

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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3 In the Matter of the :  
 Application of Ohio Edison:  
 4 Company, The Cleveland :  
 Electric Illuminating :  
 5 Company, and The Toledo :  
 Edison Company for :  
 6 Approval of a Market Rate : Case No. 08-936-EL-SSO  
 Offer to Conduct a :  
 7 Competitive Bidding :  
 Process for Standard :  
 8 Service Offer Electric :  
 Generation Supply, :  
 9 Accounting Modifications :  
 Associated with :  
 10 Reconciliation Mechanism :  
 and Tariffs for Generation:  
 11 Service. :

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PROCEEDINGS

13

14 before Ms. Christine Pirik and Mr. Gregory Price,  
 15 Attorney Examiners, at the Public Utilities  
 16 Commission of Ohio, 180 East Broad Street, Room 11-C,  
 17 Columbus, Ohio, called at 10:00 a.m. on Wednesday,  
 18 September 17, 2008.

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VOLUME II

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1 Wednesday Morning Session,  
2 September 17, 2008.

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4 EXAMINER PIRIK: We will go on the  
5 record.

6 Are there any parties, counsel present  
7 who did not make an appearance yesterday who need to  
8 make an appearance today?

9 MR. BREITSCHWERDT: Yes, your Honor.

10 My name is Brett Breitschwerdt. I am  
11 making an appearance on behalf of NOPEK and Ohio  
12 Schools Council, Bricker & Eckler, 100 South Third  
13 Street, Columbus, Ohio 43215. I would also like to  
14 make an appearance on behalf of Glenn Krassen of the  
15 same firm on behalf of NOPEK and Ohio Schools Council  
16 as well.

17 EXAMINER PIRIK: Thank you.

18 MR. BREITSCHWERDT: You're welcome.

19 MR. SMALL: Your Honor, I expect to be  
20 joined by Jacqueline Lake Roberts for OCC.

21 EXAMINER PIRIK: Thank you.

22 I believe -- I think we had one item with  
23 regard to Witness Courtney.

24 MR. PORTER: Yes, based upon our

1 discussions -- Andre Porter -- with the company and  
2 the additional intervenors, John Courtney will not be  
3 present for testimony, and the City of Cleveland will  
4 stipulate their written testimony into the record  
5 during tomorrow's hearing.

6 EXAMINER PIRIK: And I believe the  
7 parties are all in agreement with that?

8 MR. BURK: Yes, your Honor.

9 MR. JONES: Yes, your Honor.

10 EXAMINER PIRIK: Hearing no objection,  
11 that's how we will move forward.

12 I believe now we are on to staff  
13 witnesses.

14 MR. JONES: Yes, your Honor. Before we  
15 get started I wanted to put something on the record  
16 here. First of all, I want to give everybody notice  
17 that staff will not be calling Dan Shields today and  
18 we are withdrawing his testimony and we would -- we  
19 will be filing a letter to be filed with docketing  
20 reflecting the withdrawal of that testimony. So  
21 that's one change.

22 Another change is this morning we filed  
23 an amendment to the testimony of Joe Buckley. It  
24 doesn't change any -- any material in his testimony

1 but there's a slight change and that's reflected in  
2 the amended testimony that was filed this morning and  
3 that was distributed to all of the parties.

4 So with that then I would call Joe  
5 Buckley to the stand.

6 (Witness sworn.)

7 EXAMINER PIRIK: Please state your name  
8 for the record.

9 THE WITNESS: Joseph Buckley.

10 EXAMINER PIRIK: You may be seated.

11 Mr. Jones.

12 MR. JONES: Thank you, your Honor.

13 - - -

14 JOSEPH P. BUCKLEY

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

17 DIRECT EXAMINATION

18 By Mr. Jones:

19 Q. Could you please state your name for the  
20 record, please.

21 A. Joseph Buckley.

22 Q. And where are you employed?

23 A. By the Public Utilities Commission of  
24 Ohio.

1 Q. And what is your position?

2 A. I am utilities specialist 3.

3 Q. And what are your responsibilities and  
4 duties in that position?

5 A. I mainly look at financial impacts of  
6 things that happen in the utility sector in Ohio.

7 Q. Have you had an opportunity to review the  
8 application by FirstEnergy for this case proceeding?

9 A. I have.

10 Q. Okay. And do you have a document that's  
11 before you that's marked Staff Exhibit 1?

12 A. Yes.

13 Q. Would you -- would you mark 1 on your  
14 exhibit -- your testimony that was filed  
15 September 15, 2008 in this case docket. Do you have  
16 that before you?

17 A. Yes.

18 Q. Could you please identify that document  
19 for the record, please.

20 A. That's my prefiled testimony.

21 Q. And also do you have another document  
22 before you that is the prefiled testimony of Joe  
23 Buckley that's an amendment?

24 A. I do.

1 Q. Okay. And that is Staff Exhibit 1A?

2 A. Correct.

3 Q. Okay. Now, first, going back to Staff  
4 Exhibit 1, if I were to ask do you have any changes  
5 or -- to make to Staff Exhibit 1?

6 A. I do.

7 Q. Okay. And are the changes that you are  
8 making to Staff Exhibit 1, are they contained in  
9 Staff Exhibit 1A?

10 A. Yes.

11 Q. Okay. And could you please tell us  
12 what -- what the changes are.

13 A. Yeah. The question and answer No. 5, the  
14 answer to that question has been modified.

15 Q. You are referring to Staff Exhibit 1 as  
16 to question 5, the answer being changed?

17 A. Correct.

18 Q. Okay. And please tell us what that  
19 change is.

20 A. It says, "Based upon comments received in  
21 the current rulemaking case that would create new OAC  
22 Chapter 4901:1-37, Staff believes that an updated  
23 corporate separation plan should be filed to comport  
24 with the new rules. Staff also believes that, once

1 the updated corporate separation plan is approved,  
2 the electric utility shall file the plan in its TRF  
3 docket and maintain a current docket" -- "version of  
4 its approved plan in that docket. Staff believes the  
5 policy and financial impacts of the CSP are  
6 substantial and requiring a separate filing should  
7 allow interested parties easy access to the plan and  
8 subsequent updates."

9 Q. Okay. Now, that testimony you read from  
10 Staff Exhibit 1A, now, that replaces the answer that  
11 you provided in Staff Exhibit 1, question 5A?

12 A. Yes, it does.

13 Q. Do you have any other changes for Staff  
14 Exhibit 1?

15 A. I don't.

16 Q. Now, if I were to ask you these questions  
17 as are provided here in Staff Exhibit 1 and 1A, would  
18 your answers be the same?

19 A. They would.

20 MR. JONES: Your Honor, at this time I  
21 would offer the witness for cross.

22 EXAMINER PIRIK: Thank you.

23 OCC.

24 MR. SMALL: Thank you, your Honor.

1 CROSS-EXAMINATION

2 By Mr. Small:

3 Q. Mr. Buckley, Jeff Small, OCC. I have a  
4 question concerning the question and answer 6 in your  
5 prepared testimony. On the top of what was  
6 originally page 4, Staff Exhibit 1, staff -- it  
7 states "Staff feels the CSP should be audited by an  
8 independent auditing firm," and so forth. Do you see  
9 that?

10 A. I do.

11 Q. What do you see as the stakeholder  
12 involvement in -- accompanying this proposal that the  
13 CSP filed and audited?

14 A. I would -- when I originally thought  
15 about it, it would be an audit, and they could  
16 comment on the audit after the audit report is  
17 produced.

18 Q. Okay. Let's go back a step.

19 A. I can -- I am having trouble hearing you  
20 from that. Sorry.

21 Q. I understand. It's an old issue at the  
22 Commission so I understand that.

23 Let's go back a step. Your testimony --  
24 revised testimony question and answer 5 talks about

1 filing the -- the company filing its CSP with  
2 docketing; is that correct?

3 A. Correct.

4 Q. And as far as the audit that you suggest  
5 in response to question 6, would that audit also be  
6 filed and available to the public?

7 A. The audit findings?

8 Q. The audit, the entire audit.

9 A. I guess I hadn't really contemplated the  
10 workpapers in all those things in the audit. I  
11 simply haven't thought about it yet to be honest.

12 Q. I guess I was referring to you would  
13 contemplate after the auditors of -- completed their  
14 work, they would prepare a final report, right?

15 A. Yeah, an audit report, correct.

16 Q. That's what I meant. Do you contemplate  
17 or recommend that that be filed in the -- for public  
18 inspection?

19 A. Again, I probably haven't thought it  
20 through the whole -- the whole process, but I would  
21 guess that would be made public at some point, yes, a  
22 final report.

23 Q. Well, I am asking if that's what you --  
24 what you recommend. I'm not asking for your

1 understanding of Commission procedures. I am asking  
2 whether you believe it's recommended procedure,  
3 whether it's recommended that that be available to  
4 the public.

5 A. I think it would be a good idea, yes.

6 Q. Okay. Now, for the next step, which I  
7 probably started with inadvertently, what do you see  
8 happening as -- as a stakeholder process, for  
9 instance, let's say a stakeholder had a comment on  
10 the -- on the audit report or the contents of it, how  
11 do you see that as transpiring?

12 A. Part -- part of the difficulty in dealing  
13 with this is there would be -- portions of the  
14 workpapers and the things that go into the audit  
15 report would probably be confidential. The  
16 stakeholders I would like to see have a -- a say in  
17 what -- what's going on with the process and how --  
18 what might be done to fix the problems that the audit  
19 found. I would like it -- you know, them to  
20 definitely be involved in that. How we get through  
21 the confidential information would be the difficulty,  
22 and I guess I haven't thought through how that would  
23 work. I was hoping that the parties would -- at the  
24 time of the audit report would probably have to

1 request clarification from the Commission on how that  
2 would work. But I would definitely like the parties  
3 to be able to respond to the audit and talk about  
4 solutions to any problems that there might be.

5 Q. Are you aware of the process that has  
6 gone on for the last couple of years at least  
7 concerning Duke Energy's rate stabilization plan  
8 whereby their fuel procurement practices, and I am  
9 not sure if you are an aficionado of the alphabet of  
10 Duke Energy but the FFP and SRT proceedings at the  
11 Commission? Are you familiar with those proceedings?

12 A. I know that they are going on. I don't  
13 know the details of them.

14 Q. Are you aware they involve audits of the  
15 companies' operations?

16 A. I am.

17 Q. And you are aware there are proceedings  
18 that surround those audit reports, in other words,  
19 there is a setting of rates and there's the audit  
20 report that is part of the proceeding?

21 A. That would probably be the extent of my  
22 knowledge.

23 Q. Okay. And, well, let's test your  
24 knowledge a little bit more. There are confidential

1 portions of those -- of those reports as well; is  
2 that your understanding?

3 A. I would assume there would be, but I  
4 don't know that.

5 Q. Okay. So this -- this procedure of  
6 commenting and making the audit report part of a  
7 proceeding, the Commission -- there is a procedure  
8 that takes place at the Commission. That's a known  
9 process at the Commission.

10 A. Yes.

11 Q. Is there any reason why that couldn't be  
12 followed with the audit report you suggest in answer  
13 6?

14 A. Without looking at it first, I wouldn't  
15 want to comment on it, but I -- if that is a good  
16 model that can be used, yeah. I mean, I wouldn't  
17 want to recreate a new one if that could be adopted,  
18 but I haven't seen that model, so I don't really want  
19 to say right now, yes, that would be what we would  
20 use, but it definitely could be.

21 Q. Okay. So just as a summary, the staff  
22 recommendation -- your recommendations don't rule out  
23 there would be a proceeding or some opportunity to  
24 comment on the audit report that you discuss in

1 answer to question 6?

2 A. No, that would definitely be the plan,  
3 yes.

4 MR. SMALL: Thank you very much.

5 EXAMINER PIRIK: Mr. Porter.

6 MR. PORTER: No questions.

7 EXAMINER PIRIK: Ms. McAlister.

8 MS. McALISTER: No questions.

9 EXAMINER PIRIK: NOPEK.

10 MR. BREITSCHWERDT: No questions.

11 EXAMINER PIRIK: Marketers.

12 MR. PETRICOFF: No questions, your Honor.

13 MR. BOEHM: No questions.

14 MR. LAVANGA: No questions.

15 MR. YURICK: No questions.

16 EXAMINER PIRIK: Then we are to the  
17 company.

18 Mr. Kutik.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Kutik:

22 Q. Mr. Buckley, you are not suggesting, are  
23 you, that the -- the MRO application that's pending  
24 in this case should be delayed or any action on it

1 should be delayed until after the corporate  
2 separation rules are amended and complied with?

3 A. No.

4 MR. KUTIK: No further questions.

5 EXAMINER PIRIK: Mr. Jones, redirect?

6 MR. JONES: Your Honor, staff has no  
7 redirect, and at this time we would move for the  
8 admission of Staff Exhibits 1 and 1A.

9 EXAMINER PIRIK: Are there any  
10 objections?

11 Any objections?

12 MR. KUTIK: No objections.

13 EXAMINER PIRIK: Staff Exhibits 1 and 1A  
14 will be admitted into the record.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 EXAMINER PIRIK: Thank you, Mr. Buckley.

17 Staff can call their next witness.

18 MR. JONES: Thank you, your Honor. At  
19 this time the staff would call Raymond Strom to the  
20 stand.

21 (Witness sworn.)

22 EXAMINER PIRIK: Thank you. You may be  
23 seated.

24 - - -

1 RAYMOND W. STROM

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

4 DIRECT EXAMINATION

5 By Mr. Jones:

6 Q. Could you please state your name for the  
7 record, please.

8 A. Raymond W. Strom.

9 Q. And where are you employed?

10 A. The Public Utilities Commission of Ohio.

11 Q. And what is your job title?

12 A. Public utility administrator 2.

13 Q. And what are your job duties and  
14 responsibilities?

15 A. Goodness, I have several different areas  
16 that I'm involved in; facilities, siting,  
17 environmental analysis division is where I work, and  
18 I am involved in power siting activities, involved in  
19 biomass activities, involved in various rate  
20 activities associated with fuel costs, associated  
21 with bidding processes, and things of that nature.

22 Q. Have you had an opportunity to review the  
23 application for the MRO from this case filed on  
24 behalf of FirstEnergy?

1 A. Yes, I have.

2 Q. And do you have a document that's before  
3 you that's marked as Staff Exhibit 2?

4 A. Yes, I do.

5 Q. Could you please identify that document  
6 for the record, please.

7 A. Yes. It's my prefiled testimony in this  
8 case.

9 Q. Do you have any changes to make to that  
10 document, to that exhibit?

11 A. No, I do not.

12 Q. If I were to ask those same questions  
13 that are contained in Staff Exhibit 2, would your  
14 answers be the same?

15 A. Yes.

16 Q. Are your answers accurate to the best of  
17 your knowledge?

18 A. Yes.

19 MR. JONES: At this time, your Honor, I  
20 would offer Mr. Strom for cross-examination.

21 EXAMINER PIRIK: Okay.

22 Mr. Small.

23 MR. SMALL: Thank you, your Honor.

24 - - -

## CROSS-EXAMINATION

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By Mr. Small:

Q. Mr. Strom, Jeff Small, OCC again.

A. Good morning.

Q. Would you please direct your attention to page 3 of your prefiled testimony, and I am looking at question and answer No. 7. And there you discuss changes to the FirstEnergy MRO and you do so in the context of rules that were discussed at a Commission meeting September 10, 2008; is that correct?

A. That's correct.

Q. Now, your final statement is, "If these items become requirements by order of the Commission," and then you make a recommendation that the companies supplement their application. My question, regardless of whether the Commission rules are passed at any particular time and their content, do you consider the items that you discuss in answer 7, time-differentiated and dynamic retail pricing and participation in day-ahead real-time balancing markets, a good policy as far as FirstEnergy's MRO?

A. I am not really taking a position on whether it's good policy. I am just taking a position that if the Commission were to include these

1 items in the rules as items that the company should  
2 discuss and should evaluate, then the company would  
3 have to comply with that.

4 Q. So your testimony is that you observed  
5 that there are requirements that are not met that --  
6 requirements in the proposed rules that are not met  
7 by the MRO proposal by FirstEnergy; is that correct?

8 A. Could I have that --

9 Q. Would you like that reread?

10 A. Either restated or reread.

11 MR. SMALL: Could we have it reread,  
12 please.

13 (Record read.)

14 A. There are requirements that may not be  
15 met, depending on what the final rules look like.

16 Q. Okay. I hope it was clear but let's try  
17 it again.

18 A. Okay.

19 Q. There are things in the proposed rules --  
20 are you saying that in answer to question 7 that the  
21 Commission at the September 10, 2008, public meeting  
22 proposed changes to the proposed rules?

23 A. That's one of the things that they were  
24 discussing at that meeting were possible changes to

1 the rules, to the proposed rules.

2 Q. And your testimony is that however those  
3 rules come out, if they contain provisions concerning  
4 these matters, in your answer 7, they should be --  
5 the MRO should be adjusted as soon as they become  
6 effective rules; is that the testimony?

7 A. I'm not sure about as soon as they become  
8 effective. It may take some time for the company  
9 to -- to comply with them. I don't know to what  
10 extent these things have been considered and  
11 evaluated by the company but in a reasonably  
12 expeditious fashion.

13 MR. SMALL: Thank you very much.

14 EXAMINER PIRIK: Mr. Porter.

15 MR. PORTER: No questions.

16 EXAMINER PIRIK: Ms. McAlister.

17 MS. McALISTER: No questions.

18 EXAMINER PIRIK: NOPEK.

19 MR. BREITSCHWERDT: No questions.

20 EXAMINER PIRIK: Marketers.

21 MR. PETRICOFF: Yes, your Honor.

22 - - -

23

24

1 CROSS-EXAMINATION

2 By Mr. Petricoff:

3 Q. Good morning.

4 A. Good morning.

5 Q. Following up on questions from Consumers'  
6 Counsel. Do you have at this point a timeline in  
7 which you would see the rules would be improved? Do  
8 you anticipate the rules would be improved in  
9 December or January or February?

10 A. I don't know. They were on the agenda  
11 for discussion last week. They could be approved  
12 today. It could be next week. That's not something  
13 under my control. I really don't know.

14 Q. When you say approve them, you are saying  
15 issued by the Public Utilities Commission as opposed  
16 to approved by the Joint Committee on Agency Rules?

17 A. Yes, yes, I meant issued by the  
18 Commission.

19 Q. Do you anticipate then that the company  
20 should respond to these changes, if any, to comply  
21 with the rules prior to the approval by the Joint  
22 Committee on Agency Rules?

23 A. I don't know that I have an opinion on  
24 that because it sounds more like a legal question. I

1 am not sure when rules technically become effective.  
2 I don't know that I am qualified to answer that  
3 question.

4 MR. PETRICOFF: I have no further  
5 questions. Thank you, your Honor.

6 EXAMINER PIRIK: OEG?

7 Nucor?

8 MR. LAVANGA: No questions, your Honor.

9 MR. YURICK: No questions, your Honor.

10 EXAMINER PIRIK: Mr. Whitt.

11 MR. WHITT: Thank you.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Whitt:

15 Q. Mr. Strom, I want to follow up on  
16 discussions you just had with Mr. Petricoff about the  
17 rulemaking process. And you've been with the  
18 Commission 20 plus years; is that right?

19 A. That's correct.

20 Q. And I am assuming during that period of  
21 time you've been involved in many rulemakings?

22 A. Several. I'm not sure about many, but I  
23 can think of at least three.

24 Q. This isn't the first time.

1 A. No.

2 Q. And is it typically the case that in a  
3 rulemaking -- the rulemaking process starts by the  
4 Commission issuing an entry circulating proposed  
5 rules that have been developed by staff?

6 A. Yes. The ones that I have been involved  
7 in, that's the way it has happened.

8 Q. And it's also the case, isn't it, that  
9 the Commission will typically then solicit comments  
10 from parties interested in the rules as they did in  
11 this case?

12 A. Yes.

13 Q. Would you agree with me that the  
14 Commission carefully considers comments that are  
15 submitted in rulemakings?

16 A. Yes.

17 Q. Would you also agree with me that it  
18 would be unusual for the Commission to issue final  
19 rules that were the same as rules initially proposed  
20 by staff?

21 A. Staff is not that good. Yes, I believe  
22 it's common.

23 Q. Is it also your understanding that once  
24 the Commission issues a final order on rules, that

1 the Commission's order is subject to applications for  
2 rehearing?

3 A. I believe so, but --

4 MR. JONES: I would have to object, I  
5 guess. Maybe this is getting into a legal opinion  
6 here as to law.

7 EXAMINER PIRIK: I think to the extent  
8 that you understand the process that the Commission  
9 goes through, but if you feel it's going into a legal  
10 realm, the process is what it is and the statute will  
11 speak for itself.

12 A. Okay. I think that's been the practice  
13 in the ones I have been involved in. Whether or not  
14 it's necessary or not, I don't know.

15 Q. Mr. Strom, were you involved in the  
16 rulemaking process that led to the development of  
17 competitive bid rules as they exist today, in other  
18 words, the rules that are being amended in the 08-877  
19 case?

20 A. Yes.

21 Q. And it's the case, is it not, that in the  
22 prior rulemaking there were, in fact, applications  
23 for rehearing filed in that docket; if you remember?

24 A. I don't recall.

1 Q. And do you recall that in the prior  
2 rulemaking proceeding that, in fact, the final order  
3 was appealed to the Ohio Supreme Court?

4 A. I don't recall that either. I'm sorry.

5 Q. Is it your understanding, or would you  
6 agree with me, subject to check, would you agree that  
7 there was a period of approximately five and a half  
8 to six months between the Commission's issuance of  
9 the final order in the prior rulemaking and the  
10 effective date of the rules because of the appeal  
11 process?

12 A. Would I agree subject to check; is that  
13 the question?

14 Q. Yes.

15 A. I can do that.

16 Q. Whether --

17 EXAMINER PRICE: Mr. Strom, you left me  
18 confused, I'm sorry. Are you agreeing to check, or  
19 you are agreeing subject to check?

20 THE WITNESS: I am agreeing subject to  
21 check.

22 EXAMINER PIRIK: Thank you.

23 THE WITNESS: I am hopeful my lawyers can  
24 do the checking for me.

1 Q. We could look at the Commission's docket  
2 and look at the rules to determine that information,  
3 correct?

4 A. I believe so.

5 Q. And regardless of whether there are any  
6 applications for rehearing or any appeals, the final  
7 order adopting rules, you understand that the rules  
8 are then subject to review by the Joint Committee on  
9 Agency Rule Review or JCARR?

10 A. Yes.

11 Q. And would you agree with me that the  
12 earliest rules can become in effect once they have  
13 been submitted on the JCARR is on the 76th day?

14 MR. JONES: I would have to object again.  
15 Speculative, legal in nature.

16 EXAMINER PIRIK: Sustained.

17 Q. You understand there is at least some  
18 period of time the rules have to go through the JCARR  
19 process?

20 MR. JONES: Objection, same grounds.

21 EXAMINER PIRIK: I will let him answer  
22 the question, if he is aware there is a JCARR  
23 process.

24 A. I am aware there is a JCARR process. I

1 am also aware that there is some emergency process  
2 too, but I don't know anything about how that  
3 operates or if it would be applicable here.

4 Q. Is it your understanding or you would --  
5 would you agree with me that under the provisions of  
6 Senate Bill 221 that allow for or provide for the  
7 filing of an MRO application that the legislation  
8 contemplates or authorizes the filing of an MRO  
9 application before Commission rules are in effect for  
10 such applications?

11 MR. JONES: I'll object again. I think  
12 that calls for a legal opinion.

13 EXAMINER PIRIK: I'll overrule. If he is  
14 aware of what the process is, he can answer the  
15 question. But he does not have to give a legal  
16 opinion on that.

17 A. I believe I have read the language in the  
18 statute that says something to that effect.

19 Q. And -- so you would agree an MRO  
20 application may be filed before there are Commission  
21 rules governing such an application?

22 A. I believe so.

23 Q. And to the extent the Commission  
24 subsequently issues rules, is it your understanding

1 that a utility has to conform in its application to  
2 the rules if directed by the Commission?

3 A. Yes.

4 Q. We can agree, can't we, there are no  
5 Commission rules in effect today that govern an MRO  
6 application?

7 MR. SMALL: Your Honor, I object to the  
8 question. I think it calls for a legal conclusion.

9 MR. JONES: I would object on that  
10 grounds too.

11 EXAMINER PIRIK: Mr. Small, you need to  
12 speak into the microphone.

13 MR. SMALL: I object. It calls for a  
14 legal conclusion.

15 MR. JONES: I would object too on the  
16 same grounds.

17 EXAMINER PIRIK: Objection overruled.

18 THE WITNESS: Could I have the question  
19 reread or restated?

20 MR. WHITT: Could you read it.

21 (Record read.)

22 A. I think that would be correct. I am  
23 hesitating because I don't -- I am trying to rethink  
24 the existing rules and whether they would apply in

1 this instance, and I don't really know the answer to  
2 that question.

3 Q. Can we agree that the Commission has not  
4 issued a final order approving any MRO rules as of  
5 today?

6 MR. JONES: Objection, legal opinion.

7 EXAMINER PIRIK: Objection sustained.

8 MR. WHITT: If I may clarify the  
9 question, I didn't ask him anything about rules being  
10 in effect. I asked if the Commission has issued a  
11 final order approving any rules.

12 EXAMINER PIRIK: I understand. I think  
13 you are really pushing the witness, Mr. Whitt, and I  
14 am allowing you to go so far, and then when the  
15 witness answers the question, I am going to stop you  
16 moving forward so continue with your questions.

17 Q. Mr. Strom, you are not suggesting, are  
18 you, that the Commission's review of the FirstEnergy  
19 company's pending MRO application should be delayed  
20 pending issuance of any Commission rules, are you?

21 A. No, I am not suggesting we should delay  
22 the review. I think we are going through part of the  
23 process right now. There may be additional review  
24 necessary once the rules are issued and the company

1 does whatever is necessary to comply with the final  
2 issued rules.

3 Q. And sitting here today, none of us know  
4 when the final rules would be issued; would that be  
5 fair?

6 A. I think it's fair to say. I don't know.  
7 I don't know if somebody else knows.

8 MR. WHITT: Thank you, Mr. Strom.

9 EXAMINER PIRIK: Mr. Jones, redirect?

10 MR. JONES: Your Honor, if I could just  
11 have a minute to confer.

12 EXAMINER PIRIK: Yes.

13 Mr. Jones.

14 MR. JONES: Thank you, your Honor.

15 Staff would have no redirect of Mr. Strom  
16 and at this time would move for the admission of  
17 Staff Exhibit 2.

18 EXAMINER PIRIK: No objections?

19 MR. WHITT: No objection.

20 EXAMINER PIRIK: Hearing none, Staff  
21 Exhibit 2 shall be admitted on to the record.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 EXAMINER PIRIK: Thank you, Mr. Strom.

24 Staff's next witness is?

1 MR. JONES: Thank you, your Honor.

2 Staff would call Robert Fortney to the  
3 stand.

4 (Witness sworn.)

5 EXAMINER PIRIK: Be seated.

6 Mr. Jones.

7 MR. JONES: Thank you, your Honor.

8 - - -

9 ROBERT B. FORTNEY

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

12 DIRECT EXAMINATION

13 By Mr. Jones:

14 Q. Could you please state your name for the  
15 record.

16 A. Robert B. Fortney, F-O-R-T-N-E-Y.

17 Q. And where are you employed?

18 A. Public Utilities Commission of Ohio.

19 Q. And what is your title?

20 A. Public utilities administrator 3.

21 Q. And what are your job duties?

22 A. Oh, all things rates and tariffs related.

23 Q. You should have before you a document  
24 that's marked as Staff Exhibit 3. Could you please

1 identify that document for the record, please.

2 A. My prefiled testimony in this case.

3 Q. Did you have an opportunity to,  
4 Mr. Fortney, review the application filed by  
5 FirstEnergy in this case, the MRO?

6 A. Yes, I have.

7 Q. And have you prepared testimony for this  
8 proceeding?

9 A. Yes, I have.

10 Q. As to Staff Exhibit 3 being your  
11 testimony, do you have any changes or additions to  
12 make to that testimony?

13 A. I don't have any changes. I have what I  
14 guess will be a clarification. I was made aware  
15 yesterday of the infamous errata sheet. I know in  
16 the CRT, which I have described in my testimony, they  
17 have -- the company has removed the working capital  
18 piece and the renewable piece, so to the degree my  
19 description of that rider is incorrect per the errata  
20 sheet, then the testimony would stand corrected.

21 Q. Could you identify what answers would be  
22 affected for better clarification.

23 A. Probably questions 5 and 6 where it talks  
24 about the -- what is the purpose of the rider and

1 what expenses are to be included in the rider.

2 Q. Anywhere else besides answers for 5 --  
3 questions 5 and 6?

4 A. I don't think it affects my  
5 recommendations so, no, I don't believe there is any  
6 other.

7 Q. Then with those changes then if I were to  
8 ask the questions provided in your filed testimony,  
9 would your answers be the same?

10 A. Yes, they would.

11 Q. Okay. And with those changes then, are  
12 your answers accurate to the best of your knowledge?

13 A. Yes, they are.

14 MR. JONES: Your Honor, at this time I  
15 would offer Mr. Fortney for cross.

16 EXAMINER PIRIK: Mr. Small.

17 MR. SMALL: No questions, your Honor.

18 EXAMINER PIRIK: Mr. Porter.

19 MR. PORTER: No questions, your Honor.

20 EXAMINER PIRIK: Ms. McAlister.

21 MS. MCALISTER: No questions.

22 EXAMINER PIRIK: NOPEK.

23 MR. BREITSCHWERDT: No questions.

24 EXAMINER PIRIK: Marketers.

1 MR. PETRICOFF: No questions, your Honor.

2 MR. KURTZ: No questions.

3 MR. LAVANGA: No questions.

4 MR. YURIK: No questions.

5 EXAMINER PIRIK: On behalf of the  
6 company, Mr. Whitt.

7 MR. WHITT: Just a few.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Whitt:

11 Q. It's difficult to resist the temptation  
12 as you stepped up as someone who is -- does  
13 everything all rates and tariffs related to start  
14 questioning you about effective dates, but I'm not  
15 going to do that.

16 Mr. Fortney, you don't -- as I understand  
17 it, you don't have any objection to the idea of a  
18 rider that would ensure that generation costs and  
19 revenues are matched such as through the CRT  
20 mechanism?

21 A. No, I am not -- I am not recommending  
22 that there should be costs that are not recovered.

23 Q. And your issue, I take, it is with  
24 whether certain costs that are included in the CRT

1 rider should be bypassable, correct?

2 A. That's correct.

3 Q. And you're recommending, are you not,  
4 that the expenses associated with delta revenues  
5 would be taken out of rider CRT, correct?

6 A. That's correct.

7 Q. And the components that remain in rider  
8 CRT in your view should be bypassable?

9 A. That's correct.

10 Q. Is it -- well, with respect to delta  
11 revenues, what we are talking about are the  
12 difference between revenue that would be collected  
13 under a published rate schedule and revenue collected  
14 pursuant to a special contract or reasonable  
15 arrangement, correct?

16 A. That's correct.

17 Q. And would you agree with me that the  
18 special contracts or reasonable arrangements could  
19 provide important economic development benefits?

20 A. That would be part of their purpose, yes.

21 Q. And would you agree with me as well that  
22 those economic development benefits would be  
23 available to customers regardless of whether those  
24 customers shopped for electric service?

1           A.    I would agree.  And I would recommend  
2   that the delta revenue rider, if that's what it turns  
3   out to be, would be nonbypassable.

4           Q.    Would be nonbypassable?

5           A.    Yes.

6           MR. WHITT:  Thank you.

7           EXAMINER PIRIK:  Thank you, Mr. Whitt.

8           Mr. Jones, do you have any redirect?

9           MR. JONES:  No redirect, your Honor.

10           And staff would move for the admission of  
11   Staff Exhibit 3.

12           EXAMINER PIRIK:  Are there any  
13   objections?

14           MR. WHITT:  No objection.

15           EXAMINER PIRIK:  Thank you, Mr. Fortney.

16           Staff Exhibit 3 shall be admitted into  
17   the record.

18           (EXHIBIT ADMITTED INTO EVIDENCE.)

19           EXAMINER PIRIK:  Let's go off the record.

20           (Discussion off the record.)

21           EXAMINER PIRIK:  We will go back on the  
22   record.

23           We will reconvene tomorrow at 1 p.m.

24   Thank you.

1 (At 10:51 a.m., the hearing was  
2 adjourned.)

3 - - -

4 CERTIFICATE

5 I do hereby certify that the foregoing is  
6 a true and correct transcript of the proceedings  
7 taken by me in this matter on Wednesday,  
8 September 17, 2008, and carefully compared with my  
9 original stenographic notes.

10

11

\_\_\_\_\_  
Karen Sue Gibson, Registered  
Merit Reporter.

12

13 (KSG-4978)

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