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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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.:

- - -

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.

VOLUME II

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Wednesday Morning Session,
March 3, 2010.

- - -

EXAMINER PRICE: Let's go on the record.
Good morning. The Public Utilities
Commission has set for hearing at this time and this
place Case Numbers 09-1947-EL-POR, et al. This is
the hearing for FirstEnergy's energy efficiency and
peak demand reduction program portfolio proceeding.

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

We'll dispense from taking appearances
from the parties.

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

Seeing none.

(Witness sworn.)

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

THE WITNESS: George L. Fitzpatrick,
business address is 898 Veterans Highway, Suite 430,
that's in Hauppauge, H-a-u-p-p-a-u-g-e, New York,
11780.

EXAMINER PRICE: Thank you.

1 Mrs. Kolich.

2 MS. KOLICH: Thank you, your Honor. I
3 have a document entitled Direct Testimony of George
4 L. Fitzpatrick in this proceeding that I would like
5 to mark for identification as Company Exhibit 4.

6 EXAMINER PRICE: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MS. KOLICH: I also have another document
9 that is going to be passed out to counsel that was
10 also the document I referenced yesterday, it's an
11 errata sheet for the CEI, OE, and TE energy
12 efficiency and peak demand reduction program
13 portfolio and initial benchmark report, I would like
14 that to be marked as Company Exhibit 9 for
15 identification.

16 EXAMINER PRICE: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 - - -

19 GEORGE L. FITZPATRICK

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

22 DIRECT EXAMINATION

23 By Ms. Kolich:

24 Q. Mr. Fitzpatrick, do you have a copy of
25 your direct testimony with you?

1 A. I do.

2 Q. And this testimony is comprised of
3 testimony and related exhibits; is that correct?

4 A. Yes, it is.

5 Q. Do you have any corrections to your
6 testimony?

7 A. No.

8 Q. The exhibits attached to your testimony,
9 were they prepared by you or under your direct
10 supervision?

11 A. Yes, they were.

12 Q. Do you have any corrections to those
13 exhibits?

14 A. No, I do not.

15 Q. Your testimony also incorporates by
16 reference the company's three portfolio plans; is
17 that correct?

18 A. Yes.

19 Q. Those plans have already been premarked
20 as Company Exhibit 6 for the Ohio Edison plan,
21 Company Exhibit 7 for the CEI plan, and Company
22 Exhibit 8 for the Toledo Edison plan. Do you have
23 any corrections to any of these three exhibits?

24 A. Yes, we have some errata for those three
25 plans.

1 Q. And what would those changes be?

2 A. Okay. There are -- we have I
3 guess errata items for the three plans. The first
4 one is for the CEI plan, it's basically "Table 2
5 should reference Total FirstEnergy Ohio SB 221
6 benchmarks for the period 2009 to 2012." And the
7 "Filing values reflected CE values. The "Update
8 shows total FirstEnergy Benchmarks. Corresponding OE
9 and TE tables were not affected." That's the first
10 one.

11 The second one is for CEI plan again, and
12 it's the "Table 4 should reference Cleveland Electric
13 SB 221 Benchmarks for the Period '09 through '12.
14 Initial Filing values reflected OE values. Update
15 now shows CE Benchmarks."

16 No. 3 affects all plans, it's pages 5 and
17 6 in the documents, and Table 5 shows number of
18 customer values and they've been updated, and the
19 replacement pages are included with updated values as
20 part of the document that I have.

21 Q. And the document you have is Company
22 Exhibit 9 for identification?

23 A. Yes, it is.

24 Okay. No. 4, all the plans. It
25 basically starts on page 27 for OE and CI, and 26 for

1 TE, and it's "Section 3.1.4 references should be
2 updated from EDC Table 4 to EDC Table 5."

3 No. 5 affects the CEI plan which affects
4 pages 160 through 162, Appendix C-3, pages 9 and 10.
5 The "Column headings for Total Budget should read
6 2010 through 2012. All but Mercantile Self-Direct
7 state 2010 through 2013. Corresponding OE and TE
8 tables are not affected."

9 The next change affects the CEI plan,
10 page 145, Appendix C-3, page 17, and it's "Table 7E,
11 the TRC values not displayed for interruptible demand
12 reduction for 2011 and '12. The value should read:
13 2011 - .43, and 2012 - .77. The corresponding OE and
14 TE tables are not affected."

15 And finally, all the plans will be
16 affected by this change, pages 143 to 146 for CEI and
17 TE plans, and 144 through 147 for the OE plan,
18 Appendix C-3, pages 13 through 18. "Table A through
19 F: Program costs and benefits column headings show
20 measure as (\$000). The (\$000) measure should be
21 struck."

22 Q. And attached cover sheet of -- the
23 summary sheet of Company Exhibit 9 are several pages,
24 are these pages to replace the pages currently in the
25 three plans?

1 A. Yes.

2 Q. With these corrections made if I were to
3 ask you the same questions that are included in your
4 direct testimony today, would your answers included
5 in your new direct testimony be the same?

6 A. Yes, they would.

7 MS. KOLICH: Your Honor, the witness is
8 available for cross.

9 EXAMINER PRICE: Thank you.

10 OCC?

11 MR. POULOS: Yes, your Honor, thank you.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Poulos:

15 Q. Good morning, Mr. Fitzpatrick.

16 A. Good morning.

17 Q. I'd like to start with looking at your
18 testimony, Company Exhibit 4 and page 3 of your
19 testimony, about the purpose of line 20.

20 MS. KOLICH: Excuse me, before you get
21 started. Can you use a microphone?

22 MR. POULOS: Okay.

23 EXAMINER PRICE: Thank you.

24 Let's go off the record.

25 (Off the record.)

1 EXAMINER PRICE: Back on the record.

2 Q. (By Mr. Poulos) Let me start over again.
3 Morning, Mr. Fitzpatrick.

4 A. Good morning.

5 Q. I want to start with your testimony, page
6 3, line 20, regarding the purpose of your testimony.

7 A. Yes.

8 Q. And it states on line 20 part of the
9 purpose of your testimony is to summarize and sponsor
10 the energy efficiency peak demand reduction plans.
11 Do you see that?

12 A. Yes, I do.

13 Q. When you refer to "sponsor," isn't it
14 true that in your opinion your job is to bring the
15 plans in as exhibits to your testimony and offer
16 those plans to the Commission for their review?

17 A. And also to sponsor it in terms of any
18 questions that the parties may have.

19 Q. Isn't it true that all of the Black &
20 Veatch work that is done for FirstEnergy on this
21 project was done under your direction? Correct?

22 A. That's correct.

23 Q. And that you have the ultimate say for
24 Black & Veatch in this project and what is
25 incorporated in these plans.

1 A. That's correct.

2 Q. And isn't it true that the work that you
3 do and the comments you make in these, in your
4 testimony, is similar for all the plans, all three
5 plans?

6 A. Yes.

7 Q. And just to talk a little bit about the
8 limitations of your testimony, it is your
9 understanding that Mr. Ouellette is sponsoring the
10 cost recovery mechanism for the plan, correct?

11 A. Yes.

12 Q. And you are not testifying on that
13 subject, correct?

14 A. No.

15 Q. Also you understand that Mr. Ouellette is
16 sponsoring testimony on the companies' shared savings
17 mechanism, correct?

18 A. Yeah.

19 Q. And that you are not testifying on that
20 subject either, correct?

21 A. No.

22 Q. Isn't it true that you have also worked
23 for FirstEnergy's Pennsylvania utilities on their
24 energy efficiency and demand response matters?

25 A. Yes.

1 Q. And that you also sponsored testimony in
2 their filing in front of the Pennsylvania Commission,
3 correct?

4 A. Yes.

5 Q. And that was in 2009, correct?

6 A. Yes.

7 Q. Approximately July?

8 A. Yes.

9 Q. And in Pennsylvania they did have a CFL
10 program as part of their proposal, correct?

11 A. As part of the plans, yes.

12 Q. As part of the FirstEnergy plans.

13 A. Correct.

14 Q. The design of the CFL program in
15 Pennsylvania is different than the design in the
16 original plan proposed in Ohio, correct?

17 A. Yes.

18 Q. And just to clarify, you started working
19 in Ohio on the plan for FirstEnergy in late-summer;
20 is that correct?

21 A. Yes.

22 Q. And that was after the initial CFL
23 program in Ohio by FirstEnergy was launched?

24 A. Yes.

25 Q. Or was to launch.

1 A. I'm sorry, could you repeat that?

2 Q. Sure. You started working in Ohio in
3 late-summer and that was after the initial CFL plan
4 was filed by FirstEnergy, correct?

5 A. I believe that's true.

6 Q. And isn't it true that Black & Veatch did
7 not have any involvement in the development of that
8 initial CFL program?

9 A. That's true.

10 Q. Now, there is a -- you are familiar with
11 a redesigned CFL program, correct?

12 A. Yes.

13 Q. And you were involved in the redesigning
14 of that plan, correct?

15 A. We viewed that design as a combination of
16 FirstEnergy and the collaborative, the work of that
17 group.

18 Q. And when you say "FirstEnergy and the
19 collaborative," you're including Black & Veatch as
20 well?

21 A. We basically took that program from
22 FirstEnergy and the collaborative and we put that
23 program into the plan.

24 Q. Could you describe for me how the
25 redesigned plan differs from the Pennsylvania CFL

1 plan?

2 MS. KOLICH: Objection.

3 EXAMINER PRICE: Grounds?

4 MS. KOLICH: I think counsel misspoke. I
5 don't believe you want him to compare the entire plan
6 in Pennsylvania with the entire plan in Ohio.

7 MR. POULOS: I do not. CFL plan. The
8 redesigned CFL plan. Thank you.

9 EXAMINER PRICE: Thank you.

10 A. The best way to characterize the
11 difference between the Pennsylvania CFL program and
12 the Ohio CFL program iterations is that in Ohio the
13 design of the program was much more active or
14 aggressive because of the targets that needed to be
15 hit in the time frame required by Commission order
16 and SB 221.

17 The Pennsylvania plan -- the Pennsylvania
18 CFL program design was more passive in nature,
19 requiring customers to initiate contact via internet
20 or phone, but I think that it's certainly two
21 significantly different circumstances on which those
22 designs developed.

23 Q. I'm going to move over to a different
24 subject for a moment.

25 EXAMINER PRICE: Mr. Poulos, before you

1 do, there's one question I want to clarify.

2 You were not involved in the redesign of
3 the CFL program; is that correct?

4 THE WITNESS: No, sir.

5 EXAMINER PRICE: It was simply
6 translating that redesigned program into the plan.

7 THE WITNESS: That's correct.

8 EXAMINER PRICE: Thank you very much.

9 Thank you, Mr. Poulos.

10 Q. (By Mr. Poulos) I want you to look at the
11 application. Do you have that in front of you?

12 A. No, I do not.

13 EXAMINER PRICE: If FirstEnergy's counsel
14 could provide the witness copy of the application.

15 MR. POULOS: Your Honor, may I go off the
16 record for a second?

17 EXAMINER PRICE: You may.

18 (Discussion off the record.)

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

21 The witness has been provided a copy of
22 the application and I believe that FirstEnergy's
23 agreed that we will mark the application at this time
24 just for reference purposes as Company Exhibit 10.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 EXAMINER PRICE: Mr. Poulos.

2 MR. POULOS: Thank you, your Honor.

3 Q. (By Mr. Poulos) Mr. Fitzpatrick, looking
4 at Company Exhibit 10, the application, can I have
5 you turn to page 7 and the paragraph numbered 19.
6 Let know when you're there, please.

7 A. I'm just reading it.

8 Okay.

9 Q. This paragraph 19 on page 7 is a request
10 by the company for a waiver to the extent the
11 customer sectors utilized in the plans conflict with
12 the Commission's forthcoming order approving the
13 portfolio plan template in Case No. 09-714. Do you
14 see that?

15 A. Yes.

16 Q. And the request for waiver relates to the
17 seven classifications that are proposed in the
18 Commission's order. Is that your understanding?

19 A. Yes.

20 Q. And the template case, and the template
21 you're referring to in 09-714, relates to a proposed
22 template for energy efficiency and peak demand
23 reduction plans. Is that your understanding?

24 A. The template to report them by customer
25 class. Yes.

1 Q. And you are familiar with that Case
2 No. 09-714; is that correct?

3 A. Yes.

4 Q. And in that proposal, in that docket, the
5 staff proposes to organize into the seven classes
6 that we just mentioned, right?

7 A. Yes.

8 Q. And those seven classes are residential
9 programs, residential low-income programs, small
10 enterprise programs, mercantile self-directed
11 programs, mercantile utility programs, government
12 nonprofit programs, and transmission and distribution
13 programs; is that your recollection?

14 A. Yes.

15 Q. And that draft template proposes the
16 seven customer classifications as opposed to the
17 traditional residential, commercial, and industrial
18 classifications; is that correct?

19 A. Traditional?

20 Q. Well, the ones that are used now in
21 tariffs. Is that correct?

22 A. Yes, there are more classifications.

23 Q. And it's your opinion that the use of
24 these seven classifications is reasonable, correct?

25 A. To the extent that the company can

1 provide the information with its accounting and
2 billing systems, yes.

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

5 EXAMINER PRICE: You may.

6 MR. POULOS: Your Honor, I'd like to have
7 the document I just handed Mr. Fitzpatrick, which is
8 his deposition, marked as OCC Exhibit 10.

9 EXAMINER PRICE: So marked.

10 MR. POULOS: Thank you.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Mr. Fitzpatrick, do you recall being
13 deposed by OCC on February 12th?

14 A. Yes.

15 Q. I'll have you turn to page 38, lines 3
16 through 10. And starting on line 3, the question
17 was: "I'm not sure, can't recall your answer, but --
18 from a little bit ago, but did you say that it is
19 your opinion these classifications are reasonable
20 that are provided on this page?"

21 And your answer there was: "Oh, yes,
22 they are."

23 Correct? Did I read that correctly?

24 A. You did read that correctly, yes. I was
25 just looking -- that's what the deposition says, yes.

1 Q. And there's no qualification of the
2 "yes," is there?

3 A. No.

4 Q. And isn't it also true, Mr. Fitzpatrick,
5 that you find that the splitting out of the data into
6 seven classifications is to ensure that the plans
7 have recognized and to the extent they recognized the
8 different classes of customers?

9 A. Yes. That we are providing treatment
10 plan, you know, programmatic treatment to the seven
11 classes, yes.

12 Q. I'm going to have you turn to the CEI
13 Appendix B-1.

14 EXAMINER PRICE: Can I have that
15 reference again, please?

16 MR. POULOS: Sorry?

17 EXAMINER PRICE: Can I have that
18 reference again, please?

19 MR. POULOS: CEI plan, which is 7,
20 Appendix B-1, which is page 167.

21 EXAMINER PRICE: Thank you.

22 Q. Sorry, it's 168.

23 A. Appendix C?

24 Q. Appendix B. Appendix B. It's page

25 168 --

1 A. On 168?

2 Q. I'm sorry, 167 is marked on the bottom,
3 page 168 is not marked on the bottom. Instead it
4 says "page 1 of 3."

5 A. Oh. Because 168 is further back.

6 EXAMINER PRICE: There's a different 168.

7 MR. POULOS: Sorry.

8 A. Okay.

9 Q. So are we all on Appendix B-1?

10 A. B-1, Program Cost Detail Support.

11 Q. I'll have you flip to the next page which
12 talks about the detailed budget year 1. Do you see
13 the page I'm referring to?

14 A. Yes, I do.

15 Q. This states on the bottom right corner
16 "page 1 of 3", correct?

17 A. Yes, it does.

18 Q. And this Appendix B-1, if you look at the
19 next page, it's B-2, and the next page is B-3, and
20 these correlate or correspond to budget years. So
21 Appendix B-1 would be for years 2010, B-2 which would
22 be for 2011, and B-3 would be for 2012?

23 A. Yes.

24 Q. And this, as I said, was for The
25 Cleveland Illuminating Company, correct?

1 A. That's correct.

2 Q. There's also a very similar one for
3 Toledo Edison and Ohio Edison.

4 A. Yes. In format, yes.

5 Q. And this is a document that Black &
6 Veatch put together, correct?

7 A. Yes, it is.

8 Q. And looking at the, just the top third of
9 the document on Appendix B-1, do you see that?

10 A. Yes.

11 Q. These costs, as it states in the heading,
12 are "FirstEnergy Prefiled," correct?

13 A. Yes.

14 Q. And these costs listed under this
15 category as costs under the utility program and labor
16 cost category are some costs that are from 2009,
17 carryover costs; would you agree with that?

18 A. You used the word "sunk" costs.

19 Q. Some, s-o-m-e.

20 A. Oh, I'm sorry. Could you repeat that
21 again, I'm sorry?

22 Q. Sure. The costs that are listed for that
23 top third under the "Utility Program/Labor Costs,"
24 those are costs that were incurred in 2009; is that
25 correct?

1 A. I believe so, yes.

2 Q. And that would also be true for the, way
3 over on the right on that page, the incentive rebate
4 for equipment; that \$2,877,460, those were 2009
5 costs?

6 A. I think, you know, I'm not sure about
7 this. I think some of this might have been 2009,
8 some of it might be 2010. Because this is really the
9 first year of our budget. So I have to check that
10 for you.

11 Q. Whether it's 2009 or 2010 costs in this
12 top third, these are all going to be incorporated
13 into that first year budget that will be passed on,
14 the costs that will be passed on to customers,
15 correct?

16 A. Yes, the 2010 budget. Yes.

17 Q. Now, the labor or the utility
18 program/labor category is a catchall category for
19 both program and labor costs; is that correct?

20 A. Yes, it is.

21 Q. And the reason this information was put
22 in the catchall category is that the information was
23 provided from FirstEnergy to Black & Veatch, correct?

24 A. It was.

25 Q. And those figures were developed and

1 submitted to you by FirstEnergy personnel.

2 A. Correct.

3 Q. So it's true that you personally did not
4 obtain those costs, those figures.

5 A. We did not obtain?

6 Q. You're not the person who determined what
7 the accurate figure would be, correct?

8 A. We did not generate those numbers, no.

9 Q. Thank you.

10 And you did not personally review these
11 costs; is that correct?

12 A. My staff and I looked at the costs, yes,
13 I mean, we did look at them. I don't recall -- we
14 didn't see anything that we thought was, you know,
15 any outlier events in those costs, but I don't recall
16 the details of that.

17 Q. Isn't it true you didn't look at the
18 specific costs, you just looked at the numbers to see
19 if they were reasonable?

20 A. We didn't drill into the individual
21 elements of the costs. I think we looked at some of
22 these costs concerning what appropriate, you know,
23 whether they were an appropriate bandwidth.

24 Q. And moving down for a second, since I'm
25 on this page, to the second and third categories, the

1 second or the middle part of the page, those figures
2 there are Black & Veatch generated numbers, correct?

3 A. That's correct.

4 Q. And they're projections, correct?

5 A. Yes, they are.

6 Q. And it's your opinion that those
7 projections are a reasonable expectation of what the
8 costs will be.

9 A. Yes.

10 Q. And that would be the, going to page 2,
11 Appendix B-2, now, Appendix B-2 looking at the middle
12 grouping, the new EE plan programs, that would be the
13 same for those, those are all projected numbers,
14 correct?

15 A. Yes.

16 Q. And the ones on the top column, the
17 FirstEnergy energy prefiled programs, those are all
18 costs that were generated by FirstEnergy and
19 submitted to Black & Veatch, correct?

20 A. Yes.

21 Q. And they're just a -- Black & Veatch
22 simply divided the costs up between years 1, 2, and
23 for some cases 3 as well.

24 A. Could you repeat that question, please?

25 Q. Sure. Let me go over an example for you

1 first.

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

4 EXAMINER PRICE: You may.

5 MR. POULOS: Your Honor, may I have this
6 document marked as OCC Exhibit 11.

7 EXAMINER PRICE: You may.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Mr. Fitzpatrick, OCC Exhibit 11 is from
10 your deposition; do you see that on the bottom right
11 corner?

12 A. Yes, I do.

13 Q. And it's marked in the top "OCC Set 1-RPD
14 10 Attachment 3, page 4 of 7."

15 A. Correct.

16 Q. And you recognize this document, correct?

17 A. I do.

18 Q. Was this a document that was created by
19 Black & Veatch?

20 A. We created the response, yes.

21 Q. And this was a response to a set of
22 discovery questions sent to the company, correct?

23 A. Right.

24 Q. Now, could you describe what this
25 document identifies?

1 A. Well, it basically shows for the
2 residential and the residential low-income classes,
3 it shows the number of bulbs projected to go to each
4 of the operating companies, and it shows the 2010 and
5 '11 costs, and it shows that for residential and
6 residential low-income customers.

7 Q. And looking at CE in the middle column on
8 the top part --

9 A. Yes.

10 Q. -- that has a number for 2010 of
11 \$1,910,235?

12 A. Yes.

13 Q. For 2010, a similar number, correct?

14 A. Yes.

15 Q. And those numbers were taken and put into
16 Appendix B-1 and B-2 under the CFL program, correct?

17 A. Yes.

18 Q. You also have a residential low-income
19 figure for 2010 for CE, for Cleveland Electric
20 Illuminating, correct?

21 A. Yes.

22 Q. And that number was specifically put in
23 the Appendix B-1 that we were looking at, correct?

24 A. Yes.

25 Q. And that's \$824,838?

1 A. Yes.

2 Q. And we went over this in deposition, I
3 don't know if you checked it but it was subject to
4 check, I had you add up -- we talked about how these
5 numbers add up.

6 If you add up the residential category
7 and the costs for 2010 and 2011, would you agree with
8 me that that number is \$10,691,402, and that
9 certainly could be subject to check?

10 A. Subject to check, yes.

11 Q. And then if you look at the residential
12 low-income, those figures there for 2010 on the
13 bottom, those add up to \$2,472,000 -- excuse me,
14 strike that -- \$2,472,046, subject to check; is that
15 correct?

16 A. Subject to check, yes.

17 Q. And that total is \$13,163,448, subject to
18 check.

19 A. Sounds about right to me, yes.

20 Q. And I will certainly provide those
21 figures to be checked.

22 Now, looking back at B-1 and B-2 -- I'm
23 sorry, strike that.

24 A few more questions for you,
25 Mr. Fitzpatrick. You are obviously familiar with

1 Ohio's statutory energy efficiency benchmarks,
2 correct?

3 A. Yes.

4 Q. You would agree with me that these goals,
5 these energy efficiency benchmarks that have been
6 established in amended Senate Bill 221 are laudable,
7 correct?

8 A. I think I make a comment to that effect
9 in my testimony, yes.

10 Q. And why do you refer to these goals as
11 "laudable"?

12 A. I think they're reasonable goals. I
13 think they're goals that are important for the state
14 to reach. I think that it's a good thing to promote
15 energy efficiency, cost-effective energy efficiency.

16 Q. And the time frames are laudable, the
17 time frames for meeting those goals, because they're
18 incremental goals, correct?

19 A. They're incremental goals, I think given
20 where the Commission is right now with their
21 January 7th order concerning the 2009, of course,
22 which went by without, you know, getting any
23 programs -- getting additional traction for new
24 programs I think going forward that they're laudable.

25 Q. And isn't it true that it's your opinion

1 that the companies are responsible for meeting those
2 goals for the good of their customers and the good of
3 Ohio in general, correct?

4 A. I think that the companies have the
5 expertise, have the infrastructure to do a good job
6 at it. But I think that the costs for those programs
7 have to be borne by the folks that are going to
8 benefit by -- the classes that will benefit from
9 those programs.

10 So I don't think it's a social
11 responsibility, rather I think it's one -- it makes
12 sense for the utilities to be involved, but I think
13 that the costs need to be recovered, you know, by the
14 company going forward and also in the past.

15 Q. I want to turn your attention now to your
16 testimony. Looking at the bottom of page 5.

17 MS. KOLICH: Is there a specific line
18 item or line number?

19 MR. POULOS: There is. I'm looking at
20 the last question, line 16, I'm sorry. I thought he
21 was waiting to get there.

22 A. I'm sorry. I'm there.

23 Q. Okay. And looking at the last question
24 on page 5 of your testimony, "Why are the plans
25 designed to exceed statutory goals?" Do you see

1 that?

2 A. There are a number of reasons that we
3 designed the plans to ramp up quickly. You'll recall
4 that we have a number of fast-track programs which
5 were recommended in the collaborative that
6 FirstEnergy reviewed, and I think those fast-track
7 programs, the acceleration of those programs that
8 could generate the most savings, the quickest, are
9 important to do.

10 We have a situation where we're not
11 annualizing our savings so that we need to as much --
12 get as much traction with programs in the early
13 stages as possible so that we can make our 2010, '11,
14 and '12 goals, because it is a three-year plan.

15 Q. Thank you. And you are stating here that
16 these plans as you've designed them were designed to
17 overachieve the statutory benchmarks for energy
18 efficiency, correct?

19 A. They were designed to overachieve, to
20 attempt to overachieve the goals that are stated in
21 the reports in the short-term and ultimately come
22 close to those goal levels by 2012.

23 So we wanted to try to get a head start
24 on it so that we could get more traction and then
25 ultimate lately we would scale down over time so we

1 would meet the goals at the end of the day, the
2 cumulative goals, by 2012.

3 Q. Based on your answer it sounds like part
4 of the reason to design a program to overachieve is
5 an incentive to get started early so you can make
6 sure you're comfortably meeting the goals for future
7 years, correct?

8 A. Generally I think that's true.

9 MR. POULOS: Your Honor, if I can have
10 one moment, I think I'm just about done.

11 EXAMINER PRICE: If I could follow up
12 while Mr. Poulos is working.

13 Given that you need to design to
14 overachieve in order to meet your goals, would it be
15 reasonable once you've hit a statutory goal for any
16 given year to just pack up and go home at that point?

17 THE WITNESS: First of all, the reality
18 of implementation of programs of this scale --

19 EXAMINER PRICE: First of all, I asked
20 you a "yes" or "no" question, so you can answer "yes"
21 or "no" and then you can explain.

22 THE WITNESS: Oh, okay. No.

23 EXAMINER PRICE: And explain why.

24 THE WITNESS: Thank you. I think that --
25 thank you for that opportunity.

1 I think that, you know, if we get to the
2 end of the year you just need to keep gaining
3 traction until you can take a look at where you stand
4 in terms of how well you did for the calendar year.

5 And I think that once you find, for
6 example, once you find when the EM and V results come
7 in in the first couple of months of let's say 2011
8 for 2010, at that point in time you might make one or
9 more mid-course corrections to either ramp up certain
10 activities or ramp down certain program activities
11 depending upon the success of individual programs,
12 the success of participation, and what our goals are.

13 So I think that you would need to have
14 some lag time to make sure that we're getting the
15 traction we think, because EM and V results are not
16 instantaneous, we have to kind of measure that after
17 the fact. We have to close the books on the year, if
18 you will.

19 EXAMINER PRICE: Thank you very much.

20 Thank you, Mr. Poulos

21 MR. POULOS: Thank you, your Honor.

22 Q. (By Mr. Poulos) Mr. Fitzpatrick, earlier
23 I asked you some questions about the CFL plan, the
24 redesigned CFL plan in Ohio, how does it differ from
25 the Pennsylvania CFL plan -- the CFL program. Do you

1 recall those?

2 A. Excuse me, Mr. Poulos, are you talking
3 about the one that was approved by the Commission on
4 September 23rd or a subsequent iteration? There
5 are two of them, aren't there?

6 Q. The CFL program that was included in the
7 December 15th application, so I refer to that as
8 the "redesigned program."

9 A. Okay.

10 Q. Does that distinction make --

11 A. I understand, thank you.

12 Q. Okay. And part of your answer regarding
13 the redesigned CFL program in Ohio that was included
14 in the December 15th filing and the Pennsylvania
15 plan, you stated that there's a difference in those
16 plans because the Pennsylvania is a more passive
17 attempt to meet their benchmarks; is that partially
18 at least a fair characterization?

19 A. Well, I wouldn't characterize it as a
20 "passive attempt." I don't like the way that sounds.
21 I think there are a number of ways to launch a
22 program, a number of different programs.

23 In this particular case we had, in Ohio,
24 you all have had in Ohio aggressive targets,
25 aggressive goals, the need to get traction on that

1 program quickly and, therefore, I think an aggressive
2 approach is a good idea.

3 In Pennsylvania we took a different
4 approach because we had, in our estimation, more time
5 to achieve those goals so we went about it a
6 different way.

7 Q. You would agree with me in Pennsylvania
8 you also had a short time to reach energy efficiency
9 goals, correct?

10 A. Well, we had an ambitious time schedule,
11 but I think in this particular case the time schedule
12 is even more ambitious.

13 MR. POULOS: Your Honor, I have no
14 further questions at this time, thank you.

15 EXAMINER PRICE: Thank you.

16 At this time I think NRDC's counsel would
17 probably like to make an appearance on the record in
18 this proceeding.

19 MR. ECKHART: Yes, your Honor, Henry W.
20 Eckhart, 50 West Broad Street, Columbus, Ohio, I
21 represent the Natural Resources Defense Council.

22 EXAMINER PRICE: Thank you very much.

23 Mr. Sites, cross?

24 MR. SITES: Thank you, your Honor, no
25 questions.

1 EXAMINER PRICE: Mr. O'Brien.

2 MR. O'BRIEN: Yes, your Honor, just a few
3 questions.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. O'Brien:

7 Q. Good morning, Mr. Fitzpatrick.

8 A. Good morning.

9 Q. Just a couple of questions for you.
10 Could you please turn to page 12 of your testimony.

11 A. Excuse me, sir, I didn't -- I didn't get
12 your name, I'm sorry.

13 Q. I'm sorry, I'm Tom O'Brien. I'm
14 representing the Ohio Hospital Association and the
15 Ohio Manufacturers Association in this case.

16 A. Thank you.

17 Q. Page 12 of your testimony, are you there
18 yet?

19 A. Yes, I am.

20 Q. In the answer on this page you use a
21 couple of terms and I just want to try and get some
22 clarity about what you mean by those terms on the
23 record.

24 On line 9, continuing on to line 10, you
25 use the term "marginal cost" in the context of the

1 avoided supply costs that will be used in the total
2 resource cost test.

3 Can I ask you what you mean by "marginal
4 cost" in that context?

5 A. Basically the marginal cost would be the
6 incremental cost of avoided supply.

7 Q. Is that --

8 A. As opposed to the embedded.

9 Q. Is that short-run marginal costs? Is it
10 long-run marginal costs?

11 A. Well, depending upon the test, this is a
12 discussion you can use short-run marginal costs,
13 depending on the time frame of the measure being
14 looked at, or long-run marginal costs.

15 Q. Where do we look to determine those
16 values?

17 A. Where do we look?

18 Q. Yes. Where would you go to find that
19 value in applying the TRC?

20 A. That information was provided to us by
21 FirstEnergy and it would generally be provided by a
22 utility client.

23 Q. Okay. Then further on down on line 10
24 you use the term "monetary cost" in the context of
25 the demand-side measures.

1 A. Yes.

2 Q. What do you mean by "monetary cost"?

3 A. As opposed to nonquantifiable costs or
4 nonquantifiable costs and benefits. We look at the
5 monetary costs, ones that you can assign a dollar
6 amount.

7 Q. Direct costs?

8 A. This particular case you can have direct
9 costs, you can have direct installation costs, you
10 can have direct fixture costs, equipment costs, labor
11 costs, depending on the measure. Depending on the
12 program design.

13 Q. And what kind of considerations go into,
14 you know, how you add particular costs to what goes
15 into the monetary cost for the purposes of applying
16 the TRC?

17 A. All right. If you look at -- monetary
18 costs would be, for example, program overhead costs,
19 program installation costs which could be, you know,
20 materials and labor depending on the program, and
21 incremental measure costs, if you're going to look at
22 what the customer paid or what the utility pays.

23 Q. Okay. Depending on the program, what
24 considerations would go into determining whether you
25 would look at labor costs versus ignoring those

1 costs?

2 A. Well, there's a good case in point in
3 this proceeding that has to do with commercial
4 lighting retrofit from T-12s -- the T-12 fixture to a
5 T-8 fixture, for example.

6 If the program we designed is a retrofit
7 program and, therefore, based upon our analysis, we
8 would look at the measured costs, the equipment costs
9 and the installation and labor to install. If you
10 had a new installation, you might not include
11 installation costs if it was a new equipment program
12 or a new construction program.

13 Q. In your opinion should that consideration
14 apply to any retrofit for equipment regardless of the
15 particular installation?

16 A. This is where it's a case-by-case basis.
17 For example, take a T-12 fixture, the base case
18 action would be to replace the bulbs in the T-12 with
19 high-output bulbs which are lower wattage, and a
20 maintenance man could do that.

21 If you go beyond that to the alternative
22 case, the more efficient case, then you would look at
23 the labor to do that, you know, that retrofit, taking
24 the fixture out, replacing the fixture, disposing of
25 the old one, removing it, taking the bulbs out,

1 taking the ballasts out, the old magnetic ballasts
2 out, okay. So it's different on a case-by-case
3 basis.

4 Q. Well, in the example that you just gave,
5 are you suggesting there is no cost associated with
6 the maintenance man's labor that would be required
7 for that project?

8 A. That's a great question. And I will
9 explain the answer to this. A maintenance man's job,
10 generally speaking, is to go through a building and
11 replace fluorescent bulbs. So to the extent that a
12 maintenance man does it anyway, you have a
13 maintenance man on staff and you might not include
14 that cost. You might not. There are places -- it
15 varies depending on where you are.

16 But my sense is that the maintenance man
17 would do that work as a normal course of his business
18 and his cost, his labor, is fixed, he works in the
19 building every day.

20 If you do a lighting retrofit for this
21 floor, for example, you have to move in new fixtures,
22 T-8 fixtures, move the bulbs in separately, remove
23 all the T-12s, if they were T-12s, put in the new
24 ones. That installation labor is incremental, that's
25 not something a maintenance man would do.

1 A maintenance man is part of the package
2 of the building in that case.

3 Q. So it would be your opinion that to the
4 extent the cost of that maintenance man's labor is
5 essentially sunk, you wouldn't count it in the
6 calculation.

7 A. No, I wouldn't say it's sunk. I would
8 say it's associated with a base case activity, not
9 the high efficiency case activity for that particular
10 measure.

11 MR. O'BRIEN: Thank you, I think that's
12 all the questions I have, your Honor.

13 THE WITNESS: Thank you.

14 EXAMINER PRICE: Mr. Smith.

15 MR. SMITH: Yes, sir.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Smith:

19 Q. Good morning. My name is Craig Smith, I
20 represent Material Sciences Corporation.

21 A. Good morning.

22 Q. Your counsel identified Exhibits 6, 7,
23 and 8 as the plans for Ohio Edison, CEI, and Toledo
24 Edison, do you recall that?

25 A. Yes, I do.

1 Q. Are you sponsoring those plans today?

2 A. I'm sponsoring those plans as part of my
3 testimony, I'm here to describe those plans and
4 answer questions on those plans.

5 Q. And you're sponsoring in total those
6 plans including discussion language used in the
7 plans?

8 A. I'm sorry, I don't understand the
9 question.

10 Q. You're also sponsoring Exhibit 4 which is
11 your prefiled testimony.

12 A. Yes.

13 Q. Okay. Now, the plans were dated
14 December 15, 2009, correct?

15 A. Yes.

16 Q. And in preparing the plans were those
17 plans written under your control or under the
18 company's control?

19 A. Under my control, under Black & Veatch's
20 control, and I was the responsible -- was the partner
21 in charge for this engagement.

22 Q. All right. And it's customary for a work
23 product of this type to allow the companies to review
24 it for accuracy and input?

25 A. They certainly are entitled to review it

1 and did review it and were quite helpful, actually in
2 the process. But all decisions on this report, you
3 know, were made by the Black & Veatch folks. But we
4 certainly took in the valuable input of the
5 FirstEnergy people.

6 Q. What parts of the plan concerns narrative
7 did your firm review it for accuracy and for
8 truthfulness?

9 A. To the best of my knowledge, everything
10 in those reports is true and accurate.

11 Q. Well, for Exhibit 8 which is the Toledo
12 Edison plan, at page 25, if you could take a look
13 at --

14 A. Exhibit 8?

15 Q. Exhibit 8 which is Toledo Edison's.

16 A. I don't -- I have to get that.

17 You said page 25?

18 Q. Yes.

19 A. Okay.

20 Q. Item 3, the discussion about
21 interruptible rate tariff for C/I customers. Do you
22 see that language?

23 A. Yes, I do.

24 Q. Is it true that the companies provided
25 you with this language?

1 A. The company did provide this language,
2 yes. And to our -- we discussed it with the company
3 and we believed it was true and correct.

4 Q. Do you know when the company provided the
5 language to you?

6 A. I couldn't tell you the exact date. I
7 really don't remember. These plans, we were working
8 on these right up till the last second. I'm not sure
9 when we got these.

10 Q. Would you not agree it's more than likely
11 a half second change rather than something put in
12 this report in August of 2009, for example?

13 A. I don't understand the question, I'm
14 sorry.

15 Q. All right. I'm asking you can you tell
16 me at least a month you think this language was
17 inserted into the plans?

18 A. I can't, no. I can't recall.

19 Q. Was this language inserted into the plans
20 after you prepared your tables --

21 MS. KOLICH: Objection.

22 Q. -- that you're sponsoring to --

23 MS. KOLICH: This question's been asked
24 several times.

25 MR. SMITH: No, this is a different one,

1 your Honor.

2 MS. KOLICH: The question that's been
3 asked is whether or not he recalls when this
4 information was inserted into the plans. He has said
5 on several occasions that he does not recall, so
6 asking him more questions about when it was inserted
7 is asked and answered.

8 EXAMINER PRICE: I'm going to overrule
9 the objection. I think Mr. Smith is asking a
10 question about sequence and perhaps the witness will
11 recall, perhaps he will not.

12 You can answer the question.

13 MR. SMITH: Thank you.

14 Q. Let me specifically refer you to your
15 Exhibit FE-GLF-1 attached to your testimony.

16 A. Okay, I'm there.

17 MR. SMITH: May I have a moment?

18 EXAMINER PRICE: Yes.

19 Q. I want to rereference you to Exhibit
20 FE-GLF-3 which concerns Toledo Edison, and there were
21 attached to your exhibits these exhibits in sequence
22 for the companies and I'm asking you to focus on the
23 Toledo Edison part of the exhibits. Do you have
24 those in front of you?

25 A. I'm on Exhibit FE-GLF-3.

1 Q. For Toledo Edison?

2 A. I'm sorry?

3 Q. For Toledo Edison.

4 A. Page 3 of 3.

5 Q. Yes.

6 A. Yes, sir.

7 Q. Okay. Do you recall when these exhibits
8 were prepared?

9 A. These were prepared in December.

10 Q. After you inserted the language shown on
11 page 25 of the report?

12 A. I don't recall.

13 Q. Would it make a difference in your
14 conclusions whether the language in your report on
15 page 25 was inserted after you prepared these
16 exhibits?

17 A. The paragraph you referred to on page 25
18 of the plan discusses the fact that this issue is
19 currently the subject of litigation and, therefore,
20 it is not known whether the request for proposal
21 process will be incorporated into the 2011 as
22 currently contemplated.

23 I believe that's still the case.

24 Q. Does not page 25, the language starts out
25 with the reference that the riders ELR and OLR are

1 expected by the companies to end May 31st, 2011?

2 A. Yes.

3 Q. And is it not the intent as expressed in
4 this language that the RFP process would begin after
5 the company's expected ending of riders OLR/ELR?

6 A. Yes.

7 Q. And does not this language refer to
8 uncertainty whether those -- whether the RFP process
9 actually will go in effect as planned?

10 A. Yes.

11 Q. Would it not, if you turn to Exhibit
12 FE-GLF-2, page 3 of 3, would it not affect the
13 information shown on that exhibit if the RFP process
14 riders did not go into effect?

15 A. What specifically on GLF-3, page 3 of 3,
16 are you referring to?

17 Q. Mercantile utility line, the energy and
18 demand savings for years 2009 through 2012.

19 A. There are no energy and demand savings on
20 that exhibit.

21 Q. Well, maybe we're looking at a different
22 exhibit. I'm looking at page 3 of 3 --

23 A. Exhibit GLF-3.

24 Q. 2.

25 A. Oh, I'm sorry. I thought we were on 3.

1 I'm sorry.

2 MS. KOLICH: I'm sorry, could you give me
3 which line you're referring to on that exhibit?

4 MR. SMITH: The "Mercantile Utility"
5 line.

6 A. You can see that on that line you have
7 the kilowatts saved at 85,857 for program year 2010,
8 they drop down to 16,174 in 2011, and then go up
9 slightly to 21,004 in 2012. There's a significant
10 change in the amount of peak demand reduction that's
11 expected from this particular program due to the
12 uncertainty.

13 Q. What program did you refer to in your
14 answer?

15 A. Mercantile -- you're talking about the,
16 I'm sorry, you're talking about the interruptible, is
17 that what we're talking about now?

18 Q. We are.

19 A. Okay.

20 Q. Let me ask it this way, why did the kW
21 saved go down in 2011 when compared to 2010?

22 A. My recollection was that there was one
23 customer that was -- that is included in 2010, a
24 large customer that was removed from the savings
25 calculation or projection of 2011.

1 Q. Is it your testimony that it does not
2 matter to your numbers shown on this exhibit whether
3 or not the RFP process begins in 2011 or never
4 begins?

5 A. I think we've scaled back what we expect
6 from this program. We'll get some kind of impact
7 from it, but I don't think we're expecting the kind
8 of impact we would get. Should we get the RFP
9 process, I think we will be able to achieve and use
10 that program going forward and overachieve our goals
11 in kilowatt reductions.

12 Q. What would happen to the numbers shown on
13 this exhibit if the RFP process never goes into
14 effect?

15 A. I don't know.

16 MR. SMITH: Nothing further, thank you.

17 EXAMINER PRICE: Thank you.

18 Mr. Eckhart.

19 MR. ECKHART: No questions, your Honor.

20 EXAMINER PRICE: Mr. Heintz?

21 MR. HEINTZ: Some questions, your Honor.

22 - - -

23

24

25

CROSS-EXAMINATION

1
2 By Mr. Heintz:

3 Q. Good morning, Mr. Fitzpatrick.

4 A. Good morning.

5 Q. My name is Michael Heintz, I am an
6 attorney with the Environmental Law and Policy
7 Center. Some clarification questions and some new
8 questions, I think.

9 I'd like to keep your attention on the
10 Exhibit FE-GLF-2, page 3 of 3 that you were just
11 discussing.

12 A. Okay.

13 Q. Looking to about three/fourths of the way
14 down there's a line that reads "Portfolio Plan Total
15 - Cumulative Projected Savings."

16 A. We're on, I'm sorry?

17 Q. We're on FE-GLF-2, page 3 of 3.

18 A. Okay.

19 Q. About three/fourths of the way down, the
20 left column, "Portfolio Plan Total - Cumulative
21 Projected Savings."

22 A. Right.

23 Q. Now, earlier you were talking with
24 Mr. Poulos about a lack of traction on new programs
25 in 2009. Do you remember that?

1 A. Right.

2 Q. And by that I gather you mean that no new
3 programs were launched in 2009?

4 A. Right.

5 Q. Looking to program year 2009, MWh saved
6 where it reads "29,234."

7 A. Right.

8 Q. Is that projection, sitting here today,
9 still correct?

10 A. To the best of my knowledge that
11 projection is correct as of December 15th.

12 Q. Okay. Sitting here today, do you believe
13 that number is correct?

14 A. There was additional mercantile savings
15 that were applied for at the end of the year which
16 would increase that number.

17 Q. If those -- and I see further up the page
18 there is a line for mercantile self-direct, 24,864,
19 those are the applications that have been applied
20 for?

21 A. No, I think after December 15th there
22 were additional savings applied for. I think that
23 number is more like 350,000 now.

24 Q. Okay. Up from 24,000.

25 A. That's right.

1 Q. And those are applications that have been
2 applied for.

3 A. Yes.

4 Q. Not granted.

5 A. Correct.

6 Q. And if those applications are not
7 granted, that number will then go down.

8 A. You mean the 350,000?

9 Q. Whatever the projected savings are.

10 A. I think we've -- I think that there have
11 been 20,000 megawatt-hours already approved by the
12 Commission.

13 Q. Okay. Thank you. I just wanted to
14 clarify that.

15 A. Okay.

16 EXAMINER PRICE: Excuse me, I just have a
17 clarifying question.

18 Your exhibits across all three companies
19 routinely are largely identical, but I notice that
20 Exhibit FE-GLF-2, that you don't have the columns for
21 program year 2009 for Ohio Edison Company and for
22 CEI, but you do have them for Toledo. Can you
23 explain why you dropped them in Ohio Edison and CEI?

24 THE WITNESS: You're on what, GLF-2?

25 EXAMINER PRICE: GLF-2.

1 THE WITNESS: We had savings in Toledo
2 Edison that we accounted for.

3 EXAMINER PRICE: Okay. But there were no
4 savings in Ohio Edison -- then one can infer there
5 were no savings in Ohio Edison and CEI for program
6 year 2009.

7 THE WITNESS: No -- yes, that's correct.

8 EXAMINER PRICE: Okay. Thank you very
9 much.

10 Sorry.

11 MR. HEINTZ: Thank you.

12 Q. (By Mr. Heintz) Mr. Fitzpatrick, I'd like
13 to discuss for a few minutes the solid-state lighting
14 technologies that are discussed in the plan. And as
15 I understand it, a light emitting diode or an LED
16 technology is a form of solid-state lighting
17 technology; is that correct?

18 A. Yes.

19 Q. The plans as submitted include
20 solid-state lighting technology as a program; is that
21 correct?

22 A. They do.

23 Q. And, in fact, in the three plans three
24 solid-state lighting technologies have been provided.

25 A. That's correct.

1 Q. Are you aware of additional solid-state
2 lighting technologies that are on the market today?

3 A. Yes, I am.

4 Q. Are you familiar with those technologies?

5 A. Yes, I am.

6 Q. Would the inclusion of additional
7 solid-state lighting technologies assist the
8 companies in achieving their energy efficiency
9 benchmarks?

10 A. In our opinion, not in the three-year
11 time frame. We looked at LED streetlighting, for
12 example, which holds great promise, FirstEnergy as a
13 matter of fact has one pilot in place already, it's
14 West Akron Campus, with 15 fixtures, and is going to
15 put another 15 fixtures in. So we're looking at that
16 lighting type.

17 We believe for the three-year plan
18 horizon a much better choice was high-pressure
19 sodium. High-pressure sodium basically doesn't quite
20 have the life that LED is supposed to have. We don't
21 know whether or not it will achieve the life. But
22 high-pressure sodium, the differential in kilowatt
23 consumption is less than 1 percent annually for
24 streetlighting.

25 I mean ultimately I think that could be a

1 good technology but probably, you know, we've got to
2 get the price down, the price is over two times, two
3 or three times what HPS is right now, and also we
4 don't know about reliability yet, we don't have
5 enough data.

6 I think that, you know, Mr. Crandall made
7 a comment in his deposition about LEDs, and I agree,
8 I think looking at these LEDs is an important thing
9 and we are, actually the company is doing it. As a
10 matter of fact, I saw those LEDs over a year ago at
11 the West Akron Campus, so they've been there quite a
12 while.

13 So I think that in the future beyond 2012
14 LEDs are something to look at, but right now
15 high-pressure sodium is the best bet.

16 Q. Okay. And I appreciate that answer,
17 there will be a couple of things that I want to go
18 back and revisit with you in that answer.

19 A. Sure.

20 Q. You mentioned first the pilot program at
21 the West Akron Campus for the streetlighting.

22 A. Correct.

23 Q. Where in the plans is that pilot program
24 described?

25 A. It's not in the plans because it doesn't

1 generate any significant savings. It was a pilot
2 undertaken by the company.

3 Q. So the company is in the process of
4 accumulating data for future use.

5 A. Yes. I think the company is, A, in the
6 process of accumulating data, they're putting another
7 pilot in probably later this year on LED lights, and
8 also induction lighting. And we also are looking at
9 data across the country.

10 I mean, there is some data about LEDs,
11 but I don't think it's risen to the level yet where
12 we can say, yeah, let's put this in the arsenal of
13 energy efficiency measures.

14 It certainly does not have the economics
15 or the dramatic improvement in measured life or
16 measured cost to -- as a matter of fact, the measured
17 costs are higher for LEDs. It doesn't really warrant
18 to be put in at this point in time.

19 But it certainly warrants to be looked at
20 and continue to be looked at over the next three to
21 five years to see if prices do come down and
22 reliability meets the expectation.

23 Q. Thank you.

24 Turning to another topic that you
25 discussed with regards to labor costs used in the

1 model. I understand that you included, for example,
2 in the lighting, C&I lighting program, you include
3 labor costs in your modeling.

4 Did you also include the labor savings
5 that would result from the retrofits in your modeling
6 process?

7 A. No, we did not.

8 Q. Okay. Thank you.

9 MR. HEINTZ: Thank you, your Honor, I
10 have nothing further.

11 EXAMINER PRICE: Thank you.

12 Mr. Reisinger?

13 MR. REISINGER: Yes, your Honor, I have
14 just a couple questions.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Reisinger:

18 Q. Mr. Fitzpatrick, my name is Will
19 Reisinger. I represent the Ohio Environmental
20 Council in this case.

21 A. Good morning.

22 Q. I believe in response to OCC's line of
23 questioning you said that the goals of Senate Bill
24 221 are laudable; is that correct?

25 A. I think they are, yes.

1 Q. Okay. And do you also believe that the
2 energy savings envisioned by that statute are
3 laudable?

4 A. I think they're -- are we talking about
5 the short-term or are we talking about the long-term
6 savings to 2025?

7 Q. Yes.

8 A. The 2025 savings levels --

9 Q. Excuse me. Let me -- if you could answer
10 maybe, if it would help, the short-term savings are
11 laudable through 2012?

12 A. I think they're aggressive.

13 MR. REISINGER: I have no further
14 questions.

15 EXAMINER PRICE: Thank you.

16 Mr. Lavanga.

17 MR. LAVANGA: Yes, your Honor, just a
18 couple questions.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Lavanga:

22 Q. Good morning, Mr. Fitzpatrick.

23 A. Good morning.

24 Q. My name is Mike Lavanga. I'm an attorney
25 for Nucor Steel Marion. I have just a couple

1 questions.

2 To start out with, would you agree with
3 me that many of the programs in the FirstEnergy
4 portfolio plan provide both peak demand reduction and
5 energy efficiency benefits?

6 A. Yes.

7 Q. Okay. And you're responsible for
8 performing the total resource cost test on all of the
9 FirstEnergy's proposed programs, correct?

10 A. That's correct.

11 Q. Okay. And you performed a TRC on the
12 company's and industrial interruptible program which
13 includes FirstEnergy's current required ELR
14 interruptible rate; is that correct?

15 A. I believe so, yes.

16 Q. Now, in performing the TRC did you take
17 into account any avoid -- in performing the TRC on
18 the interruptible rate did you take into account any
19 avoided energy benefits associated with FirstEnergy's
20 ability to call economic interruptions under ELR?

21 A. I don't recall, I'll have to check that.

22 Q. Okay. And did you take into account any
23 reliability benefits associated with interruptible
24 rates, interruptible load?

25 A. Again, I'll have to if I could provide it

1 to you; I don't recall that, no.

2 Q. You don't recall, okay.

3 Do you know whether you took into account
4 any economic development benefits associated with
5 rider ELR?

6 A. No.

7 Q. You didn't.

8 A. Did not. No.

9 Q. Would you agree with me generally, then,
10 that the TRC doesn't encompass all the benefits that
11 an interruptible rate can provide?

12 A. I think that the -- I think there are
13 other benefits that may not be easily quantified. I
14 do think that, you know, we looked at the costs, we
15 looked at the appropriate avoided costs for that
16 analysis, but there may be other benefits that could
17 be included if we could quantify them.

18 Q. Okay. I want you to turn briefly to
19 Company Exhibit 6 which is the Ohio Edison plan. And
20 if you could turn to page 143. Are you there,
21 Mr. Fitzpatrick?

22 A. 143, Ohio Edison plan.

23 Q. Yes. Around the middle of the page there
24 is a paragraph marked "B" that describes how your
25 team developed forecasted capacity prices. Do you

1 see that?

2 A. I do.

3 Q. Can you explain to me how you developed
4 those avoided capacity prices?

5 A. These avoided capacity prices were
6 developed by FirstEnergy and provided for our team --
7 to our team.

8 Q. Do you know who at FirstEnergy provided
9 you with those?

10 A. I don't know the name of the person that
11 did it, no. But I think it was provided, if I'm not
12 mistaken, maybe from the unregulated side so it's
13 confidential information. Some of it was
14 confidential.

15 So we used -- we took proxies I think, we
16 looked at other studies we had done for other
17 companies and we basically used a proxy but we also
18 used the ELR and OLR rates that we put into that as
19 avoided costs.

20 Q. So is it correct that you have no
21 personal knowledge of how the market prices were
22 developed? They were just given to you.

23 A. We received information from FirstEnergy,
24 but we also compared that with other work we had done
25 for other companies.

1 EXAMINER PRICE: I'd like you to clarify.
2 When you say you received those information from
3 FirstEnergy, did you receive that information from
4 the FirstEnergy utilities?

5 THE WITNESS: Yes.

6 EXAMINER PRICE: From the utilities.

7 THE WITNESS: You know, if I -- can we
8 take a break perhaps and I can check this out?

9 EXAMINER PRICE: No. No. I don't think
10 so.

11 THE WITNESS: We received some
12 information from the regulated side -- from the
13 unregulated companies. But I want to make sure I --

14 EXAMINER PRICE: But you received other
15 information from --

16 THE WITNESS: Well, we had other
17 information we had from other studies that we had
18 done for companies. Marginal cost studies.

19 EXAMINER PRICE: Okay.

20 Q. (By Mr. Lavanga) And you don't know who
21 in particular developed these market prices, where
22 they came from?

23 A. Well, the 2010 avoided costs came from
24 what the company expected to pay in 2010. The 2011,
25 we used other information available that we

1 projected.

2 Q. What other information?

3 A. We have done avoided cost studies,
4 Black & Veatch has done avoided cost studies for
5 other companies, and we looked at a mix of those
6 kinds of studies and we also looked at what rates
7 were -- what avoided costs would be appropriate given
8 the ELR and OLR rates.

9 Q. I'm not talking about ELR/OLR here, I'm
10 talking about just generally the avoided capacity
11 costs you used to develop the TRC analysis for all
12 the programs.

13 A. I will have to get back to you on that.
14 I don't have that -- I do not want to misspeak.

15 Q. But, again, these were -- the information
16 on the avoided costs, they were -- they're market
17 prices and they were provided to you by FirstEnergy.

18 A. Yes.

19 Q. And you've reviewed them, but you don't
20 know any detail about how they were developed.

21 A. No.

22 MR. LAVANGA: That's all I have. Thank
23 you, your Honor.

24 EXAMINER PRICE: Thank you.

25 Mr. Clark?

1 MR. CLARK: No questions, your Honor.

2 EXAMINER PRICE: Let's go off the record.

3 (Discussion off the record.)

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

6 Mr. Lindgren.

7 MR. LINDGREN: Yes, thank you, your
8 Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Lindgren:

12 Q. Mr. Fitzpatrick, my name is Tom Lindgren
13 and I am representing the staff of the Commission.

14 A. Good morning.

15 Q. Good morning.

16 You were previously asked a question
17 regarding the sources used in conducting your total
18 resource cost analysis, and you mentioned using other
19 sources for developing your avoided costs. Can you
20 explain what those other sources were?

21 A. We have performed analyses, marginal cost
22 analyses, avoided cost analyses, for the utilities in
23 the northeast and the midwest, some of which I would
24 say is confidential pending filing of the cases, and
25 they're for electric utilities, and we looked at

1 those costs as a benchmark to assess a reasonableness
2 of the costs that we have.

3 Q. Thank you.

4 Did you use only one set of avoided cost
5 estimates?

6 A. No. We used a -- we had a base and a
7 high case.

8 Q. So you had two sets?

9 A. Yes.

10 Q. Thank you.

11 MR. LINDGREN: Thank you. No further
12 questions.

13 EXAMINER PRICE: Redirect?

14 MS. KOLICH: I need some time to --

15 EXAMINER PRICE: Approximately how long?

16 MS. KOLICH: Probably about 15 minutes.

17 EXAMINER PRICE: 15 minutes will be just
18 fine. Let's reconvene at 11:50.

19 (Recess taken.)

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

22 Redirect, Ms. Kolich?

23 MS. KOLICH: Yes, thank you, your Honor.

24 - - -

REDIRECT EXAMINATION

1
2 By Ms. Kolich:

3 Q. Mr. Fitzpatrick, counsel for OCC asked
4 you several questions regarding the Pennsylvania
5 versus the Ohio CFL programs. Do you recall that?

6 A. I do.

7 Q. And he also asked you some questions
8 about Appendix B as in "boy." Do you recall that?

9 A. Yes.

10 Q. And specifically he was asking you
11 questions about the first group of programs, the
12 FirstEnergy prefiled programs. Do you recall that?

13 A. Yes.

14 Q. And when you were responding, you
15 indicated that you didn't look at the details of the
16 numbers, but you looked at the reasonableness of the
17 numbers. Is that correct?

18 A. That's correct.

19 Q. Could you explain a little bit how you
20 looked at the reasonableness of those numbers?

21 A. I think we compared the program costs
22 between, for example, what was in Ohio versus what we
23 had designed in Pennsylvania. I know that the, for
24 example, the CFL program in Pennsylvania was more
25 expensive than the Ohio numbers that we had.

1 Q. Okay. Counsel for OCC also asked you
2 about the goals in Pennsylvania versus Ohio. Do you
3 recall that conversation?

4 A. Yes.

5 Q. I believe, I don't remember the exact
6 term you used, but the impression was that Ohio's
7 were a little more aggressive than Pennsylvania?

8 A. Yes.

9 Q. Is that a fair characterization?

10 A. That is.

11 Q. What leads you to that conclusion?

12 A. Well, the Pennsylvania -- the first
13 hurdle was in 2011, and secondly the Ohio goals
14 required prorated savings as opposed to the
15 Pennsylvania goals are annualized savings, which
16 makes a significant difference.

17 EXAMINER PRICE: Can you explain for my
18 benefit why it makes such a significant difference?
19 When the fire trucks have passed by.

20 THE WITNESS: Let's take, for example,
21 the CFL program. If you start installing CFLs or
22 distributing CFLs in January and you distribute, say,
23 a hundred a month across 2010, at the end of the year
24 in Pennsylvania the company would get credit for
25 1,200 CFLs towards its goal.

1 Not so in Ohio, because if in January you
2 get 11 months' credit, February you get 10 months'
3 credit, 9 months and so on. So whatever you
4 install -- for example, if you install bulbs in
5 November and December of 2010, you'll get two months
6 in one month credit.

7 So the energy savings are significantly
8 impacted by that, the timing of those towards the
9 annual goals.

10 EXAMINER PRICE: Which approach better
11 reflects the actual energy savings that would be
12 gained?

13 THE WITNESS: The annualized approach I
14 think is a cost-effective way to look at the
15 long-term savings.

16 EXAMINER PRICE: Thank you, but that's
17 not my question. My question is which approach for
18 the year of installation better reflects the actual
19 energy savings?

20 THE WITNESS: Well, the prorated goals
21 would reflect the actual energy savings in that year.

22 EXAMINER PRICE: Thank you.

23 THE WITNESS: But it's a much more costly
24 way to do it.

25 EXAMINER PRICE: I understand.

1 Thank you.

2 Q. (By Ms. Kolich) Counsel for MSC asked you
3 several questions about your Exhibit FE-GLF-2, page 3
4 of 3, regarding Toledo Edison Company. Do you recall
5 that?

6 A. Yes.

7 Q. And specifically he was focusing on the
8 line item "Mercantile Utility." Do you recall that?

9 A. Yes.

10 Q. Now, with regard to the program year
11 2011, what assumptions were made in determining the
12 numbers included on that line item for that year with
13 regard to the ELR/OLR interruptible program?

14 A. The ELR/OLR interruptible program is
15 projected to stop in May of 2011.

16 Q. Also, on GLF-3, page 3 of 3, Mr. Heintz
17 asked you some questions specifically regarding the
18 mercantile self-direct and the number 24,864. Do you
19 recall that?

20 A. Yes.

21 Q. When you were responding, you indicated
22 there were approximately 350,000 megawatt hours
23 included in additional programs filed. Do you recall
24 that?

25 A. Yes, I do.

1 Q. Was that specific to Toledo Edison, just
2 for clarification on the record, or was that in total
3 for the three companies?

4 A. It was across the three companies.

5 Q. Okay. Now, the Attorney Examiner asked
6 you about your exhibit that included 2009 results in
7 GLF-2 for Toledo Edison.

8 A. Right.

9 Q. But not for GLF-2 for the other two
10 companies. Do you recall that?

11 A. Yes.

12 Q. I believe you indicated that there was
13 only savings for Toledo Edison but not Ohio Edison
14 and CEI.

15 A. I misspoke. We should have removed 2009
16 from the Toledo Edison exhibit, GLF-2, page 3 of 3.
17 There were savings for the other two companies as
18 well that were removed.

19 EXAMINER PRICE: Can I ask a follow-up?

20 THE WITNESS: Sure.

21 EXAMINER PRICE: Are the savings in
22 GLF-2, page 3 of 3, for 2009 for Toledo Edison, are
23 they accurate?

24 THE WITNESS: Yes, sir.

25 EXAMINER PRICE: Thank you.

1 MS. KOLICH: I hope so.

2 THE WITNESS: As of December 15th, they
3 are. Yes, sir.

4 EXAMINER PRICE: Thank you.

5 Q. (By Ms. Kolich) There was quite a few
6 questions about labor costs with regard to the C&I
7 lighting retrofit program. Do you recall those
8 conversations?

9 A. Yes.

10 Q. In your expert opinion do you believe the
11 calculation made by Black & Veatch in the plans is
12 correct?

13 A. Yes, I do. I think that reviewing the
14 literature and reviewing practices of other companies
15 would indicate that's an appropriate way to approach
16 this by including installation costs.

17 However, I will say that you could also
18 compute a TRC with different levels of installation
19 costs, for example, there are alternate ways of doing
20 the analysis which would increase the TRC.

21 Q. Okay, thank you.

22 Now, Mr. Lavanga asked you some questions
23 about the TRC calculations regarding the ELR/OLR. Do
24 you recall that?

25 A. I do.

1 Q. In your opinion is a TRC calculation
2 appropriate?

3 A. Not for this particular case because I
4 think that this is a rate and I think that the rate
5 is -- if the rate's cost justified, I probably
6 wouldn't rely on the TRC. There are other tests that
7 you might look at the rate impact measure, for
8 example, or the utility cost test, for example, that
9 might be more appropriate.

10 MS. KOLICH: I'm waiting on that one
11 piece of information, your Honor.

12 EXAMINER PRICE: You don't have to keep
13 asking questions, we can just go off the record.

14 MS. KOLICH: Can we go off the record?

15 EXAMINER PRICE: Yes.

16 (Off the record.)

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

19 MS. KOLICH: That's all I have, your
20 Honor.

21 EXAMINER PRICE: I have a couple of
22 questions.

23 - - -

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EXAMINATION

1
2 By Examiner Price:

3 Q. Just to be clear, referring back again to
4 Exhibits FE-GLF-2, notwithstanding the waiver of the
5 2009 benchmark given to the FirstEnergy companies
6 recently by the Commission, your plan will hit
7 the -- your plan is designed to hit the cumulative
8 benchmark for 2009 and 2010; is that correct?

9 A. At the end of 2010, yes, sir.

10 Q. At the end of 2010.

11 A. Correct.

12 Q. Okay. I'm turning to your testimony on
13 page 8. When you say each plan, as filed, will meet
14 or exceed the targets established by Senate Bill 221
15 for the period January 1st, 2010, through
16 December 31st, 2012, that's conditioned upon one of
17 two procedural things happening: One was an
18 accelerated procedural schedule for this proceeding,
19 or two would be Commission approval of the fast-track
20 programs; is that correct?

21 A. That's correct.

22 Q. And if neither of those two things
23 happen, then your programs are not designed to hit
24 the 2010 benchmarks; is that correct?

25 A. I have to -- I can't give you a "yes" or

1 "no," I just have to give you an explanation.

2 Q. Sure.

3 A. If the fast-track programs are approved
4 in the time frame that we've identified, then that's
5 one condition that will definitely help us get there.
6 The second thing is we're planning the remainder of
7 the programs would launch somewhere around July 1.

8 Q. Okay.

9 A. So if those two targets are hit, the
10 programs that we've designed and the rollouts we've
11 designed, the participation levels that we've gotten
12 from survey work that we have done on Ohio customers
13 for the three operating companies indicate that we
14 would meet the 2010 benchmark.

15 Q. And I don't know if you were aware, but
16 we heard testimony yesterday that roughly 50 percent
17 of the 2010 benchmark for all three companies will be
18 achieved by historic mercantile savings; is that
19 correct?

20 A. That's my understanding.

21 Q. I have one more about the scope of your
22 testimony. You are not testifying, it's my
23 understanding, about the shared savings component.

24 A. That's correct.

25 Q. So you're not recommending one way or the

1 other approval of the shared savings component. You
2 have no recommendation on that.

3 A. I know that the company witness did
4 consult me about it.

5 Q. Okay. And you're not providing any
6 support one way or the other for the 15 percent level
7 that the company witness testified for.

8 A. Well, I certainly did speak to the
9 witness about it and from my recollection, my
10 experience, the 15 percent was a reasonable number.

11 Q. Okay. Well, then let's take two
12 hypotheticals.

13 A. Okay.

14 Q. Imagine, all other things being equal,
15 you had two public utilities, the first public owns
16 utility generation, the second public utility
17 purchases all their generation in the wholesale
18 market. Do you believe that those two public
19 utilities have an equal incentive to exceed the
20 statutory benchmarks?

21 A. Equal incentive in terms of earning an
22 incentive return?

23 Q. An equal incentive in terms of, yeah,
24 earnings -- we'll go with that for now.

25 A. I think that they would have equal

1 incentive. If they're getting incentive return, I
2 think they would have equal incentive, especially if
3 it's on EE&PDR costs.

4 Q. I guess that's not where I was going with
5 that.

6 Do you believe that you would need to
7 give them -- that the Commission would need to give
8 those two public utilities, all other things being
9 equal, an equal incentive to exceed the statutory
10 benchmarks?

11 A. In my opinion, yes, given that it's based
12 on programmatic endeavors, yes.

13 Q. And you believe that's the case even
14 though a utility that owns generation will not just
15 be giving up distribution sales, but will be giving
16 up actual commodity sales.

17 A. The commodity sales are basically they're
18 recovering their costs to serve. The difference
19 is --

20 Q. That assumes that they're pricing on
21 their cost of service though, doesn't it?

22 A. Well, I'm talking hypothetically, I
23 think.

24 Q. It's my hypothetical so let's assume that
25 they're not priced on a cost-of-service basis.

1 A. I don't think I can answer the question.

2 Q. Okay.

3 EXAMINER PRICE: Thank you.

4 THE WITNESS: Sure.

5 EXAMINER PRICE: You're excused. Thank
6 you very much.

7 THE WITNESS: Thank you.

8 EXAMINER PRICE: Ms. Kolich.

9 MS. KOLICH: Does anybody want to --

10 EXAMINER PRICE: Oh, my goodness, we
11 didn't do redirect.

12 MS. KOLICH: I did redirect.

13 EXAMINER PRICE: We didn't do recross my
14 mistake, I was so excited for my questions.

15 MS. KOLICH: I'll be happy to --

16 EXAMINER PRICE: Mr. Poulos.

17 MR. POULOS: No questions, your Honor.

18 EXAMINER PRICE: Mr. Sites.

19 MR. SITES: No questions.

20 EXAMINER PRICE: Mr. O'Brien.

21 MR. O'BRIEN: Your Honor, just one or
22 two.

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RECROSS-EXAMINATION

By Mr. O'Brien:

Q. Mr. Fitzpatrick, the decision to either add or omit a labor component into the cost figures is still a matter of professional judgment; is that correct?

A. I think it's the correct approach, but I do know there are alternative cost-effectiveness analyses that would modify -- that could modify that labor component. So I think there's a range of TRCs that would be reasonable.

Q. And, as reflected in the lighting programs included in FirstEnergy's portfolio, not all of the lighting programs do include labor costs.

A. It would depend on the circumstance, yes.

MR. O'BRIEN: Thank you.

EXAMINER PRICE: Mr. Smith.

- - -

RECROSS-EXAMINATION

By Mr. Smith:

Q. On redirect your counsel asked about the assumed ending date of the ELR riders. Do you remember that?

A. Yes, I do.

Q. And you testified it would be May 2011,

1 correct?

2 A. To the best of my knowledge, yes.

3 Q. And turning to the Exhibit GLF-2, page 3
4 of 3, for Toledo Edison --

5 A. Yes.

6 Q. -- looking at the "Mercantile Utility"
7 line for program year 2010, what did you assume for
8 the ELR rider effectiveness for that year?

9 A. In terms of impact?

10 Q. In terms of whether or not it was in
11 effect during the entire year.

12 A. We assumed it was in effect.

13 Q. And did that result in the kW saved of
14 85,857 kW?

15 A. Yes.

16 Q. Now, in 2011 you assumed the ELR required
17 would be in effect for five months?

18 A. Yes.

19 Q. And you produced a savings of kW of
20 16,174, correct?

21 A. Yes.

22 Q. Would that all be attributed to the ELR
23 rider?

24 A. Yes. You have a portion of year of this,
25 we have a total of a hundred hours obligation, so we

1 took a component of that.

2 Q. So what happened --

3 A. Excuse me, I'm sorry. And there's one
4 other customer I think we assumed would not
5 participate.

6 Q. What accounts for the 16,174 kW saved in
7 the remaining part of 2011?

8 A. Well, you would achieve that -- you have
9 to look at the top 100 load hours, so to the extent
10 you have a hundred load hours, the top 100 load
11 hours, any of those in the first five months, they
12 would be included in that analysis.

13 Q. Am I correct the total amount of savings
14 for 2011 still resulted from the ELR being in effect
15 for the first five months of 2011?

16 A. That's our assumption.

17 Q. What's your assumption for 2012?

18 A. We have assumptions on interruptible, but
19 we do have -- you can see a big difference from 2010,
20 '11, to '12, and that has to do with one particular
21 customer, a large customer, not being part of this.

22 Q. In the remainder of 2011, did you assume
23 any other program would replace the ELR rider?

24 A. We are still uncertain as to whether the
25 interruptible rate will be approved, so we did not.

1 Q. Would that be the same answer for 2012
2 also?

3 A. To the best of my knowledge, yes. I
4 don't recall the exact detail, but yes.

5 MR. SMITH: Thank you.

6 EXAMINER PRICE: Mr. Eckhart?

7 MR. ECKHART: No questions, your Honor.

8 EXAMINER PRICE: Mr. Heintz?

9 MR. HEINTZ: No questions, your Honor.

10 EXAMINER PRICE: Mr. Reisinger?

11 MR. REISINGER: No questions, your Honor.

12 EXAMINER PRICE: Mr. Lavanga?

13 MR. LAVANGA: No questions, your Honor.

14 EXAMINER PRICE: Mr. Clark?

15 MR. CLARK: No questions, your Honor.

16 EXAMINER PRICE: Mr. Lindgren?

17 MR. LINDGREN: No questions.

18 EXAMINER PRICE: Ms. Kolich?

19 MS. KOLICH: No questions.

20 EXAMINER PRICE: Exhibits?

21 MS. KOLICH: Yes, at this time, your
22 Honor I would like to move into evidence Company's
23 Exhibits 6, 7, 8, and 9.

24 EXAMINER PRICE: Any objection to the
25 admission of Company Exhibits 6, 7, 8, and 9? Did.

1 You say 4 also?

2 MS. KOLICH: I'm sorry, no, I didn't.
3 And also it would be nice if Mr. Fitzpatrick's
4 testimony got admitted as well.

5 EXAMINER PRICE: Any objection to the
6 admission of Company's Exhibit 4 as well as 6, 7, 8,
7 and 9?

8 Seeing none, those exhibits will be
9 admitted.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 EXAMINER PRICE: Mr. Poulos.

12 MR. POULOS: Thank you, your Honor. Your
13 Honor, we ask to move into evidence OCC Exhibit 11,
14 the CFL program costs.

15 EXAMINER PRICE: Any objection to the
16 admission of OCC Exhibit 11?

17 Seeing none, Mr. Poulos, at the break I'd
18 like another copy of OCC 10 and OCC 11 for my
19 colleague.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 MR. POULOS: Thank you.

22 EXAMINER PRICE: At this time we are
23 going to take a slightly extended lunch break, as I
24 indicated while we were off the record -- you're
25 excused.

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THE WITNESS: Thank you.

EXAMINER PRICE: -- we will reconvene
five minutes after the conclusion of the Commission
meeting at 1:30, which I anticipate will be 1:50.
We'll see you then, thank you.

(Lunch recess taken at 12:15 p.m.)

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Wednesday Afternoon Session,
March 3, 2010.

- - -

EXAMINER BOJKO: Let's go on the record.
I believe that our next witness, NRDC,
would you like to call your witness?

MR. ECKHART: Yes, your Honor.

Mr. Dylan Sullivan, please, will take the
stand. Your Honor, I've provided the court reporter
with a copy of his testimony and ask that it be
marked as NRDC Exhibit 1.

EXAMINER BOJKO: It will be so marked.
(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER BOJKO: Mr. Sullivan, can you
please raise your right hand?

(Witness sworn.)

EXAMINER BOJKO: Please be seated.

- - -

DYLAN SULLIVAN

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

DIRECT EXAMINATION

By Mr. Eckhart:

Q. Would you state your name, please?

A. Dylan Emmanuel Sullivan.

1 Q. Who are you employed by?

2 A. The Natural Resources Defense Council.

3 Q. Do you have before you what's been marked
4 as NRDC Exhibit 1, being your direct testimony?

5 A. Yes, I have my direct testimony in front
6 of me.

7 Q. And do you have any modifications/changes
8 to make to that testimony?

9 A. I do, I have two changes I would like to
10 make.

11 Q. What's that?

12 A. If you turn to page 6, question 14, "Have
13 other shared savings mechanisms," should read "Have
14 other existing or proposed shared savings
15 mechanisms."

16 Q. And other than that?

17 A. And the next question, question 15, "Does
18 AEP's shared savings mechanism," should read "Does
19 AEP's stipulated shared savings mechanism."

20 Q. Do those changes make any difference in
21 the content or answers that you've provided in that
22 testimony?

23 A. No, they don't.

24 Q. Other than that, is the testimony that
25 you've provided in NRDC Exhibit 1 true to the best of

1 your knowledge and belief?

2 A. Yes, it is.

3 MR. ECKHART: Your Honor, I submit
4 Mr. Sullivan for cross-examination.

5 EXAMINER BOJKO: Thank you.

6 Mr. Clark.

7 MR. CLARK: No questions, your Honor.

8 EXAMINER BOJKO: Mr. Lavanga?

9 MR. LAVANGA: No questions, your Honor.

10 EXAMINER BOJKO: Mr. Reisinger.

11 MR. REISINGER: No questions, your Honor.

12 EXAMINER BOJKO: Mr. Heintz?

13 MR. HEINTZ: No questions, your Honor.

14 EXAMINER BOJKO: Mr. Smith?

15 MR. SMITH: No questions.

16 EXAMINER BOJKO: Mr. O'Brien.

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

18 EXAMINER BOJKO: Mr. Allwein?

19 MR. ALLWEIN: No questions, your Honor.

20 EXAMINER BOJKO: Company.

21 MS. KOLICH: Yes, your Honor, I have a
22 few questions.

23 EXAMINER BOJKO: I'm sorry.

24 MR. REILLY: My name is Steve Reilly, I'm
25 here on behalf of the staff of the Public Utilities

1 Commission, and we have no questions.

2 EXAMINER BOJKO: You have no questions.

3 Please proceed, Ms. Kolich.

4 MS. KOLICH: Thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Kolich:

8 Q. Good afternoon, Mr. Sullivan. My name is
9 Kathy Kolich, and I'm an attorney for the companies
10 and I'm going to be asking you some questions this
11 afternoon. If at any time you don't understand one
12 of my questions, feel free to ask me to rephrase,
13 I'll be happy to do so, otherwise I'll assume you
14 understood my question.

15 A. Good afternoon.

16 Q. You're aware that the companies propose a
17 shared savings mechanism in its plans, correct?

18 A. Yes.

19 Q. And basically the shared savings will be
20 calculated, as you indicate in answer 8 on page 3 of
21 your testimony, by multiplying the net benefits by
22 15 percent; is that correct?

23 A. I also say that the net benefits are
24 calculated by using the utility cost test.

25 Q. With that correction, have I

1 characterized it correctly?

2 A. Yes.

3 Q. Let's talk first about the 15 percent,
4 you think that it is an acceptable -- the 15 percent
5 is an acceptable level, don't you?

6 A. I stated in my deposition that in the AEP
7 stipulation we determined that 15 percent was a
8 reasonable number.

9 Q. And you're referring to page 24 of your
10 deposition; is that correct?

11 A. Yes. So I could -- if I can correct
12 myself.

13 Q. Sure.

14 A. I just said that I said in my deposition
15 that the AEP 15 percent was reasonable, but actually
16 in my deposition I said I don't really take a
17 position on if 15 percent is reasonable or not.

18 15 percent is what NRDC stipulated to in
19 the AEP program portfolio plan case. And then going
20 off quote, of course, I don't think we would have
21 signed anything that we don't consider reasonable.

22 Q. Okay. And if I can direct you to the
23 next line in that transcript of your deposition on
24 page 24, you go on to say "I would also note that,
25 well, I don't know in the application, but 15 percent

1 on a national level is generous, but I think it's --
2 I think it's acceptable." Is that correct?

3 MR. ECKHART: You're asking him if that's
4 what it says?

5 MS. KOLICH: Yes, I am.

6 A. Well, yes, that is what it says.

7 Q. Thank you.

8 Now, talking the net benefits aspect of
9 the calculation, you recommended that a TRC test be
10 used rather than -- total resource cost test, TRC
11 test -- be used rather than a utility cost test, the
12 UCT; is that correct?

13 A. For the purposes of calculating net
14 benefits, that's correct.

15 Q. Okay. Now, in your testimony on answer
16 18 found on page 8 --

17 A. Just a moment.

18 Q. Sure.

19 A. I'm sorry, are we talking testimony or
20 deposition?

21 Q. Testimony.

22 A. Question 18?

23 Q. Yes.

24 A. Yes.

25 Q. The reason you prefer the TRC over the

1 UCT test is because otherwise the company would be
2 encouraged to lower incentives; is that correct?

3 A. That's correct. One reason that -- well,
4 it's not fully correct. One reason why it makes
5 sense to use the total resource cost test as opposed
6 to the utility cost test is that it doesn't have that
7 problem that I indicated.

8 Q. Let's clear the record. Which problem is
9 that?

10 A. I said that the problem that I am
11 mentioning right now.

12 Q. To encourage lower incentives?

13 A. To encourage lower incentives, that is
14 not the only reason the TRC is preferable to the
15 utility cost test. The reason I give for that is in
16 the first sentence of that answer to question 18.

17 Q. Okay. Now, you would agree with me that
18 incentives need to be at a level that the market
19 wants, wouldn't you?

20 A. Yes, that's correct.

21 Q. Because if those incentives are too low,
22 participation levels will diminish; is that correct?

23 A. A program isn't designed -- a program's
24 success isn't only a function of the incentives that
25 are provided, program design also comes into play,

1 but in general if incentives were lowered
2 substantially, you would expect to see lower
3 performance.

4 Q. Participation, is that the same thing?

5 A. Yes.

6 Q. And if there's less participation, it
7 makes it more difficult for the companies to meet
8 their statutory benchmarks; isn't that right?

9 A. Yes, that's right.

10 Q. Now, are you aware -- strike that.

11 Do you know if utilities are subject to
12 penalties if they fail to meet their statutory
13 benchmarks?

14 A. Utilities are subject to penalties
15 provided that the reason they do not meet the
16 benchmark is not for -- is for a reason beyond their
17 control.

18 Q. Okay. Now, are you familiar with the ESP
19 stipulation that was approved by the Commission in
20 08-935-EL-SSO involving the companies?

21 A. Yes, I am.

22 Q. And the NRDC signed that stipulation,
23 didn't they?

24 A. Yes, we signed that stipulation. We had
25 a footnote disagreeing with the collection of lost

1 revenues for effectively six years, but we did sign
2 that stipulation.

3 Q. And by signing the stipulation the NRDC
4 agreed to lost revenue recovery for programs
5 implemented in 2009, 2010, and 2011; isn't that
6 right?

7 A. That is what I say in my testimony, yes.

8 Q. In your testimony on page 13, just to
9 clear something up, it's in answer 30, about three,
10 four lines up from the end of answer 30 you talk
11 about how might lost revenue collection restore
12 revenue to the company that was, therefore, lost, and
13 you talk about this example that in an abnormally
14 warm summer, for example, in the appliance recycling
15 program, that might happen. Do you see that?

16 EXAMINER BOJKO: Let's go off the record
17 for a minute.

18 (Discussion off the record.)

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

21 Could you please read that last question
22 again?

23 (Record read.)

24 A. Yes, I do see that.

25 Q. Now, the opposite would occur in an

1 abnormally cool summer, wouldn't it?

2 A. The point here is that there are a lot of
3 things that could happen to affect the company's
4 recovery of its fixed costs, and one of the problems
5 with lost revenue recovery is it just isolates one of
6 those things which is the verified energy savings of
7 energy efficiency programs.

8 So it could be that an abnormally cool
9 summer has the opposite effect of the one that I
10 describe in my testimony, but it could also be that
11 normal load growth has similar effect to what I was
12 talking about of a hot summer.

13 So there are a lot of different factors
14 at play here that affect a utility's recovery of its
15 fixed costs.

16 MS. KOLICH: Your Honor, I would move to
17 strike that response, it has nothing to do with the
18 question I asked, which was a very simple "yes" or
19 "no" question.

20 MR. ECKHART: Your Honor, there are no
21 simple "yes" or "no" questions in this field. He's
22 entitled to explain his answer and that's what he was
23 doing.

24 MS. KOLICH: The question wasn't what the
25 point was he was trying to make. I just asked if the

1 opposite would occur if it was a cool summer.

2 EXAMINER BOJKO: Thank you. The motion
3 to strike is granted.

4 Can you reask your question, Ms. Kolich?

5 MS. KOLICH: Sure.

6 Q. (By Ms. Kolich) In your example you talk
7 about a warm summer. The opposite effect would
8 happen if the summer was abnormally cool; isn't that
9 correct?

10 A. Yes.

11 Q. Let's move on to revenue decoupling. I'm
12 going to be only talking about electric utilities. I
13 understand there are slightly different answers for
14 gas utilities, so let's just stick with electric
15 utilities for now.

16 Revenue decoupling for electric utilities
17 in Ohio is not required; is that correct?

18 A. I think there are differences of opinions
19 about whether Commission proceedings on regulatory
20 decoupling are required, and one of the reasons
21 people might think that it is required is because of
22 language that was in the stimulus bill, the American
23 Recovery and Reinvestment Act. But I think nowhere
24 in Ohio law does it require electric utilities to
25 implement revenue decoupling.

1 Q. And no electric utility in Ohio has a
2 revenue decoupling mechanism in place today, do they?

3 A. No, they do not.

4 Q. In fact, no electric utility in Ohio has
5 even proposed a revenue decoupling mechanism as of
6 today, have they?

7 A. They have not.

8 Q. And there are no regulations in place
9 that would provide guidance as to how revenue
10 decoupling would occur in Ohio, are there?

11 A. Just a moment, Kathy.

12 Q. Sure.

13 A. In my deposition I said that Ohio law or
14 Ohio Revised Code Section 4928.66, Section (D),
15 mentions revenue decoupling, and to my knowledge
16 that -- the paragraph about revenue decoupling in the
17 law is the only thing, quote/unquote, on the books in
18 Ohio about revenue decoupling.

19 Q. Okay. So back to my question, though,
20 there are no regulations in place that would provide
21 guidance as to how to apply that provision that
22 you're referring to in the law; is that correct?

23 A. I think the law contains a bit of
24 guidance, and I talk about this in my deposition
25 because I indicated I did not have the law in front

1 of me.

2 MS. KOLICH: Could I have my question
3 reread, please?

4 (Record read.)

5 Q. I'm not talking about guidance in the
6 law, I'm talking about regulations that would provide
7 guidance. Are you aware of any?

8 A. No.

9 Q. Are you aware of any Commission orders or
10 directives that require electric utilities to
11 decouple?

12 A. No.

13 Q. Now, in your testimony in answer 33, page
14 14, you define revenue decoupling; is that right?

15 A. Yes, I do.

16 Q. Now, this definition isn't based on Ohio
17 law, is it?

18 A. It isn't, but I believe that it
19 corresponds to the guidance that I mentioned earlier
20 that is in Ohio law. But it is chiefly not based on
21 Ohio law, it's based on what the field recognizes
22 revenue decoupling to be.

23 Q. "The field"? What do you mean by "the
24 field"?

25 A. I mean the energy efficiency community.

1 Q. But not the legislators in Ohio.

2 A. As I mentioned earlier, I think the
3 legislators in Ohio provided a bit of guidance in the
4 law about what revenue decoupling is.

5 Q. Now, you believe that revenue decoupling
6 should be decided in this proceeding, don't you?

7 A. I believe it could happen in this
8 proceeding. The Commission could also decide to end
9 lost revenue recovery for incremental energy savings
10 created in 2012 and put forth some sort of process to
11 develop a revenue decoupling mechanism that could be
12 put in place in 2012.

13 Q. Would you turn to page 52 of your
14 deposition, please.

15 Are you there?

16 A. Yes, I am.

17 Q. Specifically line 1, the question reads
18 "So, am I hearing you say we should address how
19 revenue decoupling in 2012 should be done in
20 FirstEnergy's plan in this case? Is that your
21 position?"

22 Your answer on line 5 was what?

23 MR. ECKHART: Are you just asking him to
24 read the answer?

25 MS. KOLICH: Let me rephrase the

1 question.

2 Q. Line 5 reads "Yes"; is that correct?

3 A. Line 5 reads "yes," but line 12 on the
4 earlier page reads "Well, I said it could be either."

5 Q. Okay. So after you said that and I asked
6 for clarification, that came based on the question I
7 just read to you and your response; is that correct?

8 A. Yes.

9 Q. Now, in your testimony on page 2 in
10 answer 5 -- and you don't need to go there if you
11 remember -- you mention a Michigan Public Service
12 order adopting a revenue decoupling pilot. Do you
13 recall that?

14 A. I'm sorry, what page of my testimony?

15 Q. Page 2, answer 5.

16 A. I think the question is actually on a
17 different page.

18 Q. All I'm asking is do you reference a
19 Michigan Public Service order adopting a revenue
20 decoupling pilot mechanism in your testimony?

21 A. Yes, I indicated that I consulted the
22 orders.

23 Q. Okay. But you're not proposing that Ohio
24 adopt the Michigan decoupling model, are you?

25 A. No; I mention those orders because I

1 thought that they had presented a good model for the
2 Commission to use if they did decide to implement a
3 revenue decoupling mechanism.

4 MS. KOLICH: Could I have the answer
5 reread, please?

6 (Record read.)

7 Q. I'm a bit confused. Are you or are you
8 not recommending that the Commission follow the
9 Michigan model if it chooses to implement revenue
10 decoupling?

11 A. I'm saying it's a good model but that the
12 Commission shouldn't, you know, merely take
13 everything in the orders and apply it to Ohio.

14 Q. So your answer is "no" -- or, your answer
15 is "yes," you're not recommending the Michigan model.

16 A. Yes, that's correct.

17 Q. In fact, in your testimony you did not
18 propose any specific decoupling methodology, did you?

19 A. I proposed that the Commission adopt a
20 revenue decoupling model that meets the definition I
21 gave in my answer to question 33. I also said that
22 it should apply to the RS rate class.

23 Q. And you also take no position on whether
24 there should be a uniform decoupling model in Ohio;
25 is that correct?

1 A. That's correct.

2 Q. Let's shift gears into the C&I lighting
3 for a few minutes. I think it begins on page 16 of
4 your testimony in answer 38. You take issue with the
5 company's TRC calculation for the C&I lighting; is
6 that correct?

7 A. Yes, I did.

8 Q. Okay. Is it your position that the TRC
9 results should be greater than 1 for that C&I
10 lighting retrofit that you're referring to as the
11 .66?

12 A. I wouldn't describe my position as saying
13 the number should be any other number. In my
14 testimony I talk about the analytical approach that I
15 think the company should use in determining the
16 cost-effectiveness of commercial lighting.

17 Q. And you don't promote any specific result
18 because you did not run a TRC test, did you?

19 A. I did not.

20 Q. And most of your discussion about this
21 program, this lighting program, revolves around the
22 inclusion of labor costs; is that correct?

23 A. It's not so much the fact that labor
24 costs are included, is how they are included.

25 Q. And what's your understanding of how

1 they're included?

2 A. My understanding is that the full labor
3 cost of the transition from a T-8 to a T-12 lighting
4 system is included in the costs that go into the
5 cost-effectiveness calculation.

6 Q. And just so we're clear on which program
7 we're talking about, this program involves the
8 replacement T-12s to T-8s; is that correct?

9 A. The program involves, I believe, a suite
10 of commercial lighting technologies, but this is one
11 of the main measures embedded in that program.

12 Q. The T-12s to T-8s?

13 A. Yes.

14 Q. Okay. Let's focus on that, because isn't
15 that the one that's causing the overall TRC for that
16 lighting suite to be lower than you otherwise think
17 it should?

18 A. Yes. The cost-effectiveness of that
19 measure is dragging down the program in the
20 portfolio.

21 Q. Now, you don't know the details involved
22 in retrofitting T-12s with T-8s, do you?

23 A. No, and I didn't need to know all the
24 details in order to write my testimony.

25 Q. Nor do you know the amount of labor

1 necessary to make such a retrofit, do you?

2 A. No, and I didn't need to know that to
3 write my testimony.

4 Q. And you don't know the voltage for one of
5 the fixtures that would have to be replaced in this
6 program, do you?

7 A. No, and I did not need to know that to
8 write my testimony.

9 Q. And you also don't know whether an
10 electrician would be necessary to perform the work
11 involving this retrofit, do you?

12 A. No, and I did not need to know that to
13 write my testimony.

14 Q. And even if an electrician is necessary,
15 you don't know the average cost of an electrician in
16 Ohio, do you?

17 A. No, and I did not need to know that to
18 write my testimony.

19 Q. And you also don't know how long it takes
20 to retrofit one of these fixtures, do you?

21 A. No, and I did not need to know that to
22 write my testimony.

23 Q. Would it be safe to say that retrofitting
24 T-12s to T-8s is not within your area of expertise?

25 MR. ECKHART: Your Honor, could I have

1 the question read back, please?

2 EXAMINER BOJKO: You may.

3 THE WITNESS: I'm forming my response.

4 MR. ECKHART: Are you ready?

5 THE WITNESS: I'll be ready in a moment.

6 MR. ECKHART: I'm not ready, I want to
7 hear the question read back.

8 (Record read.)

9 A. So the physical details of how one goes
10 about retrofitting a T-12 to a T-8 is not my area of
11 expertise, but the cost-effectiveness methodology
12 that is used to describe such an investment is
13 something that I believe I can comment on.

14 Q. So the answer to my question is "yes,"
15 you're not -- it's not within your level of -- area
16 of expertise?

17 MR. ECKHART: Object, your Honor, he gave
18 his answer, and that's not his answer.

19 EXAMINER BOJKO: Sustained.

20 Q. Let's move on to joint programs. I think
21 it begins on question and answer 42 on page 17.

22 A. I'm there.

23 Q. In your answer, first line, you talk
24 about a joint program without Btu conversion. Do you
25 see that?

1 A. Yes, I do.

2 Q. Now, a direct program would involve the
3 companies joining with a gas company to create a
4 program that they offered together; is that right?

5 A. Yes, that's correct.

6 Q. Now, you don't know of any joint program
7 like the one you're contemplating here between an
8 electric-only and a gas-only utility, do you?

9 A. I know of a program being developed in
10 Illinois. I don't know any other program like this
11 nationally.

12 Q. So as of today there are absolutely no
13 programs anywhere in the country that you're aware of
14 that offer a joint program that you're contemplating
15 here; is that correct?

16 A. I would have to check, but the Illinois
17 program might be running on a pilot basis.

18 Q. That would be the only one?

19 A. To my knowledge, yes.

20 Q. And do you know if that Illinois program
21 is identical to the one you're contemplating here?

22 A. It's not identical. It uses the same
23 general principles.

24 Q. Okay. Did you run a TRC calculation on
25 this program that you're contemplating in your

1 testimony?

2 A. No, I did not.

3 Q. So it stands to reason, then, that if you
4 would incorporate a program like this, you wouldn't
5 know the overall impact it would have on the
6 portfolio TRC either, would you?

7 A. No. I think the details of the program
8 design could be something that we talk about in the
9 collaborative.

10 Q. So you're not recommending that the
11 Commission reject the portfolio plan because this
12 program is not included; is that correct?

13 A. If the Commission makes modifications to
14 the plan, I think that this is a good modification to
15 make.

16 Q. But if they don't make this change, are
17 you recommending the Commission not approve the plan?

18 A. I don't recommend that in my testimony.

19 MS. KOLICH: That's all I have, your
20 Honor.

21 EXAMINER BOJKO: Any redirect?

22 MR. ECKHART: Your Honor, could I have a
23 few minutes to talk to my client?

24 EXAMINER BOJKO: Sure. Let's take a
25 recess. Will five minutes be sufficient,

1 Mr. Eckhart?

2 MR. ECKHART: Yeah. I may have one
3 question.

4 EXAMINER BOJKO: Looks like we might need
5 a few more than five, it's :41, :50, we'll give you
6 nine minutes.

7 MR. ECKHART: That's plenty. We'll be
8 back, thank you.

9 (Recess taken.)

10 EXAMINER BOJKO: Do you have any
11 redirect, Mr. Eckhart?

12 MR. ECKHART: Yes, your Honor, briefly.

13 - - -

14 REDIRECT EXAMINATION

15 By Mr. Eckhart:

16 Q. Mr. Sullivan, what is it in the Ohio law
17 that leads you to refer to revenue decoupling in this
18 case?

19 A. Ohio Revised Code Section 4928.66(D)
20 reads, and I'm quoting, "The Commission may establish
21 rules regarding the content of an application by an
22 electric distribution utility for Commission approval
23 of a revenue decoupling mechanism under this
24 division. Such an application shall not be
25 considered an application to increase rates and may

1 be included as part of a proposal to establish,
2 continue, or expand energy efficiency, or
3 conservation programs."

4 And then there's more to that paragraph
5 including --

6 Q. Are you quoting or getting ready to
7 quote?

8 A. Just a moment. I'm quoting here, "The
9 Commission by order may approve an application under
10 this division if it determines both that the revenue
11 decoupling mechanism provides for the recovery of
12 revenue that otherwise may be foregone by the utility
13 as a result of or in connection with the
14 implementation by the electric distribution utility
15 of any energy efficiency or energy conservation
16 programs and reasonably aligns the interests of the
17 utility and of its customers in favor of those
18 programs." End quote.

19 Q. How does that implication or language
20 from the statute relate to the revenue decoupling
21 mechanism that you propose in your testimony?

22 A. I think that the way it relates most
23 directly is at the end of that part of the statute
24 where it says a decoupling mechanism has to
25 reasonably align the interests of the utility and of

1 its customers in favor of those programs, and in my
2 opinion I think that revenue decoupling is the
3 mechanism that reasonably aligns those interests
4 because lost revenue recovery, as I talk about in my
5 testimony, is going to begin to be very costly. It's
6 going to, well it has the potential to rival program
7 costs in 2012 and 2013.

8 I also think that the talk in the law
9 about aligning the interests of the utility and its
10 customers precludes a straight fixed variable rate
11 design on the electric side because it's -- the high
12 fixed charge does decouple a utility's sales of
13 electricity from its ability to recover its fixed
14 costs for distribution service, but it does this by
15 raising the fixed charge which diminishes customers'
16 incentives to conserve and it also --

17 EXAMINER PRICE: Excuse me, but if the
18 fixed charge is recovering fixed costs, then isn't it
19 eliminating a false signal? If you're keeping
20 volumetric prices high but you're ultimately still
21 going to have to recover a fixed cost, isn't that
22 giving people a false conservation signal? Doesn't
23 that lead to inefficiencies?

24 That's two questions, sorry about that.

25 THE WITNESS: So I guess by implication,

1 yes, but if you go -- essentially what you're saying
2 is that people are not using enough electricity right
3 now and that they should be using more.

4 EXAMINER PRICE: No, I'm saying that if
5 you give people the idea that if they reduce their
6 consumption, they won't have to pay those charges but
7 it's a fixed cost, they're ultimately -- they're
8 getting a false signal because ultimately they'll get
9 recovered that fixed cost; isn't that right?

10 THE WITNESS: You'll have to ask me the
11 question again.

12 EXAMINER PRICE: Aren't you sending a
13 false signal by indicating to customers if they
14 reduce their consumption, they won't have to pay for
15 their share of the fixed costs when the distribution
16 costs are fixed? By charging a volumetric rate.

17 THE WITNESS: I guess I disagree that
18 it's a false signal, and I think --

19 EXAMINER PRICE: Is it a fixed cost?
20 Distribution costs are fixed, are they not?

21 THE WITNESS: Distribution costs are
22 fixed.

23 EXAMINER PRICE: For the most part.

24 THE WITNESS: In the short-term. You
25 know, over the long-term they might not be.

1 EXAMINER PRICE: But if you use a revenue
2 decoupling and a customer reduced his consumption in
3 reaction to that, they're going to have to still pay
4 for those fixed costs later in an adjustment to the
5 bill, aren't they?

6 THE WITNESS: I'm sorry, can you repeat
7 that question? Sorry.

8 EXAMINER PRICE: Can you read the
9 question back, please?

10 (Record read.)

11 THE WITNESS: Yes, but those costs, you
12 know, would be reallocated at the next case or
13 they --

14 EXAMINER PRICE: So they're not avoiding
15 those costs by reducing their consumption, the costs
16 will simply be reallocated.

17 THE WITNESS: Well, I guess the hope is,
18 and what we have seen in other jurisdictions is, that
19 the effect of saving energy, the value of the energy
20 saved washes out that effect that you're talking
21 about.

22 EXAMINER PRICE: Okay. Thank you.

23 Thank you, Mr. Eckhart.

24 Q. (By Mr. Eckhart) Mr. Sullivan, do you
25 recall the questions that company counsel asked

1 regarding your testimony on page 13, specifically
2 question 30 and answer 30? Do you see that?

3 A. Yes.

4 Q. You referred to maybe one factor there,
5 do you think that there are other factors that play
6 in on this -- the effect of this --

7 A. Yes.

8 Q. Okay, I'll stop. Go ahead.

9 A. So I mention the effect of weather here
10 as an example, but of course other things can happen
11 that effect -- other things can happen and will
12 happen that will affect the utility's recovery of its
13 fixed cost for distribution service and, of course,
14 economic growth is one of those factors.

15 And my point here in 30 was that one of
16 the problems with lost revenue recovery is that it
17 kind of isolates the impact of the energy efficiency
18 program savings and doesn't look at other factors
19 that might be happening -- that might be happening to
20 influence the utility's recovery of its fixed cost
21 for distribution service.

22 Q. Other than economic factors are you --
23 can you think of any others right now?

24 A. Technological change, for one.

25 Q. Well, all right. Moving on, nationally

1 do you know of other shared savings mechanisms that
2 differ from what the company in this case is
3 proposing?

4 A. Yes. So I think in my deposition I
5 mentioned other shared savings programs, I talked
6 about Arizona and California and Colorado and
7 Oklahoma.

8 MS. KOLICH: Excuse me, your Honor. I do
9 believe -- well, I'll object first. Objection. I do
10 believe that question is not within the scope of my
11 cross. And if it is within my scope, I would like a
12 reference, please.

13 MR. ECKHART: Am I supposed to read the
14 transcript?

15 EXAMINER BOJKO: Can you reread back the
16 question, please?

17 (Record read.)

18 MR. ECKHART: Your Honor, she asked
19 numerous questions about what he knew about the rest
20 of the world and now we're just focusing on what he
21 knows about this one issue nationally. He does, on
22 behalf of the Natural Resources Defense Council, deal
23 with and observe what's going on nationally. All
24 this asked is for him to provide that information to
25 the Commission on this record.

1 EXAMINER BOJKO: Ms. Kolich.

2 MS. KOLICH: I would like to take a look
3 at the transcript, then, because I do not recall
4 asking anything about nationally how are things
5 developed for shared savings. We talked specifically
6 about this shared savings program or the proposal in
7 this case.

8 EXAMINER BOJKO: Objection overruled.
9 The door was opened.

10 Q. (By Mr. Eckhart) Mr. Sullivan, you may
11 answer.

12 A. Okay. So shared savings models
13 nationally, of course, don't always take 15 percent
14 of net benefits to be the company's incentives. In
15 my deposition I mentioned Arizona and I said I didn't
16 have it right in front of me, but Arizona's is less.
17 I actually looked at it; Arizona's is 10 percent net
18 of benefits.

19 California's mechanism tops out at
20 12 percent. Colorado's also stops at 12 percent. So
21 the decision of what level of shared savings is
22 appropriate is made differently in each service
23 territory.

24 I think that one thing that's important
25 to not overlook is that one of the big differences

1 between other states and Ohio, and this is important
2 because the shared savings mechanism is definitely --
3 is a model that was developed in other states and is
4 being imported to Ohio -- other states don't have as
5 broad a definition of what counts as energy savings
6 as Ohio does.

7 The other states that have shared savings
8 mechanisms don't apply shared savings to, for
9 example, transmission and distribution infrastructure
10 improvements that reduce line losses or mercantile
11 self-directed projects.

12 And so when you move such a mechanism to
13 Ohio and just include all the energy savings in it,
14 you're essentially importing a model from other
15 jurisdictions and applying it to Ohio without taking
16 into account the Ohio-specific circumstances of how
17 energy savings are calculated here.

18 MR. ECKHART: That's all. I have no
19 further questions.

20 EXAMINER BOJKO: Thank you.

21 Do we have recross from any of the
22 intervening parties?

23 Ms. Kolich?

24 MS. KOLICH: One minute, please.

25 EXAMINER BOJKO: Yes.

1 MS. KOLICH: Yes, your Honor, thank you.

2 - - -

3 RECROSS-EXAMINATION

4 By Ms. Kolich:

5 Q. Mr. Sullivan, you do mention economic
6 growth was another factor in your example. I assume
7 that in an economic downturn the result would be the
8 opposite as well; is that right?

9 A. What result?

10 Q. Well, let's go back to your testimony on
11 13, question 30, where you talk about there might
12 being lost revenue collection to the company that was
13 never lost, and I believe you said one of the factors
14 that would result in that occurring is economic
15 growth.

16 Is it true that in an economic downturn
17 that result would be the opposite?

18 A. Yes, that is true, but the decoupling
19 mechanism that I propose is only applied to the RS
20 rate class, and it's my understanding that the
21 biggest -- the biggest effect of the downturn in
22 energy sales has been in the industrial class, not
23 the residential.

24 MS. KOLICH: That's all have, your Honor.

25 EXAMINER PRICE: I have a question about

1 shared savings, and I apologize if you answered a
2 similar question while I was absent.

3 The other jurisdictions that you
4 mentioned that had percentages, I think you said
5 Arizona had other percentages, a couple other states.
6 Had the utilities in those jurisdictions divested
7 themselves of their generation assets?

8 THE WITNESS: California utilities are
9 mostly divested. I can't answer for the other
10 states.

11 EXAMINER PRICE: Thank you.

12 - - -

13 EXAMINATION

14 By Examiner Bojko:

15 Q. Mr. Sullivan, on page 17 of your
16 testimony you stated a criticism of the company's
17 program, specifically you stated that they assumed
18 the full labor cost for each installation of the
19 lighting program. And Ms. Kolich went through a
20 series of questions with you of did you know the cost
21 of this; do you recall that discussion?

22 A. I do.

23 Q. How can you make that criticism without
24 knowing the underlying details in the cost of what
25 they considered or didn't consider whether they did

1 their TRC or the utility cost test?

2 A. Okay. Well, I think the critical
3 question when you're looking at the cost of these
4 programs, and this happens throughout energy
5 efficiency, is you have to look at the
6 counter-factual, what would have happened had this
7 program not been in place. And that's something that
8 we have to do as we measure the impacts of energy
9 efficiency programs. It's something that we also
10 have to do as we talk about the cost-effectiveness.

11 So the way I put together my results are,
12 you know, my recommendation here was asked myself
13 and, you know, talked to a couple people in the
14 industry of what is the counter-factual when a
15 customer decides to change a T-12 lighting system to
16 a T-8 lighting system, which is what we're talking
17 about in the utility's plan.

18 And so in order to, you know, answer that
19 question I don't need to know how much an electrician
20 costs in Ohio or, you know, the exact details of how
21 much it costs to do that.

22 I think what's important is, as I mention
23 in my testimony, customers are going to be replacing
24 a lighting system that has already exhausted a
25 portion of its useful life. So let's say its useful

1 life is 16 years, the lighting system might be 12
2 years old, and so in 4 years they would have to
3 replace the lighting system anyway.

4 And if it's a T-12 lighting system and
5 the ballast is getting ready to go out, you can't
6 even buy old magnetic ballasts anymore or they're not
7 manufactured anymore because the Department of Energy
8 has outlawed that.

9 And so a customer, you know, even if
10 nothing were to happen with the program at all, in
11 four years would have to replace the ballast and
12 replace the bulbs for their fixture.

13 And so I think that what I was doing in
14 my answer is talking about what, you know, what would
15 have happened had this investment not been made, and
16 I don't think I need to know every detail about what
17 the costs of the labor are in order to answer that
18 question.

19 The important thing is that the -- I
20 think it makes sense to acknowledge that even in the
21 absence of a commercial lighting program by the
22 companies, they would have had to expend labor costs
23 to perform maintenance and to deal with this lighting
24 fixture as it ages. And the company's methodology,
25 in my understanding, did not do that.

1 Q. So your criticism is just that they
2 should have assumed that some labor would have had to
3 have occurred anyway, and that's why you didn't need
4 to delve into the details of what those labor costs
5 may or may not have been at the time because they
6 could have occurred under either scenario.

7 A. Yeah; I'm not really disputing the
8 absolute number of the labor costs, I'm disputing how
9 it is applied in the cost-effectiveness calculation.

10 EXAMINER BOJKO: Okay.

11 - - -

12 EXAMINATION

13 By Examiner Price:

14 Q. Just a couple, back to your observation
15 that you felt like straight fixed variable rate
16 design did not properly align customers' interests,
17 and not to belabor this too much, but do you believe
18 the straight fixed variable better aligns customer
19 interests -- straight fixed variable rate design
20 would better align customer interests than the status
21 quo today? Is straight fixed variable better than no
22 decoupling at all?

23 A. That's hard for me to answer at this
24 moment. I mean, I would have to see what the, I
25 guess what the fixed charge would be and how that

1 would impact, you know, customers' incentives.

2 Q. Okay. Assume for the sake of argument
3 that the costs to serve each individual resident are
4 roughly equal on the distribution side.

5 A. Okay.

6 Q. That's a factual decision the Commission
7 would have to look at down the line. If you're a
8 higher use customer using more than average, you are
9 subsidizing other users, are you not?

10 A. Uh-huh.

11 Q. And so if you continue with a revenue
12 decoupling, you would continue to subsidize those
13 lower use customers, wouldn't you?

14 A. If you keep the same rate design you're
15 using, then yes.

16 Q. And the revenue decoupling?

17 A. Yes.

18 Q. So those customers' interests, the higher
19 use customers, their interests are certainly better
20 aligned with the utility's in the straight fixed
21 variable, are they not?

22 A. Well, in my reading of the law you're not
23 trying to align all interests, what you're trying to
24 align is the customer interest toward energy
25 efficiency.

1 So of course, I mean there are trade-offs
2 here. You know, if you have an economically very
3 simple, straightforward rate design, it might not
4 have the best impact on customer incentives to
5 conserve.

6 I think straight fixed variable design
7 goes, you know, very far in one direction on that, on
8 that continuum.

9 EXAMINER PRICE: Okay. Thank you.

10 EXAMINER BOJKO: Thank you. You may step
11 down.

12 MR. ECKHART: Yes, your Honor.

13 EXAMINER BOJKO: Mr. Eckhart.

14 MR. ECKHART: I would like to offer at
15 this time NRDC Exhibit 1.

16 EXAMINER BOJKO: Any opposition to the
17 admission of Mr. Sullivan's testimony, which has been
18 previously marked as NRDC Exhibit 1?

19 Hearing none, it will be admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

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

23 MR. POULOS: Yes, your Honor. OCC calls
24 Daniel Sawmiller.

25 EXAMINER PRICE: Mr. Sawmiller, raise

1 your right hand, please.

2 (witness sworn.)

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

5 THE WITNESS: My name's Daniel J.
6 Sawmiller, the Ohio Consumers' Counsel, 10 West
7 Broad, Columbus, Ohio 43215.

8 EXAMINER PRICE: Mr. Poulos, please
9 proceed.

10 MR. POULOS: Thank you, your Honor.

11 - - -

12 DANIEL J. SAWMILLER

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

15 DIRECT EXAMINATION

16 By Mr. Poulos:

17 Q. Mr. Sawmiller, by whom are you regularly
18 employed?

19 A. I'm employed by the Office of the
20 Consumers' Counsel.

21 Q. And are you the Mr. Sawmiller whose
22 prepared testimony was filed on February 17th,
23 2010, in this case?

24 A. Yes, I am.

25 Q. On whose behalf do you appear today?

1 A. On behalf of the Ohio Office of the
2 Consumers' Counsel.

3 Q. Do you have your prepared testimony with
4 you on the stand?

5 A. Yes, I do.

6 Q. And did you prepare the testimony or have
7 it prepared at your direction?

8 A. Yes, I did.

9 Q. Do you have any changes or corrections to
10 your prepared testimony?

11 A. Yes, I have one.

12 Q. What is that change?

13 A. That change can be found on page 14, the
14 first word on line 13, "Auspicious" should read
15 "Inauspicious" and that's the only change I have.

16 Q. If I asked you today the same questions
17 found in your prepared testimony as modified by your
18 one correction, would your answers be the same?

19 A. Yes, they would.

20 MR. POULOS: Your Honor, the OCC moves
21 admission of OCC Exhibit 12.

22 EXAMINER PRICE: Don't you think we ought
23 to mark it first?

24 MR. POULOS: We didn't mark it?

25 EXAMINER PRICE: No.

1 MR. POULOS: Your Honor, may I have this
2 document marked as OCC Exhibit 12.

3 EXAMINER PRICE: You may.

4 MR. POULOS: Thank you, your Honor.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MR. POULOS: Your Honor, OCC moves for
7 the admission of OCC Exhibit 12 and tenders the
8 witness for cross-examination.

9 EXAMINER PRICE: We'll defer ruling on
10 the motion for admission until after
11 cross-examination.

12 Mr. Sites?

13 MR. SITES: No questions, your Honor.

14 EXAMINER PRICE: Mr. O'Brien?

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

16 EXAMINER PRICE: Mr. Smith?

17 MR. SMITH: No questions.

18 EXAMINER PRICE: Mr. Eckhart?

19 MR. ECKHART: No questions, your Honor.

20 EXAMINER PRICE: Mr. Heintz?

21 MR. HEINTZ: No questions, your Honor.

22 EXAMINER PRICE: Mr. Reisinger?

23 MR. REISINGER: No questions, your Honor.

24 EXAMINER PRICE: Mr. Lavanga?

25 MR. LAVANGA: No questions, your Honor.

1 EXAMINER PRICE: Mr. Clark?

2 MR. CLARK: Just a couple.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Clark:

6 Q. Mr. Sawmiller, my name is Joe Clark, I'm
7 counsel for IEU Ohio, and I just -- I'll start again.

8 Mr. Sullivan, my name is Joe Clark, I'm
9 counsel for IEU-Ohio and I just have a clarification
10 question on your testimony --

11 A. Sure.

12 Q. -- regarding required DSE-2. Now, as
13 proposed by the companies' rider DSE-2 will
14 compensate FirstEnergy for the costs associated with
15 meeting its rider -- DSE-2 is how the companies will
16 be compensated for meeting the energy -- its programs
17 to meet the energy efficiency and peak demand
18 reduction benchmarks, correct?

19 A. I believe that's correct, yes.

20 Q. And the companies under the rider in
21 their proposal -- in their application would
22 segregate and recover those costs from customer
23 classes or rate schedules depending upon the programs
24 that are geared towards those customer classes or
25 rate schedules, correct?

1 A. Yes, that's how I understand it.

2 Q. And I --

3 EXAMINER PRICE: Mr. Sawmiller, if you
4 could just speak up.

5 THE WITNESS: I apologize.

6 EXAMINER PRICE: That's okay.

7 Q. Just to be clear, in your testimony today
8 you're not suggesting that the company should modify
9 that segregated allocation recovery, correct?

10 A. No, I've not made that recommendation.

11 MR. CLARK: That's all I have, your
12 Honor.

13 EXAMINER PRICE: Thank you.

14 FirstEnergy?

15 MS. MILLER: Yes, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Ms. Miller:

19 Q. My name is Ebony Miller, good afternoon,
20 Mr. Sawmiller.

21 A. Good afternoon.

22 Q. If I ask you a question, if you don't
23 understand me, just let me know, or the mic goes out,
24 but I'm a pretty loud talker so you should be able to
25 hear me.

1 You began your employment with OCC in
2 July of 2007, correct?

3 A. Yes, that's correct.

4 Q. And is it fair to say that the only other
5 relevant energy efficiency experience that you may
6 have had prior to joining the OCC is through maybe
7 some coursework that you had at Bowling Green when
8 you were obtaining your bachelor's degree?

9 A. Yes, I would say that's correct.

10 Q. The words "energy efficiency" or "peak
11 demand" were never mentioned during the course of
12 that course experience, correct?

13 A. That coursework was extended over about
14 seven years, so I can't be certain, but nothing
15 specific that I recall, no.

16 Q. In your opinion is it important that
17 energy efficiency programs deliver high net benefits
18 to customers?

19 A. Yes.

20 Q. And in your opinion high net benefits
21 would be savings customers would -- would be saving
22 customers more money through the avoided capacity
23 energy cost than what was paid to implement the
24 parameters and develop the programs, correct?

25 A. Close. It's the avoided capacity costs

1 and the avoided energy costs used to implement the
2 program or that were avoided by the program.

3 Q. But you don't know how to calculate the
4 cost of avoiding new generating capacity, do you?

5 A. Well, avoiding new generating capacity
6 would typically be calculated based on the price of a
7 new peaker plant, but the specific calculations used
8 or how that's determined what that cost is, I'm not
9 aware of how that's calculated.

10 Q. Turning to page 10, line 22 of your
11 testimony.

12 Are you there?

13 A. Yes.

14 Q. Is it fair to say that you take issue
15 with the company's use of the word "preliminary"?

16 A. When referencing the discussions between
17 FirstEnergy companies and Dominion East Ohio and the
18 collaborative members of East, yes, I would take
19 issue with the word "preliminary" for those
20 discussions.

21 Q. But you're not aware of whether OCC
22 supported this program, are you?

23 A. OCC did support the program, I believe
24 OCC recommended the program in the Dominion East Ohio
25 collaborative, however, this program was not yet

1 finished for ultimate approval of the design, but the
2 idea of a joint gas and electric program is something
3 that OCC supports, yes.

4 Q. So OCC supported the idea of the program,
5 but they didn't support the program design?

6 A. There was no final design filed that was
7 asked for support, so I don't think it ever got quite
8 to that stage. But we were actively working with
9 both collaboratives to try to develop a final program
10 design that we could support.

11 Q. So it's fair to say the program wasn't in
12 any sort of final form and additional work needed to
13 be done?

14 A. I would say it was nearing a final form.
15 There were still a few outstanding issues with the
16 design of the program, but it was not -- it was never
17 completed.

18 Q. At the stage that the program was in, you
19 said it was nearing final form, was OCC comfortable
20 and prepared to sign off at that point, subject to a
21 couple tweaks?

22 A. There were more than tweaks, I would say
23 there was an issue with converting gas Btus into a
24 kilowatt savings number for the purposes of meeting
25 the energy efficiency benchmarks in Senate Bill 221,

1 and there was still an outstanding issue about how
2 the service territories in FirstEnergy overlap with
3 Dominion East Ohio and how we would address customers
4 that don't fall into that overlapping territory.

5 Some of those were just, you know, some
6 details that still needed to be worked out and
7 discussions were taking place.

8 Q. You didn't run a TRC or analysis on the
9 program, did you?

10 A. No, I didn't. And in my testimony I
11 recommend that the program go back to the
12 collaborative to continue to be evaluated for its
13 cost-effectiveness.

14 Q. So you don't know if the program is
15 cost-effective or not.

16 MR. POULOS: Objection, your Honor. This
17 witness has said that this has not been a finalized
18 program.

19 EXAMINER PRICE: I don't understand your
20 objection, Mr. Poulos.

21 MR. POULOS: Speculation.

22 EXAMINER PRICE: Overruled. You may
23 answer. Not you may answer, you have to answer.

24 THE WITNESS: Thank you.

25 A. No, I don't think that a

1 cost-effectiveness test was run on this program so I
2 don't know if it was cost-effective or not. And
3 again, I mentioned earlier, we didn't have the final
4 design which means we didn't have all the costs, so
5 it would be difficult to run a cost-effectiveness
6 test without the cost information.

7 Q. In a couple places in your testimony you
8 expressed concern that the collaborative has not met
9 recently; is that fair to say?

10 A. Can you show me my testimony you're
11 referring to?

12 Q. Do you not think you said that in your
13 testimony?

14 MR. POULOS: Objection, your Honor,
15 argumentative.

16 EXAMINER PRICE: It would be helpful if
17 you would point out the references for the witness
18 and for the Bench.

19 Q. Page 10, lines 13 through 16.
20 "Unfortunately the collaborative has not met since
21 that meeting other than for settlement discussions."
22 Do you see that?

23 A. Yes, I see that.

24 Q. And then again on page 11, line 17.

25 A. Yes, I see that.

1 Q. So it's fair to say?

2 THE WITNESS: Could I have the question
3 repeated? I apologize I've lost the --

4 EXAMINER PRICE: We're three questions
5 back.

6 (Record read.)

7 A. Yes, I would say that's fair.

8 Q. Did you see an e-mail from the companies
9 requesting feedback for agenda items for the next
10 collaborative meeting?

11 A. I did. I recall that e-mail specifically
12 stating that nothing that's involved in this
13 portfolio plan could be presented for collaborative
14 discussion until after this case, and I'll say the
15 majority or all of the work that we've done with
16 FirstEnergy related to programs are in some ways
17 included in this plan, so any recommendations for
18 further collaborative work were clearly denied up
19 front, as this plan was in front of the Commission.

20 MS. MILLER: I believe it was a "yes" or
21 "no" question. Could I strike the witness's
22 response? It was did he receive an e-mail.

23 EXAMINER PRICE: Let's have the question
24 and answer back again.

25 (Record read.)

1 EXAMINER PRICE: I think that was
2 sufficiently answered, that his answer was
3 responsive, however, I will say that if you ask "yes"
4 or "no" questions, I will require a "yes" or "no"
5 answer.

6 MS. MILLER: Thank you.

7 Q. Was the joint program that we just
8 discussed part of the portfolio plan that the
9 companies have filed?

10 A. No. The plan stated that that joint
11 program was not included, as discussions were
12 preliminary.

13 Q. And you said that you did receive an
14 e-mail requesting agenda items, correct? You did
15 receive the e-mail?

16 A. I did receive an e-mail that asked for
17 agenda items but, like I said, it did also mention
18 not to ask for agenda items for anything that would
19 be included in this.

20 Q. Did you submit to the company an agenda
21 item requesting discussion of the joint program we
22 just discussed, since it's not in the plan?

23 A. The plan includes a comprehensive
24 residential retrofit program which is very similar to
25 the joint program just without the gas company, and

1 given that a comprehensive residential retrofit
2 program was included, that would preclude being able
3 to discuss a joint program because it's so closely
4 aligned to what's in this plan.

5 EXAMINER PRICE: I'm not going to wait
6 for Ms. Miller on that. I promised her I'd give her
7 "yes" or "no" answers and I gave you a lot of slack
8 earlier, but even from my position that was not
9 responsive. Please answer the question.

10 THE WITNESS: Can I have the question
11 again, please?

12 MS. MILLER: Could I have the question
13 reread?

14 (Record read.)

15 EXAMINER PRICE: "Yes" or "no,"
16 Mr. Sawmiller?

17 A. I did not following that e-mail, no.

18 Q. (By Ms. Miller) In fact, you didn't
19 respond recommending any agenda items, did you?

20 A. I did request that we resume discussions
21 on the joint home performance program in a
22 collaborative meeting, but I did not respond with an
23 additional request after the e-mail was sent for the
24 joint program or for any other program. My focus was
25 also on the plan.

1 Q. So to be clear, after the e-mail was
2 sent, you did not respond providing any agenda items,
3 correct?

4 A. I don't recall the date that that e-mail
5 was sent. I don't know if I can answer that
6 accurately.

7 Q. If I showed you a copy of the e-mail,
8 would that refresh your memory?

9 A. It may.

10 MS. MILLER: May I approach, your Honor?

11 EXAMINER PRICE: You may.

12 Are you having this marked at this time,
13 Ms. Miller?

14 MS. MILLER: No, not at this time, your
15 Honor.

16 Q. Is this the e-mail we just discussed that
17 was sent -- let me back up.

18 Do you have before you an e-mail that was
19 sent on January 27th, 2010?

20 A. Yes, I do.

21 Q. Are you familiar with this document?

22 A. Yes, I am.

23 Q. And did you receive a copy of this e-mail
24 sent on January 27th, 2010?

25 A. Yes, I did.

1 Q. And at the bottom, the last paragraph, is
2 this the paragraph that we discussed asking for
3 agenda items?

4 A. Yes.

5 Q. After receiving this e-mail did you
6 submit any agenda item?

7 A. No. This was just a matter of days
8 before my testimony was due and less than, you know,
9 just, you know, not that long ago, so no, I had not
10 since then requested a collaborative meeting. I've
11 been focused on the plan in front of us.

12 MS. MILLER: Your Honor, motion to strike
13 everything after "no."

14 EXAMINER PRICE: Granted.

15 MS. MILLER: No further questions.

16 EXAMINER PRICE: Thank you.

17 Mr. Reilly?

18 MR. REILLY: No questions, your Honor.

19 EXAMINER PRICE: Redirect, Mr. Poulos?

20 MR. POULOS: If I may take a moment, your
21 Honor.

22 EXAMINER PRICE: You may.

23 MR. POULOS: Thank you.

24 EXAMINER PRICE: Let's go off the record.

25 (Off the record.)

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

3 Mr. Poulos.

4 MR. POULOS: Thank you, your Honor. Just
5 very briefly.

6 - - -

7 REDIRECT EXAMINATION

8 By Mr. Poulos:

9 Q. Mr. Sullivan, you were asked questions
10 about an e-mail on cross-examination. Do you recall
11 that?

12 A. Yes, I do.

13 Q. That was dealing with putting items on
14 the agenda for a collaborative meeting.

15 A. Yes, I recall that discussion.

16 Q. And the statement that you did not put
17 anything on -- request anything for the agenda on the
18 collaborative meeting; is that right?

19 A. Yes.

20 Q. Why didn't you request anything to be put
21 on the agenda for a collaborative meeting?

22 A. After the joint home performance program
23 discussion had been abandoned, I did ask again in
24 November at a collaborative meeting to revisit the
25 program design, and that request was denied.

EXAMINATION

1
2 By Examiner Price:

3 Q. Do you think that's unreasonable, that
4 now that a case has gone to litigation, it would no
5 longer be the subject of collaborative meetings?

6 A. No, I do not think that's unreasonable.
7 I think that -- I don't see that it would be a
8 reasonable request for me to make of this joint home
9 performance program to go on an agenda since this
10 e-mail was provided. You know --

11 Q. Won't there be a portfolio plan in the
12 future?

13 A. There will, but I think that the 30 days
14 between when this email was sent and today would not
15 have provided sufficient time to develop remainder of
16 that plan, and that's something that I would like to
17 pursue in the future and I will be making that
18 request in the future.

19 I just didn't see this as the most
20 opportune time to make that request, adding to that
21 the fact that the request had been denied multiple
22 times, I just didn't see a lot of benefit replying to
23 this at this time. But I think it's definitely
24 reasonable that litigated items should not be
25 discussed in the collaborative right now.

1 Q. Do you think it's not unreasonable -- do
2 you think it was unreasonable for the collaborative
3 efforts to slow down as litigation commenced because
4 parties had to prepare for litigation on this case?

5 Just like you said you had a narrow
6 period of time to focus on your testimony in this
7 case, isn't that true for all the parties in the
8 collaborative who were also parties to this case?

9 A. Somewhat. I'll say, you know, some of
10 the other utilities we have continued to meet and
11 discuss and reach resolutions after things had been
12 filed, although a case is pending, we've been able to
13 reach resolution on issues, and that's something that
14 could have been done. I don't know that I'll really
15 comment on whether or not it's reasonable, but I
16 think it could have been done, yes.

17 EXAMINER PRICE: Okay. Thank you.

18 Mr. Sites?

19 MR. SITES: No questions, your Honor.

20 EXAMINER PRICE: Mr. O'Brien?

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

22 EXAMINER PRICE: Mr. Smith?

23 MR. SMITH: No questions, your Honor.

24 EXAMINER PRICE: Mr. Heintz?

25 MR. HEINTZ: No questions, your Honor.

1 EXAMINER PRICE: Mr. Reisinger?

2 MR. REISINGER: No questions, your Honor.

3 EXAMINER PRICE: Mr. Lavanga?

4 MR. LAVANGA: No questions, your Honor.

5 EXAMINER PRICE: Mr. Clark?

6 MR. CLARK: No questions, your Honor.

7 EXAMINER PRICE: Ms. Miller?

8 MS. MILLER: Just a few more questions,
9 your Honor.

10 - - -

11 RE-CROSS-EXAMINATION

12 By Ms. Miller:

13 Q. Is it your testimony there was no program
14 that was not included in the plan that could have
15 been discussed at a future collaborative meeting?

16 A. No.

17 Q. "No," there was no other program to
18 discuss?

19 MR. POULOS: Objection, beyond -- your
20 Honor, beyond the scope of cross or the scope of
21 redirect.

22 EXAMINER PRICE: We'll give her a little
23 bit of leeway.

24 A. I answered "no" to your question, I
25 think, if we could have it reread.

1 EXAMINER PRICE: Let's have the last
2 question back, please.

3 THE WITNESS: Thank you.
4 (Record read.)

5 EXAMINER PRICE: So the pending question
6 there is no other program to discuss.

7 A. My answer to that was "no," that there --
8 I am sure there are a multitude of programs that
9 could be discussed. I think that what's included in
10 this plan is by no means a comprehensive plan that
11 will never be expanded upon or changed in any way.

12 I did not recommend any programs since
13 this e-mail was sent to me, no. But that doesn't
14 mean that there's not other programs out there that
15 the collaborative couldn't discuss at some point in
16 the future, if that's what you're asking.

17 MS. MILLER: No further questions.

18 - - -

19 FURTHER EXAMINATION

20 By Examiner Price:

21 Q. Mr. Sawmiller, my impression from your
22 testimony is that you are not in favor of a shared
23 savings provision at this time for FirstEnergy; is
24 that correct?

25 A. No, that wouldn't be correct.

1 Q. That would not be correct?

2 A. No, it would not.

3 Q. What sort of shared savings proposal
4 would you support?

5 A. I've made a recommendation in my
6 testimony, if you'll give me a moment to turn to that
7 page.

8 Starting on page 6, in question and
9 answer 6, I describe the concept of shared savings
10 being a performance-based, and I'm quoting, "a
11 performance-based mechanism developed to reward a
12 utility for developing and implementing new
13 cost-effective energy efficiency programs that
14 deliver high net benefit to customers."

15 And I propose a shared savings mechanism
16 that would reach these goals.

17 I would add to that that the plan as
18 proposed coupled with the shared savings mechanism as
19 I propose, it would indeed -- the effect that you
20 asked the question of, it would not reward the
21 utility for exceeding the benchmark.

22 There would have to be changes made to
23 that portfolio, and the shared savings mechanism with
24 the parameters that I'm proposing would provide
25 incentive to make those changes and provide the

1 retirement benefits to customers.

2 EXAMINER BOJKO: But what factually are
3 those parameters? I mean are you referring to the
4 question and answer on page 9, question 10?

5 You said that the company should become
6 eligible only when exceeding the benchmarks using
7 utility directed customer programs? I mean, are
8 those the parameters?

9 I guess I was looking for yes -- when you
10 answered "yes" to Mr. Price that you were going to
11 tell me percentage, a number.

12 THE WITNESS: Sure, I can answer that.
13 The parameters are a few. One is customer directed,
14 that customers actually have the ability to get from
15 the program themselves, and one of the other things I
16 mentioned here is that would not include transmission
17 and distribution programs towards the shared savings
18 and that would not include mercantile opt-out
19 programs to count towards the shared savings that
20 would be rewarded to a utility. So those are the
21 parameters --

22 EXAMINER BOJKO: I'm sorry, the first one
23 you talked about, the customer participation, that
24 would be not be -- the customer-sited is not to be
25 counted?

1 THE WITNESS: It would be counted. A
2 program that's actually delivered to a customer, me
3 as a customer, I have an opportunity to participate
4 in this program, incents me to do the energy
5 efficiency, those will be counted.

6 But the utility programs such as
7 transmission and distribution project that's taken on
8 to improve reliability or to accommodate load growth
9 would not be given a shared savings incentive or
10 reward.

11 Q. (By Examiner Price) So you would exclude
12 them from calculating when the utility had exceeded
13 the benchmark; is that right?

14 A. For purposes of shared savings, yes.

15 Q. I understand that, for purposes of shared
16 savings.

17 A. Yes.

18 Q. And you would exclude mercantile
19 customers' programs for purposes of -- for shared
20 savings purposes when they exceed a benchmark; is
21 that right?

22 A. That's correct.

23 EXAMINER BOJKO: And you say
24 customer-site on page 2 and you mean to insert the
25 word "mercantile" customer-sited. Are those the type

1 of programs?

2 THE WITNESS: Can you tell me where?

3 EXAMINER BOJKO: Line 19 on page 9. I
4 thought I heard you answer reverse to my question
5 earlier about customer-sited programs, so is there a
6 distinction, do you mean "mercantile"?

7 THE WITNESS: Let me make sure we're
8 talking about the same things here. What I'm talking
9 about is customer-directed programs, the utility is
10 offering a program to their customer, the customer
11 partakes in that program, and because of that program
12 being offered to them, they saved energy. The
13 utility would get a portion of that saved cost to be
14 collected under the shared savings incentive.

15 Q. (By Examiner Price) And why would you
16 exclude mercantile customers then, because they
17 initiated the program entirely on their own?

18 A. That's correct. In many cases they opt
19 out of the rider and things and it's not something
20 that the utility incented.

21 Q. Okay. Do you have a recommended level of
22 incentive, do you think -- assuming the Commission
23 were to adopt your recommendations and exclude
24 T and D, exclude mercantile customer, do you think
25 the 15 percent incentive proposed by FirstEnergy in

1 Mr. Ouellette's testimony is reasonable?

2 A. Can you give me just a moment? I'd like
3 to reread what the proposal was to be sure.

4 I think 15 percent could be seen as
5 reasonable if the recommendations that I make were to
6 be adopted. Yes, I think that's within the scope.

7 One thing that I would add is there's
8 no -- there's no cap on that 15 percent number and
9 other mechanisms in Ohio do include a cap on that
10 15 percent. So, you know, there are some other
11 things there I suppose that would affect what that
12 15 percent number would be.

13 I didn't make a recommendation in my
14 testimony as to whether 15 percent was accurate. I
15 do feel there's a lot of moving parts that make that
16 number either reasonable or unreasonable.

17 EXAMINER PRICE: Okay.

18 - - -

19 EXAMINATION

20 By Examiner Bojko:

21 Q. Let's switch to your testimony on page 13
22 that talks a little bit about the infamous CFL
23 program. I'm a little confused and maybe you can
24 walk me through exactly what your position or
25 Consumers' Counsel's position is with regard to the

1 different stages of this program.

2 Because you talk about the -- you talk
3 about in the beginning that you were disappointed
4 that this program didn't get off and that the utility
5 requested an extension, and I guess what I read in
6 your testimony is that you're talking about an
7 extension of, let's just be clear here, November
8 30th to December 15th. That's the 15- or 16-day
9 extension that you were referencing; is that right?

10 A. Yeah, I think there's more to that than
11 that, if you would like me to explain now, or if you
12 want to continue your questioning.

13 Q. By all means, go ahead.

14 A. The order that sent the CFL back to the
15 collaborative for redesign asked for the redesign to
16 be filed November 30th. The members of the
17 residential subcommittee met, you know, I know six
18 times in person and more times by phone only in the
19 month of November to redesign this program, and the
20 distribution aspects of this program were agreed upon
21 at the end of November.

22 And that program could have been filed at
23 the end of November for approval, and the program has
24 not changed in any way since the end of November
25 until when it was added to this plan or even as it

1 stands today.

2 Adding this program to this plan had the
3 effect of including it in the process prescribed for
4 this portfolio plan which included the mandatory
5 hearing. I think that that program could have been
6 implemented and rolled out with the remaining cost
7 issues left for further debate later.

8 I didn't see the need to delay that
9 program and roll it into the portfolio. It could
10 have been filed, in my opinion, the same as it was
11 originally filed outside the portfolio.

12 Q. Okay. Well, now you've raised a lot of
13 issues. So let's talk about, okay, you said you
14 thought it could be filed November 30th when the
15 Commission directed and you thought it could be done
16 without a hearing. So in what time period did you
17 think -- did you think Commission approval was
18 necessary?

19 A. Yes, I believe so.

20 Q. Okay. So in what time period from
21 November, the filing was supposed to occur
22 November 30th, to when did you think the approval
23 should have been had?

24 A. I wouldn't want to speculate on the
25 amount of time that it would take, but I think that

1 the fact that the program would have been filed with
2 the collaborative's consensus and recommendation on
3 the new design of that program and the amount of
4 scrutiny that was being placed on that program, it
5 may have moved, you know, I think it definitely would
6 have moved quicker than what this portfolio
7 proceeding has moved.

8 But I don't know that it would have been,
9 you know, a week or two weeks or what the case, but I
10 think the approval of the recommendation or the
11 approval of the collaborative may have helped that to
12 move quicker.

13 Q. Okay. We need to talk about a couple
14 things separately. First, I want to focus on the
15 cost for just a minute. You talk about this \$30,000
16 in warehouse costs and that that's a problem, then I
17 think you're terming this "sunk costs," is it fair
18 that's the characterization you use is the warehouse
19 cost of keeping the light bulbs in because of the old
20 failed program is a sunk cost?

21 A. I can go with that, yes. That's fine.

22 Q. Well, I mean, I think that's what you
23 call it. I have more questions if you want to go
24 through it, I mean, question and answer 16 you use
25 the word "sunk" costs, and I want make sure you're

1 talking about the old program.

2 And I mean, that's what I'm trying to
3 figure out, your testimony, I couldn't understand, is
4 -- I mean, if the Commission would have approved
5 this, if FirstEnergy would have filed, and I'm not
6 sure -- this isn't another question, I'm not sure
7 what you wanted them to file on November 30th, but
8 if they would have filed something on
9 November 30th, then the Commission would have
10 approved it and so the costs between
11 November 30th or wherever you go back to, the
12 warehouse, you don't have a starting date of these
13 warehouse costs, but that starting date of the costs
14 to when Commission approval was, do you believe that
15 those warehouse costs and any other sunk costs, you
16 specifically lay out the warehouse costs, do you
17 believe that those costs would have been able to be
18 recovered in the new revised CFL program?

19 A. I'm sorry, it's very confusing. I think
20 I know where you're going.

21 Q. The point I'm trying to ask you is you're
22 disputing the time of the company rolling and
23 delaying the CFL program into the portfolio filing.
24 If they had not, that there would have still been a
25 time period from November 30th or November 4th,

1 when the Commission ordered them to revise the plan,
2 to when approval would have been gotten.

3 You stated that you thought approval
4 would have been necessary. So are you disputing all
5 costs from the revised program or are you just
6 disputing the warehouse costs that are extra because
7 the company chose not to file on November 30th but
8 instead rolled into this portfolio plan?

9 A. The latter.

10 Q. Okay. So then if it's your position that
11 the company could recover those costs from the old
12 plan, all the other costs from the old plan but for
13 the delayed costs, I mean, that's what I'm trying to
14 get at.

15 A. No, okay.

16 Q. Because you mentioned 30,000 then you
17 throw out a 120,000 number.

18 A. Sure.

19 Q. And then if we look at question and
20 answer 16 and question and answer 17, you're talking
21 about sunk costs and --

22 A. I think I confused you when you asked me
23 to use the term "sunk." The warehousing I don't see
24 as necessarily a sunk cost as I would define it. The
25 sunk cost is a cost that was spent and there's no

1 benefit coming from those costs but we can't get
2 those costs back.

3 We are paying warehousing costs to store
4 these bulbs, but -- it's \$30,000 a month, but we're
5 storing the bulbs. We have also numbers for
6 marketing costs and management costs that are already
7 expended and there's no benefit showing for those
8 costs and that's what I'm coining as "sunk costs."

9 So there's a little bit of a difference
10 there. I am using to develop the warehousing cost
11 number from the date November 30th, where the
12 Commission had originally asked for filing to be
13 made, until April 1st, which is the fast track --
14 the request for the fast track of this program that
15 was included in this plan, so that's where the
16 \$120,000 came from.

17 Q. Okay. So what if the Commission, even if
18 they filed on November 30th, what if the Commission
19 would not have approved this till April 1st, or say
20 the Commission doesn't approve it now till July, I
21 mean, does the company not include those in the
22 recovery of the CFL costs?

23 A. I think that filing it on November
24 30th as planned provided an opportunity for earlier
25 approval and it would have had the collaborative

1 support which also makes it more likely that it would
2 have an earlier approval.

3 However, part of my reasoning for this is
4 that the collaborative was not consulted when
5 determining whether or not to make this request for a
6 delay, and it kind of undermines and diminishes the
7 purpose of the collaborative, which is to reach
8 consensus and to discuss these programs as a group.

9 And to make that decision alone and then
10 to charge customers \$30,000 a month for that decision
11 that was not discussed with the collaborative, to me
12 seems unreasonable.

13 Q. Okay. But you think it is reasonable to
14 include the costs if they would have filed on
15 November 30th, but it was the Commission who did
16 not approve the costs or approve the program until
17 April or June or July. Then in your mind it would
18 have been reasonable because they followed the time
19 line for filing.

20 A. Well, yeah, I would say at that point
21 that's something that was outside the collaborative's
22 control and, yeah, I would not be in a position to
23 say that it was unreasonable to recover those costs
24 because of the timing delay at the Commission, that's
25 right.

1 Q. Now I want to talk about --

2 EXAMINER PRICE: One second, I have a
3 follow-up real fast, I'm sorry.

4 Q. This is a follow-up, you used the words
5 to formulate your basis of whether it should have
6 been or you believed that it would have been able to
7 be approved earlier because of the collaborative, and
8 I guess I would ask you in what form did you expect
9 the November 30th filing, because the old program,
10 you know, there was a letter and a statement that
11 consensus in the collaborative had been made and,
12 obviously, we all know how that turned out, that
13 consensus was clearly not reached because then we had
14 more proceedings and, you know, oral arguments and
15 everything at the Commission.

16 So what form did you expect the
17 November 30th filing to actually have?

18 A. You know, I'm not exactly sure how to
19 answer that, but I do also agree with there being a
20 concern to show the Commission with clarity that
21 there is indeed consensus within the collaborative,
22 and at the time had that filing been made, I think
23 that's something that OCC would have tried to ensure
24 that our position was very clear, and if the
25 collaborative did indeed reach consensus, that it was

1 clear in that filing.

2 What that form would have been or where
3 that would have been, I don't know if it's something
4 I would have been involved with creating or whatever,
5 but I think it would have needed to have been clear
6 at that point.

7 EXAMINER PRICE: When you say the
8 collaborative had a consensus at the end of November,
9 does that include issues related to costs?

10 THE WITNESS: No, it does not. I was
11 speaking about distribution of the program.

12 EXAMINER PRICE: Did that include issues
13 related to lost distribution revenues?

14 THE WITNESS: No, it did not.

15 EXAMINER PRICE: So you would have asked
16 the Commission to approve this program on or about --
17 sometime after November 30th without having a
18 consensus on cost or lost distribution revenues or
19 even answers to those questions; is that correct?

20 THE WITNESS: Yes, the cost for the
21 program I would have requested been delayed probably
22 to this proceeding.

23 Q. (By Examiner Bojko) Okay. Well, was it
24 your understanding from the collaborative that
25 FirstEnergy would have implemented the programs

1 without assurance of cost recovery or lost revenue
2 recovery?

3 A. Yes. And that was the case --

4 Q. Wait. "Yes" what? "Yes," what, that you
5 thought that FirstEnergy would start the program
6 without the cost determination?

7 A. I don't think it would have been
8 unreasonable to do that. That's happened in other
9 utilities in Ohio.

10 Q. Was that discussed in the collaborative?

11 A. I'm sure it was discussed. I can't
12 recall details of what was discussed.

13 EXAMINER PRICE: I've got a more specific
14 issue just as to marketing.

15 EXAMINER BOJKO: I have more too, I meant
16 on that.

17 EXAMINER PRICE: At page 15, line 13
18 through 15, you state the plan approved by the
19 Commission included a \$1.8 million expense for
20 marketing the program, however, FirstEnergy only
21 spent a mere 427,000 of the \$1.8 million allocated
22 for marketing.

23 You're aware, having followed this
24 very carefully, that the Commission approved the
25 program September 23rd, 2009, and the Office of

1 Consumers' Counsel asked for rehearing 15 days later
2 on October 8th, 2009.

3 And so you feel they should have spent
4 more of the \$1.8 million in that 15-day period?

5 THE WITNESS: Yes, the \$1.8 million
6 number that I reference here is a number that was
7 estimated to be needed to effectively premarket and
8 educate customers on this program.

9 EXAMINER BOJKO: Wait, "this program"
10 meaning the old program.

11 EXAMINER PRICE: The original CFL
12 program.

13 THE WITNESS: That's correct.

14 EXAMINER PRICE: So you anticipated they
15 would spend \$1.8 million in 15 days.

16 THE WITNESS: The application at that
17 time and the application that still exists in this
18 plan now states that it's critical to do that in
19 three to four weeks, and that --

20 EXAMINER BOJKO: I'm sorry, which
21 application? You're talking about the fast-track
22 application?

23 THE WITNESS: The plan that's in front of
24 us now includes a sixth draft of this CFL program,
25 and it talks in there about it's critical to

1 premarket this program before it rolls out, which I
2 don't think is even the case.

3 I think they plan to market and roll out
4 the program again on the same time line not regarding
5 the critical need to educate consumers properly on
6 what the program is and the benefits that it provides
7 to them.

8 In addition to the amount of time --

9 EXAMINER PRICE: What specifically do you
10 think they didn't do in the 15 days that they had?

11 THE WITNESS: The customers were educated
12 on an extensive CFL program that was going to be
13 delivered to their door without any option to the
14 customer. It disregarded any communication regarding
15 the overwhelming benefits of energy efficiency as a
16 whole, that a portfolio plan was in the making that
17 would -- for customers who don't see the need or
18 benefit or don't like the color or all the different
19 things that they can complain about a CFL bulb, that
20 other options are coming in the future.

21 So it kind of caused an uproar: Why am I
22 getting this? As opposed to: This is part of the
23 plan, this is just one of the first pieces of that
24 plan.

25 EXAMINER PRICE: You don't think the cost

1 to the consumers or at least the perceived cost to
2 the consumers was part of what you characterize as an
3 "uproar"?

4 THE WITNESS: Of course, that was part of
5 it.

6 EXAMINER PRICE: And if FirstEnergy had
7 gone ahead at the end of November, as you suggest,
8 without having resolved cost recovery issues, you
9 don't think the lack of answers to how much is this
10 going to cost wouldn't have caused another,
11 quote/unquote, uproar?

12 THE WITNESS: That's something that we
13 did discuss in detail in the collaborative to try to
14 determine how to avoid that, and part of that was to
15 make mention to the portfolio plan and that the costs
16 of this program were going to be costs included in
17 part of a greater portfolio, and --

18 EXAMINER PRICE: Don't you think there's
19 a certain amount of risk in that approach? A risk of
20 consumer dissatisfaction with not having answers?

21 A. Sure.

22 Q. (By Examiner Bojko) Well, I guess I'm a
23 little confused. Let's go back to the part of -- I'm
24 stuck on the you believe the Commission would approve
25 this quickly and thus these costs should be

1 disallowed, because I read the joint application for
2 fast track in this case and I read -- well, maybe you
3 should tell, me what is your position on the
4 fast-track program?

5 A. Well, specifically related to the CFL
6 program I find it difficult to call it fast tracking
7 a program that in all reality has been significantly
8 delayed. So what are we fast tracking from when the
9 Commission had originally asked for filing on the
10 30th? I see it more as a delayed program than a
11 fast-track program.

12 Q. So are you opposed to even bifurcating
13 this proceeding and somehow issuing a ruling on the
14 fast-track programs earlier than the portfolio order
15 would come out?

16 A. Somewhat. Like I said a moment ago --
17 EXAMINER PRICE: I'm sorry, I think
18 that's a "yes" or "no" question.

19 Do you support -- do you recommend to the
20 Commission that they approve the fast-track programs?
21 Understanding that you don't like the
22 characterization of "fast track," do you recommend
23 that the Commission approve by mid-March the
24 fast-track programs?

25 THE WITNESS: Not including the costs,

1 the outstanding costs that are at issue that I
2 mention in my testimony. However, the distribution
3 design of the program I think should go forward.

4 Q. But the filing was made including the
5 cost recovery, and that's why I don't understand your
6 statement that -- your basis that this could have
7 been approved quickly with the company going forward
8 without a guaranteed cost recovery. I mean, what is
9 your basis that the --

10 A. I think there was a joint motion filed in
11 this case in regards to these fast-track programs and
12 that document itself is asking to roll out the
13 program without guaranteed cost recovery or any cost
14 issues handled, and that those issues would be
15 handled now in this case, so I think it's the same
16 situation there as it would have been in November.

17 Q. That's what you believe that motion says?

18 A. It does say that, yes.

19 MR. POULOS: Your Honor, OCC did file
20 comments to the motion.

21 EXAMINER BOJKO: I know, that's why I'm
22 trying to figure out based on the testimony provided
23 for us what exactly your witness's testimony is with
24 regard to everything that's been filed with CFLs. I
25 know, I read.

1 THE WITNESS: I'm trying to be clear, I
2 apologize. I'm trying to answer your questions here.

3 Q. You stated you believe that the motion
4 did include a punting of the cost recovery, but
5 didn't it really bifurcate the punting of the cost
6 recovery? Didn't it really say we want to get cost
7 recovery and if the Commission changes something
8 about the program on a going-forward bases, you can
9 change the program, but we still get cost recovery
10 from everything that's been incurred?

11 A. I think what the joint motion said is
12 that cost recovery would be done per the stipulation
13 in the 935 case, and that was the ESP, and I think
14 that's where some of the issue lied is what really is
15 allowed per the language in 935 and what was not.

16 And the reason OCC didn't sign on to the
17 motion is because it didn't make it absolutely clear
18 that the cost issues were still remaining to be
19 litigated, and I think that was the purpose of the
20 motion. It just wasn't clear enough in the motion
21 and that's why we filed our comments outside of that.

22 Q. That's my point. And you just told me it
23 was clear in the motion that they were punting
24 everything, and that's not what I got from OCC's
25 response to the motion.

1 A. I suppose I misspoke. The discussions
2 around that was everyone else assumed that that was
3 clear in the motion, OCC did not, and so we did not
4 sign on and we filed our comments instead.

5 But I think it is supposed to be clear by
6 that motion that the costs -- that the program
7 distribution design is approvable while the costs
8 will be handled in this case.

9 Q. And including the sentence that says "Any
10 modifications to the fast-track program found to be
11 necessary by the Commission in its final order in
12 this proceeding will be made on a prospective basis
13 only with any such modifications having no effect on
14 the recovery of reasonably incurred costs associated
15 with the fast-track programs that have been committed
16 to be spent or actually spent by the companies in
17 reliance upon the granting of this motion"?

18 A. That's a lot that I don't have in front
19 of me to comment on. But I think --

20 EXAMINER PRICE: We can read the question
21 back.

22 THE WITNESS: We can rely on reasonable,
23 you know, the costs have to be reasonable and the
24 reasonableness was to be determined through this
25 case.

1 Q. Okay. I'm still -- okay. Is it your
2 position that the fast-track programs should or
3 should not be approved by April 1st, or it was
4 effective April 1st, so March 30?

5 A. I'd like to defer to our comments on that
6 motion asking for approval of the fast-track
7 programs.

8 Q. But I'm trying to understand your
9 testimony in this case regarding cost recovery and
10 what should or shouldn't be included in the cost
11 recovery, and the difference between the initial and
12 the revised CFL plan, and I'm trying to figure out
13 the pieces of the puzzle and how they fit together,
14 and that's why I'm trying to ask you the questions,
15 to bring those pieces together.

16 I mean, you don't have a position of
17 whether the fast-track program should be approved
18 before March 30th?

19 A. I think they should be approved without
20 being allowed to collect sunk management costs, sunk
21 marketing costs, warehousing costs from
22 December 1st to the approval date of the fast
23 track. That would be my position on it.

24 Q. Okay. So any costs included, do you
25 agree with the sentence I read to you that any

1 reasonable costs incurred on a prospective basis
2 would be -- that the Commission, if they made changes
3 to that, that the company would still be able to
4 recover those committed costs that have either --
5 been spent by the companies in reliance upon the
6 granting of the motion; do you believe that they
7 should get those costs?

8 A. Again, that's a lot. If you could put
9 the sentence in front me to read, it would be
10 helpful.

11 Q. Sure.

12 A. Thank you very much.

13 So you're starting on C.

14 Q. The highlighted part is C, yes, that's
15 correct.

16 A. It's difficult for me to agree with this
17 language. It doesn't seem to take into consideration
18 the recommendations that I've made in my testimony
19 regarding sunk costs and warehousing costs, so no, I
20 would not agree with this here.

21 However, I would say that the quicker we
22 can get these programs on the ground and out
23 benefiting customers, the better. But there are
24 still cost implications that are being debated, and
25 this language here doesn't seem to me to take that

1 into consideration.

2 Q. Thank you.

3 I mean, do you see my confusion?

4 A. No; I do.

5 Q. Okay.

6 A. The language in this was very tricky and
7 confusing and that's why OCC decided to stay off, but
8 I think the purpose of the motion and the discussions
9 I participated in, most people felt that it was clear
10 these costs were still to be litigated here. OCC
11 took a different position.

12 Q. So let's talk about, then, the actual
13 costs that are in your testimony, okay. You talk
14 about the marketing costs and you've stated that
15 these are marketing costs from the initial program in
16 Pennsylvania.

17 Are you saying that none of the
18 \$1.8 million of the old program should be
19 incorporated into the cost recovery of the new
20 program?

21 A. No, the only costs from the old program
22 that are being incorporated into the new program to
23 my knowledge, is this roughly \$427,000. And that's
24 the money that was committed for marketing from the
25 first program that is not providing benefit to the

1 second or to the new program that I'm saying should
2 be disallowed.

3 Q. I'm sorry, it was 427.

4 EXAMINER PRICE: One second. Can I
5 follow up to that?

6 THE WITNESS: Sure.

7 EXAMINER PRICE: Your argument is that
8 this money should be disallowed, the \$427,000,
9 because they did not spend enough of it. If they had
10 spent the full 1.8 million, then you would support
11 the recovery of that 1.8 million?

12 THE WITNESS: I don't think it's that
13 easy, but I think that spending the 1.8 million would
14 have had a much more likely -- likelihood of success
15 for the program.

16 EXAMINER PRICE: So you --

17 THE WITNESS: And this may not have
18 been --

19 EXAMINER PRICE: You think they should
20 eat the marketing costs because of the uproar and the
21 program failed.

22 THE WITNESS: I think that the marketing
23 was, yeah, ineffective, insufficient, and resulted in
24 a failing program and, therefore, the small amount
25 here should not be collected.

1 EXAMINER PRICE: Had you reviewed the
2 marketing materials beforehand?

3 THE WITNESS: I had asked multiple times
4 for information to support the marketing cost and the
5 management cost.

6 EXAMINER PRICE: That's not what I said.
7 Did you review the marketing materials beforehand?
8 You said they were ineffective. Had you reviewed the
9 marketing materials beforehand?

10 THE WITNESS: I can't recall. I don't
11 believe that I did, no.

12 Q. (By Examiner Bojko) Okay. So the 427,000
13 used for ineffective marketing of the last program
14 should not be in the cost recovery of the new
15 program?

16 A. Right. And that's what I'm calling a
17 sunk cost.

18 Q. Okay. So should the company be allowed
19 to start over, so to speak, on their marketing and
20 all those marketing costs of the new program be
21 included in the new program?

22 A. You're saying the estimate provided for
23 the new program should be recovered for the new
24 program.

25 Q. Yes.

1 A. I think it could be approved. I still
2 think that those costs should be spent prudently and
3 in a reasonable manner, and if they're not, then I
4 think they should be subject to some sort of penalty
5 or I don't know how that money gets recovered back to
6 customers, but yeah, I think that --

7 Q. Okay. Now, let's go back to the
8 warehouse again. Sorry.

9 A. Sure.

10 Q. You told me about your recommendation of
11 the money from November 30th to whenever the
12 Commission approves it. What is your recommendation
13 for the warehousing costs for the light bulbs that
14 were purchased and stored before the November 4th
15 Commission -- would those warehouse costs be able to
16 be recovered in the new program?

17 A. I don't know the current status of those
18 costs. If those have been recovered since the first
19 approval or how that's -- I don't know what the
20 status is of the initial warehouses costs.

21 My testimony speaks to the warehouse
22 costs from the day that the -- the requested delay,
23 however, I would say now that those bulbs never
24 really should have been purchased. The collaborative
25 had not reached a consensus on that program, and had

1 those bulbs never been purchased and had they
2 followed what the original, the very original design
3 was which was close to what we have now, those bulbs
4 would have been put through retailers and just an
5 incentive provided to the retailer to lower the cost.
6 We never would have had physically 3.75 million bulbs
7 sitting in a warehouse.

8 Q. You said something about those might have
9 been recovered. Is there some recovery mechanism or
10 approval of that recovery that you know of that
11 happened?

12 A. I don't think so. I wouldn't want to --
13 I don't know what the -- how much money that is or
14 where that's at.

15 Q. But to your knowledge the Commission
16 didn't ultimately approve any recovery and the
17 program was never started so there would have been
18 no, I mean, the dollars haven't been collected from
19 customers, right, for that first CFL program that you
20 know of?

21 A. Not that I know of.

22 Q. Okay. So I guess, then, you've just
23 highlighted a more important question. Are you
24 really saying, because you make a distinction, as
25 Mr. Price pointed to, that there's, you know, a

1 marketing cost, the sunk costs that you call it,
2 because there's also another sunk cost?

3 A. Management was also a sunk cost.

4 Q. The management costs, okay. So is really
5 your point that none of the costs associated with the
6 first CFL program should be approved because it was
7 never approved by the collaborative? I mean, that's
8 what I heard your last answer to just say.

9 A. No. There's a large number of costs, and
10 I don't have that in front of me, that were spent on
11 the first program. The costs that I'm recommending
12 not be recovered are simply the costs that aren't
13 contributing to the new program.

14 There was money spent on marketing
15 materials, money spent to buy bulbs, different things
16 like that that those bulbs are being used in the
17 second program, some of those brochures and pamphlets
18 are being used in the second program, and those costs
19 I don't make a recommendation on here.

20 But it's the money that was spent that's
21 not carrying forward to the new program that I'm
22 saying customers should not be responsible for paying
23 the company.

24 Q. Except you don't know about the warehouse
25 costs or even if there were warehouse costs.

1 A. Well, there were warehouse costs. We've
2 been told in the collaborative there are
3 approximately \$30,000 a month. I don't see it as
4 being fair to customers to pay \$30,000 a month in
5 particular from the day that the company requested a
6 delay.

7 I can't say how long it would have taken
8 necessarily for approval to be granted on that
9 program, but not knowing that, not wanting to
10 speculate on that, I resorted to the day -- the
11 November 30th original request for a filing made by
12 the Commission until the April 1st fast-track date
13 to give this number of \$120,000.

14 Q. Okay. But any warehouse cost before the
15 November 30th date that might have been needed to
16 store the light bulbs, till the program actually
17 started for distribution purposes, is okay to be
18 included in the cost recovery?

19 A. I didn't make a recommendation on those
20 costs in my testimony. I relied simply on when the
21 Commission asked to refile the design.

22 Q. Okay, something else, you stated that
23 there are certain items about the marketing approach
24 that the Commission asked the company to provide, and
25 I believe it's your testimony that they did not

1 provide that in the portfolio plan filing; is that
2 accurate?

3 A. Do you have the spot in my testimony?

4 Q. Yes, page 16, lines 1 and 2.

5 A. Yes. The order that asked for the
6 refiling of the CFL program on November 30th did
7 include specific language asking for specific
8 marketing materials. I did not see that in this
9 plan.

10 It was agreed this program could be the
11 portfolio plan, but I don't believe it was agreed
12 that the specifics that the Commission had asked for
13 were waived. I think they were still requiring those
14 details, and I was unable to find those in this plan.

15 Q. So, I mean, is it your recommendation
16 that the portfolio plan which includes the CFL
17 provision is insufficient and thus it shouldn't be
18 approved by this Commission?

19 A. It's difficult to answer. You know, I do
20 want to see the FirstEnergy customers have energy
21 efficiency programs made available to them, but it
22 should be done appropriately. And, you know, I
23 didn't make that recommendation in my testimony, but
24 I can't say that I know what the -- exactly the
25 marketing approach is going to be, and I didn't see

1 it in this plan.

2 I can say that we discussed in the
3 collaborative quite a bit how this plan would be
4 marketed and some of the concerns, like I mentioned
5 earlier, was this plan would be marketed as a
6 portfolio and not just as the CFLs, to let the
7 customers know that even if CFLs aren't your way to
8 save energy, there are other options for you.

9 EXAMINER PRICE: That's a good marketing
10 approach?

11 THE WITNESS: Yeah, I think that's better
12 than: Hey, we're going to come drop two bulbs off at
13 your door.

14 EXAMINER PRICE: But earlier you
15 testified that you thought that the company should
16 have gone ahead and asked for approval with this on a
17 stand-alone basis, they wouldn't be able to market
18 this as part of a portfolio unless it was part of the
19 portfolio.

20 THE WITNESS: Well, that was discussed in
21 the collaborative as well, and I would respectfully
22 disagree with that.

23 I think there's no reason that you
24 couldn't roll the plan out today and mention in your
25 marketing that this is the first phase of quite a bit

1 that's coming your way, and although this may not be
2 the best thing for you, we do have other options
3 coming and here's what we're thinking.

4 There's a lot of different ways that you
5 can do that. The fact that the program is rolling
6 out alone does not isolate it from the rest of the
7 energy efficiencies that the company is doing. So I
8 would respectfully disagree with that assertion.

9 EXAMINER PRICE: Fair enough.

10 Q. (By Examiner Bojko) So I think what I'm
11 hearing is if you put the cost issues aside, I think
12 you said that there was a consensus in the
13 collaborative -- and I'm taking that consensus in the
14 collaborative to mean OCC; is that a correct
15 assumption?

16 A. Yeah, let me clarify. I will say I don't
17 want to speak for other parties and I will say that
18 OCC is happy with the current distribution design of
19 the redesigned CFL program, yes.

20 Q. So you support -- I understand you're not
21 happy with the timing, but now it's part of the
22 portfolio plan and OCC would support the CFL program
23 that's included in the portfolio plan, setting aside
24 costs, what the old costs and new costs and sunk
25 costs are or whether they should or should not be

1 recovered.

2 A. Right. If we're not talking about any of
3 the costs and just the design of the program, I would
4 say OCC is in support, yes. And that would have been
5 my same answer November 30th. And that's where I
6 see the concerns.

7 Here we are in March and that was at the
8 end of November and there hasn't been -- that's a few
9 months that customers have not been able to benefit
10 from that program, and instead are paying warehousing
11 costs to store those bulbs, that's the point I'm
12 trying to make.

13 EXAMINER PRICE: Thank you, you're
14 excused.

15 THE WITNESS: I'm holding my breath over
16 here.

17 EXAMINER BOJKO: Thank you. Thank you
18 for your time.

19 THE WITNESS: Yes.

20 MR. POULOS: Your Honor, at this time OCC
21 would like to offer OCC Exhibit 12 into the record.

22 EXAMINER PRICE: Any objections to the
23 admission of OCC Exhibit 12?

24 Seeing none, it will be admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 EXAMINER PRICE: Let's go off the record.

2 (Discussion off the record.)

3 EXAMINER PRICE: Back on the record.

4 Mr. Reilly.

5 MR. REILLY: Your Honor, we would call
6 Gregory Scheck.

7 Your Honor, I have given the court
8 reporter and placed on the Bench copies of
9 Mr. Scheck's prefiled testimony that was filed on
10 February 23rd of this year.

11 EXAMINER PRICE: Thank you.

12 MR. REILLY: I trust that everybody else
13 has copies. I have some additional copies if anybody
14 else needs them. I trust everybody's got them.

15 (Witness sworn.)

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

18 THE WITNESS: My name is Gregory Scheck,
19 and my business address is 180 East Broad Street,
20 Columbus, Ohio 43215.

21 EXAMINER PRICE: Thank you.

22 Mr. Reilly, please proceed.

23 MR. REILLY: Thank you, your Honor.

24 - - -

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GREGORY SCHECK

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

DIRECT EXAMINATION

By Mr. Reilly:

Q. Mr. Scheck, can you tell us by whom you're employed?

A. I'm employed by the Public Utilities Commission of Ohio.

Q. Did you cause testimony to be filed in this matter on February 23rd of this year?

A. Yes, I did.

Q. Can you tell us how that testimony came into existence?

A. I put together my testimony prior to or on the date of February 23rd and it was filed by the general.

Q. Okay. Is that fair to say just that you created the testimony yourself?

A. Yes, I did.

Q. Do you have a copy with you on the stand?

A. Yes, I do.

Q. Do you have any modifications to that testimony?

A. Yes, I do.

1 Q. Could you tell us what those are?

2 A. Yes. They're basically grammatical, and
3 I'll start with the cover page. There is a
4 correction on the division -- State's Policy and
5 Market Analysis Division. I actually worked in the
6 newly formed Energy Efficiency and Renewables
7 Division. So that is also carried over in my second
8 response to what my current position is at the
9 Commission.

10 I'm still the utilities specialist but
11 it's in the Energy Efficiency and Renewables Division
12 of what is now the Energy and Environment Department,
13 rather than the Utilities Department. And that's my
14 first correction.

15 Then there's a grammatical correction on
16 question 6, in the answer and on line 21.

17 EXAMINER PRICE: Can I have the page
18 number again, please?

19 THE WITNESS: I don't have a page number
20 with mine, actually.

21 MR. REILLY: He said it's question 6.

22 THE WITNESS: The answer to question 6, I
23 have line 21, I don't know if that's what everyone
24 else has, it starts with yes, as I observed in DSM
25 Ohio's and Duke Energy-Ohio's filing, and that should

1 be "they" rather than thy, it should be "t-h-e-y,"
2 there was an "e" missing in that word.

3 And then there is a word missing on my
4 question 8, I don't have the page but it's question
5 No. 8, I have it on line 9 a couple pages later and
6 there should be the word "have" inserted after "does
7 staff," and it should be "have any recommendations."
8 The word "have" should be included there.

9 And then throughout the document I put an
10 apostrophe after "companies" and it really shouldn't
11 be any apostrophes, and it shouldn't be in the
12 possessive in the plural, where there's apostrophes
13 after companies, the apostrophes should be stricken.
14 That's basically my corrections to the testimony.

15 Q. Mr. Scheck, with the exception of the
16 first correction you mentioned regarding the identity
17 of the section you work for, do any of the
18 corrections that you just mentioned affect the
19 meaning of your answers or your questions or answers
20 in any regard?

21 A. No, they do not.

22 Q. Mr. Scheck, with those changes if I were
23 to ask you the questions that appear in Staff Exhibit
24 No. 1, would your answers be the same as appear in
25 Staff Exhibit No. 1?

1 A. Yes.

2 EXAMINER PRICE: Actually we haven't
3 marked --

4 MR. REILLY: I would also request that we
5 mark the document we've been discussing as Staff
6 Exhibit No. 1.

7 EXAMINER PRICE: So marked.

8 MR. REILLY: I apologize, it just
9 occurred to me.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MR. REILLY: And I would tender the
12 witness for cross-examination.

13 EXAMINER PRICE: Thank you.

14 MS. KOLICH: Your Honor, can we off the
15 record for one minute?

16 EXAMINER PRICE: Yes, please.

17 (Discussion off the record.)

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

20 Ms. Kolich.

21 MS. KOLICH: Thank you, your Honor. I
22 would move that the line starting on line 23 of
23 question 6, which I think is page 2 where it says "In
24 addition, I have spoken to Dayton Power & Light
25 Company personnel and they indicated that commercial

1 lighting was a cost-effective program," I would move
2 to strike that on the grounds that that's hearsay.

3 These calculations make quite a few
4 assumptions and we have no way of crossing the Dayton
5 Power & Light personnel, and this is being -- this
6 statement is being offered for the truth of the
7 matter asserted.

8 EXAMINER PRICE: Mr. Reilly.

9 MR. REILLY: Your Honor, it's often said
10 and it is true that the Rules of Evidence are relaxed
11 in administrative hearings. It is true that's
12 hearsay. We don't quibble with that. But Mr. Scheck
13 is here to be examined on that statement if counsel
14 wished, therefore, there can be cross-examination on
15 it.

16 As to Dayton Power & Light's basis, the
17 statement, it seems to me that's a weight question
18 really to be considered by the Bench after
19 cross-examination.

20 EXAMINER PRICE: Well, relaxed or not,
21 we're not that relaxed, the motion to strike will be
22 granted.

23 MS. KOLICH: That's the only motion I
24 have for striking.

25 EXAMINER PRICE: Thank you.

1 OCC, cross?

2 MR. ALLWEIN: Not at this time, your
3 Honor.

4 EXAMINER PRICE: Mr. O'Brien?

5 MR. O'BRIEN: Yes, your Honor, just a
6 couple of questions.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. O'Brien:

10 Q. Good afternoon, Mr. Scheck.

11 Just actually one question, depending on
12 how you answer it. A little hedging there.

13 Would you please turn to your answer to
14 question 7? I would give you a page reference,
15 but --

16 A. I got it.

17 Q. That first paragraph in your answer, the
18 second sentence, "The assumption that the entire
19 labor costs should be included is not reasonable in
20 that many of the retrofit applications the customer
21 would have less than the useful life remaining with
22 their useful current lighting system," and I'm not
23 quarreling with your statement there, but my question
24 is, is there a Commission rule or a Commission
25 document or any kind of document where we would go to

1 obtain guidance on the reasonableness of that
2 assumption?

3 A. There is no particular staff or
4 Commission document related to that comment. It is
5 just my general background knowledge, and also in
6 looking and reviewing both the AEP and the Duke
7 filings, that they did not use fully loaded labor
8 costs.

9 Basically I'm repeating a former
10 witness's answer to the same question, which is --
11 that would have been Dylan Sullivan from NRDC, is
12 essentially customers would probably somewhere in the
13 middle of their replacement life in terms of the
14 remaining useful life left of the measure.

15 If typically a lighting system would last
16 16 years, probably on average the lighting system may
17 be 8 years remaining life left just on the average.
18 So that's the purpose of the assumption about the
19 labor costs. But there is no particular spelling
20 document that some certain number must be used.

21 Maybe at some later date there might be
22 related to that if there is any specifications to a
23 technical reference manual that's underway, but that
24 has not been completed at the present time.

25 Q. Thank you. Follow-up question to that.

1 You mentioned that technical reference
2 manual. To your knowledge, would the TRC that's
3 currently under consideration answer this kind of an
4 issue to your knowledge?

5 A. Could you repeat the question again?

6 Q. The technical reference manual that is
7 under consideration in Docket 09-512, to your
8 knowledge would it provide guidance on this type of
9 assumption?

10 A. I'm not a hundred percent that it will,
11 but it may.

12 MR. O'BRIEN: Thank you, no further
13 questions.

14 EXAMINER PRICE: Thank you.

15 Mr. Smith?

16 MR. SMITH: No questions, your Honor.

17 EXAMINER PRICE: Mr. Heintz?

18 MR. HEINTZ: No questions, your Honor.

19 EXAMINER PRICE: Mr. Reisinger.

20 MR. REISINGER: No questions, your Honor.

21 EXAMINER PRICE: Mr. Lavanga?

22 MR. LAVANGA: No questions, your Honor.

23 EXAMINER PRICE: Mr. Clark?

24 MR. CLARK: Just a couple, your Honor.

25 - - -

CROSS-EXAMINATION

1
2 By Mr. Clark:

3 Q. Mr. Scheck, I would like to direct you to
4 unnumbered page 2 of your testimony, your answer to
5 question 5, lines 10 to 17 on that page. There you
6 say that, if I read it quickly, "The problem with the
7 company's filing is that the company would like to
8 proceed with the rollout of a small and large
9 enterprise commercial and industrial lighting program
10 and yet they are providing preliminary analysis that
11 says this program is not cost-effective on a total
12 resource basis. This would suggest that the
13 companies should be purchasing the incremental cost
14 of power for customers rather than pursuing energy
15 efficiency in the commercial and industrial lighting
16 category since most of the lighting categories do not
17 pass the TRC test."

18 Did I read that correctly?

19 A. Yes, you did.

20 Q. And then on page 4 of your testimony in
21 answer to question 8 you suggest that the company
22 remodel their -- they come back with a range of
23 assumptions about the lighting programs; is that
24 correct?

25 A. Yes.

1 Q. So my question is if the companies change
2 the assumptions and come back and determine that the
3 C&I lighting projects still do not pass the TRC,
4 you're still recommending that they do not do the C&I
5 lighting projects and buy the power instead, correct?

6 A. Well, that depends. I mean, there may be
7 certain measures that -- there's a number of measures
8 that the company has in the lighting program itself,
9 the C&I lighting program. Some of those will be --
10 probably most likely be cost-effective, others won't.

11 So the preference would be to proceed
12 with the lighting program in the totality it passes
13 the total resource cost test, but if it doesn't, then
14 I think that brings it into question then the company
15 should probably be investing C&I dollars into motors
16 and probably the HVAC instead of lighting.

17 But again, that is contrary to my
18 knowledge of the industry. Typically the
19 low-lying -- low-hanging fruit is typically
20 commercial lighting, so I would expect it to look or
21 at least to have a range of assumptions in which in
22 many cases would show that it would be
23 cost-effective.

24 Q. And then my next question is going back
25 to unnumbered page 4, your question, it would be the

1 answer to question 7 and beginning at line 6 you
2 state "The staff is concerned that the companies may
3 rely solely on the mercantile self-directed projects
4 to reach their annual benchmarks."

5 And my question is if the companies can
6 use the mercantile self-directed projects to meet
7 their new benchmarks on a least-cost basis, why do
8 you have concerns with that it's least cost to use
9 the mercantile projects?

10 A. I'm sorry, where was the question at?

11 Q. Sure. Looking at lines 6 through 8
12 there.

13 A. What question is this?

14 Q. Oh, I'm sorry, it would be the answer to
15 question 7.

16 A. Question 7.

17 Q. And unnumbered page 4 of your testimony.

18 A. Right. Yes, go ahead.

19 Q. If I moved too quick for you there. You
20 state on line 6 to 8 "The staff is concerned that the
21 companies may rely solely on the mercantile
22 self-directed projects to reach their annual
23 benchmarks."

24 If the companies can use the mercantile
25 self-directed projects to meet their benchmarks on a

1 least cost basis, why do you have a concern with
2 that?

3 A. Well, it has to do with the fact that
4 the, I think the basic tenet of a law was to have
5 companies actually introduce programs on a
6 mass-market basis and there's nothing wrong with
7 self-directed mercantile projects being done that are
8 cost-effective and contribute to other goals.

9 I don't have any issue with that. It's
10 just in the long-term historical self-directed
11 probably will be exhausted at some point, and,
12 therefore, you do want to have programs in place.

13 There's -- in that instance for other
14 customers to participate because they're going to be
15 other classes, or I should say other groups of
16 customers in C&I classes that are going to have funds
17 available to invest in energy efficiency, so you
18 don't want to ignore the whole class so there should
19 probably be a whole portfolio of measures for
20 customers to select from that would fit into the
21 mercantile definition.

22 So nothing -- on its face, there's
23 nothing against the rule that says the company can't
24 exceed its benchmarks and be able to take credit to
25 the following year, so if the company on its own can

1 meet the benchmarks just with self-directed, that's
2 great.

3 But on the other hand, you want to make
4 sure you have energy efficiency offered to all
5 customers, so that's the reason for the statement is
6 that you don't want a company to rely entirely on
7 self-invested customer funds just to reach their
8 goals. They need to have a broad set of measures for
9 both the residential class as well as the small and
10 large commercial class and governmental, and that's
11 the reason for the statement.

12 Q. So you would agree with me that even if
13 it costs more for the customers, you still shouldn't
14 use the mercantile customer projects on their own if
15 they can completely meet the benchmarks with the
16 mercantile self-directed, even if it costs more.

17 A. Even if it costs more. That question is
18 not that it costs more. That questions is does it
19 cost less than the avoided generation costs for both
20 capacity and energy. So long as there are C&I
21 measures out there as well as residential that are
22 lower than the avoided costs, then they should be
23 investing in that.

24 So it's not a question of do they only do
25 the self-direct mercantile because it's the lowest

1 cost, and it may be the lowest cost for any of the
2 companies. And that may be the case. But that's not
3 where you stop.

4 The point at which you stop is when the
5 avoided cost is equal to whatever the incremental
6 investment is in energy efficiency.

7 Q. Mr. Scheck, there's nothing in Senate
8 Bill 221 that limits how much mercantile customer
9 projects can be applied towards benchmarks, correct?

10 A. Absolutely not. I wish they'd contribute
11 all they can.

12 Q. And there's nothing in the rules that
13 limits how much mercantile customer self-directed
14 projects can count towards benchmarks.

15 A. Correct.

16 Q. So hypothetically speaking, if the
17 utility could meet all of their benchmarks using the
18 mercantile self-directed projects and it was the
19 least cost basis of all the other projects, you would
20 still recommend the utilities include in their
21 portfolio programs and implement and make customers
22 pay for those programs above and beyond the
23 benchmarks just because they were lower than the
24 avoided cost of capacity and energy?

25 A. Yes. From a total resource economic

1 decision, that should be a correct decision.

2 Q. Even if the utility could meet the
3 benchmark, meet their entire benchmark using the
4 mercantile self-directed, the minimums required by
5 the law.

6 A. Yes.

7 Q. Okay.

8 MR. CLARK: That's all I have, your
9 Honor.

10 EXAMINER PRICE: Ms. Kolich.

11 MS. KOLICH: Yes, thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Ms. Kolich:

15 Q. Good afternoon, Mr. Scheck. My name's
16 Kathy Kolich, I'm counsel for the companies, I'll be
17 asking you a few questions.

18 In response to question 6, I think's on
19 unnumbered page 2, you refer to AEP's Potential Study
20 Volume 2, DSM Potential Study Volume 2, and Duke
21 Energy-Ohio's filing. Do you see that?

22 A. Yes, I do.

23 Q. Did you have any personal involvement in
24 the development of either of those?

25 A. No, I did not.

1 Q. Are you familiar with all of the
2 assumptions that either of these companies make in
3 the development of these documents?

4 A. I am familiar with some of them but not
5 all of them.

6 Q. And have you run a TRC test on the T-12
7 C&I program that you're discussing in your testimony?

8 A. Not at this time.

9 Q. It's actually in response to question 7
10 but it's above question 8, it might help you find it,
11 the first line where you say "The only reasoning the
12 Staff can think of" -- I'm sorry, let me try that
13 again.

14 "The only reasoning the Staff can think
15 as to why the Company used these type of assumptions
16 in their commercial lighting analysis"; do you see
17 that?

18 A. Yes, I do.

19 Q. Is the staff guessing as to the company's
20 motivations with this statement?

21 A. I'd have to say "yes."

22 Q. And you are aware that the company is
23 advocating that this lighting program go forward, is
24 that true?

25 A. Yes. But qualifying that realizing that

1 they put forward their preliminary analysis that it
2 is not cost-effective by a fairly large measure.

3 Q. Is the staff recommending that that
4 program not go forward?

5 A. No. Again, qualifying that I think the
6 company needs to go back and, again, reevaluate the
7 program with a range of assumptions using a Monte
8 Carlo simulation or something like that where you can
9 actually adjust the assumptions up and down to a low
10 or high level and you can look at a whole probability
11 of outcomes and look at that expected range and see
12 what is the risk analysis associated with the company
13 by proceeding forward.

14 Q. And you're making this suggestion based
15 on -- strike that.

16 You're making this recommendation even
17 though you did not perform a TRC test of your own.

18 A. It's not that I -- I didn't perform a TRC
19 of this particular program on my own, but I have done
20 many, many evaluations in the past when the
21 Commission staff had software, we do not have it at
22 the present time, but I do understand basically using
23 prior called static analysis using DS Manager,
24 DS Strategist. That we used to have, I'm aware that
25 two of the companies currently use DSMore. We are in

1 the process of probably acquiring DSMore, we do not
2 have it at the present time. If I did have it, I'd
3 be doing the very same thing.

4 Q. And the outcome from that software would
5 depend on the assumptions used, right?

6 A. Right. That's, yeah, you would run a
7 range of assumptions for like avoided cost, program
8 cost, range of incentives, expected participation
9 rates, ramp-up rates, discount rates, there's a whole
10 range of assumptions you could put in there and look
11 at different outcomes or expected outcomes that could
12 happen.

13 Q. Do you know what the company used for
14 each of those assumptions?

15 A. I do not know if they used a whole range
16 of assumptions or not. I do know in hearing the
17 cross with the company witness consultant that they
18 did have a high base case and a high case I believe
19 with the avoided cost, but other than that I did not
20 see, at least in the sheets that I have, a whole
21 range of assumptions related to, say, labor costs or
22 the cost, incremental cost of efficiency or discount
23 rates, I didn't see that in the particular filing.

24 Q. Okay. Turning your attention to your
25 answer to question 10, starting on line 17, you state

1 that "The Staff is concerned that the Company's
2 proposing a request for bid for interruptible load
3 post May 31st, 2011." Do you see that?

4 A. Yes, I do.

5 Q. You go on to express a concern as to how
6 the companies are going to meet their annual peak
7 load reduction targets for 2011 and beyond. I
8 believe that starts on line 20. Do you see that?

9 A. Yes, I do.

10 Q. Now, you would agree with me that in the
11 company's MRO proceeding the company has proposed an
12 interruptible RFP, haven't they?

13 A. I'm not a hundred percent certain, but if
14 that's what you're stating, I'll take that to be the
15 fact.

16 Q. If the Commission approves that proposed
17 program in the MRO proceeding, would that alleviate
18 your concern that you're voicing here?

19 A. It would in part, however, I think having
20 all options open might be a better way to go, meaning
21 you could have the ELR and the OLR option, those
22 riders continue and also do a request for bid for
23 megawatts, if you will, and do those both to meet the
24 goals.

25 Q. Actually, you just answered my next

1 question.

2 A. Oh.

3 Q. So if either the ELR or OLR is extended
4 for the request -- the interruptible RFP is approved,
5 that wouldn't alleviate your concerns that you're
6 voicing here?

7 A. I think if both of those were continued,
8 that would help -- that would certainly alleviate the
9 concerns if you had both those options.

10 Q. Are you recommending that the company
11 provide more clarity, as you indicate on line 23 of
12 your testimony, prior to the Commission making its
13 ruling in the MRO case?

14 A. That may help. Maybe the company doesn't
15 know exactly how it's going to conduct the auction
16 itself. That's part of it. It's kind of a generic
17 statement, if I'm reading in the filing, but it
18 didn't elaborate as how that's going to take place or
19 what type of auction it would be.

20 Q. And you believe the company should
21 clarify that in this case or the MRO case?

22 A. Either one.

23 MS. KOLICH: That's all I have, your
24 Honor.

25 EXAMINER PRICE: Mr. Reilly, redirect?

1 MR. REILLY: Thank you, your Honor.

2 Just a few questions, Mr. Scheck.

3 - - -

4 REDIRECT EXAMINATION

5 By Mr. Reilly:

6 Q. Let me ask you, Mr. Scheck, have you done
7 anything of an investigation into the cost
8 effectiveness of commercial and industrial lighting
9 programs?

10 A. I have looked at a couple of filings here
11 at the Commission. I did call a couple of
12 consultants regarding the cost-effectiveness just
13 nationally with a couple of well-known consultants in
14 the industry and asked their opinion in the last
15 couple of weeks, and the response I get was in
16 general commercial and industrial lighting has been
17 found to be cost-effective.

18 Q. All right.

19 MS. KOLICH: Objection. Move to strike
20 the response as hearsay.

21 EXAMINER PRICE: Mr. Reilly.

22 MR. REILLY: Your Honor, Mr. Scheck just
23 testified that he conducted -- the conclusions he
24 drew after his own investigation. These are his
25 conclusions, his investigation. It's not hearsay.

1 It's his conclusion.

2 EXAMINER PRICE: Can we have the answer
3 read back, please?

4 (Record read.)

5 EXAMINER PRICE: Mr. Reilly, can you
6 address why everything after "Commission" should not
7 be stricken as hearsay, please?

8 MR. REILLY: Can you read it up to that
9 point for me?

10 (Record read.)

11 MR. REILLY: I would suggest, your Honor,
12 that we're talking about his investigation and the --
13 and what he considers to be an effective
14 investigation. I can ask him the question did he
15 draw any conclusions as a result of that
16 investigation.

17 EXAMINER PRICE: Well, you can ask
18 whatever questions you would like, but I'm going to
19 the motion to strike everything after the word
20 "Commission" will be stricken.

21 MR. REILLY: I apologize for the dual
22 questions here, but I, frankly, am not sure what's
23 cut out here.

24 Q. (By Mr. Reilly) But if I can just go
25 back, did you conduct an investigation into the

1 cost-effectiveness of commercial and industrial
2 lighting?

3 A. Yes, I did.

4 Q. Did you draw any conclusions as a result
5 of that investigation?

6 A. Based on my review of the two utilities
7 filings here at the Commission, I determined that C&I
8 lighting in general, or at least with those two
9 utilities, that it is cost-effective.

10 Q. Thank you.

11 EXAMINER PRICE: Have you ever looked at
12 any of the literature, any professional treatises or
13 journals on this question?

14 THE WITNESS: In the past. I haven't
15 looked recently, but over a period of 15, 20 years
16 from what I've seen C&I lighting in general is
17 cost-effective.

18 EXAMINER PRICE: Okay. But you can't
19 cite any specific sources today.

20 THE WITNESS: No. I could find them. I
21 could easily find some.

22 EXAMINER PRICE: I'm sorry, Mr. Reilly,
23 did you say you were done?

24 MR. REILLY: If I can just have a moment,
25 your Honor.

1 EXAMINER PRICE: Sure.

2 MR. REILLY: I am done, your Honor.

3 Thank you.

4 EXAMINER PRICE: Thank you.

5 Mr. Poulos, recross?

6 MR. ALLWEIN: Not at this time, your
7 Honor.

8 EXAMINER PRICE: Mr. O'Brien? Mr. Smith?

9 MR. SMITH: Recross on the cross, is that
10 what you're asking?

11 EXAMINER PRICE: Right. Recross on the
12 redirect.

13 MR. SMITH: No.

14 EXAMINER PRICE: Mr. Heintz?

15 MR. HEINTZ: No.

16 EXAMINER PRICE: Mr. Reisinger?

17 MR. REISINGER: No.

18 EXAMINER PRICE: Mr. Lavanga?

19 MR. LAVANGA: No, your Honor.

20 EXAMINER PRICE: Mr. Clark?

21 MR. CLARK: No, your Honor.

22 EXAMINER PRICE: Ms. Kolich?

23 MS. KOLICH: No, your Honor.

24 EXAMINER PRICE: Mr. Scheck, turning to
25 your response to question 7 and it's actually the

1 concerns you raise that companies may rely solely on
2 the mercantile self-directed projects, I believe
3 Mr. Clark asked you several questions about that. Do
4 you have that in your testimony?

5 THE WITNESS: Yes.

6 EXAMINER PRICE: Okay. I'm handing you a
7 copy of Ohio Environmental Council Exhibit 1, which
8 has been admitted into evidence in this proceeding.
9 Have you ever seen this before?

10 THE WITNESS: No, I haven't. But I'm
11 looking at it.

12 EXAMINER PRICE: Well, take a few minutes
13 to review it and tell me.

14 THE WITNESS: I see it.

15 EXAMINER PRICE: Okay. Does that exhibit
16 alleviate your concern that the companies may rely
17 solely on mercantile self-directed programs in the
18 future?

19 THE WITNESS: Well, it looks like they
20 drop off for certain, but that doesn't mean -- just
21 because one submits me a document saying this is
22 their expected numbers for mercantile direct, it
23 doesn't mean that with a change in the program
24 administrator agreement we could see several hundred
25 self-directed mercantiles that could meet the

1 company's goals.

2 So even though I have values and
3 percentages here, it doesn't mean that the company
4 could fall back on just self-directed mercantiles to
5 meet the goals and then back off on investing in
6 other mass-market programs. That is my --

7 EXAMINER PRICE: So the answer to my
8 question would be no, it does not alleviate your
9 concern.

10 THE WITNESS: No, it does not.

11 EXAMINER PRICE: Thank you. Okay.

12 EXAMINER BOJKO: Mr. Scheck, are you
13 taking a position today with regard to any shared
14 savings that may or may not be impacted by the
15 mercantile-sited customer practices that you
16 discussed?

17 THE WITNESS: Well, I don't think that a
18 company should get shared savings for something they
19 didn't initiate. Shared savings in general I think
20 should be something in which the company caused
21 energy efficiency and not from customers'
22 out-of-pocket expense for energy efficiency.

23 EXAMINER PRICE: So you agree with
24 Mr. Sawmiller's recommendation that any shared
25 savings exclude the effect of mercantile-directed

1 programs.

2 THE WITNESS: If I were to testify or
3 comment to that, yes, I would agree with that
4 statement.

5 EXAMINER PRICE: Do you have a position
6 on shared savings at all?

7 THE WITNESS: No, other than the way I --
8 my thinking is probably a little different. Instead
9 of just pulling a number out of the air and saying,
10 you know, 15 percent is the right number, actually
11 this is not a new concept, as someone asked before,
12 this concept was around back in the mid-'90s, we
13 actually had shared savings incentives at that time.
14 And those shared savings incentives were basically at
15 the time at the companies allowed rate of return.

16 So when I look at a statement like
17 "shared savings" or a "profit incentive," I look at
18 it as what's the alternative for the company. If
19 they were to invest in, say, a supply alternative,
20 what would be their rate of return?

21 Now, however, generation, if it's
22 deregulated and they do not own any of it, that's a
23 different animal altogether, but if they do own
24 generation, generation may be spun off to some extent
25 but it's in a separate profit entity, the company

1 usually -- the risk associated with generation is
2 higher than it would be for transmission and
3 distribution.

4 But with that said, you would look at --
5 if they still own generation, you would probably look
6 at the whole range of assets they have and look at
7 the risks they have associated with all their assets
8 and see, okay, what is it they're avoiding when they
9 do energy efficiency depending on the project?

10 So shared savings to me should still be
11 tied to some alternative investment or rate of return
12 the company would make, so using a number of
13 15 percent, I'm not really locked into that number,
14 but, you know, what's the alternative? The company's
15 rate return on its other assets.

16 Because that's essentially what energy
17 efficiency does, it avoids other investment in other
18 assets that are supposedly more expensive.

19 So my view is, you know, something tied
20 to the company's rate of return could have some
21 sliding scale based on performance. I can understand
22 some number 15 percent being picked out because the
23 Commission may be wanting to promote energy
24 efficiency at that time over other investments.

25 EXAMINER PRICE: There's a lot to unpack

1 in that response.

2 THE WITNESS: Yes.

3 EXAMINER PRICE: Just as a preliminary
4 question back to Mr. Sawmiller, do you agree with
5 Mr. Sawmiller's recommendation that transmission and
6 distribution projects be excluded from the
7 calculation of shared savings?

8 THE WITNESS: That depends on T and D
9 investment. If the T and D investment was done
10 primarily to gain energy efficiency, then I could see
11 it being included. If it was for other purposes,
12 like reliability or expansion, I think he talked
13 about, then probably not. So if it is directly
14 strictly or primarily for energy efficiency purposes,
15 then I would say yes. But otherwise, no.

16 EXAMINER PRICE: Okay. Do the
17 FirstEnergy operating companies, Ohio Edison,
18 Cleveland Electric Illuminating Company, and The
19 Toledo Edison Company, to the best of your knowledge,
20 own any generating assets -- generation assets?

21 THE WITNESS: The operating companies?

22 EXAMINER PRICE: Yes.

23 THE WITNESS: No, they don't. At least
24 that I know of.

25 EXAMINER PRICE: Earlier in your

1 testimony you seemed to distinguish between companies
2 that do own generation assets from companies that do
3 not own generation assets. So understanding that
4 FirstEnergy does own generation assets, what would
5 your recommendation be for shared savings?

6 THE WITNESS: No, I think we need to
7 clarify this a little bit here. Just because the
8 FirstEnergy operating companies do not own any
9 assets doesn't mean that their behavior is not
10 altered.

11 The FirstEnergy stock incorporates
12 FirstEnergy Solutions which owns assets, so with that
13 in mind, that means that the distribution company's
14 thinking may be affected by what impacts are on
15 generation.

16 So just because they supposedly don't own
17 any generating assets, doesn't mean their behavior
18 has changed. If they're totally divested, that's a
19 different story.

20 EXAMINER PRICE: I don't have any further
21 questions.

22 EXAMINER BOJKO: I don't either.

23 EXAMINER PRICE: You're excused, thank
24 you.

25 Mr. Reilly.

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MR. REILLY: We move the introduction of Staff Exhibit No. 1.

EXAMINER PRICE: Any objections?

That will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: Let's go off the record.

(Discussion off the record.)

EXAMINER PRICE: Let's go back on the record. This hearing is adjourned, we will commence again tomorrow at 9:00 o'clock. Thank you all.

Off the record.

(Thereupon, the hearing adjourned at 5:07 p.m.)

- - -

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, March 3, 2010, and carefully compared with my original stenographic notes.

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

My commission expires June 19, 2011.

(MDJ-3524)

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Case No(s). 09-1947-EL-POR, 09-1948-EL-POR, 09-1949-EL-POR, 09-1942-EL-EEC, 09-1943-EL-EEC,

Summary: Transcript Transcript of FirstEnergy Volume II hearing held on 03/02/10.
electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones,
Maria DiPaolo Mrs.