah.

24 A. Yes.

1 Q. I will grant you that, but the -- so the
2 benefit you are talking to about the competitive
3 bidding process is that it is the benefit it was
4 supposed to -- or in theory supposed to be that this
5 process will produce a lower retail rate that the
6 company -- that the company can offer -- the
7 operating companies can offer that wouldn't have been
8 the case if they -- if they were -- you know, if this
9 was rate-of-return regulated?

10 MS. MILLER: Objection, your Honor. The
11 witness is putting forth the MRO option; he is not
12 making a comparison between the new regime or any
13 sort of old regime.

14 MR. ROYER: Well, the witness has said
15 that the rationale for --

16 EXAMINER PRICE: Mr. Royer, overruled.

17 MR. ROYER: Thank you.

18 Q. Do you remember the question?

19 A. No.

20 MR. ROYER: Could you read it, please.

21 (Record read.)

22 A. I didn't mean to get into that aspect. I
23 really wasn't. I was just saying that the shoppers
24 had a back -- backstop or place to come back. I

1 didn't indicate nor am I comfortable indicating
2 whether the price is higher or lower than would
3 otherwise be.

4 Q. Well, do you think there is a distinction
5 between the benefits of competition for wholesale
6 supply and retail competition, the benefits of retail
7 competition?

8 A. I don't know.

9 Q. Are you familiar with the policies of the
10 State that are set out in Chapter 4928 in terms of
11 promoting competition?

12 A. Not specifically.

13 Q. Okay. Now, you said one of the -- with
14 respect to the uncollectibles, and I want to make
15 sure I got this right, one of the reasons that it's
16 fair to charge shopping customers for uncollectibles
17 or bad debt associated with SSO service is because
18 some shopping customer may have contributed to that
19 bad debt before he left and went to a competitive
20 supplier; is that what I heard you say?

21 A. That was one aspect of it, yes.

22 Q. Do you think a -- do competitive whole --
23 or do marketers do credit checks on their
24 customers -- on their applicant or applicant

1 customers?

2 A. I don't know if they do or not. I would
3 assume they would have more leeway in which customers
4 they select.

5 Q. Well, do you think a marketer would pick
6 up a customer that just got booted off standard
7 service offer because of bad debt?

8 A. I don't think that would be likely, no.

9 Q. Okay. So there -- so that rationale is
10 probably not applicable, is it?

11 MS. MILLER: Objection, your Honor
12 argumentative.

13 MR. ROYER: I withdraw it.

14 Q. Okay. Now, with respect to these delta
15 revenue issues and the energy efficiency schedule and
16 so forth that you talk about in the fourth part of
17 this answer, would the company have any objection to
18 treating this subject under a separate rider where it
19 could be fully explored independent of this process?

20 A. Certainly preference would be to resolve
21 it here.

22 Q. Well, why do you -- why would you -- why
23 do you believe this should be part of the CRT rider?

24 A. So your question is whether or not we

1 would be comfortable taking it out of CRT and dealing
2 with it as a completely separate rider?

3 Q. Well, yeah, and to get to that answer I
4 was asking you why you elected to include it in the
5 CRT as opposed to in a separate rider.

6 A. It didn't seem like there was a necessity
7 to have a separate rider.

8 Q. Well, if there is -- I understand we are
9 at somewhat of a disadvantage since we don't have
10 rules yet, but as I read -- as I read some proposed
11 rules the concept would be, for example, to qualify
12 for some of this -- for some of this delta revenue
13 recovery there is going to be, you know, an annual
14 process, and I am just questioning why that this
15 subject matter shouldn't be addressed through a
16 separate, you know -- through a separate rider as
17 opposed to being made a part of the MRO?

18 A. I guess as long as there wasn't a timing
19 issue involved, and I am not sure what the timing
20 would be, I don't know that there would be any
21 problem with dealing with it in the same manner as we
22 propose here but in a separate rider.

23 Q. Well, these calculations that you -- I
24 mean that you have laid out in your -- in your

1 schedules though they are -- even though we don't
2 have all the numbers, those are discrete calculations
3 that relate to the MRO, right?

4 A. I'm not sure what calculations you are
5 talking about.

6 Q. Well, I thought you described in your --
7 in your attachments how you are going -- how you are
8 going to figure these -- the retail rate out. Am I
9 missing something?

10 MS. MILLER: May I have an attachment
11 reference?

12 MR. ROYER: Well, let me -- I will just
13 withdraw it. That's okay.

14 Q. So then to summarize your testimony, the
15 reason that you've included this here is you are
16 trying to get all this resolved at once; is that the
17 idea?

18 A. Yes.

19 MR. ROYER: That's all I have. Thank
20 you, your Honor.

21 EXAMINER PRICE: Mr. Porter.

22 MR. PORTER: No questions.

23 EXAMINER PRICE: Mr. Small.

24 MR. SMALL: Thank you, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Small:

Q. Mr. Norris, Jeff Small, OCC. I have just a couple of questions for you.

Do you recall a line of questioning by Mr. Kurtz for the OEG concerning the manner in which the company purchased -- would purchase the generation supply from bidders?

Well, let me refresh your memory. Do you recall Mr. Kurtz asking you that if procurement from bidders was on the basis other than energy only but also the purchase -- procurement also included demand factors could the company design rates that corresponded to that that had demand factors, and do you recall that?

A. Yes. Thank you for that reminder. I do recall that.

Q. Okay. Now, I would like you to set aside what the company is recommending or what you are recommending but just focus on the -- on what's possible. If we go to procurement for generation supply purely on an energy basis, the same thing that's in the company's application, is there

1 anything preventing, in other words, is there
2 anything impossible about creating rates that are on
3 some basis other than energy only? It is possible to
4 create such rates, isn't it?

5 A. It is possible, but I can't think of
6 anything that you would do -- that by doing it you
7 would distort the market price that we face in
8 procuring the power.

9 Q. Well, as I said, leaving aside -- leaving
10 aside what you recommend and what the company has in
11 its application, there is nothing impossible -- it is
12 possible to design rates like that, isn't it?

13 MS. MILLER: Objection, your Honor.
14 Asked and answered.

15 EXAMINER PRICE: Overruled.

16 Q. It's possible?

17 A. It is possible.

18 Q. If I may, would you refer -- turn to page
19 6, line 21 of your testimony. This is mostly a
20 matter of clarification. Do you have that?

21 A. Yes.

22 Q. And you refer to contracts, special --
23 CEI special contracts that were in effect prior to
24 December 31 of 2008. Do you see that?

1 A. Yes.

2 Q. And just the follow-up of it, you are
3 talking about contracts that exist before
4 December 31, 2008 and which continue on into 2009,
5 correct?

6 A. Yes, into 2009, and I think in some cases
7 beyond 2009.

8 Q. Okay. This only applies to CEI; is that
9 correct?

10 A. Yes, the special contracts that I am
11 talking about on this line 21 does only apply to CEI,
12 correct.

13 Q. And how long -- I think you sort of
14 anticipated my question. How long do these contracts
15 continue?

16 A. I'm remembering that they -- some of them
17 could run through 2010, subject to check.

18 Q. They are contracts that expire at
19 different times?

20 A. I'm not sure.

21 Q. Have you reviewed or do you -- have you
22 seen any summary of the timing or timing of the
23 agreements?

24 A. No.

1 Q. And have you reviewed or have you seen a
2 summary of the amount -- amount of energy or demand
3 associated with those contracts?

4 A. In the filing as part of one of my
5 workpapers, there is a calculation that tries to get
6 an estimate of the delta revenue that we are talking
7 about here, and I believe if you look at the sales on
8 that, you would have to do some mathematical
9 gymnastics, but I think if you look on that schedule,
10 you will see some sales that include contracts and
11 there's probably other schedules in the filing that
12 include them. If you took the difference, you could
13 probably get the number, but I am not familiar with
14 it offhand.

15 Q. For those calculations wouldn't you have
16 to know whether -- how long the contracts went?

17 A. Yes.

18 Q. And so in the workpapers we would
19 determine whether they extended into 2010 or not; is
20 that correct?

21 A. The workpaper that I am referring to
22 which is part of KLN-4 shows a calculation for both
23 2009 and 10, but it does not give you enough
24 information to know at what point in time any

1 individual contract may have stopped.

2 Q. But it does give the calculations or an
3 estimate in aggregate?

4 A. Estimates, yes, based on estimated
5 results of the bid.

6 Q. If you could turn to page 9 of your
7 testimony, and in the area of approximately lines 12
8 and 13 you discuss some of the assumptions behind
9 your schedule 1A. Do you have that?

10 A. I'm at page 9. Can you give me the line
11 reference again?

12 Q. It's basically the last question and
13 answer but in particular there is a discussion on
14 lines 12 and 13 discussing the distribution rate
15 levels, your assumptions concerning distribution
16 rates.

17 A. Yes, okay.

18 Q. Do you offer any schedules that show
19 just generation without the effect of assuming
20 changes in the distribution rates?

21 A. Not as part of the filing, no.

22 Q. They are all combined with distribution
23 rate increases that you assume; is that correct?

24 A. Yes. The impacts reflect both.

1 Q. And how do you -- how do you reflect the
2 treatment of the deferrals in your assumptions here
3 for Schedule 1A? Let me clarify. You state that you
4 are taking the assumptions for distribution rate
5 levels from the companies' ESP filing; is that
6 correct? It's found on line 13 of your testimony.

7 A. Yes, I see that.

8 Q. Okay. And so the question is how are you
9 treating the deferrals that are found in that ESP
10 filing? For example, the ESP filing has a deferral
11 of \$25 million for CEI. How is that treated in your
12 tables -- I'm sorry, in your Schedule 1A?

13 A. I believe that the way the distribution
14 values that I speak of here, they assume the same
15 level, and I believe it was about \$150 million
16 increase, that was what was consistent with the ESP.
17 As far as the details of what's in the 150 as far as
18 the deferral components or anything else, I wouldn't
19 be able to identify that.

20 Q. So is it fair to say, just reflecting my
21 understanding of your answer, that if we went to the
22 ESP filing, the assumptions you have used and
23 incorporated in your table, in your Schedule 1A here,
24 is the \$150 million distribution rate increase,

1 revenue increase for the companies?

2 A. Yes. That's my understanding, yes.

3 Q. And so if there is something else there,
4 a deferral or something else aside from that
5 \$150 million, that is not part of your assumptions
6 here?

7 A. That's correct. Up or down, that's
8 correct. 150 is the limit.

9 MR. SMALL: Thank you very much.

10 EXAMINER PRICE: Staff.

11 MR. JONES: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Jones:

15 Q. Good afternoon, Mr. Norris.

16 A. Good afternoon.

17 Q. Mr. Norris, I will be quick here. On
18 page 7 of your testimony where you testify as to the
19 purpose of rider GRC -- I will let you go there.

20 A. Okay, I am on page 7.

21 Q. Page 7, rider GRC.

22 A. Okay.

23 Q. You have there, the last sentence of that
24 paragraph of that question, "No additional charges or

1 costs will result from implementation of this rider."
2 Could there be any delta revenues associated with
3 customer served under rider GRC?

4 A. Rider GRC is for the CEI contracts that
5 currently exist, and they will not pay the delta
6 revenue components so the answer is no.

7 MR. JONES: That's all I have. Thank
8 you.

9 EXAMINER PRICE: Ms. Miller, redirect?

10 MS. MILLER: Can I have 3 minutes?

11 EXAMINER PRICE: Yes. Let's go off the
12 record. We will be back at 4:20.

13 (Recess taken.)

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

16 Ms. Miller.

17 - - -

18 REDIRECT EXAMINATION

19 By Ms. Miller:

20 Q. Hi, Mr. Norris. I just want to clarify
21 and ask just a few additional questions. There was a
22 line of questioning regarding marketers not accepting
23 a customer with bad credit. Can the companies refuse
24 customers for bad credit under their default service

1 option?

2 A. No, they cannot.

3 Q. And there was a line of questioning about
4 whether if the CRT -- excuse me -- the CRT
5 reconciliation mechanism wasn't in this case, could
6 it be recovered in distribution rates? Do you recall
7 that line of questioning?

8 A. Yes, I do.

9 Q. Can CRT be recovered in distribution
10 rates?

11 MR. ROYER: I object. That's the
12 question -- that would be attributed to me. That's
13 not what I asked.

14 MS. MILLER: Actually, I was referring to
15 a question by Mr. Kurtz.

16 MR. ROYER: Sorry.

17 EXAMINER PRICE: No problem.

18 Please proceed.

19 A. No, generation costs cannot be recovered
20 in distribution rates.

21 MR. BOEHM: Objection, your Honor.

22 That's a legal conclusion based upon a Supreme Court
23 case that may have been modified by 221. This
24 witness, unless he is a lawyer, surely is not

1 qualified to answer that.

2 Q. Mr. Norris, do you have an understanding
3 or is it your understanding of whether or not the CRT
4 rider can be collected in distribution rates? I am
5 just asking your understanding.

6 A. Yeah. My understanding is that it cannot
7 be recovered -- generation costs related to our part
8 of the CRT cannot be recovered in distribution rates.

9 Q. Thank you.

10 EXAMINER PRICE: Are you making a legal
11 conclusion, or this is your understanding?

12 THE WITNESS: It's just my understanding.

13 EXAMINER PRICE: You are not testifying
14 as to legal conclusion?

15 THE WITNESS: No.

16 MR. BOEHM: Your Honor, may I ask where
17 he got it? It's clearly a legal conclusion. You
18 know, if he got his understanding from a lawyer,
19 let's have a lawyer up here.

20 MS. MILLER: Your Honor, I object. This
21 is redirect based on his line of questioning.

22 EXAMINER PRICE: First of all --

23 MR. BOEHM: Yes, it is.

24 EXAMINER PRICE: Mr. Kurtz -- Mr. Boehm,

1 this is Mr. Kurtz's witness.

2 MR. BOEHM: Okay.

3 EXAMINER PRICE: Second, if Mr. Kurtz
4 wants to ask him a question on recross, he will have
5 the opportunity to.

6 MR. BOEHM: All right. Excuse me.

7 EXAMINER PRICE: Thank you.

8 Q. There was a conversation or some
9 discussion about the uncollectibles and whether they
10 were a deterrent to shopping. Can you clarify your
11 answer on that?

12 A. Yes. I misspoke in my answer originally
13 because all customers in our proposal pay the
14 uncollectibles. They would not, therefore, be a
15 shopping deterrent.

16 Q. And there was also some questioning
17 regarding SSO customers, and if the default
18 service -- excuse me, let me repeat that.

19 If the SSO default service option is not
20 favorable to customers, what other options do they
21 have?

22 A. As I testified to earlier, they could
23 look towards special contract type arrangements or
24 they could also shop.

1 Q. Okay. Just two more questions. We had
2 talked about delta revenue and why it was being
3 proposed for collection in this case. Why is it
4 appropriate to collect delta revenue in connection
5 with this case under the CRT rider?

6 A. The load that's being procured under
7 this -- under our proposal includes the load for the
8 special contracts, therefore, there is a cost for
9 them, generation cost, and therefore, it should be
10 recoverable under the CRT.

11 Q. Okay.

12 EXAMINER PRICE: Could I have that answer
13 reread back for me, please.

14 (Record read.)

15 EXAMINER PRICE: Thank you.

16 Q. Okay. My final question is you were
17 asked a long list of possibilities that could have
18 been included in your rate design, demand, type of
19 use, interruptibles. What effect would that have on
20 CRT rider?

21 A. If you introduced those, it would create
22 large swings potentially in the CRT rider.

23 Q. In the reconciliation mechanism?

24 A. Yes, just CRT.

1 MS. MILLER: Thank you. No further
2 questions.

3 EXAMINER PRICE: Mr. Weldele.

4 MR. WELDELE: No questions, your Honor.

5 EXAMINER PRICE: Mr. Yurik.

6 MR. YURICK: I have just a couple.

7 - - -

8 RECROSS-EXAMINATION

9 By Mr. Yurick:

10 Q. Sir, if you would look at your testimony
11 on page 6, line 10, you say "Rider CRT is an
12 unavoidable charge and is more fully described in
13 Exhibit C attached to the application, which also
14 includes the same calculation of rider CRT." Do you
15 see that?

16 A. Yes.

17 Q. So if you go to, and I did, Exhibit C,
18 page 3 of 4, footnote 3, I think defines delta
19 revenue that your counsel was just asking you about;
20 is that right?

21 A. Yes.

22 Q. "So revenue variance or delta revenue is
23 the difference in revenue from the application of
24 rates and the otherwise applicable rate schedule and

1 the application of the terms of an economic
2 development schedule," whatever and you have -- you
3 refer to them all, I think, generically as special
4 contracts; is that right? Economic development
5 schedule, energy efficiency schedule, reasonable
6 arrangement, government special contracts or unique
7 arrangement, you refer to all of those as special
8 contracts, right?

9 A. I think the last bracket is just for the
10 unique -- unique arrangement but --

11 Q. Well, but that's the definition of delta
12 revenue.

13 A. Yes.

14 Q. Okay. Is it possible that the company
15 would enter into a special arrangement because it
16 economically benefited the company?

17 A. Yes, it's possible.

18 Q. But your calculation delta revenue
19 doesn't make any kind of attempt to quantify that or
20 measure an economic development or credit the delta
21 revenue with any kinds of economic benefit, correct?

22 A. I think as this delta revenue is
23 calculated, it would be coming from contracts that
24 are reviewed by the Commision and I believe there

1 would be --

2 Q. That's not my question. My question
3 is --

4 MS. MILLER: Excuse me, your Honor, I
5 don't think the witness has finished his answer.

6 Q. Oh, I'm sorry. Did I cut you off? I
7 didn't mean to.

8 A. I was just saying that there's new
9 contracts and the Commission would have an
10 opportunity to review these and if they -- if there
11 was a tradeoff, they would have that -- if there was
12 a benefit of the company to requantify, I think they
13 could have potential to adjust the delta revenue.

14 Q. I'm sticking with my original comment.
15 That doesn't really answer -- my question is very
16 specific. There's no attempt in your definition of
17 delta revenue, footnote 3, Exhibit C, as you have
18 defined delta revenue to take that into
19 consideration.

20 A. The footnote is general, I would say
21 that. Nor is there anything specifically that would
22 exclude what you're talking about.

23 Q. Well, okay. So is it your testimony that
24 there is going -- there is some way in your

1 calculation of delta revenue to account for an
2 economic benefit to the company of a special
3 arrangement?

4 A. As new contracts are developed?

5 Q. In this rider.

6 A. And included in this rider.

7 Q. As delta revenue is defined here, is
8 there some calculation that you are making in delta
9 revenue on your exhibit or in your appendix or
10 elsewhere that shows me where you've made an attempt
11 to quantify and credit against your rider an economic
12 benefit to the company?

13 A. We have not quantified all the special
14 contracts extended, CEI ones or the new ones, so the
15 answer to your question is no, there's nothing that
16 would quantify that because we haven't really made
17 that calculation.

18 Q. Okay. But is there any attempt by you
19 that I'm not seeing mathematically to account for
20 that delta revenue?

21 A. In the delta revenue that I --

22 Q. Yes.

23 A. -- have not calculated?

24 Q. You don't know how you're going to

1 calculate delta revenue?

2 A. I think we have a responsibility to wait
3 for review from the Commission for the ultimate
4 calculation of delta revenue.

5 Q. I'm sorry, I thought you said in your
6 testimony that Exhibit C was a more full description
7 of this unavoidable charge CRT at page 6. And we had
8 a sample calculation.

9 A. That reference to the sample
10 calculation --

11 Q. Anywhere. Yeah, if you can show me
12 somewhere on a piece of paper where you've accounted
13 in your calculation, a sample calculation and/or
14 otherwise, of an economic benefit to the company of a
15 special arrangement, I'd like to see it, I guess.

16 MS. MILLER: Objection, your Honor.
17 Asked and answered.

18 EXAMINER PRICE: Well, I don't think
19 Mr. Yurik believes he has answered the question, so
20 overruled.

21 A. The way the delta revenue falls out in
22 the example calculation on table 1 attached to that,
23 there is no specific calculation of quantifying the
24 economic development that you're talking about.

1 Q. So in the delta revenue, and if you are
2 answering this question and I am just not getting it,
3 I do apologize, but in your calculation of delta
4 revenue, there is no attempt to account for an
5 economic benefit to the company of a special contract
6 or special arrangement?

7 A. In the sample calculation I have, that's
8 correct.

9 Q. Okay. In any other calculation that you
10 have done?

11 A. No. Correct.

12 MR. YURICK: I'm good. Thank you. I
13 have no further questions. Appreciate those.

14 EXAMINER PRICE: Mr. Lavanga.

15 - - -

16 RECROSS-EXAMINATION

17 By Mr. Lavanga:

18 Q. Mr. Norris, in response to the question
19 your attorney asked, you said that if you included
20 things like interruptible and time of use in the rate
21 design, then the result would be large swings in the
22 reconciliation rider; is that correct?

23 A. Yes.

24 Q. Would that still be the case if the -- if

1 the procurement was designed to purchase, say, a time
2 of use block instead of a flat rate or flat price --

3 A. If you started playing on both sides of
4 the equation --

5 Q. In other words, if you built more
6 variation into the products that you would obtain in
7 the auction.

8 A. Yes, but you still create a lot more
9 dynamics and variables that to me would lead to a
10 bigger swing in the CRT.

11 Q. So you would still expect to see large
12 swings?

13 A. Yes.

14 Q. And that's -- that's definite? You would
15 definitely see large swings, or is it just possible?

16 A. It's possible. And if I understood your
17 question it was if you tried to put say time of day
18 on the supplier's side of his procurement, if it
19 wasn't perfectly matched to how he was doing on the
20 rate design side, yes, it could create swings.

21 MR. LAVANGA: Okay. Thank you.

22 EXAMINER PRICE: Mr. Kurtz.

23 MR. KURTZ: A little bit, your Honor.

24 - - -

1 CROSS-EXAMINATION

2 By Mr. Kurtz:

3 Q. Did I understand from questions from your
4 counsel that there are some of these CRT costs that
5 cannot be recovered in distribution rates because
6 they are generation related? Is that what your -- is
7 that what your answer is, that some of the CRT costs
8 are generation related, therefore, cannot be
9 recovered in distribution rates?

10 A. Yes, that's correct.

11 Q. Okay. Which of the CRT costs cannot be
12 recovered in distribution rates?

13 A. It would say any that were generation
14 related.

15 Q. Which of the three components are
16 generation related? There used to be 1, 2, 3, 4;
17 now, there is 1, 3, 4.

18 A. I would think all three would be.

19 Q. Okay. So all three of those are
20 generation related?

21 A. Yes.

22 Q. Then let me ask you this basic question,
23 why shouldn't shoppers be able to avoid paying for
24 generation charges of the utility if they shop with

1 third parties?

2 A. It goes back to the premise that I've
3 shared several times.

4 Q. If the provider --

5 MS. MILLER: Objection, your Honor.

6 Q. What is your premise?

7 MS. MILLER: Objection, your Honor. I
8 think this is getting beyond recross or redirect.

9 EXAMINER PRICE: Overruled.

10 Q. If these are -- if the CRT costs are now
11 100 percent generation related, why should they not
12 be fully bypassable by a shopper?

13 A. Because --

14 MS. MILLER: Same objection, your Honor.

15 EXAMINER PRICE: Same ruling. Overruled.
16 You can answer the question.

17 A. They are costs that are part of the
18 competitive bid that's available to shopping
19 customers.

20 Q. So you are saying a shopping customer
21 should pay for generation twice, once from the
22 third-party supplier and these components of
23 generation costs through the CRT?

24 A. For different cost factors.

1 Q. The premise of my earlier questions were
2 that these were provider of last resort costs and,
3 therefore, distribution related, but I guess I was
4 wrong. These are generation related costs, they're
5 100 percent of the CRT; is that correct?

6 A. That's my understanding.

7 Q. If the wholesale procurement was done on
8 an on-peak, off-peak rather than a flat kilowatt hour
9 basis, which of the CRT components would be subject
10 to wide variation?

11 A. I'm not sure.

12 Q. How do you know any of that would be
13 subject to wide variation?

14 A. Are you referring back to the fact that I
15 indicated there could be wide swings?

16 Q. Yes.

17 A. That was under the conditions that we are
18 on a rate design side would introduce time of day or
19 any other kind of rate design but did not adjust the
20 competitive bid results from being the energy only.

21 Q. Let me repeat my question. If the
22 wholesale procurement is done on-peak/off-peak basis
23 rather than straight kilowatt hours, flat, which of
24 the CRT components would be subject to wide

1 fluctuation or variation as you indicated in your
2 redirect examination? There are three components of
3 the CRT, which would be subject to wide variation?

4 A. I think each of them could be.

5 Q. Okay. How would the competitive bidding
6 process expenses be subject to wide variation, item
7 No. 1?

8 A. If there was additional costs because of
9 trying to implement time of day.

10 Q. In other words, you think it would cost
11 the third-party competitor suppliers more to submit a
12 bid on-peak/off-peak basis and that would widely vary
13 the cost of bidding?

14 A. I'm just not sure.

15 Q. Okay. What about -- you're not sure
16 about any of the components?

17 A. What -- what I was trying to indicate was
18 that there would be wide swings in CRT factor that we
19 introduced, for example, time of day --

20 Q. Okay.

21 A. -- in a rate design.

22 Q. Are you done?

23 A. Yes.

24 Q. We went through the first CRT factor.

1 What about -- what of the other two remaining CRT
2 factors would be subject to wide variation? Take the
3 last one first, how would -- how would an
4 on-peak/off-peak wholesale procurement change the
5 delta revenue associated with special contracts or
6 economic development rates or energy efficiency?

7 A. If that was introduced by the utilities?

8 Q. I am trying to understand your testimony.
9 How would that component of the CRT be subject to
10 wide variation if the wholesale procurement was done
11 on an on-peak/off-peak basis?

12 A. I guess the real basic factor would be
13 the assumption is the competitive bid results would
14 not change. We would start with the energy price
15 results from the bid. That's what we had paid
16 suppliers. If on the rate design side we introduce
17 time of day or any other provisions, the revenue
18 stream would not be matching payment to suppliers.
19 And that's what I was trying to indicate creates
20 swings.

21 Q. You've designed seasonal rates, haven't
22 you? If you design the payment to suppliers to be --
23 to correspond with the payment from retail customers,
24 why would there be variation in either side of the

1 revenue equation?

2 A. If they were aligned equally on both
3 sides, there wouldn't be swings.

4 Q. Let's go to the third component of CRT,
5 uncollectible amounts, why would people tend to not
6 pay their bills to the utilities if the wholesale
7 procurement was done on one basis versus another?

8 A. I guess the only possibility there would
9 be if for some reason during certain periods the
10 implementation of what you are suggesting caused the
11 G component somehow to be higher because of a higher
12 level of uncollectibles for a period of time. That's
13 purely hypothetical.

14 Q. Let's talk about CEI special contract
15 just for a minute. The CEI special contracts where
16 you have a special cost recovery rider, those
17 contracts were extended in the RCP proceeding; is
18 that correct?

19 A. That's my understanding.

20 Q. The RCP was the result of a stipulation
21 approved by the Commission; is that correct?

22 MS. MILLER: Objection, your Honor. This
23 is beyond the scope.

24 EXAMINER PRICE: Sustained.

1 Q. Well, let me -- what is the -- what is
2 the basis, the rationale, the economic basis that you
3 have for recovering the difference between the
4 Commission-approved CEI contracts that were part of
5 the stipulation with CEI and market? Why is CEI
6 entitled to get that differential in light of the
7 fact that CEI agreed to extend those contracts?

8 A. That would be under the umbrella of the
9 fact that with regard to the CBP, we are allowed --
10 my understanding we are allowed to recover
11 100 percent of our costs, which as I stated we --
12 those contracts and their load is included in the
13 procurement, so we're paying the market price for
14 those.

15 Q. When CEI agreed to extend those contracts
16 to the end of 2010, didn't CEI get compensation or --
17 or consideration for that agreement as part of the
18 RCP settlement?

19 MS. MILLER: Objection, your Honor.
20 Beyond the scope.

21 EXAMINER PRICE: Grounds?

22 MS. MILLER: It's beyond the scope.

23 EXAMINER PRICE: Could you be a little
24 more specific why you think this is beyond the scope

1 of what you've asked?

2 MS. MILLER: The negotiation of how those
3 original CEI contracts came into place was not part
4 of my redirect. It was questions relating to whether
5 or not the delta revenue should be in the CRT. I can
6 understand that. Going beyond that and evaluating
7 the nature of how those contracts came about and how
8 those negotiations were done is beyond the scope, I
9 believe.

10 EXAMINER PRICE: Mr. Kurtz.

11 MR. KURTZ: Well, I was getting at --
12 beyond the mechanics. I was getting at the
13 rationale, the ratemaking rationale, the equities of
14 essentially compensating CEI twice. That whatever
15 they got for agreeing to this contract extension to
16 2010 as part of the RCP settlement, fuel deferrals
17 and so forth, was contained within that agreement.
18 And, now, to say we want delta revenue is effectively
19 either a renegotiation of the RCP or double recovery,
20 so I wanted to get the ratemaking rationale from this
21 witness. Now, if that's beyond the scope of his
22 testimony, I can understand.

23 EXAMINER PRICE: I think the question is
24 whether it's beyond the scope of her cross -- of her

1 redirect, and I don't agree with her, so the
2 objection is overruled.

3 Q. What is the ratemaking rationale to why
4 CEI should get the delta revenue with respect to
5 special contracts?

6 A. As I stated, we are entitled to 100 --
7 it's my understanding we were entitled to 100 percent
8 of our costs that are created by having the RCP in
9 place.

10 ATTORNEY EXAMINER: Can you explain where
11 you got that understanding from?

12 THE WITNESS: Advice of legal counsel.

13 Q. Isn't it also your understanding that the
14 contractual commitments that the utility entered into
15 should be or have to be honored?

16 A. Contractual agreement?

17 Q. Yeah, the 2010 contracts that we are
18 talking about.

19 A. Yes.

20 MR. KURTZ: That's it, your Honor. Thank
21 you.

22 EXAMINER PRICE: Thank you.

23 Marketers.

24 MR. SETTINERI: No questions, your Honor.

1 EXAMINER PRICE: Ms. McAlister.

2 MS. MCALISTER: No questions, your Honor.

3 EXAMINER PRICE: Mr. Rinebolt.

4 MR. RINEBOLT: No. Thank you, your
5 Honor. Appreciate it.

6 EXAMINER PRICE: Mr. Royer.

7 MR. ROYER: Yeah. Just a couple to make
8 sure I understood your answer on redirect.

9 - - -

10 RECROSS-EXAMINATION

11 By Mr. Royer:

12 Q. You said that -- did you say that
13 uncollectibles -- inclusion of uncollectibles in the
14 CRT was not a shopping deterrent because everybody
15 had to pay them?

16 A. Because all customers under our proposal
17 would pay it.

18 Q. Do you think that shopping customers pay
19 rates that reflect or recognize in some way the
20 marketers' uncollectible experience?

21 A. I'm not familiar with what they pay.

22 Q. Let me give you a hypothetical then. If
23 marketers have to build into their offers some
24 allowance for their bad debt expense and if shopping

1 customers pay for that and if they also pay for the
2 uncollectible expense under the standard service
3 offer, don't you think that's a deterrent to
4 shopping?

5 A. The component that they pay to the
6 operating companies I can say is not a deterrent to
7 shopping.

8 Q. Well, do SSO customers have to pay a rate
9 that reflects the cost of the bad debt incurred by
10 marketers or what they pay -- for what the services
11 they supply to their customers in terms of the bad
12 debt expense?

13 A. No.

14 Q. Now, then you also -- I am not sure I
15 understand this. There was a question from counsel
16 that said -- that asked you if -- if the operating
17 companies were, and I may have got this wrong, but
18 the operating companies could not refuse service to a
19 customer because of poor credit; is that your -- was
20 that your testimony?

21 A. Could not refuse service, yes.

22 Q. Okay. Well, let's run through that.
23 Okay. So, now, the operating companies do have
24 credit requirements, right, security deposit and

1 things of that nature?

2 A. Yes.

3 Q. Okay. And the operating -- are you
4 saying that if the operating companies disconnect the
5 customer for nonpayment and that customer turns
6 around the next day, doesn't make good on his
7 arrearage, that the operating company has to hook him
8 up?

9 A. No, I am not saying that.

10 Q. So then I don't understand your answer.
11 What's the point of the answer?

12 A. That the operating companies have more
13 responsibility to take customers back.

14 Q. Do they have a responsibility to take
15 back the customer that owes them money?

16 A. Yes.

17 Q. Under what circumstances?

18 A. Under what circumstances?

19 Q. Yeah.

20 A. Do they take them back?

21 Q. Yeah.

22 A. I'm not sure of all the details.

23 Q. Well, what's the source of that -- what's
24 the source of that requirement?

1 A. I mean, as long as customers meet certain
2 conditions, I am not sure what all they are, but the
3 operating company would have to take them.

4 Q. If they -- if they made good on their
5 bad -- made good on their arrearage, right? You are
6 not required to take back a customer that owes you
7 money unless they make good on it, right?

8 A. I am not real sure about that.

9 Q. So you don't know if that answer was
10 correct or not; in other words?

11 A. I know that the operating company has a
12 responsibility to take them back?

13 Q. But you don't know the source of that
14 responsibility, correct?

15 A. Correct.

16 Q. All right. And then there was one other
17 question regarding options. I can't remember exactly
18 but options that were available to -- to customers
19 besides -- or in addition to a competitive supplier,
20 correct?

21 A. Yes.

22 Q. And you mentioned special contracts, for
23 example, as being an option if they didn't like the
24 SSO service, they could get a special contract?

1 A. Right.

2 Q. Okay. And do you have lots of
3 residential special contracts out there?

4 A. No.

5 MR. ROYER: All right. That's all I
6 have.

7 EXAMINER PRICE: Mr. Porter.

8 MR. PORTER: No questions.

9 EXAMINER PRICE: Mr. Small.

10 MR. SMALL: Thank you, your Honor.

11 - - -

12 RECROSS-EXAMINATION

13 By Mr. Small:

14 Q. Mr. Norris, in answer to the questions by
15 your own counsel and I think later on Mr. Kurtz for
16 OEG, I heard potentially wide swings and could be
17 wide swings. What's the empirical basis for your
18 response that there could be swings in the CRT?

19 A. That the price that we end up charging
20 the customers doesn't match up with the costs that we
21 pay the supplier.

22 Q. By empirical basis, have you conducted
23 any studies or is this just a qualitative I think on
24 the stand?

1 A. It just seems like a reasonable
2 conclusion. If the prices don't match, the revenue
3 coming in doesn't match the costs going out, there
4 would be swings that you would have to make up for.

5 Q. Okay. Well, that seems to be a
6 qualitative analysis or maybe the direction that it
7 would go, but you don't have any empirical --
8 empirical studies or support for, you know, the width
9 of it. You said wide swings, how wide is wide? Do
10 you have any empirical studies or support for your
11 statement?

12 A. No, I do not.

13 Q. And one of the reasons for that, wouldn't
14 you agree, is you don't know what to compare it with?
15 You don't know what alternative set of rates that you
16 would compare it with? You need a basis of
17 comparison of what the company is proposing now with
18 something else, right?

19 A. I guess the reason I don't have anything
20 is I just -- I haven't done anything but, yes, you
21 would need to have both sides of the equation.

22 MR. SMALL: No further questions, your
23 Honor.

24 EXAMINER PRICE: Thank you.

1 Mr. Jones.

2 MR. JONES: No questions, your Honor.

3 EXAMINER PRICE: I have no questions.

4 You are excused.

5 EXAMINER PRICE: Ms. Miller.

6 MS. MILLER: Your Honor, at this time I
7 would like to admit into evidence Company Exhibit 2
8 and Company Exhibit 5.

9 EXAMINER PRICE: Any objection to the
10 admission of Company Exhibits 2 and 5?

11 Hearing none, those exhibits will be
12 admitted.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 EXAMINER PRICE: We will resume tomorrow
15 morning with the staff witnesses at 10 o'clock.

16 Mr. Jones.

17 MR. JONES: Yes, your Honor. I do have
18 an order of our witnesses tomorrow and that would be
19 Mr. Buckley would be first, Mr. Strom would be
20 second, Mr. Shields would be third, and Mr. Fortney
21 will be our last witness.

22 EXAMINER PRICE: Thank you very much.

23 MR. JONES: Thank you.

24 MR. WRIGHT: Excuse me, your Honor. Did

1 you say 10 o'clock?

2 EXAMINER PRICE: I said 10 o'clock. Does
3 anybody object to 10 o'clock?

4 MR. WRIGHT: No. I just wanted to make
5 sure.

6 MR. WHITT: One of you said 9 and one
7 said 10, I think.

8 EXAMINER PRICE: I am saying 10. Does
9 anybody object to 10?

10 MR. WHITT: 10, 10 it is.

11 EXAMINER PRICE: 10:00 it is.

12 (At 5 p.m., the hearing was adjourned.)

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CERTIFICATE

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I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Tuesday, September 16,
2008, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-4977)

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Case No(s). 08-0936-EL-SSO

Summary: Transcript First Energy - VOL I from 9/16/08 electronically filed by Mrs. Jennifer D. Duffer on behalf of Armstrong & Okey, Inc.