BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of Columbus :
Southern Power Company for:
Approval of its Electric :
Security Plan; an : Case No. 08-917-EL-SSO
Amendment to its Corporate:
Separation Plan; and the :
Sale or Transfer of :
Certain Generating Assets.:
:
In the Matter of the :
Application of Ohio Power :
Company for Approval of :
its Electric Security : Case No. 08-918-EL-SSO
Plan; and an Amendment to :
its Corporate Separation :
Plan. :

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PROCEEDINGS

before Ms. Kimberly W. Bojko and Ms. Greta See, Hearing Examiners, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-C, Columbus, Ohio, called at 9:00 a.m. on Tuesday, November 25, 2008.

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Tuesday Morning Session,
November 25, 2008.
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EXAMINER BOJKO: Let's go on the record.

This is a continuation of case numbers 08-917 and 08-918-EL-SSO, In the Matter of Columbus Southern Power and Ohio Power Company for Approval of their Electric Security Plans and Related Issues.

My name's Kim Bojko. With me is Greta see. We're the attorney-examiners assigned to this case.

Take abbreviated appearances.

MR. RESNIK: On behalf of the companies, Marvin Resnik and Steve Nourse, and Dan Conway will be here later.

MR. SMALZ: On behalf of the Appalachian People's Action Coalition, Michael Smalz, and Joseph Maskovyak will be here later.

MR. O'BRIEN: On behalf of the Ohio Hospital Association, Tom O'Brien and Rick Sites.

MR. JONES: On behalf of staff of the Public Utilities Commission, John Jones, Werner Margard, and Tom Lindgren.

MS. ELDER: On behalf of the Competitive

Suppliers, Betsy Elder and Howard Petricoff.
MS. GRADY: On behalf of the residential ratepayers of the companies, the Consumers' Counsel, Janine L. Migden-Ostrander, Maureen R. Grady and Michael Idzkowski.
MR. RANDAZZO: On behalf of the Industrial Energy Users, Sam Randazzo, Lisa McAlister, and Joe Clark.
MS. WUNG: On behalf of The Commercial Group, Grace Wung.
MR. BOEHM: On behalf of the Ohio Energy Group, David Boehm and Michael L. Kurtz.
MR. BELL: On behalf of the Ohio Manufacturers Association, Langdon Bell.
MR. YURICK: And John Bentine, Mark Yurick, and Matt White on behalf of the Kroger Company.
EXAMINER BOJKO: Thank you.
At this time we're going to go to the

Kroger witness I believe, Mr. Higgins.

MR. BOEHM: Your Honor, could I take up one preliminary matter before?

EXAMINER BOJKO: Please.

MR. BOEHM: We have Mr. Kollen coming in this morning as our witness. He isn't in yet. His plane is due at quarter after 9:00. We hope he'll be here at 10:30, and we think that will probably be in time, but if not, we would ask that he go after the next witness.

Also I think Mike talked to you yesterday about Mr. Charlie King, who's our excessive earnings witness. I spoke again to him last night from his hospital room, and certainly this week is out. Monday his surgeon's coming back in from Europe so he'll be consulting with him.

We hope to arrange something maybe late next week where, with the company and the indulgence of the other intervenors, we can do something by the telephone, something like -- set up something like that because he's got some very bad ankles they're going to be working on. I don't think he's going to be able to travel.

EXAMINER BOJKO: Okay.

MR. BOEHM: Your Honor, the question was

just raised, and I'm afraid I don't know this because
we've been splitting things up.

Did you folks depose Charlie, Marv?

MR. RESNIK: No.

MR. BOEHM: You didn't, okay.

MR. RESNIK: No.

EXAMINER BOJKO: Ms. Grady, depending on how we proceed with Mr. Higgins, we might want to make sure that Mr. Cleaver is here. He may need to go next.

MS. GRADY: Okay.

EXAMINER BOJKO: Thank you.

MS. GRADY: Is it possible for you to give me like a -- should I call now and just have him come over?

EXAMINER BOJKO: That would be great. Thank you.

Mr. Yurick, would you like to call your first witness?

MR. YURICK: Thank you, your Honor.

Yes. Kroger Company would call Mr. Kevin Higgins to the stand.

EXAMINER BOJKO: Please raise your right hand.

(Witness sworn.)

EXAMINER SEE: Please have a seat.

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KEVIN C. HIGGINS

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

DIRECT EXAMINATION

By Mr. Yurick:

Q. Good morning, Mr. Higgins.

A. Good morning, Mr. Yurick.

Q. Would you please state your full name and spell your last name for the record?

A. My name is Kevin C. Higgins. That is spelled H-i-g-g-i-n-s.

Q. And how are you currently employed, sir?

A. I'm a principal in the firm of Energy Strategies.

Q. And on whose behalf are you testifying in this proceeding this morning?

A. I'm here on behalf of the Kroger Company.

Q. Showing you what's been marked Kroger's Exhibit 1, is that your direct prefiled testimony filed in this proceeding?

A. Yes, it is.

Q. And was that testimony prepared by you or at your direction?

A. It was.

Q. And if I asked you the same questions that are set forth in your testimony today that are in your Kroger's Exhibit 1, would your answers be the same?

A. Yes, they would.

Q. Any additions or corrections?

A. No.

MR. YURICK: At this point I would tender Mr. Higgins for cross-examination, and I'll wait to move the exhibit into evidence until after cross.

EXAMINER SEE: Okay. But it is marked as Kroger Exhibit 1.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER SEE: Volunteers?

Okay. Mr. Smalz?

MR. SMALZ: Your Honor, I have no questions.

EXAMINER SEE: Ms. Elder?

MS. ELDER: No questions, your Honor.

MR. RANDAZZO: No questions.

EXAMINER SEE: Thank you, Mr. Randazzo.

Mr. Idzkowski.

MR. RANDAZZO: I volunteered.

MR. IDZKOWSKI: No questions, your Honor.

EXAMINER SEE: Ms. Wung.

MS. WUNG: No questions, your Honor.

MR. BOEHM: No questions, your Honor.

EXAMINER SEE: Mr. Bell?

MR. BELL: I'm not going to break the streak of luck.

EXAMINER SEE: Okay. Mr. Jones?

MR. JONES: No questions, your Honor.

EXAMINER SEE: Who for the company will be cross-examining Mr. Higgins? Mr. Nourse.

MR. NOURSE: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Nourse:

Q. Good morning, Mr. Higgins.

A. Good morning, Mr. Nourse.

Q. On page 6 of your testimony you begin discussing AEP's proposed plan, and you're indicating in the bottom half of the page that the rates, the existing rates, are not cost based and the proposed rates are not cost based, and then you conclude at line 20 and 21: "A cost-based component added to a noncost-based rate produces another noncost-based rate." Do you see that?

A. Yes, sir.

Q. Now, in traditional terminology you're identifying what's referred to as a single-issue rate case; is that accurate?

A. Not necessarily. While I'm quite familiar with single-issue rate-making, it was not my intent in this section of my testimony to necessarily make a case about single-issue rate-making, more to clarify at the outset of my testimony the point that I was making on lines 18 through 21.

Q. That's the same criticism, is it not, that generally is associated with a single-issue rate case?

A. That criticism can be levied in a single-issue rate case, that treating a certain set of costs in isolation from overall costs and revenues can be construed as inappropriate under -- in many circumstances, and so that is a criticism of -- that is levied in single-issue rate cases, I agree with that.

Q. Thank you.

On page 7 you in lines 14 through 17, you make the observation that the AEP's proposed increases appear to track the nonmarket portion of the rate blend under a MRO. Do you see that?

A.   Yes, sir.

Q.   Okay. Now, I gather that's a criticism.

A.   No, that was not intended as a criticism.

Q. Okay.

A. It was actually intended in terms of framing my discussion as an acknowledgment that I did see the connection between the package that the company had proposed and the conceptual structure that is -- of the adjustments that are permitted under a 4928.142(D).

Q. Do you believe that the nonmarket portion of the MRO rate blend is more favorable than the entirety of the ESP provisions proposed by AEP-Ohio?

A. Could you -- could you please repeat the question, Mr. Nourse, I want to make sure I understand exactly what you're asking.

MR. NOURSE: Can you read it back?

(Record read.)

THE WITNESS: Just, I'm sorry, one more time. I want to make sure I'm connecting the dots between the different parts.

(Record read.)

A. I did not make a side-by-side comparison of the nonmarket rate blend permitted in the MRO with the company's ESP proposal. You know, I mean the company did not make an MRO filing, so really at this point all we have to evaluate is the company's ESP proposal. We may draw some inferences about what an

MRO filing might look like, but all we have to look at at this point is the ESP. So I did not make a, you know, draw a conclusion with respect to your question, sir.

Q. But it is your testimony on page 7 that AEP's proposed increases appear to track the nonmarket portion of the MRO rate blend, correct?

A. They track the general description. This testimony on these lines is about the structure of the proposal, that my testimony is acknowledging that the structure of the proposal, that is, the items the company chose to emphasize in its filing with respect to the adjustments that it's seeking, the structure of those adjustments appears to track the description of the adjustments that would be permitted under the cited section. So that's separate from evaluating whether the actual amounts ought to be approved or not approved.

Q. Is it your understanding that the

nonmarket portion of the rate blend under an MRO, those items are permissible in an ESP proposal as well under Senate Bill 221?

A. My understanding is that they would be permissible.

Q. I'll ask you to turn to page 8. Now,

you're discussing the company's FAC proposal --
A. Yes.
Q. -- beginning on line 7.
A. Correct.
Q. And if I understand you correctly, you're basically objecting to setting the FAC rate based on cost out of a concern relating to the nonfuel generation rates allowing them to contribute to cover the FAC cost. Is that a correct characterization?
A. Not necessarily. I don't object to the company recovering its FAC costs. My testimony says that there is not sufficient indication in the company's filing as to what those costs actually are.
And so that's really the issue I'm speaking to. It isn't an objection to recovering FAC costs. I believe the company is entitled to recover those costs. It's identifying what portion of current rates already recover FAC-related costs.
And that's the issue I'm speaking to in

saying that there is not sufficient indication in the company's application or filing as to what portion of the existing rates are recovering the FAC costs. I do acknowledge that the company does perform an analysis through which the company claims that a portion of existing rates recovers certain FAC costs, but I do point out that without an analysis of the nonFAC-related generation costs, we really don't know what portion of existing rates are recovering FAC-related costs or not.

Q. So is this the single-issue rate-making problem again here?

A. Single-issue rate-making is implicated in this discussion, but I don't really believe it is just as simple as saying it's a single-issue rate-making item. I believe that, you know, in single-issue rate-making there is usually a context in which cost of service is already established at some point in time, and a commission may allow a single-issue rate-making proceeding to take place, perhaps for fuel adjustment, with the knowledge that the current rates were cost based and that there is some framework of cost upon which to rely, even in the period in which single-issue rate-making is taking place.

In this instance we're beginning with rates that are admittedly not cost based in the first case -- in the first place, and attempting to recover certain cost items on top of that. And so while my criticism is related to a single-issue rate-making criticism, I think it's broader than that. I think that the circumstances of this filing really even go beyond the single-issue rate-making question.

Q. But to get from where we are now to a cost-based FAC provision, you're really saying you have to look at all the generation costs and rates, the nonfuel and the fuel; is that what you're saying?

A. Yes.

Q. Let me ask you to turn to page 10. Down on lines 18 through 20 you conclude that: "AEP appears not to account for the accumulated depreciation of these assets since they have been in service." Do you see that?

A. Yes, sir.

Q. And you're speaking in this section to the environmental carrying cost proposal Mr. Nelson sponsors?

A. Yes.

Q. Okay. Have you reviewed Mr. Nelson's testimony and exhibits?

A. Yes, I have.

Q. And what's your understanding, that there's no accounting for accumulated depreciation?

A. Well, I reviewed his testimony and exhibits and attempted to identify where accumulated depreciation would have been taken into account and was not able to find it. And so I read his words carefully and was not able to identify where accumulated depreciation was taken account of.

If he had taken account of it, then, you know, obviously that concern would not -- would not stand; however, based on my reading of what he did and my examination of his exhibits, I couldn't find it.

Q. Okay. If I were to ask you to assume for the purposes of these questions Mr. Nelson in PJN Exhibit 10 had utilized a levelized depreciation approach, do you know what I mean by that?

A. Well, why don't you expand upon that so I'm absolutely certain I'm tracking with what you're asking me.

Q. Well, instead of doing a straight line depreciation where you have more front-loaded depreciation, levelized would be a lower level to begin with and would be levelized throughout the period of the life of the asset. So with that clarification --

A. Yes.

Q. -- would your understanding be that the levelized approach, if that's what Mr. Nelson used, would actually resolve that concern that you have stated here on page 10?

A. Based on your description, then if indeed his analysis took account of accumulated depreciation in a way that lined up with what would otherwise occur under traditional rate-making for these assets with respect to their treatment, with respect to the treatment of depreciation, that then would resolve a concern on those lines.

Q. Thank you.

On page 11 of your testimony, at the top of the page you're still, I think, still addressing the nonfuel generation proposal by the companies, and you indicate on lines 2 and 3 that it should be denied unless AEP can demonstrate the cost representing an increase in net cost of the nonFAC-related generation service. Do you see that?

A. Yes.

Q. Now, is it your understanding that the components of the ESP not only have to be justified

on a cost basis, but on a net cost when comparing all
other generation service components?
A. I believe there are circumstances in which an ESP would not have to be justified on a cost basis. For example, if the company had come in and filed an ESP that proposed no adjustments and simply

continued its existing rates, even though those existing rates are not cost based my nonlegal reading of Senate Bill 221 is that that type of proposal could be adopted by the Commission under certain conditions that would not require an examination of costs.

However, if adjustments are proposed, my understanding is that those adjustments need to be cost based in some fashion, and mathematically in order to identify whether or not those adjustments are indeed cost based, I believe it is necessary to look at the all-in costs of the company.

So I hope that's answering your question, that there's circumstances under which you would not have to be cost based. But I do believe if you're proposing adjustments, then I think it's important for the Commission not to be flying blind in approving adjustments but have the information necessary to understand that there is indeed a net cost change before allowing the adjustment.

Q. Okay. That takes us back to the single-issue rate-making problem essentially, right?

A. I believe single-issue rate-making is implicated in this discussion.

Q. Okay. Now, you next discuss the proposed

POLR charge --
A. Yes.
Q. -- beginning on page 11 of your testimony. And your observation in lines 12 through 14 is the charge is a rather stiff premium to pay when only a few customers have actually shopped, et cetera. Do you see that?
A. Yes.
Q. Now, is it your understanding that the proposed POLR charge compensates or would compensate AEP-Ohio for customers that have previously shopped?
A. Would it compensate for -- well, my understanding is that it's intended to compensate the company for the risk that customers who left to shop would come back to the company and there would be a risk associated with that.
Q. And that's the only risk that's covered in the proposed POLR charge, to your understanding?
A. Well, I believe the company is attempting

to recover a premium that is associated with
customers leaving as well, and it's not clear to me
that that risk is necessarily a provider of last
resort risk for which the company is entitled to
recover a premium.

In my view that's a policy call by the

Commission. Certainly under a conventional view of provider of last resort, the risk is that this provider is standing ready to accept back customers who have left to be served by another provider, and the provider of last resort faces a risk that they would have to supply service or provide service at a time of high market prices.

While there may be a risk to the company that customers would leave and potentially that would have a net revenue impact on the company, I acknowledge that -- it's not clear to me that that particular risk is what is intended by provider of last resort service risk.

But to your question, I do believe that the company is attempting to recover a premium associated with that risk in your proposal, in the company's proposal.

Q. Yes. You stated in your answer that the conventional view of the POLR obligation -- do you

view Senate Bill 221 as a conventional piece of
regulatory legislation?

MR. YURICK: Objection.

EXAMINER SEE: Your basis, Mr. Yurick?

MR. YURICK: I think whether or not this
witness views this as a traditional piece of

legislation or not is irrelevant.

EXAMINER SEE: Mr. Nourse, did you want to respond?

MR. NOURSE: Pardon me?

EXAMINER SEE: Did you wish to respond?

MR. NOURSE: Your Honor, I was just using the same word, "conventional," that he used in his answer to describe the risk associated with the POLR obligation. I'm just trying to clarify whether that conventional view applies to Senate Bill 221, his lay understanding.

EXAMINER SEE: And the objection is overruled.

Please answer the question, Mr. Higgins.

A. I believe Senate Bill 221 is a rather innovative piece of legislation and provides a structure for rate-making that is not conventional.

Q. Now, your proposal that I think you offer for POLR is to do what I'll call a tracker; is that right?

A. Yes, sir.

Q. Now, I'd just like to clarify a little bit about what you're proposing. When would the rider be established or collected, you know, as a sequential timing matter in your proposal?

A. Well, if this proposal were adopted, the company's provider of last resort component would be set to zero. The rider would be established at the outset and would be set equal to zero. And then to the extent that there were demonstrated net costs incurred by AEP to provide service to customers who were returning from an ESP to the utility, then the net cost of that would be recovered on an actual cost basis. It would be recovered as soon as possible but obviously with some lag so that the company was allowed to recover the cost -- the net cost it experienced by having to serve these returning customers.

Q. Before we get to that, I want to clarify. I think you might have misspoke. You said "customers returning from the ESP to the company." I think you meant returning from a CRES or competitive supplier to the ESP.

A. Thank you for that clarification.

Q. Okay.

A. In other jurisdictions the CRES is referred to as an ESP, so thank you for clarifying that.

Q. Okay. And then would the -- exactly what would be recovered there, the delta market rate, the difference between the market rate and the ESP rate?

A. I believe the delta should be the net cost increase to the company from having to serve these customers, and I believe that, you know, certainly the revenue recovery the company would experience would be the price paid by the returning customer and there would be an incremental cost associated with serving that customer.

And if the incremental cost is increased fuel, then I believe that the company ought to recover that at the margin, whatever that increased cost was. If it was an increased purchase, then I believe that the increased purchase cost ought to be recoverable by the company.

Q. Okay. That would be a nonbypassable charge to all customers?

A. Yes.

Q. The rider.

A. Yes, it would.

Q. Let me ask you to turn to page 14 and you're discussing the company's energy efficiency peak demand and cost reduction rider and explaining your proposal for an opt-out provision.

A. Yes.

Q. Do you recall that?

A. Yes.

Q. With respect to -- I'm sorry, withdraw that.

You discuss in lines 5 and 6 that this exemption that's referenced in point 66(A)(2)(c) that you reference there is subject to certain conditions, right?

A. Yes.

Q. And one of those conditions would be PUCO approval; is that your understanding?

A. Yes.

Q. So the opt-out proposal that you have set forth here, would there be any threshold level that a GS-3 customer would have to meet or qualify, certify in order to qualify for the opt-out?

A. When you say "threshold level," do you mean a size level?

Q. Well, thank you, no. I meant assuming they meet a size level or threshold level for size,

the actual EE or demand response activities and
measures they've undertaken, would they have to
certify that they've done any certain amount of EE or
DR activity?

A. Well, I'm proposing that they would need
to certify that they were taking action or had taken

action on implementing cost-effective measures, so there would be a cost-effectiveness threshold that will be required. I have not proposed a particular dollar amount, say, for that self-certification, but that they would have to have -- have the analysis performed and would have to be certifying that they had undertaken or were undertaking cost-effective measures per that analysis.

Q. So the customer would just say, "I've already done what I need to do." Is that essentially what you're saying?

A. Well, only if they had had the requisite analysis performed and were -- and in fact had done the investments. I mean, they couldn't just say, "well, we performed the investment" without also certifying that they had the requisite studies done and had indeed performed the cost-effective investment.

Q. So they would have had to implement or

had plans for implementing each and every
cost-effective measure that such an energy audit
would recommend?
A. You said "each and every." I believe
that -- I don't know that I would specify that it
would have to be each and every, but I do believe

we're talking about a good-faith effort to invest in the cost-effective measures that were identified.

Q. So when you state on line 13 that the "cost-effective measures identified," you're not meaning all of them, you're meaning some or most of them?

A. That's a fair question. If we're -- I would hesitate to suggest that they be each and every because there could -- that could create a hardship with respect to the amount of money required to undertake each and every. But I do believe that there is a reasonableness threshold there where there would have to be a good-faith effort to have undertaken the most cost-effective measures given the opportunity that was there given the investment cost that would be required.

Q. Now, once they opt out under your proposal, then presumably the customer doesn't pay the rider, correct?

A. Correct.

Q. And then they're not -- that customer is not eligible to participate in programs under the -- that are paid for under the rider; is that also true?

A. That is also true.

Q. Mr. Higgins, finally I just want to

clarify or ask you a couple questions about, in your last segment of your testimony, generation aggregation. You set forth a proposal and then you refer to pilot programs in Michigan --

A. Yes.

Q. -- right? Now, you indicated there are total participation limitations on line 20 there.

A. That is correct.

Q. What other limitations were structured into those pilot programs?

A. There were limitations on the aggregate size of the load. There was a minimum threshold required to participate, and in some cases -- the threshold was related to the size of the individual meters that were being aggregated, as well as the threshold of minimum amount of load that would be -- that an individual customer was putting forward into the program so that it would provide some basis for, you know, measuring a discernible difference between the customer's coincident peak load and some of its individual peaks.

Q. Were those the -- what were the evaluation criteria for success of the pilot -- pilots?

A. The evaluation criteria, as I recall, are -- in Michigan are somewhat open. My understanding is that the Michigan utilities are testing the operational efficacy of the program, that is, conceptually there isn't any dispute that it makes sense. The questions are do you run into operational challenges if you are keeping track of customers' load in this fashion, that is, you know, looking at aggregated -- looking at peak generation demand over the month and aggregating it up so that the profile of the several sites looks like a single site for generation purposes.

There were questions as to operationally would there be problems, challenges associated with doing that, and so my understanding is that the pilots will evaluate whether or not it's feasible to do this on a larger scale.

Q. Now, your generation aggregation proposal, is that designed to promote energy efficiency and demand response, or is it essentially a rate design proposal?

A. It's both. I would have to say fundamentally it's a rate design proposal, I think, in the first instance in that it really isolates the question that if you have a customer with multiple sites, shouldn't its generation usage be viewed as a single customer and its peak demand as a customer treated as if it were a single site, because there's really no basis in cost causation not to do so. There's a basis in cost causation not to treat a distribution charge this way, but for generation charges a multisite customer ought to look just like a single-site generation customer.

So there is a fundamental rate design reason for doing this. Having said that, if you adopt this type of rate design, then it does create the opportunity to perform load management on multiple sites, particularly if there is the requisite metering and information that is made available to the customer, and, indeed, we're moving into a time when metering is getting more sophisticated. So I believe that it is complementary to peak demand response programs.

Q. Now, when you say multilocations, that's within the territory of Columbus Southern Power or

Ohio Power in this case.

A. Yes. It's intended to be internal to a particular utility's service territory.

Q. And your client, Kroger, has multiple locations within each territory --

A. That is correct.

Q. -- in this case.

MR. NOURSE: Thank you, your Honor. That's all I have.

EXAMINER SEE: Mr. Yurick, any redirect?

MR. YURICK: If I could have a moment with my witness, please, your Honor.

EXAMINER SEE: Sure.

MR. YURICK: Your Honor, I have no redirect of the witness.

At this point I would move Kroger's Exhibit q into evidence.

EXAMINER SEE: Are there any objections to the admission of -- oh, I'm sorry, we have some questions from the Bench, Mr. Higgins.

EXAMINER BOJKO: Mr. Higgins, you stated in response to Mr. Nourse's question what portion of the current rates are already being recovered in the fuel cost, in the FAC, and then you also go on to a discussion about FAC versus non-FAC costs.

Have you done an analysis or were you
able to determine what the cost, the fuel costs that
are already being recovered in rates is?

THE WITNESS: Your Honor, I have not. I
did not feel that the information necessary to do
that was available in the filing. I note that staff

testimony made the -- one of the staff witnesses commented that, you know, if one looks at the return -- well, I shouldn't say return. One of the staff witnesses commented that since the utilities are currently recovering their costs, that -- or earning a profit thereby recovering their costs, that by implication the fuel costs are being recovered in existing rates.

So that was a conclusion that another witness had made. I didn't see any reason to disagree with that witness. I did not make an independent calculation of that myself.

EXAMINER BOJKO: Thank you.

EXAMINER SEE: Are there any objections to the admission of Kroger Exhibit 1?

Hearing none, Kroger Exhibit 1 is admitted into the record.

MR. YURICK: Thank you, your Honor.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. BOEHM: Your Honor, it looks like Mr. Kollen is not here yet. If another witness could fill in, I would be grateful.

EXAMINER SEE: Okay. Is Mr. Cleaver --

MS. GRADY: Mr. Cleaver is here and ready to testify, your Honor.

MR. BOEHM: I'm going to try to find out where he is.

EXAMINER SEE: Okay.

EXAMINER BOJKO: OCC, would you like to call your next witness?

MS. GRADY: Thank you, your Honor. OCC calls Mr. Cleaver, please.

EXAMINER BOJKO: Would you please raise your right hand?

(Witness sworn.)

EXAMINER BOJKO: Thank you. Please be seated.

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DAVID W. CLEAVER

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

DIRECT EXAMINATION

By Mr. Reese:

Q. Good morning, Mr. Cleaver.

A. Good morning.

Q. Mr. Cleaver, are you the same David Cleaver whose prepared testimony was filed on October 15th -- give me one second -- that was filed on October 31st, 2008?

A. Yes.

Q. Mr. Cleaver, on whose behalf do you appear?
A. The Ohio Consumers' Counsel.
Q. Do you have your prepared testimony with you on the stand?
A. Yes.
Q. Did you prepare the testimony or have it prepared under your direction?
A. Yes, I did.
Q. Do you have any corrections to your testimony?
A. No.
Q. Mr. Cleaver, if I asked you today the same questions found in your prepared testimony, would your answers be the same?
A. Yes, they would.
MR. REESE: Your Honor, OCC moves for admission of OCC Exhibit 13 and tenders the witness for cross-examination.

EXAMINER BOJKO: We will mark
Mr. Cleaver's direct testimony for identification
purposes as OCC Exhibit 13, and we will defer ruling
on admission until the time after cross-examination.

MR. REESE: Thank you, your Honor.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER BOJKO: Mr. Nourse.

MR. NOURSE: Your Honor, I had motions to strike.

EXAMINER BOJKO: Okay.

MR. NOURSE: Starting on page 17.

EXAMINER BOJKO: One moment, Mr. Nourse.

I'm sorry, please continue, Mr. Nourse. Page?

MR. NOURSE: The first motion to strike is page 17 and the first sentence in the answer which begins on line 7 goes through the word "systems, period" at line 10.

Would you like me to argue each one of them as we go through? I've tried to be very collective and just go for sentences.

EXAMINER BOJKO: Yes.

MR. NOURSE: Okay. So this statement here is -- Mr. Cleaver is not qualified to make these observations. It would be for what led to the

evaluation of AEP's service or what caused the
Commission staff to look more closely at the
company's practices, and he's referring to events in
another case, a separate case, that was contested and
never went to hearing and the Commission didn't make
these findings.

EXAMINER BOJKO: Would you like to respond?

MR. REESE: Can I hear which lines? You're starting on lines -- we're on page 17, correct?

MR. NOURSE: Yeah. The first sentence in the answer, "In early 2003," and then ending on line 10, "distribution systems, period."

MR. REESE: Well, your Honor, one of the things that OCC is looking at in this case is the current state of the reliability of AEP's system. This case looked at that state -- that's the 221, in fact, encourages that. I can look up the specific section, but this case, actually a lot of this language probably came right out of the stipulation and the staff reports in the case.

But one of the tasks that the Commission has before granting any type of distribution modernization plan is to take a look at the current

state of the distribution system and what it's been
like up to this point. That's what Mr. Cleaver's
testimony goes to, your Honor.

MR. NOURSE: Well, your Honor, if I
might, this is not talking about the current issues
or what ESP. This is characterizing a prior

proceeding that was contested and saying what caused the Commission staff to take action.

EXAMINER BOJKO: Okay. We're going to grant the motion to strike. There's no citation to this sentence, and it does seem to give the intent of staff, which is inappropriate for this witness. Motion to strike the first sentence on page 17, line 7 through 10, is granted.

MR. NOURSE: Thank your Honor.

The next motion begins on line 23 of the same page, carries over to page 18 through the end of line 2. This is, again, referring to this staff document in 2003 that was -- this is hearsay. He's saying that they had found or expressed the opinion that there was compliance issues with the ESSS rules. This is not based on his personal knowledge and, again, the staff document and the observations and the conclusions were contested. It was never adopted or made any of those findings in a Commission order.

EXAMINER BOJKO: Did not?

MR. NOURSE: These opinions were not adopted in a Commission order, which would be a different matter. And again, I think it raises due process questions to allow witnesses to invoke hearsay for the truth of the matter asserted and not allow cross-examination in the direct proceeding here today.

EXAMINER BOJKO: Okay. Thank you.

Do you have a response to this one, Mr. Reese?

MR. REESE: Well, yes, your Honor, I think it's an exception to hearsay. It's a business record. It's also a public record, there was a Staff Report that was attached to a motion for acceptance in the Stipulation in this case. This is part and parcel of what was in the Staff Report that was attached to the staff's motion for acceptance.

This case was opened with a Stipulation on December 31st of 2003, prompted by the Staff Report, and again, it was attached to the motion for acceptance filed by the staff in front of the Commission so that they would accept the terms of the stip. Again, as I said, it's also an exception to hearsay.

EXAMINER SEE: Okay.

MR. NOURSE: If I could respond.

EXAMINER SEE: Just a minute, Mr. Nourse.

EXAMINER BOJKO: Mr. Nourse, do you want
to response?

MR. NOURSE: Well, I don't think it's an

exception to hearsay, your Honor. He's making statements referencing the Staff Report conclusions about compliance and noncompliance. That was a contested matter. You know, it's not just a routine business document that can be used as an exception to hearsay. These are, again, highly controversial conclusions, not some routine business statement.

EXAMINER BOJKO: We're going to grant the motion to strike. It appears that this language is interpreting the Staff Report which is an opinion of the interpreter. The Staff Report is referenced above, and it can speak for itself.

MR. NOURSE: Thank you, your Honor.

The next motion --

MR. BOEHM: Excuse me, your Honor, may I know what lines then in particular are stricken?

EXAMINER BOJKO: I'm sorry. That was page 17, line 23 over to page 18, lines 1 and 2 will be stricken.

MR. BOEHM: Thank you.

THE WITNESS: Your Honor, may I get a pen or a pencil and strike these myself?

EXAMINER SEE: You can use this.

THE WITNESS: Thank you.

MR. NOURSE: Thank you, your Honor.

My next motion to strike was on page 18, the first sentence of the answer beginning on line 15, "On January 31st," through "service reliability, period." This statement is characterizing what the intentions were, the company's intentions. Again, Mr. Cleaver does not speak for other parties, including the company. He doesn't know what AEP's intentions are, and I think it's an inappropriate statement to make.

EXAMINER BOJKO: I think that the witness can give the history that they filed a self-complaint on January 31st, 2006, so I will strike the end of the sentence after "Complaint."

MR. NOURSE: "Filed a self-complaint, period"?

EXAMINER BOJKO: Yes.

MR. NOURSE: Thank you, your Honor.

EXAMINER BOJKO: Motion to strike the end of the first sentence on line 15 beginning with "that was intended to focus the Commission on the future direction of service reliability" on page 18 is granted.

MR. NOURSE: Thank your Honor.

I only have a few more here.

The next motion to strike is on page 19, line 20, the sentence beginning "Commission staff felt," and it carries through to the following sentence and carrying onto page 21 through the middle of line -- I'm sorry, to page 20, so it starts on page 19, line 20 and ends on page 20, line 2 in the middle after "period."

These statements about the Commission staff's feelings and the Commission's staff, quote/unquote, findings, their conclusions in the document characterizing the company's reliability, again, I won't repeat the same arguments I used previously, but on the same basis.

EXAMINER BOJKO: Does OCC have a copy of the Staff Report that they're relying on?

MR. REESE: I don't think I have them with me, your Honor. Your Honor, we can get it in short order.

EXAMINER BOJKO: Yeah, we're going to defer ruling on that one. We need to review the

Staff Report to see what it stated.

Do you have another one, Mr. Nourse?

MR. NOURSE: Yes, two more. Page 30, line 22 where it begins "The 2003 Staff Report found," and ending on line 7 on page 31, "ESSS Rule 27 (E)(2)(c)." Again, this is characterizing the company's activities with statements about, in line 2, "postponing tree trimming," and line 4 and 5, policies were being substituted for the cycle, trimming cycle, and then down in line 6, the "staff believed."

Again, these statements are hearsay and relate to matters, factual and policy matters, regulatory compliance matters, that were contested in an unrelated separate proceeding and never brought before the Commission for findings.

EXAMINER BOJKO: Okay. We're going to review the Staff Report on that one as well, so we'll defer ruling on that piece.

MR. NOURSE: Can I inquire when the ruling would be made relative to cross-examination, your Honor?

EXAMINER BOJKO: Mr. Reese just motioned that maybe the witness has a copy of the Staff Report?

MR. RINEBOLT: Your Honor, I have a copy of it electronically.

EXAMINER BOJKO: Aah, I love technology.

Let's go off the record.

(Discussion off the record.)

EXAMINER BOJKO: Let's go back on the

record.

MR. NOURSE: The final motion to strike, your Honor, page 37, line 17, in the 06-222 case, OCC filed testimony by Peter Lanzalotta. He stated, again, this is actually -- this is hearsay within hearsay, your Honor, because within this quote it actually quotes another party's deposition transcript characterization. So this carries through, your Honor, to line 4 on page 38.

That concludes the motions to strike, your Honor.

EXAMINER BOJKO: We'll take all of the motions to strike under consideration, the ones that we have not yet ruled on, upon reviewing the Staff Report.

Let's take a 15-minute recess.

(Recess taken.)

EXAMINER BOJKO: Okay. On the record. Mr. Reese, do you have a response or do you have

anything to add? Or are you standing for a reason?
MR. REESE: Because the Bench entered the room.
Your Honor, I did want to talk first about the last motion to strike. I believe we were talking about a cite for Mr. Lanzalotta's testimony

on the bottom of page 37, I believe. Your Honor, this is not being offered for the truth of the matter asserted. We don't believe it's hearsay. It's an indication of some of the work that's been conducted looking into the performance of the company.

MR. NOURSE: Your Honor.

EXAMINER BOJKO: Yes.

MR. NOURSE: I disagree that --

EXAMINER BOJKO: We're ready to rule on this motion.

This motion to strike is going to be granted. Looking back at the case 06-222 the testimony was filed but it was never entered into evidence because the case never went to hearing and, thus, the testimony was never subject to cross-examination. So this is a partial picture of the total case and we're going to strike this citation and quote from the testimony.

MR. BOEHM: Your Honor, if I may,

precisely could you give us --

EXAMINER BOJKO: That is from page 37 starting at line 17, it says "in the 06-222 case," and then the subsequent quote from the testimony, that will be stricken over to page 38, line 4.

MR. BOEHM: Thank you, your Honor.

EXAMINER BOJKO: We might as well work backwards. The next motion to strike that we have is on page 30 and 31 and a reference to the Staff Report, the '03 Staff Report. We're working off numerous staff reports here in this testimony. This is the '03 Staff Report.

I'm just going to make a ruling. I don't think you need to respond, Mr. Reese.

The 2003 Staff Report, this cite does have a citation to page 8 of the Staff Report and this was a finding, it's a summary of a finding, but the concept and the words are contained in the Staff Report, so we are going to deny the motion to strike, with regards to this provision on page 30, sentence starting "The 2003 Staff Report" over to page 31, line 7. That section will remain in the testimony.

MR. NOURSE: Can I inquire as to whether OCC is submitting that material for the truth of the matter asserted?

EXAMINER BOJKO: It's in the document filed with the Commission. The Staff Report speaks for itself.

MR. NOURSE: Yes, it does.

EXAMINER BOJKO: Then I believe the remaining motion to strike is on page 19. Mr. Reese, do you have a response?

MR. REESE: I'm sorry, your Honor, page 19?

EXAMINER BOJKO: Yes. "Commission staff felt" on page 20.

MR. RANDAZZO: Line.

EXAMINER BOJKO: Line 20.

MR. REESE: Your Honor, starting at line 22 carrying over -- on page 19 carrying over to page 20 we'd note that what we're citing here is a staff finding in the order or in the Staff Report and staff's recommendations.

EXAMINER BOJKO: Even though there's no citation in the testimony, we have found this finding on page 2 of the 2006 Staff Report the second sentence that was moved to strike on line 22, page 19, over to line 2, page 20, the motion to strike will be denied and that sentence will remain in.

With regard to the first sentence in the

motion to strike, lines 19 to 22 on page 19, even
though the witness used the word "felt," we believe
on page 11 we recognize that the staff did state this
position and it is contained in the Staff Report on
page 11. Thus, we are going to deny the motion to
strike with regard to that sentence as well.

MR. NOURSE: Your Honor, can I just clarify? With respect to these, this is unusual to bring in prior documents like this, and I guess I want to be clear whether when we admit this document, this testimony later, whether it's just based on your ruling, the document speaks for itself. He's referring to things that were said in that document. That's the purpose in which it's being offered and admitted, as opposed to the truth of the statements that were made.

EXAMINER BOJKO: I'm assuming you're not stating in any way that you question staff's truthfulness contained in their Staff Report document, but the document was filed and we are not using it in this proceeding for any other purpose than it was a filed document and those are the statements contained therein.

MR. NOURSE: Thank you.

MR. REESE: Thank your Honor.

EXAMINER BOJKO: Anything further, Mr. Nourse, with regards to motions to strike?

MR. NOURSE: No. Thank you, your Honor.

EXAMINER BOJKO: Let's begin with Mr. Yurick. Do you have any questions for this witness?

MR. YURICK: No questions for this witness, your Honor.

EXAMINER BOJKO: Mr. Bell?

MR. BELL: Yes, your Honor, I do.

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CROSS-EXAMINATION

By Mr. Bell:

Q. At the risk of inviting the ire of my good friend Ms. Grady and Mr. Reese, I've got two questions of you, Mr. Cleaver.

Mr. Cleaver, of what value is reliability of electric service if customers cannot afford to turn their lights on or, more to the point, keep them on?

A. I'm not sure I know how customers value their electric service so I don't think I could speak or answer that question.

Q. You have difficulty answering that question?

A. Yes, I would.

Q. Okay. One follow-up question that goes to your response, Mr. Cleaver.

A. Thank you.

Q. Would you agree, Mr. Cleaver, that value of reliability to customers is relative to the cost of reliability at any point or over any given period of time?

A. I would agree that it's reasonable to assume that cost is always a factor in value.

Q. And based upon your knowledge of the economy and the prevailing conditions would you agree that cost is of utmost concern to customers today in their valuation of reliability?

MR. NOURSE: Objection.

EXAMINER BOJKO: Basis?

MR. NOURSE: That's friendly cross.

MR. BELL: Friendly?

THE WITNESS: Could you repeat the question?

EXAMINER BOJKO: Overruled.

THE WITNESS: I'm sorry.

Q. (By Mr. Bell) Would you like the question reread, Mr. Cleaver?

A. Yes, I would appreciate that.

MR. BELL: Thank you.

(Record read.)

EXAMINER BOJKO: You may answer.

A. I don't know that I would agree that it's of utmost concern. I think it would be reasonable for one to assume that it's of greater concern.

MR. BELL: Thank you.
That's all I have, your Honor.
EXAMINER BOJKO: Mr. Boehm?
MR. BOEHM: No questions, your Honor.
EXAMINER BOJKO: Ms. Wung.
MS. WUNG: No questions, your Honor.
EXAMINER BOJKO: Mr. Randazzo.
MR. RANDAZZO: No questions.
EXAMINER BOJKO: Ms. Elder?
MS. ELDER: No questions, your Honor.
EXAMINER BOJKO: Mr. Smalz?
MR. SMALZ: No questions, your Honor.
EXAMINER BOJKO: Mr. Nourse or Mr. Resnik? Mr. Nourse?
MR. NOURSE: Sorry, are we the last party, your Honor?
EXAMINER BOJKO: No, staff is.
MR. NOURSE: Staff is the only one left? Okay.

EXAMINER BOJKO: I'm sorry.

MR. NOURSE: I thought you might have skipped somebody else.

EXAMINER BOJKO: No. Mr. Jones has the opportunity to go last.

MR. NOURSE: Thank you.

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CROSS-EXAMINATION

By Mr. Nourse:

Q. Good morning, Mr. Cleaver.

A. Good morning.

Q. You had stated earlier in direct that the testimony in OCC Exhibit -- I'm sorry, what's the exhibit? -- No. 13 was prepared by you; is that correct?

A. That's correct.

Q. Were all these statements in your testimony your original thoughts or did you obtain them from somewhere else?

A. Well, I believe in my testimony on page 7 I listed all the information that I considered, so with regard to your question, that's the information contained on line 7 -- or, excuse me, page 7 and 8, information that I considered, which would be the filing itself, that was historical documents that

were subject to some of your motions to strike,
knowledge of the ESSS rules and so forth.

Q. It's one thing to review those documents.
I guess what I'm asking you is whether the documents
you list on page 7 and 8, and let's leave aside the
staff reports that we've talked about earlier this

morning, is there anything else that you actually took material from those documents and incorporated it into your testimony?

A. I relied quite heavily on the previous OCC witnesses' work that's listed that I reviewed here, evaluated those thoughts and those -- just thoughts as far as were they still pertinent to this case, were there things that have changed, did I agree or disagree with those thoughts.

Q. You're referring to Peter Lanzalotta from testimony that was filed in the docket in 06-222?

A. That's correct.

Q. Okay. In fact, didn't you lift entire passages verbatim out of his testimony and put it into your testimony you're offering today as your own testimony?

A. I don't know if I would agree with that characterization. I used it as a template. I think I started with Mr. Lanzalotta's testimony and, again, I went through the process I just described to see what I thought was still pertinent and not.

Q. You used it as a template? Do you mean -- what do you mean by that? Did you have a Microsoft Word document of his testimony and you went in and made changes?

A. Yes.

Q. Can you tell us what portions of your testimony were copied verbatim from Mr. Lanzalotta's testimony?

A. Well, I think the ones that might be really general in nature like the explanation of what SAIFI, CAIDI, SAIDI, that type of thing were. If Mr. Lanzalotta's words I thought were maybe more eloquent than what mine might be, I could have used his words.

Q. So was it just the background material, would you say general background material?

A. Yes. And I think as far as the history, the recount of the history that I would have started with what that was, but I read the documents myself to see, again, if I agreed with what was being presented in that original document, to see if I agreed that, again, they were still pertinent type of items and if I agreed with his findings or not.

Q. But you're not just agreeing with his findings, you're incorporating the exact language and portraying it as your testimony in this case, right?

A. Again, I wouldn't characterize it as that. I would not have included it if I didn't feel like my conclusions were the same.

Q. Do pages 15 and 16 of your testimony fall into that category?

A. Yes, they would.

Q. Do you consider those statements as background or informational statements?

A. No, I would not.

Q. Are there other portions of your testimony that go on for multiple pages that are virtually identical or verbatim to Mr. Lanzalotta's testimony?

A. Not to my knowledge.

Q. You think that's it? We covered it all already?

A. I'm not sure.

Q. What about pages 22, 23, 24, 25, do those pages fall into the copied verbatim category?

A. No.

Q. Would you like to explain that?

A. Could you be more specific?

Q. The materials on pages 22, 23, 24, 25,
those were not lifted from Mr. Lanzalotta's
testimony?

A. I think the table and the historical
information was copied. Of course, they had to be
updated with the new data, and that was done.

Q. You're saying the text on pages 22, 23, 24, 25 are all original thoughts that you came up with in preparing your testimony?

A. Again, they would be thoughts, again, that may have been contained in Mr. Lanzalotta's testimony that I evaluated to see if they -- if I agreed, if I still thought they were relevant to this case, and to that extent I included them.

Q. So you did copy those sections as well; is that what you're saying?

A. Again, I can't say that they're verbatim, I don't have that document in front of me.

Q. All right, Mr. Lanzalotta. Let me ask you to turn to page 8 of your testimony.

EXAMINER BOJKO: Mr. Cleaver, you mean?

MR. NOURSE: I'm sorry?

EXAMINER BOJKO: Mr. Cleaver.

MR. NOURSE: I'm sorry, what did I said?

THE WITNESS: Mr. Lanzalotta.

MR. NOURSE: I apologize.

MR. REESE: Nice try, Steve.

THE WITNESS: That wasn't a Freudian slip?

MR. NOURSE: It must have been.

Q. (By Mr. Nourse) Page 8 of your testimony,

Mr. Cleaver. Thank you.
A. A particular line?
Q. You give your overall recommendation here --
EXAMINER BOJKO: I'm sorry, which page are you on?
MR. NOURSE: Page 8.
A. Yes.
Q. Okay. You're basically concluding there "AEP has not shown the additional investment it has proposed as part of its ESRP will noticeably enhance distribution system reliability." Correct?
A. Yes.
Q. Okay. So that's kind of your overarching or overall conclusion in response to the ESRP?
A. I think that's fair, yes.
Q. Now, are you saying that the activities and programs that make up the ESRP -- first of all, you're familiar with all those proposals based on

your review of Mr. Boyd's testimony in this case; is that accurate?

A. Yes.

Q. So all the individual activities taken together as programs, that those programs would not substantially impact or improve reliability for

AEP-Ohio?

A. I think I used the word "noticeably" impact.

Q. So you think if there is an impact from all those programs taken together, they would be de minimis or insignificant?

A. I think if you would please refer to table 1, page 22, I could illustrate what my thought process was there. Just as an example, I think Mr. Boyd said the focus of the program was to improve, well, momentary outages, which aren't measured by an indices, but they're also aimed primarily at SAIFI. I believe that's my understanding.

And if you look at SAIFI for let's say 2007, through discovery and through I think Mr. Boyd's testimony we learned that the projected overall impact on SAIFI is approximately 10 percent over five years. That's my recollection.

And that's at the end of the total
program. I think this is a three-year program as
proposed in the ESP, but the total program is I think
intended to be a five-year program. So if you look
at 10 percent of, say, 1.67, that's like .16. You
divide that by the five years and that would tell you

about, about what, .03 improvement per year. And so if you -- you go from 1.67 to 1.64 to 1.61 in two years to maybe 1.57.

I think those types of improvements, if you will, or changes get lost in the noise, if you will, of those types of -- the main drivers in these types of indices which tend to be more related to weather and severity of weather, the number of severe storms and just the random nature of equipment failures.

And if you look from year to year, there's very large changes due to those type of forces, so when I look at .03 in one year, that to me would be very difficult for anyone to separate that out from what might be happening or influencing those numbers due to weather or just the random nature of failures.

Q. Okay. Mr. Cleaver, are you saying you don't think AEP needs to or should undertake any of the programs proposed in the ESRP?

A. No, that's not what I'm saying.

Q. Well, if they don't affect reliability, what difference does it make?

A. I think that the program, or at least some of the programs that are contained in the ESRP, may affect reliability and I would expect that the company as required by the rules at the Commission, the ESSS rules, to do preventative maintenance and so forth and have proactive preventative type programs, I think some of them may affect your reliability.

Q. In a positive fashion?

A. Yes.

Q. Now, with respect to the activities that relate to each of the programs in the ESRP, would you agree that each of those proposals involve additional activities, either new activities that aren't currently being done or higher levels of current activities such as vegetation management that come with an associated cost?

A. Could you repeat that again? I'm sorry, I lost you about halfway through.

Q. Let me break it down.

A. Please.

Q. That's fair. I'm trying to ask you some general questions before we get into the specific programs.

A. Okay.

Q. But as a package or as an ESRP as a whole, would you agree that each of those programs involve proposals to conduct either new activities that aren't currently being done or to expand the current activities, such as vegetation management, that is currently being done?

A. I think that I would agree in part. Let me qualify it by saying I think many of the activities will depend on your particular program that we're talking about, so when we get into specifics, I can be more specific when we talk about a specific program. Many of the activities I would consider as routine as far as, again, your characterization about veg management. I mean, you're -- trimming trees is trimming trees. There might be a different philosophy or different approach, but you're still cutting trees down or trimming limbs.

So in that respect it's a different philosophy. So what you're doing is routine. You know, the lion's share of that activity is something I would expect that you're already doing today or may already be doing today. There are other activities in your programs that I would consider may be intensified, just doing more of the same thing.

Q. And those are the categories I asked you about. Regardless of -- we'll get into the routine issue --

A. Okay.

Q. -- in the next questions here, but, again, just to boil it down, you would agree that each of the programs either involve new activities not being currently done today or increasing a level of current activities; is that accurate?

A. I would agree that they would contain those two categories. There may be others. Again, when we get into specifics, you know, I could comment on it then.

Q. So let me try to understand your question, though, relative to the programs generally. You're saying that the proposed program, the ESRP, are all things -- correct me if I'm wrong here -- you're saying that they're all things that the company should already be doing.

A. I think the programs in a broad sense are things that I would expect AEP to be doing as a part of providing reliable service. Again, the activities

I think within those programs, they may change. They
may intensify. There might be incremental, what I
call incremental activities I think in my testimony,
which is meant to mean something you're not doing
today that might be involved.

But overall I'd say I'm looking at the

programs and what I consider to be routine with respect to what I would expect the company to be doing to maintain their system reliability.

Q. And all the activities and all the programs within the ESRP fall into that category, in your opinion?

A. I would say to some degree, yes. Again, it's going to depend on the particular activity.

Q. Are there -- you said they were all required to provide reliable service, correct?

A. I think that the activities contained in those programs are -- the main focus is to maintain reliable service, so in that regard, yes.

Q. So if we set aside any concerns about rate-making, let's say, single-issue rate-making or anything like that, again, you would recommend that AEP-Ohio pursue the -- all the things in ESRP, would you not?

A. I wouldn't say that I would agree with everything that's in the program. I do have some reservations about some of the recommendations.

Q. Which reservations are those?

A. I think the underground mitigation initiative is one. The distribution automation would be the other.

Q. I'm sorry, if you're going to mention them, could you explain what you mean by "is one"?

A. Well, I think your question was which part of the ESRP I might have reservations with.

Q. Uh-huh.

A. So the one reservation would be the underground and the other would be the distribution that I would say that I have a -- the most reservation for.

Q. I'm sorry, the second one was?

A. Distribution automation, DA.

Q. Okay. So what's your reservation or concern with the underground?

A. Go to page 41, please.

Q. I'm there.

A. I think I start at line 10, I think -- well, actually, there's two things that I think that bother me most about this particular program, is that, one, there were some parts of the program that

I think on a per-unit or a per-mile basis the costs were very high, and unlike some of the other programs the company didn't offer any improvements, projected improvements, in SAIFI or SAIDI relative to these requested programs.

Q. Okay. When you say the cost per, what did you say, per unit?

A. Per unit.

Q. Or per mile --

A. Yeah.

Q. -- is high. High relative to what?

A. With a data request that we received from the company, the programs -- at least three of the four programs there was a cost per mile that was presented, which I think is a reasonable way of looking at it. You have to know how many miles, of course, to know what the cost is.

But on a cost-per-mile basis, some of the different cable categories that were presented were very high, close to $2 million per mile as compared to, say, the overhead inspection and mitigation program, which was more like I think $6,000 per mile.

Q. So it's more expensive than overhead?

A. It was more expensive than that program per mile.

Q. Okay. Well, relative to customers that are served in facilities that are already currently underground, that's what this program applies to, right?

A. I'm not sure.

Q. Is it employing new underground systems?

Is that your understanding of this program?
A. No, it's not.
Q. So it's existing underground systems, customers that are already served through those underground facilities today, correct?
A. That would be my understanding, yes.
Q. So do you have an alternative to maintaining or rejuvenating the underground cable that creates these problems?
A. Now, would you say that again, please? I'm sorry.
Q. Do you have an alternative to this kind of, and I'll take your characterization, expensive program for this purpose for customers that are currently served by underground facilities, what other choice is there other than to maintain or rejuvenate the cable?
A. Well, I think the cables in question here fall under at least two broad categories, if not

more. The URD, which is underground residential distribution cables, those are cables that are typically feeding residential subdivisions and possibly commercial also, so those are the cables that it's my understanding are the ones that are being targeted for rejuvenation. So that's kind of one category.

I believe that was the lowest cost category of all that were presented. It was maybe in the hundred thousands, 150,000-dollar per mile.

The other categories would be main line feeders I think at substation exits, underground cables. I believe those are the ones that were the most expensive, a million dollars per mile up to close to 2 million.

Q. Okay. Are you -- I'm trying to get at your concern here. You mentioned about the underground program. Are you saying that the company should build new facilities, overhead, for example, for those kinds of station facilities or feeder cables? What's your alternative to spending the money to do what the company's proposing?

A. Well, I think my concern was more that at least at this point there was nothing really to evaluate, or not a lot from my perspective. It

seemed like the company was taking a position that
because the cable was old, you know, it has to be
replaced, or at least a certain portion, whatever
they projected here, has to be replaced.

I felt that -- and without any projected
improvements. So there really was no ability for

myself, I think, or the staff, the Commission to say okay, this is a good program compared to the other programs. This is a good bang for our buck as compared to the overhead mitigation or the vegetation management so, therefore, we should do this instead of that.

I think there needs to be more thought possibly, more projections. Seems like most of the projections were based on actual failures. My understanding of underground cables as far as exits and three-phase feeders or my conclusion was that not too many of those were failing, at least currently, or the company could present some data as to, you know, what the effect is on their SAIDI or SAIFI.

Q. Okay. Well, Mr. Cleaver, the SAIFI and SAIDI projections you're talking about, those are system average indices, right?

A. That's correct.

Q. And perhaps given the amount of

underground facilities for residential generally, it's not surprising that improvements to the underground facilities for residential would not have a big impact on SAIDI or SAIFI, is it, in your experience?

A. In my experience cable, you know, if you do it on a reactive basis, if you just replace cable a section here, a section there, then that particular event's not going to have a significant impact on your overall SAIFI. It would get lost.

Q. Okay. Are you suggesting the company should just wait until cables fail and then react --

A. No.

Q. Do you have an alternative proposal for underground?

A. I can tell you what I would like to see. I would like to see at least some type of probability analysis of cable failure, and if the company doesn't have its own numbers of actual failures where they can present a plausible case, a business case so you can compare dollars or SAIFI improvement per dollar, something like that, that they do something maybe using industry data, EPRI data, something like that. That at least would give myself and the Commission something to look at, something to compare.

Q. Now, notwithstanding the fact that underground improvements may not affect SAIDI or SAIFI in a significant manner, if you're one of the customers served by underground facilities that are aging and have reliability issues, that would be a more significant impact for those customers, correct?

A. I think that's logical to assume, yes.

Q. And again, other than your point about more thought and more study, you don't have a proposal, an alternative proposal to deal with -- currently to deal with the underground situation.

A. I agree. That's correct.

Q. Thank you.

Now, you had also mentioned the -- I'm sorry, what was your second concern?

A. I think distribution automation.

Q. Yeah. Okay. So can you explain your concern on distribution automation?

A. I think you'll find that again, my testimony, on page 42 and 43.

Q. Well, that's fine. Can you explain it to me?

A. Yes. My perspective on that is distribution automation has at least a potential to provide a premium level of service but to, again, a

select number, a select few, if you will, of
customers. And it was my perspective on this
particular proposal that that money might be better
spent, at least considered to be spent on SCADA as an
alternative.
I believe if you go back to the '06 case,

SCADA was a program that the company had looked at at that time. If I recall correctly, the number of stations was something like in order of magnitude of like 150 stations at the time that AEP had that did not have SCADA, and it's my view that SCADA has a, at least, a greater potential of improving reliability to more customers because it's at the substation level instead of the distribution circuit level, so it has a greater possibility at least of providing better service for more people.

Q. Does SCADA reduce or eliminate outages?

A. No, it does not.

Q. Okay. So with those concerns that we've gone back through, noted, those two things are noted --

A. Yeah.

Q. -- you do agree that the company's ESRP proposals, all the programs and activities that are part of that proposal, should be implemented as proposed?

A. No. I don't think I would agree with
that, no.

Q. Are there other programs or activities
within the ESRP proposal besides DA and underground
that you have concerns with?

A. I think you said "as proposed," and again one of the sticky points that I pointed out in my original statement was that it's a very small improvement. I think, you know, if you look at the amount of dollars that are being asked for here, like 450 million I think is correct, and the projected on the company's part, projected improvements are, in my view, relatively small as far as what they seem to be guaranteeing as a result of that expenditure that I wouldn't agree that as proposed that I would support the program.

Q. Is it your opinion that reliability performance, the status quo, can be maintained without spending more money?

A. Could you tell me what you mean by "the status quo," please?

Q. The current level of reliability, the performance under the indices could be maintained as is without spending more money.

A. I don't think I know the answer to that question.

Q. Does OCC believe it's good industry practice for all the Ohio electric distribution utilities to undertake all the programs in the ESRP that's being proposed by AEP?

THE WITNESS: Could I have that read back?

(Record read.)

A. No.

Q. If it's good industry practice, why shouldn't everybody do it?

A. I think it's going to depend. It will depend on the individual utility, their historical reliability performance or history and their design, their geography, I think, so you have to look at each individual utility.

Q. So when you say "good industry practice," does that mean if you look at a particular company's facts and circumstances, that whatever you think they should do in your opinion is good industry practice?

A. I think there's some commonalties. To the extent that they use common equipment, you may have common terrain as far as like vegetation management, you know, in Ohio, to that extent that you can draw a general conclusion as far as what's good industry practice for all those utilities to the extent that those common factors apply.

Q. But is it your opinion about what you would do if you managed the company, is that what you mean by "good industry practice"?

A. I think that's one way of looking at it. I think I would fall back on more than that. You know, my own experience would definitely be part of it, but it would also be, you know, knowledge that I've acquired over the years in addition to that knowledge of what other utilities or even other industries do. My understanding of the requirements, regulatory requirements of the ESSS rules, that would all factor into it.

Q. I think you stated earlier your concept of incremental programs would be something in addition to what the company's currently undertaking today; is that correct?

A. I think generally, yes, that's the way I used it in my testimony.

Q. Is that what's required in your opinion under Senate Bill 221 to obtain approval for a distribution infrastructure improvement plan?

A. Just the incremental you're talking

about?

Q. To do more.

A. I think that's a consideration. I don't think that's -- to my understanding of the pertinent sections of the statute, that's not the only thing.

Q. Do you think utilities, if they're

increasing their activities and their reliability activities, should get cost recovery for doing so?

A. My general answer to that question is if those -- the activities associated with those costs are prudent and you're recovering those costs through Commission-approved rates, then yes, you should.

Q. Okay. Could you turn to page 10 of your testimony? In item 4 at the bottom of the page you say: "The enhanced overhead line inspection program does not appear to be significantly different from the Company's existing program."

A. Yes.

Q. Do you see that? Does this mean it's not an incremental program, in your view?

A. It could be.

Q. Well, you say it's not significantly different. What did you mean by that?

A. I think in item 4, if that's what you're talking about --

Q. Yes.

A. -- my thought process there, what I was considering was the part of the program, the ESRP, that's proposing to walk instead of drive by and do the inspections.

Q. That's it?

A. That's I think primarily what I was considering there, yes.

Q. Are you aware of any other features of the overhead line inspection program that are different?

A. Yes.

Q. What else are you aware of?

A. Well, I understand that the company proposes to do more aerial inspections and to either do that I think with a bucket truck or climbing and more walking.

Q. Okay. And those are both things that, again, would be going back to our category of doing additional things or doing more than they do today of existing practices.

A. Doing different practices, yes.

Q. In addition to what's currently being done today.

A. Well, I don't know if the driving versus walking is in addition. I think you're doing that anyway today.

Q. I mean, do you think the bucket truck, you said aerial inspections specifics, that typically would be a bucket truck inspection, right?

A. That's what I understand, yes.

Q. And walking the lines, those kinds of things. Are those more thorough or complete, more effective ways to inspect facilities?

A. I think they may be, yes.

Q. Okay. And they're activities that have a cost associated with stepping up or doing those differently, correct?

A. I think there's a cost associated with everything. Is that what you're talking about?

Q. Right. Okay. So then beyond the stepped-up inspection, we'll call it, what else are you aware of that's different under the proposed overhead program in the ESRP?

A. I believe part of the initiative proposed is to maybe do repairs on the spot and to be more proactive, I think to use Mr. Boyd's words, as far as trying to identify defects, which is different than what you're apparently doing now.

Q. And, in fact, are there five distinct

categories of the targeted overhead asset initiatives
that would be triggered through these enhanced
inspections?

A. I believe I would say that there are five
assets that the company has targeted. I don't think
all of them would relate back to your inspection

program, though.
Q. They go hand in hand with the enhanced inspections as part of the overhead -- enhanced overhead program though, correct?
A. I don't know that it's true.
Q. Are you aware of the cutout replacement initiative as part of that effort?
A. I would note that that's one that I would expect that would be included in the inspection process, yes.
Q. Would be included, what do you mean? Is that something that's done today by AEP that's not changing? Is that what you're saying?
A. No. I meant that as it related back to your inspection process, I would -- I could see where that could be incorporated with the inspection process as one of your targeted initiatives that, you know, may --
Q. Not only could be, but that's what the

company's proposing, is it not?

A. I think what the company is proposing is to inspect more thoroughly, possibly, to find defective cutouts and then replace them.

Q. Oh the walking inspections, the bucket truck inspections, climbing the pole, are those things that are required under the ESSS rules or under some statutory requirement that you're aware of?

A. It's my understanding -- well, based on my past experience and based on my understanding of the ESSS rules, those are activities that I would expect the company to be doing today.

Q. Do all the other utilities in Ohio do it that way?

A. I haven't made that kind of comparison and wouldn't have any knowledge that they are or they aren't. To the extent that the same regulatory requirements apply under the ESSS rules for you to both inspect, repair, maintain, and to have preventative -- take preventative actions, proactive actions as required as part of Rule 27(D)(1), to the extent that that's required of all the utilities, then I would say that they should be all doing that.

Q. But you don't know whether they do

currently.

A. No.

Q. Okay. And when you say if those things are required under rule 27(D)(1), is there something in the rule that leads you to believe that those particular methods are required?

A. I think the rule doesn't speak or doesn't specify methods or process or procedures. Again, I would agree that there should be some latitude there based on that particular utility's circumstances. I think it's more of a performance-based specification, if you will, to allow for those types of differences, and the end results would be measured as far as the effectiveness of those programs through your targets and your ability to meet those targets.

Q. Okay. And when a rule says to do inspections and repairs, there are many different ways to do those things; wouldn't you agree?

A. Yes, I would.

Q. Now, with respect to the vegetation management proposal in the company's ESRP, is that incremental or is that business as usual?

A. I would consider the lion's share of that to be business as usual or a good industry practice. There may be some parts that I would consider incremental.

Q. Okay. On page 35 of your testimony in lines 20 and 21 you say it's an improvement over current performance-based programs, it is not an enhancement, rather a reflection of additional tree trimming needed as a result of your prior program. Do you see that?

A. Yes.

Q. So what do you mean, it's an improvement but not an enhancement?

A. That's the words I chose, yes.

Q. What does that mean, if it's an improvement not an enhancement? Can you explain -- those seem to be synonyms that you're using in a different way, right?

A. Yeah. I think in general I had a little problem with the word "enhancement." My own understanding of the word, the connotation of, you know, high quality or something like that was involved, and I saw tree trimming, especially as one of those items that were -- it's a bread and butter type of item, a meat and potatoes type activity that has been going on for years.

The company is proposing to actually go back to more of a cycle-based program, which is a program that they've done in the past. My understanding, I think per Mr. Boyd, there was a focus to go away from cycle-based and more performance-based in the 2000 to 2007 period and now we're going back to that.

So that being said, like I said, it's a

meat and potatoes type of thing. That type of philosophy, if you will, of clearing the vegetation off of lines has been around for a long time, I think, so it's a method that I refer as being a more proactive, especially in the long-term when you consider how performance-based can allow trees to grow up around circuits if you don't trim those circuits over a, you know, a long period of time and leave them too long, I think, to high winds and storms and so forth and make sure your reliability puts it in jeopardy.

Q. Okay. But even though it is a meat and potatoes activity, as you say, and it's a traditional method of enhancing reliability, I thought you agreed earlier that even a traditional activity that is currently being done could be stepped up or increased and enhance reliability; that's also true, right?

A. That's possible, yes.

Q. Okay. So the enhanced level of the

vegetation management proposal within the ESRP,
you're not saying the company shouldn't do that at
that level, are you?
A. I'm quibbling with you about that -- over
the word "level." I think it's an improved
philosophy. I think some of the reason I might

quibble with "level" is because your past philosophy is part of the reason why we're here and why the company actually needs to step up and double its crews for five years before it can actually go on a cycle based. So in that regard, you know, like I said I would quibble with your word "level."

Q. Okay.

A. Whether that's justified or not.

Q. But again, sitting here today you do recommend and agree that the proposed vegetation management component of the ESRP is appropriate and should be undertaken by the companies?

A. I would agree that it may be.

Q. Well, is that dependent on some future development?

A. Well, I think your own Mr. Boyd stated that he can't guarantee the programs will come off as proposed or planned because of potential scarcity of labor, materials, and so forth, so I think there's no guarantees.

Q. Well, I know I didn't ask you about a guarantee. What I asked you was whether sitting here today whether undertaking the vegetation management component of the ESRP as described by Mr. Boyd is something that the company should do, should undertake now.

A. I would again agree that it's an -- it may be an improvement. The devil is in the details, so to speak, and I think only time will tell whether it will or not. I would agree that it may.

Q. Mr. Cleaver, if you could turn to page 11, item No. 5 at the top of the page you include as part of that statement that "the 34.5 kV program, while laudable, does not reflect an incremental effort."

A. Yes.

Q. Do you see that?

A. Yes.

Q. What do you base that statement on?

A. Well, as I understood it, the activities involved in 34-5 program are primarily adding, I believe it was sectionalizing, which I will assume for now that's reclosers, although it could be sectionalizers are maybe switching and lightning arresters, and those are two, again, bread and butter items that have been around forever, and I think it's a normal activity to, as your lines get extended or grow with the load growth, to add those items as needed.

Q. But again, let's be clear. Are you

saying that the company's targeted overhead asset initiatives, including the 34.5-kilovolt protection program described in Mr. Boyd's testimony specifically, is that something when you say it's not incremental, that's not being done today? That was your definition of incremental earlier.

A. I think just based on that definition, I think you could say just about anything that you do tomorrow is incremental. As a general practice I would consider adding reclosers and lightning arresters to a 34-5 system as something that you would be expected to do on a regular basis.

Q. I know, but I didn't ask you that. I'm asking you whether -- I'm trying to be clear about your statements, that it's -- you say does not reflect an incremental effort. Is that something the company does today or not?

A. I believe that it is something that they do today, yes.

Q. Let me ask you to turn to page 15 and 16
of your testimony.

A. You say 15?

Q. 15 and 16.

A. Okay.

Q. You're referencing the idea that major storm reliability data should be included in evaluating reliability performance; is that correct?

A. Yes.

Q. Now, what's your understanding of how the Rule 10 of the ESSS rules works relative to major event or major storm data?

A. You mean currently, is that correct, currently?

Q. Yes.

A. My understanding is that each company is allowed to define a major event themselves. There's not currently a standard definition, and based on that proposal it goes to the staff currently, the staff would have the ability to discuss that definition. There may be a negotiation that goes on. I think there is even a provision in the code that would allow it to even go to a hearing if you would require -- if we think that's needed. That's the definition that's used, and to filter out, if you will, or exclude those events from the company's actual performance that will be used to determine if they meet their targets or not.

Q. Okay. You disagree with that rule?

A. No.

Q. I'm sorry?

A. No.

Q. You agree with excluding storm data for purposes of reliability performance?

A. Well, I think as it pertains to that rule on page 15, footnote 4, I said that it is appropriate to have that exclusion because weather events vary from year to year, and that when you do that, you're looking at the system -- more the system itself and not the variability of weather so it is a valuable measure to require the company to exclude extreme events to see how the system itself is performing with some buffering or filtering, if you will, of extreme events.

Q. It's your testimony on page 16, doesn't that lead up to the point that AEP should be required to calculate reliability indices, including major storm data?

A. Yes.

Q. So you'd like AEP-Ohio's reliability

performance to be judged in a different way than your
understanding of the rules, Rule 10?
A. I think as it pertains to this
proceeding, the ESRP, that would be a recommendation
that we would like for the Commission to consider.
We believe that it's important, especially if you

want to align the customers' interests with the company's, that that alignment should reflect the customers' overall experience related to the actual amount of outage times and the durations and the frequencies they are actually experiencing.

So we would think in the context of this proposal it would be appropriate and reasonable to have some standards, some kind of milestones, if you will, some kind of measures to promote some accountability for anything that the Commission does see as appropriate for allowing.

Q. So you would set some new targets then that would be different relative to just the ESRP proposal, just to that context for AEP-Ohio?

A. I think -- I'm not proposing that the ESSS rules be changed as they currently are, but as it relates to this proceeding and based on some of the conclusions that is in my testimony concerning about -- our concern about the company's system's ability to withstand extreme events, extreme weather conditions, that that would be appropriate.

Q. So your recommendation on lines 14 through 17 on page 16 are specific to the ESRP proposal?

A. Yes.

Q. Isn't this the verbatim paragraph that was contained in Mr. Lanzalotta's testimony for purposes of the ESSS rule issues in the prior case?

A. If could be.

Q. Mr. Cleaver, is it possible for AEP-Ohio or other utilities to harden their systems, distribution systems, so that they're not impacted by major storms?

A. I don't know that you can say it's possible that you could harden a system to the point where it's never impacted. It would be like zero probability or possibility of being impacted.

Q. So short of that, how would you do that? How hard should a system be for a major storm?

A. Well, I think if I can assume that a company has implemented, does have programs that are proactive programs that are well-maintained programs, that trim trees far enough from conductors, inspect and repair proactively, that those type of programs

would in most cases harden the system to the point
where they are avoiding as many or -- excuse me.
Yeah, I think avoiding as many avoidable, I used the
word twice, outages as possible.
Q. Okay. That's all a matter of degree,
right, how much tree trimming you do, what outages

are avoidable? My question, though, is should a utility harden its system so it's not impacted by major storms?

A. No, I'm not suggesting that.

Q. Okay. And doing so would probably be quite expensive, correct? Going back to our underground discussion earlier.

A. I think that's logical, yes.

Q. Okay. And OCC would not support cost recovery for that kind of activity, would it?

MR. REESE: Objection, your Honor.

EXAMINER BOJKO: Grounds?

MR. REESE: It's beyond the scope of Mr. --

EXAMINER BOJKO: I'm sorry?

MR. REESE: It's beyond the scope of Mr. Cleaver's testimony.

EXAMINER BOJKO: Overruled.

A. I'm not sure what OCC's position would be if that kind of proposal was put before us. I think we would evaluate it.

Q. Okay. Now, you talked a little bit earlier about performance-based vegetation management and cycle-based. Do you recall that?

A. Yes.

Q. And would you agree that if there is a fixed pot of dollars for vegetation management, that the performance-based approach does give you the biggest bang for your buck in that context?

A. No. I don't think I would necessarily agree with that, no.

Q. Can you explain that?

A. I think there's a couple things I would consider. How big is that pot? I think the bigger the pot, the more the performance based may actually approach being a cycle based. If you're trimming enough lines, you may get close to trimming a line from end to end. That's part of it.

In my own mind I think there are some possible labor efficiencies that are available with cycle-based versus performance-based, that may actually decrease your cost.

Q. Now, in reviewing the reliability data for AEP-Ohio, would you agree that there have been improvements as measured by their reliability indices, in the last couple years during major events specifically is what I wanted to ask you?

A. You're referring to this table 2?

Q. Would you agree with my question?

A. Again, are you referring to table 2?

Q. I'm not referring to table 2. You may.
A. Okay. Now, again, was the question excluding major events or including?
Q. Including.
A. Including?
Q. Yeah.
A. Yes, I would agree.
Q. You think that that improvement is based on the programs that AEP-Ohio has undertaken or variations in major storms? To what would you attribute that improvement?
A. Well, I'm not sure if AEP-Ohio has varied their programs during that period so I couldn't speak to that. I think it's possible, there's a variation in weather every year so that's -- I think it's possible that that was an influence, I believe, in that time period also, or prior to that time period. According to Mr. Boyd's testimony, I think 2004 and 2005 there was a fairly large expenditure on AEP's

part that was applied toward reliability improvements. I think it was like $60 million. It was in his testimony and he was saying that there was a fairly large improvement in I think -- in the right-of-way or avoidable type of tree-related outages. So I think in that -- I would not expect personally that if you made improvements in '04 and '05, that you would see immediate reliability in indices improvement. You would expect to see that a year or two later, so I think we're somewhat seeing the effect of those increased expenditures also.

Q. Okay. During major storms how much does equipment failure contribute to outages, in your experience?

A. I think to some degree it depends. It depends on how you categorize your different outage causes. It depends also on the type of storm that you're talking about.

Q. Can you give me an example, though, of typical outages during a major storm and whether it relates to equipment failure or not?

A. Again, it depends on your definition of equipment -- or, your classification of equipment, I would say. For example, if you categorized a conductor splice where you make a repair to a

conductor and you put a mechanical splice on it, if
you characterize that as an equipment or the
conductor itself as equipment, major storms or
outages may affect that splice, especially if it's
weakened. The splice sometimes is the weakest link
in the conductor, so I think that would be an

example.

Q. Is equipment failure typically the cause of outages in major storms?

A. Did you say is it the major?

Q. Is it typically the cause of outages during major storm events?

A. Again, I think it's going to depend on the type of storm and possibly the utility.

Q. Why would it depend on the utility?

A. Say if you're a utility that didn't have, say, a lot of vegetation that you had to worry about. Vegetation I think is what I consider one of the major factors or contributors to outages during storms in Ohio because we have a lot of rural lines and vegetation in close proximity to those lines.

So if you were a utility that didn't have a lot of vegetation management, then equipment failure would probably be high on your list versus vegetation.

Q. Okay. If a tree falls down during a
storm into a line, is that equipment failure?

A. It depends on your definition.

Q. What's your definition?

A. Well, I think it depends on the data that
you wanted to recover. I'm trying to recall, there

was -- Mr. Boyd, I think we gave him a question in that manner and he kind of surprised me with his answer, but I think he did use a plausible reason for answering the way he did. I remember it surprised me.

I tend to want to identify the direct cause for an outage so I would classify, say -- some people may say if the wind blows real hard and that results in a tree limb snapping and blowing into the line, they may classify that as a wind-related effect. I would tend to look at the final cause, the direct cause. To me it's what hit the line, why it hit the line. That's the type of information that I would want to gather, and I would tend to call that a tree-related outage.

Q. So is that an equipment failure or not, your example?

A. No.

Q. Do you know how other -- if other

utilities report -- let me strike that.

Do you know how -- whether there is consistency among utilities in reporting those types of classifications?

A. Do I know if there's a consistency?

Q. Yeah.

A. It would be my experience that there's not consistency within a company as far as how those outages are reported, so within the industry I'd say no.

Q. Okay. On page 25 of your testimony you conclude at the bottom of the page that: "The ability of the Company to deal effectively with storms seems to have weakened significantly over the same period." Do you see that?

A. Yes.

Q. And this is the conclusion of comparing data from two time periods, 1998 to 2001 on the one hand, and 2002 through 2007.

A. Yes.

Q. Is that correct?

A. Yes.

Q. Now, did you compare the baseline for the two time periods relative to major events or storm activity?

A. Could you rephrase that? I don't think I understand what you want.

Q. Well, the two time periods --

A. Yes.

Q. -- did you examine the major storm activity during those two time periods and compare them or evaluate them?

A. Well -- pardon me.

I considered the potential impact, if you will, of the severity of storms and maybe the number of storms when I did this calculation, yes.

Q. You considered the number of storms and the severity of storms in the two time periods?

A. I considered the impact that those two factors may have on my conclusions, yes.

Q. The impact.

A. Yes.

Q. Okay. Well, if there were not as many storms in the first time period, wouldn't that affect your conclusion at the bottom of page 25?

A. It could, that's correct.

Q. Okay. Are you aware of any other factors that may have affected the company's reporting in comparing those two time periods?

A. Oh, yes. Yes, I am.

Q. What is that?

A. I think I read quite a bit of information in the Lanzalotta paper concerning a switch of the automated outage management system. I think that occurred around 2002. I think Mr. Boyd also testified to that.

Q. Okay. So you're aware of the automation and the outage management system that was introduced within AEP-Ohio.

A. Yes.

Q. Is that correct?

A. Yes.

Q. Okay. In your experience, would you agree that automation of outage reporting would impact the reliability indices performance of a company?

A. I have no direct experience from changing systems as I understand happened in 2002. My direct experience is with manual systems back in the stone age that were --

Q. Yeah.

A. -- transitioned to more of a spreadsheet, you know, where data entry people would take a form with information on it and put it on a spreadsheet. My experience with that is the data's more accurate.

You take -- there are fewer people involved. You can
standardize what type of information you look at.
You can consider -- you can maybe correct errors or
ask folks to go out and say "this doesn't make any
sense," you know, type of thing so it tends to
improve accuracy.

Q. The automation?
A. Yes.
Q. Which could certainly impact the reported performance under reliability indices, correct?
A. I think it could impact it either way. They could go up or they could go down.
Q. Well, isn't it logical to presume that the recorded outages would go up under an automated system?
A. I think the accuracy would go up.
Q. And if all, virtually all the outages are captured through the automated system, wouldn't there have been an element of human error, error or neglect in the manual system that would have missed some of those outages?
A. I would agree if you take the human element out, then you would get more consistency. I think it would depend on what those human beings assumed when they were reporting the outages. They

may assume that a thousand customers are off when only a hundred customers were off, so again, I would go back and say it depends. I think you basically have more of a standard -- a more accurate outcome.

Q. Okay. But it's certainly possible given the introduction of the automation that the comparison of these two time periods that you're referencing on page 15 would render that comparison inaccurate; isn't it?

A. I think the potential is that to the degree that there might be a difference between the two systems in terms of how it -- the sensitivity, if you will, of one system to the other and the effect that maybe more accurate information would have, again, that could have an influence.

MR. NOURSE: Your Honor, if I could have just a minute.

EXAMINER BOJKO: Let's go off the record.

(Off the record.)

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

Q. (By Mr. Nourse) Mr. Cleaver, do you know whether Ohio Power or Columbus Southern Power is spending on an annual basis more or less than the distribution maintenance expenses that were allowed in their last rate cases respectively?

A. No, I do not.

Q. Do you know whether the company's -- I'm sorry, strike that.

MR. NOURSE: That's all I have, your Honor.

EXAMINER BOJKO: Staff?

MR. JONES: No questions, your Honor.

EXAMINER BOJKO: Redirect?

MR. REESE: Yes, your Honor. Can we do this after lunch or can we take ten minutes?

EXAMINER BOJKO: Let's go off the record.

(Discussion off the record.)

EXAMINER BOJKO: Let's see you back at 1:45.

(At 12:11 p.m. a lunch recess was taken until 1:45 p.m.)

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Tuesday Afternoon Session,
November 25, 2008.

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EXAMINER BOJKO: Let's go back on the record. Does OCC have any redirect for this witness?

MR. REESE: Yes, your Honor, just several questions.

EXAMINER BOJKO: Please proceed.

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REDIRECT EXAMINATION

By Mr. Reese:

Q. Mr. Cleaver, you've relied to a certain degree on testimony from Mr. Lanzalotta in a prior case, correct?

MR. RESNIK: Excuse me, your Honor, may I have a moment?

EXAMINER BOJKO: Yes.

(Discussion off the record.)

EXAMINER BOJKO: Let's go back on the

record.

Sorry, could you please reread the last question?

(Record read.)

A. Yes.

Q. Mr. Cleaver, do you know what case

Mr. Lanzalotta's testimony was filed in?

A. Yes. That was case 06-222.

Q. That was a self-complaint case; is that correct?

A. Yes.

Q. Can you tell me generally what issues Mr. Lanzalotta addressed in his testimony?

A. Mr. Lanzalotta was asked to look at the company's proposed enhanced plan, it's called the enhanced service -- excuse me, the Enhanced Distribution Service Reliability Plan, which was related to the self-complaint.

Q. Okay. Now, did the -- we'll refer to that as the EDSRP. Did the EDSRP contain a vegetation management enhancement provision?

A. Yes, it did.

Q. Does the ESRP contain such a provision?

A. Yes.

Q. Did the EDSRP contain a provision

regarding overhead line inspections and overhead mitigation?

A. Yes.

Q. Does the ESRP contain such a provision?

A. Yes, it does.

Q. Does the EDSRP contain an underground mitigation program?

A. Yes, it did.

Q. Does the ESRP contain such an initiative?

A. Yes.

Q. Did the EDSRP contain a proposed program to deal with automation?

A. Yes.

Q. Does the ESRP contain such a provision?

A. Yes, it does.

Q. Mr. Lanzalotta addressed all of these in his testimony; is that correct?

A. Yes, he did.

Q. Now, you mentioned that you had used Mr. Lanzalotta's testimony as more or less a template for portions of your testimony; is that correct?

A. Yes, I did.

Q. Can you explain why you would have used his testimony as a template for certain provisions in your testimony?

A. Well, as I compared the EDSRP, which was the plan in the 06-222 case, with the ESRP in this proceeding, I found them to be nearly identical.

Q. As I understand it, case number 06-222, the self-complaint case, dealt with enhanced programs as well.

A. That's correct.

MR. REESE: No further questions, your Honor.

EXAMINER BOJKO: Any recross, Mr. Yurick?

MR. YURICK: No, thank you, your Honor.

EXAMINER BOJKO: Mr. Bell?

MR. BELL: No, your Honor.

EXAMINER BOJKO: Mr. Boehm?

MR. BOEHM: No, your Honor.

EXAMINER BOJKO: Mr. Rinebolt?

MR. RINEBOLT: No, your Honor

EXAMINER BOJKO: Ms. Wung?

MS. WUNG: No, your Honor.

EXAMINER BOJKO: Mr. Randazzo?

MR. RANDAZZO: No, your Honor.

EXAMINER BOJKO: Ms. Elder?

MS. ELDER: No, your Honor.

EXAMINER BOJKO: Mr. Jones?

MR. JONES: No, your Honor.

EXAMINER BOJKO: Mr. Smalz?

MR. SMALZ: No, your Honor.

EXAMINER BOJKO: Mr. Nourse?

MR. NOURSE: No, your Honor.

EXAMINER BOJKO: Thank you. You may step down, Mr. Cleaver.

MR. REESE: Your Honor, OCC moves for admission of OCC Exhibit 13.

EXAMINER BOJKO: Any opposition to the admission of OCC Exhibit 13 with the appropriate language stricken as or pursuant to my rulings on the motions to strike?

MR. NOURSE: No, your Honor.

EXAMINER BOJKO: Then it will be admitted as amended.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. REESE: Your Honor, if I might, during my cross of Mr. Boyd several days ago I had approached with certain discovery request responses, virtually a packet, and we had -- AEP and OCC had stipulated to certain of those.

What I had agreed to do with counsel from AEP is remove all of the discovery that was either prepared by a party other than Mr. Boyd or that the company had objected to and not provided any additional response.

I have compiled that particular packet.
What I would like to do later today or -- either I
will do it or counsel, would like to move that in as
an exhibit later today. Is that okay?

EXAMINER BOJKO: Yes. Not now?

MR. REESE: Not now. I have to make some additional copies so I can pass it out to everybody.

EXAMINER BOJKO: Okay.

MR. REESE: I'd like to have it marked as Exhibit 9A.

EXAMINER BOJKO: Exhibit 9A?

MR. REESE: That's correct.

EXAMINER BOJKO: It will be so marked as OCC Exhibit 9A, which is a compilation of discovery request responses?

MR. REESE: Yes, your Honor. We'll have an index attached to it to indicate which pieces of discovery are in the packet.

EXAMINER BOJKO: It will be so marked.

MR. REESE: Thank you.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER BOJKO: Any other matters before proceeding with the next witness?

Seeing none, Mr. Boehm, would you like to call your next witness?

MR. BOEHM: Yes, your Honor, I'd like to call Mr. Lane Kollen.

EXAMINER BOJKO: Mr. Kollen, could you please raise your right hand?

(Witness sworn.)

EXAMINER BOJKO: Please be seated.
Please proceed.

- - -

LANE KOLLEN

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

DIRECT EXAMINATION

By Mr. Boehm:

Q. Mr. Kollen, will you state your full name and spell your last name for the court reporter?

A. Yes. My name is Lane Kollen, K-o-l-l-e-n.

Q. Mr. Kollen, do you have a document in front of you entitled Direct Testimony of Lane Kollen?

A. I do.

Q. And was that testimony prepared by you or under your supervision and control?

A. Yes.

Q. Do you have any changes to that testimony?

A. No.

Q. Is that testimony true and correct to the best of your information and belief?

A. Yes.

MR. BOEHM: Your Honor, we submit the witness for cross-examination.

EXAMINER BOJKO: I'm sorry, did you mark the testimony?

MR. BOEHM: Excuse me, your Honor. I think it would be OEG-3. We had the testimony of Steve Baron and then we had the rebuttal testimony of Mr. Baron, and I think those were 1 and 2, and this should be 3.

EXAMINER BOJKO: Yes. It will be so marked as OEG Exhibit 3.

MR. BOEHM: Thank you.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER BOJKO: Mr. Yurick?

MR. YURICK: I have no questions of this witness. Thank you, your Honor.

EXAMINER BOJKO: Mr. Bell?

MR. BELL: Yes, your Honor.

If I may, as a preliminary matter, as the

Bench is aware, on November 17th at the commencement of the hearing on the, quote, interim plans that have been proposed by a number of parties in this proceeding, I moved to strike all of the testimony of all of those witnesses on the basis that the Commission had no legal authority under Senate

Bill 221 to authorize an interim ESP plan.

Mr. Kollen addresses in his testimony what should or might take place or what is being proposed beginning January 1, 2009, and I would either move to strike that testimony, which I can certainly identify for the Bench, or, alternatively, I would request the opportunity to very briefly voir dire Mr. Kollen to determine whether any of his testimony is directed toward an interim plan.

If not, I will have no witnesses -- or, no questions of Mr. Kollen. It's for the purpose of preserving the legal argument that I made on November 17th.

EXAMINER BOJKO: I understand your legal argument that you made. Where are you requesting be stricken?

MR. BELL: Well, if I can voir dire, it might alleviate the need to strike. If the witness says "None of my testimony is directed toward an interim plan," I will not move to strike.

EXAMINER BOJKO: You may ask that question because I'm a bit confused because I believe I already asked this question at the prehearing conference, so that's why I'm trying to get you to direct me to a place where you believe --

MR. BELL: For instance, he speaks not in terms of interim plans, but he speaks with respect to carrying charges on environmental capital additions starting in 2009, beginning on page 20, question 15, answer beginning on page -- or, on line 17. Again, the following page, 21, with respect to the company's proposed recovery beginning on line 8, he says, "Secondly the company's existing RSP rates provide recovery of generation," et cetera.

EXAMINER BOJKO: Okay.

Mr. Kollen, were the date references intended to refer to some kind of interim plan, or is that just the date you believed that the ESP was scheduled to be implemented?

THE WITNESS: None of my testimony addresses the interim plan. Everything that has dates on it in my testimony references either to the statute or to the company's proposal.

MR. BELL: Thank you, your Honor. I

withdraw my motion to strike. I'm just trying to preserve my legal position. Thank you.

EXAMINER BOJKO: Thank you.

Ms. Wung.

MS. WUNG: No questions, your Honor.

EXAMINER BOJKO: Mr. Randazzo.

MR. RANDAZZO: Just a few.

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CROSS-EXAMINATION

By Mr. Randazzo:

Q. Mr. Kollen, would you turn to your testimony OEG Exhibit 3 at page 20, please. And in the answer that begins at line 17 you say that you agree in general concept with the company's proposal to recover carrying costs on environmental capital additions starting in 2009. Do you see that?

A. Yes.

Q. And you reference section 4928.143(B)(2)(b), right?

A. That's correct.

Q. Are you a lawyer?

A. I am not a lawyer.

Q. Okay. Do you have a copy of the -- it's bad citation form, by the way. Just kidding.

Do you have a copy of Senate Bill 221

available to you by any chance?

A. I do.

Q. Would you turn to that section?

A. Yes.

Q. Is it your understanding that that section deals with recovery of costs related to environmental expenditures or, more broadly, construction work in progress allowances?

A. Yes, both.

Q. So the way you read it, is the reasonable allowance for construction work in progress for the distribution utility's cost of constructing an electric generating facility separate and apart from the opportunity to recover costs related to an environmental expenditure?

A. Well, I think there's a conjunction there, and I think that where you've got a reasonable allowance for construction work in progress for any of the electric distribution utility's costs of constructing an electric generating facility or for an environmental expenditure, I see those as being two different categories of costs.

Obviously, there could be environmental expenditures within the construction costs of a new generating facility. In fact, that is almost always the case. But I see this as being two separately identified categories of costs.

Q. Okay. Are you familiar with the concept of construction -- an allowance for construction work in progress?

A. Yes.

Q. And generally can you describe what your understanding of that is?

A. Yes. That's a situation where via surcharge or through base rates a utility is allowed to recover a carrying charge on construction expenditures throughout the construction period.

Q. Right. And when there's an allowance for construction work in progress, does that have an ultimate impact on the rate base valuation of the plant that comes into service?

A. Ultimately it does, that's correct.

Q. Okay. And I ask you that question because -- are you aware of any other requirements that are related to the surcharge that's authorized in this section 143(B)(2)(b)?

A. Your question is, am I aware of any other requirements?

Q. Yeah. If there was a surcharge granted under this section, are there any other requirements

that you are aware of in the legislation that affect
the opportunity for the Commission to grant such an
allowance?
A. Yes. There are other threshold
requirements in that provision. One, for example,
is: No such allowance for generating facility

construction shall be authorized, however, unless the Commission first determines in the proceeding that there is a need for the facility.

And I could continue on, but that would be a threshold requirement for new generation facilities.

Q. Okay. I had something else in mind. Would you turn to, same section, turn to (C), or upper case C, as us adults say, (1), which is on a couple pages over. Do you have that section in front of you?

A. I do.

Q. And would you turn to the last sentence in that section, or the next-to-the-last sentence and the last sentence. The next-to-the-last sentence starts with the word "additionally." Would you read that, sir?

A. This is (C) and then (1)?

Q. Yes, that's right. The section begins with "The burden of proof."

A. Okay. And you're asking me to read the next-to-the-last sentence or both the next-to-the-last and the last sentence?

Q. Both.

A. Okay. "Additionally, if the Commission so approves an application that contains a surcharge under Division (B)(2)(b) or (c) of this section, the Commission shall ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge. Otherwise, the Commission by order shall disapprove the application."

Q. Now, would reading that -- and again, we've already acknowledged that you're not a lawyer -- but would your technical reading, expert witness reading of that suggest that there are some conditions associated with the opportunity for the Commission to grant a surcharge under the section that you cite on your testimony at page 20?

A. Yes. It says that "The Commission shall ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge." I would think that would be a condition.

Q. All right. Now, might one of the benefits that are available as a result of environmental-related capital expenditures be the availability of emission allowances?

A. Yes, that's a possibility.

Q. All right. And -- well, strike that.

Now, on page 25 of your testimony, at the top, and this is in the section of your testimony dealing with the aspect of the company's proposal to obtain permission to, at some point in time, possibly sell or transfer generating assets, correct?

A. Page 25 covers that subject, yes.

Q. Right. You actually start that subject on page 24 of your testimony. Correct?

A. Yes, that's correct.

Q. Okay. Now, you have on the top of page 25, you've got two numbered paragraphs, and I want to draw your attention to paragraph No. 2. In paragraph No. 2 you refer to Columbus & Southern and Ohio Power's contractual entitlements to a portion of the output associated with OVEC, or the Ohio Valley Electric Corporation, generating facilities.

Did you examine the nature of the interest that may be possessed by AEP, Columbus Southern, or Ohio Power in the generating facilities

otherwise sitting under the corporate structure of
OVEC?
A. I did, and I'm familiar with the
structure of that entity. It is owned by a number of
sponsoring utilities, each of them which historically
have been entitled to their proportional share of the

capacity and energy from those units in excess of the Department of Energy's requirements.

The Department of Energy's requirements are nonexistent and have been for some time, and so essentially that translated to a direct entitlement of the capacity and energy based upon their respective ownership shares in OVEC.

Q. Are you aware of whether or not AEP or any of its operating companies have a common equity ownership interest in OVEC?

A. Yes, they do.

Q. And by referring to the contractual entitlements in your testimony, you weren't suggesting one way or the other, and I think you say this in the testimony, that you weren't making a judgment about whether or not whatever interest is held in OVEC is a generating asset; is that correct?

A. Well, these are generation entitlements or effectively purchased power agreements, and to the

extent that these contractual entitlements are sold
or transferred, that would cause CSP's and Ohio Power
Company's costs to go up because the fuel and
purchased power expenses required to replace that
generation would be more expensive.

MR. RESNIK: Your Honor, I'm going to

object and ask the answer be stricken. It was absolutely nonresponsive to Mr. Randazzo's question.

MR. BOEHM: Your Honor, could I have the question read again?

EXAMINER BOJKO: Yes.

MR. RANDAZZO: I would agree it was not responsive.

MR. BOEHM: Nobody cares. I'd like to hear the question read again if I could.

(Record read.)

MR. BOEHM: It seems to me, your Honor, it all depends on how strictly you want to interpret responsive. Certainly it was at least partially responsive.

MR. RANDAZZO: I should get to decide. It was my question.

MR. BOEHM: It's my witness.

EXAMINER BOJKO: I believe it was partially responsive. I was trying to -- could you let me review the answer?

I'm going to strike after the word "and" -- or beginning with "and to the extent that these" -- beginning with the word "and" of the answer, I'm going to strike so then the answer stands as --

(Record read.)

EXAMINER BOJKO: Mr. Randazzo, do you have a follow-up?

MR. RANDAZZO: No.

Q. (By Mr. Randazzo) I'd like to turn now, Mr. Kollen, to your testimony dealing with the structure of the significantly excess earnings, which begins at page 29 of your testimony. And I'd like for you to help me better understand, because I don't, the rate-making adjustments that you propose to make for purposes of conducting the test. Before we get to that point I want to see if we have the same understanding.

It's my understanding that in the event that the Commission finds that there is significantly excess earnings and proceeds to direct the utility, in this case the electric distribution utility, to make a refund, that at that point the utility has the ability to elect to terminate the electric security

plan and to move to a market rate option. Is that
your understanding?

A. My understanding is based upon the
statute, and the company does have the right to
withdraw its plan, from my understanding of the
statute, and then file an MRO plan.

As to whether or not those adjustments go into effect, I don't know the answer to that question.

Q. Right. And so that -- well, strike that.

Now, at page 33, at line 4 to line 7, are you there, describing some of the what you call rate-making adjustments that you are suggesting the Commission needs to make for purposes of conducting the excess earnings analysis?

A. Yes. There are a number of them there, and then there are some on the prior page as well.

Q. Okay. Now, and I'll use this as sort of an opportunity to ask a question that has some application to other things you say in your testimony, but let's see if we can do this generally and maybe won't need to do it specifically.

Would you also need to make similar kinds of adjustments to the earnings of the group of comparable utilities that is used to establish the

appropriate level of earnings or the benchmark level
of earnings?

A. Well, that's a possibility to some
extent. Now, the peer group -- well, first of all,
I'm not the witness on the methodology for OEG; that
would be Mr. King. But with respect to the operation

of the peer group or the comparative group, would be a combination of nonutilities and utilities, and there would be, in my assessment, no practical way in which to modify the reported net income and common equity used in the comparable group computations for rate-making adjustments.

But that is not the case with respect to the distribution utilities here in Ohio because what we're trying to do is compare the distribution utilities in Ohio to this comparative group. And, you know, your question is should we make rate-making adjustments to the comparative group, as I appreciated the question.

No analog, no comparability as far as the nonutilities within that group. There arguably could be some issues with respect to the utilities, but I don't think that it's worth inquiring into that level of detail for the comparative group because of the averaging approach used for the comparative group.

Q. Okay. I'd like to explore that a little bit. You say -- let's take your nonutility point. You would be able for a nonutility to sift through their accounting information and determine whether or not there are one-time write-offs, for example, wouldn't you?

A. Yeah.

Q. That's fairly typical; that's not a utility accounting trick, is it, or convention?

A. Well, I don't think that anything that's done in conformance with generally accepted accounting principles is an accounting trick.

Q. Well, there are some people that are in jail just for doing that.

A. Well, it still wasn't a trick even in those circumstances. But yes, I think that -- and again, this question may be perhaps better directed to Mr. King, but I think that you certainly could take out the effects of extraordinary write-offs from the comparative group regardless of whether those members of the group were utilities or nonutilities.

Q. Right. And the same would be true with acquisition premiums?

A. Yes, to some extent.

Q. And the effects of mark-to-market

accounting?

A. That one I think is more problematic. The generally accepted accounting principles are not always transparent in the sense that all of these types of mark-to-market adjustments are reported. I think that the perspective of OEG and Mr. King, and I share this perspective, is that you need a methodology that is reasonably practical, and so my understanding of Mr. King's methodology, without testifying to his testimony, is that the approach that we are recommending is a practical approach and it doesn't get bogged down in all of this type of analytical detail where people could reasonably disagree but rather to simply take the information from a published source of financial information. And my understanding is that is what Mr. King has proposed and that is what he did using 2007 actual data in his testimony.

MR. RESNIK: Your Honor, can I just make a point here. I guess there may be some question ultimately about the availability of Mr. King, and I just want to be certain that none of this witness's statements of his understanding of Mr. King's testimony is being put -- is being put in the record essentially in having Mr. King's testimony in absentia.

MR. BOEHM: Certainly, your Honor, there
isn't any arrangement between Mr. Randazzo and I to
see that done, and I'm, I guess, growing a little bit
in apprehension about this line of questioning going
into Mr. King's testimony as well, and I would just

as soon leave it where we are now, but I wanted to afford counsel as much liberty as I could.

No, we fully intend somehow, some way to get Mr. King available for cross-examination.

MR. RESNIK: Thank you.

Q. (By Mr. Randazzo) Mr. Kollen, maybe I misunderstood the purpose of your testimony. Aren't you the witness that's describing how you go about determining the amount of income that's available for common shareholders through your rate-making adjustments for purposes of inputting that number into the significantly excess earnings test?

A. Yes, you're correct about that.

Q. And Mr. King doesn't do that --

A. But I wasn't finished with my answer. There's two parts to the equation. The first part is the threshold issue for determining whether or not and what the rate of return is for significantly excessive earnings, and that methodology is addressed by Mr. King.

Now, then there's the other part of the equation, which is what are the earnings of the particular distribution utility for the review year, and I address that issue. So you have Mr. King addressing the threshold issue. I address the computation of the earnings for each one of the utilities with respect to AEP-Ohio, and then the application of the significantly excessive earnings test, the result of that.

Q. Right.

A. I address that as well.

Q. But again, you're the witness that's responsible for quantifying the level of income available for common shareholders based upon the rate-making adjustments that you're recommending to the Commission, right?

A. Yes, that's correct. And then also the application of that, the comparison of the result of that to the threshold determined under Mr. King's methodology, because you need both. Then you get a differential, and then the question is what do you do with the differential? And I address that piece of it as well.

Q. Right. And, now, with regard to your --

at page 35 you talk about, at the bottom of page 35 continuing on to page 36, grossing up for income taxes similar to the way we have historically done it for rate-making purposes based upon a rate base rate-of-return approach, correct?

A. Yes, that's correct. Because the result of the computation, the significantly excessive earnings computation, is an earnings differential. Earnings are after tax, but the revenue requirement is before tax. So you have to take that after-tax result and move it up for income taxes, or what we call a gross-up, and that's consistent with the PUCO's traditional rate-making practice, to take the operating income, which is after tax, and it's the analog of the excess earnings, and then to gross that up to the revenue requirement for either a rate increase or a rate reduction. In this case it would be a refund, effectively.

MR. RESNIK: Your Honor, I would move to strike everything after the word "yes."

EXAMINER BOJKO: Mr. Resnik, he's just trying to be a helpful witness and explain in its totality to the Court. I don't think that one was meant to be --

MR. RESNIK: Loading the record.

EXAMINER BOJKO: -- elaborate for a
different reason.

But please just try to answer the
question.

THE WITNESS: Yes.

EXAMINER BOJKO: You'll be surprised how

much we know.

THE WITNESS: I'm certain that's true.

MR. RESNIK: We knew that, too.

Q. (By Mr. Randazzo) Would you also need to gross up the earnings of the comparable group?

A. No. It's the differential. In other words, you have a rate of return that becomes the threshold using Mr. King's methodology or, you know, some methodology, and then you compare that to the earned return, regardless of how the Commission determines that earned return will be computed. Then you get a differential.

That differential is a dollar amount, and then that is grossed up. You don't have to do anything more with the comparable group other than determine the comparable group's rate of return for the significantly excessive earnings threshold.

MR. RESNIK: Your Honor, same objection, only this time it's after the word "no."

EXAMINER BOJKO: Overruled.

Q. Is the return -- percentage return on common equity for the comparable group reported based upon income grossed up for taxes?

A. No. Earnings are after tax, and that was the point that I was trying to make earlier. I won't go into it any further, but it's an after-tax computation. I don't want to be chastised from the Bench.

EXAMINER BOJKO: I overruled the last one.

THE WITNESS: I know.

MR. RESNIK: The last two.

THE WITNESS: I thought I would be a little bit circumspect.

Q. But in the traditional rate-making context, would I be correct that you had used the statutory tax rate for purposes of grossing up?

A. Let me ask a clarifying question. You're talking about in the normal rate-making process where you take an operating income deficiency or surplus and then gross that up to a revenue requirement?

Q. Right.

A. Yes, the statutory income tax rate.

Q. Okay. Would the return on common equity

reported for a comparable group of companies reflect
the effective tax rate?

A. Yes. That's a difficult question to answer because --

Q. Well, you just did, and then you said --

A. Well, I said yes, and then I said that's a difficult question to answer because it would be no in some circumstances as well. But, generally speaking, it would be the statutory rate, but it could be the effective rate, which for various reasons under the tax law and under GAAP may be different.

Q. So you would need to look at the comparable group to determine exactly how taxes have been computed for purposes of determining whether they're comparable; is that what you're saying?

A. No. No. I absolutely disagree with that.

Q. On page 42 of your testimony, beginning at line 11 through 15, you've got a 1 percent return on common equity is equivalent to $19 million. Is the 1 percent there the same as a hundred basis points?

A. Yes, 1 percent equals 100 basis points.

Q. Okay. And again, the 19 million that you show there for Columbus & Southern and 37 million for Ohio Power, those are grossed-up values?

A. Correct.

Q. And you show that on page 1 of 2 of LK-2, one of your exhibits, correct?

A. Yes.

Q. Now, if you could turn to your Exhibit LK-2, am I correct that you are comparing for purposes of computing the returns or return on common equity, you are comparing the net income line total company to the total common equity line to get your percentage relationship, correct?

A. I'm not sure what you mean by "compared," but I divided the net income by the total common equity to come up with a percent ROE.

Q. All right. And then you get -- the grossing-up process that we talked about a moment ago is then shown in the middle of the page where you take approximately 11.6 million for Columbus & Southern and apply both federal and state taxes to get to the grossed-up value, right?

A. Yes.

Q. And you used the statutory rates for purposes -- statutory tax rates or legislatively specified tax rates for purposes of computing the

38.6; is that correct?

A. Yes.

MR. RANDAZZO: That's all I have. Thank you very much.

EXAMINER BOJKO: Mr. Rinebolt?

MR. RINEBOLT: No questions, your Honor.

Thank you.

EXAMINER BOJKO: Ms. Grady?

MS. GRADY: No questions, your Honor. Thank you.

EXAMINER BOJKO: Ms. Elder?

MS. ELDER: No questions, your Honor.

EXAMINER BOJKO: Mr. Smalz?

MR. SMALZ: Just one or two clarifying questions.

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CROSS-EXAMINATION

By Mr. Smalz:

Q. Good afternoon, Mr. Kollen. Turning to page 9 of your testimony, and particularly your statement beginning on line 21 that begins "In 2009."

MR. RESNIK: I'm sorry.

MR. SMALZ: Page --

MR. RESNIK: I'm sorry, Michael. Go ahead.

Q. Having to do with the protection of OPC's and CSP's nonrequirement sales for resale, were you able to break that down into how much of those sales were projected to be made to other AEP companies and how much was projected to be sold to third parties, non-AEP companies?

A. I have a reference here -- well, first of all, I think so, but I would have to verify that against Mr. Nelson's exhibits that I've referenced at the bottom of the page and onto the top of the next page just to confirm that, but I believe that his exhibits have that breakdown. I didn't do anything independently, but I believe that those exhibits have that breakdown.

Q. I see.

MR. SMALZ: Thank you.

That's all, your Honor.

EXAMINER BOJKO: Mr. Resnik.

MR. RESNIK: Thank you, your Honor.

EXAMINER BOJKO: Oh, Mr. O'Brien, do you have any questions?

MR. O'BRIEN: No questions, your Honor.

EXAMINER BOJKO: Please proceed.

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CROSS-EXAMINATION

By Mr. Resnik:

Q. Good afternoon, Mr. Kollen.

A. Good afternoon.

Q. How are you today?

A. I'm doing fine. How are you?

Q. Good.

A. Good. Hopefully we'll both be in the same shape after we're done with this.

Q. Actually, I was just hoping your answers to the rest of my questions would be as direct to the one telling me how well you were doing.

If you could take a look at page 3 of your testimony beginning down at the bottom of line 22 and going on to page 4, line 3, do you see there where you're discussing purchases being prudent?

A. Yes.

Q. Is your conclusion regarding prudence based on prudence from a financial perspective?

A. I'm not sure that I have a limitation on the use of the term "prudent," but I am using that term as I understand it is being used in the statute, which has a rate-making connotation which then, in turn, has a financial application.

Q. But even in rate-making there may be other reasons for a company to do something other than just the financial reasons; is that correct?

A. I suppose that's true under certain circumstances.

Q. And in those circumstances those other reasons that are not financial in nature may still be prudent reasons to carry out a particular decision.

A. I can think of -- yes. I think that would be true. For example, if you have operational constraints, you would want to operate your system at the least costs you could, but nevertheless, you may not be able to do that in certain respects because of operational constraints. So that would be a situation where operations constrain the financial decision-making.

Q. Okay. And there may be other examples as well.

A. There may be.

Q. Okay. Now, at page 9, lines 10 through 12 you say that the actual purchased operations, and this is purchasing power, will be reflected in the company's FAC riders, not these estimate -- I think that's supposed to be "estimated" prices.

A. Yes, that's correct.

Q. So are you saying that what the market price actually is, is what will wind up impacting the

FAC?

A. Yes. That's the company's proposal, and
I would agree with that. That's exactly right.

Q. And on page 10, line 16, you make
reference to the AEP interconnection agreement, and
you point out that that is a FERC-regulated rate; is

ARMSTRONG & OKEY, INC., Columbus, Ohio (614) 224-9481 that right?

A. Yes.

Q. Is there any particular significance there or reasons why you pointed out that the pool agreement -- that's what we call the interconnection agreement, the pool agreement -- is a FERC-regulated rate?

A. There were at least two reasons for that. One reason is to agree with Mr. Baker, who I believe also states that fact. And the second one was to point out that it is federal preemption, as I argue later in the testimony, that requires the margins from the off-system sales and from the capacity equalization receipts to be distributed to the AEP utilities. And then I go on to describe how that is reflected in retail rate-making.

So this is the first introduction of the term in this context, and I thought it was important to note that it was a FERC-regulated rate.

Q. At page 13, lines 3 through 5, you have some numbers there, and actually going down through line 7, and I'm wondering if something got reversed. You talk about CSP ratepayers, 75.4 million, and Ohio Power, 69.6, but then when you multiply it by three times, you're getting answers that wouldn't be expected.

A. Well, you have to compound because it's not just simply the 69.6 million times three. In the first year when you are under the company's proposal purchasing 5 percent of load, the effect would be 69.6 million. In the second year under the company's proposal, you're purchasing 10 percent of load, it would be 139.2 million, and then in the third year it would be something north of 200 million.

So when you add up the impact of the three years, that's how you come up with the 452 million or the 418 million. It's not a simple multiplication times three. It's actually a multiplication times five.

Q. Okay, so --

A. I'm sorry, times six.

Q. You're comfortable then that these numbers are all in the right places?

A. I think so. We can check the math, but I think they're correct.

Q. Okay. At lines 12 through 13 you talk about these market purchases will push lower cost energy to the other AEP members. Do you see that?

A. Yes.

Q. Is that based on your assumption that these purchases will be considered as member primary capacity under the pool?

A. Yes, in part. And also in part just simply the energy costs will be higher based upon the pricing developed in Mr. Baker's testimony. The $88 per megawatt-hour and the $85 per megawatt-hour is substantially higher on an energy basis than the ability to either purchase from the other AEP companies under the interconnection agreement or to sell to the other AEP companies under the interconnection agreement.

Q. You're familiar with the interconnection agreement?

A. Yes.

Q. And are you aware that in that agreement referencing member primary capacity, as far as purchases of capacity from nonaffiliated companies as to whether they are considered to be member primary capacity is limited to the following circumstances

and considerations, and the first condition is that
the term during which the capacity will be available,
a commitment from a reliable source of power and
energy for at least five years be normally regarded
as appropriate for inclusion as a capacity source?

A. In the member primary capacity, that's

correct.
Q. Okay.
A. But, you know, the point here is that, as I mentioned before, is that the energy cost is much higher in the purchase and it's displacing lower cost energy. I did not make the argument here as far as the primary member capacity.
Q. So your statement here at lines 12 and 13 has absolutely no relationship as to whether the purchase is considered to be member primary capacity under the pool?
A. That's true. With respect to that statement, that's true.
Q. True that it has no bearing on it?
A. That's true.
Q. Are you familiar with the old electric fuel clause operation in Ohio before Senate Bill 3?
A. Through Mr. Nelson's testimony I am, but other than that I don't have any personal knowledge

of it.

Q. Okay. And on page 14, lines 16 through 18, you talk about other jurisdictions that AEP operates in and how off-system sales margins are treated.

A. Yes.

Q. Do you know if any of those states have a rate regulatory structure comparable to Senate Bill 221?

A. My recollection is that there may be something similar to it, it's not identical, in West Virginia, but essentially a reregulation paradigm, but it's not identical in every respect. In fact, it's not identical in every major respect.

Q. Is it identical in any major respect?

A. Yes, I think it is. For example, in West Virginia there's an energy clause that allows recovery of fuel and purchased power costs, and that's one of the riders that Senate Bill 221 allows specifically in Ohio.

Q. Does West Virginia's statute specify any particular treatment of off-system sales margins?

A. I don't know if it specifies in the statute, but as a practical matter I know that the company's affiliate, Appalachian Power Company, proposed -- and I believe it was Mr. Baker who proposed this in that jurisdiction -- that it would include off-system sales.

Q. But if the statute specifies a treatment for off-system sales in West Virginia, that would be quite a major difference from Senate Bill 221, would you agree?

A. Well, I don't think that Senate Bill 221 specifies the treatment of off-system sales.

Q. Well, precisely. That's what I'm saying. If the legislation in West Virginia does specify the treatment of off-system sales margins, Senate Bill 221 does not, would you agree that that's a fairly major difference between the two state structures?

A. Well, let me make sure that -- before I answer that, this is a hypothetical. You're not stating it as a matter of fact.

Q. I'm not testifying.

A. It's something that I represented. I said I knew what the treatment of off-system sales was in West Virginia, and it was treatment in accordance with the company's proposal to put through off-system sales margins in a reresurrection, if you will, of the fuel clause in West Virginia, but I did not say that that was statutorily based, and I don't believe that it is.

Q. Okay. If it were, that might explain the position taken by the company, the position you say was taken by the company in West Virginia?

A. Again, it's a hypothetical?

Q. Yes.

A. If that was based in the statute, if that was a statutory requirement in West Virginia, that would be an explanation for the company proposing it.

Q. Thank you.

A. I just don't recall that it was part of the statute. In fact, my recollection is that it was not.

Q. Okay. Now, on page 15, lines 1 through 3, you indicate that if off-system sales margins are not passed through the fuel adjustment mechanism proposed by the company in this proceeding, that that would discriminate against Ohio vis-a-vis the other AEP states.

A. Yes, that's true.

Q. Now, will you agree that the various state regulatory -- the various states in which the AEP companies operate, that each of those states have different statutory provisions that allow for different recoveries or disallow various recoveries

and that that is not necessarily consistent from one
state to the next?

A. The specifics I would agree, but
conceptually my point here is that by not putting
through the off-system sales margins in Ohio, but
doing so in all of the other jurisdictions, that

conceptually would be discriminatory.

Q. And you're saying that off-system sales margins are flowing through in all of the other AEP jurisdictions?

A. I'm sorry, I didn't mean to speak over you. In whole or in part.

Q. In all of the jurisdictions.

A. Yes, to my understanding.

Q. Are receipts of capacity equalization payments, excuse me, are the -- yeah, right. Are the receipts of capacity equalization payments a cost of fuel?

A. I think there's a strong argument that they are. It doesn't fit into account 501, which is a cost of fuel account, but the statute in Ohio does not specify which accounts are to be used, only that the costs are eligible for recovery through an automatic type of rider. And I would argue that this is part of the determination of the net cost of fuel.

Q. Right. Are you aware that the statute does specifically address the treatment of gains from the sales of emission allowances?

A. Yes, it does.

Q. And does that suggest anything to you as a regulatory expert, that you have a statute that addresses a specific item to be used as an offset to fuel cost but not another item, the one you have in mind, off-system sales margins, that perhaps the General Assembly intended to address one but was not contemplating that the other be an offset to the fuel cost?

MR. BOEHM: Objection, your Honor.

EXAMINER BOJKO: Sustained.

Q. Now, on page 19, lines 4 through 6, you indicate that as a regulatory expert it's your understanding that Senate Bill 221 authorizes rate increases in an ESP based on prudently incurred costs. Is it also your understanding that all of the components that might be put into an electric security plan have to be based on prudently incurred costs?

A. I think generally that's true. There are specific references in the statute to prudently incurred fuel and purchased power costs, emissions costs, environmental costs, but then in addition, for example, on the construction work in progress and the environmental related costs, there's a requirement that the Commission approve such expenditures.

So my understanding of that would be that the Commission essentially would make a determination or a predetermination, if you will, of prudence, or otherwise it would not have approved it.

Q. And --

A. But the word itself does not appear in the statute with respect that aspect or those types of costs recoverable under an ESP.

Q. And are you aware that the provision concerning an ESP also provides for the recovery of automatic increases?

A. Yes, it does. Subject to those increases or the costs that are used to support the increases, that they be prudently incurred. It's not just an open-ended automatic increase.

Q. Well, I'm looking. Maybe you can refer me to something else. I'm looking at the provision that says "Automatic increases or decreases in any component of the standard service offer price."

MR. BOEHM: Excuse me, could counsel give a reference, please?

MR. RESNIK: Yes. This is in 4928.143(B)(2)(e).

A. I see that.

Q. You see that. Do you see the word "prudent" in there?

A. Well, I don't see it in that particular provision, but I see it back up in (a), and, you know, that's all part of the statute. We can't just look at -- I don't want to lecture you on legal standards, but it strikes me that where the statute specifically refers to "automatic recovery of any of the following costs of the electric distribution utility, provided the cost is prudently incurred," and then it repeats that word, it strikes me that that is a modifier and a requirement that needs to be taken together with subpart (e).

Q. Okay. So the basis for your testimony in lines 4 through 6 on page 19 is your understanding that the words that appear in paragraph (a) should be viewed as also being in subparagraph (e).

A. No, I didn't say that. I said that the words "prudently" appear in subpart (a). You asked me previously if the word "prudent" appeared anywhere in subpart (e), and I said no, it does not. And then I also described to you that in subpart (b) there was a requirement for the Commission to review and approve the expenditures for a new generating unit, in which case my determination there would be that that was a finding of prudence if the Commission had approved it in essentially what would be a certification type proceeding.

Q. Right. And so it seems at this end, on the listening side that while I'm asking you about (e), you want to talk about (a) and (b). I'm trying to figure out where it is in (e) that talks about automatic increases that include in paragraph E that those automatic increases have to be, A: Cost related, and B: Prudent costs.

MR. BOEHM: Excuse me, your Honor. It seems to me this is something we can brief, and, you know, while I understand that there's a certain amount of interpretation an expert witness has got to make, Mr. Kollen has made his interpretation known, and if counsel doesn't agree with that, we can argue it on brief.

EXAMINER BOJKO: The witness may answer as he believes. But I agree, let's not get argumentative with the witness about what you believe versus what he believes.

MR. RESNIK: Can I have -- I think

there's a question, if I could have that answered.

EXAMINER BOJKO: Please.

(Record read.)

MR. BOEHM: And it seems to me the witness has answered that question, your Honor.

EXAMINER BOJKO: Is there anything you

can add additionally with the latter part of the question, the cost related?

THE WITNESS: Well, I can only in this sense, that the automatic increase or decrease is the only other reference in this particular section in the statute to -- the automatic increases or decreases really is in subpart (a), which requires, A: Cost, and B: Prudence.

Q. Okay. Let's move on to page 20 of your testimony and --

EXAMINER BOJKO: Mr. Resnik, can I interrupt you?

MR. RESNIK: Sure.

EXAMINER BOJKO: We need to take a 10-minute break.

MR. RESNIK: Okay.

EXAMINER BOJKO: Is this a good place to stop since you're moving on to environmental carrying costs?

MR. RESNIK: Yes.

EXAMINER BOJKO: Great.

(Recess taken.)

EXAMINER SEE: Mr. Resnik, I believe
you're in the middle of cross examining Mr. Kollen.

MR. RESNIK: Yes, thank you, your Honor.

And I'd like to, if I could clarify a couple matters while we're on the record. When Mr. Kollen was being cross-examined by Mr. Randazzo, I had raised a concern, and I think that Mr. Boehm at least it appeared thought that I was accusing that he and Mr. Randazzo had gotten together and hatched some plot, which was not the suggestion. My concern was that since the witness had talked about Mr. King that it might ultimately get used in Mr. King's --

MR. BOEHM: I understand.

MR. RESNIK: I wasn't suggesting anything, and I wanted to make that point on the record.

MR. BOEHM: Thank you, Mr. Resnik.

Q. (By Mr. Resnik) The other point is, and this now is going to get into my resuming the cross-examination, is that, Mr. Kollen, I repeatedly asked you questions about West Virginia, and I am advised during our recess that I should have been

asking you about the Commonwealth of Virginia. So
what I'd like to do, what I would prefer is to strike
out the word "West" in front of all those questions,
but I know I can't do that, so let me just go back to
Virginia and the treatment of off-system sales
margins in that state.

A. Okay.

Q. Are you aware whether the treatment of off-system sales margins is addressed in the legislation in Virginia?

A. No.

Q. You're not aware.

A. No, I don't believe it is.

Q. Okay. I will move on.

Page 20, and here we are talking about environmental carrying costs, and in particular line 20, and there you're in the midst of a quote from the statute where it talks about provided the cost is incurred or the expenditure occurs on or after January 1, 2009. Do you see that?

A. I do.

Q. Is it your understanding that the company's request concerning environmental investments made from 2001 through 2008 request carrying costs that are being incurred starting with

January 1, 2009?

A. That's correct. The costs themselves were incurred prior to January 1, 2009, but it is carrying costs subsequent to that date that the company's requesting as far as the environmental carrying costs.

Q. And what was incurred before January 1, 2009, was the investment; is that correct?

A. Yes, that's correct.

Q. Okay. And on page 21 of your testimony at lines 15 through 19, you are suggesting there, if I understand your testimony correctly, potential offsets that might be appropriate as far as you are concerned to the carrying costs recovery that the company is proposing?

A. Well, no, not exactly. I haven't proposed specific offsets to the company's retroactive -- request for retroactive recovery of the 2001 through 2008 costs. I simply pointed out that it was asymmetrical in the sense that the existing rates include recovery of costs that have now since the costs were incurred depreciated significantly and that wasn't part of the company's assessment of whether or not it was fully recovering its costs. I wasn't proposing an offset, is the point.

Q. As far as the asymmetry that you mentioned, you are aware that the section concerning electric security plans in Senate Bill 221 specifically refers to environmental costs?

A. Yes. That's part (b), section 4928.143

(B)(2)(b).

Q. Okay. And are you aware of language in section 4928.143 that refers to offsetting the recovery of those costs for items such as depreciation since 2000?

A. No, I'm not aware of that. And what I -- the point I was simply making is that any balance of analysis for attempting to obtain recovery retroactively of the costs incurred through 2008 should then also include a comparison of the buildup and accumulated depreciation, the reduction in cost to the company, which it did not.

But that particular provision that you referred me to in the statute provides that only costs incurred after January 1 -- on or after January 1, 2009, can be recovered.

Q. Okay. Let's move on to the portion of the company's request and your testimony that addresses sale or transfer of generating assets. And

in the preparation of your testimony on this subject
did you review section 4928.17?

A. Yes.

Q. And you're aware that paragraph (E) of
that provision addresses requests for the sale or
transfer of generating assets?

A. Yes, that's correct.

Q. Okay. Now, in your review of paragraph (E) of that section, what standards did you find in that paragraph that you believe should be guiding the Commission in making a decision on the company's requests regarding the Darby and Waterford facilities?

A. Well, I think it's pretty unequivocal. It just simply says "no electric distribution utility shall sell and transfer any generating asset it wholly or partly owns at any time without obtaining prior Commission approval." And then I go on after citing that provision in the statute to explain why the Commission should not grant that approval requested by the company.

Q. Right. What I asked you is what standards you found in paragraph (E) for -- that would guide the Commission's decision.

A. Well, there are none specifically. It just says "no electric distribution utility shall sell and transfer any generating asset it wholly or partly owns at any time without obtaining prior Commission approval." So intentionally there are no standards or principles by which the Commission may be guided specified in that paragraph, so you have to look beyond that, as the company did, and I put a different set of factors on the table.

Q. If you want to look for it in other places, did you consider the provisions of paragraph (A) in 4928.17 regarding corporate separation?

A. Yes, I did. I saw that as one of the general framework references provided by Mr. Baker. In addition, I considered other provisions such as specifically 4928.143(B)(2)(a), which requires that the cost of fuel and purchased power be prudently incurred, and I describe that in my testimony.

So I did consider other provisions of the statute that I think do control. Even though that particular paragraph of 4928.17 does not have principles by which the Commission may be guided, there are other provisions of the same statute that do have the principles by which the Commission may be guided.

Q. And when you say "that particular

paragraph," you're referring to paragraph (E)?

A. I was actually referring to 4928.143, I believe it's (B)(2)(a).

MR. RESNIK: Now, can I have the witness's prior answer read back, your Honor. And I would ask the witness to listen for the point in the answer when he refers to that particular paragraph, because I wasn't sure which particular paragraph he was referring to.

EXAMINER SEE: Okay.

(Record read.)

Q. So when you were referring to that particular paragraph of 17 that did not have guidance, were you referring to paragraph (E)?

A. Yes.

Q. Okay. Now, let's take a look at paragraph (A), and do you have an understanding as to whether that paragraph requires that -- or prohibits a utility engaging in supplying a noncompetitive retail electric service and a competitive retail electric service unless that company operates under a corporate separation plan approved by the Commission?

MR. BOEHM: Excuse me, I'm a little lost. You said paragraph (A), of what section?

MR. RESNIK: I'm sorry 4928.17.

MR. BOEHM: 17. Thank you.

A. Okay. And your question is what, if you could repeat it.

Q. Whether you agree that this paragraph (A) of 4928.17 prohibits a utility from engaging in the business of supplying noncompetitive retail electric service and competitive retail electric service unless that utility is operating under a corporate separation plan approved by the Commission.

A. I believe that is what it says. I have not studied it or discussed it with counsel, but I believe that is what it says.

Q. And you did review this section in paragraph (a) in connection with your testimony on the -- addressing the company's request to sell or transfer generating assets. I think you said that.

A. Yes, that's correct.

Q. Okay.

A. And that was cited by Mr. Baker in his testimony, and I, of course, read his testimony with respect to this.

Q. And still referring to paragraph 17(A), are you aware that the corporate separation plan that would be approved by the Commission must provide for the provision of the competitive retail electric service through a fully separated affiliate of the company?

A. If you could give me a specific reference, I'd be happy to look at it.

Q. Well, do you have a line numbered version of the legislation?

A. I do not.

Q. It is 4928.17(A), paragraph (1). It begins "The plan provides at a minimum."

A. Yes, I see that. However, I believe that Mr. Baker addressed that specific provision in his testimony and described an order that the Commission had issued that dealt with this issue of the corporate separation on a functional basis as opposed to a separate legal entity basis. And then he made an argument as to whether or not that could be perpetuated on an interim basis or a longer-term basis and then provided a legal opinion that apparently he was advised by counsel with respect to that. And I have not made an independent assessment of that.

Q. Okay. And, actually, I think you're referring to a portion of Mr. Baker's testimony that if not directly, at least indirectly, is referring to paragraph 17(C), 4928.17(C), that permits functional separation for an interim period of time.

A. Yes, that's correct.

Q. Okay.

A. Thank you for refreshing my memory.

Q. Sure.

A. Yes.

Q. Would it be your understanding as a regulatory expert that an interim period is forever?

A. You know, so many things have changed. I can't answer that really yes or no because "interim" really depends upon the context. Interim can be a very long time or it can be a short period of time, but it depends on the context.

Q. But would you agree given the language that we've talked about in paragraph (A) and the reference in paragraph (C) to an alternative for an interim period, that the end point of the corporate separation plan is that the competitive retail electric service is to be provided through a fully separated affiliate of the company?

A. You know, I really don't have an opinion on that. I really can't offer more on that than what I already have.

Q. What is it that precludes you from being able to offer an opinion on that? What's missing?

A. I don't know what the trigger point for the termination of the interim period is under your question.

Q. Right. And I'm not trying to specify that there's a trigger to end the interim period, but as you look at paragraph (A) and paragraph (C), I'm just asking if your understanding of the corporate separation requirement is that ultimately, however long ultimately might be, but ultimately a company has to -- if it's going to offer a competitive retail electric service, it must do so through a fully separated affiliate.

A. I simply don't know. There really is not enough information in the statute to address that issue. It appears to vest the Commission with a significant amount of discretion with respect to that by saying "of the section but complies with such functional separation requirements as the Commission authorizes to apply for an interim period prescribed in the order."

In other words, it would seem to me it vests the entire discretion in the Commission. It doesn't specify the term of an interim period. It doesn't specify what the trigger points are for the termination of the interim period or if it can go on indefinitely.

Q. So in your mind, again, there's just a lack of guidance for the Commission as far as when they should be requiring a fully separated corporate entity that would offer competitive retail electric service?

A. Yes, I think that's correct. And I really think that Mr. Baker reached the same conclusion and was put into the position of having to rely upon a counsel representation in his testimony.

Q. But you don't seem to have any problem going to a totally different section, that being, 4928.143(2)(a) and (b), or maybe you just referenced (2) and saying that's a standard you think should be applied to paragraph 17(E).

A. Yes. And the reason I don't have any trouble indicating that is because there is an absolute requirement that the costs incurred under an automatic rider for fuel and purchased power, number one, be costs, and number two, be prudent. And in my assessment, if the company were to sell or transfer the Waterford or the Darby generating units or the generation entitlements, that would inevitably increase the cost of fuel and purchased power, and I believe that that would be imprudent to do so, particularly given the fact that at this point there are no studies that the company has done, as I pointed out in my testimony, and the company has the burden of proof pursuant to the statute.

Q. So this goes back to where we started the cross-examination earlier in the day, that your view of the prudence of the sale or transfer of Darby and Waterford is a view that is formed from a financial perspective. Is that right?

A. Well, you're right, this goes back to the first series of questions that you asked me. It's a rate-making perspective, the determination of prudence, but that determination of prudence is measured by financial data; in other words, is there harm to the ratepayers, and, indeed, there would be if these assets were sold or transferred.

Q. So if the Commission were to determine in this proceeding that in order to effectuate the policy that's in paragraph 4928.17(A) of ultimately having a competitive retail electric service provided through a fully separated affiliate, and based on that decision authorized the sale or transfer of those units, would you then believe that that, being done in furtherance of the Commission's interpretation of the corporate separation statute,

would then be prudent for the company to sell or
transfer those units?

A. Well, I'm sorry, I did not follow that
question. I can take a crack at it or could I ask
you to rephrase it?

Q. I'll try and ask it again.

A. There were about three or so compound questions or statements in there.

Q. Assume for the moment that the Commission concludes that the directive in paragraph (A) of Section 4928.17 requires that competitive retail electric service be provided through a fully separated affiliate. Are you with me so far?

A. Yes. And this is a hypothetical?

Q. Yes.

A. Okay.

Q. And to that end authorizes the companies to sell Darby and Waterford, authorizes Columbus Southern Power.

A. Could I interrupt you?

Q. Sure.

A. Wouldn't the predicate for that be an actual separation, a legal separation? In other words, you're kind of going through in your hypothetical a sequence of events, and you're saying

first the Commission finds, and this is the first
part of your hypothetical, that first the Commission
finds that the company's competitive retail electric
service should be provided through a separate legal
entity, and then you jump immediately to the sale or
the transfer of the generating units.

Wouldn't there be something else in there like, for example, that the Commission authorizes the functional separation, and then as part of that there's a transfer or -- of all of the assets into that separate legal entity? Isn't that kind of a predicate for the third part of your hypothetical?

Q. There may be any number of steps that would have to be undertaken in order to legally implement the corporate separation that is contemplated in paragraph (A). And what I am contemplating, without getting into the detail of what all those interim steps might be, is that the Commission concluding that corporate separation into a fully separate affiliate makes sense and it, let's just say, as an initial step toward that authorizes the sale by Columbus Southern of Darby and Waterford to an unregulated affiliate.

A. Okay. And that's your hypothetical.

Q. Yes.

A. All right. So now we're to the question point.

Q. So now we're to the question.

A. Okay.

Q. If Columbus Southern Power had that authority from the Commission based on the Commission

ARMSTRONG & OKEY, INC., Columbus, Ohio (614) 224-9481 wanting Columbus Southern to move toward corporate separation, would you believe that that would make the sale or transfer of those units prudent?

A. I don't know. And the reason I don't know is because I don't really have enough facts to make that assessment. I don't know if, for example, the Commission would certainly not -- well, let me back up a little bit.

First of all, the Commission would not need to make that determination in this proceeding, which is the company's request. It could do so in the future, which is a point that I made in my testimony. There's no decision on this issue that needs to be made in this proceeding.

If the Commission goes along with the facts of your hypothetical and later on makes that determination that full functional -- not just functional separation but, indeed, legal separation is appropriate, then that would be the next step, would be to determine whether or not any of the assets owned at this point by the distribution utility should be transferred to the separate legal entity.

And I would imagine that there would be a broad series of parameters that would have to be assessed at that point in time. That's why I can't give you an answer yes, it would be prudent, or no, it wouldn't be prudent. You would have to look at the facts and circumstances at the time.

Q. Okay. Will you agree, though, that there's more to the question of prudence than just the financial impact of the sale of those units by Columbus Southern Power? It may be addressing other state policies, namely corporate separation.

A. Well, I think --

Q. Excuse me. Can you recognize that as a factor influencing the prudence question?

A. Yes. There may be any number of factors that would influence the prudence question or the Commission's authority to sell or transfer these assets. But within the context of where the company is today where there is not legal separation but only functional separation, it would be imprudent.

Q. On page 29 of your testimony you begin a

discussion of significantly excessive earnings test;
is that right?

A. Yes.

Q. And starting on that page at line 36 and
going on to page 30 at line 3, can you explain to me
how the customer is harmed if a utility's revenues

significantly exceed costs of providing generation
service to nonshoppers?
A. Yes, I can. If indeed there are rate increases that are not necessary in order for the distribution utility to cover its costs of providing generation service, then this is important ratepayer protection because it allows the Commission to reach backward and recover those rate increases.
Q. I understand, at least I think I understand, how the test would work. But what I'm asking is you indicate that ratepayers would be harmed if the utility's revenues were -- significantly exceeded the utility's cost of providing generation service to nonshoppers, and I'm trying to focus how it is customers would be harmed.
A. Yes. Harmed means being charged more than the cost to provide the service given the regulatory paradigm.
Q. What you do you mean by "given the

regulatory paradigm"?

A. The regulatory paradigm is effectively here under Senate Bill 221 a reregulation of the generation function and then an ability to increase rates to recover certain costs subject to the ability of the Commission to reach back into the year that those new rates were effective in the event that the costs -- or, I'm sorry, the revenues generated by the new rate significantly exceed, et cetera, the company's cost to provide that service.

Q. Is it your opinion that all the components of the electric security plan have to be cost based?

A. They are not.

Q. No, I'm asking for your view. Do you believe that they're supposed to all be cost based?

A. No, they're not all cost based.

Q. You're not answering my question.

A. I'm trying to.

Q. Is it your opinion that the components are supposed to be cost based?

A. Well, if they're not all cost based, then I would not argue that they are supposed to be cost based.

Q. Well, you're arguing with a lot of things in our plan that you find wrong so I'm trying to figure out whether -- I'm not asking your opinion whether the plan has items in it that are not cost based but whether you believe they're supposed to all be cost based.

A. Oh, the financial provisions of the plan?

I thought you were basically asking me for qualitative features of the plan and whether or not the plan under the statute could have qualitative features that were not, in effect, cost based, and that's what I was answering.

MR. RESNIK: Can I have that answer read back?

(Record read.)

Q. Let's see if we're able to communicate with each other a little better. I'm asking you, as someone who asserts to be a regulatory expert, whether it is your opinion that the components of an electric security plan under 4928.143 are required to be cost based.

A. The financial components would be required to be cost based, yes.

Q. And when you say the financial components, what are you trying to identify as -- in relation to the electric security plan?

A. Well, there are various shopping provisions and things like that that are not specifically translatable into dollars and cents, so what I was trying to do is differentiate between the quantitative factors and the qualitative factors, and I thought your question was directed toward does everything in this electric security plan boil down to quantitative factors, a financial factor, and I answered that question no, there are qualitative factors.

Q. Okay. But the quantitative factors you believe are required to be cost based.

A. Yes.

Q. At page 30, lines 12 through 14, you talk about the importance of the Commission rendering an opinion on how the significantly excessive earnings test will be applied.

A. Yes. And more specifically in this proceeding.

Q. Right.

A. They can't wait until 2010, a year after the first year in which the ESP would be in effect.

Q. And you don't mention what you think might be another reason, and I want to see if you would agree that this is another reason for the

Commission to rule in this case, and that is so that the company will be informed as to how that test will be applied so it can decide if the Commission in any way modifies the ESP, whether it should accept that modification.

A. Yes, I would agree with that. I think that's a very important factor.

Q. Now, at page 31, line 2, you talk about a rate of return on common equity threshold. I'm just trying to figure out what that's referring to. Are you suggesting that the way to apply the significantly excessive earnings test is, in this case, to set a return on equity, and then when the Commission looks at the companies in 2010 to see its actual return for 2009, it just looks to see if that return was above or below that preset return on equity?

A. Yes. And that's addressed by Mr. King, another OEG witness. But essentially the methodology proposed by OEG requires a threshold rate of return over which the earnings would be considered to be significantly excessive and then subject to refund. And I believe that's consistent with the company's case as well, although the methodologies differ.

And then that percentage rate of return

would effectively be translated into dollars once the differential on the rates of return would be carried through the computation.

Q. So if it's just a matter of setting -- presetting a return on equity and looking sometime in 2010 at the actual return on equity, do we need comparables?

A. Yes, you do.

Q. Why? I mean, if you preset the return on equity in this case at, say, 20 percent, and it turns out in 2009 one of the companies earned 25 percent, I thought you were suggesting that's the end of the story, that you've determined that there will have been significantly excessive earnings.

A. Well, I'm not really sure what you meant by "preset." Maybe we could explore that a little bit. But essentially a methodology is important, and as you go through the year the company can track that methodology, and near the end of the year, of course, it would be closing in on the calendar year, and it would have the comparables quarter by quarter by quarter and could have 9 months, 12 months ending, kind of a rolling average so that it would know based upon the methodology adopted by the Commission for the comparable group what that significantly excessive threshold would be.

At the same time it would be tracking its
own earnings 9 months ended, 12 months ended, as we
get toward the end of the year, 10 months, 11 months,
and then when the books are closed for the end of the
year, it will know what the actual earned rate of

return is. It will know what the comparable group, because of the Commission's methodology, what the comparable group threshold return on equity is, and it then can compute whether or not it has a refund obligation.

If it does, then it will have to book a regulatory liability for that obligation.

Q. Are you suggesting in this case that the Commission determine a particular return on equity for Columbus Southern Power and for Ohio Power Company, and then when the significantly excessive earnings test is applied in 2010 for the year 2009, simply look to see what return on equity those companies had, compare it to some return set in this case, and make its determination in that fashion?

A. No. And I think that that was why I questioned the premise in your prior question, and as I point out in my testimony, the Commission needs to determine the methodology in this proceeding, not preset the rate of return, not actually determine the rate of return because that will be determined based upon the comparable group results for the actual calendar year 2009.

The Commission can't sit here at the end of 2008 and know what that will be for 2009, but it can determine the methodology, and that's what I propose.

Q. Okay. On page 32 of your testimony, lines 3 -- well, let me see. If I can just have one moment.

At lines 12 through 19 on page 32 one of the things you suggest is that only prudent fuel and purchased power expenses should be included in the significantly excessive earnings test.

A. Yes, that's correct.

Q. And I just want to explore that a little bit. Whatever fuel and purchased power expense the company has, if it was recovered through the fuel clause itself, wouldn't the revenues match the expenses for the year?

A. Generally that's true as the company has proposed its fuel adjustment clause. However, the situation arises that I can see where, and as I've noted throughout my testimony, where the company may incur fuel purchased power costs that are not prudent, in which case then the imprudent portion of those costs should not be included, not only for purposes of the fuel adjustment clause rider, but they should also be removed for purposes of the excessive earnings test.

Q. Well, if they're removed from both revenues and expenses or included in both revenues and expenses, isn't the impact on the return on equity still neutralized?

A. No. I think you're missing a point here because if the -- you know, you've posed a hypothetical where the two are equal, but I've -- the point here is that they may not be equal, and if the revenues are less than the cost that is reported or recognized -- recorded on the company's accounting books, let's say there was an imprudent portion of the fuel and purchased power cost and that was a total cost of a hundred dollars but the Commission allowed only $80 to go through the fuel adjustment clause, then it is only $80 of the costs that should be reflected in the significantly excessive earnings test. In other words, the company shouldn't get a second bite of the apple.

If the costs are found to be imprudent

for purposes of the rider, they shouldn't be allowed to pick it up through the significantly excessive earnings test as a matter of consistency.

Q. And would you agree that as a matter of consistency that if the Commission finds fuel expenses to be prudent in a fuel case, that no one should get a second bite at the apple in the significantly excessive earnings test to try to argue that those same fuel costs were, in fact, imprudent?

A. Yeah, I would agree with that, sure.

Q. Okay.

A. That's reasonable.

Q. And what happens if in the course of the year that fuel revenues are greater than the expenses? Are there any adjustments that get made in computing the significantly excessive earnings test?

A. Well, once you have a fuel adjustment clause in place and if the fuel expenses are all deemed -- and purchased power expenses are deemed to be prudent, then you would have the same revenues, presumably, except for timing differences, in which case you would pick that up either into a regulatory asset or a regulatory liability through a deferral and then that would be trued up. So that's how that would be handled.

So the only situation where you would have a mismatch is when some of the costs were deemed to be imprudent and the revenues were less.

Q. But if they were deemed imprudent, wouldn't you expect that the Commission would have disallowed its revenue recovery associated with those imprudent costs?

A. Yes. And that's exactly the point. The revenue would be less but the fuel expenses would be higher on the company's accounting books, and the significantly excessive earnings test without any rate-making adjustments would then show this mismatch between revenues and fuel expense. Fuel expense would be higher than the revenues. It would drag down the earnings and, therefore, reduce the refunds under the significantly excessive earnings test. That's not appropriate.

If it's disallowed for the rider, it should be disallowed for the significantly excessive earnings test as a matter of consistency.

Q. Now, at page 33 of your testimony, lines 4 through 7, you offer up a number of items that you believe should be adjusted for by the Commission in its application of the significantly excessive earnings test; is that right?

A. Yes, that's correct.

Q. And there are fines and penalties, one-time write-offs, and some other items. And then at lines 15 and 16 you say that Senate Bill 221 contemplates no such ad hoc exclusions to the utility's earnings. Is that right?

A. Yes. That's correct.

Q. So there can be exclusions on the expense side but not on the earnings side? Is that what you're saying?

A. No. No, that's not what I said. What I was differentiating there was that there are legitimate rate-making adjustments -- remember, the generation function is essentially being reregulated on a cost basis; therefore, we go into the regulatory paradigm of costs need to be, first of all, incurred, second of all, prudent. And there's other application of rate-making adjustments that the Commission may in its discretion include or exclude, and these are common rate-making adjustments, such as the exclusion of fines and penalties and one-time write-offs and acquisition premiums.

In other words, through the normal rate-making paradigm utilities are not allowed to recover these costs, and the point being that, you know, we shouldn't now undo that aspect of regulation. And then the company, on the other hand, has suggested that we should undo a recognition of the off-system sales revenues or margins in the rate-making process, whereas historically that has been included.

So what I have done is I've proposed a consistent paradigm of rate-making adjustments, and by consistent I mean consistent with what the Commission has done historically and what the company has proposed is something that is inconsistent.

Q. Do you think that the regulatory paradigm in Senate Bill 221 is consistent with the historic regulatory paradigm in Ohio?

A. I do with certain exceptions. And the primary consistency, of course, is that it's cost based and that the costs must be prudently incurred. But the exceptions then are, for example, the allowance of an excessive rate of return and also single-issue rate-making on the distribution function of the business.

Q. And generation rates are not based on a test year cost of service or date certain rate base; is that right?

A. Well, that's not true. Effectively they are. For example, the operating expense, the fuel and purchased power are clearly based upon a projected test year under the statute and under the company's proposal, and then those are trued up to the actual costs for the test year under the company's proposal.

Similarly, there are various other cost-based components, and those are, again, based upon the costs incurred in a particular year. One example of that is the 2009 environmental cost, the 2010 environmental cost, the 2011 environmental cost, all cost based, all tied to a test year, all tied to the rate-making-paradigm, which is identical in many respects to the previous paradigm that existed.

Q. And is it your understanding that the company is proposing a dollar-for-dollar recovery of the carrying costs associated with incremental environmental investments made in 2009 through 2011?

A. Yes. That's in Nelson's -- Mr. Nelson's testimony.

Q. Okay. Now, would you agree that if the margins from off-system sales are included in the determination of the significantly excessive earnings test, that that could result in refunds to Ohio retail customers based, at least in part, on

FERC-approved rates?

A. Yes, just as the costs are based in part
upon FERC-approved rates. You know, there's a
symmetry there. There's both costs and there should
be revenues or receipts as well. Both are under the
FERC-regulated tariff, the interconnection agreement.

Q. Okay. Do you believe that the application of the significantly excessive earnings test can result in refunds to a level below the current standard service offer rate?

A. No, I don't. And I think that to the extent that that could happen, I have suggested, in fact, I've stated specifically in my testimony that the refund would be essentially capped out at whatever the rate increases pursuant to the ESP were, so if there was a hundred dollars of rate increases, then the maximum refund exposure would be $100.

Q. Now, let's take a look at page 42 of your testimony, and you've got some return figures there at lines 3 through 7, and you indicate that your computations are shown on Exhibit LK-2, that was the basis to those returns.

A. Yes.

Q. And looking at LK-2, page 1 of 2, you've got a composite income tax rate of 38.6 percent.

A. Yes.

Q. And looking at page 2 of 2, that's where you show the calculation of that composite tax rate, correct?

A. Yes, that's correct.

Q. And for state income tax you show a rate of 8-1/2 percent.

A. Yes. And that was before the phase-out of the state corporate income tax. I think that in 2009 it would be 40 percent of that, in 2010, 20 percent of that, so those should be correctly reflected as well.

Q. If the phase-out is sooner than you think, and I hope I'm not pulling another West Virginia/Virginia situation here, but if the phase-out is to be complete at the end of tax year 2008, then would you agree that the rate that should be shown in this calculation on page 2 of 2 would be zero percent?

A. Yes, that's correct.

Q. Okay.

A. Yeah. This was nothing more than an illustration of how to derive the income tax rate.

Q. Well, you used it for more than an illustration, didn't you? You put it back into page

1 of 2 to help compute the returns that you show with
page 42 of your testimony; isn't that right?

A. Well, no, not to compute the returns but
to compute the revenue requirement equivalent, each
of 1 percent return sounds, so that's correct, and
those are rounded numbers and I don't know that they

would change.

MR. RESNIK: Okay, that's all I have. Thank you.

THE WITNESS: You're welcome.

EXAMINER SEE: Give -- I'm going to assume that Mr. Resnik was the last one to cross, or staff?

MR. MARGARD: Staff has no questions. Thank you, your Honor.

EXAMINER SEE: Any redirect for this witness?

MR. BOEHM: Could we consult with the witness for about five minutes?

EXAMINER SEE: Sure.

MR. BOEHM: Thank you.

(Off the record.)

EXAMINER SEE: Let's go back on the record.

MR. BOEHM: Your Honor, we have no

redirect for Mr. Kollen.

EXAMINER SEE: Thank you.

MR. BOEHM: And we would move the admission of OEG Exhibit No. 3.

EXAMINER SEE: Are there any objections to the admission of OEG Exhibit 3?

Hearing none, OEG Exhibit 3 is admitted into the record.

MR. BOEHM: Thank you.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. BOEHM: May I excuse the witness, your Honor?

THE WITNESS: Please.

MR. BOEHM: Thank you.

EXAMINER SEE: Is Commercial Group ready?

MS. WUNG: Yes, your Honor. We call Michael Gorman to the stand.

EXAMINER SEE: Mr. Gorman, if you would please raise your right hand.

(Witness sworn.)

EXAMINER SEE: Thank you.

MS. WUNG: Your Honor, at this time we'd like to mark for identification Commercial Group Exhibit 1, which is the direct testimony and exhibits of Michael Gorman filed with the Commission on

October 31st, 2008.

EXAMINER SEE: The exhibit will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. WUNG: Thank you.

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MICHAEL GORMAN

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

DIRECT EXAMINATION

By Ms. Wung:

Q. Mr. Gorman, would you please state your name and address, business address, for the record, police?

A. My name is Michael Gorman. My business address is 1690 Swingley Ridge Road, Chesterfield, Missouri.

Q. By whom are you employed?

A. Brubaker & Associates.

Q. And on whose behalf are you testifying today?

A. Commercial Group.

Q. Mr. Gorman, do you have before you what's been marked for identification as Commercial Group Exhibit No. 1?

A. I do.

Q. Can you please identify that document?

A. That's my direct testimony filed in this proceeding.

Q. And you are the same -- the direct testimony was prepared by you or under your direct

supervision?
A. Yes.
Q. Do you have any corrections or changes to the testimony?
A. I do not.
Q. Mr. Gorman, if I were to ask you the questions that appear in your direct testimony today, would the answers be the same?
A. Yes.
MS. WUNG: Your Honor, Mr. Gorman's available for cross-examination.
EXAMINER SEE: Okay.
Mr. Yurick?
MR. YURICK: I have no questions. Thank you, your Honor.
EXAMINER SEE: Mr. Bell.
MR. BELL: Yes, your Honor, I do.

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CROSS-EXAMINATION

By Mr. Bell:

Q. Good afternoon, Mr. Gorman.

A. Good afternoon.

Q. Langdon Bell on behalf of the Ohio Manufacturers.

I'd like to first start with your point

No. 6 on page 3 of your prefiled testimony where you recommend the significantly excess earnings test be based upon the Commission-approved return on equity of 10.5 percent for AEP, and then you go on to explain your recommendation. Do you see that?

A. Yes.

Q. Mr. Gorman, just so that I understand your recommendation, does your recommendation with respect to basing the excess earnings test upon the approved return on equity depend at all upon when that approved return was -- when that return was approved, that is, the date of the authorized return?

A. Would be the most recent authorized return on equity for the utility.

Q. Regardless of how far removed that should be from the date that the test is applied?

A. We, I believe all parties should be -- should have the right to request the Commission revisit the determination of the utility's current market cost of equity, but until that --

Q. I'm not trying to argue with you, I'm trying to understand your recommendation.

A. I'm trying to explain it.

Q. Okay. I apologize if you did not finish. Go ahead and explain.

A. Well, my recommendation for the significantly excessive earnings test is to add a premium to the utility's current authorized return on equity. To the extent that current authorized return on equity no longer is a reasonable estimate of that utility's market cost of equity, to judge whether or not the rates are reasonable, then all parties would have the right to request the Commission to revisit that determination.

Q. Would your test ignore, if you will, the investors' expected return on equity?

A. No.

Q. It would not ignore it.

A. Correct.

Q. Let me give you an example, just to test that hypothesis, Mr. Gorman. Let's assume that during a period of time during a depressed economy, tight credit where investors had minimal expectations with respect to their equity investments. Will you

follow me with that premise thus far? And let's
assume that during that period of time I, as an
equity investor, would be very happy to receive a
5 percent return on equity. Can you accept that for
purposes of our discussion?

A. I'll accept that hypothetical, yes.

Q. Now, would you further accept that during the period of time that that expectation prevails that the company has no difficulty in raising equity capital with a return in that range of 5 percent, that is, it can go out and issue common stock. It has no difficulty in securing equity capital providing that level of return. Can you accept that?

A. It the market's required return on equity was 5 percent, I could accept that, yes.

Q. Now, if, in fact, a test were to be employed such as the test that you are recommending, would produce a 10 or 15 percent threshold for a return in identifying excess earnings, stated differently, that the threshold test that you propose would produce -- and I'm not getting into the test. I'm just talking about the results of your test -- would in fact produce a return of two times or three times the investors' expectations, that is, i.e., a return of 10 or 15 percent, your test would apply

irrespective of the resulting returns being two and
three times the investors' expectation, would it not?

A. It's not my test, sir.

Q. It isn't?

A. It is not.

Q. Would you explain how that is not the case?

A. My test is based on the expectation of starting with the investor current required return and adding a 200 basis point premium to that. So if the current investor required return were 5 percent under this hypothetical, the excessive earnings test would be 7 percent.

Q. Have you finished your answer? I don't want to cut you off.

Are you stating in effect then, Mr. Gorman, that when you used the approved return on equity of 10.5 percent, that is, in your judgment, equivalent to the investors' current expected return on equity?

A. It's the most recent Commission finding on -- as I understand it, the most recent Commission finding on the current cost of equity for this utility.

Q. Are they one and the same, the investors'

current expected return and the Commission's
authorized return on equity? That's the question, in
your testimony are they one and the same?
        A.   In my testimony the Commission typically
will authorize a return on equity that is an estimate
of the investor required return to make an investment

in the utility company.

Q. The investors' current?

A. At the time, yes.

Q. Now, backing up if we may to your points 1 and 2 on page 2 of your testimony and the answer beginning on line 11, are both of those related to the signals that the pricing would convey to the customer?

A. Points 1 and 2.

Q. Both 1 and 2, 1 on line 12 and 2 on line 18.

A. Yes.

Q. With respect to your point 1, is it your position that a fuel adjustment clause as, quote, an adjustment clause is intended to track the underlying cost with associated revenues?

A. I'm sorry, where are you quoting from?

Q. I'm referencing your No. 1 on fuel adjustment clause, and the question initially was is the intent of a fuel adjustment clause like most adjustment clauses, to track, if you will, underlying costs with associated revenues? It's a tracker, so to speak?

A. It's a tracker mechanism, yes. It tracks revenues --

Q. Your answer to my question is yes, then?
A. It tracks revenues and costs, yes.
Q. And with respect to that which is being tracked, if you will, is it your position that fuel is a variable cost?
A. Yes.
Q. By definition.
And as such its recovery should be variable in a tracker?
A. A tracker mechanism will vary with the cost of fuel, yes.
Q. Well, stated differently, I take it your position in item No. 1 is that whatever the tracker is, it should track the nature of the item's cost that's being tracked, correct?
A. It should adjust the price to produce the revenue to correspond with the cost of the item.
Q. For instance, if one were to attempt to design a tracker to track, if you will, a customer

cost, such as increasing cost in meters, would it be
inappropriate from your perspective to track that
item with a kWh tracker -- based tracker?
A. A meter charge, no.
Q. Why not?
A. Because it's not a charge that varies

with the amount of energy sold or generated.

Q. And it's signaling to the -- giving the customer an inappropriate signal that, in fact, it does track the cost in the scenario that I created?

A. If you recovered a meter charge on a kilowatt-hour basis, it would give the false customer impression that meter cost varies with the amount of energy usage.

Q. And would that in fact lead, under your scenario, to a customer reacting inappropriately to that signal?

A. It would be getting an incorrect economic signal from that price and may not encourage customers to make the most informed or economic consumption decisions.

Q. Is it your position, Mr. Gorman, that with respect to both items 1 and items 2 on your page 2 of your prefiled testimony, that the company's proposal by giving improper price signals relative to

capacity and energy are likely to create the very
problems that demand-side management and energy
efficiency program credits are intended to correct?

A. I don't understand that question.

Q. If, in fact, an incorrect price signal is
given which causes a customer to inappropriately

increase its demand, would such a price signal be incompatible and inconsistent with the objective of demand response programs? Do you understand that question?

A. If there is a price that causes customers to increase demand --

Q. Yes.

A. -- would that be inconsistent with demand-side management?

Q. Yes.

A. It is possible, yes.

Q. And would not capacity costs being priced on a kilowatt-hour basis lead to a customer inappropriately increasing the customer's demands?

A. Potentially if the demand charge understates the true cost of demand, customers will not get an accurate price signal of what that demand cost and the value of avoiding -- buying that additional kilowatt of demand. So it could

discourage economic responses to the true cost of
utility capacity charges or capacity costs.

Q. And have not those price signals, in
fact, created the very problems that demand-side
management and energy efficiency credits are designed
and intended to correct, that is, to reduce one's

demand and to reduce one's energy consumption?

A. It potentially could cause customers to increase demand when there's economic alternatives to reduce demand if the potential avoided cost credits for not incurring that demand charge are not properly priced.

Q. Going back, if we might, to your item 6 on page 3 of your testimony, and I'm going to abbreviate this examination for both of our benefits, and the Bench, on line 26 you state -- well, let me read the whole sentence. "To the extent that the Company's earned return on equity exceeds this 12.5 percent threshold, then earnings in excess of this level should be considered significantly excessive and subject to refund or rejection." And my question is, what do you mean by "rejection"?

A. Rejection of the company's ESP plan.

Q. Moving back up to item No. 4, you there discuss the point that "The Company's energy efficiency and demand reduction cost recovery rider is designed to properly allow mercantile customers to opt out of the rider if they are implementing" problems "to conserve energy and reduce peak demand on their own," emphasizing "on their own."

EXAMINER SEE: I'm sorry, you read that

"problems" to conserve. Did you mean "programs" to conserve?

MR. BELL: Programs, I'm sorry, I misspoke. Thank you, your Honor.

Q. Is the underlying rationale of your position that there is no purpose to be served by imposing these rider costs upon customers who are already achieving the objective of the rider?

A. Well, there are several reasons to comply with this mandate in the law. One is that customers that are proactively pursuing the types of demanned side management and energy efficiency programs are incurring the cost of those efficiency gains on their own. It would be inappropriate to ask those same customers to incur the cost the utility incurs to implement those same programs at other customers' facilities.

Q. The fairness aspect.

A. The fairness aspect.

Second, to the extent those customers don't get the full benefit of the economic benefit of implementing these energy efficiencies and demand response programs by implementing these programs on their own, that may create an incentive for them not to pursue those actions in the future. And I think that's inconsistent with the true objective of the law, and that is to gain as much energy efficiency and demand response benefits as possible.

Q. No. 5 on page 3 where you speak of "The Company's proposed methodology to determine significantly excessive earnings is flawed, would result in volatile excess earnings determinations, and is not properly tied to the companies that have comparable business and financial risks to the AEP Ohio distribution subsidiaries," I'd like to address the first of that three-prongs in your response, and that is, "would result in volatile excess earnings determination."

Is the volatility of which you speak in that response directed to only the variance in the excessive -- significantly excessive earnings return on equity reached by Dr. Makhija for the years 2006 -- 2005, '06, and '07?

MR. CONWAY: Objection.

EXAMINER SEE: On what grounds, Mr. Conway?

MR. CONWAY: Your Honor, the line of examination has become progressively friendlier as the time has passed, and, you know, I've not objected earlier, but it's clearly friendly cross.

MR. BELL: Your Honor, I'll withdraw -- I'll withdraw the question because I certainly don't want to engage in friendly cross-examination, but I am committed to meeting Mr. Resnik's objective of speeding these proceedings along and letting Mr. Gorman catch his plane.

Thank you. No further questions.

EXAMINER SEE: Thank you.

MR. BOEHM: No questions, your Honor.

MR. RINEBOLT: No questions, your Honor.

EXAMINER SEE: Mr. Randazzo.

MR. RANDAZZO: Mr. Bell asked all my questions. Thank you.

EXAMINER SEE: Ms. Grady?

MS. GRADY: Yes, your Honor.

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CROSS-EXAMINATION

By Ms. Grady:

Q. Mr. Gorman, you indicated in response to one of the questions posed by Mr. Bell that mercantile opt-out customers engaging in DSM initiatives may not get the full benefit of the program. Do you recall that response?

A. Yes.

Q. Can you explain to me how that happens and under what circumstances they would not get the full benefit of the program?

MR. CONWAY: Objection, same basis. His testimony is clearly aligned with OCC's position in this case, and she's asking him to --

MS. GRADY: I don't think so.

EXAMINER SEE: I'll allow the witness to answer the question. We'll see how far it goes.

MS. GRADY: Thank you.

A. Well, the full benefit of the program would be such that the customer would retain all the economic savings associated with the reduced energy consumption or demand reduction. To the extent they incur the costs for those conservation actions or demand response programs, receive those benefits, but then are asked to pay a charge on top of that that is related to conservation and demand response costs the utility incurs for those types of initiatives at other customers' facilities, then part of the benefit

that customer receives on its own is taken away
through charges the utility imposes on that same
customer for the same type of programs that the
utility incurs costs for other customers.

MS. GRADY: That's all the questions I
have.

EXAMINER SEE: Thank you.
Ms. Elder?
MS. ELDER: No questions, your Honor.
EXAMINER SEE: Mr. Smalz?
MR. SMALZ: No questions, your Honor.
EXAMINER SEE: Mr. Margard?
MR. MARGARD: No questions, your Honor.
EXAMINER SEE: Mr. Conway.
MR. CONWAY: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Conway:

Q. Mr. Gorman, good afternoon or good evening.
A. Good evening.
Q. I'll try to move through my questions and get you out of here on a timely basis.
A. I'm sorry, I missed your name.
Q. It's Mr. -- it's Dan Conway. I'm a

lawyer for AEP-Ohio.

A. Thank you.

MS. GRADY: Your Honor, if Mr. Conway could use the microphone, it would be a little easier for us to hear.

EXAMINER SEE: Okay.

MR. CONWAY: I thought I was.

EXAMINER SEE: Mr. Conway --

MR. CONWAY: It's not working.

(Discussion off the record.)

EXAMINER SEE: Go ahead, Mr. Conway.

MR. CONWAY: Thank you, your Honor. Is that better?

THE WITNESS: Yes, thank you.

MS. GRADY: Thank you.

MR. CONWAY: Ms. Wung, if you can't hear me, let me know. If it goes off again or out of order, just let me know.

MS. WUNG: I will do that. Thank you.

Q. (By Mr. Conway) Mr. Gorman, beginning at page 3 of your testimony you have a discussion about the fuel adjustment clause and a couple of -- or several criticisms you have about the way the companies have proposed to implement the fuel adjustment clause.

And I believe your first objection that I noted is that you disagree with the proposal to include capacity costs of purchased power in the fuel adjustment clause; is that right?

A. Yes.

Q. And you also object to the proposal to

include fuel handling expenses in the FAC.
A. Yes.
Q. Are you familiar with the provisions of the new law, SB 221?
A. Yes.
Q. And you're aware that it permits the electric distribution utilities to establish fuel adjustment clauses?
A. Yes.
Q. And do you know whether the provisions of SB 221 that speak to the fuel adjustment clause allow the EDUs to include capacity costs of purchased power in the FAC?
A. I don't believe it specifically provides authority for that, but on the other hand, I'm not aware of any language that specifically prevents it either.
Q. So you're not aware of any language that specifically addresses the topic?

A. For purchased power capacity costs?

Q. Yes.

A. That's correct.

Q. And with regard to fuel handling costs, would you agree that those are operating costs?

A. Those are, yes, they are operating costs.

Q. And in what uniform system of account would fuel handling costs be recorded?

A. I don't know that as I sit here.

Q. You don't know whether 501 would be the correct account?

A. I would have to check.

Q. Okay. I'd like to ask you several questions about your proposal for designing the rates that would collect the fuel adjustment clause expenses, and I believe that your discussion about that topic related to the FAC starts at page 5 of your testimony. One of your recommendations is that the FAC should include a winter and summer rate design; is that right?

A. Yes.

Q. And that's the seasonal rate design proposal.

A. Yes.

Q. And you also recommend that it should

include time-of-day and on-peak and off-peak rates;
is that right?

A. I do, yes.

Q. Is there a difference between time-of-day
and on-peak and off-peak rates? Or do they cover the
same objective?

A. Well, depends on how the time-of-day rate is designed. It could, in effect, be an hourly rate based on the utility's actual energy cost throughout a 24-hour period. An on-peak/off-peak rate could be a period rate where the on peak is for a specified period of time within the 24-hour period and the off-peak rate would be for the remaining time.

Q. Thank you. Do you know how frequently the companies will be updating their FAC rates once it's implemented?

A. I believe semiannually.

Q. If it were to be done quarterly, that is, they would change their rate every quarter to reflect the projection of what the costs were going to be for the quarter, and suppose it was on calendar year quarters, would you make that assumption?

A. Yes.

Q. Would you agree that if they approached it in that fashion, that their FAC rates were changed

on a quarterly based, that that would go some way to
addressing your proposal that seasonality be
reflected in the rate design for the FAC?

A. The seasonality would, yes.

Q. And --

A. I would note, though, however, that any type of reconciliation should be attempted to be recovered during the same quarterly period to ensure the customers that either underrecovered -- or underpaid the fuel cost or overpaid the fuel cost would either get the additional charge or the credit.

Q. Thank you. Do you know whether the statutory provisions of the new law specifically address rate design objectives for the FAC?

A. Not in the detail that I've laid out in my testimony, I don't believe so.

Q. And how about for the non-FAC portion of the standard service offer rate, would your answer be the same if I asked the question regarding that?

A. Yes.

Q. With regard to the time-of-day and on-peak/off-peak rate design proposal for the FAC, do you know whether AEP-Ohio's customers, that is, the customers of Ohio Power Company and the customers of Columbus Southern Power Company, currently have the

kind of meters that you would need in order to
implement time-of-day rates.

A. I haven't verified it specifically, but
normally larger commercial customers, industrial
customers have those types of meters.

Q. But as far as the customer classes

outside of those two, you're not sure whether they have the kind of meters that would be necessary?

A. No. But if there's -- I'm not sure, but if there are meter limitations on providing these rate options, those classes of customers would either have to make arrangements for the meters that would make them -- that type of rate available to them or it would not be available.

Q. Would you support as part of your recommendation recovery of costs that might need to be incurred to furnish the appropriate kind of meters?

A. From the appropriate customers, yes.

Q. Okay. Could you turn your attention to your Energy Efficiency and Peak Demand Reduction Cost Recovery testimony, which I think begins on page 8?

A. I'm there.

Q. At this point in your testimony are you commenting on the company's proposed energy

efficiency and peak demand reduction cost recovery
rider?
A. Yes.
Q. And I notice in the title to your section
of the testimony at this point you use the word
"factor," but if I substituted the word "rider" for

that, would that be acceptable to you?

A. It would, yes.

Q. And I want you to turn your attention to the third item that you have provided on the page, and the introductory sentence to it on line 21 states that: "The Company's proposed pricing structure for its energy efficiency and demand response programs is based on a charge per kWh." Do you see that?

A. I do.

Q. And at that point are you recapping how the rate design that the company has proposed for the rider will work?

A. Yes.

Q. It's an energy -- it's a cents per kilowatt-hour type rate; is that right?

A. Yes.

Q. Okay. And then a couple of sentences past that point you propose on line 24 toward the end of that line, you propose that "demand response programs should be based on a demand-based credit, and energy conservation be based on an energy charge." Do you see that?

A. Yes.

Q. If you could help me out with this a little bit, I didn't quite understand what it was you were recommending, but -- let me ask you a couple questions and see if I've got it sorted out.

Your first sentence notes that the proposed rider is designed on a cents per kilowatt-hour basis, and I take it from your sentence that I just read back to you that your proposal is that the costs of the demand response programs that the company is recovering through the rider, that those costs ought to be recovered through a demand type charge; is that right?

A. Yes.

Q. And then conversely, that the costs of the energy conservation programs should be recovered through a cents per kilowatt-hour charge.

A. Yes.

Q. And do you know whether at this point there are any demand reduction program costs that are being proposed for recovery by the company through the rider?

A. I do not.

Q. And then if it turns out that all the program costs that are being proposed for recovery at this point are energy conservation program type costs, would you agree that it would be okay for the company to use a cents per kilowatt-hour approach to recovering those costs?

A. As long as the rider specifically stated that it was recovering energy conservation charges, it would be. To the extent the rider specifically allows for both demand response and energy conservation, I believe that that would be inappropriate and --

Q. That would be inappropriate?

A. Inappropriate. And that the rider should be modified to separate the demand response cost from the energy conservation cost, and the charges should be applied on either a demand or energy basis.

Q. Let me assume for purposes of our discussion that what's happening is that at this point only energy efficiency program costs are being recovered through the rider, and a cents per kilowatt-hour rate design is acceptable to you for that purpose, okay?

A. Yes.

Q. In that event are you proposing that the costs of all the energy efficiency programs be just spread over all the kilowatt-hours sold and that there not be any accommodation to the allocation of such costs to particular classes, or would you include that in it?

A. Well, yeah, you would have to allocate the costs for the conservation and demand response to the classes those costs are incurred to provide conservation actions for, but the ultimate charge to those classes should be differentiated based on whether or not those classes' benefits are based on demand reductions or energy reductions.

Q. So, for example, if there's a certain amount of costs that are being incurred for energy efficiency, energy conservation programs for the commercial class of customers, those costs ought to be recovered from the commercial class of customers.

A. From the commercial class of customers who are -- who have not been exempt from that program, yes.

Q. And the same -- your answer would be the same if I substituted industrial or residential for commercial?

A. For those that have not been exempt from the program, yes.

Q. Okay. Let me ask you a few questions about the deferred FAC costs and the carrying cost rate, which I believe your testimony addresses starting on page 9 and on to 10, at least the parts that I'm focusing on here.

Are you there?
A. Yes.
Q. Mr. Gorman, under the company's proposal for deferring costs during the ESP for later recovery, those deferrals become regulatory assets under the company's proposal; is that right?
A. That's my understanding.
Q. And under the proposal the company would be deferring costs in the first two or three years of the ESP and then they would be recovering them through some amortization mechanism to rates in the subsequent seven years; is that right?
A. Yes.
Q. And the companies will have to finance the deferred costs until they recover them through the rates during that recovery period, right?
A. They will have to finance the after-tax balance of those deferred costs until they are ultimately recovered from customers.

Q. And with that qualification, though, you would agree with me that they have to finance the deferred costs for that period of time.

A. Yes.

Q. And is it your -- is it your testimony, your opinion, that that is a short-term period?

A. Yes.

Q. And if the deferral and cost recovery period were not short-term, if it were a long-term period, would you agree that it would be appropriate to use, as far as debt goes, long-term issues of debt to finance such a deferral?

A. Well, if it's a regulatory asset, I don't know if the amortization per accounting principles can go longer than ten years. But yeah, the life of the capital should be reasonably comparable to the life of the asset.

Q. So if you have an asset that you're holding for a long-term period, it would be appropriate to use long-term types of capital to finance the asset.

A. Or if it's a permanent asset such as one that as it's worn out, it's replaced by a similar asset or the next generation of assets, then the capital supporting that rate base could be rolled

over into perpetuity, so very long capital sources
are normally used to finance permanent investments in
a utility.

Q. For the permanent types of facilities,
equity would be appropriate as a source of capital
for financing?

A. Yes.

Q. When you say short-term debt should be used to finance the deferred costs until they're recovered, what term do you mean to apply to that?

A. Well, I didn't mean to limit it to a specific term, but rather it's typically the utility's short-term borrowing facilities. To the extent they could look in a borrowing facility with the ability to pay it down as they recover these temporary assets, then that would be appropriate also.

But I would suggest that the borrowing facility certainly should be no longer than the ten-year accumulation and amortization period, as long as that balance can be paid down as they receive revenues from customers and compensation for those deferred assets.

Q. Well, assume with me for a moment that that's what the companies do, they finance it the way

you just explained you're recommending they do it.
Do you have an opinion as to whether or not the credit rating agencies would regard that kind of debt, whether you and I call it short term or long term, whether they would call it long-term debt, treat it as long-term debt?

A. The credit rating agencies look at all debt in the same way. They look at the cash requirements necessary to service that debt. That service consists of both interest payments and the principal payments on the debt.

So they would consider it in determining the utility's credit metrics, and that would be a component of the credit rating review of the utility company.

Q. Would they take it into consideration as debt in the capital structure that would be reflected in the debt ratio of the capital structure?

A. The actual financial leverage of the utility company, yes, they would consider that debt.

Q. So the debt that the company would take on to finance the deferred costs that you recommend that they use to do that, that would have the effect then of consequently reducing the equity ratios for the companies, would it not?

A. From a credit rating standpoint it would,
yes.

Q. And if from a credit rating standpoint
the additional leverage that results from financing
the deferred fuel costs in a manner that you propose
would adversely affect, that is, reduce the

creditworthiness of the companies, do you have an opinion as to whether or not that would increase the companies' cost of debt and equity?

A. Well, I think you're limiting it. I do have an opinion. I think you're limiting it to only the impacts on the balance sheet. What you're overlooking is the impact on the utility's cash flows because as this utility recovers this cost on a relatively short period of time, it recovers both the debt interest and principal payments from that amortization of that regulatory asset, so that enhances the utility's internal cash flows and ability to support their outstanding debt.

So while there is an increase in debt temporarily for this temporary asset, there's also an increase in the internal cash flows of the utility to support that additional debt. So all of that would be taken into consideration by the credit rating agencies, and the ultimate impact on the utility's credit rating would be consideration of those dynamics along with all the other cash flows and debt obligations of the utility added to that.

Q. Are you finished?

A. That completes my answer.

Q. If it did adversely affect the

creditworthiness of the companies in the view of the credit rating agencies, would you agree that the companies would then be encouraged to rebuild their equity or to add equity to their capital in order to restore the balance of their capital ratios to what they were before they started adding the debt in the fashion that you've proposed?

A. Well, again, this would be one element of the utility's overall capitalization mix as considered by credit rating analysts, but the utilities will have a continuous effort to try to manage its capital structured risk and debt leverage risk in order to comply with the credit analysts' outlook in terms of its balance sheet strength and asset strength in order to support its debt so that may require modifications in common equity to total long-term capital, and common equity ratios are permanent from all capital sources.

Q. Did you model the impact of financing the companies' proposed fuel deferrals with short-term debt, what impact that would have on their capital ratios?

A. I did not.

Q. I have a few questions for you, Mr. Gorman, with regard to your proposal for the significantly excessive earnings test, which I would direct your attention to page 16 of your testimony.

A. I'm there.

Q. And I believe in a prior line of questions that Mr. Bell posed to you, which hopefully has shortened my own examination of you by some amount, that you explained that your proposal at this point was to use a 10-1/2 percent cost of equity measure and add 200 basis points to that to come up with a threshold for the significantly excessive earnings test that you recommend; is that right?

A. That's right, recognizing that 10.5 percent return on equity is what I understand to be the Commission's most recent authorized return on equity for the utilities.

Q. And where did you get that information?

A. I believe Mr. Assante had stated that in his direct testimony at 8, page 8.

Q. I can't remember if I already asked this question. If I did, I apologize, but at the end of the day you have a 12-1/2 percent threshold that you recommend for the significantly excessive earnings test.

A. Yes.

Q. At page 16, lines 15 through 17, you

state that: "To the extent the earnings exceed 12.5 percent" -- which is the benchmark that we just discussed -- that you recommend "the Commission should suspend increases in AEP's ESP pricing mechanisms, or require AEP to refile its ESP pricing structure." Do you see that?

A. Yes.

Q. Do you know whether SB 221 contains provisions that would provide either of those two options to the Commission as a remedy in the event of significantly excessive earnings?

A. It's my understanding it does.

Q. Going back to the 10 percent cost of equity figure that you recommend as part of the composition of the threshold, that's not an earned return for a historical period, is it? I think you already mentioned several times that it's a cost of equity and prospective measure of what investors would require in order to stay invested in the company.

A. Well, it's a benchmark for what an appropriate return on equity would be and provide fair compensation to the utility.

Q. But it's not -- you didn't develop the 10-1/2 percent by looking at a prior period's worth of earnings and calculating what the earned return was in a prior period, did you?

A. Well, not the 10.5 percent, but I did validate the 12.5 percent excess -- significantly excessive earnings threshold by looking at earned return on equities for an electric utility industry proxy group.

Q. Let me ask you a few questions about, if you don't mind, about how your significantly excessive earnings test would work. Assume that the Commission adopts your benchmark of 12-1/2 percent and assume that in 2009 Columbus Southern Power and Ohio Power Company each have earned ROEs that exceed the 12-1/2 percent benchmark, and then you can further assume that whatever other conditions might need to be met are met and refunds are required, okay, for 2009 in 2010. Do you follow me?

A. Yes.

Q. Okay. Now, consider a contrasting

situation. Assume in the next year in 2010 the
benchmark again is 12-1/2 percent. The threshold is
12-1/2 percent, and that the two companies each earn
less than 10-1/2 percent minus 2 percent, that is,
8-1/2 percent. They're earning less than 8-1/2
percent in 2010. Would you agree that earning less

than the mirror image of the 200 percent adder deducted from the 10-1/2 percent, would you agree that that would represent significantly deficient earnings for the companies?

A. Well, I don't believe so because I think under the latter scenario where the earned return on equity was 8-1/2 percent --

Q. I'm sorry, could you repeat that?

A. The second year scenario where we're assuming that the earned return on equity was 8-1/2 percent.

Q. Less than 8-1/2 percent.

A. Less than 8-1/2 percent, in that scenario it's my understanding that the utility would be allowed to adjust its rider mechanisms to increase revenues to correspond with its increased costs.

Q. Okay.

A. So that would keep the utility whole in the event of lower earnings.

Q. I have a question or two about the comparable group of electric utilities with primarily regulated operations on your Exhibit MPG-2.

A. I'm there.

Q. You're ahead of me. Do you know which of these firms are utilities that must allow customers

to switch to competitive generation suppliers?
A. Which of these utilities have a provision where their retail customers must switch?
Q. No, that they may switch.
A. That they may switch.
Q. That the utilities must allow the customers to switch.
A. I haven't done a review of that. This is an industry of regulated utility companies.
Q. So would you estimate that it includes utilities among its list -- on the list some of which have switching and some of which do not have switching?
A. Yes.
Q. And we can cut through this a little bit. You don't know at this point which ones of the utilities on the list actually allow switching by their customers, do you?
A. Well, I can't give you an inclusive list

but I could name some of the companies that do. I have not reviewed this list specifically to make that determination.

Q. Well, let me ask you another question or two, and then if it gets too tedious, I'll stop. How many of the utilities that you recognize on the list that allow their customers to switch or who are required to let their customers switch also must permit the customers to return to regulated standard service offer rates when they're done taking their generation supply from an alternative or competitive supplier? By regulated rate I mean how many -- I mean a rate that's regulated by the Commission for the returning customer as opposed to being required to take service when they come back at a market-based rate.

A. Well, in terms of the cost-based or market-based rates means that utility's made whole when the customer comes back to the system. Ameren Corp would fit into that for its Illinois jurisdictions, AEP obviously. CMS Energy Corp. has an option for large customers to go to the market.

Q. And they come back -- if they decide to come back, do they come back to a market rate or a regulated rate?

A. There's restrictions on the rate as they come back, and I don't recall those restrictions as I sit here.

Q. It may not be that they're allowed to come back at a regulated rate?

A. Well, it would be the utility's cost per providing service to that customer.

Q. And the cost may be a market-based measure of cost that is the cost of --

A. At some point in time it might be, but as time goes on, depending on whether or not it's a contractual arrangement to supply the customer or if it's an index arrangement, then, you know, one would be a fixed price which could move above or below the market rate, and the latter would always be at some index of the market.

But I would have to look at the specific provisions for CMS Energy.

Q. If you were to eliminate -- here's a final question for you on this line. If you were to take out American Electric Power, which has the Ohio operating companies and DPL, Inc. which owns DP&L, which is another Ohio electric distribution utility, are there any of those remaining firms that now face a significantly excessive earnings test comparable to the one that is applicable in Ohio?

A. Well, I think they all face the risk of being called in for an adjustment if their earnings are excessive, so specific provisions referred to as a significantly excessive earnings test is not unusual in setting rates. In fact, it is common that the regulatory commissions have authority to pull a utility in to adjust rates if those rates are found to be excessive, so I would say that's a pretty common risk shared among all the companies.

Q. And that's the -- and is that a risk that utilities in Ohio previously faced before deregulation and before reregulation when they were regulated on a cost-of-service basis?

A. I believe it was, yes.

Q. So in the prior regulatory regime in Ohio it would have been possible for someone to file a complaint against a utility that its rates were excessive, it was earning too much money, and have the Commission after reviewing that complaint order rates to be reduced. Is that the kind of mechanism that you're referring to?

A. That's the kind of mechanism I'm referring to, but I haven't reviewed the old Ohio law specifically for that provision, but it is common.

Q. But conversely, or in contrast to that,
would you agree that it's uncommon to have a test
like that which is applicable in Ohio now, the
significantly excessive earnings test?

A. No. I think it's common for many clients
I work for to inform them of when regulated prices

are producing excess profits, and if they are, whether or not it's appropriate to request a show-cause type proceeding where the utility would be asked to come in and show its rates are not excessive.

Q. What utilities on this list have a significantly excessive earnings test other than the American Electric Power utility and DPL, Inc.?

A. Again, I'm not aware of any utility specifically with that test, but I am familiar with most jurisdictions' requirement for just and reasonable rates, and a rate that produces excessive profits is normally found to be not just nor reasonable.

Q. Thank you.

Could you turn to your Exhibit MPG-3 for a moment?

A. Yes.

Q. I want you to give me some help with your column 3, the Beta column.

A. Yes.

Q. Are the betas that you've reflected there, are they levered or unlevered betas?

A. That is the value on published beta. That is a levered beta.

Q. And I note that in your footnote 3 you indicate that you use three different Value Line Investment Surveys, the August 8th, the August 29th, and the September 26th, 2008, surveys.

Did you average the betas for each of these firms to come up with a value that you have in your column 3, or did you use some other -- did you use the three separate surveys in some other fashion besides averaging?

A. For each company the beta I have listed under column 3 is the most recent published beta by Value Line. The reason I had to rely on three different sources of Value Line reports is because Value Line breaks up its electric utility industry into three divisions, an eastern, a central, and a west. So the three dates reflect the dates for each of the Value Line editions that I relied on to quote the most recent beta estimate for each of those companies.

MR. CONWAY: Thank you, Mr. Gorman.

Your Honor, that's all I have.

EXAMINER SEE: Ms. Wung, any redirect?

MS. WUNG: Your Honor, may I actually have two minutes to confer with the witness?

EXAMINER SEE: I'm sorry, say that again.

MS. WUNG: Could I have two minutes to confer with the witness?

EXAMINER SEE: Yes.

MS. WUNG: Thank you.

(Off the record.)

EXAMINER SEE: Let's go back on the record.

MS. WUNG: Your Honor, I have no redirect.

At this time we'd like to move for the admission of The Commercial Group Exhibit No. 1.

EXAMINER PRICE: Are there any objections to Commercial Group's Exhibit No. 1?

MR. CONWAY: No objection.

EXAMINER SEE: Hearing none, Commercial Group Exhibit is admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER SEE: Thank you, Mr. Gorman.

THE WITNESS: Thank you.

EXAMINER SEE: Let's go off the record for a minute.

(Discussion off the record.)

EXAMINER SEE: Let's go back on the record.

We've established that we will follow up tomorrow morning starting with Yankel, Roberts, Scheck, and Pete Baker for tomorrow.

If there's nothing further, the hearing is adjourned until 9 a.m. tomorrow.

(The adjourned concluded at 5:47 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, November 25, 2008, and carefully compared with my original stenographic notes.

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

(3304-MDJ)

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