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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 9:00 a.m. on Thursday, March 4, 2010.

VOLUME III

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1 Thursday Morning Session,
2 March 4, 2010.

3 - - -

4 EXAMINER BOJKO: Let's go on the record.
5 Good morning. This is a continuation of
6 in the matter of the Application of the FirstEnergy
7 operating companies for approval of their energy
8 efficiency and peak demand reduction program
9 portfolio plans for 2010 through 2012 and associated
10 cost recovery mechanisms in Case No. 09-1947-EL-POR,
11 et al.

12 At this time we'll take appearances this
13 morning. Start with the company. Abbreviated
14 appearances are fine. Just to let the record reflect
15 who's present at today's hearing

16 MS. KOLICH: Kathy J. Kolich, James F.
17 Lang, on behalf of the companies.

18 EXAMINER BOJKO: Mr. Lindgren.

19 MR. LINDGREN: Thomas Lindgren, Assistant
20 Attorney General on behalf of the Commission staff.

21 MR. CLARK: Joe Clark, IEU-Ohio.

22 MR. LAVANGA: Mike Lavanga, Brickfield,
23 Burchette, Ritts & Stone, on behalf of Nucor Steel
24 Marion.

25 MR. REISINGER: William Reisinger, on

1 behalf of the Ohio Environmental Council.

2 MR. HEINTZ: Michael Heintz, on behalf of
3 the Ohio Environmental Law and Policy Center.

4 MR. SMITH: Craig Smith, on behalf of the
5 Materials Science Corporation.

6 MR. O'BRIEN: Tom O'Brien, on behalf of
7 the Ohio Manufacturers Association and the Ohio
8 Hospital Association.

9 MR. SITES: Richard L. Sites, on behalf
10 of the Ohio Hospital Association.

11 MR. ALLWEIN: Christopher J. Allwein, on
12 behalf of the Office of the Ohio Consumers' Counsel.

13 EXAMINER BOJKO: Thank you.

14 EXAMINER PRICE: Any preliminary issues
15 before we take our first witness?

16 Seeing none, Mr. Lavanga.

17 MR. LAVANGA: Your Honor, Nucor Steel
18 Marion calls Dr. Dennis Goins.

19 (Witness sworn.)

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

22 THE WITNESS: My name is Dennis Goins, my
23 business address is 5801 Westchester Street,
24 Alexandria, Virginia 22310.

25 EXAMINER PRICE: Mr. Lavanga, please

1 proceed.

2 MR. LAVANGA: Your Honor, I'd like to
3 mark for identification Nucor Exhibit 1, the direct
4 testimony and exhibits of Dr. Dennis Goins.

5 EXAMINER PRICE: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 - - -

8 DENNIS W. GOINS

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

11 DIRECT EXAMINATION

12 By Mr. Lavanga:

13 Q. Dr. Goins, do you have before you what's
14 been marked as Nucor Exhibit 1?

15 A. I do.

16 Q. And is this your prefiled direct
17 testimony in this case?

18 A. It is.

19 Q. Do you have any corrections to make to
20 your testimony?

21 A. I don't.

22 Q. If I were to ask you the same questions
23 as the questions contained in your testimony, would
24 your answers be the same?

25 A. They would.

1 MR. LAVANGA: Your Honor, the witness is
2 available for cross-examination.

3 EXAMINER PRICE: Thank you.

4 Mr. Clark?

5 MR. CLARK: No questions, your Honor.

6 EXAMINER PRICE: Mr. Reisinger?

7 MR. REISINGER: No questions.

8 EXAMINER PRICE: Mr. Heintz?

9 MR. HEINTZ: No questions, your Honor.

10 EXAMINER PRICE: Mr. Smith?

11 MR. SMITH: No questions.

12 EXAMINER PRICE: Mr. O'Brien?

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

14 EXAMINER PRICE: Mr. Sites?

15 MR. SITES: Thank you, no questions.

16 EXAMINER PRICE: Mr. Allwein.

17 MR. ALLWEIN: No questions, your Honor.

18 EXAMINER PRICE: Mr. Lang.

19 MR. LANG: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Lang:

23 Q. Good morning, Dr. Goins.

24 A. Good morning.

25 Q. I'm Jim Lang representing FirstEnergy

1 utilities. Dr. Goins, for purposes of this
2 proceeding you reviewed the Commission's rules
3 related to the energy efficiency and peak demand
4 reduction requirements in general, correct?

5 A. In general, yes.

6 Q. You did not try to do a comprehensive
7 assessment or analysis of those rules, correct?

8 A. I did not.

9 Q. With regard to the company's existing
10 interruptible program, you agree that that program
11 should qualify as a peak demand reduction program for
12 purposes of satisfying the company's statutory
13 benchmarks, correct?

14 A. I do.

15 Q. And you also believe that the application
16 of the TRC, the total resource cost test, to
17 particular programs creates unreasonable restrictions
18 on FirstEnergy's ability to demonstrate other
19 benefits and the other benefits of those programs,
20 correct?

21 A. That's correct.

22 Q. You also believe that applying the TRC
23 test to specific programs does not fit what you
24 believe the Commission's responsibilities are in this
25 proceeding, correct?

1 A. Well, as I perceive it, the rules
2 essentially say that the overall programs offered,
3 the portfolios offered by FirstEnergy must meet
4 certain standards as defined by cost-effective and
5 TRC, but not individual measures of programs
6 necessarily.

7 And to the extent that one would attempt
8 to apply the TRC to a specific program, such as the
9 interruptible program, that test in and of itself
10 places restrictions on FirstEnergy or anyone else
11 from making totally valid arguments that there are
12 significant additional benefits associated with that
13 program which simply are not captured in a TRC.

14 Q. And so a portion of your testimony is
15 that you're encouraging the Commission to expand its
16 review to the extent that a TRC is below 1, that the
17 Commission consider those other benefits, correct?

18 A. Yes. I think it's in the public interest
19 that the Commission do so, otherwise, some programs
20 that were on the border of a TRC test, either
21 positive or minus, could be recorrected when, in
22 fact, those programs from a societal point of view
23 were highly effective and highly beneficial.

24 Q. You are also familiar with the RPM
25 process in PJM, correct?

1 A. Generally so, yes.

2 Q. And you agree that interruptible load can
3 be bid into that process, correct?

4 A. Yes.

5 Q. You're also aware that in the most recent
6 RPM auction several thousand megawatts of
7 interruptible load were bid into that process,
8 correct?

9 A. That's my understanding.

10 Q. And that the purpose of that auction is
11 to determine the interruptible price that
12 customers -- the price that interruptible customers
13 receive the load that they are committing to the
14 auction, correct?

15 A. For that resource, yes.

16 Q. And, in fact, Nucor and other
17 interruptible customers, other customers who have
18 interruptible load, in the future will be able to bid
19 that load into the PJM RPM auction, correct?

20 A. I understand the existing -- under the
21 existing rules that, yes, they could.

22 Q. And as a result of the auction process,
23 interruptible customers receive what's referred to as
24 a market clearing price, correct?

25 A. That's correct.

1 Q. And that market clearing price is tied to
2 avoiding the loss of a system on a once-in-ten-year
3 time frame, correct?

4 A. Yes. In general, it's a complex process,
5 but it evolves into essentially determining the
6 required reserve margins that would produce that
7 level of reliability.

8 Q. Over a ten-year period.

9 A. Over a ten-year period.

10 Q. You also refer in your testimony to the
11 cost of new entry, or CONE, C-O-N-E, which is
12 administratively set by PJM. You agree that CONE is
13 an incentive to add new capacity within the PJM
14 network, correct?

15 A. Yes.

16 Q. And your belief is that CONE is used as a
17 component of the RPM auctions.

18 A. Yes. Essentially it's setting -- it is
19 one component of setting what are commonly referred
20 to as the demand curves in the RPM bids.

21 Q. Now, you cannot explain in detail how
22 CONE is used as part of that RPM process, correct?

23 A. I couldn't give you chapter and verse on
24 it because the tariff itself is so complex that I
25 understand the basic concepts of it in terms of

1 incorporating it into those curves, but in terms of
2 actually sitting down and calculating those points
3 along the curves, no.

4 Q. But you will agree that CONE sets the
5 price for a capacity shortage requirement, correct?

6 A. It sets a target threshold against which
7 the value of capacity is set within the RPM depending
8 on whether the reliability target of the RTO is met
9 or not met with the available supply within the
10 market.

11 Q. As a result if there is not a capacity
12 shortage, that's when CONE exceeds the market
13 clearing price in PJM; isn't that correct?

14 A. Yes.

15 Q. Now, you recommend that FirstEnergy's
16 estimate of its interruptible load for purposes of
17 peak demand reduction and calculating the peak demand
18 reduction benchmarks, you recommend that that should
19 be based on the maximum demand of the interruptible
20 customer, correct?

21 A. What I say is that it should be based on
22 the calculation of curtailable load as defined in
23 rider ELR, which is the maximum less firm defined
24 within a specified time period in certain non-holiday
25 weekdays from I think 11 to 5.

1 Q. So in the rider ELR for purposes of
2 defining interruptible load there's a specific time
3 frame which is the peak time frame, and then within
4 that time frame you take maximum load and subtract
5 the firm load that's declared by the customer,
6 correct?

7 A. Yes. And then in my testimony I explain
8 one approach that one could use in combining those
9 individual estimates into an aggregate estimate which
10 would involve some of those loads.

11 Q. Now, you agree that during a curtailment
12 event, during an interruptible situation, a
13 curtailment event, that it's unlikely that all
14 interruptible customers will be at that level of
15 maximum demand, correct?

16 A. Well, I've done no analysis of it, but to
17 assume that there's a hundred percent coincidence of
18 those, the probability is certainly not 1, I don't
19 know what that probability is.

20 Q. So you would not offer an opinion on
21 whether it's more probable or less probable, more
22 remote or less remote?

23 A. No. I've done no analysis of it, so
24 empirically I don't know.

25 Q. With regard to Nucor, do you know how --

1 do you know on how many occasions Nucor has been at
2 maximum demand when a curtailment event was called?

3 A. I do not.

4 Q. Do you know what Nucor's maximum demand
5 is?

6 A. I do not.

7 Q. Do you know how often during an average
8 24-hour period Nucor is at its maximum demand?

9 A. I do not.

10 Q. Have you done an analysis with regard to
11 interruptible customers in general as to how often
12 their load is at maximum demand?

13 A. No. Not of the customers eligible for
14 rider ELR, no.

15 Q. And have you done an analysis showing how
16 often load of an interruptible customer is at maximum
17 demand when a curtailment event occurs?

18 A. No.

19 Q. Now, rider ELR uses maximum demand to
20 calculate the credit payments provided under that
21 rider, correct?

22 A. That's correct.

23 Q. Now, you are familiar with the Commission
24 rule that allows a utility to count demand reduction
25 toward its peak demand reduction benchmark to the

1 extent that program meets the requirements to be
2 counted as a capacity resource under an RTO tariff,
3 yes?

4 A. That is one of the conditions, yes.

5 Q. And you will agree that FirstEnergy will
6 have to do whatever the Commission says it has to do
7 in its rules, correct?

8 A. That's correct.

9 Q. In one portion of your testimony when
10 you're discussing GT class customers you propose a
11 monthly \$3,000 per customer on DSE2 charges. And as
12 I understand, that \$3,000 monthly cap would be for --
13 by specific customer in the GT class; is that
14 correct?

15 A. Yes, it essentially places a cap, the
16 financial exposure of a customer to DSE2 charges on
17 an annual basis for Ohio Edison at \$36,000. I did
18 not calculate or recommend a cap for the other two
19 operating companies.

20 Q. Just for that one operating company is
21 the suggestion.

22 A. Yes. I say in the testimony that I have
23 not calculated whether that cap should be applicable,
24 for example, to the other two operating companies or
25 whether another cap would be applicable to them.

1 Q. And the --

2 A. The point I was trying to get at is that
3 a cap, in my opinion, would be reasonable because of
4 the exposure that customers have.

5 Q. And is your testimony focused on the one
6 operating company because your client, Nucor, is a
7 customer of that operating company?

8 A. Yes.

9 Q. And you said you're recommending an
10 annual cap of 36,000, your testimony also refers to a
11 monthly cap.

12 A. Oh, yes.

13 Q. Are you referring to a -- is it month by
14 month that the calculation would be made?

15 A. Well, the calculation I made, it was
16 36,000 essentially which equated to a \$3,000 a month
17 cap if one were looking at the charges that were
18 applicable, again, the details of actually how the
19 cap would be set, it's down to a level that people
20 could work out under reasonable circumstances.

21 The key and critical point that I was
22 trying to make is that the development of these
23 programs and the application of those charges in
24 particular for some of the larger customers within
25 the GT class could have significant financial

1 impacts, impacts that create choices within operating
2 budgets of companies. It doesn't matter whether it's
3 Nucor, it could be any other company within the GT
4 class.

5 But I think it is -- for customers on a
6 going-forward basis to have some reasonable
7 expectation of what their maximum exposure to these
8 charges is is a good idea, and exactly how we get
9 there, people can debate that. I've offered one
10 suggestion.

11 Q. Oh, are you saying that you're not
12 recommending that the company should track a \$3,000
13 monthly cap on a monthly basis, track it and adjust
14 it monthly for each GT class customer? Is that not
15 your recommendation?

16 A. No. My recommendation is that there be a
17 \$3,000 a month cap. Whether the, you know, the
18 individual tracking is done or not is something that
19 I didn't get into in the testimony, but again, the
20 focus was on the issue of a cap limiting the maximum
21 exposure of an individual customer to the DSE2
22 charges on an annual basis translating into, in terms
23 of ratemaking, a monthly cap.

24 Q. So to take that one step further, assume
25 that a company's DSE2 charge, a GT class customer's

1 DSE2 charge is \$6,000 for one month and there's a
2 \$3,000 cap, what happens to the difference, the other
3 3,000 that's above the cap?

4 A. Well, the Commission could decide in
5 setting the rate design rules for the recovery of the
6 cost that the cap was fixed at \$3,000 a month, they
7 could also decide that the deferrals,
8 overaccumulations or underrecoveries in individual
9 months could be tracked on an annual basis such that
10 an individual customer would not be exposed to more
11 than \$36,000 of charges in a year.

12 I didn't make any recommendation to the
13 Commission on that.

14 Q. Assuming it's done on a monthly basis, as
15 it appears you're partially recommending, if it's
16 done on a monthly basis, what happens to that
17 overage? Is that somehow -- is that distributed to
18 the other class -- customers in the GT class?

19 A. Well, the commissions would have to
20 decide what would happen in terms of recovery of the
21 budgets on an annual basis from the GT class in
22 total.

23 Q. So you --

24 A. It may mean that those underrecoveries
25 might have to be deferred to a following program year

1 and then incorporated into the budgets for that
2 program year and adjusted in some way.

3 Again, the focus is on essentially giving
4 customers some insurance against what could become
5 highly escalating costs of these programs within --
6 to the GT class.

7 Q. So you do not have an opinion or a
8 recommendation in this testimony as to what would
9 happen with that overage.

10 A. Not in this testimony, no.

11 Q. At the end of your testimony you discuss
12 FirstEnergy's shared savings proposal and the
13 15 percent of net benefits proposal that's in
14 FirstEnergy's plans. Have you done any analysis to
15 show that the proposed 15 percent level is
16 unreasonable?

17 A. Well, I state the reasons why I think
18 it's unreasonable at this time and -- in testimony,
19 and in particular whether -- first of all, whether an
20 incentive is needed at this time, whether the design
21 that FirstEnergy has proposed is appropriate hasn't
22 been determined.

23 If it is appropriate and reasonable, what
24 is an appropriate level? Should it be linked to
25 what's been done, for example, in some other

1 jurisdiction or with another program?

2 All the details, all the discussions
3 within FirstEnergy's proposal simply aren't there,
4 it's just sort of a blanket: If we can beat the
5 benchmark, we get 15 percent of the net benefits.

6 Q. Perhaps, I'm sorry, perhaps my question
7 wasn't clear. Have you done any, say, quantitative
8 analysis to show that the 15 percent of net benefits
9 is a reasonable or unreasonable amount, or that some
10 other percentage would be reasonable or unreasonable?

11 A. Well, I'm not sure exactly what kind of
12 test one would do to determine whether a 15 percent
13 or a 10 percent or an 18 percent measure is
14 reasonable.

15 These are policy decisions. They're
16 normative decisions, they come down to essentially
17 getting various stakeholders that have different
18 opinions on, number one, whether an incentive
19 mechanism should exist, and number two, how should it
20 be structured and what should the levels be.

21 Q. Are you aware that a 15 percent shared
22 savings incentive has been approved in other states?

23 A. I don't know of one that's been approved
24 exactly like FirstEnergy has proposed which is
25 essentially, again, described as I've described it in

1 my testimony as 15 percent of, quote, net benefits
2 above benchmark. No, I don't know of any program
3 that's been approved.

4 Q. And you are aware that if FirstEnergy, if
5 each of the FirstEnergy utilities does not satisfy
6 their statutory benchmarks, that they are subject to
7 penalties under the statute, correct?

8 A. Possibly, yes.

9 Q. In another area of your testimony you
10 argue that using a kilowatt-hour cost recovery
11 approach for the GT customer class will force
12 high-load factor customers to subsidize low-load
13 factor customers, correct? That's an aspect of your
14 testimony.

15 A. That's correct.

16 Q. And when we talk about high-load factor
17 customers subsidizing low-load factor customers, what
18 we're really talking about is higher than average
19 load factor customers and lower than average load
20 factor customers.

21 A. That's correct.

22 Q. So it's a determination of -- the average
23 or mean load factor in that customer class is a
24 valuable data point in making that determination,
25 correct?

1 A. Well, it's a data point in defining the
2 level of dispersion around the mean of various -- of
3 load factors within the class. It's a valuable point
4 in developing a very detailed, specific rate-tracking
5 mechanism.

6 It is not a critical key component to
7 simply recognizing the fact that in classes such as
8 large industrial pure kilowatt-hour charges in and of
9 themselves from a pure rate design perspective create
10 intraclass subsidy problems that have been recognized
11 for decades in ratemaking.

12 Q. So as I understand it, it's -- you
13 determine the mean and then also would need to
14 examine the dispersion of the customers around that
15 mean to examine their load factors so that you could
16 determine the impact of using kilowatt-hour charges
17 and what type of impact that would have on high-load
18 factor customers versus low-load factor customers,
19 correct?

20 A. Well, you could do that. Again, there
21 are a lot simpler approaches to doing it. Again, the
22 approach I recommended is a much simpler approach
23 that doesn't require that and it's an approach that
24 has been recognized, again, for decades in industrial
25 ratemaking, and that is the development of demand and

1 energy charges.

2 Q. So that's recommending an alternative to
3 using the kilowatt-hour charges, correct?

4 A. That's correct.

5 Q. And what I'm asking you to determine,
6 whether kilowatt-hour charges are resulting in
7 intraclass subsidies, you need to understand what the
8 dispersion around the mean is of those customers
9 because if they're all clustered around the mean,
10 there's not going to be a significant impact on those
11 customers of using kilowatt-hour charges, correct?

12 A. No, not necessarily. In and of itself,
13 as I've tried to point out, when you have diversity
14 of dispersion around the mean of the load factors and
15 in particular within a large industrial class where
16 there are millions of kilowatt-hours per customer on
17 an annual basis potentially available in analyzing
18 impacts, it has been recognized, again, from pure
19 ratemaking or ratemaking principles that intraclass
20 subsidy problems will exist.

21 To determine the exact magnitude of those
22 is a fairly technical analysis that one could get
23 into, but it doesn't deny the fact that the
24 subsidies, the intraclass subsidies, do exist.

25 Now, in terms of the remedy and looking

1 at the impact of individual customers, yes, you would
2 have to come out with a final rate after all of your
3 technical analysis.

4 Q. And that technical analysis that you said
5 one can do, you have not done that analysis, correct?

6 A. No. I have taken a standard ratemaking
7 approach simply to classify demand costs as -- and
8 recover them through demand charges, energy related
9 costs, classify them as such and recover them through
10 energy charges.

11 Q. And you do not know what the average load
12 factor is for the GT customer class, correct?

13 A. I have not calculated that.

14 Q. And you have not done an analysis of the
15 GT customer class with regard to what the dispersion
16 is around the mean, correct?

17 A. That's correct.

18 Q. Are you aware that most customers in the
19 GT customer class are clustered around the mean?

20 A. No, I'm not. I've not done that
21 analysis.

22 MR. LANG: That's all the questions I
23 have, your Honor.

24 EXAMINER PRICE: Thank you.

25 Mr. Lindgren?

1 MR. LINDGREN: One moment, your Honor.

2 No questions, your Honor.

3 EXAMINER PRICE: Mr. Lavanga, redirect?

4 MR. LAVANGA: Your Honor, may I have ten
5 minutes?

6 EXAMINER PRICE: You may. Let's go off
7 the record for ten minutes.

8 (Recess taken.)

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

11 Mr. Lavanga.

12 MR. LAVANGA: Just a couple questions,
13 your Honor.

14 - - -

15 REDIRECT EXAMINATION

16 By Mr. Lavanga:

17 Q. Dr. Goins, you got some questions from
18 Mr. Lang concerning the use of CONE in PJM's RPM
19 process, do you remember that?

20 A. Yes, I do.

21 Q. What did you use CONE for in your
22 analysis?

23 A. The only thing I used CONE for was as a
24 benchmark value of the long-run avoided costs of
25 capacity, and to compare that value against the

1 existing credits within the IDR program, that is the
2 interruptible credits associated with riders ELR and
3 EDR, and I simply made the association that that CONE
4 value was significantly greater than those credits.

5 Q. So your use of CONE was simply as a
6 measure of long-term avoided capacity costs.

7 A. That's right.

8 Q. Mr. Lang also discussed with you the
9 possibility of your proposed GT cap, the possibility
10 of over- or underrecoveries due to that cap. Do you
11 recall that?

12 A. I do.

13 Q. Now, to your knowledge has FirstEnergy
14 presented any evidence on the record or analysis to
15 show that there would be significant over- or
16 underrecoveries on a cumulative basis from either
17 FirstEnergy's per-kilowatt-hour rate design or your
18 proposed rate design for GT?

19 A. No. I've seen no evidence that that
20 problem as I discussed with Mr. Lang, number one,
21 exists, and number two, is of any significant
22 magnitude either under the straight kilowatt-hour
23 rate design FirstEnergy's proposed or the demand
24 energy rate design that I've proposed.

25 And the bottom line is it's a rate design

1 problem. It can be handled and treated as a rate
2 design problem. It's certainly not an unsurmountable
3 problem, even if it were one, which no one knows.

4 MR. LAVANGA: Thank you. That's all the
5 questions I have.

6 EXAMINER PRICE: Thank you.

7 Mr. Clark, recross?

8 MR. CLARK: No, thank you.

9 EXAMINER PRICE: Mr. Reisinger?

10 MR. REISINGER: No questions, your Honor.

11 EXAMINER PRICE: Mr. Heintz?

12 MR. HEINTZ: No questions, your Honor.

13 EXAMINER PRICE: Mr. Smith?

14 MR. SMITH: No questions, your Honor.

15 EXAMINER PRICE: Mr. Sites?

16 MR. SITES: No questions, your Honor.

17 EXAMINER PRICE: Mr. Allwein?

18 MR. ALLWEIN: Yes, I do.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Allwein:

22 Q. Dr. Goins, you were asked by the
23 company's counsel if you did any kind of analysis to
24 determine whether the company's proposed shared
25 savings mechanism was reasonable. Do you recall that

1 line of questioning?

2 MR. LAVANGA: Your Honor, I'm going to
3 object. This is outside the scope of --

4 EXAMINER PRICE: Sustained.

5 MR. ALLWEIN: Okay. I have no further
6 questions.

7 EXAMINER PRICE: Mr. Weldele?

8 MR. WELDELE: No questions, your Honor.

9 EXAMINER PRICE: Mr. Lindgren?

10 MR. LINDGREN: No questions.

11 EXAMINER PRICE: I actually have just two
12 questions, or I don't know, maybe more.

13 Mr. Lang asked you if you understood that
14 in order for FirstEnergy to count riders ELR and OLR
15 towards their peak demand benchmarks, that they have
16 to be accepted as a capacity resource by the regional
17 transmission organization. Do you recall that
18 question?

19 THE WITNESS: Yes.

20 EXAMINER PRICE: Do you know whether
21 rider ELR has been accepted as a capacity resource by
22 MISO?

23 THE WITNESS: I do not.

24 EXAMINER PRICE: Do you know whether
25 rider OLR has been accepted by MISO as a capacity

1 resource?

2 THE WITNESS: I do not.

3 EXAMINER PRICE: Okay. Thank you.

4 EXAMINER BOJKO: Mr. Goins, do you recall
5 a discussion you had with Mr. Lang about the shared
6 savings incentive and, I believe that's page 29 of
7 your testimony, you have a criticism of FirstEnergy,
8 that they didn't do an empirical analysis about the
9 percentage of how you calculate that actual shared
10 percentage; is that an accurate characterization?

11 THE WITNESS: The characterization was
12 essentially that there was no analysis other than
13 simply making statements.

14 EXAMINER BOJKO: Okay. But when Mr. Lang
15 asked you whether you had done such an analysis, I
16 thought I heard you say that it would be very
17 difficult, you couldn't do such analysis. So I guess
18 I'm asking what do you expect that the company could
19 do when you said you couldn't do it yourself?

20 THE WITNESS: Well, what I said was that,
21 first of all, it needs to be determined whether an
22 incentive mechanism is necessary and if it would
23 promote the objectives of the state and the
24 Commission in achieving the EE&PDR benchmarks and
25 exceeding them. In other words, would it be

1 beneficial to the people of the state.

2 And if there is a determination that
3 going over and above the benchmarks is a good thing,
4 the question is is the company -- the company will
5 still be allowed, as far as I can determine, if they
6 can meet these various tests, to recover those costs
7 and so on and so forth.

8 But in addition to that, they want to
9 make more money going above those benchmarks,
10 something over and above what they are required to
11 do.

12 And there are multiple types of incentive
13 mechanisms, if you want to encourage a company to go
14 over and above a set level or a threshold, there are
15 multiple types of incentive mechanisms that one could
16 develop, that one could evaluate, that one could
17 design and implement.

18 My criticism is that FirstEnergy has
19 presented none of that in this case. FirstEnergy has
20 simply said other companies -- first of all, we are
21 allowed to have it, under the statute and the rules,
22 and that we think 15 percent would be reasonable
23 because other companies, you know, have mechanisms
24 that are similar, according to them.

25 The only thing I can say as I answered

1 Mr. Lang, I don't know of any company that has that
2 15 percent threshold related to an EE/PDR benchmark.

3 Number two, even those companies that
4 have incentive mechanisms for EE&PDR programs or DR
5 programs in the United States, a lot of those
6 programs have been -- are incentive mechanisms that
7 have been developed after extensive litigation in
8 regulatory proceedings among stakeholders, and
9 ultimately it boils down to an agreement among the
10 parties of if there is going to be an incentive
11 mechanism, what should be the quantitative value of
12 it, how should it be structured, and how should it be
13 implemented and verified and all of that stuff.

14 And that evidence is not here. It's not
15 a matter of whether it's reasonable. It's, as I
16 said, it's a normative judgment, it's not something
17 you can run out and do, you know, 20 empirical tests
18 that if you answer affirmatively on 18 of them, you
19 say this is a good deal and we ought to do it.

20 It's essentially, one, you make some
21 social judgment about whether we want to go over and
22 above the thresholds, if we do, are incentives
23 necessary, and if so, what level of incentive is
24 appropriate?

25 That incentive level could be 5 percent,

1 it could be 6, it could be any number, and the
2 decision on that would be a normative decision.

3 EXAMINER BOJKO: So you don't have a
4 recommendation for us today that is different than
5 the 15 percent proposed by the company.

6 THE WITNESS: Oh, no. My recommendation
7 is that the company has not presented sufficient
8 evidence in this case of, one, to justify having an
9 incentive mechanism, and number two, justifying the
10 specific mechanism that they proposed.

11 EXAMINER BOJKO: Right. I guess what I'm
12 asking, though, is do you have a specific
13 recommendation for the Commission of what would be an
14 appropriate level, either mechanism or level in this
15 case?

16 THE WITNESS: No, I don't.

17 EXAMINER BOJKO: Thank you.

18 THE WITNESS: Sure.

19 EXAMINER PRICE: Do you think that the
20 company's rate of return is a reasonable incentive?

21 THE WITNESS: Again, as long as -- I am
22 assuming by when you speak of "rate of return," that
23 they're able to recover their costs and lost revenues
24 and stuff, which involves a return of their
25 investments and expenditures. That's an incentive.

1 That in and of itself is an incentive.

2 The initial arguments we're having with
3 incentive mechanisms or going forward with issues
4 such as decoupling and all of these other things
5 would level the playing field. When I look at Ohio,
6 it appears the playing field is fairly level.

7 The question -- and legislature has
8 essentially set the framework in terms of the
9 benchmarks and how they're to be done. The
10 Commission's implemented rules to meet those goals
11 and objectives, and then the issue raised by
12 FirstEnergy is what if we go above that?

13 And the same rules that apply for the
14 benchmarks in terms of recovery, cost recovery and
15 earnings, are still going to apply above the
16 benchmark.

17 Do we need something extra? I'm not
18 sure. I don't think so. But, there are many, many
19 people in the United States in cases all across the
20 country that argue oh, yes, you do. They all have
21 their agendas to go forward.

22 It is a money-making proposition for a
23 utility. Should you give -- I can think of probably
24 other initiatives that the Commission could undertake
25 that, you know, in terms of rates or various

1 programs, and maybe I could make an argument that
2 there should be an incentive on those, they're
3 totally unrelated to EE&PDR. Well, what type of
4 framework would the Commission implement to evaluate
5 whether that's a good deal, and generally it boils
6 down to is it just and reasonable, is it structured
7 fairly, is it necessary, those types of questions,
8 none of which have been asked or answered in this
9 case.

10 When you say do you have a specific
11 number? Absolutely not. We're not even at step one,
12 as far as I'm concerned, on that.

13 EXAMINER PRICE: Thank you. You're
14 excused.

15 THE WITNESS: Sure.

16 EXAMINER PRICE: Mr. Lavanga.

17 MR. LAVANGA: Your Honor, I move for
18 admission of Nucor Exhibit 1.

19 EXAMINER PRICE: Any objection to the
20 admission of Nucor Exhibit 1?

21 MR. LANG: No, your Honor.

22 EXAMINER PRICE: Seeing none, it will be
23 admitted.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 EXAMINER BOJKO: Mr. Heintz, would you

1 like to call your first witness?

2 MR. HEINTZ: Thank you, your Honor. The
3 Environmental Law and Policy Center would call
4 Geoffrey C. Crandall to the stand, please.

5 Your Honor, I'd like to mark or premark
6 for identification purposes ELPC Exhibit 1, a copy of
7 Mr. Crandall's prefiled direct testimony.

8 EXAMINER BOJKO: It will be so marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MR. HEINTZ: Does the Bench need a copy
11 of it?

12 EXAMINER BOJKO: No, thank you.

13 Mr. Crandall, can you please raise your
14 right hand?

15 (Witness sworn.)

16 EXAMINER BOJKO: Please be seated.

17 Please proceed.

18 - - -

19 GEOFFREY C. CRANDALL

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

22 DIRECT EXAMINATION

23 By Mr. Heintz:

24 Q. Mr. Crandall, can you state your name and
25 spell it for the record, please?

1 A. Geoffrey C. Crandall, C-r-a-n-d-a-l-l.

2 Q. Thank you. And what is your business
3 address?

4 A. 1800 Parmenter Street, Suite 204,
5 Middleton, Wisconsin.

6 Q. And do you have in front of you what's
7 been premarked as ELP Exhibit 1?

8 A. Yes, I do.

9 Q. Is this your prefiled direct testimony?

10 A. Yes, it is.

11 Q. Does it also include the exhibits to your
12 testimony?

13 A. Yes.

14 Q. Was this testimony prepared by you or
15 under your direction?

16 A. Yes.

17 Q. Do you have any corrections to your
18 testimony today?

19 A. Yes, I do.

20 Q. And what are those corrections?

21 A. Page 6, line 12, strike "PRD" and
22 inserted "PRD." Yeah, I'm sorry. Yeah, it should
23 read "PDR" instead of "PRD."

24 Q. Thank you.

25 A. Also page 20, line 9, the one "compared"

1 should be stricken.

2 And the final change for sake of clarity
3 would be Exhibit GCC-9, should be marked accordingly,
4 mine was not. So the last Exhibit 1 of 9 should be
5 entitled GCC-9.

6 Q. And just so it's clear for the record,
7 this is the page at the bottom marked "1 of 9," at
8 the top it has the Wal-Mart name and insignia?

9 A. Yes.

10 Q. Mr. Crandall, taking into account these
11 corrections, if I were to ask you the questions that
12 appear in this testimony, would these be your
13 answers?

14 A. Yes, they would.

15 MR. HEINTZ: Thank you. The witness is
16 available for cross-examination.

17 EXAMINER BOJKO: Thank you.

18 Let's begin with, I'm going to mix it up
19 a little bit. Mr. Smith?

20 MR. SMITH: No questions.

21 EXAMINER BOJKO: Okay. Mr. Sites?

22 MR. SITES: No questions, your Honor.

23 EXAMINER BOJKO: Mr. Reisinger?

24 MR. REISINGER: No questions, your Honor.

25 EXAMINER BOJKO: Mr. Lavanga?

1 MR. LAVANGA: No questions, your Honor.

2 EXAMINER BOJKO: Mr. Clark?

3 MR. CLARK: Just a clarification
4 question, your Honor.

5 EXAMINER BOJKO: Okay.

6 MS. KOLICH: Excuse me, your Honor,
7 before we start, when would you like to take motions
8 to strike?

9 EXAMINER BOJKO: Before we start. Now,
10 please.

11 MS. KOLICH: Me?

12 EXAMINER BOJKO: Please.

13 MS. KOLICH: Thank you, your Honor.

14 I would move to strike lines 9 through 12
15 on page 20 of Mr. Crandall's testimony. Actually,
16 lines 9 through 13 starting with "I called a
17 retailer" finishing with "range exceeding 1.0." The
18 basis being that it's hearsay.

19 This is a statement offered for the truth
20 of the matter asserted on something that the company
21 has no opportunity to cross-examine the retailer that
22 he spoke to to find out any of the details related to
23 this fixture, whether it's consistent with what's
24 contemplated in the plan, and any other matters that
25 may come up.

1 EXAMINER BOJKO: I'm sorry, where did you
2 end?

3 MS. KOLICH: "1.0," because if you leave
4 the \$100 cost differential in there, then it still
5 incorporates the hearsay.

6 EXAMINER BOJKO: We agree it is hearsay,
7 the motion to strike will be granted.

8 Is that all?

9 MS. KOLICH: No. No, your Honor. Just
10 to be clear, it is stricken as I described it?

11 EXAMINER BOJKO: Beginning on lines 9 "I
12 called," and ending on line 13 after "exceeding 1.0"
13 will be stricken from the record.

14 MS. KOLICH: I also move to strike
15 Exhibit GCC-2.

16 EXAMINER BOJKO: Grounds?

17 MS. KOLICH: First of all, it's not been
18 authenticated, it's just been stuck in the back of
19 his testimony.

20 Second, again, it's statements by other
21 parties. There's no indication that he was involved
22 in the development of this document or had any
23 involvement with it whatsoever.

24 And actually, it's somewhat irrelevant to
25 whether -- the issues before this Commission dealing

1 with the plan that's before the Commission.

2 MR. HEINTZ: Your Honor, if I may.

3 EXAMINER BOJKO: You may respond.

4 MR. HEINTZ: As to the hearsay, this
5 falls under the government records exception to the
6 hearsay rule. This is a record that is kept by the
7 United States Environmental Protection Agency in the
8 course of its regularly conducted business.

9 As to authentication, I would --

10 EXAMINER BOJKO: Let's go off the record.

11 (Off the record.)

12 EXAMINER BOJKO: Go back on the record.

13 Please continue.

14 MR. HEINTZ: As to the hearsay objection,
15 it is a governmental record, as I indicated, kept by
16 the United States Environmental Protection Agency in
17 the course of its regularly conducted business.

18 As to authentication, we can certainly
19 have Mr. Crandall authenticate the source as to where
20 he obtained the record.

21 As to relevancy, it gets to the programs
22 that are being offered by the companies and is an
23 example of additional measures that the companies
24 could get to through their programs.

25 EXAMINER BOJKO: The motion will be

1 denied.

2 Ms. Kolich, do you have another one?

3 MS. KOLICH: I move to strike GCC-3.

4 EXAMINER BOJKO: Grounds?

5 MS. KOLICH: Basically, relevance. It's
6 a press release apparently talking about California
7 approving a law. I don't see where it's relevant to
8 this proceeding.

9 EXAMINER BOJKO: Response?

10 MR. HEINTZ: It is relevant, again, for
11 the same reason that GCC-2 was relevant. It goes to
12 additional measures that the company could get to and
13 shows the energy usage by certain products that the
14 company could address through their programs.

15 MS. KOLICH: I don't agree that this is
16 the same as the last one. It's making statements
17 such as it would save consumers 8.1 billion over ten
18 years. What was that based on? How are we supposed
19 to cross-examine on this to find the details?

20 EXAMINER BOJKO: I think the point was it
21 was the same for relevancy purposes, but --

22 MS. KOLICH: Oh, not for purposes of
23 hearsay?

24 EXAMINER BOJKO: Correct. I think that
25 was the distinction Mr. Heintz made, because your

1 objection only was on relevance.

2 MS. KOLICH: Oh, I'll add the objection
3 to hearsay. I'm sorry.

4 MR. HEINTZ: Again, it's a government
5 record, it's kept by the state of California.

6 EXAMINER BOJKO: I think this is a press
7 release. The motion will be granted on both grounds.

8 MS. KOLICH: I also move to strike GCC-4.

9 EXAMINER BOJKO: Grounds?

10 MS. KOLICH: Hearsay, relevance. It
11 appears to be an advertisement by MidAmerican, which
12 I believe is a utility in Iowa, and again, it appears
13 to be prepared by people at MidAmerican, for their
14 business, and whether or not it's comparable to what
15 we're dealing with here, we don't know. And unless
16 we have an opportunity to ask questions about it --

17 EXAMINER PRICE: He's not offering it for
18 the truth of the matter asserted, though. He's using
19 this as an example of information provided to
20 customers.

21 Isn't that right? I mean, his statement
22 says "a good example of the type of information
23 provided is GCC-4." I don't think anybody's
24 testifying that this is the actual -- the truth of
25 the matter asserted. I think he testified to that

1 earlier in his testimony.

2 MS. KOLICH: As long as that is the
3 understanding on the record, I'll withdraw that.

4 EXAMINER PRICE: Am I incorrect?

5 MR. HEINTZ: No; that's correct. This is
6 being offered as an example of the type of
7 advertisement that a utility can offer.

8 EXAMINER BOJKO: With that, you withdrew
9 your motion?

10 MS. KOLICH: I will withdraw my motion to
11 strike that one, but I will move to strike GCC-6. In
12 this one, he makes a statement referring to this
13 indicating that there are other utilities that offer
14 more programs with -- more, lighting programs than
15 are offered in this plan. That is being offered --
16 this document is in support of that statement which
17 is being offered for the truth of the matter
18 asserted, and apparently it's DTE's program
19 application along with its terms.

20 Again, we would not have an opportunity
21 to question anybody from DTE to give more details on
22 these or to try to refute or discredit or distinguish
23 between DTE's plan and what's included in our plan.

24 EXAMINER BOJKO: Do you have a page
25 reference to the reference?

1 MS. KOLICH: It's just GCC-6 after --

2 EXAMINER PRICE: Page 9, line 9.

3 MS. KOLICH: Yeah, I can find it for you.

4 EXAMINER BOJKO: We found it, page 9,
5 line 9.

6 MS. KOLICH: You found it?

7 MR. HEINTZ: Your Honor, again, this is
8 not being offered for the truth of the information
9 contained. Mr. Crandall states "I have provided
10 examples of these other LED incentive programs in
11 Exhibits 6, 7, and 8."

12 These are simply being offered as an
13 example of other incentive programs being provided by
14 other utilities. He is not testifying as to the
15 incentive levels in those programs, just that they
16 exist.

17 MS. KOLICH: I believe he's saying more
18 than that because his criticism is we do not have
19 enough lighting programs in our plan; he makes the
20 statement that these are examples of programs where
21 more lighting measures are included. And we have no
22 details underlying these programs other than what we
23 find here. So I don't know . . .

24 MR. HEINTZ: I guess I don't understand
25 your hearsay objection. He's not testifying as to

1 the details contained in these three exhibits, but
2 rather that these are other examples of what other
3 utilities are offering.

4 EXAMINER BOJKO: I think we're going to,
5 I don't think, we are going to deny this motion to
6 strike. And I'm assuming it's the same for 6, 7, and
7 8.

8 MS. KOLICH: Okay, I wasn't going to move
9 for 7 or 8 since you denied 6, but yes.

10 EXAMINER BOJKO: All three cases are
11 examples, we will not consider them for the truth of
12 the matter asserted therein.

13 We're all into new territory here and I
14 think that we're trying to look to examples to get
15 the Ohio programs to be the best that they can be.
16 So we'll leave this in.

17 Any other one?

18 MS. KOLICH: Yes, your Honor. Actually,
19 I would move to strike GCC-8 on different grounds,
20 most of which is relevance.

21 Based on discussions during deposition
22 this program focus on energy, which is 13 pages, is a
23 state run program, predominantly a state run program.
24 Mr. Crandall can correct me if I misunderstand what
25 was said in deposition, but that was my

1 understanding, and how a state run program or its
2 design is relevant to a utility-based program is lost
3 on me.

4 EXAMINER BOJKO: Similar to our last
5 ruling, we're going to leave this in, again, for
6 illustrative purposes.

7 MS. KOLICH: And my last motion to strike
8 deals with GCC-9, which apparently is some PowerPoint
9 presentation from Wal-Mart. I have no idea what it's
10 supposed to tell us but it has a lot of statements in
11 it that if they are being offered for the truth of
12 the matter asserted, obviously, it's hearsay and we
13 cannot delve into the details underlying these
14 statements.

15 Again, on relevance, apparently it looks
16 like it's a privately run pilot by an end-use
17 customer.

18 EXAMINER PRICE: Could we have the
19 reference where he uses that?

20 MR. HEINTZ: It's page 10, line 21, and
21 if you're taking responses, I'd be happy to provide
22 one.

23 EXAMINER BOJKO: Please.

24 MR. HEINTZ: It is not being offered for
25 the truth of the matter asserted. Again, it is an

1 example program. So in that regard we would maintain
2 it is not hearsay.

3 As to relevance, the company, Company
4 Witness Fitzpatrick yesterday testified to the fact
5 that the company is running a pilot program for LED
6 technology. This is simply another example of an LED
7 pilot program that the company could offer. So this
8 I believe was something that the company put into
9 evidence itself.

10 EXAMINER BOJKO: Okay. Consistent with
11 our other rulings, we will deny the motion to strike
12 based on statements of counsel that this isn't
13 offered for the truth of the matter asserted, merely
14 as an example of an example of a program that could
15 be offered.

16 MS. KOLICH: Just so we're clear, the
17 statements about -- the statements made in the
18 PowerPoint cannot be cited on brief as evidence other
19 than the existence of this pilot. But the PowerPoint
20 is nine pages long and has a lot of details in it.
21 LED is a great solution to --

22 EXAMINER BOJKO: Right, it's an example
23 of a program, that is why we are allowing it in.

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

1 EXAMINER BOJKO: Thank you.

2 Now back to Mr. Clark's little minor
3 clarification.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Clark:

7 Q. Good morning, Mr. Crandall. My name is
8 Joe Clark and I'm counsel for Industrial Energy
9 Users-Ohio, and I do have just a clarification
10 question.

11 Reviewing your testimony, are you
12 familiar with the cost allocation and revenue
13 recovery mechanism embedded in DSE2 as proposed by
14 the company?

15 MR. HEINTZ: Objection.

16 EXAMINER BOJKO: Grounds?

17 MR. HEINTZ: I believe that's beyond the
18 scope of Mr. Crandall's testimony.

19 EXAMINER BOJKO: I believe he asked if he
20 was aware of it.

21 Why don't you try to lay a little
22 foundation, Mr. Clark.

23 Q. Mr. Crandall, are you aware of rider
24 DSE2?

25 A. Yes, or I'm aware there's a required.

1 Q. And are you aware that as the companies
2 proposed in Witness Ouellette's testimony, that the
3 costs of the programs proposed by the companies will
4 be allocated to the customer classes and recovered
5 from those customer classes based upon where they're
6 targeted?

7 A. No, I am not.

8 Q. So in your testimony today you're making
9 no assertions as to how it should be allocated or
10 recovered from customers; is that correct?

11 A. That would be correct. Yes.

12 MR. CLARK: I have no more questions,
13 your Honor.

14 EXAMINER BOJKO: Thank you.

15 Mr. Weldele?

16 MR. WELDELE: No questions, your Honor.

17 EXAMINER BOJKO: I believe we're to
18 Mr. Allwein.

19 MR. ALLWEIN: No questions, your Honor.

20 EXAMINER BOJKO: And Mr. Lindgren? Wait,
21 Mr. Lindgren, let's go to the company first. Sorry.

22 MS. KOLICH: Thank you, your Honor.

23 - - -
24
25

CROSS-EXAMINATION

1
2 By Ms. Kolich:

3 Q. Good morning, Mr. Crandall. My name is
4 Kathy Kolich, I'm an attorney for the companies.
5 I'll be asking you some questions this morning. If
6 at any time you don't understand the question, feel
7 free to let me know and I'll be more than happy to
8 rephrase it, otherwise I will assume that you
9 understand the question, okay?

10 A. Yes.

11 Q. Now, your arrangement with the
12 Environmental Law and Policy Center, which I'll be
13 referring to as "ELPC," you act as a technical
14 adviser for them?

15 A. Yes, that's correct.

16 Q. So your job is to advocate ELPC's
17 positions; is that correct?

18 A. No.

19 Q. What is your role?

20 A. My role is to review various proposals,
21 filings, applications, et cetera, and to offer them
22 my professional opinion and advice as to many aspects
23 of those documents, those filings, and those
24 activities.

25 EXAMINER BOJKO: Wait. I'm sorry.

1 You're looking at Ms. Kolich. Could you move the
2 microphone over to that side because we're losing you
3 on this side of the room.

4 THE WITNESS: Sure.

5 EXAMINER BOJKO: Thank you.

6 Q. So you view yourself as an independent
7 consultant?

8 A. Yes. I'm there to -- I'm a technical
9 consultant and I'm hired by ELPC as they need me to
10 help them understand various filings or cases as the
11 need may arise.

12 Q. So are there times when you and ELPC
13 don't agree on positions?

14 A. Yeah, that probably happens from time to
15 time.

16 Q. Now, your arrangement with ELPC, you're
17 under contract, correct?

18 A. Right. We have a memorandum of
19 understanding, yes.

20 Q. Turning your attention to your testimony
21 on page 4, line 6, you indicate that the companies'
22 plans do not include strategies or a sufficient level
23 of effort to build customer awareness of energy
24 efficiency options. Do you see that?

25 A. Yes, I do.

1 Q. When you drew this conclusion, you had
2 not looked at any of the companies' proposed
3 marketing materials, had you?

4 A. I reviewed the plan filing and within
5 that filing there was a description of their proposed
6 educational approaches and their marketing
7 approaches, but it was all explained within their --
8 the filing, the plan filing.

9 Q. So you didn't look at any mock-up
10 advertisements or marketing plans or anything like
11 that that the company may have?

12 A. Nothing beyond what was in their plan
13 filing.

14 Q. And how about the -- are you aware that
15 the company has an on-line energy tool that it offers
16 to customers that's interactive?

17 A. Yes, I am aware of that.

18 Q. And did you go on line and use that tool?

19 A. No, I did not.

20 Q. How about any of the companies' -- or,
21 I'm sorry, how about the company's energy products
22 program that it offers, did you look into that or
23 look at any of those materials?

24 A. I looked at the materials that were
25 contained within the plan filing.

1 Q. So it would be -- the same would hold
2 true, then, that you didn't look at any proposed
3 company bill inserts or public announcements?

4 A. That's correct.

5 Q. Same would hold true that you didn't look
6 at any drafts of speaker bureau plan or scripts?

7 A. That's true, yes.

8 Q. Same would hold true that you didn't look
9 at any scripts of any call centers for the -- the
10 company's call center dealing with energy efficiency.

11 A. That is correct.

12 Q. Now, would you agree with me that before
13 the companies should finalize their marketing
14 materials, they should probably know what the final
15 plan is?

16 A. Yes, I agree.

17 Q. And do you think it's the sole
18 responsibility of the companies to provide the
19 education that you describe here in your testimony to
20 make customers aware of the benefits of energy
21 efficiency?

22 A. No.

23 Q. Who else do you think should share in
24 that responsibility? The state?

25 A. I think state agencies certainly have a

1 responsibility in that regard, and I think they do a
2 number of things that help to get the information out
3 to build consumer awareness of energy efficiency
4 opportunities.

5 Q. So when you say "state agencies," you
6 mean like the consumer advocate?

7 A. Yes. In fact, I looked at their website
8 and they have information, public information on how
9 they can -- customers can save energy, dealing with
10 phantom load, for example, what that is, what they
11 can do to minimize their energy bill.

12 Q. And how about the Commission, should they
13 be part of that?

14 A. I think they should be, yes.

15 Q. Have you seen any materials from the
16 public utilities -- the Ohio Commission?

17 A. I have not.

18 Q. Okay. Turning your attention to the
19 bottom of page 4 starting on line 17 through 22, you
20 cite quite a few statistics. Do you see that?

21 A. Yes.

22 Q. Those are national statistics, correct?

23 A. Yes, they are.

24 Q. Now, on page 6 of your testimony, I
25 believe it is, line 4, you talk about the plug load

1 specific to Ohio. Do you see that?

2 A. Yes.

3 Q. Other than that statement in your
4 testimony, do you have any other of the statistics
5 mentioned on page 4 that are applicable specific to
6 Ohio?

7 A. No, I do not.

8 Q. In your testimony on page 5, line 21, you
9 reference California. You're not suggesting -- I'm
10 sorry. Yeah, line 21. You're not suggesting that
11 Ohio follow the energy policies of California, are
12 you?

13 A. To the extent that government bodies can
14 advise their consumers as to what television sets to
15 use and help them to be mindful of the consumption at
16 their point of purchase, I do agree that Ohioans
17 should follow that same policy direction.

18 It's important to get the word out to
19 consumers so after they buy these television sets
20 they become aware of the fact that they use much more
21 electricity than the old set used, and I think Ohio
22 utilities and government bodies need to make sure
23 that consumers in the state are aware of that, so I
24 believe that would be appropriate, yes.

25 Q. Okay. And --

1 EXAMINER BOJKO: Ms. Kolich, before you
2 move on.

3 Is that just in regard to the type of
4 television, for instance, like because it's my
5 understanding that those are becoming energy
6 certified just like refrigerators and washers and
7 dryers, or are you talking -- because this is kind of
8 in the context of I thought the phantom load
9 discussion.

10 So were you talking more about the set
11 itself using less energy or the phantom load aspect
12 of it?

13 THE WITNESS: I was referring to the
14 television sets, to make sure the consumer understood
15 the impact of buying a plasma television, for
16 example, over an old CRT type of set or the LCD sets.
17 So that they're aware of the consumption of the
18 televisions, that's what I was referring to there.

19 EXAMINER BOJKO: Okay. Can you tell me a
20 little bit about the plug load and how that works?
21 You mentioned the strip, the electrical strip, does
22 that eliminate phantom load or -- can you explain
23 that a little bit?

24 THE WITNESS: Right. Page 4 of my
25 testimony talks about the 11 percent of annual

1 electric use nationally, and that really refers to
2 all plug loads. That would be things like printers,
3 that would be things like laptop computers that have
4 a little power pack, and within that number -- and we
5 have phantom load. So a phantom load would be like a
6 television set that has a remote control device that
7 when you're not using it, it's still drawing power.

8 So the phantom load is using electricity
9 when you don't need the set and it's using it
10 wastefully.

11 That's what the OCC, for example, has a
12 fact sheet on their website that explains that you
13 need to be aware of phantom load. There would be
14 many devices that use remote control devices, for
15 example and these are -- even an air-handling system
16 you would use in your house. They have remote
17 control units for everything nowadays, and when you
18 have that remote control device, it's drawing power
19 when you're not using the device.

20 EXAMINER PRICE: Not the remote control,
21 the device that is controlled by the remote control.

22 THE WITNESS: Exactly. Yes. Yes. In
23 order for that remote control to actuate the
24 appliance, you have to have the AC power there so it
25 can receive the signal.

1 But this power strip, when you were using
2 let's say a laptop computer or a television set and
3 you are on a power strip, you turn that off and
4 any draw that might be there from the phantom load
5 then is eliminated.

6 EXAMINER BOJKO: You turn the power strip
7 off?

8 THE WITNESS: Yes.

9 EXAMINER BOJKO: So then you'd have to
10 turn the power strip on before you use the remote.

11 THE WITNESS: Right. Exactly. Yes.

12 EXAMINER BOJKO: And doesn't that mess
13 with the TV settings?

14 THE WITNESS: No. If you have a
15 television or if you have, like I say, a laptop
16 computer or any number of devices, battery chargers,
17 if they're on a power strip, you turn it on, you turn
18 it off, you know, and that will save you somewhere 4
19 to 7 percent are some estimates.

20 So that's what it does, and they're
21 becoming more and more common, and I use one in my
22 home quite a bit actually. You just, if you don't
23 need the television on or if you have a VCR player
24 you're not using, put it on the power strip, turn the
25 power strip off, and you're not draining electricity

1 wastefully.

2 EXAMINER BOJKO: And in your testimony
3 you're stating that FirstEnergy has included that in
4 their program. Is there another recommendation you
5 have to address plug load?

6 THE WITNESS: The recommendation is that
7 they make customers aware of phantom load and these
8 effects they probably aren't aware of, and I think a
9 combination of the power strip plus education and
10 consumer awareness information would be a very good
11 thing to do, it would be in the public interest.

12 EXAMINER BOJKO: So there are no other
13 recommendations to deal with it from a physical or
14 technical perspective?

15 THE WITNESS: That's right.

16 EXAMINER BOJKO: Okay. Thank you.

17 Sorry, Ms. Kolich.

18 MS. KOLICH: That's okay, you just
19 knocked out four of my questions.

20 Q. (By Ms. Kolich) Let's move on to page 8
21 and your SSL lighting section, I believe it starts at
22 line 16 where you say that "FirstEnergy erred by not
23 including additional SSL measures in this proposed
24 three-year plan." Do you see that?

25 A. Yes.

1 Q. Now, at the bottom of page 8 starting on
2 lines 22 and carrying over to page 9 you list
3 numerous new SSL products, "SSL" being solid state
4 lighting, correct?

5 A. Yes.

6 Q. Do you see that?

7 A. Yes, I do.

8 Q. You are not recommending in your
9 testimony here today that a specific program be
10 included that encompasses any of these measures, are
11 you? You haven't got a specifically-designed program
12 that you want to say here's a program that should be
13 in the plan.

14 A. I'm sorry, I don't understand your
15 question.

16 Q. Okay. Let's back up.

17 On line 22 where you list all of these
18 programs, the parking lot, the outdoor porch lights,
19 et cetera, your testimony today isn't a
20 recommendation to include a specific program that any
21 of these measures, you know, how the company has a
22 T-12/T-8 retrofit measure, you're not here today
23 saying "I think the company should do the parking lot
24 measure and this is how they should do it."

25 You're just saying that they should start

1 designing programs that incorporate these types of
2 measures; is that correct?

3 A. Well, my testimony is that these types of
4 measures are becoming commonplace in the midwest.
5 Consumers may be interested in purchasing these, and
6 if they do, they would save energy.

7 And that FirstEnergy ought to include
8 these particular measures and technologies as an
9 offering within their program, their commercial
10 lighting program.

11 Q. Okay. So the parking lot light measure,
12 do you have a TRC calculation if it would be
13 incorporated into the lighting program?

14 A. I guess at what level of analysis are you
15 referring to?

16 Q. The level that you just described where
17 you would like them to be incorporated into the
18 lighting program. So if the program was changed to
19 incorporate an offering of parking lot lights, how
20 would the TRC be affected in the portfolio?

21 A. How would the TRC --

22 Q. Of the portfolio.

23 A. -- of the portfolio be affected?

24 Q. Yes.

25 A. I think in that case it would still be

1 positive.

2 Q. Do you have a calculation demonstrating
3 that?

4 A. No, I do not. However, in my judgment it
5 would be so small of an impact that the plan overall
6 would certainly pass the TRC.

7 Q. Now, that's your statement for LED
8 lighting; is that correct?

9 A. Yes, it is.

10 Q. But you have no specific calculation on
11 that.

12 A. No, I do not.

13 Q. Okay. And what specific assumptions --
14 strike that.

15 Now, would you agree with me that
16 high-pressure sodium lighting is an efficient
17 replacement for current lighting?

18 A. I think it's one -- it is one option, one
19 improvement in the existing lighting, yes. It's one
20 option.

21 Q. And are you aware that the company has
22 programs involving high-pressure sodium lights?

23 A. Yes, I am.

24 Q. Are you aware that the company has
25 also -- strike that.

1 I'll come back to that.

2 Now, you indicated that other midwestern
3 utilities include these types of measures; is that
4 correct?

5 A. Yes.

6 Q. And would those other utilities be the
7 utility programs that are included as Exhibit GCC-6,
8 7, and 8?

9 Let me ask it a different way.

10 Is one of those utilities that you're
11 referring to DTE Energy?

12 A. Yes, it is.

13 Q. And ComEd?

14 A. ComEd identified on GCC-7, yes.

15 Q. Well, let's look at GCC-6, specifically
16 page 3.

17 A. Okay.

18 Q. These are the lighting measures that you
19 suggest the company incorporate into its plan; is
20 that correct?

21 A. Well, these are examples of other
22 utilities that have incorporated it into their plans
23 and are offering it to their customers, yes.

24 Q. Do you know the participation rates that
25 DTE is achieving in this program set forth in GCC-6?

1 A. Well, this is a very new program
2 offering, I think it reflects the interest of the
3 consumer in today's world and today's market in
4 Michigan and it's very new, so I don't have any
5 uptake rates.

6 Q. So your answer to my question is "no"?

7 A. That's correct.

8 Q. And you do not have a TRC calculation on
9 DTE's program, do you?

10 A. DTE's a different cost testing. They
11 don't rely on the TRC analysis, they rely on a
12 different cost test up there in that jurisdiction, so
13 I don't have that calculation.

14 Q. You're aware that Ohio requires a
15 calculation-based TRC?

16 A. Yes, I do.

17 Q. Did you run a TRC on this program as
18 designed by DTE?

19 A. No, I did not. I asked for an executable
20 model from FirstEnergy so I could then run
21 alternative analyses. The model I received was not
22 fully functional and I could not execute it so I
23 could have derived that value.

24 Q. You're aware that the TRC is set forth in
25 the Commission's rules, aren't you?

1 A. Yes, I am.

2 Q. Did you try to reconstruct the TRC on
3 your own?

4 A. I guess I don't understand that question
5 either.

6 Q. Well, let me rephrase it, then.
7 You're aware that the TRC is laid out in
8 the Commission's rules, correct?

9 A. Yes.

10 Q. And you didn't take that rule and put
11 this DTE lighting program into that test as described
12 in the Commission's rule, you didn't model the TRC
13 test and run it through your model, the DTE program;
14 is that correct?

15 A. I did not independently model this
16 program and the assumptions which would have required
17 me to have a series of avoided costs, a lot of other
18 operational factors, so I could perfectly replicate
19 what was in the FirstEnergy model. So I did not
20 conduct that analysis separately, no, I did not.

21 Q. Okay. Move to GCC-7, the ComEd lighting
22 program. Specifically page 3 of 3. Do you know the
23 participation rates for this ComEd program as set
24 forth in your exhibit, GCC-7?

25 A. No, I do not. And, this is a program

1 that was launched last year. I don't know
2 specifically for the LED lights, but overall I know
3 that their commercial lighting program, which is an
4 element of it, is oversubsidized.

5 EXAMINER PRICE: Off the record, please.

6 (Off the record.)

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

9 Please continue.

10 THE WITNESS: Could we have that read
11 back? I can't remember where I was.

12 EXAMINER BOJKO: Yes, please.

13 (Record read.)

14 A. That's it.

15 EXAMINER BOJKO: Ms. Kolich.

16 Q. Mr. Crandall, you did not run a TRC
17 calculation for a ComEd program described in Exhibit
18 GCC-7, did you?

19 A. No, I did not.

20 Q. And you don't know if the companies would
21 incorporate a program as described in GCC-7, how it
22 would affect the overall portfolio TRC, do you?

23 A. Well, with respect to the ComEd, they did
24 include these measures and they screened above 1 on
25 the TRC, I believe their value is 1.25. So ComEd

1 included it in their program, their commercial
2 lighting program, and it screened favorably.

3 Were you referring to ComEd or to
4 FirstEnergy?

5 MS. KOLICH: Could I have my question
6 reread, please?

7 Q. I was referring to FirstEnergy but we'll
8 reread the question.

9 (Record read.)

10 A. I haven't run a specific --

11 MS. KOLICH: Excuse me.

12 A. -- value --

13 MS. KOLICH: Excuse me, I would move to
14 strike his answer to my question, first of all,
15 because I asked was -- he doesn't -- whether he knows
16 how the TRC would be affected in the portfolio of
17 FirstEnergy. That's a yes/no question.

18 EXAMINER BOJKO: Motion granted. Or
19 objection sustained, motion to strike granted.

20 Please answer the question that was
21 posed. Do you need it reread?

22 THE WITNESS: My answer would be "yes."

23 Q. Yes, you ran the --

24 A. No.

25 MS. KOLICH: Let me -- please reread the

1 question.

2 (Record read.)

3 Q. And the companies, meaning FirstEnergy,
4 was the reference.

5 A. My answer would be "yes, I do know." In
6 my opinion this would be such a small amount of
7 impact on the TRC of the overall plan, which is what
8 you asked me, that it would not drive the TRC value
9 below 1. That's my professional opinion.

10 Q. What would the TRC value be of the
11 portfolios if you incorporated this plan?

12 A. It would be a de minimis impact on the
13 TRC of the overall plan to include these measures.

14 Q. Would it have a de minimis impact on
15 kilowatt-hours as well?

16 A. It would depend on how many measures were
17 included, how many customers would purchase these
18 lights. I don't believe there would be a large
19 amount of kilowatt-hours saved, but there would be
20 some.

21 Q. And we don't know what participation
22 rates we would have in Ohio, do we?

23 A. Not until you do the program, you don't
24 know that, that's right.

25 Q. Moving on to GCC-8, up in the left corner

1 it says "focus on energy." Do you see that?

2 A. Yes.

3 Q. Now, this program is managed in large
4 part by the state of Wisconsin, isn't it?

5 A. Yes, it is. The Department of
6 Administration is primarily responsible for this.

7 Q. Turning to your testimony on page 9,
8 please, specifically line 11. Do you see that?

9 A. Yes.

10 Q. You state that FirstEnergy "did not
11 include a concentrated and focused demonstration
12 pilot for new interior and exterior SSL applications
13 in Ohio." Do you see that?

14 A. Yes, I do.

15 Q. Now, are you saying that such a pilot
16 should have been included in the plans?

17 A. I'm saying such a pilot should be
18 conducted in FirstEnergy's service territory.

19 Q. But not necessarily included as a plan
20 program.

21 A. Not necessarily, that's correct.

22 Q. If you'll turn to page 11 of your
23 testimony, specifically line 11, where you say "The
24 PUCO should ensure that FirstEnergy is setting up its
25 accounting systems appropriately." Do you see that?

1 A. Yes.

2 Q. And specifically line 18, where it says
3 "The PUCO staff should provide guidance through
4 written correspondence." Do you see that?

5 A. Yes.

6 Q. Now, are you recommending that these
7 suggestions be incorporated prior to the plan being
8 approved, that the plan should not be approved until
9 the PUCO staff provides guidance?

10 A. I'm recommending that this be done as
11 soon as possible. Having worked for the Commission
12 staff in Michigan, we found it to be very
13 important -- we found it to be important to identify
14 the accounts and subaccounts within the uniform
15 system so that when we looked at the cost recovery,
16 we could audit expenses, we could allocate costs by
17 functionality, and that should be done through a memo
18 or through some instructions from the accounting
19 staff to the utility. It should be done as soon as
20 possible.

21 Q. Do you know if that's been done by the
22 Commission here in Ohio?

23 A. I don't know if it has been done. If it
24 was, I am not aware of that.

25 Q. But you're not recommending that the plan

1 be held up until these recommendations are
2 implemented, are you?

3 A. That's correct.

4 Q. Let's turn to page 12 of your testimony
5 regarding EM and V, evaluation, measurement, and
6 verification. You are not advocating any particular
7 EM and V model that should be used in Ohio, are you?

8 A. No, I'm not.

9 Q. And that's because you believe that the
10 independent program evaluator that will be hired
11 through the Commission's recently issued RFP will
12 have to decide the approach that is appropriate for
13 Ohio; is that correct?

14 A. That's correct.

15 Q. Now, page 13 of your testimony, line 3,
16 you set forth two concerns regarding the EM and V
17 surrounding the company's plans. Do you see that?

18 A. Yes.

19 Q. And your first concern is regarding the
20 selection and managing of FirstEnergy's EM and V
21 contractor; is that correct?

22 A. Yes.

23 Q. Would you agree with me that if FE hires
24 an EM and V contractor, it's reasonable to assume
25 that such an arrangement would be done through a

1 contract?

2 A. Yes.

3 Q. Now, on page 13, line 8, you indicate "As
4 proposed, FirstEnergy would have the ability to
5 unilaterally dismiss the EM and CV contractor." Do
6 you see that?

7 A. Yes.

8 Q. What do you mean, "as proposed"?

9 A. Well, the company indicated they would be
10 hiring an EMV contractor, and my assumption is that
11 there will be terms in the contract and a standard
12 contract would allow dismissal or -- of the
13 contractor consistent with the terms of the contract
14 or, if the EMV team chooses to leave the contract,
15 there would be an out provision for that as well.
16 Standard contract arrangement.

17 Q. But you haven't seen the terms of the
18 FirstEnergy contract.

19 A. No, I have not.

20 Q. So you're just speculating as to what may
21 be in that contract?

22 A. Yes, that's correct.

23 EXAMINER BOJKO: But if the company can't
24 unilaterally -- are you suggesting that staff or the
25 Commission oversee such a contract?

1 THE WITNESS: Yes, I am, in terms of the
2 ability to dismiss an EMV contractor, should the
3 contractor issue a report that a program was
4 deficient or faulty or failed or something like that,
5 then the EMV team may have a contract termination,
6 for example.

7 And I think that there needs to be
8 independence and autonomy with the contractor who
9 does the evaluation so they can render an objective
10 opinion without worrying about having a contract
11 terminated.

12 EXAMINER BOJKO: Okay.

13 Q. (By Ms. Kolich) Just a point of
14 clarification. On line 14 of page 13 you talk about
15 a firewall, and I think we had some confusion during
16 deposition. Could you just define what you mean by a
17 "firewall"?

18 A. Can you refer me to the page number and
19 line number again?

20 Q. Sure. It's page 13, line 14.

21 A. What I'm referring to here is some
22 procedural mechanism that would insulate an objective
23 EMV contractor from FirstEnergy, be it a designation
24 by the Commission or the staff or something like
25 that, that they believe that this particular

1 contractor ought to be terminated and that
2 FirstEnergy can't unilaterally on its own dismiss
3 their EMV contractor, that procedural mechanism is
4 what I'm referring to as the firewall.

5 Q. So it doesn't mean that FirstEnergy on
6 one side of the wall couldn't talk to an EMV, their
7 EMV contractor on the other side of the wall; is that
8 correct?

9 A. No, it does not mean that, because
10 FirstEnergy has a very important role here in the
11 evaluation. They need to provide data and there has
12 to be a flow of information from program
13 implementers, FirstEnergy, to the evaluation team.

14 Q. Now, turning your attention to line 17
15 and 18, you say "A safeguard needs to be inserted
16 such that the contractor cannot be unduly influenced
17 by FirstEnergy." Do you see that?

18 A. Yes.

19 Q. Do you have any evidence that would lead
20 you to believe that FirstEnergy would unduly
21 influence its EM and V contractor?

22 A. No, I do not.

23 Q. And up on 16 you say "Integrity of this
24 process is paramount -- of paramount importance."

25 "This process" being the EM and V process?

1 A. Yes.

2 Q. You don't have any evidence that would
3 indicate FirstEnergy would not approach this process
4 with integrity, do you?

5 A. Could you restate your question, please?

6 Q. Sure. Do you have any evidence that
7 would lead you to believe that FirstEnergy would
8 approach the EM and V process or work in the EM and V
9 process without integrity?

10 A. No, I do not.

11 Q. And it's not your testimony today that an
12 EM and V contractor can't be independent, is it?

13 A. No, that's not my testimony.

14 Q. In fact, I believe you said earlier you
15 had disagreements with the ELPC before, right?

16 A. Certainly.

17 Q. And you're under contract with them.

18 A. Yes.

19 Q. And you haven't been fired, right?

20 A. Not that I know of.

21 Q. Turning your attention to page 14, line 2
22 of your testimony, I believe this is your second
23 concern and it deals with -- second concern regarding
24 the EM and V, and you say that "only verified bona
25 fide savings resulting directly from FirstEnergy's

1 EE&PDR activities" should be reflected in savings.

2 Do you see that?

3 A. Yes.

4 Q. Now, I want to focus on "directly
5 related" for a minute. Are you familiar with the
6 term "spillover"?

7 A. Yes, I am.

8 Q. And I think there's also a term "free
9 driver."

10 A. Correct.

11 Q. Are those somewhat interchangeable?

12 A. Yes.

13 Q. I'm going to use "spillover," then.
14 Would it be a fair description of a spillover effect
15 if the company offered four CFL light bulbs to its
16 customers and it went -- and then that customer
17 decided that they liked these CFL bulbs and they go
18 out on their own and buy five more bulbs? Would that
19 additional five bulbs they buy be a spillover effect
20 if it can be shown it was a direct result of the four
21 bulbs that were offered by the company?

22 A. If it can be shown, yes.

23 Q. Okay. So in that scenario the spillover
24 effect of the five bulbs, the savings resulting from
25 those, in your opinion, would be directly related

1 and, therefore, should be included for counting?

2 A. Well, this is a question that goes to EMV
3 methodology. The exact procedure as to what is
4 included as a spillover effect or free rider effect,
5 net to gross ratio, all that is one that needs to be
6 addressed by the evaluation team or the, in this case
7 the statewide independent program evaluator.

8 And there is a series of options there
9 and there's methodology choices they would make, so
10 it's involved as to how you would explicitly quantify
11 these impacts.

12 So that would be, in this case that would
13 be up to the direction and guidance provided by the
14 independent statewide program evaluator.

15 Q. Do you have a copy of your deposition
16 handy?

17 A. I don't have one here, no.

18 MS. KOLICH: Can we go off the record a
19 second?

20 EXAMINER BOJKO: Yes.

21 (Discussion off the record.)

22 EXAMINER BOJKO: Let's just take five
23 minutes.

24 (Recess taken.)

25 EXAMINER BOJKO: Let's go back on the

1 record.

2 I believe you were referring us to page
3 129, Ms. Kolich?

4 MS. KOLICH: Yes, your Honor.

5 EXAMINER BOJKO: Just for the record, of
6 Mr. Crandall's deposition.

7 MS. KOLICH: Correct.

8 EXAMINER BOJKO: Please proceed.

9 MS. KOLICH: Thank you.

10 Q. (By Ms. Kolich) Mr. Crandall, if I could
11 point you to line 21 on page 129 of your deposition,
12 you see there where we're talking about free drivers
13 sometimes referred to as spillover?

14 A. Yes.

15 Q. And the question reads "Okay. That
16 effect" -- the spillover effect -- "in your opinion
17 should it be included as part of the results if it
18 can be demonstrated that these results arose from the
19 activities in the plan?" Do you see that?

20 A. Yes.

21 Q. And your answer is: "I think reflecting
22 that when you have a good basis to do it is --
23 reflecting those things I think certainly does make
24 sense. If you only discounted for those activities
25 of customers you thought would have done this anyway

1 absent a rebate and you only look at net to gross
2 that way and don't include the spillover effect, I
3 don't think that balances."

4 Going on it says: "So I think this is --
5 if it can be proven and you have a good basis for it,
6 I think that's reasonable to include in your
7 assessment."

8 Is that correct?

9 A. Yes.

10 Q. Did I read that correctly?

11 A. Yes, you did.

12 Q. Thank you.

13 If you would turn to page 14, line 9 of
14 your testimony.

15 A. Yes.

16 Q. You make a reference to Appendix G
17 dealing with the company's historical T and D
18 programs. Do you see that?

19 A. Yes.

20 Q. Just so we're clear, you are aware that
21 the company did not include the effects or the
22 results from the historic T and D programs; is that
23 correct?

24 A. For the 2010 through 2012 period, yes,
25 that is correct.

1 Q. Okay. Turning to page 17 of your
2 testimony, these deal with -- starting on line 5 and
3 the pages after 17, several pages have testimony
4 regarding the fast-track programs. Do you see that?

5 A. Yes, I do.

6 Q. Are you aware that ELPC agreed not to
7 oppose a joint motion to launch the company's
8 fast-track programs?

9 A. Yes, that's my understanding.

10 Q. And are you also aware that except for
11 the appliance recycling program, ELPC agreed that the
12 fast-track programs -- sorry, let me rephrase.

13 ELPC agreed to not oppose the launching
14 of the fast-track programs as designed in the plans
15 except for the appliance recycling?

16 A. I don't know exactly what ELP's position
17 is on this other than to not oppose the fast-track
18 programs.

19 Q. Okay.

20 EXAMINER BOJKO: I'm sorry, Ms. Kolich,
21 did you say "as designed in the portfolio plan" or
22 "as designed in the fast-track motion," joint motion?

23 MS. KOLICH: I excluded the recycle
24 program, the other three programs I indicated -- my
25 statement dealt with as designed in the plans.

1 EXAMINER BOJKO: The portfolio plan.

2 MS. KOLICH: The portfolio plans.

3 EXAMINER BOJKO: And that doesn't change
4 your response, does it?

5 THE WITNESS: No.

6 EXAMINER BOJKO: Thank you.

7 Q. (By Ms. Kolich) Okay. Looking at page
8 18, line 21, you talk about the appliance recycling
9 program. Do you see that?

10 A. Yes.

11 Q. Starting on 20, the question is.

12 And you suggest that certain incentive
13 levels be changed. Do you see that?

14 A. Yes.

15 Q. Now, if the company agrees to change
16 those incentive levels in the recycle program, as you
17 describe in your testimony, are your concerns with
18 the program eliminated?

19 A. My concerns with respect to the incentive
20 level would be, yes.

21 Q. Let's turn to page 19 of your testimony
22 where you talk about the C&I lighting program.

23 Are you there?

24 A. Yes.

25 EXAMINER PRICE: Can I ask you a question

1 real fast?

2 MS. KOLICH: Sure.

3 EXAMINER PRICE: With respect to question
4 13 you indicate, involving marketing strategy, it's
5 for people who sign up and they get cold feet and
6 back out. What exactly are you talking about there?

7 Line 13, I'm sorry. Yes. Thank you.

8 Line 13, page 19.

9 THE WITNESS: Right.

10 EXAMINER PRICE: Your additional
11 suggestions. What kind of marketing strategy would
12 apply to somebody who signed up and then changed
13 their mind?

14 THE WITNESS: Well, we've had this
15 problem in Illinois and what happens is people who
16 are interested in the program sign up and then
17 there's a -- they schedule a trip to the home in that
18 particular neighborhood and these customers are
19 saying "I've thought about it, I really, I'm
20 ambivalent, I guess I'm not going to do that."

21 Well, what has happened is utilities will
22 maybe a few weeks after that now to try to capture
23 that old inefficient freezer or refrigerator, they
24 call the customer back and say "We're going to be in
25 the neighborhood anyway in this time frame, do you

1 think -- might you still be interested in us removing
2 that appliance?"

3 And a number of people say, "Yeah, you
4 know what, I think I will. I'll have that taken
5 out."

6 So it seems to be an issue and that's why
7 I brought it up.

8 EXAMINER PRICE: Not advocating high
9 pressure sales tactics --

10 THE WITNESS: No.

11 EXAMINER PRICE: -- to extract these
12 refrigerators from the consumers.

13 Just checking, thank you.

14 Thank you.

15 Q. (By Ms. Kolich) Let's go back to the C&I
16 equipment program regarding lighting. And
17 specifically I want to talk about the T-12 to T-8
18 retrofits. Now, would you agree with me that the
19 type of retrofit, this type of retrofit generally
20 involves more than just replacing bulbs?

21 A. Yes.

22 Q. And that's because the ballasts for the
23 T-12 won't accommodate T-8, correct?

24 A. That's correct.

25 Q. So the fixture also has to be replaced in

1 such a retrofit; is that correct?

2 A. That's very common, yes.

3 Q. And generally speaking, for commercial
4 buildings, aren't electrical contractors generally
5 used for any retrofit of any significance?

6 Generally.

7 A. Quite often that's the case, but again,
8 it depends if a company has a maintenance staff and
9 they would do a lot of that anyway, but yeah, it
10 would depend on the type of customer.

11 Q. Now, if you were going to include --
12 well, let me strike that.

13 If you were using an electrical
14 contractor for one of these retrofits, would it be
15 reasonable to include a labor cost for purposes of
16 calculating the TRC?

17 A. Yes. According to the Commission rules,
18 the cost of the equipment as well as the installation
19 costs can be reflected in the cost of the measure,
20 yes.

21 Q. So if you were going to try to figure out
22 the cost of the labor, would you agree with me that
23 it would be helpful to know approximately how many
24 people would be needed to do the retrofit?

25 A. I guess I don't understand your question.

1 Sorry.

2 Q. If we're trying to figure out the cost
3 component that goes into the overall calculation in
4 the TRC for labor, just labor, in order to determine
5 that cost of labor you would have to know how many
6 people would be doing the labor, right?

7 A. You mean how many hours it would require
8 a qualified worker to do that?

9 Q. Yeah, we can start there.

10 A. Yeah.

11 Q. And you would have to generally know the
12 rate or the, yeah, the rate that would be charged for
13 that type of individual, wouldn't you?

14 A. You'd have to be able to derive a value,
15 yes.

16 Q. Okay. And it would be helpful also if
17 you knew whether an electrician was needed to do
18 those retrofits versus a maintenance man.

19 A. Right.

20 Q. Let's see. Let's turn to page 21 of your
21 testimony, please. These are just to clarify a few
22 things for me. Line 7, you say that you believe a
23 more accurate cost and operational information -- I'm
24 sorry, let me read that again.

25 "I believe that more accurate cost and

1 operational information needs to be developed for use
2 in the analysis and design of energy efficiency
3 programs by FirstEnergy." Do you see that?

4 A. Yes.

5 Q. Putting this in context, you're talking
6 about this on a going-forward basis; is that correct?

7 A. Yes.

8 Q. And line 12 of the same page, you
9 indicate that you "believe that FirstEnergy and the
10 Ohio utilities need to create or gain access to a
11 revised technology database." Do you see that?

12 A. Yes.

13 Q. And just for clarification, the Ohio
14 utilities also include AEP, Duke, and Dayton Power &
15 Light.

16 A. Yes.

17 Q. Again, to put this in context, you're
18 talking about that on a going-forward basis; is that
19 correct?

20 A. Yes.

21 Q. Let's go to -- no, we're already there,
22 page 21, line 17, where we talk about the FirstEnergy
23 collaborative process. During 2009 you did not
24 participate in the FE collaborative, did you?

25 A. I did not.

1 Q. So you have no personal knowledge as to
2 the inner workings of that group, do you?

3 A. That's correct.

4 MS. KOLICH: If you can just give me one
5 minute, please.

6 EXAMINER BOJKO: Yes. Let's go off the
7 record.

8 (Off the record.)

9 EXAMINER BOJKO: Let's take a five minute
10 recess. Off the record.

11 (Recess taken.)

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

14 Mr. Lindgren, do you have any questions
15 for this witness?

16 MR. LINDGREN: No questions, your Honor.

17 EXAMINER BOJKO: Thank you.

18 Mr. Heintz, do you have redirect?

19 MR. HEINTZ: We have no redirect, your
20 Honor.

21 EXAMINER BOJKO: Thank you.

22 I have a couple questions.

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EXAMINATION

By Examiner Bojko:

Q. Mr. Crandall, if you can turn to page 12 of your testimony, on line 22 you talk about the Ohio EMV framework. When you reference "Ohio EMV," are you meaning the same thing that's on page 14 when you talk about the statewide independent program evaluator?

A. Yes.

Q. Is that the same person?

A. Yes.

Q. And when you talk about the framework being consistent with this approach, I guess are you referencing the framework of the independent program evaluator that was outlined in the RFP in the 09-512 proceeding?

A. Yes, that's correct.

Q. Okay. Now I'd like to turn you to page 17 of your testimony. You talked about the fast-track programs with Ms. Kolich and I thought you stated you weren't sure about EPLC's exact position, but I guess I need to clarify that.

Do you mean you're not sure of their exact position with regard to the actual fast tracking of the programs, or did you mean to say you

1 don't know their exact position with regard to the
2 content of the fast-track programs?

3 A. I think that -- I'm not completely aware
4 of what their position is with respect to that
5 motion. As I understand it, they're not opposed to
6 the implementation of these fast-track programs, so I
7 haven't seen that motion, I don't know how it's
8 written up or what they've said in there, but
9 basically I believe they're not opposing the
10 implementation of the fast-track programs.

11 Q. Okay. But you do have testimony here
12 about the content of those programs.

13 A. Yes, I do. Yes.

14 Q. Okay. So they are taking a position on
15 the content of the programs, or are you saying that
16 you have some tweaks and, despite your tweaks, they
17 could still go forward because they're not opposing
18 it?

19 A. Right.

20 Q. Any way? I guess I'm confused with those
21 statements.

22 A. Well, when I prepared this testimony, I
23 looked at the proposed programs, in fact, was
24 involved in a conference call on this the company had
25 and then I reacted to these programs in my testimony.

1 Now, after I filed my testimony some
2 motion was made, and I haven't seen the motion so,
3 I'm sorry, I don't know precisely. As I understand
4 it, I understand there is a change to the incentive
5 level for recycling.

6 All I know is when I looked at these
7 programs, these are my concerns and I articulated
8 those in testimony.

9 Q. Okay.

10 A. Beyond that, I'm sorry, I don't know.

11 Q. Let's talk specifics then about for the
12 CFL program. You suggest that -- you make a
13 suggestion that they need to have a turn-in
14 initiative; is that right?

15 A. Right.

16 Q. So I guess what I'm asking, if they did
17 have this turn-in initiative added to the program,
18 then you believe that the program should be adopted
19 by the Commission.

20 A. Right. Yeah.

21 Q. What about without the turn-in
22 initiative, do you still believe that the program has
23 merit and should be adopted by the Commission?

24 A. Well, I think that the disposal issue is
25 very significant. I think that needs to be part of

1 the program.

2 Q. Okay. And let's go to the recycling
3 program. You say on your first line -- on line 21 on
4 page 18 you see the merit of the program and you
5 believe that it's well designed overall but, again,
6 you offer substantive changes or modifications to the
7 program. So you believe that those modifications
8 should occur prior to implementation of the program.

9 A. Yes, I do.

10 Q. And is your response the same for the, is
11 there another fast-track -- the C&I?

12 A. The lighting.

13 Q. The C&I lighting program.

14 A. Right.

15 Q. You believe modification should be made
16 prior to the implementation of that program.

17 A. Yes, I do. But let me just clarify that,
18 as far as implementing the lighting program I'm
19 suggesting they should go forward. I've identified a
20 data input inaccuracy problem and that needs to be
21 resolved as soon as possible on a going-forward
22 basis.

23 But even so, I believe that this program
24 should be implemented, it would be in the public
25 interest to do so as a fast-track program.

1 Q. And on page 21 you talk about a need for
2 additional cost and operational data in developing,
3 you just state in developing programs. You're just
4 talking in general about all the programs contained
5 in the portfolio plan?

6 A. Yes.

7 Q. And again, my question I guess would be
8 the same, do you believe that that information needs
9 to I guess be produced prior to those programs being
10 approved and implemented?

11 A. No, I do not. When you have a program
12 like this, we will begin to understand some actual
13 cost data and as we collect information on the cost
14 to install lights, for example, you'll have some
15 known data, and as you track that information, you
16 can bring that back into the further redesign or
17 development or expansion, or elimination, of programs
18 based on actual costs in Ohio.

19 So, no, we need to do this, but we need
20 to do it on an ongoing basis, we ought to implement
21 these programs first and now and get this information
22 collected as the programs are implemented.

23 Does that clarify your question?

24 Q. Yes. Thank you.

25 EXAMINER BOJKO: Thank you. You may step

1 down.

2 MR. HEINTZ: Your Honor, ELPC would move
3 for the admission of ELPC Exhibit 1 into the record.

4 EXAMINER BOJKO: Thank you.

5 Are there any objections to the admission
6 of ELPC Exhibit 1, which is Mr. Crandall's testimony?

7 Hearing none, it will be admitted.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 EXAMINER BOJKO: Let's go off the record.

10 (Discussion off the record.)

11 EXAMINER PRICE: Let's go back on the
12 record.

13 Ms. Kolich.

14 MS. KOLICH: Thank you, your Honor. The
15 company would like to re-call George Fitzpatrick to
16 the stand. The reason being that while the company
17 was reviewing information last night, we discovered
18 that several of his responses to questions posed by
19 Mr. Smith were not entirely accurate.

20 The company realizes that this is the
21 sole issue for Mr. Smith and we wanted to make sure
22 that the record was clear so as not to mislead him
23 when he's advocating his position.

24 So with that I would ask that the Bench
25 grant us the -- indulge us and allow us to put

1 Mr. Fitzpatrick on the stand.

2 EXAMINER PRICE: Well, in the interest of
3 a complete record we will go ahead and re-call
4 Mr. Fitzpatrick.

5 Mr. Fitzpatrick, I remind you you are
6 still under oath in this proceeding.

7 THE WITNESS: Yes.

8 EXAMINER PRICE: Ms. Kolich, please
9 proceed.

10 MS. KOLICH: Thank you. Your Honor.

11 - - -

12 GEORGE L. FITZPATRICK

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

15 FURTHER REDIRECT EXAMINATION

16 By Ms. Kolich:

17 Q. Mr. Fitzpatrick, you were cross-examined
18 by Mr. Smith yesterday, do you recall that?

19 A. Yes, I do.

20 Q. And if you could turn your attention to
21 your Exhibit FE-GLF-2, page 3 of 3, which deals with
22 Toledo Edison Company. Do you have that?

23 A. Yes I do.

24 Q. Mr. Smith asked you several questions
25 regarding the kilowatt-hours saved for mercantile

1 utility large enterprise customers for the program
2 years 2010, 2011, and 2012. Do you recall that?

3 A. He asked me specifically about the
4 kilowatts saved.

5 Q. I'm sorry, yes. The kW's saved.

6 A. Yes, I do remember that.

7 Q. And as you informed me yesterday, your
8 answers to his questions were not complete. Could
9 you explain why you believe that to be the case?

10 A. Yes. In my response to Mr. Smith I
11 indicated that the numbers shown on the row entitled
12 Mercantile Utility (Large Enterprise) Cumulative Net
13 Weather Adjusted Savings for the year 2010 of 85,857,
14 and for the year 2011, 16,174, and the year 2012, the
15 number is 21,004, were entirely interruptible-related
16 load reductions.

17 I failed to mention and overlooked the
18 fact that there are other programs kilowatt impacts
19 that are included in those, although I would say that
20 predominantly it is interruptible load that's in
21 those numbers.

22 There are basically five programs that
23 have primarily kilowatt-hours -- or, four programs
24 have primarily kilowatt-hour savings but do have a
25 concomitant kW savings component, and those programs

1 are the C&I audits and equipment rebate program, the
2 technical assessment umbrella program, the C&I
3 equipment program, and -- the lighting component, and
4 the C&I equipment program, the industrial motors
5 component, and then finally the interruptible demand
6 reductions is the largest component of those five
7 programs.

8 For example, in the year 2010 the
9 interruptible demand reduction to account for
10 99 percent of the number shown on Exhibit GLF-2, page
11 3 of 3, under the "Kilowatt Saved" column for program
12 year 2010; for 2011 the number is -- the
13 interruptible number is about 76 percent of the total
14 16,174; and in the year 2012 the number -- the
15 interruptible number is 58 percent of the
16 21,004 kilowatts.

17 So that clarifies the components of those
18 particular numbers.

19 Q. Now, when you mentioned the other
20 programs, is there a schedule that details the
21 results of those other programs?

22 A. Yes, there is. It's contained in the
23 report.

24 EXAMINER BOJKO: I'm sorry, which report?

25 THE WITNESS: I'm sorry. In the Toledo

1 Edison energy efficiency peak demand reduction
2 report.

3 EXAMINER BOJKO: That's part of the
4 portfolio plan?

5 THE WITNESS: Yes.

6 EXAMINER BOJKO: Do you mean the plan?

7 THE WITNESS: Yes, I do. I'm sorry.

8 EXAMINER BOJKO: Okay.

9 THE WITNESS: The plan.

10 MS. KOLICH: The witness is available for
11 cross-examination.

12 EXAMINER PRICE: Mr. Smith.

13 - - -

14 FURTHER RECROSS-EXAMINATION

15 By Mr. Smith:

16 Q. Thank you for the clarification. In
17 essence, you're sponsoring, this is for background,
18 you're sponsoring Exhibits 6, 7, and 8 which are the
19 portfolio plans for Ohio Edison, CEI, and Toledo
20 Edison, correct?

21 A. That's correct.

22 Q. And you have virtually the same Exhibit 2
23 for CEI and Ohio Edison plans as you do for Toledo
24 Edison.

25 A. Yes. GLF-2, yes.

1 Q. And GLF-2, all the numbers shown for
2 Toledo Edison are accurate and correct.

3 A. Yes.

4 Q. What you're doing today is going into the
5 numbers that you referenced and identifying what part
6 of the savings would result from the interruptible or
7 IDR, I don't know what you meant by "IDR," but that's
8 the interruptible part of it, correct?

9 A. That's correct, the detail of that number
10 is contained in Appendix C-3, Table 7-E. That's
11 where the detail would be for Toledo Edison.

12 Q. Okay. And in asking you questions about
13 this table yesterday I did that after referring you
14 to page 25 of the Toledo Edison report --

15 A. Yes.

16 Q. -- do you recall? And on page 25 is a
17 discussion about Toledo Edison, I'm paraphrasing,
18 having some uncertainty whether or not the RFP
19 process would go forward as planned.

20 A. That's correct.

21 Q. And those statements are still true and
22 accurate as you testified yesterday.

23 A. Yes, they are.

24 Q. Again, so the IDR that you reference is
25 more of a generic interruptible plan?

1 A. Yes, that's correct. We basically needed
2 an interruptible resource so we took the
3 interruptible resource and put it into the plan to
4 the extent we needed it.

5 Q. And but for your forthcoming with
6 additional information, all of the information you
7 provided yesterday on cross-examination remains as
8 stated?

9 A. Except for the corrections so that you're
10 aware of all the components of those numbers.

11 Q. All right.

12 MR. SMITH: I have nothing further.

13 EXAMINER PRICE: Thank you.

14 OCC?

15 MR. ALLWEIN: We have no questions, your
16 Honor.

17 EXAMINER PRICE: Mr. Sites?

18 MR. SITES: No questions, your Honor.

19 EXAMINER PRICE: Mr. Heintz?

20 MR. HEINTZ: No questions, your Honor.

21 EXAMINER PRICE: Mr. Reisinger?

22 MR. REISINGER: No questions, your Honor.

23 EXAMINER PRICE: Mr. Clark?

24 MR. CLARK: No questions, your Honor.

25 EXAMINER PRICE: Mr. Lindgren?

1 MR. LINDGREN: No questions.

2 EXAMINER PRICE: Redirect?

3 MS. KOLICH: No questions.

4 EXAMINER PRICE: I have no questions.

5 You're excused.

6 THE WITNESS: Thank you.

7 EXAMINER BOJKO: Let's go off the record.

8 (Discussion off the record.)

9 EXAMINER BOJKO: We'll go back on the
10 record. We are adjourned for the day until
11 10:30 a.m. on Monday, March 8th.

12 We'd also like to note that in the record
13 that we have established a briefing schedule; briefs
14 will be due on -- initial briefs will be due March
15 29th and reply briefs will be due April 12th.

16 Now we're adjourned until Monday. Thank
17 you.

18 (Thereupon, the hearing adjourned at 11:59
19 a.m.)

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Summary: Transcript Transcript of FirstEnergy Volume 3 hearing held on 03/04/10.
electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones,
Maria DiPaolo Mrs.