

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of Ohio : Case Nos. 09-1947-EL-POR
Edison Company, The : 09-1948-EL-POR
Cleveland Electric : 09-1949-EL-POR
Illuminating Company, :
and The Toledo Edison :
Company For Approval of :
Their Energy Efficiency :
and Peak Demand Reduction :
Program Portfolio Plans :
for 2010 through 2012 and :
Associated Cost Recovery :
Mechanisms. :

In the Matter of the :
Application of Ohio : Case Nos. 09-1942-EL-EEC
Edison Company, The : 09-1943-EL-EEC
Cleveland Electric : 09-1944-EL-EEC
Illuminating Company, and :
The Toledo Edison Company :
For Approval of Their :
Initial Benchmark Reports.:

In the Matter of the :
Energy Efficiency and : Case Nos. 09-580-EL-EEC
Peak Demand Reduction : 09-581-EL-EEC
Program Portfolio of Ohio : 09-582-EL-EEC
Edison Company, The :
Cleveland Electric :
Illuminating Company, and :
The Toledo Edison Company.:

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PROCEEDINGS

before Mr. Gregory Price and Ms. Kimberly Bojko,
Hearing Examiners, at the Public Utilities Commission
of Ohio, 180 East Broad Street, Room 11-A, Columbus,
Ohio, called at 10:00 a.m. on Tuesday, March 2, 2010.

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On behalf of the Council of Smaller
Enterprises.

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Tuesday Morning Session,

March 2, 2010.

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EXAMINER PRICE: Let's go on the record.

Good morning, the Public Utilities Commission has set for a hearing at this time and this place Case No. 09-1947-EL-POR, 09-1948-EL-POR, Case No. 09-1949-EL-POR, being in the matter of the application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for approval of their energy efficiency and peak demand reduction program portfolio plans for 2010 through 2012 and associated cost recovery mechanism;

As well as Case No. 09-1942-EL-EEC, 09-1943-EL-EEC, and 09-1944-EL-EEC being in the matter of the application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for approval of their initial benchmark reports;

As well as Case No. 09-580-EL-EEC, 09-581-EL-EEC, and 09-582-EL-EEC, being in the matter of the energy efficiency and peak demand reduction program portfolio of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The

1 Toledo Edison Company.

2 My name is Gregory Price, with me is
3 Kimberly Bojko, we are the Attorney Examiners
4 assigned to preside over today's hearing.

5 Let's begin by taking appearances
6 starting with the company and working our way through
7 the room.

8 MS. KOLICH: Thank you, your Honor.
9 Kathy J. Kolich, FirstEnergy Service Company, 76
10 South Main Street, Akron, Ohio 44308, on behalf of
11 the companies Ohio Edison Company, The Toledo Edison
12 Company, and The Cleveland Electric Illuminating
13 Company.

14 EXAMINER PRICE: Thank you.

15 MS. McALISTER: Thank you, your Honor.
16 On behalf of Industrial Energy Users-Ohio, McNees,
17 Wallace & Nurick, by Lisa McAlister, Samuel C.
18 Randazzo, Joseph M. Clark, 21 East State Street,
19 Columbus, Ohio 43215.

20 EXAMINER PRICE: Thank you.

21 Mr. Lindgren.

22 MR. LINDGREN: On behalf of the staff of
23 the Commission, Ohio Attorney General Richard
24 Cordray, and Duane Luckey, Chief of the Public
25 Utilities Section, by Thomas Lindgren and Steven

1 Reilly, Assistant Attorneys General, 180 East Broad
2 Street, 6th floor, Columbus, Ohio 43215.

3 MR. LAVANGA: Good morning, your Honor.
4 On behalf of Nucor Steel Marion, Michael Lavanga and
5 Garrett Stone of the law firm Brickfield, Burchette,
6 Ritts & Stone, 1025 Thomas Jefferson Street,
7 Northwest, Washington, DC, zip code 20007.

8 EXAMINER PRICE: Mr. Weldele.

9 MR. WELDELE: Thank you, your Honor. On
10 behalf of the Council of Smaller Enterprises, Eric
11 Weldele, with the law firm of Tucker, Ellis & West,
12 41 South High Street, Suite 1225, Columbus, Ohio
13 43215.

14 MR. REISINGER: Good morning, your Honor.
15 On behalf of the Ohio Environmental Council, William
16 Reisinger and Trent Dougherty, 1207 Grandview Avenue,
17 Columbus, Ohio 43212.

18 MR. HEINTZ: On behalf of the
19 Environmental Law and Policy Center, Michael Heintz,
20 1207 Grandview Avenue, Suite 201, Columbus, Ohio
21 43212.

22 MR. KURTZ: Good morning, your Honor.
23 For the Ohio Energy Group Mike Kurtz, 1510 URS
24 Center, Cincinnati, Ohio 45202.

25 MR. SMITH: On behalf of Material

1 Sciences Corporation, Craig I. Smith, Attorney at
2 Law, 2824 Coventry Road, Cleveland, Ohio 44120.

3 MR. O'BRIEN: Good morning, your Honors.
4 On behalf of the Ohio Manufacturers Association,
5 Bricker & Eckler, LLP, by Thomas J. O'Brien, 100
6 South Third Street, Columbus, Ohio 43215.

7 Also appearing on behalf of the Ohio
8 Hospital Association, Richard L. Sites, 155 East
9 Broad Street, Columbus, Ohio 43215, and Thomas J.
10 O'Brien, Bricker & Eckler, LLP. Thank you.

11 EXAMINER PRICE: OCC.

12 MR. POULOS: Good morning, your Honor.
13 Gregory J. Poulos, Chris Allwein, and Jeffrey Small
14 on behalf of Ohio Consumers' Counsel, 10 West Broad
15 Street, Columbus, Ohio 43215.

16 EXAMINER PRICE: Thank you.

17 Mr. Porter.

18 MS. PORTER: Thank you. On behalf of the
19 Association of Independent Colleges and Universities
20 of Ohio, Schottenstein, Zox & Dunn, by Andre T.
21 Porter, Christopher L. Miller, and Gregory Dunn,
22 thank you.

23 MR. WARNOCK: On behalf of Ohio Schools
24 Council, law office of Bricker & Eckler, LLP, Matthew
25 W. Warnock and Glen Krassen, 100 South Third Street,

1 Columbus, Ohio 43215.

2 EXAMINER PRICE: Thank you.

3 MS. MOONEY: On behalf of Ohio Partners
4 for Affordable Energy, David C. Rinebolt and Colleen
5 L. Mooney, attorneys, 231 West Lima Street, Findlay,
6 Ohio.

7 EXAMINER PRICE: Thank you.

8 Let's go off the record for one moment,
9 please.

10 (Discussion off the record.)

11 EXAMINER PRICE: Now we'll go back on the
12 record.

13 MS. KOLICH: Counsel needs to add several
14 counsel to the appearance. In addition to Kathy
15 Kolich, there's Arthur E. Korkosz and Ebony Miller,
16 both with FirstEnergy Service Company, 76 South Main
17 Street, Akron, Ohio 44308, as well as James F. Lang,
18 Calfee, Halter & Griswold, LLP, 1400 Key Bank Center,
19 800 Superior Avenue, Cleveland, Ohio 44114. Thank
20 you.

21 EXAMINER PRICE: Thank you.

22 We have a number of pending motions that
23 we have not yet ruled upon. We have pending motions
24 to intervene on behalf of Ohio Consumers' Counsel,
25 Ohio Hospital Association, the Environmental Law and

1 Policy Center, EnerNoc, Inc., Nucor Steel Marion,
2 Ohio Schools Council, City of Cleveland, Council for
3 Smaller Enterprises, and Material Sciences
4 Corporation.

5 At this time all those motions to
6 intervene will be granted.

7 We also have pending motions for
8 admission pro hac vice on behalf of Michael K.
9 Lavanga and Garrett A. Stone, those motions will be
10 granted at this time.

11 We have a pending motion to strike -- by
12 FirstEnergy to strike the System Coalition comments.
13 FirstEnergy's motion was filed on January 25th,
14 2010, and that motion will be denied.

15 Do we have any other preliminary issues
16 we need to address before we take our first witness?

17 MR. KURTZ: Your Honor.

18 EXAMINER PRICE: Yes, sir.

19 MR. KURTZ: Could we go off the record
20 just one minute, please?

21 EXAMINER PRICE: Yes.

22 (Discussion off the record.)

23 EXAMINER PRICE: Let's go back on the
24 record.

25 I think we can take our first witness.

1 MS. MILLER: The companies call John
2 Paganie.

3 (Witness sworn.)

4 EXAMINER PRICE: Please be seated and
5 state your name and business address for the record.

6 THE WITNESS: My name is John Paganie,
7 P-a-g-a-n-i-e, 76 South Main Street, Akron, Ohio
8 44308.

9 EXAMINER PRICE: Thank you.

10 Ms. Miller.

11 MS. MILLER: Your Honor, before I begin
12 I'd like to premark Company Exhibit 1.

13 EXAMINER PRICE: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 - - -

16 JOHN PAGANIE

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

19 DIRECT EXAMINATION

20 By Ms. Miller:

21 Q. Mr. Paganie, good morning.

22 A. Morning.

23 Q. Do you have before you what's just been
24 premark as Company Exhibit 1?

25 A. Yes, I do.

1 Q. Is that your direct testimony that's been
2 filed in this proceeding?

3 A. Yes, it is.

4 Q. Do you have any corrections or changes to
5 make to that testimony?

6 A. I do.

7 Q. What correction or change do you have?

8 A. Referring to Exhibit JEP-1, page 15, in
9 paragraph No. 2 the first line, at the end of the
10 first line where it states Pennsylvania Electric
11 Company (Toledo Edison), that is incorrect for the
12 title of Pennsylvania Electric Company. It should be
13 PenElec.

14 THE WITNESS: Can I make changes on this?

15 EXAMINER PRICE: Is that the document you
16 intend to give to the reporter?

17 MS. MILLER: Yes.

18 EXAMINER PRICE: Okay.

19 Q. Any other change, sir?

20 A. Yes, there are.

21 Q. What other change?

22 A. On page 16 of that same exhibit, Exhibit
23 JEP-1, under the paragraph that's headed
24 "Experience," the next-to-last line where it
25 indicates 11/01 to 2 of '09, Regional President of

1 Pennsylvania Electric Company, that should read
2 11/01/08.

3 And there should be a line inserted
4 directly below that that would read from "3/08 to
5 2/09" and that would be alongside of that titled
6 "Vice President Energy Efficiency." And then the
7 last line would remain as it is from "2/09 to
8 present."

9 I hope that was clear.

10 Q. Any other changes or modifications?

11 A. No.

12 Q. Subject to the changes that you've just
13 made, if I were to ask you the same questions set
14 forth in your testimony, would your answers be the
15 same?

16 A. Yes, they would.

17 MS. MILLER: The companies tender the
18 witness for cross.

19 EXAMINER PRICE: Thank you.

20 OCC.

21 MR. POULOS: Thank you, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Poulos:

25 Q. Good morning, Mr. Paganie.

1 A. Good morning.

2 Q. My name is Greg Poulos and I'm
3 representing the residential customers of FirstEnergy
4 companies.

5 THE WITNESS: Would it be possible for
6 Greg to use a mic?

7 EXAMINER PRICE: Yes, he is.

8 MR. POULOS: Yes, does that work?

9 EXAMINER PRICE: Of course not.
10 Is that better?

11 THE WITNESS: Yes, thank you.

12 Q. (By Mr. Poulos) I want to have you start
13 by looking at page 2 of your testimony, I believe
14 that's the Companies' Exhibit 1.

15 A. Okay.

16 Q. And just discuss a little bit about the
17 purpose of your testimony now, the purpose of your
18 testimony generally is to provide an overview of the
19 filing; is that correct?

20 A. Yes, that's correct.

21 Q. And that includes the energy efficiency
22 and the peak demand reduction activities during 2009?

23 A. Yes, that's part of it.

24 Q. And as part of those activities in 2009
25 that would include the filing -- the CFL original

1 plan filing Case No. 09-580; is that correct?

2 A. Yes, that was part of it.

3 Q. And you also proposed a time line for
4 review of the application by the parties, and a
5 certain time frame for the Commission to rule; is
6 that correct?

7 A. Yes, that is correct.

8 Q. Because you were providing an overview I
9 want to clarify for the record some of the limits of
10 what you're testifying about. I want to start with
11 shared savings. As part of the application the
12 company is asking for a shared savings mechanism; is
13 that your understanding?

14 A. Yes, that is my understanding.

15 Q. And could you briefly describe the
16 company's proposed shared savings mechanism?

17 A. Yes, I can. The company is proposing
18 that shared savings would be provided as part of the
19 company's program when one of the operating
20 companies, and there are three operating companies
21 under the proposal for 2010 through 2012, when one of
22 those operating companies exceeds the compliance
23 requirements by statute, that that operating company
24 would then have an opportunity to receive shared
25 savings.

1 Q. Now, with your testimony I want to
2 clarify that it is Mr. Ouellette's testimony that
3 supports the company's shared savings proposal; is
4 that correct?

5 A. Yes, that's correct. Company Witness
6 Ouellette will provide details on how the shared
7 savings are calculated.

8 Q. And the fact that you have a general
9 overview of the whole application, you are not
10 testifying to support the company's shared savings
11 mechanism; is that right?

12 A. I'm not sure that I understand the
13 question.

14 Q. As part of your testimony you're not
15 sponsoring the shared savings mechanism; is that
16 correct?

17 A. Well, I am sponsoring it in the sense
18 that it is part of our portfolio plan filing, and I'm
19 sponsoring the entire filing.

20 Q. Isn't it your opinion that the companies
21 can request a shared savings mechanism because you
22 are aware that another electric company in Ohio has a
23 shared savings mechanism?

24 A. Well, it would be my position that the
25 rules for energy efficiency and peak demand response

1 that were approved on December the 15th of 2009
2 provide that the company can request shared savings
3 as part of its portfolio plan, and in addition to
4 that it's my understanding that at least one other
5 company in Ohio has applied for shared savings as
6 well.

7 Q. And that other utility is AEP; is that
8 correct?

9 A. Yes, that's correct.

10 Q. And the company is looking for a shared
11 savings mechanism that would be 15 percent, correct?

12 A. Yes. I would define it a little more
13 than that. It would be that if the company --
14 operating company individually exceeds their
15 compliance requirement, that that operating company
16 would then be eligible to receive the 15 percent for
17 that particular company.

18 Q. And it's based on the separate companies,
19 so it's based on Ohio Edison or Toledo Edison or The
20 Cleveland Electric Illuminating Company.

21 A. Yes.

22 Q. Isn't it true that you don't know how the
23 15 percent figure was established?

24 A. Well, as part of the filing of the plan
25 in the discussions we had with our teams, it was my

1 understanding that 15 percent for shared savings was
2 a number that was available as part of other states'
3 requirements that permitted shared savings and was
4 eligible for some other utilities in those states.

5 I don't necessarily have specifics on
6 that, but it was part of the discussions that took
7 place in those meetings.

8 Q. So you don't have any specifics on how
9 that 15 percent figure was arrived at.

10 A. Other than what I have just stated, that
11 it was a number that had been considered to be
12 reasonable as it applied in other states and other
13 jurisdictions with other utility companies.

14 EXAMINER PRICE: Can you identify the
15 other states that use 15 percent?

16 THE WITNESS: I can't identify all of
17 them. There are 22 that were identified as states.
18 Of those states are states that would be New York and
19 Michigan, but I can't really identify all the 22.

20 EXAMINER PRICE: But New York and
21 Michigan use 15 percent.

22 THE WITNESS: Yes.

23 EXAMINER PRICE: Thank you.

24 Thank you, Mr. Poulos.

25 Q. (By Mr. Poulos) You said those other

1 states use shared savings mechanism or that they use
2 15 percent shared savings mechanism?

3 A. The 22 states have a shared savings
4 mechanism, not all of them have 15 percent.

5 Q. And which ones --

6 A. That was my understanding.

7 Q. I'm sorry. Which ones do have 15
8 percent?

9 A. Again, I don't have the details on all
10 the states that do have the 15 percent. The two that
11 I had mentioned, but I don't have details on all the
12 22.

13 Q. Isn't it true that you relied upon your
14 counsel in AEP to determine your position that
15 FirstEnergy's shared savings mechanism should be at
16 15 percent?

17 A. Well, no. It was more than that. Of
18 course, we relied on our consultant, their job was to
19 support the design of programs that would put us in
20 compliance with the statute -- the requirements in
21 the Green Rules as well as to provide an opportunity
22 through that design to meet our statutory
23 requirements.

24 But it was a collective process of
25 working with the consultant, working with our

1 internal teams, and having discussions with the
2 collaborative.

3 MR. POULOS: Your Honor, may I approach
4 the witness?

5 EXAMINER PRICE: You may.

6 MR. POULOS: Your Honor, may I have the
7 deposition of Mr. Paganie marked as OCC Exhibit 1?

8 EXAMINER PRICE: So marked.

9 MR. POULOS: Thank you, your Honor.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. (By Mr. Poulos) And if I may have the
12 witness look at page 101.

13 MS. MILLER: Your Honor, just for
14 clarification, is it the entire exhibit that's going
15 to be marked?

16 EXAMINER PRICE: I believe so.

17 MR. POULOS: Yes.

18 MS. MILLER: The entire deposition?

19 EXAMINER PRICE: Yes.

20 MR. POULOS: Just for reference.

21 A. Okay, I'm on page 101.

22 Q. I'll have you look at line 17 and let me
23 know if I read this correctly. "In your opinion what
24 is the basis for FirstEnergy -- that they should get
25 a 15 percent net benefit?"

1 Then an objection by your counsel, and
2 your answer: "Based on what was provided to me as
3 what was filed by the other Ohio electric company as
4 well as what our consultants believe to be
5 appropriate."

6 Did I read that correctly?

7 A. Yes.

8 Q. Now, isn't it true that you are not sure
9 what programs the companies' shared savings
10 mechanisms would include?

11 A. I'm not sure I follow your question.

12 Q. Would it include transmission and
13 distribution programs?

14 A. It's my understanding that it would.

15 Q. Can I have you refer again to your
16 deposition on page 102.

17 A. Yes.

18 Q. Page 102 on line 14.

19 A. Yes.

20 Q. Do you see that question: "Shared
21 savings, Mr. Paganie, what does that apply to? Does
22 that apply to any savings the company gets or are
23 there certain limitations?"

24 And after objection, "That's all covered
25 by Mr. Ouellette and he will be able to answer all

1 those questions," your answer was "I'm not sure." Do
2 you see that?

3 A. Yes.

4 Q. Isn't it true you are also not aware to
5 the limits of the amount of shared savings the
6 company can collect?

7 A. Yes, that was the statement.

8 Q. Now, you talked about AEP and the fact
9 that they have a shared savings mechanism, so as part
10 of your position you'd agree that FirstEnergy should
11 be permitted to have a shared savings mechanism,
12 correct?

13 A. Well, as I stated, it was not just
14 because of what another company had filed in Ohio, it
15 was permitted by the Green Rules, it was something
16 that had been done in other states and other
17 jurisdictions as well as in Ohio, and it was, as we
18 had discussions internally, it was something that we
19 felt was important to provide an opportunity to
20 create, I guess I'll use the word "sustainability" as
21 we developed these programs going forward.

22 We're just getting started here with this
23 process of creating energy efficiency in the state of
24 Ohio from a portfolio standpoint by implementing
25 programs and we have to do it in a way that it

1 sticks. It's going to have to have traction because
2 we've got significant compliance requirements until
3 2025.

4 And to make it sustainable, it provides
5 an opportunity for the companies to do more than
6 required by compliance in the sense of incentive to
7 do more, and that's what the shared savings would
8 provide.

9 Q. So let me ask the question again. Was
10 AEP a part of that, though? Part of the reason that
11 the company's asking for a shared mechanism?

12 A. I think I answered that "yes."

13 Q. Now, isn't it true that you do not have
14 an understanding of AEP's shared savings mechanism?

15 A. That is true.

16 Q. And you don't have an understanding of
17 whether that was -- a shared savings mechanism was
18 part of a settlement agreement?

19 A. I'm not aware of that either.

20 Q. Or that if the settlement agreement has
21 been approved.

22 MS. MILLER: Objection, your Honor. The
23 witness has already indicated that he wasn't aware of
24 whether it was part of the settlement agreement. I
25 don't know how he would then know whether the

1 settlement agreement would be approved.

2 EXAMINER PRICE: I think we know how he's
3 going to answer now, Ms. Miller. Overruled.

4 Mr. Paganie.

5 MS. MILLER: I'll state just "objection."

6 THE WITNESS: Please reread the question.

7 (Record read.)

8 A. I'm not sure if the settlement agreement
9 has been approved.

10 Q. Are you aware that the AEP energy
11 efficiency plan including its shared savings
12 mechanism went to hearing last week?

13 A. Yes.

14 Q. Just to make sure I'm clear, it's true
15 that you don't have an understanding of AEP's
16 proposal for a shared savings mechanism itself,
17 correct?

18 A. I do believe you asked me that question.

19 EXAMINER PRICE: Well, your counsel needs
20 to make that, not you. And since she has not, you
21 can answer the question.

22 A. No, I'm not.

23 Q. Move on to the FirstEnergy ESP
24 stipulation just briefly. As part of the FirstEnergy
25 2008 ESP, there was a stipulation; is that your

1 understanding? Correct?

2 A. Yes.

3 Q. And that stipulation resolved that case;
4 is that your understanding?

5 A. That would be my understanding.

6 Q. And you were involved in FirstEnergy's
7 submittal of the 2008 ESP application and the
8 subsequent stipulation, correct?

9 A. I was not involved in the application. I
10 was involved in the stipulation agreement.

11 Q. And your involvement centered around the
12 energy efficiency measures.

13 A. Yes, it did.

14 Q. And is it your understanding that the
15 stipulation from that case established a
16 collaborative process for the development and
17 implementation of FirstEnergy's energy efficiency and
18 peak demand reduction programs? Correct?

19 A. Yes, that is correct.

20 Q. And you are the person responsible at
21 FirstEnergy for implementing the energy efficiency
22 provisions for the stipulation and the collaborative,
23 correct?

24 A. That is correct.

25 Q. And your role includes kicking off the

1 collaborative process as soon as practicable.

2 A. I would consider that to be part of my
3 role.

4 Q. And that happened in approximately what
5 month of 2009?

6 A. The first collaborative meeting was on
7 May 18th, that stipulation I believe was approved
8 on, it was late-March, I believe, March 25th
9 possibly. So the first collaborative meeting we
10 actually held, once we were able to notify parties
11 and gather everyone together, was May 18th.

12 Q. Now, as you were going through your
13 testimony and some of the modifications, you made a
14 change to the fact that you were part of -- the
15 energy efficiency vice president for FirstEnergy
16 companies; is that correct?

17 A. Yes.

18 Q. And as part of that role did you help the
19 FirstEnergy Pennsylvania electric companies design
20 and implement energy efficiency programs?

21 MS. MILLER: Objection.

22 EXAMINER PRICE: Grounds?

23 MS. MILLER: It's irrelevant.

24 EXAMINER PRICE: Overruled.

25 A. Yes, part of my role was to support the

1 process for developing the portfolio plan for the
2 Pennsylvania operating companies.

3 Q. And the development of those plans, that
4 was earlier than the plan year you're proposing.

5 I'll ask that again, Mr. Paganie. That
6 work that you did on the programs in Pennsylvania,
7 that work came before you filed the FirstEnergy in
8 Ohio plan, correct?

9 A. I'm not quite sure of the context of your
10 question. I will answer that we had to file by
11 statute in Pennsylvania in July of 2009, so we had to
12 have a market assessment and the portfolio plan done
13 prior to that. So that would have been earlier than
14 we filed the plan for Ohio.

15 Q. And your role in filing those plans in
16 Pennsylvania was similar to your role here in filing
17 the plans in Ohio; is that correct?

18 A. Yes, that would be correct.

19 Q. And the Ohio benchmarks, statutory
20 benchmarks, you're familiar with those for energy
21 efficiency?

22 A. Yes.

23 Q. And those were established in amended
24 Senate Bill 221, there are 2009 figures and, there's
25 all the way -- figures to 2022, correct?

1 A. Yes.

2 Q. They're cumulative figures.

3 A. Well, there are both incremental by year
4 as well as cumulative in the statute.

5 Q. As part of this plan, this plan runs 2010
6 through 2012, correct?

7 A. Yes, that is correct. That's the
8 guidance from the rules that were published on
9 December the 15th.

10 Q. And the benchmark for 2009, does this
11 plan incorporate the statutory benchmark for 2009 for
12 energy efficiency?

13 A. Yes. The plan that we filed, the
14 portfolio plan --

15 Q. Yes.

16 A. -- for '10 through '12 is filed on the
17 basis of achieving the statutory benchmarks that were
18 cumulative in the statute for '10, '11, and '12,
19 which would include the incremental amount of the
20 statutory requirement from 2009.

21 Q. And it is your opinion that it is
22 FirstEnergy's obligation to meet those benchmarks,
23 correct?

24 A. Yes, it's our obligation to meet those
25 benchmarks.

1 Q. Mr. Paganie, I want to talk a little bit
2 about another program and see where -- I know you
3 have an overview of the application, but see how
4 specific your review was in this process, and that's
5 regarding the CFL program.

6 Is it your understanding that originally
7 the companies filed the application for the CFL
8 program with the Commission in July of 2009? Is that
9 correct?

10 A. There was a filing for a CFL program in
11 July of 2009.

12 Q. And for clarity sake I'll just refer to
13 that as the original CFL program. Is that
14 understandable?

15 A. That's fine.

16 Q. And the purpose of the program, that
17 original program, was at least in part to assist
18 FirstEnergy in meeting the statutory obligation to
19 achieve its energy efficiency benchmarks in 2009; is
20 that correct?

21 A. It is correct. We were -- that was one
22 of a number of programs that the company had included
23 in its plans for 2009 compliance, and that was along
24 with a T and D program that had been filed prior to
25 that for both T and D historical as well as the new

1 T and D in '09 and the mercantile programs and the
2 programs that were ongoing in the state at that time
3 as well, which would have been the home energy --
4 home performance with Energy Star and the direct load
5 control program.

6 Q. And the original CFL program was designed
7 and implemented under your direction, correct?

8 A. It was designed and when it was approved
9 by the Commission, we began implementation of the
10 program. That was stopped quickly thereafter. It
11 was done under my direction.

12 Q. And would you consider your involvement
13 in that design and implementation of the original
14 program to be more of a high-level review or a
15 hands-on review?

16 A. It would have been a high-level review,
17 but as in all -- in all matters as we were attempting
18 to find ways to design programs that gave us an
19 opportunity to be in compliance in 2009, it was more
20 in depth than I would characterize as a high level.

21 So I'm not sure if that makes a lot of
22 sense. But I had to know more about the programs
23 than just to have a cursory view of them.

24 Q. That original CFL program, Black & Veatch
25 did not help you design that original CFL program,

1 correct?

2 A. We had had discussions with Black &
3 Veatch, but they did not provide the design of that
4 program to us.

5 Q. Black & Veatch is the consultant that you
6 used for this filing, for this energy efficiency
7 filing; is that correct?

8 A. Yeah, that is correct. Black & Veatch
9 was hired in May to be the expert consultant on
10 energy efficiency and peak demand design, and the
11 first steps they had to take were to do a market
12 assessment study, so that really took them from the
13 time that we hired them really through until about
14 the first of September to get that market assessment
15 done, then we brought that to the collaborative.

16 So they really weren't part of a design
17 process yet, we were still trying to get our arms
18 around what the market looked like and what kind of
19 programs would be good for the customers in our
20 marketplace.

21 Q. And this original CFL program design that
22 we're referring to was not part of the December
23 15th, 2009, filing, correct?

24 A. No. The program that we're referring to
25 was stopped and then we were required to redesign the

1 program.

2 Q. And it's the --

3 A. Excuse me, I'm just having a pause for a
4 moment.

5 Q. I'm sorry.

6 A. And then on the order to redesign the
7 program we were ultimately provided an opportunity,
8 after discussions through the collaborative process,
9 to include that redesigned program as part of the
10 portfolio of all the programs that were being offered
11 from '10 through '12.

12 Q. You mentioned that the collaborative
13 assisted in that redesign. Did Black & Veatch assist
14 with that redesign program?

15 A. They were part of it, but most of the
16 redesign was really done through the collaborative
17 process. There were a large number of meetings and a
18 considerable amount of program -- of design and
19 redesign of that -- using "redesign" and "program"
20 too many times in the statement -- but there were a
21 lot of opportunities to talk that over with the
22 collaborative, get ideas and input, put them back
23 into the process and redesign them and bring them
24 back to the collaborative.

25 So most of that redesign was done through

1 the collaborative process utilizing the skills of the
2 people who were part of that. It was mostly the
3 residential subcommittee of the collaborative that
4 was engaged in that.

5 Q. And I'll get back to that collaborative,
6 the residential collaborative in a second, but I want
7 to clarify some things.

8 We talked about Pennsylvania and you
9 helping or directing the FirstEnergy company's plan
10 there. Is there a CFL program as part of the
11 Pennsylvania FirstEnergy plan?

12 A. Yes.

13 Q. That was developed under your direction?

14 A. Yes.

15 Q. So the original CFL program here in Ohio
16 was not the first CFL program designed under your
17 direction, correct?

18 A. Well, yes, that's true. Not only in
19 Ohio -- I mean not only in Pennsylvania, but in Ohio.
20 As you'll probably recall from the earlier
21 collaborative meetings and the residential
22 subcommittee meetings, we had originally looked at a
23 CFL program as part of our overall plan to be in
24 compliance for 2009, we had looked at a different
25 program for CFLs initially. It was a coupon program.

1 And then we looked at even modifying that
2 to a voucher program, and then as it became more
3 apparent that we needed to have a program because of
4 our need to get savings accomplished on a pro rata
5 basis, which the draft rules were indicating, that we
6 modified that program to the one you're identifying
7 as the original program.

8 So even in Ohio we had had some other
9 designs in place for discussion.

10 Q. For clarification, the Ohio plan that you
11 have proposed as the original plan is different than
12 the plan that was in Pennsylvania, correct?

13 A. Yes.

14 Q. And the reason the Ohio plan is unique is
15 because, I think you alluded to it, is the fact that
16 there were regulatory delays here in Ohio so the
17 company had to meet its compliance requirements in a
18 short period of time; is that correct?

19 A. Well, it was more than that. There were
20 a lot of issues going on at that time where a lot
21 of -- there were filings made, we hadn't received
22 action on the filings, but we also didn't have rules
23 at that time, we didn't have a TRM, or a technical
24 reference manual, either, and we had draft rules, and
25 draft rules, as I stated, indicated that we had to

1 use pro rata savings.

2 So as we got deeper into the year, each
3 month, in recognizing that we would be launching
4 programs later in the year and only be able to count
5 that portion of the savings when we got that program
6 implemented later, then we realized that we had to
7 modify that program to the one that we're now calling
8 the CFL program.

9 Q. And you alluded to this earlier about the
10 Commission asking you to suspend the program. Is it
11 your understanding that FirstEnergy was asked by the
12 Commission Chairman on October 8th, 2009, to not
13 implement the program? Correct?

14 A. I don't recall the exact date.

15 Q. Was it approximately around October
16 8th?

17 A. It was approximately that time frame.

18 Q. And is it your understanding the program
19 slated to start on October 12th, 2009?

20 A. It was approximately that date. We were
21 trying to start the program as soon as practical
22 after the program was approved by the Commission
23 because, as I've talked about, the need to -- the way
24 that program was designed was to have the lights
25 distributed in a four- to six-week period in order to

1 give us an opportunity to achieve the savings on a
2 pro rata basis.

3 MR. POULOS: Your Honor, may I approach
4 the witness?

5 EXAMINER PRICE: You may.

6 MR. POULOS: Thank you.

7 Your Honor, may I have this marked as OCC
8 Exhibit 2?

9 EXAMINER PRICE: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. Mr. Paganie, do you recognize OCC Exhibit
12 2, which about a third of the page down it has a
13 headline of "FirstEnergy to Postpone Energy-Efficient
14 Light Bulb Distribution" and is dated, at least says
15 "For Release: October 8, 2009"?

16 A. Yes.

17 Q. And you recognize this as a press release
18 sent out by FirstEnergy?

19 A. Yes, that's what it looks like.

20 Q. And if you look at the second paragraph,
21 it talks about the program's scheduled to begin
22 October 12th, 2009. Do you see that?

23 A. I do.

24 Q. Do you have any reason to doubt that was
25 the date it was scheduled to begin?

1 A. No, I don't.

2 Q. And that the, if you look at the first
3 line, the first sentence of this press release, that
4 FirstEnergy today announced that it would postpone
5 distribution of compact fluorescent light bulbs, and
6 would it be your understanding it was postponed on
7 October 8th based on this newsletter?

8 MS. MILLER: Objection, your Honor.

9 EXAMINER PRICE: Grounds?

10 MS. MILLER: The document speaks for
11 itself.

12 EXAMINER PRICE: I'm not clear what
13 you're saying.

14 MS. MILLER: He's established that the
15 document was released on a day, the first sentence
16 says "today," I think the document speaks for itself.

17 EXAMINER PRICE: Overruled.

18 THE WITNESS: Please repeat the question.

19 (Record read.)

20 A. That would be my understanding.

21 Q. Thank you, Mr. Paganie. And that's all I
22 have from that document.

23 As part of the original program that was
24 suspended you incurred -- FirstEnergy incurred costs,
25 correct?

1 A. Yes. There were costs that were incurred
2 as we began to launch the programs after it was
3 approved.

4 Q. And those costs are a part of the cost
5 recovery for the new CFL that was -- program that was
6 filed as part of the December 15th plan.

7 A. Yes, that is correct.

8 Q. Before I get to those costs I want to go
9 over the collaborative that you discussed a little
10 bit earlier, the residential collaborative and the
11 redesign. Since the point when that program was
12 halted FirstEnergy has redesigned the program, which
13 you stated, correct?

14 A. Well, FirstEnergy hasn't redesigned the
15 program. That program was redesigned through the
16 collaborative process.

17 Q. And you were part of that collaborative
18 process; is that correct?

19 A. Yes.

20 Q. And more specific than any collaborative,
21 it was a residential collaborative that really worked
22 on that; is that true?

23 A. Yeah, that would be true. It was mostly
24 the residential subcommittee of the collaborative.

25 Q. And that was, the approximate time frame

1 for that reworking the program was in November of
2 2009?

3 A. Well, it started before that. We began
4 to have discussions in October through November.
5 There were a number of discussions with that part of
6 the collaborative.

7 Q. And is it your recollection that there
8 were a lot of discussions, of meetings?

9 A. Yes. There were, I believe there were
10 five meetings that actually occurred in person and
11 another meeting that was by phone. So at least six
12 meetings of record that I can recall.

13 Q. In the October/November, just dealing
14 with the CFL redesign program.

15 A. Yes.

16 Q. Do you have an understanding of whether
17 there were six residential collaborative meetings
18 even -- total before that period?

19 A. Before what period again?

20 Q. Before you were working on the redesigned
21 CFL program. I'm trying to compare the number of
22 meetings you had just on that program in
23 October/November versus all the other residential
24 collaborative meetings combined.

25 A. Well, I'm sure we can look at the record

1 and be certain about that, but my recollection is
2 that we probably had a residential subcommittee
3 meeting every month once we established the
4 subcommittees as part of the collaborative process in
5 May, so if I do my math correctly, that would have
6 been about five, so I'm just speculating on the
7 number. Again, we could look at the record to see
8 exactly how many occurred.

9 Q. And that approximation is good, thank
10 you.

11 Now, do you recall when those meetings
12 ended regarding the CFL program redesign?

13 A. Well, I know we had a full collaborative
14 meeting in late-November, 23rd I believe, and I
15 know we had subcommittee meetings up to that point as
16 we were getting programs ready for the full portfolio
17 filing, so I believe that, I think we had six
18 different drafts of the, what we'll call the
19 redesigned CFL program.

20 And I believe it was approximately in
21 that time frame that we had the last draft that we
22 had talked to the subcommittee about and reached an
23 agreement that we had included everything that we
24 could include from the recommendations from the
25 collaborative members in that we had all reached, I'm

1 going to use the word "agreement" that the redesign
2 was done in a manner that all the parties agreed was
3 designed properly with all the delivery channels we
4 were going to be using. I'm not sure the time, but I
5 believe it would have been late-November.

6 Q. So approximately late-November is the
7 time frame?

8 A. I believe so. I'd have to look back at
9 the record to be certain.

10 Q. And you also mentioned there an agreement
11 between the collaborative members, the residential
12 collaborative members about the program.

13 A. Yeah, that was a term that I used. We
14 often asked the members at the meetings if everybody
15 agreed with the redesign of the program, and the
16 members would all indicate whether they did or not,
17 and my recollection was that the members indicated
18 that, yes, we were in agreement that the program has
19 been redesigned appropriately, it will provide an
20 opportunity to distribute the lights in a reasonable
21 fashion to customers over a reasonable period of
22 time. I think it was over a two-year period of time.

23 Q. And isn't it your opinion at that point,
24 once there was an agreement reached or a consensus
25 reached regarding the distribution of these CFL light

1 bulbs, the new program, that it just simply was a
2 matter of launching the program?

3 A. It could be, but at that time what we
4 were discussing -- and we had our communications
5 group with us several of those meetings. What we
6 were discussing was if we redesigned the program and
7 launched it again as, I'll use the term as a "one-off
8 program," in other words a separate program not part
9 of the entire portfolio package, that we were
10 probably going to be facing a pretty difficult time
11 managing the media attention and the customer
12 awareness of what we were doing and why we were doing
13 it because those were similar to the issues that we
14 faced with the program launch.

15 So part of the discussions we had with
16 the collaborative at that point was rather than
17 relaunching this redesigned program as another
18 one-off program, it would be in the best interest of
19 all of us to do it as part of the portfolio because
20 we were all interested in trying to find a way to get
21 all of our customers to really support energy
22 efficiency across the state.

23 So we really had talked about including
24 this as part of our portfolio, and my recollection of
25 the last meeting, the last two meetings with the

1 residential committee as we talked was there was
2 generally agreement that it would make more sense to
3 launch it as part of the portfolio package.

4 Q. Let me clarify something on that. So you
5 said that the last residential collaborative meeting
6 was end of November, to your understanding, to your
7 recollection.

8 A. Well, if you give me an opportunity, I
9 could look at the exact date.

10 Q. And that's fine, but my question is there
11 haven't been any residential collaborative meetings
12 since then, correct?

13 A. Since we filed the portfolio plan on
14 December the 15th there have not been any
15 collaborative meetings. There have been meetings to
16 try to discuss a combination meeting that we had on
17 January 7th and a follow-up meeting, it was a
18 technical meeting to try to do two things, and that
19 was to try to have an opportunity for the parties to
20 feed back comments on the programs as well as to talk
21 about settlement of the case.

22 Q. Just to make sure I understand your
23 answer, isn't it true that the reason there haven't
24 been any other collaborative meetings, residential
25 collaborative meetings about the CFL program is

1 because there has been a consensus about the program
2 and all that is left to do is to launch the program
3 and see how the outcomes -- see the outcome? Is that
4 correct?

5 A. Well, no, the residential collaborative
6 had more functions than just the CFL program. They
7 were looking at all the residential programs. As a
8 matter of fact, in a filing there are seven or eight
9 separate programs that are part of the residential
10 group. So their function was to review all of that
11 material.

12 Q. I'm sorry, I'm just referring to the CFL
13 program. For the CFL program, the redesign of the
14 CFL program purposes, isn't it true that the reason
15 there haven't been any more meetings regarding the
16 CFL program is because a consensus was reached on the
17 CFL redesign and at this point it's just left to
18 launching the program and observing the results?

19 A. I'm not sure if I used the word
20 "consensus." As I recall what we discussed in those
21 meetings, it was do you agree with the redesign, and
22 the answers we got in most cases were yes, however,
23 some parties would indicate that they couldn't really
24 respond in total agreement until they had more
25 discussions with their management.

1 So I'm not sure "consensus" was an
2 appropriate term. We were trying to come to grips
3 with was this the best we could do with the program,
4 and I think we had reached that kind of a conclusion
5 with the parties. So I thought we had an agreement
6 on the design and then it became an opportunity to
7 include it as part of the portfolio plan.

8 Q. My question was more, though, to at this
9 point there's been a consensus or close to consensus
10 that all that is left to do is to launch the program.

11 A. Well, all that's left to do is to have it
12 become part of a portfolio plan and get it approved
13 and then we can launch the program.

14 Q. Mr. Paganie, can I have you refer again
15 to your deposition on page 74. Starting on line 8,
16 just let me know when you get there. Do you see
17 that, line 8?

18 A. I am there.

19 Q. Line 8 the question starts "Do you have
20 an idea, will there be more meetings regarding the
21 CFL program in the residential collaborative?" And
22 your answer starting on line 11: "I believe we have
23 reached a consensus on what the CFL redesign program
24 will be and it's a matter now of launching the
25 program and having the residential collaborative

1 observe the outcomes we, that we achieve." Do you
2 see that?

3 A. I do. And I don't think that's any
4 different than what I said except using the term
5 "consensus," which I'm troubled with, but when I
6 referred to launching the program and having the
7 residential --

8 Q. I'm sorry, Mr. Paganie, there's no
9 question pending.

10 EXAMINER PRICE: He can finish his answer
11 and then if you have a motion, you can make that
12 motion, but let's let him finish what he was saying.

13 THE WITNESS: Thank you.

14 I was just going to indicate that when I
15 indicate it's a matter of now launching the program
16 and having the collaborative review the outcomes,
17 that's really the purpose of the collaborative on a
18 going-forward basis. Launching the programs is part
19 of the portfolio and having the collaborative review
20 outcomes was my intent.

21 MR. POULOS: Your Honor, I ask that
22 everything after reading the deposition be stricken.

23 EXAMINER PRICE: Well, I think you want
24 everything after he says "I do" stricken.

25 Ms. Miller.

1 MS. MILLER: Your Honor, it's obvious
2 that Mr. Poulos was asking him to read the section of
3 his deposition because he thought he was being
4 inconsistent, and Mr. Paganie was indicating how he
5 was not being inconsistent in reconciling the
6 statements.

7 EXAMINER PRICE: That's true, but that
8 wasn't the question.

9 Motion to strike will be granted. You
10 can bring that up on redirect.

11 Q. (By Mr. Poulos) Mr. Paganie, we've had a
12 couple questions about the consensus and whether
13 there was a consensus and what there was a consensus
14 related to. You would agree that consensus or close
15 to consensus that we've been discussing, that was
16 related to the design and implementation of the
17 distribution of the lights, correct?

18 A. Yes, I would agree.

19 Q. And wouldn't you agree with me that there
20 were other aspects of the program that the
21 collaborative has not reached a consensus on or
22 anything close to it? Correct?

23 A. There were other aspects that members of
24 the collaborative were not in agreement on.

25 Q. And do you recall that one of the

1 remaining issues related included cost recovery of
2 lost revenues? Correct?

3 A. Yes. That was one of the issues.

4 Q. And that there were questions also
5 surrounding the marketing of the redesigned program.

6 A. Well, my recollection was that I felt
7 that we were pretty good with respect to the
8 marketing, that there were offers to support
9 marketing by members of the collaborative which I
10 thought was a great idea. We hadn't really worked
11 out all the details yet, but certainly it was the
12 intent to have our communications group work with
13 others to find some joint ways we could utilize
14 communications to customers.

15 Q. And at the time of the last residential
16 collaborative meetings there were also questions
17 regarding some of the sunk costs or costs that have
18 already been spent by the company on the original
19 program that can't be used going forward; is that
20 correct?

21 A. Yes, there were discussions about that.

22 Q. And those questions or issues regarding
23 the collection of lost revenues, the marketing and
24 the sunk costs, those are still outstanding, correct?

25 A. I'm not sure what you mean by

1 "outstanding."

2 Q. Well, we referred to the fact that those
3 were issues at the last residential collaborative
4 meeting and there hasn't been one since then,
5 correct?

6 A. That is correct, there has not been
7 another residential subcommittee meeting.

8 Q. Thank you.

9 Do you have any plans to have a -- to
10 schedule a residential collaborative meeting to
11 address those issues?

12 A. Well, there's been some ongoing actions
13 to address those issues regarding the costs that were
14 incurred when the company began to launch the
15 original CFL program and providing some additional
16 information that was requested.

17 With respect to setting up another
18 collaborative meeting, the company had sent out an
19 e-mail notice to the members, I'm trying to think of
20 the date that that went out, to ask the members if
21 they would have any items that they would like to
22 have discussed at future collaborative meetings, and
23 to date we've had no response from the members on
24 that particular message.

25 So we haven't set a meeting up yet, but

1 we certainly have intentions to do so.

2 Q. Thank you.

3 MS. MILLER: Your Honor, could we get him
4 another battery?

5 EXAMINER PRICE: Yes. Let's go off the
6 record.

7 (Off the record.)

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

10 Mr. Poulos.

11 MR. POULOS: Thank you, your Honor.

12 Your Honor, during the break there I
13 handed out an exhibit which I'd like to have marked
14 as OCC Exhibit 3.

15 EXAMINER PRICE: So marked as OCC Exhibit
16 3.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MR. POULOS: Thank you, your Honor.

19 Q. (By Mr. Poulos) Mr. Paganie, this
20 document, OCC Exhibit 3, it's two pages and the first
21 page says "Retail, Community Group and OPT IN
22 FirstEnergy CFL Distribution Estimate," with a date
23 11/24/09. Do you see that?

24 A. Yes, I do.

25 Q. I want to have you look at the second

1 page which is titled "CFL Program Committed/Spent."

2 Do you see that?

3 A. Yes.

4 Q. And do you recognize this document?

5 A. I believe I do. There were a number of
6 documents that look like this that were circulated
7 among the parties as we were going through the
8 subcommittee meetings and this looks like one of
9 those documents.

10 Q. Do you recognize the categories in this
11 document?

12 A. Yes.

13 Q. And the CFL program and the costs
14 associated with it, those were something that you
15 were in charge of, correct?

16 A. As my overall responsibilities for that
17 particular function, yes.

18 Q. And this document here was provided to
19 the residential collaborative members, correct?

20 A. Yes, it was.

21 Q. And as we referred to earlier, the costs
22 from the original program, these CFL program
23 committed/spent costs that are on this page 2 of OCC
24 Exhibit 3 are costs that have been included in the
25 filing for recovery from residential customers; is

1 that true?

2 MS. MILLER: Objection, your Honor.

3 EXAMINER PRICE: Grounds?

4 MS. MILLER: The witness has indicated
5 this is one of many drafts and that he was not sure
6 what order this draft came in.

7 EXAMINER PRICE: Can we read back
8 Mr. Poulos's question, please?

9 (Record read.)

10 EXAMINER PRICE: I think he can answer
11 that question. Overruled.

12 A. This doesn't indicate what draft this is,
13 Mr. Poulos, it just has "Draft" and no number beside
14 it. My recollection of the final draft was Draft
15 No. 6, and that being said, I don't know if this is
16 the final draft or not because the final draft had
17 the final costs in it that actually went into the
18 portfolio plan. So I can't answer the question based
19 on -- I don't know if this is the final draft.

20 Q. And I want to clarify something for the
21 record. Looking at this OCC Exhibit 3, you have seen
22 this document before, correct?

23 A. I have seen what before?

24 Q. You have seen this document before.

25 A. I believe I have. As I said, there were

1 a number of drafts that were posed to the
2 subcommittee and they all looked like this, of
3 course, but as we designed and changed the design,
4 the draft changed.

5 Q. Can I have you refer again to your
6 deposition.

7 A. Sure.

8 Q. Page 77.

9 A. Okay.

10 Q. Starting on line 11.

11 A. Okay.

12 Q. Mr. Paganie, the question starting on 11
13 on page 77, "Mr. Paganie, I am going to start with
14 OCC Exhibit 6 which is two pages long. Do you
15 recognize this document?"

16 Answer: "I do recall having seen it."

17 Question: "And I want to focus more on
18 the second page, which is CFL Program Committed/Spent
19 costs. Do you see that?"

20 Answer: "Yes, I see that."

21 Is this the same document we referred to
22 in your deposition?

23 A. It is.

24 Q. Looking at this document, which I believe
25 you said was you recall being provided to the

1 collaborative?

2 A. Yes, I do -- I believe that it was
3 circulated. All the documents that we prepared with
4 the different changes and the different drafts were
5 circulated to the collaborative.

6 Q. And these are costs, on page 2 here of
7 OCC Exhibit 3, that were from the original program
8 that are being -- this will be included in costs
9 recovered from residential customers as part of the
10 redesigned program; is that true?

11 A. These were costs that were associated
12 with the launch of that program after approved and
13 then once it was suspended, the costs were curtailed
14 and they are, then, included on page 1 as part of the
15 overall costs of the redesigned program.

16 As you'll recall, the order we had from
17 the Commission was to redesign the program and keep
18 it under \$3.50 per CFL. So that was what we were
19 attempting to do.

20 Q. And isn't it true, listed on this sheet
21 under "Management Services," that you can't tell me
22 what management services is?

23 A. At the time of the deposition that was my
24 answer.

25 Q. Have you supplemented any answers to OCC

1 since then?

2 A. I have not provided any supplemental
3 answers to the OCC, but I have had an opportunity in
4 preparing for testimony today to get more information
5 on that particular line item.

6 Q. And when were you able to do that?

7 A. Yesterday.

8 Q. And what is your understanding of
9 management services?

10 A. My understanding of management services
11 is that applies to the vendor from an administrative
12 standpoint of ordering the material, having the
13 material shipped to the warehouse -- the two
14 warehouses, having it staged in the warehouses which
15 means putting it on pallets, putting it in boxes or
16 bags, getting it ready for delivery, arranging for
17 the vehicles for the pickup by employees, schedules;
18 those would be what would be included as part of
19 management services.

20 Q. And what's the time frame for those
21 management services?

22 A. The time frame would have been when the
23 vendor was -- the time frame would have been -- I'm
24 trying to recall the exact time here.

25 I think the plan was filed in July, I

1 believe it was July the 9th but I'll have to double
2 check my dates to be sure, and it was approved in
3 late-September by the Commission, I believe it might
4 have been September 23rd. Again, I'm speculating
5 on the date.

6 So the time frame for the management
7 services would have been just prior to the -- just
8 after the approval on September the 23rd. We
9 entered into a contract immediately with the vendor,
10 had the vendor get quick delivery on the lights, and
11 move forward in expedited fashion to begin to get
12 ready for the delivery.

13 Q. I'm sorry, what was the time frame there
14 again?

15 A. I'm not exactly sure how long that
16 lasted. I know from the 23rd until the program was
17 suspended, which would have been in early-October,
18 and then after the program was suspended it was not
19 identified precisely by the Commission what action to
20 take until later in the month.

21 So during the month of October the vendor
22 was still providing services but changing the
23 schedule because every time we delayed a week, we had
24 to alter the schedule.

25 So it would have run through that month,

1 through the month of October.

2 Q. So starting September 23rd through the
3 month of October there were management services to
4 the cost of \$225,000; is that correct?

5 A. Yes.

6 Q. How did the management services differ
7 from the personnel services?

8 A. Personnel services were the labor costs.
9 Several employees had to be hired to be prepared to
10 deliver the bulbs.

11 As I had indicated earlier, we were
12 planning on having the delivery done in a very
13 expedited fashion across our service area. Actually,
14 we were going to try to do it in four weeks, thinking
15 more likely it would have extended to probably five
16 weeks to actually get it done.

17 People had to be hired and trained and
18 had to have safety equipment and those services had
19 to be provided and were provided in that time frame.

20 Q. So personnel -- let me get this straight.
21 Management services were the putting the bulbs in the
22 warehouse --

23 A. Management services were doing the
24 administrative work and creating the orders and
25 having people perform those services for them.

1 Q. And the personnel services, it sounded
2 like from your answer, this is where I kind of lost
3 you a little bit, personnel services dealt with
4 distributing the bulbs?

5 A. Well, that was a major part of it.

6 Q. I would say -- but it never happened,
7 they didn't distribute the bulbs, correct?

8 A. No. When we were told to halt the
9 program, we had to stop the vendor, the vendor
10 stopped the employees that we had hired to deliver
11 but retained them because we were still in a process
12 of deciding what we were going to do; were we going
13 to continue the program or were we going to not
14 continue the program.

15 So there was a period of time where they
16 had -- the people had to be retained, and that's part
17 of the cost for the retention of those employees.

18 EXAMINER PRICE: What did they do all
19 day?

20 THE WITNESS: I'm not sure.

21 Q. And this says here that personnel
22 services were "halted when staging finished." So the
23 personnel services were done when the staging was
24 done; is that correct?

25 A. It's the -- yes.

1 Q. So the personnel services only includes
2 what -- until October 8th when the program was
3 halted, correct?

4 A. Yes.

5 Q. And the personnel services you just
6 described was only dealing with the distribution of
7 the bulbs, which never happened.

8 A. That was the major part of it. There
9 were personnel services that had to do the labor with
10 respect to the warehouse activities.

11 EXAMINER BOJKO: Do you know how many
12 people were hired?

13 THE WITNESS: Your Honor, I don't
14 remember the exact number.

15 EXAMINER BOJKO: Do you have a ballpark?
16 Are we talking ten employees or hundreds?

17 THE WITNESS: No; I believe it was
18 several hundred.

19 EXAMINER BOJKO: Several hundred?

20 THE WITNESS: But I, again, don't have
21 the exact number.

22 EXAMINER BOJKO: Thank you.

23 Q. (By Mr. Poulos) Now, you said that some
24 of these aspects dealt with the warehousing of
25 putting these bulbs in the warehouse, correct?

1 A. Yes.

2 Q. That leads to my third area, which is,
3 there is a \$315,000 cost for warehousing facilities
4 and services. So how does the management services
5 and personnel services differ from warehousing
6 facilities and services?

7 A. The warehousing facility and service was
8 a charge by Goodwill Industries at the two warehouses
9 where we maintained the bulbs to pay for the storage
10 space. This was an early -- this now I'm certain was
11 an earlier draft because we have been able to get
12 that warehousing cost reduced I believe to, I think
13 \$240,000. But that was the original -- on this draft
14 that's what the cost looked like.

15 And it included costs that would be
16 continued, although it doesn't say that on that page,
17 to the time that the programs were -- that the light
18 bulbs would be ultimately distributed over the
19 two-year period.

20 Q. Do you have an idea of what the services
21 are that were included in the warehousing facilities
22 and services?

23 A. No, I don't.

24 Q. Are you able to break down the costs for
25 the warehousing facilities and services for me?

1 A. The cost that's here, the 315,000, no,
2 but ultimately the number that you've been given more
3 recently which is 240,000 is broken down at \$30,000 a
4 month.

5 Q. Looking at the advertising, artwork, and
6 design, isn't it true that you can't say what went
7 into advertising, artwork, and design?

8 A. I can give you more specifics than that
9 one line. It included the buys for purchasing time
10 with the media for advertising for both -- for radio
11 and for print advertising and for preparing
12 materials.

13 Q. And can you -- you said you can give me
14 some more specifics. Is that all of the specifics or
15 is there more that goes into that cost?

16 A. Well, the cost also included the
17 termination of those contracts early, so when we were
18 told to stop the programs, we went to the media
19 outlets and said we have to stop our ads and our
20 media buy, and as part of that agreement we had with
21 the media there were -- the contracts had penalty --
22 fairly significant penalty clauses in them to
23 terminate early.

24 And we were able to get those penalties
25 negotiated to a much lower level, but that's included

1 in there as well. It was what we had ultimately
2 spent as far as preparation of materials to be
3 delivered, the ads that were already provided by the
4 media, both print and voice, and the costs of
5 terminating those agreements early.

6 Q. And who was the print company you used?

7 A. I don't recall the names.

8 Q. You said the other one was print and
9 audio; is that what you said?

10 A. There were radio ads as well.

11 Q. Who were the radio ads you used?

12 A. I don't recall the name. I can get that
13 information.

14 Q. And what were the cancellation costs?

15 A. In total my recollection in discussing
16 this with Mr. Toth was that the costs of the buys
17 plus the early cancellation was going to be in the
18 range of about \$900,000, which he was able to
19 negotiate to a much lower level which shows here to
20 be 427, ultimately he's been able to reduce that even
21 lower.

22 Q. Is this information that you just
23 referred to based on your actual knowledge or on
24 information from other people?

25 A. It's information I received from other

1 people.

2 Q. Is it your understanding, at least it was
3 at the time of the deposition, that Black & Veatch
4 can provide more details regarding these costs?

5 A. That was my understanding at the time of
6 the deposition. I believe they could, but I'm not
7 entirely sure.

8 MR. POULOS: Your Honor, may I approach
9 the witness?

10 EXAMINER PRICE: You may.

11 MR. POULOS: Thank you.

12 EXAMINER BOJKO: Mr. Paganie, while he's
13 passing that out and before we leave this document,
14 do you see the date at the bottom of the document on
15 both pages, it's November 24th, 2009?

16 THE WITNESS: Yes.

17 EXAMINER BOJKO: You're talking about
18 amendments and updated numbers and different drafts.
19 Are you saying that there were different drafts even
20 before your 12/15 portfolio filing or do you mean
21 even since your filing there have been updated
22 drafts?

23 THE WITNESS: No; before.

24 EXAMINER BOJKO: Before your portfolio
25 filing.

1 THE WITNESS: Right.

2 EXAMINER BOJKO: So just in the couple
3 weeks from November 24th to December 15th there
4 were updated drafts.

5 THE WITNESS: Yes, I don't have a draft
6 number on this and, as I stated, I believe the last
7 draft we did was number 6.

8 EXAMINER BOJKO: Okay. And so do you
9 know off the top of your head what the updated
10 numbers are or what the magnitude of the difference
11 is?

12 THE WITNESS: It wasn't significant.
13 There were some modifications that were made. Some
14 of these numbers were able to be reduced through some
15 further negotiations with the vendors and with the
16 suppliers.

17 I don't believe -- I don't know which
18 draft number this is, but it's late in the month so
19 I'm assuming it was a later draft, so there wouldn't
20 have been a lot of changes in the delivery mechanisms
21 that we were using, so I wouldn't have expected many
22 changes on this page.

23 I would think that we ultimately ended up
24 pretty close to this. I think our final number might
25 have been a little lower than 12.6 million that

1 actually went into the plan.

2 EXAMINER PRICE: And could we find that
3 number in the plan?

4 THE WITNESS: Yes.

5 EXAMINER BOJKO: Okay. So just so we're
6 clear, this document does not reflect the number that
7 was actually incorporated into the December
8 15th portfolio filing.

9 THE WITNESS: I don't believe it was.

10 EXAMINER BOJKO: Thank you.

11 EXAMINER PRICE: Well, if your counsel
12 could provide you a copy of the plan, could you
13 direct us to where in the plan we'll find the actual
14 number that you're seeking recovery for?

15 THE WITNESS: Yes.

16 EXAMINER BOJKO: And would an itemized
17 list such as this draft be included in the plan or in
18 the workpapers?

19 THE WITNESS: I don't believe it would be
20 in the plan. The plan would show the budget for that
21 particular program. I don't believe the itemized
22 detail of that budget would be in the plan.

23 MS. KOLICH: Can we go off the record a
24 minute?

25 EXAMINER BOJKO: Yes.

1 (Discussion off the record.)

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

4 You have the cost for CEI now?

5 THE WITNESS: Yeah, for CEI for the CFL
6 program for the residential non-low income per the
7 portfolio plan is 3.8 -- \$3,820,470.

8 EXAMINER PRICE: Where would we find
9 that?

10 THE WITNESS: Table 6A, which is in the
11 CEI plan, the page on my document is 160.

12 EXAMINER PRICE: Okay.

13 THE WITNESS: And for the CFL for low
14 income, which is on page 161, total is \$824,838. Do
15 you have different page numbers?

16 EXAMINER PRICE: No. No, that's right.

17 And those were the costs, just to be
18 clear, just for CEI for the CFL program that were
19 embedded in that \$12.6 million or so that Mr. Poulos
20 is asking you about.

21 THE WITNESS: Yes, that is correct.
22 That's for CEI only.

23 EXAMINER PRICE: Okay. And if we added
24 up the numbers for each of the three operating
25 companies, it would end up roughly at the 12.6, a

1 little bit less than the \$12.6 million Mr. Poulos
2 asked you about; is that right?

3 THE WITNESS: Yes, it would be in that
4 range.

5 EXAMINER BOJKO: Thank you, Mr. Poulos.
6 Thank you.

7 THE WITNESS: Thank you.

8 MR. POULOS: Your Honor, just for
9 clarification of the record, this document's not
10 marked as an exhibit yet, is it?

11 EXAMINER PRICE: No, it's not.

12 MS. MILLER: Can I have a clarification?
13 What document are we talking about?

14 EXAMINER PRICE: Well, we're looking at
15 the application actually.

16 MS. MILLER: Oh, I see.

17 EXAMINER PRICE: Why don't we go ahead, I
18 don't know how you were going to mark the
19 application, so why don't we mark it now so it's
20 clear in the record.

21 MS. KOLICH: Your Honor, they've been
22 incorporated into Mr. Fitzpatrick's testimony, but
23 for purposes of the reference we'll call Ohio
24 Edison's plan Company Exhibit 6, CEI's plan Company
25 Exhibit 7, and Toledo Edison's plan Company Exhibit

1 8. Company Exhibit 5 is reserved for the public
2 notice.

3 EXAMINER PRICE: Thank you. Just to be
4 clear for Mr. Poulos's point, the document you are
5 looking at is now marked as Company Exhibit 7.

6 MS. KOLICH: Yes.

7 EXAMINER PRICE: Thank you.

8 MR. POULOS: What was Company Exhibit 6?

9 MS. KOLICH: OE's plan.

10 EXAMINER PRICE: Thank you.

11 Mr. Poulos.

12 MR. POULOS: Thank you, your Honor.

13 Q. (By Mr. Poulos) Mr. Paganie, another
14 clarification, you were mentioning a number of
15 12.6 million. Where did you arrive at the
16 12.6 million number you were referring to?

17 A. On the document that's identified as OCC
18 Exhibit No. 3, at the bottom of the page 1 it says
19 "Grand total" and under the grand total column it has
20 \$12,650,000 in it.

21 Q. Thank you.

22 MR. POULOS: Your Honor, may I approach
23 with another exhibit?

24 EXAMINER PRICE: You may.

25 MR. POULOS: Your Honor, may I have this

1 document marked as OCC Exhibit 4.

2 EXAMINER PRICE: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Mr. Paganie, looking at this document, it
5 has two different headings; the one on the left
6 column is "Original FirstEnergy CFL Distribution Cost
7 Estimate 9/23/09." Are you familiar with this
8 document?

9 A. It looks like a document I've seen
10 before. One of a number of documents that were
11 circulated through the residential subcommittees, as
12 we've referred to.

13 Q. Just looking at the left column, is it
14 your understanding this is the initial estimates of
15 what it would have cost FirstEnergy to do their
16 original FirstEnergy distribution plan?

17 A. Based on what the title is on the top,
18 that would be my understanding.

19 Q. And looking at the predistribution,
20 education, and public awareness, it's closer to the
21 bottom and it has a figure next to it of \$1,892,000;
22 do you see that?

23 A. Yes, I do.

24 Q. Could you explain how that number was
25 arrived at?

1 A. It's my understanding that that was the
2 cost that would be involved for marketing and
3 customer awareness for the original plan from start
4 to finish.

5 Q. What is your understanding based on?

6 A. Discussions I've had with internal
7 parties as well as discussions that were held at the
8 residential subcommittees.

9 Q. And how was the \$1,892,000 number arrived
10 at?

11 A. In my estimation it was arrived at by
12 discussions that were held with the various parties
13 that would be providing those services and
14 determining what the costs would be for the services
15 that we had asked to have provided.

16 Q. Are you familiar with the breakdown of
17 specifically how that 1.8 million -- 1.892 --
18 \$1,892,000 figure was arrived at?

19 A. I've seen detail on it. I can't recall
20 what it was, but the detail had a significant amount
21 of information on each of the contracts that would be
22 involved with the various media, but it's not here,
23 and I don't have a recollection of what that detail
24 was.

25 Q. As you alluded to earlier, this document

1 is something that had been handed out in the
2 collaborative?

3 A. That would be my understanding. This
4 one's dated 11/9, so it was prior to the document we
5 referred to earlier, the OCC Exhibit No. 3, which was
6 11/24. And this document here, as you can see, had
7 an original program, it had an opt-out program on the
8 right, and a column for that opt-out program was some
9 items relative to the costs there.

10 And then on the second page you have an
11 opt-in program and then a coupon program. So early
12 on as we began the redesign process, we were looking
13 at a number of different opportunities.

14 This document appears to be trying to put
15 together the costs associated with those kinds of
16 delivery systems.

17 Q. So as you were just alluding to, so the
18 right column of this first page of this two-page
19 document, the opt-out and the two columns on the back
20 side were both different types of programs that could
21 be used as the redesigned program; is that your
22 understanding?

23 A. Yeah, that's my understanding. We looked
24 at a number of different types of programs.

25 Q. And the original FirstEnergy CFL

1 distribution cost estimate, that left column on the
2 first page, that was what the company estimated it
3 would be spending on the original program that was
4 meant to be implemented October 12th of 2009,
5 correct? Is that your understanding?

6 A. That is my understanding.

7 Q. Now, these figures on this original
8 FirstEnergy CFL distribution cost estimate on the
9 left column of page 1, these costs -- is it your
10 opinion that these costs as estimated were reasonable
11 costs?

12 A. Yes. My opinion is they were reasonable
13 costs. We were able to get a reasonable price per
14 bulb by virtue of a large order and through the
15 vendor we were able to get what we considered to be
16 reasonable prices for the management and
17 distribution.

18 MR. POULOS: Your Honor, I have another
19 document to show the witness. May I approach?

20 EXAMINER PRICE: You may.

21 MR. POULOS: Your Honor, the document I
22 just handed to the witness, may I have it marked as
23 OCC Exhibit 5?

24 EXAMINER PRICE: You may.

25 MR. POULOS: Thank you, your Honor.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Mr. Paganie, this document is the entry
3 on rehearing from the original CFL case and is dated
4 November 4th. Do you see that?

5 A. Yes.

6 Q. Do you recognize this document?

7 A. Yes, I do.

8 Q. I want to have you look at paragraph 9,
9 which is on page 3.

10 A. Okay.

11 Q. And starting on the second sentence of
12 paragraph 9, "The company should describe the
13 specific" -- excuse me, starting at the top, "The
14 Commission directs the companies to provide
15 additional details regarding a proposed alternative
16 CFL program."

17 Do you see where I just read?

18 A. Yes.

19 Q. I want to know if you -- how you
20 responded to these questions by the Commission. The
21 second sentence of paragraph 9: "The company should
22 describe the specific means by which it is proposing
23 to distribute different quantities of CFLs."

24 Has the company addressed the
25 Commission's request for information on that?

1 A. Yes.

2 Q. And how has it done that?

3 A. The redesigned program has a number of
4 different methods for distribution that I believe
5 meets that requirement.

6 Q. And what are the specific channels of
7 distribution?

8 A. The bulbs will be distributed through
9 retailers; they will be distributed through
10 organizations that have been provided to us by the
11 collaborative to utilize for distribution services;
12 they will be distributed to a variety of customer
13 groups as an offer, if the customers want them,
14 including customers who have concerns about usage and
15 have contacted the contact centers.

16 Low-income customers will be provided
17 opportunities for distribution of those bulbs. New
18 customers who are moving into the territory as part
19 of an opportunity to get a new mover package would be
20 given an opportunity to receive some bulbs.

21 I'm not sure if I've identified all the
22 distribution channels associated with it, but those
23 are some of them.

24 Q. And I don't want you to give us a -- I
25 know some of these answers are in Exhibit E of the

1 different plans, Company Exhibit 6, 7, and 8, if that
2 helps your recollection. The one I wanted to focus
3 on was the third one, any steps they, being the
4 companies, would take to avoid or reduce public
5 misunderstanding. Do you see that one?

6 A. Yes.

7 Q. That's one I want to know what the
8 company has plans on doing or has done to avoid a
9 reduced public misunderstanding.

10 A. Well, this was discussed quite a bit with
11 the residential collaborative. In talking about
12 redesigning the program and in talking about
13 including the redesigned program as part of the
14 portfolio plan, we all thought that would be an
15 opportunity to describe the costs in total and the
16 savings in total to the customer, and the other
17 programs that we talked about by utilizing our
18 corporate communications was to provide a number of
19 venues for getting information to customers, for
20 holding -- for working with some of the collaborative
21 members which I had mentioned earlier who had offered
22 to provide some support and providing information to
23 customers.

24 But a variety of channels to get
25 information out to customers to inform them of what

1 we were going to do, how the customers could benefit
2 from these programs, and ultimately what kind of
3 savings they could achieve. So I do believe we did
4 meet that.

5 Q. Do you recall our discussion earlier
6 regarding some of the outstanding issues that were
7 left from the residential collaborative regarding the
8 CFL program?

9 A. Yes.

10 Q. The fact that one of them was marketing;
11 do you recall that discussion?

12 A. Yes.

13 Q. And this would pertain to marketing,
14 wouldn't it?

15 A. I think we provided the collaborative
16 with a pretty clear description of what our plan was
17 through our own corporate communications group.
18 There was additional requests by the collaborative to
19 find some ways to let them participate in that
20 process, which is an ongoing activity.

21 But I do believe we had created a pretty
22 clear message as to how we were going to do this with
23 the collaborative.

24 Q. Do you have specific marketing
25 information you intend on sending out when the plan

1 is implemented?

2 A. Yes.

3 Q. And I said when it's implemented. Do you
4 have information -- let me ask this, when do you plan
5 on sending out the marketing information?

6 A. Well, as you know, we have asked to fast
7 track programs as part of our filing for our
8 portfolio plan and one of the fast-track programs is
9 the redesigned CFL program, that if the joint motion
10 that was filed last week is approved, that we would
11 be ready to launch that program the first of April.

12 So the materials that we would talk about
13 providing to get out in front of that would be done
14 concurrent with the launch of that program and the
15 other programs that we would be fast tracking as
16 well.

17 Q. What do you mean by "concurrent with"?

18 A. The program would be launched April 1.
19 The communications would be provided at or about the
20 time of the launch.

21 Q. The specific information regarding --
22 excuse me.

23 The specific information that would be
24 used to avoid a reduced public misunderstanding?

25 A. Yes.

1 Q. And what is your understanding of the
2 word "misunderstanding" in that sentence? How do you
3 characterize that?

4 A. Well, I didn't write it, obviously the
5 Commission wrote that word so they could define
6 "misunderstanding."

7 I think we had a lot of issues in the
8 first program as a result of customers seeing the
9 program cost and not really seeing how that program
10 really fit in with the total context of the energy
11 efficiency requirements in the state, because that
12 program was done as a separate program.

13 And so when you look at all of the
14 programs that would be available to customers and the
15 options customers would have, they would have a
16 better understanding of how they could participate in
17 various programs, get benefits from those, and
18 overall the savings would far exceed the cost of
19 those programs.

20 That would be my interpretation of
21 "misunderstanding."

22 Q. Moving on to a different matter, my last
23 matter, FirstEnergy's role in the collaborative is as
24 the facilitator, correct?

25 A. Yes.

1 MS. MILLER: Excuse me. I think your mic
2 went out. I'm sorry. I was going to let you finish.

3 MR. POULOS: Sorry. Do I need to reask
4 it?

5 Q. Can you hear my questions?

6 A. I can, but the attorney can't.

7 Q. Let me just reask the question.

8 Mr. Paganie, isn't it true that it's your
9 understanding that FirstEnergy's role in the
10 collaborative is as a facilitator? Is that correct?

11 A. Yes, I do believe that's our role in the
12 collaborative process.

13 Q. And as the facilitator it's your opinion
14 that FirstEnergy must get together with the group and
15 understand what the interests of all the members of
16 the collaborative are, correct?

17 A. Well, that's part of it. We have to come
18 together, we have to find out who is part of this
19 process, what people's interests are, where we have
20 common interests, and try to find a way to use those
21 to benefit the design and development of -- so that
22 we can achieve our targets.

23 Q. And find a way to best develop a common
24 approach to addressing or to meeting the benchmarks,
25 correct?

1 A. It certainly is an effort that we've
2 tried to do -- that we should try to do and we have
3 tried to do.

4 Q. Isn't it true your understanding of what
5 the role of the collaborative would be is to actively
6 listen? Correct?

7 A. Yes.

8 Q. To comment on the plans, correct?

9 A. Yes.

10 Q. And to provide constructive feedback.

11 A. Yes. Certainly is part of it.

12 Q. And also isn't it true that everyone
13 should have a role in determining the key aspects of
14 the plan?

15 A. Everyone. Are you referring to the
16 collaborative?

17 Q. Yes.

18 A. Yes.

19 Q. And I also mean everyone else, I mean
20 Black & Veatch, because they were a part of the
21 collaborative as well, correct?

22 A. Right. The collaborative is really three
23 parts; it's the Black & Veatch, it's the company and
24 the company's internal team, and the collaborative.

25 Q. And when you referred to the internal

1 team, it's their role, at least in part, to determine
2 the initial ideas that go forth with and a road map
3 of how to go from there, correct?

4 A. Yes, as a starting point that's generally
5 what we would do, because we have to create some
6 stimulation for discussion about how we're going to
7 do these plans and how they're going to evolve into
8 compliance requirements.

9 But as you are well aware, the
10 collaborative has their own ideas and oftentimes
11 we've incorporated ideas from the collaborative into
12 that plan or the planning process.

13 Q. Isn't it true that the internal team,
14 FirstEnergy internal team also determines who needs
15 to be involved in the collaborative process?

16 A. Well, I think the collaborative process
17 is identified by the ESP stipulation, and my
18 recollection without having it right in front of me
19 is that the stipulation indicates that we are to
20 commence a collaborative and that would be with the
21 collaborative members being the signatory parties and
22 the administrators.

23 Q. Are you aware of other parties that are
24 part of the collaborative that aren't signing -- that
25 did not sign onto the stipulation?

1 MS. MILLER: Could you reread that
2 question?

3 (Record read.)

4 A. I'm not aware of any. Let me rephrase
5 that. I'm not aware of any who were not signatories
6 to the stipulation or administrators, because the
7 collaborative is both signatory and administrators.

8 Q. And just to follow up on the FirstEnergy
9 internal group, isn't it also their responsibility to
10 set the time lines a plan will be reviewed by the
11 collaborative?

12 A. Yes, I think that's a definite part of
13 their responsibility. Ultimately the company has to
14 meet these requirements and it's their obligation and
15 responsibility to do so, so it's incumbent on them to
16 create a time line that makes sense so that we can
17 get it accomplished in a timely fashion.

18 MR. POULOS: Your Honor, may I approach
19 the witness?

20 EXAMINER PRICE: You may.

21 MR. POULOS: Your Honor, what I've handed
22 the witness I would like to have marked as OCC
23 Exhibit 6. I know it may be a little confusing
24 because it does have an OCC Exhibit 1 at the top that
25 was from the deposition. I apologize.

1 EXAMINER PRICE: That's okay, we'll work
2 around that. This will be marked as OCC Exhibit 6.

3 MR. POULOS: Thank you, your Honor.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MS. MILLER: Your Honor, for
6 clarification, can we agree to strike "OCC Exhibit 1"
7 at the top of the document?

8 EXAMINER PRICE: Yes, we can. Thank you.

9 Q. (By Mr. Poulos) Mr. Paganie, looking at
10 OCC Exhibit 6, it states at the top "FirstEnergy's
11 Ohio Energy Efficiency Collaborative," and has a date
12 underneath of 12/10/09 meeting minutes. Do you see
13 that?

14 A. Yes.

15 Q. Do you recognize this document?

16 A. Yes.

17 Q. This meeting, that is regarding the
18 December 10th, '09, meeting of the full
19 collaborative, correct?

20 A. Yes, it is.

21 Q. This wasn't the residential
22 collaborative. It was all the collaboratives,
23 correct?

24 A. It was the full collaborative.

25 Q. And this meeting is five days before the

1 plan was filed by the companies, correct?

2 A. You're referring to the portfolio plan?

3 Q. Yes.

4 A. Yes.

5 Q. And in general, FirstEnergy set up the
6 basic structure for the collaborative meetings the
7 same way it set up this meeting, correct?

8 MS. MILLER: Objection.

9 A. I'm not sure.

10 EXAMINER PRICE: Grounds?

11 MS. MILLER: I just want clarification on
12 "this meeting."

13 MR. POULOS: "This meeting" being the
14 December 10th meeting.

15 A. And I'm not sure what you really mean by
16 the question.

17 Q. Well, let me ask this way, the
18 FirstEnergy collaborative meetings were formal in
19 their structure; would you agree with that?

20 A. I think they developed that way over
21 time.

22 Q. And FirstEnergy set the agenda for these
23 meetings?

24 A. We initially set an agenda, we asked for
25 comments, but yes, we initially set the agenda.

1 Q. And meeting notes were taken by a member
2 of FirstEnergy, correct?

3 A. Yes.

4 Q. And then they were sent to the entire
5 group to review the meeting minutes.

6 A. Right. What we agreed to do is take the
7 minutes, send them out to the members, have the
8 members comment and make corrections, get them back
9 to us and then we would make them a part of the
10 record at the next meeting.

11 Q. And if you look at this OCC Exhibit 6,
12 which is six pages long, do you see page 6 there's a
13 chart with a long list of names, organizations? Do
14 you see that?

15 A. Yes.

16 Q. And the Xs on the chart would indicate
17 those who were in attendance at this meeting?

18 A. Yes, that's what it's intended to do.

19 Q. And is it your understanding that the
20 general list, this whole chart of organizations is
21 all those groups that are part of the collaborative?

22 A. Yes.

23 Q. And based on your statements earlier,
24 it's your understanding that all these parties are
25 either signatories of the earlier stipulation of the

1 2008 ESP stipulation, or they are --

2 A. Administrators is what I had said.

3 Q. So they're either signatories to the 2008
4 ESP stipulation or they're administrators; is that
5 correct?

6 A. That is my understanding.

7 Q. And what is your understanding based on?

8 A. That was what the ESP stipulation
9 provided for the members in the collaborative.

10 Q. Mr. Paganie, can I have you turn to
11 Company Exhibit 1, which is your testimony. I'll
12 refer to the meeting minutes too, but I just wanted
13 to look at your testimony briefly.

14 A. Okay.

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

16 A. I do.

17 Q. I'm looking specifically at page 8 of
18 your testimony, line 12.

19 A. Okay.

20 Q. Line 12 states "As stated in that
21 section, the companies recognize that due to the
22 timing of this meeting, vis-a-vis the filing, there
23 was minimal time for the collaborative to review
24 details of the plans." Do you see where I just read?

25 A. Yes.

1 Q. And could you explain what you mean by
2 "the timing of this meeting"?

3 A. Referring to the timing of the meeting on
4 December the 10th that -- in relation to the plan
5 filing on December the 15th that there were five
6 days in between and that while we had been able to
7 get information to the collaborative prior to this
8 meeting in the form of -- we had provided documents
9 that detailed what we had on the programs as far as
10 descriptions of the programs with as much detail as
11 we had, and additional discussions that were held
12 prior to that, this was really the first time we were
13 able to put a full draft of the plan filing in front
14 of the -- well, this wasn't the full draft.

15 This was the first time we were able to
16 discuss the portfolio plan prior to the filing on the
17 15th in detail. And we knew that when we filed the
18 plan in detail on the 15th, that we wanted to give
19 the collaborative an opportunity to comment on it,
20 and we realized that that wouldn't have given them
21 sufficient time. So that was the intent of that
22 statement.

23 MR. POULOS: I'm sorry, can I have the
24 last sentence reread too?

25 EXAMINER PRICE: Please.

1 (Record read.)

2 Q. So you had a December 10th meeting to
3 give the collaborative an opportunity to comment on
4 this plan that was going to be filed December 15th,
5 correct?

6 A. Right. On the 10th we had as much
7 information as available, we had our consultants
8 present that information, and it did not include a
9 full draft of the plan because the models weren't
10 quite ready yet, but that full draft was provided for
11 the collaborative to review on the 15th.

12 And that was the intent of having the
13 next meeting that we set up prior to that on
14 January 7th, to have the opportunity for the
15 collaborative members to respond back with comments.

16 MR. POULOS: Your Honor, may I approach
17 the witness?

18 EXAMINER PRICE: You may.

19 MR. POULOS: Your Honor, may I have the
20 exhibit I just handed out marked as OCC Exhibit 7?

21 EXAMINER PRICE: So marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MR. POULOS: And as the point made before
24 may I ask that we strike the "OCC Exhibit 2" at the
25 top of the page that refers to the deposition?

1 EXAMINER PRICE: We will strike that,
2 thank you.

3 MR. POULOS: Thank you.

4 Q. (By Mr. Poulos) Mr. Paganie, I've just
5 handed you OCC Exhibit 7, which in the top left
6 corner says "Energy Efficiency," and as the title of
7 it states in the middle, "Ohio Energy Efficiency
8 Collaborative: Final Presentation of the FirstEnergy
9 Portfolio." Do you see that?

10 A. Yes.

11 Q. Do you recognize this document?

12 A. Yes.

13 Q. Would you agree that this is not only the
14 final presentation but it's the first presentation of
15 the FirstEnergy portfolio to the collaborative?

16 A. Well, it would be the first presentation
17 where it was all put together, but there were a
18 number of presentations made about the programs that
19 were going to be included in this filing.

20 As a matter of fact, a document was sent
21 out to the collaborative prior to this meeting that
22 contained program descriptions that look very similar
23 to the descriptions that are contained in the filing,
24 I can't quite recall what they're marked right now,
25 but for CEI, Toledo Edison, and for the Illuminating

1 Company.

2 MR. POULOS: Your Honor, may I approach
3 the witness again?

4 EXAMINER PRICE: You may.

5 Could I have the last question and answer
6 back again, please?

7 (Record read.)

8 EXAMINER PRICE: Thank you.

9 MR. POULOS: Your Honor, may I have the
10 document I've just handed the witness marked as OCC
11 Exhibit 8.

12 EXAMINER PRICE: Can you describe this
13 document for the record to make it clear?

14 MR. POULOS: Yes. OCC Exhibit 8 is the
15 e-mail that was sent and the document attached to it
16 which is a fact sheet regarding the final
17 collaborative review.

18 EXAMINER PRICE: Thank you. I just
19 wanted to make clear that the fact sheet was an
20 attachment to the e-mail thank you.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Mr. Paganie, do you recognize OCC Exhibit
23 8?

24 A. Yes.

25 Q. Is this the document you're referring to

1 regarding an explanation of the programs that was
2 sent around to all the collaborative for review?

3 MS. MILLER: Your Honor, may I have a
4 clarification of which document we're talking about?

5 EXAMINER PRICE: I believe we're talking
6 about OCC Exhibit 8.

7 MR. POULOS: Yes, your Honor.

8 MS. MILLER: You were not referring to
9 the first page though, correct?

10 MR. POULOS: No; I'm referring to the
11 document itself, the fact sheets, the final
12 collaborative review.

13 MS. KOLICH: For clarification, the
14 document itself is OCC Exhibit 8.

15 MR. POULOS: I guess for clarification
16 OCC Exhibit 8 is 19 pages long, starts with an e-mail
17 from williamsw@FirstEnergyCorp, and then the second
18 page of it, pages numbered 1 through 18 are program
19 fact sheets for the final collaborative review.

20 MS. MILLER: Your Honor, I would just
21 like to clarify that this first document was not the
22 document sent around. Obviously, this is a fax
23 sheet.

24 EXAMINER BOJKO: The e-mail?

25 MS. MILLER: Correct. This is a fax of

1 the e-mail. This is not the actual e-mail, it's a
2 fax copy of the e-mail. It's not a printout of the
3 actual e-mail or else it would have a fax cover
4 header on it.

5 EXAMINER BOJKO: Where is the fax cover?
6 Is this a printout of the e-mail?

7 MR. POULOS: It's a printout of the
8 e-mail.

9 MS. MILLER: Okay. Just thought that
10 this line item on the front was the fax, but it's
11 not, it's the e-mail signature of it.

12 EXAMINER PRICE: I think the question
13 she's having is where is the heading from?

14 MR. POULOS: That's the e-mail heading.
15 Or that's --

16 EXAMINER PRICE: Okay. I understand now.
17 Okay. That's not the way my e-mail comes out.

18 MR. ALLWEIN: That's just how when it
19 prints out an e-mail, it automatically appears at our
20 office.

21 MS. MILLER: That's fine.

22 Q. (By Mr. Poulos) Mr. Paganie, do you
23 recognize the program fact sheet for the
24 collaborative program review that was attached to the
25 e-mail as OCC Exhibit 8?

1 A. Yes, I do.

2 Q. Is this the document you're referring to
3 that was sent around to the parties regarding the
4 application?

5 A. Yes.

6 Q. So isn't it true that you have a
7 PowerPoint that was given to the parties on
8 December 10th, and this fact sheet as OCC Exhibit 8
9 along with discussions --

10 EXAMINER BOJKO: I'm sorry. E-mail,
11 correct?

12 Q. And also the discussions regarding the
13 application on December 10th. That was the
14 information provided to the parties, the final
15 presentation.

16 A. Well, there was a lot of -- excuse me, my
17 attorney was supposed to give me a sinus pill.

18 MS. MILLER: You're not allowed to have
19 any medication.

20 A. I just don't want to understate these
21 discussions. There were a lot of discussions about
22 these programs along the way.

23 The fact is in the portfolio itself the
24 residential new construction, the C&I new
25 construction, the technical umbrella program were all

1 products of the collaborative process and the
2 redesign certainly was in a major way a redesign of
3 the collaborative. So I don't want to understate the
4 discussions, they were ongoing and part of the plan
5 for the portfolio.

6 Then the documents were sent out as they
7 became available to get them in front of the full
8 collaborative and the presentation and to refer to on
9 December the 10th.

10 Q. Just to make clear, going back to your
11 testimony that we were reading on page 8 where it
12 says on page 8, line 12, 13, and 14, specifically on
13 line 13 where it says "There was minimal time for the
14 collaborative to review the details of the plans." I
15 mean, you were referring to details of those plans.

16 Isn't it true you're referring to the
17 PowerPoint which is OCC Exhibit 7, the fact sheets
18 and the e-mail which is OCC Exhibit 8, and
19 discussions at that December 10th meeting?
20 Correct?

21 A. Give me a moment to review this, please.

22 What I'm referring to here is that in the
23 meeting on the 10th we provided an outline of what
24 the filing was going to be with the information we
25 had available to us at that time. The full detail of

1 the filing itself with all the documents was filed
2 five days later on the 15th.

3 With that being said, we felt that we
4 needed to have an opportunity for feedback. There
5 wouldn't have been opportunity for feedback before
6 the filing that was made by the collaborative, so
7 that's why we set up the meeting in early-January for
8 that purpose.

9 There would not have been an opportunity
10 for the collaborative to feed back on the filing, the
11 filing was made on the 15th, did not receive that
12 full filing until the 15th.

13 EXAMINER BOJKO: Did you have the meeting
14 on the 7th?

15 THE WITNESS: Yes. Yes, we did.

16 EXAMINER BOJKO: Did the collaborative
17 provide feedback?

18 THE WITNESS: Yes.

19 EXAMINER BOJKO: And was that feedback in
20 any way incorporated into your portfolio plan?

21 THE WITNESS: There were no changes made
22 in the plan as a result of that.

23 Q. (By Mr. Poulos) After the 7th have
24 there been meetings of the collaborative -- there
25 haven't been meetings of the collaborative after

1 that, correct?

2 A. No, there have not been any collaborative
3 meetings. There have been -- there was a technical
4 meeting with the settlement group that occurred after
5 the 7th and discussions with the settlement group,
6 but no further collaborative meetings.

7 Q. Another aspect, something else that was
8 discussed on December 10th was the fact that the
9 company wanted to fast track four programs. Do you
10 recall that?

11 A. Yes, I do.

12 Q. And isn't it true that you don't recall
13 letting any party know about the fast-track process
14 prior to that meeting? Correct?

15 A. Prior to the December 10 meeting?

16 Q. Correct.

17 A. I don't recall specifically talking about
18 those four programs in that kind of detail. We had
19 discussions at not only subcommittee meetings but at
20 prior meetings that there were programs that we could
21 launch earlier because they could be put together in
22 a quick fashion with vendors and we could get early
23 successes from them, and we all knew that the early
24 successes would be beneficial.

25 I don't recall us ever putting together

1 the context of we needed to fast track all four of
2 these because once the consultants -- until the
3 consultants ran the full models and we saw the
4 outcomes of the models on a pro rata basis, that's
5 where it really became evident that we needed to have
6 the fast-track process, and that was late in the year
7 at that time when we got that information.

8 Q. And isn't it your opinion the
9 collaborative did not make the decision to go forward
10 with the fast track, it was a made by FirstEnergy?
11 Correct?

12 A. It was ultimately a FirstEnergy decision.

13 Q. And when you're referring to the fast
14 track, what does "fast track" mean?

15 A. Fast track means that if we could not get
16 a procedural schedule that would permit us to launch
17 all of the programs in the early part of the year,
18 that in order to meet the compliance requirements,
19 the statutory requirements, we would either need to
20 fast track programs, that would be programs that we
21 felt we could move quickly on, that vendors could be
22 arranged quickly to get these programs delivered to
23 customers and we could get results quickly, or that
24 we would have to ask for some modification in the
25 rule with respect to pro rata savings versus

1 annualized savings.

2 So the fast track was included in the
3 filing based on the fact that the procedural schedule
4 did give the companies an opportunity to get those
5 programs launched early, all programs.

6 Q. So the fast tracking is a way of saying
7 they need these programs to be administratively --
8 the administrative process for these need to be sped
9 up or at least shortened.

10 A. Well, fast track means that we need to
11 get these programs delivered to customers quickly in
12 the early part of the year in order to count the
13 savings, to permit the compliance requirement which
14 requires the savings to be counted on a pro rata
15 basis.

16 If we were going to count those savings
17 pro rata, we had to get these programs launched early
18 enough to get delivery to customers so that we could
19 begin counting the savings that would be reflected in
20 those programs early enough in the year so that they
21 would count.

22 Q. And the only way to do that is to modify
23 the administrative process, correct?

24 A. I'm not sure what you mean by "modify the
25 process."

1 Q. Isn't that what the fast track part of it
2 is, is either to get an early ruling on those
3 programs or speed up the administrative process?

4 A. Well, as I said, once the plan was filed
5 we had asked for scheduling to be provided in an
6 earlier fashion. That wasn't done, so when the
7 schedule was developed, anticipating that that would
8 be one of the outcomes, we asked to have the
9 opportunity to fast track programs so that we could
10 be in compliance.

11 The procedural schedule is what I'm
12 referring to.

13 Q. Speaking generally about the entire set
14 of programs that were proposed on December 15th,
15 isn't it true that you can't recall FirstEnergy
16 asking the collaborative parties to recommend these
17 programs at that meeting?

18 THE WITNESS: Please read that back to
19 me.

20 (Record read.)

21 A. There was not a meeting on
22 December 15th.

23 Q. December 10th. Excuse me, on
24 December 10th, that meeting, isn't it true that you
25 do not recall FirstEnergy asking the collaborative

1 parties to recommend programs that are part of the
2 December 15th filing?

3 A. I don't recall that we asked that
4 question, for a recommendation, but as in all those
5 meetings, we asked members who were present to
6 comment on what our plans were for the filings.

7 MR. POULOS: Your Honor, I have no
8 further questions at this time.

9 EXAMINER PRICE: Thank you.

10 Mr. Sites.

11 MR. SITES: No questions, your Honor.

12 EXAMINER PRICE: Mr. Smith.

13 MR. SMITH: Yes, please.

14 THE WITNESS: May I take just a short
15 break?

16 EXAMINER PRICE: Yes, let's go off the
17 record for five minutes.

18 (Recess taken.)

19 EXAMINER PRICE: We're now going to take
20 a break for lunch until 2:00 o'clock. Thank you all.

21 (Luncheon recess taken.)

22 - - -
23
24
25

1 Tuesday Afternoon Session,

2 March 2, 2010.

3 - - -

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

6 Mr. Smith.

7 MR. SMITH: Thank you.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Smith:

11 Q. Good afternoon, Mr. Paganie.

12 Earlier today Company Exhibits 6, 7, 8
13 were marked. Those are the portfolio plans. Do you
14 recall that?

15 A. Yes.

16 Q. And Exhibit 8 is for Toledo Edison?

17 A. Yes.

18 Q. And those exhibits are virtually
19 identical in text?

20 A. Yes, they're very much the same. The
21 programs are virtually the same.

22 Q. In your written testimony, pages 9 and
23 10, lines 13 through 22 on 9 and lines 1 through 6 on
24 10, you offer an opinion about compliance.

25 A. What were the lines on 10, please?

1 Q. 13 through -- I'm sorry, 1 through 6. Do
2 you see where I'm speak about?

3 A. Yes, I do.

4 Q. And the question asks whether the plans
5 satisfy the filing requirements of the Commission
6 rules, and you answer "yes," correct?

7 A. Yes.

8 Q. On page 10, lines 2 through 6, items 4
9 and 5, you specifically address existing programs and
10 proposed programs, correct?

11 A. Yes.

12 Q. And there's a distinction between the
13 two, are there not?

14 A. Yes. The existing programs referring to
15 programs that were currently in existence at the
16 three operating companies as opposed to the programs
17 that were new to be a part of the portfolio program
18 from '10 to '12.

19 Q. And new programs would be termed
20 "proposed programs"?

21 A. Yes.

22 Q. Turning to Exhibit 8 which would be for
23 Toledo Edison --

24 MS. MILLER: Can you correct me? What
25 are we turning to?

1 EXAMINER PRICE: Exhibit 8.

2 MR. SMITH: I'm providing him time to
3 find the exhibit.

4 MS. MILLER: I'd like to have time to
5 find it too, which are we --

6 EXAMINER PRICE: 8.

7 MR. SMITH: Company Exhibit 8, Toledo
8 Edison.

9 EXAMINER PRICE: What page number are you
10 going to direct us to, Mr. Smith?

11 MR. SMITH: Page 2.

12 Q. (By Mr. Smith) At the bottom of page 2,
13 actually under the heading "The Following Large
14 Commercial and Industrial (C&I) Programs", the last
15 bullet is "C-I Interruptible Demand Reduction
16 Program." Do you see that?

17 A. Yes.

18 Q. Can you provide a further description of
19 what programs that refers to?

20 A. It's referring to the current program
21 that is in place that is the ELR/OLR interruptible
22 tariff that will be changed when those two tariffs
23 expire by their term on May 31st of 2011 to an
24 interruptible RFP program.

25 Q. Is it correct the phrase refers to both

1 the existing interruptible program and the proposed
2 interruptible program?

3 A. That is fair.

4 Q. Turning to page 25, top of the page under
5 item 3, "Interruptible Rate Tariff for C/I
6 Customers," do you see the language below that?

7 A. Yes, I do.

8 Q. And in that language am I correct that
9 you're uncertain whether the proposed program will be
10 implemented?

11 A. Are you asking me if that's what the
12 language says?

13 Q. Yes, but I can be more specific. Is it
14 your understanding that's what the language says?

15 A. That is my understanding of the language
16 in reference to the fact that the MRO case hasn't
17 been decided yet.

18 Q. Litigation refers to the MRO case?

19 A. Yes.

20 Q. The last sentence of that paragraph, how
21 do you expect the company to update the Commission
22 about the status of the RFP process program?

23 A. We'll be required to update the
24 Commission per rule on March the 15th of each year.
25 So we'll provide an update on March 15th of the

1 status of the program that's in place at that time.

2 Q. Are you requesting approval of the
3 proposed RFP process program in this case?

4 A. Yes, it is part of this case.

5 Q. Turning to page 74 of Exhibit 8 --

6 A. I'm sorry, was that page 74?

7 Q. 74.

8 A. Okay.

9 Q. Do you agree that all the provisions
10 shown on page 74, 75, and 76 concerns the existing
11 ELR/OLR programs except for the bottom of page 74 and
12 the top of page 75 where you discuss the RFP process?

13 THE WITNESS: I just reviewed those
14 pages, could you please read his question back to me?

15 (Record read.)

16 A. Let me try to answer this, see if it is
17 what you're asking. The provisions under
18 Implementation Strategy (including expected changes
19 that may occur in different program year) at the
20 bottom of page 74, that implementation strategy, as
21 stated pretty clearly there, that what it's
22 referencing is the implementation would be to utilize
23 the interruptible RFP, but that's dependent on the
24 litigation process in the MRO and that will dictate
25 of outcome of how this is ultimately resolved.

1 And the next part on page 75, program
2 issues and risks -- and risk management strategy,
3 interruptible customers may shop with an alternative
4 generation supplier, of course, that applies right
5 now.

6 Q. For my information, where on page 75 did
7 you just read the quoted language?

8 A. The program issues and risks -- and risk
9 management strategy.

10 Q. It is correct, however, other than your
11 explanation, that page 74 through 76 concerns the
12 existing rider ELR and OLR programs.

13 A. Well, it includes the existing programs,
14 they're going to be modified dependent on the outcome
15 in the MRO case.

16 Q. Right. And in this case you don't
17 provide the Commission with a description of the
18 proposed RFP process interruptible programs, do you?

19 A. No, we don't.

20 MR. SMITH: Nothing further.

21 EXAMINER PRICE: Thank you.

22 MR. KURTZ: No questions, your Honor.

23 EXAMINER PRICE: Mr. Heintz.

24 MR. HEINTZ: Just a few questions.

25 - - -

CROSS-EXAMINATION

By Mr. Heintz:

Q. Mr. Paganie, I would like to clarify a few issues that you were speaking with Mr. Poulos about this morning. It is correct that the companies are requesting fast-track approval of four programs?

A. Yes, that is correct. We have filed a joint motion to that effect.

Q. And is it also correct that the companies are seeking an annualized accounting of the efficiency savings?

A. No, that's not correct. In the filing we proposed an overall plan, and as part of that plan indicated that if we could achieve the annualized savings, we would not need to fast track programs, in lieu of not having the annualized savings and not having an accelerated procedural schedule we would ask for the fast-track programs.

Q. So the annualized savings and the fast-track programs are requests in the alternative.

A. Yes, that is correct.

Q. And the point of the companies asking for those alternative requests is to allow the companies to meet their 2010 statutory efficiency benchmarks?

A. Yes, that is correct. The way the plan

1 was filed, it was to meet the -- create a design that
2 created an opportunity for the company to meet those
3 benchmarks on a cumulative basis.

4 Q. So is it correct to say that without
5 fast-track approval or annualized accounting, the
6 plan does not meet the statutory requirements for
7 2010?

8 MS. MILLER: Objection, your Honor.

9 EXAMINER PRICE: Grounds?

10 MS. MILLER: That calls for a legal
11 opinion.

12 EXAMINER PRICE: Oh, he's certainly
13 rendered many opinions on the law so far in his
14 testimony. Overruled.

15 THE WITNESS: Could I possibly have it
16 read back, please?

17 (Record read.)

18 A. Yes, that is correct.

19 Q. Thank you.

20 Turning your attention to customer
21 education and marketing as you've described in
22 these -- or, as the companies have described in these
23 plans, it's correct that each operating company
24 includes a statement on customer education as to the
25 programs in the portfolio, correct?

1 A. Yes, that's correct.

2 Q. If you would turn -- I just happen to
3 have the CEI plan in front of me, I don't know -- I'm
4 sorry, I don't know which exhibit number that is.

5 A. I have it. I'm not sure what number.

6 EXAMINER PRICE: It's 7.

7 EXAMINER BOJKO: Company Exhibit 7.

8 A. Okay.

9 Q. I see on page 81, section 3.7.1.

10 A. Okay.

11 Q. That is, in this instance, CEI's
12 statement as to customer education programs; is that
13 correct?

14 A. Yes, that is correct.

15 Q. Are there any other customer education
16 statements or plans in the portfolio plan?

17 A. I don't recall specifically. I'd have to
18 review the plan to be sure.

19 Q. Sure. And in section 3.7.1 the last
20 sentence references that third-party program managers
21 will be responsible for the development and execution
22 of program-specific marketing plan; is that correct?

23 A. Yes, that is correct. We were asking the
24 vendors as part of the process of hiring a vendor
25 that they provide that kind of marketing plan which

1 would be approved by the parties.

2 Q. When you say "approved by the parties,"
3 what parties?

4 A. That would be approved by the company
5 who's hiring them.

6 Q. Okay. So the companies are not
7 developing specific marketing plans for the programs
8 that will be rolled out.

9 A. What we have done with the vendors, we
10 haven't hired any vendors yet, but as we do, the
11 vendors will be hired to develop a marketing plan.
12 Part of that process of creating a plan is to work
13 with the companies and our parties through the
14 collaborative process to decide how we're going to
15 deliver that marketing plan.

16 So in many cases they'll have a plan,
17 they'll do outreach, they'll be part of that process
18 that will be done by the companies and, hopefully,
19 we'll have some input from the collaborative as well.

20 Q. Okay.

21 A. So there's no -- it will be more of a
22 joint type of effort.

23 Q. So at this point there are no specific
24 marketing plans in the filing as made by the company.

25 A. Other than what we've just discussed, not

1 that I recall.

2 Q. Okay. Within the program itself, within
3 the plan itself, do you have an understanding of the
4 term "phantom load"?

5 A. Please describe what you mean by "phantom
6 load."

7 Q. I'm asking if you have a definition of
8 "phantom load."

9 A. I would describe phantom loads as loads
10 the customers don't realize they're using because
11 they have equipment that is operating and utilizing
12 energy.

13 Q. Okay. Do you have a definition for the
14 term "plug load" or an understanding of the term
15 "plug load"?

16 A. I don't have a technical definition for
17 it.

18 Q. Would an example of plug load be a
19 television that is plugged in but in a standby mode?

20 A. Again, I don't have a technical
21 definition of what a plug mode is. I can make
22 assumptions, but I don't have a technical definition.

23 EXAMINER PRICE: I think you need to
24 answer his question. He didn't ask you if you had a
25 technical definition. He asked you if that was an

1 example of plug load, so if you can answer that
2 question directly.

3 A. It sounds like it would be.

4 Q. Okay. Are there any programs in the
5 portfolio plan as filed that address phantom load?

6 A. It is possible that it's addressed -- it
7 may not be in the manner that you're referring to
8 calling it phantom load, but it's possible that you
9 could make a conclusion or at least draw a conclusion
10 that when you do the on-line audit home energy
11 analyzer, that it would give you an opportunity to
12 see what's creating energy usage, for example, in
13 your house.

14 And so if you look at that product that
15 you get from utilizing an analyzer, you will see that
16 you are drawing loads even when you're not utilizing
17 equipment, for example televisions and computers that
18 are on. So to some degree I believe that might give
19 you some line to which you're referring to as phantom
20 loads. I don't think it specifically addresses it
21 that way, but I'm trying to draw a parallel.

22 Q. Okay. And what about plug load? Is
23 there any program in the plan that addresses plug
24 load?

25 A. Well, I think that program would do the

1 same for plug load.

2 Q. Okay.

3 A. With respect to other programs, I'd have
4 to give that a little more thought.

5 Q. And you mentioned customer usage through
6 equipment such as televisions. Are there any
7 customer education programs that the companies have
8 considered to target high use appliances such as
9 televisions by your customers?

10 A. I don't know that we've created any
11 educational materials yet. I know we've talked about
12 it and we think it's very important to do that, and
13 certainly we're going to have to work with the
14 vendors and work with our partners in the
15 collaborative to see if we can develop some
16 educational material like that. I think it's really
17 important that we come up with that.

18 Q. Okay. Thank you.

19 Finally, Mr. Paganie, turning your
20 attention to, again, the CEI plan in front of you,
21 page 99.

22 A. Okay.

23 Q. Section 6.1 in the second paragraph, is
24 it correct that this paragraph references the hiring
25 of the evaluation monitoring and verification

1 consultants by the companies?

2 MS. MILLER: May I have a clarification.
3 I just don't think you read the section title
4 correctly. "Monitoring" instead of "measurement."

5 Q. I'm sorry, you're correct, monitoring, EM
6 and V.

7 A. I'm sorry, would you please ask it again?

8 Q. Sure. Is it correct that section 6.1
9 addresses the hiring of EM and V contractors by the
10 companies?

11 A. Yes, it does.

12 Q. And it's the company's intention to
13 directly hire EM and V consultants?

14 A. Well, it is our intention. I'm not sure
15 that we'll hire consultants. It may be one
16 consultant.

17 Q. Okay. But it's the company's plan to
18 hire the consultant, be it a single entity or several
19 individuals or entities, to do the EM and V work on
20 behalf of the companies?

21 A. Yes, that is correct.

22 Q. Would it then be correct to say that the
23 companies could dismiss the EM and V contractors that
24 they then hired?

25 A. Well, I suppose that's correct with

1 respect to any contract that a company would have
2 with a vendor. I think what we're talking about here
3 is a little different.

4 The EM and V consultant that we hire is
5 going to be working for us to evaluate the
6 measurement and verification of the programs that are
7 part of the portfolio, but there's also going to be
8 an independent evaluator that the state hires that's
9 going to be overseeing the work of our evaluator.

10 So I don't think it's quite as simple as
11 just having somebody who's working for you, this is
12 working in a broader context.

13 Q. Okay. Finally, just two more specific
14 questions. With regards to the appliance turn-in
15 program that the companies are proposing, is there
16 any plan to follow up or otherwise try and recapture
17 customers who wished to turn in their appliances and
18 subsequently changed their mind before turning in
19 that appliance?

20 A. I'm not quite sure I followed that.

21 Q. Sure. Say in your appliance turn-in
22 program you have a customer who calls the companies
23 to turn in a second refrigerator. Before that pickup
24 occurs the customer changes his or her mind and
25 elects to keep the refrigerator.

1 Is there any plan the company's proposing
2 to follow up with that customer in an attempt to
3 recapture that appliance?

4 A. I'm not entirely sure. Sounds like an
5 idea that we ought to pursue, but I'm not sure if
6 that's part of the current plan provision right now.
7 It's something that I believe Company Witness
8 Fitzpatrick could answer.

9 Q. Okay. Similarly, with the contractors
10 that the companies will use to administer the
11 individual programs such as the appliance turn-in
12 program, do the companies have any plan to conduct
13 inspections or otherwise conduct quality control
14 oversight of the vendors that they use to administer
15 these programs?

16 THE WITNESS: Would you please read that
17 back to me?

18 (Record read.)

19 A. Maybe I'm misunderstanding, but I believe
20 that will be part of the process the EM and V
21 contractor is going to be performing. It will be an
22 audit of the programs, how they're delivered, how
23 they're being accepted, what -- the customers'
24 reaction, customers' satisfaction and so forth.

25 Q. So the company will use the EM and V

1 contractor to ensure the program contractors are
2 performing the work they're hired to do?

3 A. That will be -- that would certainly be
4 one step. The company will also have internally
5 program managers. Program managers will be
6 responsible for those various vendors or contractors,
7 and part of their job will be to ensure that the work
8 is being performed, somewhat of an audit, the work is
9 being performed, that the costs are appropriate, and
10 the customers are satisfied.

11 So it will be a similar kind of a check,
12 but in a different manner by the company's internal
13 program manager.

14 MR. HEINTZ: Thank you.

15 Your Honor, I have nothing further.

16 EXAMINER PRICE: Thank you.

17 OEC.

18 MR. REISINGER: Yes, just a few
19 questions.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Reisinger:

23 Q. Mr. Paganie, my name is Will Reisinger,
24 I'm staff attorney for the Ohio Environmental
25 Council. Please let me know if I'm not speaking

1 directly into the microphone here, I may slip a few
2 times there.

3 I'd like to ask you a few questions about
4 FirstEnergy's mercantile self-direct program, is that
5 all right?

6 A. Yes.

7 Q. You are familiar with the companies'
8 mercantile self-direct program?

9 A. Yes, I am.

10 Q. And the companies plan to use the savings
11 from these programs to meet their EE&PDR benchmark;
12 is that correct?

13 A. Yes, that is correct.

14 Q. Is it true that for Cleveland Electric,
15 that company plans to use mercantile savings as a
16 means of achieving 50.1 percent of their 2010
17 efficiency benchmarks?

18 A. That sounds appropriate to me, but to be
19 precise, I'd have to look into the plan just to be
20 sure. But it does sound like it's an appropriate
21 percentage.

22 MR. REISINGER: Your Honor, may I
23 approach the witness?

24 EXAMINER PRICE: You may.

25 MR. REISINGER: Could I have that

1 document marked as OEC Exhibit 1, please?

2 EXAMINER PRICE: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Mr. Paganie, I just handed you the
5 companies' responses to OEC's first set of
6 interrogatories, and specifically on page 5 of those
7 responses, which should be flagged by a yellow
8 Post-It note there, there is a table compiled by the
9 company entitled "Historical Savings Percentages."

10 A. Yes, I see that.

11 Q. You see that table? And that table is
12 responding to the question "What is the percentage of
13 overall energy efficiency savings for each year that
14 the FirstEnergy Companies expect to come from
15 Historic Programs?"

16 Do you have any reason to believe that
17 these numbers are not accurate?

18 A. No, I have no reason to believe that. I
19 believe they are accurate.

20 Q. Okay. Good. So just for me to repeat
21 again, the number for Cleveland Electric that will
22 come from historic mercantile savings, that
23 percentage is 50.1; is that correct?

24 A. Yes, it is, for 2010.

25 Q. Okay. And for 2010 that percentage for

1 Ohio Edison is 48.6; is that correct?

2 A. Yes, that is correct.

3 Q. And that percentage for Toledo Edison is
4 52.9 percent; is that correct?

5 A. Yes, that is correct.

6 Q. Now, is it also true that not all of
7 these mercantile self-direct applications have been
8 approved by the Commission?

9 A. Yes, that is correct. To date I believe
10 six of the mercantile programs that have been filed
11 have been approved. And we have filed over 40
12 programs.

13 Q. So to date you think about 6 of 40 have
14 been approved?

15 A. Yes, that's -- 6 have been approved, but
16 the number that we have filed is I believe over 40.

17 Q. And due to the fact that, for example,
18 Cleveland Electric relies on these historic savings
19 for 51.6 -- 50.1 percent of their 2010 requirements,
20 is it reasonable to expect that if any of these
21 outstanding applications are not approved, that the
22 company will still be able to meet its 2010
23 benchmarks?

24 A. Well, we believe that they will be
25 approved, that's why they're part of the portfolio.

1 We have been working very closely with the staff and
2 the program filings, we believe, are complete and
3 there's just a lot of work to be done to get them
4 through the process.

5 Q. Okay.

6 A. So we think it's a bit of a jam because
7 there's so many of them being filed by other
8 companies as well.

9 Q. Thank you.

10 A. But we do believe they will be approved.

11 Q. Thank you.

12 Are you familiar with the Johnny
13 Appleseed Broadcasting self-direct application that
14 is currently pending before the Commission?

15 A. No, I am not familiar.

16 MR. REISINGER: May I approach the
17 witness?

18 EXAMINER PRICE: You may.

19 MR. REISINGER: Could I have this
20 document marked as OEC Exhibit 2, please?

21 EXAMINER PRICE: You may.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. Mr. Paganie, can you turn to page 6 of
24 the agreement which is accompanies this application
25 and it should also be flagged with a yellow Post-It

1 note.

2 A. Yes, I see that page.

3 Q. Is this your signature under the line
4 Ohio Edison?

5 A. Yes, it is.

6 Q. So you were signing in your capacity as
7 vice president, for I believe this says Customer
8 Services and Energy Efficiency on behalf of Ohio
9 Edison?

10 A. Yes, that is correct.

11 Q. Are you aware that this application seeks
12 to commit energy savings that occurred as a result of
13 the digital television switch, the DTV transition?

14 A. I'm not aware of that. At the time that
15 the mercantile customer filing was put in front of
16 me, questions I asked of my group were to the effect
17 was the filing complete, did it meet all the
18 requirements, before I would sign it. But I'm not
19 familiar with that particular aspect.

20 Q. Are you aware that the DTV transition was
21 mandated by federal law?

22 MS. KOLICH: Your Honor, can we go off
23 the record for a second?

24 EXAMINER PRICE: Yes.

25 (Discussion off the record.)

1 EXAMINER PRICE: Let's go back on the
2 record.

3 Q. Mr. Paganie, just one more --

4 EXAMINER PRICE: You have a pending
5 question, he has not answered.

6 MS. MILLER: Could you reread the
7 question, please?

8 EXAMINER PRICE: Thank you.

9 (Record read.)

10 MS. MILLER: Objection, your Honor.

11 EXAMINER PRICE: Grounds?

12 MS. MILLER: Assuming facts not in
13 evidence.

14 EXAMINER PRICE: I think that also calls
15 for a legal conclusion on an area he's not opined on.
16 Sustained.

17 Q. (By Mr. Reisinger) Mr. Paganie, do you
18 think it's reasonable for FirstEnergy to rely on
19 applications such as these to meet their 2010
20 benchmarks?

21 A. Yes, I think it's reasonable and it was
22 intended as part of the statute. It's a good
23 cost-effective way to be able to meet the benchmarks.

24 Q. Okay. Just one more question here. You
25 said earlier that you did not recall this particular

1 application. You did not recall signing it. Does
2 that mean that there might be many more similar
3 applications pending before the Commission?

4 MS. MILLER: Objection, your Honor.

5 EXAMINER PRICE: Grounds?

6 MS. MILLER: The witness did not indicate
7 that he did not remember signing the application.

8 EXAMINER PRICE: Sustained. Do you want
9 to rephrase?

10 MR. REISINGER: Okay.

11 Q. Mr. Paganie, you said earlier that you
12 did not recall this particular application when I
13 named the application. Should we take that to mean
14 that there might be many more similar applications
15 pending before the Commission?

16 A. I'm not entirely sure what you mean by
17 "similar applications." When I indicated I didn't
18 recall the name, as I indicated, there were a large
19 number of these mercantile customer programs filed
20 and I don't recall the names of all of the ones that
21 were filed.

22 I reviewed all of them and talked to my
23 staff before I signed any of them to ensure that they
24 were complete.

25 Q. Okay. Thanks. I'll move on here.

1 Could I turn your attention to Appendix
2 D, the FirstEnergy's EE&PDR market potential study
3 which I believe was filed by the company as Appendix
4 D.

5 A. I have a document that's titled Appendix
6 D, 2009 Survey Results.

7 Q. Could you turn to the executive summary
8 of that document. I believe I'm looking at Appendix
9 D filed on December 16th, 2009, it's FirstEnergy's
10 market potential study and it was filed as Appendix
11 D.

12 EXAMINER BOJKO: 15th.

13 THE WITNESS: I don't have that as part
14 of my document.

15 MS. MILLER: Your Honor, may we go off
16 the record?

17 EXAMINER PRICE: Let's go off the record.
18 (Discussion off the record.)

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

21 Q. (By Mr. Reisinger) I apologize,
22 Mr. Paganie, for not describing that with more
23 accuracy, but could I have you turn to the executive
24 summary of that document.

25 EXAMINER BOJKO: Now that we're back on

1 the record, how about if you clarify exactly what
2 document you're referencing.

3 MR. REISINGER: Yes.

4 Q. Mr. Paganie, could you turn to the
5 executive summary of the market potential study which
6 has been filed as Appendix D.

7 EXAMINER BOJKO: To the December 15th
8 portfolio filing.

9 Q. To the December 15th portfolio filing.
10 Thank you.

11 A. Yes, I am there.

12 Q. Okay. This market potential study was
13 undertaken by a consulting firm, Black & Veatch; is
14 that correct?

15 A. That is correct.

16 Q. Okay. And one of the purposes of this
17 study was to determine the achievable efficiency
18 savings in Ohio; is this correct?

19 A. Yes, that was one of the purposes of the
20 study.

21 Q. And one of the sources relied upon by
22 Black & Veatch was a study conducted by ACEEE, the
23 American Council for Energy Efficient Economy; is
24 this correct?

25 A. Yes, that's correct. That's one of the

1 sources they used.

2 Q. And this source, the ACEEE study that is
3 cited as a source, isn't it true that this study
4 states that there is an efficiency potential of
5 33 percent in Ohio by 2025?

6 A. I don't know that to be a fact.

7 Q. Looking at the, I think it's the third
8 paragraph on page 1 which is just one sentence, it
9 says "Maximum technical potential is considered to be
10 33 percent of projected electricity consumption in
11 2025 and it's based upon a recent study by the ACEEE
12 conducted in March of 2009," and that study is cited
13 as footnote 1, ACEEE Shaping Ohio's Energy Future,
14 Energy Efficiency Works.

15 Do you see that sentence and that
16 citation that I just read?

17 A. Yes, I do.

18 Q. And isn't it true that FirstEnergy's
19 market potential study here in paragraph 4 under a
20 high-case or best-case scenario says that the
21 achievable potential for energy reductions is
22 19.2 percent for Ohio Edison, 17.9 percent for Toledo
23 Edison, and 19.9 percent for Cleveland Electric? Is
24 that correct?

25 A. Yes, that's what that sentence states.

1 Q. So this means that even under a best-case
2 scenario FirstEnergy will not be able to meet its
3 22 percent benchmark requirements by 2025?

4 A. I think that that may be a conclusion
5 that's drawn, but I would hazard to say that we're
6 not very certain what the outcomes are really going
7 to be until we actually began to launch some
8 programs.

9 We can read all the data and model as
10 much as we want, and that's good because it gives us
11 a great point to set benchmarks from, but we really
12 have to start to develop and launch programs and see
13 what the outcomes are and see how sustainable they
14 are, and there's a market transition phase that we
15 hope to start to see customers adopt as they become
16 more engaged in energy efficiency.

17 So that's -- the words here state that
18 and it's based on the studies.

19 Q. Okay. And just to clarify, the
20 percentages that I just read were a base case
21 scenario, under the base case those percentages are
22 significantly lower; is that correct?

23 A. Significantly lower than.

24 Q. Those numbers are lower for a base case
25 scenario. A base case scenario envisions potential

1 for energy reductions of 12.6 for Ohio Edison, of
2 11.9 percent for Toledo Edison, and of 13.5 percent
3 for Cleveland Electric by 2025; is that correct?

4 A. Right. That's correct. That's what it
5 says. And I believe if you really had some more
6 detailed questions on this, Company Witness
7 Fitzpatrick, who is the managing director and was
8 responsible for the study, can certainly answer them.

9 Q. Okay, I just have one more question. The
10 FirstEnergy companies' plans were filed on
11 December 15th, 2009; is that correct?

12 A. The FirstEnergy's portfolio plan for '10,
13 '11, and '12, yes.

14 Q. And those plans have not been revised
15 since that date; is that correct?

16 A. That is correct, they have not.

17 MR. REISINGER: Thank you, Mr. Paganie.
18 I have no further questions.

19 MR. POULOS: Your Honor, can I have a
20 clarification. What is the document number for
21 Appendix D? Is there an exhibit number for this?

22 EXAMINER PRICE: It's part of the
23 company's application, we never did mark it, no.

24 EXAMINER BOJKO: It's Appendix D in
25 Volume I of the portfolio plan filing.

1 EXAMINER PRICE: You should have asked us
2 to mark it while we were on it, it would have been
3 helpful.

4 MR. POULOS: Sorry, I realized it in the
5 middle of a question.

6 EXAMINER PRICE: Mr. Weldele.

7 MR. WELDELE: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Weldele:

11 Q. Mr. Paganie, my name is Eric Weldele and
12 I am counsel to the Council of Small Enterprises and
13 I just have a couple of questions for you.

14 If you could turn your to attention to
15 what has been marked as Company Exhibit 7, which is
16 the CEI energy efficiency portfolio, and specifically
17 in that document I'd call your attention to page 17,
18 section 2.0, and let me know when you get there.

19 A. What page did you say it was?

20 Q. Page 17.

21 A. Okay, I'm on page 17 of the CEI portfolio
22 plan.

23 Q. And page 17 is section 2.0 Energy
24 Efficiency Portfolio Program Summaries; is that
25 correct?

1 A. Yes, that's correct.

2 Q. And it's fair to say that section 2.0
3 provides a summary of the programs more fully
4 contained within the remainder of the filing; is that
5 correct?

6 A. Yes, that is correct.

7 Q. And more specifically, section 2.1
8 identifies eight residential program summaries,
9 section 2.2 identifies two residential low-income
10 program summaries, section 2.3 identifies two small
11 enterprise program summaries, and section 2.4
12 describes the mercantile self-directed program
13 summary; is that correct?

14 A. Yes.

15 Q. On section 2.3 on page 17, the last
16 paragraph, indicates that since many small businesses
17 are operated out of facilities that have energy
18 consumption patterns and load profiles more similar
19 to residential customers, several of the programs for
20 residential buildings may also apply to small
21 business customers. The on-line efficient products
22 program and on-line audit program, for example, may
23 be ideal for customers with limited energy-saving
24 opportunities and equipment needs who are seeking an
25 easy way to obtain advice and products that they can

1 install themselves.

2 Do you see that paragraph there?

3 A. Yes.

4 Q. Within that paragraph it's fair to say
5 then that the company expects that there will be
6 small business users of some of the residential
7 programs identified in section 2.1; is that correct?

8 A. I think the only program that we're
9 referring to, while the concept is referred to in
10 this paragraph, is the CFL program which the intent
11 was to provide 14,000 lights to businesses who had
12 requested those CFLs.

13 Q. So the second sentence there which I'll
14 read again indicates that the on-line efficient
15 products program and the on-line audit program, for
16 example, may be ideal for customers identified in
17 section 2.3, do you disagree with that statement?

18 A. No, I don't disagree. It further states
19 further that the CEI -- the C&I audit and equipment
20 rebate programs will be available to any
21 nonresidential customer large and small.

22 Q. Absolutely, and I agree with that as
23 well. What I'm getting at and my question really is,
24 is there a reason why the company didn't identify the
25 residential programs it feels will be utilized by

1 small businesses within section 2.3 and then,
2 specifically, the small enterprise program summaries?

3 A. I can't think of any particular reason.
4 We were trying to identify the programs in the right
5 sectors and then allocate the budgets to those
6 sectors where the programs primarily will be
7 evolving. I can't think of any other reason.

8 Q. Would there be an objection by the
9 company to identify those programs within the
10 residential, i.e., the on-line audit program, the CFL
11 program, the on-line efficient products program for
12 examples, as applying also specifically to the small
13 enterprise programs?

14 A. I'm not entirely sure how we would do
15 that. We would have to revise the portfolio plan and
16 reallocate budgets accordingly, which can be done,
17 it's certainly something we could take a look at.

18 MR. WELDELE: Thank you, your Honor. No
19 further questions.

20 EXAMINER PRICE: Thank you.

21 Nucor.

22 MR. LAVANGA: No questions, your Honor.

23 EXAMINER PRICE: IEU.

24 MR. CLARK: No questions, your Honor.

25 EXAMINER PRICE: Staff.

1 MR. LINDGREN: Yes, thank you, your
2 Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Lindgren:

6 Q. Good afternoon, Mr. Paganie.

7 A. Good afternoon.

8 Q. Concerning the programs described in your
9 direct testimony, is there anything that would
10 prevent the companies from launching these programs
11 prior to Commission approval?

12 A. There would be nothing that would
13 physically prevent the company from launching the
14 program. Without approval we would have no ability
15 to recover the cost of those programs.

16 Q. So it's simply to -- the companies
17 require preapproval in order to avoid the risk of not
18 recovering the cost; is that it?

19 A. I believe we would ask -- we would want
20 approval of the programs. I'm not sure what you
21 meant by "preapproval," but we would ask that the
22 programs all be approved as part of the portfolio
23 plan.

24 We need to see that approval process not
25 only for the cost recovery, which we think is

1 reasonable, but the approval is necessary in order to
2 provide an opportunity to meet our compliance
3 targets. Without approval we can also not count the
4 savings that we achieve from those projects or
5 programs towards meeting our compliance targets.

6 MR. LINDGREN: Thank you. No further
7 questions.

8 EXAMINER PRICE: Redirect?

9 MS. MILLER: Can we have five minutes?

10 EXAMINER PRICE: You certainly may.
11 Let's go off the record for five minutes.
12 (Recess taken.)

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

15 Redirect?

16 MS. MILLER: Yes, your Honor.

17 - - -

18 REDIRECT EXAMINATION

19 By Ms. Miller:

20 Q. Mr. Paganie, you were handed a document
21 that was premarked as OCC Exhibit 6. Do you have
22 that before you?

23 A. Yes, I do.

24 Q. Can you turn to the last page of that
25 document.

1 A. Yes.

2 Q. There were -- on the last page of this
3 document there are a number of names and
4 organizations, and you had indicated that these were
5 either administrators or signatory parties. Do you
6 recall that?

7 A. I do recall that.

8 Q. Going down the list there were a few
9 names that stuck out that I did not recognize as
10 signatory parties or administrators. For example,
11 Summa Health Systems, Metro Health Medical, Parma
12 Community General Hospital. Can you explain that?

13 A. Yes. They are members of OHA. OHA is a
14 signatory party.

15 Q. Okay. How about a few others, Cuyahoga
16 County Department of Development and Summit County.
17 Could you explain those?

18 A. They are members of one of the
19 administrators, the County Commissioners.

20 Q. Okay. And then my last question is on
21 another organization, Appliance Recycling Center of
22 America. Can you explain that one?

23 A. I can't really explain that. It appears
24 to be a mistake. In talking to my team over lunch it
25 appears that the only explanation that we have is

1 that it was transferred from a similar list of
2 stakeholders that we had in Pennsylvania, but I can't
3 identify any other reason why it would be on the
4 list. They should not be.

5 Q. Did they attend any collaborative
6 meetings or subcommittee meetings for Ohio?

7 A. No, they did not.

8 MS. MILLER: No further questions.

9 EXAMINER PRICE: Thank you.

10 Mr. Poulos, recross?

11 MR. POULOS: Very brief.

12 - - -

13 RECROSS-EXAMINATION

14 By Mr. Poulos:

15 Q. Mr. Paganie, you were referring to Summa
16 and Metro being part of OHA and that's why they were
17 members of the collaborative; is that correct?

18 A. I was referring to those names as being
19 part of the OHA who is a member of the collaborative,
20 who is a signatory party. What we really need to do
21 is clean this list up.

22 My reference would be that in reviewing
23 this after we had a chance to take a look at it we
24 need to tighten it up and keep it defined
25 specifically to the parties that should be on it who

1 are either administrators or signatory parties.

2 Q. Last question. Is Cleveland Clinic a
3 member of OHA? Do you know?

4 A. I thought Cleveland Clinic was a
5 signatory party, but I could be wrong.

6 MR. POULOS: Thank you. I have no
7 further questions.

8 EXAMINER PRICE: Mr. Sites?

9 MR. SITES: No questions, your Honor.

10 EXAMINER PRICE: Mr. O'Brien?

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

12 EXAMINER PRICE: Mr. Smith?

13 MR. SMITH: No questions.

14 EXAMINER PRICE: Mr. Kurtz.

15 MR. KURTZ: No questions.

16 EXAMINER PRICE: Mr. Heintz.

17 MR. HEINTZ: One question, your Honor.

18 - - -

19 RECROSS-EXAMINATION

20 By Mr. Heintz:

21 Q. Mr. Paganie, is it FirstEnergy's
22 intention not to allow any collaborative membership
23 to any interested party?

24 MS. MILLER: Objection, your Honor, that
25 is beyond the scope of redirect.

1 EXAMINER PRICE: Well, I think he did
2 mention that they need to clean up the list and to
3 restrict it solely to signatory parties and
4 administrators, so I'll allow it.

5 A. It's our intention to follow the
6 stipulation which provides that the company's
7 collaborative be, the membership of the collaborative
8 be signatory parties or administrators and we will
9 comply with that stipulation.

10 MR. HEINTZ: Thank you.

11 EXAMINER PRICE: Mr. Reisinger.

12 MR. REISINGER: No questions.

13 EXAMINER PRICE: Mr. Lavanga.

14 MR. LAVANGA: No questions, your Honor.

15 EXAMINER PRICE: IEU.

16 MR. CLARK: No questions, your Honor.

17 But I would like to clarify that Cleveland Clinic is
18 a member of IEU-Ohio.

19 EXAMINER PRICE: Mr. Lindgren?

20 MR. LINDGREN: No questions, your Honor.

21 EXAMINER PRICE: Ms. Bojko.

22 - - -

23 EXAMINATION

24 By Examiner Bojko:

25 Q. Mr. Paganie, you were looking at a data

1 request from OEC, Exhibit 1, and although the witness
2 is Fitzpatrick, you seem to be knowledgeable about
3 the response to that data request. Do you recall
4 that line of questioning?

5 A. Yes, I do.

6 Q. From OEC's counsel?

7 A. Yes, I do.

8 Q. If we take a look at the chart of
9 historical savings percentages, it's not clear from
10 the question what the response is referencing. Can
11 you describe what the percentages are percentages of
12 in your response, or companies' response?

13 A. Yes. I think I can. Referring to the
14 self-directed mercantile projects, which is the way
15 the response is constructed, those projects as filed
16 through the end of 2009 and what we contemplate
17 filing in '10, '11, and '12, would make up that
18 percentage of the total requirement of the
19 compliance -- the compliance requirement for those
20 years.

21 Q. So this is a percent --

22 A. Does that make sense?

23 Q. This is a percentage of the benchmark
24 that you actually have to meet, the companies'
25 benchmark?

1 A. Yes, that is correct.

2 Q. So you're saying that for 2010 under OE
3 the self-directed mercantile projects would satisfy
4 48.6 percent of the companies' required benchmark.

5 A. That is correct.

6 EXAMINER BOJKO: Okay. Thank you.

7 EXAMINER PRICE: Just a follow-up on a
8 question Mr. Heintz proposed to you. Absent
9 Commission approval of the fast-track programs or the
10 accelerated procedural schedule in this proceeding,
11 which clearly is not happening, your programs are not
12 designed to achieve the statutory benchmark for 2010;
13 is that correct? FirstEnergy's programs are not
14 designed, as proposed, are not designed to achieve
15 the 2010 statutory benchmark.

16 THE WITNESS: That is correct, without
17 the fast-track programs.

18 EXAMINER PRICE: You're excused.

19 EXAMINER BOJKO: Wait a second.

20 EXAMINER PRICE: Whoa, not so fast.

21 Q. (By Examiner Bojko) It's my understanding
22 that the fast-track programs are also, though,
23 incorporated into your program portfolio, correct?

24 A. Yes, that is correct.

25 Q. So what you're really saying in response

1 to Examiner Price's question is that but for those
2 four programs being accelerated so that they are
3 implemented by April 1, you would not be able to meet
4 your benchmark.

5 A. Yes, that's correct. Yeah, we had --
6 those are four programs that are a part of the
7 portfolio filing. We had hoped originally in asking
8 for an accelerated procedural schedule that we could
9 launch the entire program portfolio earlier, and on a
10 pro rata basis that would have given us an
11 opportunity through the design to meet our compliance
12 targets.

13 If the procedural schedule was not
14 accelerated, and as you indicated not, then either we
15 needed to have the ability to fast track four of the
16 programs to start them early or to apply an
17 annualized savings.

18 Q. And just so the record's clear, because
19 you've talked a lot today about the pro rata basis
20 versus annualized savings and what can count towards
21 your benchmark, the companies' position is that it is
22 done on a pro rata basis from implementation of the
23 programs, and your understanding comes from the
24 Commission's June 17th, 2008, entry on rehearing
25 filed in Case 08-888-EL-ORD issued -- I'm sorry, in

1 that case; is that correct?

2 A. I think so.

3 MS. KOLICH: Excuse me, just so the
4 record's clear, the date is 2009.

5 EXAMINER BOJKO: 2009, I'm sorry, I
6 thought I might have said 2008. 2009.

7 Q. You believe so. You don't recall off the
8 top of your head a particular rule that contains the
9 language that you keep referencing today?

10 A. No, I don't recall a particular rule,
11 only the document that you referred to.

12 Q. Okay.

13 A. The docket on the case.

14 Q. An entry in the case.

15 A. An entry, I'm sorry.

16 EXAMINER BOJKO: Thank you.

17 - - -

18 EXAMINATION

19 By Examiner Price:

20 Q. Just to be clear, the on-line audit tool
21 program, that has been approved by the Commission,
22 has it not?

23 A. Yes, it was approved. It was approved in
24 2009 when we filed it.

25 Q. Right.

1 A. We're asking it to be approved as part of
2 the portfolio --

3 Q. But it's currently an approved program.

4 A. Yes.

5 Q. And the mercantile programs are approved.

6 A. Well, six of them have been approved.

7 Q. The concept has been approved but we
8 still have to approve the individual applications; is
9 that correct?

10 A. Yes.

11 EXAMINER PRICE: Okay. Thank you. Now
12 you're excused.

13 THE WITNESS: Okay. Thank you.

14 EXAMINER PRICE: Thank you.

15 Ms. Miller.

16 MS. MILLER: Your Honor, at this time the
17 company would like to move into evidence Company
18 Exhibit 1.

19 EXAMINER PRICE: Any objection to the
20 admission of Exhibit 1?

21 Seeing none, it will be admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 MR. POULOS: Your Honor, at this time OCC
24 offers Exhibits 2, 3, 4, 5, 6, and 7 into evidence.

25 MS. MILLER: Could I hear that again?

1 MR. POULOS: Exhibit 2, 3, 4, 5, 6, 7.
2 We are not offering Exhibit 1, which is Paganie's
3 deposition.

4 MS. MILLER: 2 through 6 then?

5 MR. POULOS: 2 through 7.

6 EXAMINER PRICE: What about 8?

7 MR. POULOS: 2 through 8, excuse me.

8 EXAMINER PRICE: Is there any objection
9 to the admission of OCC Exhibits 2, 3, 4, 5, 6, 7, or
10 8?

11 MS. MILLER: Can I have a minute, your
12 Honor?

13 EXAMINER PRICE: You may.

14 MS. MILLER: Your Honor, the company
15 would like to make a motion to strike OCC Exhibit 3.
16 Or the companies object to the admission of OCC
17 Exhibit 3. During the questioning --

18 EXAMINER PRICE: Hold on. Tell me the
19 ones that you object to and then we'll go ahead and
20 admit the ones you don't.

21 MS. MILLER: That's it.

22 EXAMINER PRICE: Only 3?

23 MS. MILLER: Yes.

24 EXAMINER PRICE: Anybody else object to
25 OCC Exhibits 2, 4, 5, 6, 7, and 8?

1 Okay, we'll admit those at this time.

2 (EXHIBITS ADMITTED INTO EVIDENCE.)

3 EXAMINER PRICE: We'll take arguments on
4 the admission of OCC Exhibit 3. Exhibit 3?

5 MS. MILLER: Yes.

6 EXAMINER PRICE: Go ahead.

7 MS. MILLER: During the line of
8 questioning it was presented as draft numbers that
9 had been discussed during the collaborative. The
10 witness has indicated that there were drafts before
11 this draft and drafts after this draft, and so the
12 information presented on this document is not
13 relevant to the plan as filed and we believe it will
14 only cause confusion in the docket.

15 EXAMINER PRICE: Mr. Poulos.

16 MR. POULOS: Your Honor, as I was using
17 this deposition transcript we did recognize this
18 document and we asked questions about when he was
19 familiar with it. I can get you specific cites I
20 read from in the deposition.

21 EXAMINER PRICE: I recall.

22 MS. KOLICH: Can counsel use the
23 microphone?

24 MS. MILLER: May I have --

25 EXAMINER PRICE: Sure, what the heck.

1 MS. MILLER: I just would like to have
2 his response reread.

3 (Record read.)

4 MS. MILLER: Your Honor, I didn't object
5 to foundation of the document.

6 EXAMINER PRICE: I understand. But we
7 are going to admit the exhibit. We did try to elicit
8 from the witness that these numbers were basically
9 relied upon, and we understand the numbers may not be
10 exactly correct and that will go to the weight that
11 we attribute to that evidence.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER PRICE: Mr. Reisinger.

14 MR. REISINGER: Yes, your Honor, the OEC
15 would like to have OEC Exhibits 1 and 2 admitted.

16 EXAMINER PRICE: Any objection to the
17 admission of OEC's Exhibits 1 and 2?

18 MS. MILLER: Yes, your Honor. The
19 companies object to the admission of OEC Exhibit 2,
20 not the whole document -- actually, I'm sorry, it's
21 OEC Exhibit 1. Not the entire document, there are a
22 variety of data responses on this OEC Exhibit 1.

23 OEC only asked questions on OEC set 1,
24 DR-5. The company did not object to the admission of
25 that one page, however, none of the other pages were

1 covered by OEC.

2 EXAMINER PRICE: Mr. Reisinger.

3 MR. REISINGER: No objection to that.

4 EXAMINER PRICE: Okay. Then just to
5 clarify for the record, the only part of OEC Exhibit
6 1 that will be admitted will be a response to OEC
7 set 1, DR-5.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 EXAMINER PRICE: Thank you.

10 And we will also admit all of OEC Exhibit
11 2.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER BOJKO: FirstEnergy, would you
14 like to call your next witness.

15 MS. MILLER: Yes, your Honor. The
16 companies call Katherine Kettlewell to the stand.

17 EXAMINER BOJKO: Ms. Kettlewell, please
18 raise your right hand.

19 (Witness sworn.)

20 EXAMINER BOJKO: Please be seated.

21 Please proceed, Ms. Miller.

22 - - -
23
24
25

1 KATHERINE KETTLEWELL

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

4 DIRECT EXAMINATION

5 By Ms. Miller:

6 Q. Good afternoon, Ms. Kettlewell, how are
7 you today?

8 A. Fine, thank you.

9 Q. Can you please state your name and
10 address for the record?

11 A. Yes, my name is Katherine Kettlewell,
12 K-e-t-t-l-e-w-e-l-l. My work address is 76 South
13 Main Street, Akron, Ohio 44308.

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

16 (Discussion off the record.)

17 EXAMINER PRICE: Back on the record.

18 MS. MILLER: Your Honors, the company
19 would like to premark Company Exhibit 2.

20 EXAMINER BOJKO: Which is?

21 MS. MILLER: Direct of Katherine
22 Kettlewell.

23 EXAMINER BOJKO: It will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Miss Kettlewell, do you have before you

1 what has just been premarked as Company Exhibit 2?

2 A. Yes.

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

5 A. Yes.

6 Q. Do you have any changes or modifications
7 to your testimony?

8 A. Yes.

9 Q. What is your first change or
10 modification?

11 A. If you'll turn to page 7, line 14, that
12 should read "filed post December 1st, 2009."

13 Q. Do you have other changes or
14 modifications to make?

15 A. Yes. If you'll go to page 10, the
16 question on lines 21 and 22 has been cut off, it
17 should read "Are you personally familiar with the
18 forecasted adjusted average 'distribution service
19 sold' for the calendar years 2009 through 2011?"

20 Q. Do you have any other additions or
21 modifications to make?

22 A. No.

23 Q. Subject to the changes that you just
24 made, if I were to ask you the questions set forth in
25 your testimony here today, would your answers be the

1 same?

2 A. Yes.

3 MS. MILLER: The companies tender the
4 witness for cross.

5 EXAMINER BOJKO: Thank you.

6 IEU?

7 MR. CLARK: Nothing.

8 EXAMINER BOJKO: Mr. Lavanga.

9 MR. LAVANGA: No questions, your Honor.

10 EXAMINER BOJKO: Mr. Weldele.

11 MR. WELDELE: No questions, your Honor.

12 EXAMINER BOJKO: Mr. Reisinger.

13 MR. REISINGER: No questions, your Honor.

14 EXAMINER BOJKO: Mr. Heintz.

15 MR. HEINTZ: No questions, your Honor.

16 EXAMINER BOJKO: Mr. Kurtz?

17 MR. KURTZ: No questions, your Honor.

18 EXAMINER BOJKO: Mr. Smith?

19 MR. SMITH: No questions.

20 EXAMINER BOJKO: Mr. O'Brien?

21 MR. O'BRIEN: I don't want it to be a
22 shutout. No, I have no questions.

23 EXAMINER BOJKO: Mr. Sites?

24 MR. SITES: No questions, thank you.

25 EXAMINER BOJKO: Mr. Allwein?

1 MR. ALLWEIN: No questions, your Honor.

2 EXAMINER BOJKO: Staff?

3 MR. LINDGREN: Yes, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Lindgren:

7 Q. Miss Kettlewell, how or by what method
8 did you normalize your distribution service sales?

9 A. We used the weather normalized. Is that
10 what you're referring to?

11 Q. Yes.

12 A. Okay.

13 Q. Could you elaborate on that?

14 A. Yes, I'm looking for that section in my
15 testimony.

16 Yes, on page 9, basically to remove the
17 effect of weather on sales we regressed the heating
18 and cooling degree days against the usage and to
19 calculate the change in usage given the change in
20 CDDs over 20 years' time.

21 Exhibit 2 has an example of that. So to
22 the extent that the weather was not normal in those
23 years, in the baseline years, we would reduce or
24 increase the baseline.

25 Q. Why did you choose to use a 20-year

1 average instead of a, say, 25 or 30 years?

2 A. Twenty years is what we had been using
3 when we did any financial analysis within the
4 companies, so that we used the same method as we used
5 for that.

6 MR. LINDGREN: Thank you. No further
7 questions. Thank you.

8 EXAMINER BOJKO: Ms. Miller, do you have
9 any redirect?

10 MS. MILLER: No, your Honor.

11 EXAMINER BOJKO: You may step down.
12 Thank you.

13 Let's go off the record.

14 (Discussion off the record.)

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

17 Ms. Miller.

18 MS. MILLER: Your Honors, at this time
19 the company would like to move into evidence
20 Companies' Exhibit 2.

21 EXAMINER BOJKO: Any opposition to the
22 admission of Company Exhibit 2, which is the direct
23 testimony of Ms. Kettlewell?

24 Hearing none, it will be admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 EXAMINER BOJKO: We will take a
2 five-minute recess at this time.

3 (Recess taken.)

4 EXAMINER BOJKO: Let's go on the record.
5 Ms. Kolich.

6 MS. KOLICH: Thank you, your Honor. At
7 this time the companies would like to call Mr. Steven
8 Ouellette to the stand.

9 EXAMINER BOJKO: Mr. Ouellette, please
10 raise your right hand.

11 (Witness sworn.)

12 EXAMINER BOJKO: Please be seated.
13 Please proceed.

14 MS. KOLICH: Thank you, your Honor.

15 Your Honor, I have a document entitled
16 Direct Testimony of Stephen E. Ouellette I would like
17 marked for identification as Company Exhibit 3.

18 EXAMINER BOJKO: It will be so marked.

19 MS. KOLICH: Thank you.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 - - -
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25

STEVEN E. OUELLETTE

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

DIRECT EXAMINATION

By Ms. Kolich:

Q. Mr. Ouellette, do you have a copy of
what's just been marked as Company Exhibit 3?

A. Yes, I do.

Q. And is this your direct testimony filed
in this case?

A. Yes, it is.

Q. And is it comprised of both testimony and
related exhibits?

A. Yes.

Q. Do you have any corrections to your
testimony?

A. I do. On page 5 of my direct testimony
there is the -- on line 8, that is actually the
second like where it has "iv," that should be a "v"
as in 5, and on line 12 that makes the "v" "vi."

Q. Are there any other corrections?

A. No.

Q. Do you have any corrections to any of the
exhibits attached to your testimony?

A. I do not.

1 Q. Were those exhibits prepared by you or
2 under your direct supervision?

3 A. Yes.

4 Q. If I were to ask you the questions that
5 are set forth in your testimony, would they be the
6 same today?

7 A. Yes, they would.

8 MS. KOLICH: Your Honor, at this time the
9 witness is ready for cross-examination.

10 EXAMINER BOJKO: Thank you.

11 Mr. Allwein.

12 MR. ALLWEIN: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Allwein:

16 Q. Good afternoon, Mr. Ouellette.

17 A. Good afternoon.

18 Q. I am Christopher Allwein representing
19 FirstEnergy's residential customers on behalf of the
20 Ohio Consumers' Counsel. For clarification, when I
21 say "FirstEnergy companies," I am referring to The
22 Toledo Edison Company, The Cleveland Electric
23 Illuminating Company, and The Ohio Edison Company,
24 okay?

25 A. Yes.

1 Q. Mr. Ouellette, your direct testimony
2 explains the FirstEnergy companies' proposed cost
3 recovery in these cases, correct?

4 A. Yes, it does.

5 Q. And part of the FirstEnergy companies'
6 proposed cost recovery includes a shared savings
7 mechanism, correct?

8 A. Yes, it does.

9 Q. And can you tell us what is shared
10 savings?

11 A. As FirstEnergy looks at shared savings,
12 it is an incentive for the company to exceed the
13 benchmarks set by the statute.

14 Q. And according to your direct testimony a
15 FirstEnergy company will include specifically a
16 shared component in rider DSE, provided one or more
17 of the companies achieved more reductions than are
18 mandated by Ohio Revised Code 4928.66 in any given
19 year; is that correct?

20 A. Yes.

21 Q. And the amount of FirstEnergy companies'
22 shared savings when any FirstEnergy company becomes
23 eligible, as listed in your testimony, is 15 percent
24 of the net benefits as calculated by the utility cost
25 test, correct?

1 A. That is correct.

2 Q. And this shared savings component is an
3 amount that will be collected from FirstEnergy's
4 customers, as you describe on page 10 beginning with
5 line 9; is that right? You say that "A shared
6 savings component will be included in future years as
7 appropriate."

8 A. Yes.

9 Q. Part of this amount will be allocated to
10 and collected from residential customers, correct?

11 A. That's correct.

12 Q. And what part of this amount?

13 A. The shared savings component is made up
14 and assigned to the areas that generate the net of
15 benefit, so at this point in time whatever the net of
16 benefit is in the residential programs and passes the
17 utility cost test, that would be -- 15 percent of
18 that number would be the shared savings component.

19 Q. Regarding the basis for the 15 percent
20 shared savings proposal, you did not perform your own
21 analysis of this issue or obtain any independent
22 research on this, correct?

23 A. That is correct.

24 Q. And isn't it true that you did not do
25 your own calculations or have any other evidence

1 supporting FirstEnergy companies' 15 percent shared
2 savings proposal?

3 A. We did not do internal calculations
4 associated with that. We did have discussions
5 internal on that percentage. And we did look at
6 AEP's stipulation and Duke Energy's shared savings
7 program.

8 Q. The Ohio Public Utilities Commission
9 rules allow a company to request shared savings,
10 correct?

11 A. Yes.

12 Q. And to the best of your knowledge, do the
13 Commission rules governing this area present or
14 provide for a specific percentage?

15 A. No.

16 Q. Do the rules governing this area specify
17 a specific amount?

18 A. No.

19 Q. Regarding the discussions you just
20 referred to, isn't it true that the FirstEnergy
21 companies' proposed 15 percent shared savings
22 mechanism was obtained merely by picking that
23 specific percentage by itself from the Duke ESP case
24 and the AEP portfolio cases?

25 MS. KOLICH: Could I have that question

1 reread, please?

2 EXAMINER BOJKO: You may.

3 (Record read.)

4 A. I wouldn't say it "merely," we just took
5 it out of that. We used -- we looked at those two
6 cases and internally discussed whether a 15 percent
7 net of benefit was significant enough that the
8 company would, in fact, be incented to overshoot the
9 benchmarks.

10 We also, as you know, have Black & Veatch
11 as a consultant and I did have a discussion with
12 Mr. Fitzpatrick on whether 15 percent was a
13 reasonable number, and he said it was.

14 MR. ALLWEIN: Your Honor, may I approach
15 the witness?

16 EXAMINER BOJKO: You may.

17 MR. ALLWEIN: Could you please mark this
18 OCC Exhibit 9?

19 EXAMINER BOJKO: Let the record reflect
20 that we are marking as OCC Exhibit 9 Nucor's first
21 set of data responses.

22 MR. ALLWEIN: Yes, this is Nucor Set-1,
23 Data Response 17.

24 EXAMINER BOJKO: It will be so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. (By Mr. Allwein) Mr. Ouellette, this
2 document?

3 A. Yes.

4 Q. Are you familiar with its content?

5 A. Yes.

6 Q. Did you prepare the answers or oversee
7 the preparation of these answers?

8 A. Yes.

9 Q. I'd like to look at page 1 of 3, letter
10 (c), the data request is "Explain in detail the basis
11 for FirstEnergy's proposal to receive 15 percent of
12 the net benefits." Do you see that?

13 A. Yes, I do.

14 Q. And then the answer on page 3 of 3,
15 letter (c), is that FirstEnergy's proposal of 15
16 percent is comparable to the other utilities in Ohio.
17 AEP has proposed this in their portfolio plan. Is
18 that correct?

19 A. Yes.

20 Q. And that portfolio plan case is -- those
21 cases actually are 09-1089-EL-POR, and
22 09-1090-EL-POR; is that correct?

23 A. I'd have to check.

24 Q. Back on page 1 of 3, letter (d), you're
25 asked to "Explain in detail how a 15 percent share

1 (for shared savings) was determined." Do you see
2 that?

3 A. Yes.

4 Q. And then your answer on 3 of 3 of this
5 document is letter (c).

6 A. Yes.

7 Q. Regarding the AEP stipulation, excuse me,
8 the AEP portfolio plan, are you aware that there is a
9 stipulated agreement filed in that case?

10 A. Yes, I am.

11 Q. You did not participate in the
12 negotiation of that stipulation, correct?

13 A. That is correct.

14 Q. So you have no personal knowledge by
15 which that agreement was created; is that right?

16 A. I do have personal knowledge from contact
17 with my counterpart from AEP.

18 Q. And can you describe that personal
19 knowledge?

20 A. When we saw the stipulation as it had
21 been filed and signed by the parties, we called and
22 asked for some general information of what it
23 entailed and the reasoning behind the mechanism that
24 was put.

25 Q. All right. I'd like to turn back to the

1 data request. In letter (e) you were asked to
2 "Identify and provide all calculations and other
3 evidence or documentation supporting the choice of a
4 15 percent shared savings." Do you see that?

5 A. Yes.

6 Q. And on page 3 of 3 your answer of after
7 letter (e) is "See the testimony of John F. Williams
8 and David M. Roush in Case 09-1089-EL-POR. Also see
9 the testimony of Theodore E. Schultz in Case
10 No. 09-920-EL-SSO." Do you see that?

11 A. Yes.

12 Q. And what -- do you know what the case is,
13 Case No. 08-920-EL-SSO?

14 A. I believe that was their energy
15 efficiency plans.

16 Q. Now, you didn't write or assist in the
17 production of any of the testimony of any of the
18 individuals I just mentioned; is that correct?

19 A. No, I did not.

20 Q. And you did not consider any percentage
21 other than 15 percent; is that correct?

22 A. That is correct.

23 Q. In your response to data request letter
24 (c), the last sentence says "Duke has been approved
25 with a rate of return cap that is 15 percent." Do

1 you see that?

2 A. Yes.

3 Q. Are you aware that the 15 percent rate of
4 return cap that you referred to in the Duke case is
5 only available if the company, by which I mean Duke
6 Energy, achieves savings greater than 125 percent of
7 the statutory mandate for that year?

8 MS. KOLICH: Objection.

9 EXAMINER BOJKO: Grounds?

10 MS. KOLICH: The Duke case speaks for
11 itself. Otherwise we're assuming facts not in
12 evidence and he's testifying as to what the situation
13 is.

14 EXAMINER BOJKO: I think he asked if the
15 witness knew. I think the witness can answer as to
16 whether he knows, so overruled.

17 A. To be honest with you, I thought it was
18 less than that.

19 EXAMINER PRICE: How much did you think
20 it was?

21 THE WITNESS: I thought it was if they
22 were 115 percent, that they got 15 percent.

23 Q. Under the FirstEnergy companies' proposal
24 what percentage of the net benefits would FirstEnergy
25 companies receive if they produced savings that are

1 greater than 125 percent of the statutory mandate?

2 A. Well, remember, if the -- the 125 percent
3 of the savings -- at a hundred percent is just a
4 trigger. The calculation for net of benefit is a
5 utility cost test which is not related to the number
6 above a hundred percent. So the answer is I don't
7 know that number.

8 Q. Wouldn't it be 15 percent of the net of
9 benefits, as you state in your testimony?

10 A. The 15 percent, yes. I'm sorry, I
11 thought you were asking for an actual number. But it
12 would be 15 percent, yes.

13 Q. Okay. I'm sorry, I was asking for a
14 percentage.

15 A. I'm sorry.

16 Q. Are you aware that Duke's cap is
17 13 percent and available only when Duke achieves
18 savings that are between 116 percent and 125 percent
19 of their statutory mandate?

20 A. No, I was not.

21 Q. Under the FirstEnergy companies'
22 proposal, what percentage of the net of benefits
23 would the FirstEnergy companies receive if they
24 produce savings that are between 116 percent and
25 125 percent of their benchmarks?

1 A. As a percentage?

2 Q. Yes.

3 A. 15.

4 Q. Okay. Are you aware that the Duke cap is
5 11 percent and available only when Duke achieves
6 savings that are between 111 percent and 115 percent
7 of their statutory mandate?

8 A. I assume that's correct, if you're
9 telling me, but I do also know that Duke has the
10 ability to get net of benefit -- or, net savings if
11 they're below a hundred percent and ours is not set
12 up that way.

13 Q. Well, under the FirstEnergy companies'
14 proposal what percentage of the net benefits would
15 FirstEnergy companies receive if they produce savings
16 that are between 111 and 115 percent of their
17 benchmarks?

18 A. As a percentage?

19 Q. Yes.

20 A. 15. 15 of net benefit.

21 Q. And are you aware that the Duke cap is
22 6 percent and available only when Duke achieves
23 savings that are between 101 and 110 percent of their
24 statutory mandate?

25 A. You say it is.

1 Q. What percentage of the net of benefits
2 would FirstEnergy companies receive if they produce
3 savings that are between 101 and 110 percent of the
4 statutory benchmark?

5 A. 15 percent.

6 Q. So is it fair to say that FirstEnergy's
7 shared savings proposal as presented in your
8 testimony provides a FirstEnergy company with a
9 15 percent net benefits shared savings amount as long
10 as that company achieves any amount of savings over
11 and above what is mandated by Ohio Revised Code
12 4928.66?

13 THE WITNESS: Would you read that
14 question back, please?

15 (Record read.)

16 A. Yes.

17 Q. Now, again, in letter (c) you state that
18 FirstEnergy's proposal is comparable to the request
19 of other utilities in Ohio. We mentioned the AEP
20 plan. Do you know when that stipulation was filed in
21 that case?

22 A. I do not know offhand.

23 Q. And are you aware the stipulation has not
24 been approved by the Commission?

25 A. Yes.

1 Q. Do you know what parties signed on to
2 that stipulation?

3 A. I know what parties did not.

4 Q. What parties did not?

5 A. IEU and the staff.

6 Q. But you're unaware of any signatory
7 parties to that stipulation?

8 A. Assume that all other parties did.

9 Q. Now, are you aware of any of the
10 particular circumstances that surrounded the AEP
11 negotiations that would have led to the outcomes
12 specific to shared savings?

13 A. Not directly.

14 Q. Okay. Do you know how long the parties
15 negotiated before producing a stipulation?

16 A. No, I do not.

17 Q. Are you aware of the cost cap that is a
18 percentage of program investment that is part of
19 AEP's proposal?

20 MS. KOLICH: Objection. The initial
21 question was whether he was aware of any of the
22 details surrounding the stipulation. He indicated
23 no. And now we're asking a bunch of questions about
24 the details of the stipulation.

25 EXAMINER BOJKO: Mr. Allwein.

1 MR. ALLWEIN: I'm only asking
2 Mr. Ouellette here a question that he answered in the
3 deposition.

4 MS. KOLICH: That doesn't make it
5 admissible here.

6 EXAMINER BOJKO: Can you please reread
7 the last question?

8 (Record read.)

9 EXAMINER BOJKO: Mr. Allwein, maybe you
10 can clarify your question, is cost cap the same
11 question regarding shared savings? Rephrase your
12 question and let's try again.

13 Q. (By Mr. Allwein) Are you aware of any of
14 the conditions that are part of AEP's stipulated
15 agreement regarding their shared savings proposal?

16 A. Yes.

17 Q. And what conditions are you aware of?

18 A. I'm aware that their net of benefit
19 calculation is similar to ours. I'm also aware of
20 the cap.

21 Q. So you're aware of the cost cap that is a
22 percentage of program investment.

23 A. Yes.

24 Q. When the FirstEnergy companies adopted
25 the 15 percent shared savings percentage from AEP's

1 stipulation, did FirstEnergy also adopt this cost cap
2 portion of the AEP stipulation?

3 A. No.

4 Q. Are you aware of any of the other
5 conditions that govern AEP's shared savings mechanism
6 in the stipulation?

7 A. Not that I can think of.

8 Q. FirstEnergy companies propose to include
9 transmission and distribution projects in their
10 shared savings calculation; is that correct?

11 A. Yes.

12 MS. KOLICH: Could I have that question
13 reread, please?

14 EXAMINER BOJKO: You may.

15 (Record read.)

16 MS. KOLICH: The shared savings
17 calculation, you mean based on the 15 percent or
18 whether or not it qualifies? Because I think the
19 answer is different depending, just to clear the
20 record up.

21 THE WITNESS: Can I address that?

22 Q. Yes, please.

23 A. The transmission and distribution savings
24 associated with meeting our energy portfolio standard
25 would be used to calculate the target, to put into

1 the target, and so, therefore, it would be part of
2 the components to get to a shared savings number.

3 The fact of the matter is, is that
4 whether energy -- or, whether transmission and
5 distribution projects would qualify for shared
6 savings would be difficult because it's going to be
7 tough for them to make the total -- the utility cost
8 test because of the expense of putting those in.

9 Q. The reasons that a company undertakes
10 transmission and distribution projects are
11 reliability, upgrades in the system, and growth; is
12 that correct?

13 A. For the most part, that's true. They do
14 do other -- there are other reasons why utilities
15 would do transmission and distribution projects.

16 Q. But a primary purpose of transmission and
17 distribution projects is not energy efficiency.

18 A. That is correct.

19 Q. FirstEnergy companies' shared savings
20 calculation as proposed excludes mercantile
21 self-directed projects; is that correct?

22 THE WITNESS: Would you read that
23 question back please?

24 (Record read.)

25 A. That is correct.

1 Q. And this is because the self-directed
2 mercantile projects are not part of the net benefits
3 portion of the calculation used by the FirstEnergy
4 companies to calculate shared savings; is that
5 correct?

6 A. That is correct.

7 MR. ALLWEIN: That's all the questions I
8 have, your Honor, thank you.

9 Thank you, Mr. Ouellette.

10 EXAMINER BOJKO: Did you, Mr. Smith?

11 MR. SMITH: No questions.

12 EXAMINER BOJKO: Mr. Kurtz?

13 MR. KURTZ: I do have a few, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Kurtz:

17 Q. Good afternoon, Mr. Ouellette. Let me
18 just clarify and follow up from OCC questions.

19 On the T and D, transmission and
20 distribution, I understand that you will not seek an
21 incentive --

22 A. Mr. Kurtz, could you use a microphone, I
23 have a head cold and I'm really struggling to try to
24 hear. Thank you.

25 Q. On the T and D as I understand it, you

1 are not seeking shared savings on those investments;
2 is that correct?

3 A. No, that is not correct.

4 Q. What is correct?

5 A. We would look for shared savings if they
6 qualified under the utility cost test.

7 Q. Okay. Did I understand that on the
8 mercantile self-direct programs you are not seeking
9 shared savings on those?

10 A. That is correct.

11 Q. Now, assume that you met 99 percent of
12 your mandate for one year with the mercantile
13 self-direct, would all of the other programs that
14 then got pushed over -- suppose then you made 110,
15 120, 130 percent of the benchmark, would all those
16 other programs qualify for shared savings by virtue
17 of being pushed up the stack by the mercantile
18 programs?

19 A. As soon as we got past our benchmark of a
20 hundred percent, any program that would pass the
21 utility cost test would be in the calculation for net
22 savings.

23 Q. So even though you wouldn't get a
24 specific shared savings on the mercantile, that
25 could, under this example, if you filled up

1 99 percent of your requirement, push up the other
2 projects and make them eligible.

3 A. That's correct. And the reason that
4 that's important is that if not, there would be no
5 incentive for the company to move forward with any
6 other projects for energy efficiency.

7 Q. I haven't heard any dollars. Do you have
8 any idea how much money we're talking about during
9 the three-year program?

10 A. No. We haven't done those calculations
11 at this point.

12 Q. So right now it's just a methodology with
13 no dollars attached to it?

14 A. That's correct.

15 Q. I'd like to refer you to OCC Exhibit 9.
16 You were being asked questions. Your answer on part
17 (g), you were asked "Explain in detail why achieving
18 greater reductions than the statutory benchmarks is
19 appropriate and should be incentivized."

20 I'd like to go over your answer. Do you
21 have your answer in front of you?

22 A. Yes.

23 Q. Okay. First you say "To the extent there
24 are cost-effective measures available beyond what the
25 utility is required to meet using statutory

1 benchmarks, the customers benefit through the
2 postponement of constructing new generation." Did I
3 read that right?

4 A. Yes.

5 Q. Now, the FirstEnergy operating companies
6 own no generation, correct?

7 A. That's correct.

8 Q. And they have no plans to build
9 generation; is that correct?

10 A. That is correct.

11 Q. Okay. So that benefit of overcompliance
12 would not apply to the customers of the FirstEnergy
13 operating companies.

14 A. Well, remember, the net of benefits is
15 the generation -- or, the energy efficiency as well
16 as capacity and the offset of not having it, not
17 having to do it anywhere within our footprint
18 would -- or drive the cost up could have a benefit.

19 Q. I don't think you answered my question.
20 If the FirstEnergy utilities own no generation now
21 and have no plans to build generation, then the
22 postponement of constructing new generation would not
23 be a benefit of overcompliance; isn't that correct?

24 A. I think the benefits are the benefits of
25 customers at this point in time. And if customers --

1 if you don't have to build generation in which
2 customers would -- could have to pay for or compete
3 for, the thought process is, and use the existing
4 generation, that it helps keep costs down.

5 Q. Maybe you're not understanding me. I
6 read this answer to be customers should pay the
7 operating companies -- three operating companies an
8 incentive to overcomply because that could --
9 customers will benefit through the postponement of
10 constructing new generation. That's what you wrote
11 in this data interrogatory answer, isn't it?

12 A. Yes.

13 Q. Okay. But the FirstEnergy operating
14 companies are proposing to build no new generation
15 anywhere in your 20-year long-term forecast that was
16 filed at the Commission; isn't that right?

17 A. That is correct. But the sheer fact that
18 we don't have to do it is a benefit to customers.

19 Q. You're not proposing to build generation
20 because you own no generation and it's been spun off
21 to FirstEnergy Solutions, that's not a result of
22 energy efficiency overcompliance, is it?

23 A. I think the fact of the matter is anybody
24 building new generation today would have to build it
25 at a higher cost than what the existing generation

1 is, which then would probably make the cost of
2 generation and the cost to customers higher,
3 therefore, not having to do that it helps keep costs
4 down.

5 Q. Do you think the customers of FirstEnergy
6 operating companies pay a cost-based rate for
7 generation so that the cost of new construction would
8 have any impact at all if don't we pay a market-based
9 rate?

10 A. That's correct.

11 Q. Well, what are you testifying to, then,
12 the cost of the construction that the utilities are
13 not going to build will somehow -- that you're not
14 planning on building will somehow be a benefit to
15 consumers?

16 A. What I said was not building generation
17 today will save customers money.

18 Q. And that's the -- that's what the plan of
19 utilities is, not to build generation, whether or not
20 you get shared savings or not.

21 A. But the shared savings component is an
22 incentive to overcomply to the energy -- to energy
23 efficiency standards.

24 Q. So I guess are you saying that there's a
25 possibility the three utilities will build generation

1 unless you get shared savings?

2 A. No, I didn't say that.

3 Q. Okay. Let me go to your answer again.

4 Now we get into, you say "Further, for those
5 utilities without generation, there is less demand in
6 the market, which generally reduces wholesale
7 prices." Can we talk about that for a minute?

8 A. Yes.

9 Q. That, I understand. It's one
10 megawatt-hour of less demand in the market during the
11 next auction, presumably the prices will be lower by
12 some economic increment because the supply's the same
13 but there's less demand, supply-demand crosses and
14 that sets the market price. Is that what you're
15 getting at here?

16 A. Do you want to shorten that up a little
17 bit?

18 Q. Yeah. There's less demand -- well, where
19 the supply curve and the demand curve cross was where
20 the market price is; is that correct? Is that what
21 you're --

22 A. I believe that to be correct.

23 Q. So if you reduce demand, you'll lower the
24 market clearing price.

25 A. You would expect that.

1 Q. Expect that. Okay. Now, that's economic
2 theory, less demand, and we're seeing that now in the
3 economy, results in lower pricing.

4 A. Yes.

5 Q. Now, have you done any kind of study to
6 justify the 15 percent shared savings with this
7 theoretical incremental reduction in the market price
8 to know whether customers are paying the right amount
9 or getting a good deal for this 15 percent?

10 A. No, we have not.

11 Q. Well, why should the Commission approve
12 15 percent if there's -- if you don't know how much
13 the reduction in the market price for generation will
14 be if you get this incentive?

15 A. Again, we use the 15 percent as an
16 incentive to overcomply.

17 Q. Let me finish up. You understand that
18 Duke Energy-Ohio and Columbus & Southern and Ohio
19 Power, those utilities all own their own generation.

20 A. Yes.

21 Q. So if they overcomply, they'll sell less
22 of their generation at retail, presumably?

23 A. I would expect that.

24 Q. Or they might even defer the construction
25 of new generation?

1 A. I don't know that I should be speaking to
2 what Duke and AEP will do with their operations.

3 MR. KURTZ: Thank you. Those are all my
4 questions.

5 EXAMINER BOJKO: Thank you.

6 Mr. Heintz?

7 MR. HEINTZ: No questions.

8 EXAMINER BOJKO: Mr. Reisinger?

9 MR. REISINGER: No questions, your Honor.

10 EXAMINER BOJKO: Mr. Weldele?

11 MR. WELDELE: No questions, your Honor.

12 EXAMINER BOJKO: Mr. Lavanga?

13 MR. LAVANGA: No questions, your Honor.

14 EXAMINER BOJKO: Mr. Clark?

15 MR. CLARK: No questions, your Honor.

16 EXAMINER BOJKO: Mr. Lindgren.

17 MR. LINDGREN: Very briefly, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Lindgren:

21 Q. Good afternoon, Mr. Ouellette.

22 Page 11 of your testimony, on page 11 you
23 discuss paying administrators to oversee mercantile
24 self-directed projects, and then you go on to say
25 that the administrator fees will be assigned to the

1 rate schedules for customers in the small enterprise
2 and mercantile utility customer segments.

3 My question is that, are you aware of any
4 small business customers that would qualify to
5 participate in these mercantile self-directed?

6 A. Well, there are what we call GS class
7 customers which were our small enterprise customers
8 that are in that class that are actually, their
9 annual usage would qualify them to be mercantile
10 class customer.

11 Q. Do you know approximately how many
12 customers there are in that class?

13 A. I don't know offhand but I could find
14 out.

15 Q. Thank you.

16 MR. LINDGREN: No further questions.

17 EXAMINER BOJKO: Any redirect,
18 Ms. Kolich?

19 MS. KOLICH: Could you give one minute,
20 your Honor?

21 EXAMINER BOJKO: Yes. Let's go off the
22 record.

23 (Recess taken.)

24 MS. KOLICH: Just a couple questions,
25 your Honor.

1 EXAMINER BOJKO: Please proceed.

2 - - -

3 REDIRECT EXAMINATION

4 By Ms. Kolich:

5 Q. Mr. Ouellette, you were asked several
6 questions about the 15 percent shared savings; do you
7 recall that?

8 A. Yes.

9 Q. If the company doesn't receive 15 percent
10 of the net as part of its shared savings, will the
11 company strive to exceed the statutory benchmarks set
12 forth in 4928.66?

13 A. No.

14 MS. KOLICH: That's all I have, your
15 Honor.

16 EXAMINER BOJKO: Any recross,
17 Mr. Allwein?

18 MR. ALLWEIN: No, your Honor.

19 EXAMINER BOJKO: Mr. Smith?

20 MR. SMITH: No.

21 EXAMINER BOJKO: Mr. Kurtz?

22 MR. KURTZ: No, your Honor.

23 EXAMINER BOJKO: Anybody else?

24 Mr. Lindgren?

25 MR. LINDGREN: No, thank you.

1 - - -

2 EXAMINATION

3 By Examiner Bojko:

4 Q. Mr. Ouellette, if the shared savings
5 percentage was lower than 15 percent, would the
6 company -- say, 10 percent or 13 percent or any
7 percentage level lower, would the company still be
8 incentivized to exceed the statutory benchmarks?

9 A. At a lower percentage still be
10 incentivized, but would that be enough? I can't give
11 you an answer on that.

12 Q. Well, the company in its proposal is
13 receiving full cost recovery for meeting its
14 statutory benchmarks; is that right?

15 A. Yes.

16 Q. So why would there be a disincentive to
17 exceeding your benchmarks if you got any percentage
18 even if it's lower than 15 percent?

19 A. Well, there are additional costs
20 associated with trying to drive, you know, other
21 programs and to try to drive them past what the
22 portfolio program today is set at. We just felt that
23 15 percent was a good, fair number, remembering that,
24 you know, customers would receive 85 percent of that
25 benefit.

1 Q. So when you talk about costs, are you
2 saying that you believe there are other costs outside
3 those you are seeking recovery from customers to meet
4 your statutory benchmarks?

5 A. No. But they're still budgeted costs.

6 Q. And you will, under your proposal, get
7 recovery for all of those costs.

8 A. I believe so.

9 Q. So any incentive above 1 percent is
10 beneficial to the company.

11 A. It's beneficial but it may not be enough
12 of a driver to incent anybody to do anything.

13 EXAMINER PRICE: But Mr. Ouellette, this
14 is not an exact science. Are you telling me that on
15 December 15th if you hit your benchmarks for the
16 year, that you'll just pack up and go home?

17 THE WITNESS: Yes.

18 EXAMINER PRICE: There you go.

19 MS. KOLICH: Am I allowed to redirect?

20 EXAMINER PRICE: I'm done.

21 EXAMINER BOJKO: No further questions,
22 you may step down. Thank you.

23 Ms. Kolich.

24 MS. KOLICH: Your Honor, at this time I
25 would move for the admission of Company Exhibit 3.

1 EXAMINER BOJKO: Which is Mr. Ouellette's
2 testimony. Is there any opposition to the admission
3 of Mr. Ouellette's testimony?

4 Hearing none, Company Exhibit 3 will be
5 admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 MR. ALLWEIN: Your Honor, at this time --
8 I'm sorry.

9 EXAMINER BOJKO: Go ahead, Mr. Allwein.

10 MR. ALLWEIN: I'd moved to introduce OCC
11 Exhibit 9, offer it into evidence.

12 EXAMINER BOJKO: Which is Nucor's data
13 request and the company's response to DR No. 17.

14 Are there any objections to the admission
15 of OCC Exhibit 9?

16 MS. KOLICH: A partial objection, your
17 Honor. Not all of the questions on this data request
18 were addressed during his testimony, and to the
19 extent that those questions -- those portions of this
20 data request were not addressed, that they not be
21 included as part of the record.

22 EXAMINER BOJKO: Mr. Allwein, do you have
23 a response?

24 MR. ALLWEIN: Can the company help us out
25 and identify which ones they want to exclude?

1 MS. KOLICH: We could go through the
2 record and indicate, if I get a checklist of what was
3 covered, I will pick all the ones that were not
4 addressed in the record.

5 EXAMINER BOJKO: I don't think that's
6 necessary. I believe that these all referred to a
7 subject matter that was discussed very thoroughly
8 today and to keep it all in context, I think that the
9 whole data request and response should be admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 EXAMINER BOJKO: Anything further before
12 we adjourn for the day? No?

13 Then we will adjourn until 10:00 a.m.
14 tomorrow morning. And we will begin with
15 Mr. Fitzpatrick and then the order is Mr. Sullivan, I
16 believe next.

17 MR. POULOS: Yes, your Honor.

18 EXAMINER BOJKO: And then Mr. Sawmiller.
19 Is that correct?

20 MR. ALLWEIN: Yes, your Honor.

21 EXAMINER BOJKO: We are adjourned, thank
22 you.

23 (Thereupon, the hearing was adjourned at
24 5:05 p.m.)

25 - - -

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, March 10, 2010, and carefully compared with my original stenographic notes.

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

My commission expires June 19, 2011.

(MDJ-3523)

- - -

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Maria DiPaolo Mrs.