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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

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

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

- - -

PROCEEDINGS

before Mr. Gregory Price and Ms. Kimberly Bojko,
Hearing Examiners, at the Public Utilities Commission
of Ohio, 180 East Broad Street, Room 11-A, Columbus,
Ohio, called at 10:30 a.m. on Monday, March 8, 2010.

VOLUME IV - REBUTTAL

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Monday Morning Session,
March 8, 2010.

- - -

EXAMINER PRICE: Let's go on the record.
Good morning. The Public Utilities Commission has set for hearing at this time and this place Case No. 09-1947-EL-POR, et al. This is our fourth day in this proceeding regarding FirstEnergy's peak demand reduction and energy efficiency portfolio plans for 2010 through 2012.

My name is Gregory Price. With me is Kimberly Bojko. We're the Examiners assigned to preside over today's hearing.

Do we have any preliminary issues for the Bench before we take our first witness?

Seeing none. FirstEnergy, you may call your first rebuttal witness.

MS. KOLICH: Thank you, your Honor.
The companies would call Katherine M. Kettlewell to the stand.

(Witness sworn.)

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

THE WITNESS: My name is Katherine

1 Kettlewell, K-e-t-t-l-e-w-e-l-l, my business address
2 is 76 South Main Street, Akron, Ohio 44308.

3 EXAMINER PRICE: Thank you.

4 Please proceed.

5 MS. KOLICH: Thank you, your Honor. Your
6 Honor, I have a document labeled "Rebuttal Testimony
7 of Katherine M. Kettlewell" that I would like marked
8 Company Exhibit 11 for identification.

9 EXAMINER PRICE: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 - - -

12 KATHERINE M. KETTLEWELL

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

15 DIRECT EXAMINATION

16 By Ms. Kolich:

17 Q. Ms. Kettlewell, do you have a copy of
18 what's been marked as Company Exhibit 11?

19 A. Yes.

20 Q. And is that your rebuttal testimony in
21 this proceeding?

22 A. Yes.

23 Q. Do you have any corrections to this
24 testimony?

25 A. Yes, I do. On page 3, line 1, it starts

1 with "Section 49-1," that should read "Section 4901."

2 Q. Do you have any other corrections?

3 A. No.

4 Q. If I were to ask you the questions set
5 forth in Exhibit 11 today, would your answers set
6 forth in that exhibit be the same?

7 A. Yes.

8 MS. KOLICH: Your Honor, at this time the
9 witness is available for cross-examination.

10 EXAMINER PRICE: Thank you.

11 OCC?

12 MR. POULOS: No, your Honor, thank you.

13 EXAMINER PRICE: Mr. Porter?

14 MS. PORTER: No questions, your Honor.

15 EXAMINER PRICE: Mr. Heintz?

16 MR. HEINTZ: No questions, your Honor.

17 EXAMINER PRICE: Mr. Reisinger?

18 MR. REISINGER: No questions, your Honor.

19 EXAMINER PRICE: Mr. Lavanga?

20 MR. LAVANGA: Just a few, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Lavanga:

24 Q. Good morning, Ms. Kettlewell.

25 A. Good morning.

1 Q. My name is Mike Lavanga and I'm an
2 attorney for Nucor Steel Marion.

3 A. Nice to meet you.

4 Q. Ms. Kettlewell, you testify in your
5 rebuttal testimony that FirstEnergy currently
6 registers rider ELR interruptible capability as a
7 load modifying resource capacity in Midwest ISO; is
8 that correct?

9 A. Yes. Can you tell me where you're
10 reading that from in the testimony?

11 Q. I believe it's on page 3, line 17, "The
12 Companies currently register the Companies' ELR
13 Interruptible Capability as load modifying resource
14 capacity in MISO."

15 A. Yes, I see that. Thank you.

16 Q. And you propose to use the interruptible
17 load registered as load modifying resource capacity
18 in Midwest ISO as the amount of rider ELR
19 interruptible load that will be counted toward
20 meeting FirstEnergy's peak demand reduction
21 benchmarks for 2009 and 2010; is that correct?

22 A. Yes.

23 Q. Okay. And under this methodology 258
24 megawatts of rider ELR interruptible load will be
25 counted toward meeting FirstEnergy's peak demand

1 reduction benchmarks in 2009 and 2010.

2 A. That's what we plan to count, yes.

3 Q. Okay. So that will be -- it will be the
4 same amount in both 2009 and 2010?

5 A. Oh, excuse me. The value right now, 258,
6 is what we know today for 2009 that would apply. As
7 we go through 2010, if that number changes with MISO,
8 we do refresh it continually, we would use whatever's
9 the most applicable amount for 2010.

10 Q. So it's possible that the 2010 number
11 will be different from the 2009.

12 A. Yes.

13 Q. Now, is it correct that load modifying
14 resource capacity in Midwest ISO is used only in the
15 case of an emergency?

16 A. I believe that's true, yes.

17 Q. So it's interruptible load that Midwest
18 ISO can call on in the cases of a system emergency to
19 back down.

20 A. Yes.

21 Q. Now, starting on page 3 and on to page 4,
22 you testify that "The Companies utilize a
23 multi-factor calculation to develop the load
24 modifying resource capacity," and you go on to
25 describe this multifactor calculation, well, it's on

1 page 4.

2 Is this calculation dictated by the
3 Midwest ISO tariff or is this something that
4 FirstEnergy itself developed?

5 A. I believe the MISO tariff allows the
6 companies to define how to calculate their particular
7 interruptible capability.

8 Q. Okay. So this is a calculation that
9 FirstEnergy developed to calculate the amount of
10 interruptible capacity that it wanted -- wants to
11 dedicate to Midwest ISO.

12 A. Right. And the companies' intent in
13 whatever methodology they choose is to try to make it
14 as achievable as they believe it can be.

15 Q. Okay. So is it fair to say that not
16 every Midwest ISO participant does this the same way?

17 A. I wouldn't know what other participants
18 do.

19 Q. I believe you testified on page 3 and
20 into page 4 that the multifactor calculation looks at
21 several different measures of performance or factors,
22 and then these factors are given weights to arrive at
23 the capability associated with interruptible
24 resources.

25 A. Yes.

1 Q. Can you explain how you develop the
2 weights.

3 A. The intent of the calculation is to see
4 how much capability is available at a broad range of
5 time, and we focus on the chance that MISO would call
6 an interruption would be probably most consistent
7 with the ATSI system peak. So we would weight the
8 time period in that area of time more than some of
9 the other periods in the calculation.

10 Q. Are these fixed weights? I guess I'm
11 not -- you have several different, again, several
12 different factors. I think you have three or four
13 factors and you say they're weighted. I guess I just
14 want to be clear on how you developed the particular
15 weights given to each factor.

16 A. Like I mentioned, we would weight -- the
17 periods of time have historically been closest to the
18 ATSI system peak greater. As to whether we could
19 change the weights at some point, we would have the
20 option to do that if we felt that the historical
21 patterns, you know, had changed.

22 Q. Okay. When you say it's "weighted
23 greater," how much greater?

24 A. I don't have the specific percentages in
25 front of me to refer to, so the best I can say is

1 it's greater.

2 Q. Okay. And you testify on page 4 that
3 "The time period covered by the multi-factor
4 calculation is consistent with the time periods that
5 would most likely result in emergency interruptions."

6 Now, are these time periods the weekdays
7 between 3:00 and 6:00 p.m. in the months of June
8 through August, as you mention on page 4 here?

9 A. That is one of the time periods. I
10 believe the time period in the calculation, though,
11 is 4:00 to 6:00, not 3:00 to 6:00.

12 Q. The time period in the calculation is
13 4:00 to 6:00?

14 A. Yes.

15 Q. Okay. Well, on page 4 on line 3 you
16 mention the time period 3:00 to 6:00. Is that a
17 mistake? Is that just a different time period?

18 A. Well, I need to refer back, again, I
19 don't have the actual methodology in front of me to
20 know for sure if it's 4:00 or 3:00 on that particular
21 page. So I guess I would have to check to see if
22 that's 4:00 or 3:00.

23 And that's not to say if it's 4:00 on the
24 sheet, that the 3:00 o'clock time period isn't
25 represented in another one of the factors.

1 Q. This is another one of the factors.

2 A. Yeah.

3 Q. Okay. Did you do any study or analysis
4 in developing this calculation to demonstrate the
5 hours when an emergency interruption is most likely
6 to occur?

7 A. Well, there have not been emergency
8 interruptions in MISO frequently enough to establish
9 some data points for that analysis. We're mostly
10 using our beliefs about how load is driven in certain
11 time periods to arrive at when it would be most
12 likely to lead to an emergency.

13 Q. So this is just the judgment of you and
14 others at FirstEnergy to when an interruption for an
15 emergency reason would most likely occur.

16 A. Yes.

17 Q. But you would agree that an emergency
18 could occur at any time.

19 A. Yes.

20 Q. Okay. Now, under required ELR a customer
21 can be interrupted for an emergency in any hour of
22 any day, correct?

23 A. That's my belief, yes.

24 Q. And under ELR a customer can be
25 interrupted by the RTO or the operating companies?

1 A. Yes. The transmission company. I think
2 there's maybe two or three different roles that can
3 interrupt there.

4 Q. Right, I believe it's the RTO, a
5 transmission provider, or the operating companies.

6 A. Yes.

7 Q. And the emergency can be for anything
8 within the judgment of FirstEnergy or one of those
9 other entities, that there's an emergency condition
10 that requires an interruption and it could be
11 for distribution reasons or transmission reasons,
12 generation reasons.

13 A. Yeah. And I would have to check again
14 the ELR, the words in the ELR, but I do believe the
15 entity that calls it has sole discretion.

16 Q. Okay. Going back to page 4 of your
17 testimony, Ms. Kettlewell, the question starting on
18 line 10 states that "Dr. Goins recommends that the
19 Commission 'determine that FirstEnergy may use rider
20 ELR and OLR interruptible load toward meeting its
21 peak demand reduction benchmarks under Revised Code
22 Section 4928.66(A).'"

23 Did I read that correctly?

24 A. Yes.

25 Q. And the question is "Do you agree with

1 this recommendation?" And you say "No."

2 Now, I just want to be clear here. Are
3 you testifying that you agree that interruptible load
4 under required ELR and OLR can be used to meet the
5 benchmarks and you just disagree with how Dr. Goins
6 is calculating how much?

7 EXAMINER PRICE: Mr. Lavanga, can you
8 rephrase your question and separate ELR and OLR so
9 the record is clear as to which load she's talking
10 about?

11 MR. LAVANGA: Sure.

12 EXAMINER PRICE: Thank you.

13 Q. The question is whether in responding to
14 this question "no," are you testifying that rider ELR
15 load can be used to provide peak -- can be counted
16 toward meeting the peak demand reduction benefit or,
17 I'm sorry, can be counted toward meeting the peak
18 demand reduction benchmark, but that you just
19 disagree with how Dr. Goins is calculating how much
20 of that load can be used?

21 A. Yes. When I read that recommendation,
22 what I believed he meant by "load" was the
23 calculation as defined in ELR for that capability.

24 Q. So you would agree that interruptible
25 load under rider ELR can count toward meeting the

1 peak demand reduction benchmark.

2 A. Yes. We believe that ELR counts as an
3 interruptible program.

4 Q. And would the same be the case for rider
5 OLR interruptible load to the extent that there's
6 load under that rider?

7 A. Yes.

8 EXAMINER PRICE: If I could just follow
9 up, Mr. Lavanga.

10 In the Commission rules it states that an
11 electric utility, I can give you the cite, it's
12 4901:1-39-05(E)(2), which I believe you cite to in
13 your testimony.

14 THE WITNESS: Yes.

15 EXAMINER PRICE: So you're familiar with
16 that rule.

17 THE WITNESS: Yes.

18 EXAMINER PRICE: In that rule it says for
19 demand response programs an electric utility may
20 count demand reductions towards satisfying some or
21 all of the peak demand reduction benchmarks by
22 demonstrating that either the electric utility has
23 reduced its actual demand or has the capability to
24 reduce its peak demand and such capability is created
25 under either of the following circumstances.

1 And then (A) is a peak demand reduction
2 program meets the requirements to be counted as a
3 capacity resource under the tariff of regional
4 transmission organization approved by the FERC.

5 And so you're testifying that rider ELR
6 is a capacity resource under the MISO tariff.

7 THE WITNESS: Yes. MISO has seen the ELR
8 tariff and agrees that it is a contract between the
9 companies and the customers for the companies to
10 acquire the interruptible capability. So they allow
11 you to use it as a contract.

12 And they know who the customers are, and
13 we provide them with this calculation on the module E
14 which is how you demonstrate you own the capacity and
15 they've been accepting of that.

16 So, yes, MISO does agree that that is an
17 interruptible program that satisfies their
18 requirements.

19 EXAMINER PRICE: And likewise, required
20 OLR is also a capacity resource under MISO.

21 THE WITNESS: If there were load there,
22 we would calculate that and use that, yes.

23 EXAMINER PRICE: Okay. And in your
24 testimony, just to clarify, page 3, line 18, you call
25 it a "load modifying resource capacity." Is there a

1 difference between the term "capacity resource" and
2 the term "load modifying resource capacity"?

3 THE WITNESS: Yes. MISO allows you to
4 use capacity that's, for example, generating plant if
5 you have them, it could be a bilateral contract to
6 purchase the energy, so there's different sort of
7 capacity definitions. And a load modifying resource
8 is their term for "demand response resource" which
9 would be different than a generating plant resource.

10 EXAMINER PRICE: Okay. Thank you.

11 EXAMINER BOJKO: So would you use the
12 same term for OLR, because your testimony only speaks
13 to ELR?

14 THE WITNESS: Yes, we would. It's my
15 understanding right now we don't have OLR
16 customers -- this is cutting out -- at the moment on
17 that required, but is intended to be inclusive.

18 EXAMINER BOJKO: So is the module E for
19 OLR as well?

20 THE WITNESS: Yes, module E is MISO's
21 mechanism for the company to demonstrate that it has
22 sufficient capacity to cover its load in MISO,
23 whether that be a demand response capacity or a
24 generating plant or some other bilateral contract.
25 It all goes on module E.

1 EXAMINER PRICE: And you haven't
2 registered any OLR load under module E because you
3 have no OLR customers.

4 THE WITNESS: I believe that's right. I
5 would have to check for sure, but I don't think we
6 have any.

7 EXAMINER BOJKO: And just so the record's
8 clear, your distinction or your use of only speaking
9 towards -- to ELR in your testimony is for what you
10 just said, because you don't have any OLR load right
11 now.

12 THE WITNESS: Yes. I did not
13 intentionally exclude OLR from this testimony.

14 EXAMINER BOJKO: Okay. Thank you.

15 EXAMINER PRICE: Thank you very much.

16 Thank you, Mr. Lavanga.

17 Q. (By Mr. Lavanga) Ms. Kettlewell, at the
18 bottom of page 4 of your testimony you testify that
19 it's unlikely that the maximum load of all ELR
20 customers would be available for curtailment at the
21 time of an interruption. Is that correct?

22 A. Yes.

23 Q. Okay. Now, under rider ELR a customer's
24 curtailable load for purposes of determining the ELR
25 credit is determined by taking the customer's

1 designated firm demand and subtracting that from a
2 maximum demand that occurs within a period of time
3 over the course of the month; is that correct?

4 A. Yes.

5 Q. Okay.

6 A. Subject I think to a cap, isn't it, of
7 some sort? I may be wrong about that.

8 Q. I'm not sure.

9 A. Okay. But there is a calculation as you
10 have described.

11 Q. Right. And, well, let's take a
12 hypothetical. Let's assume that my designated firm
13 load is 10 megawatts and my maximum load in a given
14 month is 30 megawatts, so that the curtailable load
15 would be 20 megawatts.

16 A. For the purpose of calculating a credit.

17 Q. Curtailable load, right.

18 A. Yes.

19 Q. Now, let's assume that this customer is
20 operating at 10 megawatts and an emergency
21 interruption is called. Now, that customer isn't
22 going to be required to curtail anymore, but it's
23 also going to be restricted or precluded from
24 increasing its load up to its maximum, correct?

25 A. Yes.

1 Q. Would you agree that there's a benefit, a
2 reliability benefit to the system to that customer
3 not being able to increase its load at the time of
4 that emergency?

5 A. Can you maybe give me a better idea of
6 what you mean by "reliability benefit"?

7 Q. Well, when an interruption is called for
8 an emergency reason, obviously either the
9 transmission provider or the RTO or the operating
10 company believes there's some kind of problem or
11 contingency on the system that requires them to
12 interrupt a load for emergency reasons, correct?

13 A. Yes.

14 Q. Now, isn't there also a benefit provided
15 by customers that are not at their maximum from being
16 precluded from increasing their demand up to that
17 maximum during the course of that emergency
18 interruption?

19 A. I understand what you're saying, and I
20 wouldn't call it a reliability benefit. I would say
21 that the customer has an obligation not to make
22 matters any worse on the system that's already in an
23 emergency, so I would just say he has an obligation
24 not to make it worse.

25 Q. Right. So increasing your load at a time

1 when the transmission provider or the operating
2 company is trying to reduce load could make matters
3 worse.

4 A. I think it could make matters worse.

5 Q. Okay. Just a few more questions,
6 Ms. Kettlewell. On page 5 of your testimony you
7 explained how you're going to calculate interruptible
8 capability that will count toward meeting the
9 benchmarks in 2011 and 2012.

10 As I understand your recommendation,
11 there are going to be two requirements; number one,
12 the interruptible capability will need to be
13 qualified as a demand resource in the PJM reliability
14 pricing model, and number two, it would need to clear
15 the capacity auction; is that correct?

16 A. That's correct, for participating in PJM.

17 Q. Okay. Is it your expectation that under
18 this approach you are going to get approximately the
19 same amount of peak demand reduction benefit, or,
20 well, peak demand reduction that you can count toward
21 meeting the benchmark as you get under the MISO
22 approach?

23 A. And at this point I don't know whether
24 that would be the same or greater than what would be
25 true in the PJM world, if you will.

1 Q. Would you agree with me that there's no
2 specific requirement in Section 4901:1-39-05(E) that
3 interruptible capability clear an RTO's capacity
4 auction in order to qualify it meeting peak demand
5 reduction benchmarks?

6 A. If I could refer a minute here.

7 MS. KOLICH: Objection. The document --
8 the rule speaks for itself whether or not the
9 provision is in there.

10 EXAMINER PRICE: I think she has been
11 speaking quite expertly as the conscience that rules.
12 She can answer if she knows.

13 A. Okay. So it's my interpretation of the
14 statement in rule (E)(2) that it meets the
15 requirements to be counted as a capacity resource
16 under the RTO. So going into PJM what that means is
17 first of all you have to qualify as a resource, and
18 you have to clear in the auction.

19 If you don't clear in the auction, you
20 are not available for interruption, you are not paid
21 as a capacity resource. So I believe it's very
22 consistent with (E)(2) in the rules

23 Q. Okay. But, again, there's no specific
24 requirement in there that it clears, that's just your
25 interpretation.

1 A. Well, it's specific to the extent that it
2 points you in this case to PJM and PJM's rules do
3 say, you know, to be in the capacity auction you have
4 to be resource.

5 Q. The rule doesn't specifically point to
6 PJM, though, correct?

7 A. It does not point to PJM specifically,
8 but it does point to RTOs.

9 Q. I think that's all I have, Ms.
10 Kettlewell. Thank you very much.

11 A. You're welcome.

12 EXAMINER PRICE: Mr. Clark?

13 MR. CLARK: No questions, your Honor.

14 EXAMINER PRICE: Mr. Lindgren?

15 MR. LINDGREN: No questions, your Honor.

16 EXAMINER PRICE: Redirect?

17 MS. KOLICH: Could I have a minute,
18 please?

19 EXAMINER PRICE: You may.

20 (Discussion off the record.)

21 (Recess taken.)

22 EXAMINER PRICE: Let's go back on the
23 record. Ms. Kolich.

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

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REDIRECT EXAMINATION

By Ms. Kolich:

Q. Ms. Kettlewell, Mr. Lavanga asked you several questions about the time period for your calculations, specifically a 3:00 to 6:00 time frame versus a 4:00 to 6:00 time frame. Could you explain the difference?

A. Yes. Sometimes we talk about the beginning of the hour and sometimes we talk about the ending of the hour, and so I misspoke about 4:00 to 6:00. What I really meant was the hour ending 4:00 through the hour ending 6:00 which would -- so the hour ending at 4:00 would start at 3:00, sometimes we talk about the start and sometimes we talk about the end. So that was my confusion there, sorry about that.

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

EXAMINER PRICE: Recross, OCC?

MR. POULOS: No, your Honor.

EXAMINER PRICE: Mr. Porter?

MR. PORTER: No questions.

EXAMINER PRICE: Mr. Heintz?

MR. HEINTZ: No, your Honor.

EXAMINER PRICE: Mr. Reisinger?

1 MR. REISINGER: No, your Honor.

2 EXAMINER PRICE: Mr. Lavanga?

3 MR. LAVANGA: No questions, your Honor.

4 EXAMINER PRICE: Mr. Clark.

5 MR. CLARK: No questions.

6 EXAMINER PRICE: Mr. Lindgren.

7 MR. LINDGREN: No questions, your Honor.

8 - - -

9 EXAMINATION

10 By Examiner Price:

11 Q. Turning your testimony back to page 5, I
12 just had a question about the transition to PJM, and
13 what you will do for interruptible capacity after, I
14 think May 31st, 2011 is your transition date; is
15 that correct?

16 A. Yes.

17 Q. Is there a structural issue with the --
18 leaving aside the point that riders ELR and OLR are
19 scheduled to expire on their terms May 31st, 2011,
20 leaving aside that, is there an issue with required
21 ELR and OLR that they could not qualify as capacity
22 resources under PJM?

23 A. When you say "structural," what are you
24 referring to?

25 Q. Is there any reason why riders ELR and

1 OLR could not qualify as capacity resources under
2 PJM?

3 A. The purpose of ELR/OLR, whether it be now
4 or then, will be to define how the companies acquire
5 the interruptible capability. How they schedule that
6 or sell that into PJM is, you know, based on the RPM
7 rule.

8 So I think our PJM would look to their
9 own rules about that and would not be concerned with
10 how we might purchase it from the interruptible
11 customer.

12 So those can be -- the ELR/OLR can take
13 whatever form it takes and not be incompatible with
14 using it as capacity in MISO -- PJM, excuse me.

15 Q. So there is no reason, just to summarize,
16 there is no reason that riders ELR and OLR could not
17 be capacity resources under PJM.

18 A. Well, it's hard for me to say there is no
19 reason.

20 Q. That you know of.

21 A. I don't know what that will look like
22 come 2011, so I would have to say that I would expect
23 that the companies count the interruptible capability
24 as defined through PJM depending on, you know, how
25 that looks. I don't know how it's going to look.

1 - - -

2 EXAMINATION

3 By Examiner Bojko:

4 Q. Is the transition from MISO to PJM the
5 reason FirstEnergy is proposing to discontinue those
6 two riders?

7 A. Well, I don't know what "discontinue the
8 riders" means.

9 Q. Well, they're expiring.

10 A. They do expire. You know, for the
11 companies to be able to count interruptible
12 capability in 2011 we have to have it in -- we have
13 to have it. So in other words, there needs to be a
14 mechanism for us to get it. So however that turns
15 out through the other proceeding, you know, is still
16 an open issue.

17 Q. Okay. So you're just saying that because
18 of what other proceeding -- that it's not necessarily
19 tied to the portfolio proceeding; is that what you're
20 stating?

21 A. I think it's separate -- you can talk
22 about how the companies count interruptible
23 capability in a separate discussion from how they may
24 acquire it from the interruptible customers.

25 Q. Okay. So, I mean the bottom line, you're

1 just saying for purposes of the counting proceeding,
2 which is this, the portfolio proceeding, that you
3 don't see why a -- or you don't know why the
4 transition to PJM would have an effect on the
5 counting or you don't believe it would have an effect
6 on the counting as long as you have the interruptible
7 capacity to count.

8 A. Yes. I believe we will plan to count
9 that capability in 2011 for purposes of this plan in
10 accordance with the PJM requirements provided, of
11 course, that we have it to, you know, purchase it in
12 some way from the interruptible customers.

13 EXAMINER PRICE: And the decision as to
14 how you will acquire your interruptible capacity
15 after May 31st, 2011, is a decision before the
16 Commission in the market offering.

17 THE WITNESS: Yes, and this rebuttal
18 testimony is only about how we might value it, how we
19 might measure it, in a PJM environment. And this
20 plan assumes that we do have it.

21 Q. Okay. When you were talking to
22 Mr. Lavanga, you discussed 39-05(E)(2)(a) in the
23 rule. Do you recall your discussion with regard to
24 whether something clears at capacity? Do you recall
25 that discussion?

1 A. Yes.

2 Q. Can you think of some reason why it
3 wouldn't clear, or are you just saying it has to meet
4 the PJM requirements which includes clearing?

5 A. Well, you have to bid it into the RPM,
6 and not all resources that are bid in -- or capacity
7 that's bid into the RPM will clear. I don't know how
8 to define what "clear" means, so I guess I have to
9 leave that part open. But it has to be cleared in
10 order to get compensated.

11 Q. And is there not a requirement in MISO
12 for the clearing?

13 A. Right. MISO capacity is a bilateral
14 market so you have contracts bilaterally with
15 suppliers of some sort, so there's no annual auction
16 that is cleared.

17 MISO does allow you to -- it provides a
18 procedure for parties to get together through some
19 monthly, I believe it's monthly auctions, but it is
20 not a market in that sense.

21 Q. If we can go back to page 4 of your
22 testimony, I think Mr. Lavanga asked you about, on
23 line 4, you state that the factors in your
24 calculations are then given weights, and I believe
25 you said you didn't know what the weights were at

1 this time.

2 I mean, FirstEnergy -- it's FirstEnergy's
3 calculation still, that's what you're referencing, so
4 FirstEnergy has a weighting calculation, you just --

5 A. Yes.

6 Q. -- don't have it in front of you?

7 A. I don't have it in front of me. I
8 certainly can get that, if you were interested in
9 that.

10 Q. I just wanted to make sure it was part of
11 FirstEnergy's calculation and it was their weighting
12 as part of that calculation.

13 A. Yes, it's the company's percentage
14 weights.

15 Q. Okay.

16 EXAMINER PRICE: Thank you. You're
17 excused.

18 THE WITNESS: Thank you.

19 Ms. Kolich. Do you have to move for
20 admission?

21 MS. KOLICH: Yes, yes. At this time,
22 your Honor, I'd like to move into the record Company
23 Exhibit 11.

24 EXAMINER PRICE: Any objections to the
25 admission of Company Exhibit 11?

1 Seeing none, it will be admitted.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 EXAMINER BOJKO: Ms. Kolich, would you
4 like to call your next witness? Sorry, Mr. Lang.

5 MR. LANG: Thank you, your Honor. The
6 companies call Gregory M. Toth.

7 EXAMINER BOJKO: Mr. Toth, could you
8 please raise your right hand.

9 (Witness sworn.)

10 EXAMINER BOJKO: Please be seated.
11 Please state your name and address for the record.

12 THE WITNESS: My name is Gregory M. Toth.
13 I work at 76 South Main Street, Akron, Ohio 44308.

14 EXAMINER BOJKO: Thank you.
15 Please proceed.

16 MR. LANG: Your Honors, we'd like to have
17 the rebuttal testimony of Gregory M. Toth marked as
18 Company Exhibit 12.

19 EXAMINER BOJKO: It will be so marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

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GREGORY M. TOTH

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

DIRECT EXAMINATION

By Mr. Lang:

Q. Mr. Toth, do you have in front of you what has been marked as Company Exhibit 12?

A. I do.

Q. Is this your rebuttal testimony in this proceeding?

A. It is.

Q. Do you have any additions or corrections to your testimony?

A. I do not.

Q. If I asked you the same questions that appear in your testimony, Company Exhibit 12, will your answers be the same as they appear in that exhibit?

A. Yes.

MR. LANG: Your Honors, Mr. Toth is available.

EXAMINER BOJKO: Let's begin with Mr. Clark.

MR. CLARK: No questions, your Honor.

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EXAMINER BOJKO: Mr. Lavanga?
MR. LAVANGA: No questions, your Honor.
EXAMINER BOJKO: Mr. Reisinger?
MR. REISINGER: No questions, your Honor.
EXAMINER BOJKO: Mr. Heintz?
MR. HEINTZ: No questions, your Honor.
EXAMINER BOJKO: Mr. Poulos?
MR. POULOS: I do, your Honor, thank you.
EXAMINER BOJKO: Please proceed.

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CROSS-EXAMINATION

By Mr. Poulos:

Q. Good morning, Mr. Toth.

A. Hello.

Q. As you are aware, my name is Greg Poulos and I represent the Ohio Consumers' Counsel and residential customers of FirstEnergy.

One of the items in Mr. Sawmiller's testimony that you address in your testimony is Mr. Sawmiller's assertion that the company's management costs are not supported; is that correct?

A. Where in my testimony? Let me take a look.

Q. I'll refer you to page 7 through page 11 of your testimony.

1 A. Yes.

2 Q. Now, Mr. Sawmiller stated in his
3 testimony that he has asked for the figures behind
4 the management costs for quite a while. Do you
5 recall that, his testimony?

6 A. Yes. I gave the collaborative members
7 all the information we had through all the requests,
8 brought them to many collaborative meetings.

9 Q. And it is also true that the companies
10 are requesting recovery of the management costs as
11 part of the plan going forward, the plan going
12 forward; is that correct?

13 A. Yes.

14 Q. And I want to refer you to your testimony
15 on page 8, line 1, start with --

16 EXAMINER BOJKO: I'm sorry, Mr. Poulos,
17 before you move on.

18 So are you stating that Mr. Sawmiller's
19 assertion that he did not have the information is
20 incorrect? Do you know if you provided information
21 specifically to Mr. Sawmiller?

22 THE WITNESS: I did provide additional
23 information to Mr. Sawmiller above and beyond the
24 information we brought to the collaborative.

25 EXAMINER BOJKO: Okay. And would that

1 include the numbers that are bullet pointed in your
2 testimony on page 8? The dollar amounts as well as
3 the description on page 8.

4 THE WITNESS: No, it would not.

5 EXAMINER BOJKO: Okay. So you provided,
6 just so we're clear here, you provided certain
7 information to all the collaborative members and then
8 you provided additional information to Mr. Sawmiller,
9 but then this is additional information on top of
10 those two pieces of information?

11 THE WITNESS: This is additional
12 information.

13 EXAMINER BOJKO: Okay. And why was this
14 not provided to the collaborative and/or Mr.
15 Sawmiller specifically?

16 THE WITNESS: Sure. This information I
17 recently pulled together. We had settlement
18 discussions on February 10th and 11th and there
19 was some additional requests at that time.

20 We got back to the CFL vendor and said
21 can you give us anything else supporting this and
22 maybe a breakdown. And they recently came back with
23 a little more information, and I included it then in
24 my testimony.

25 EXAMINER BOJKO: Okay.

1 EXAMINER PRICE: Could I ask you a
2 question?

3 When you said you provided additional
4 information to Mr. Sawmiller, do you mean you
5 provided that to him as part of the collaborative
6 discussions like off to the side, or do you mean you
7 provided that to him in the discovery in this
8 proceeding?

9 THE WITNESS: The way the collaborative
10 was operating, we were having many, many meetings so
11 I was sharing as much information as I had. If I
12 asked for something, if I had it, I gave it to
13 everybody.

14 We then had some additional conversations
15 in the settlement discussions on February 10th and
16 11th, they got a little more information then just
17 based on us digging a little deeper into, and then
18 the information I include in testimony.

19 EXAMINER PRICE: Okay. Thank you.

20 THE WITNESS: Sure.

21 EXAMINER BOJKO: Please proceed. Sorry.

22 MR. POULOS: Thank you, your Honor.

23 Q. (By Mr. Poulos) And I have a couple
24 questions relating to that information as well, I
25 want to start at page 8 of your testimony. Let me

1 know when you're there.

2 A. I am.

3 Q. Thank you.

4 Starting with the second sentence on line
5 1, "One line item of costs provided to the
6 Residential Subcommittee participants is 225,000 for
7 the services." Do you see that?

8 A. Yes.

9 Q. I want to start by focusing on the
10 "provided to residential subcommittee participants,"
11 and you've already been asked a couple questions
12 about that by the Bench.

13 You would agree that OCC is one of the
14 participants in the residential subcommittee of the
15 collaborative, correct?

16 A. Yes.

17 Q. And Sierra Club is one of those members,
18 correct?

19 A. Yes.

20 Q. And the Council of Small Enterprises,
21 sometimes referred to as COSE, is also a participant
22 in the residential subcommittee of the collaborative.

23 A. Yes.

24 Q. And OP&E.

25 A. Yes.

1 Q. NRDC.

2 A. Yes.

3 Q. The PUCO staff.

4 A. Yes.

5 Q. And of course, FirstEnergy.

6 A. Yes.

7 Q. Now, Mr. Toth, you would agree that the
8 residential subcommittee of the collaborative met a
9 number of times in November to address the redesign
10 of the CFL program, correct?

11 A. We did meet in November, yes. Many
12 times.

13 Q. And when I refer to November, that's --
14 the November time period was critical because on
15 November 4th the Commission came out with an entry
16 on rehearing that stated the company had until
17 November 30th to work with the collaborative and
18 file a redesigned program; is that correct? Or would
19 you agree with that?

20 A. Yes, that's correct.

21 Q. And the initial meeting of the
22 residential subcommittee of the collaborative to talk
23 about the redesign was November 6th; is that
24 correct?

25 A. Are you asking did we have a meeting that

1 day?

2 Q. Yeah. Do you recall that meeting?

3 A. We did have a meeting that day. We sent
4 information out on the 3rd.

5 Q. And that's a face-to-face meeting,
6 correct? Everyone who could make it was in
7 attendance.

8 A. On the 1st.

9 Q. And then there were three other meetings
10 of the residential subcommittee to discuss the CFL
11 program. Do you recall those?

12 A. I would have to go back and look through
13 the dates for the number.

14 Q. You don't specifically recognize the
15 dates?

16 A. Yeah, I've got them, I just -- I'm
17 counting them now. But it's four or five and a
18 conference call.

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

21 EXAMINER BOJKO: You may.

22 MR. POULOS: Thank you.

23 Your Honor, for identification purposes
24 may I have the document that was handed to the
25 witness marked as OCC Exhibit 12?

1 EXAMINER BOJKO: Which is OCC's first set
2 of discovery, DR No. 3.

3 MR. POULOS: Yes, your Honor, it's two
4 pages long.

5 EXAMINER BOJKO: It will be so marked.

6 MR. POULOS: Thank you, your Honor.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. (By Mr. Poulos) Mr. Toth, looking at this
9 response of FirstEnergy to OCC's discovery, does this
10 refresh your recollection of the dates of the
11 collaborative meetings for the residential
12 subcommittee?

13 A. Yes.

14 Q. And this Exhibit 12, OCC Exhibit 12,
15 states that in November there were four
16 residential/low-income subcommittee meetings, do you
17 see that?

18 A. Yes.

19 Q. November 6th, November 12th,
20 November 17th, and then there was a call on
21 November 20th, correct?

22 A. Yes.

23 Q. And you would agree with those figures or
24 have no reasons to disagree with those figures.

25 A. That's correct.

1 Q. And FirstEnergy has not called a meeting
2 of the residential subcommittee of the collaborative
3 since November 20th, correct?

4 A. Correct.

5 Q. When I refer to FirstEnergy calling any
6 more residential subcommittee collaborative meetings,
7 isn't it true that you are the chairman of the
8 residential subcommittee? Correct?

9 A. I am the chairman of the residential and
10 low-income subcommittee.

11 Q. When I refer to the residential
12 subcommittee, it is residential and low-income
13 subcommittee, isn't it?

14 A. Yes.

15 Q. I believe you were here for Mr. Paganie's
16 testimony, but do you recall him stating that
17 FirstEnergy is the facilitator for the whole
18 collaborative? Do you recall that testimony?

19 A. I do not.

20 Q. Would you consider FirstEnergy the
21 facilitator for the residential subcommittee?

22 A. Yes.

23 Q. And you are in charge of that
24 subcommittee, correct? You personally.

25 A. I'm the chairman of the subcommittee.

1 Q. Isn't it also true that you coordinated
2 putting all the CFL documents together and sending
3 them out to the parties?

4 A. I did coordinate that, yes.

5 Q. And I think as you alluded to some of the
6 questions from the Bench, some of those responses
7 were during collaborative meetings and some of them
8 were outside of collaborative meetings; is that
9 correct?

10 A. Yes.

11 Q. And do you recall having discussions with
12 Mr. Sawmiller outside of the collaborative?

13 A. I do recall having conversations with
14 Mr. Sawmiller and yourself and other people from the
15 residential subcommittee. In fact, we did that quite
16 frequently.

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

19 EXAMINER BOJKO: You may.

20 MR. POULOS: Thank you.

21 EXAMINER BOJKO: As you approach, I think
22 we mismarked the last discovery response. It should
23 have been OCC Exhibit 13. I apologize,
24 Mr. Sawmiller's testimony was 12.

25 MR. POULOS: Thank you, your Honor. I

1 apologize.

2 (EXHIBIT REMARKED FOR IDENTIFICATION.)

3 EXAMINER BOJKO: So we will remark OCC
4 discovery with the Response Set 1, DR No. 3 will be
5 OCC Exhibit 13. And I'm assuming you want to mark
6 another one?

7 MR. POULOS: Yes, your Honor. Your
8 Honor, I ask that the document that was just handed
9 to the witness marked as OCC Exhibit 14.

10 EXAMINER BOJKO: And for the record that
11 document being?

12 MR. POULOS: Thank you, your Honor. Your
13 Honor, the document that has just been handed, OCC
14 Exhibit 14, states at the top, it's basically an
15 e-mail from TothG@FirstEnergyCorp. to Daniel
16 Sawmiller, and it is five pages long, your Honor.

17 EXAMINER BOJKO: The e-mail and
18 attachments will be marked as OCC Exhibit 14.

19 MR. POULOS: Thank you, your Honor.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. (By Mr. Poulos) Mr. Toth, this is a chain
22 of e-mails and I ask you to look at page 2 to start.

23 A. Okay.

24 Q. Looking at page 2 right in the middle do
25 you recognize the part where you see three little

1 carets pointing to the right, do you recognize that
2 as an e-mail from you to the collaborative members
3 inviting the collaborative members to a conference
4 call on November 20th?

5 A. Yes.

6 Q. And that November 20th conference call,
7 that would be the last time the residential
8 collaborative would meet, correct?

9 A. Yes. We had full collaborative meetings
10 after that date.

11 Q. So the residential collaborative was done
12 but there were full collaborative meetings after that
13 date.

14 A. Yes, but we always covered any
15 residential issues at the full collaborative to bring
16 them up to speed.

17 Q. And we'll get to that in a moment.

18 Now looking at the response which is from
19 Mr. Sawmiller to your e-mail, that is right above at
20 the top of page 2, do you see that?

21 A. Yes.

22 Q. And do you recognize that as the response
23 to your e-mail?

24 A. I don't recognize this chain of e-mails.
25 I certainly sent that. I'm assuming that this is

1 accurate. I would guess so. I don't recall. We
2 shared e-mails frequently.

3 Q. Absolutely.

4 And the 9.1 million that is referring to,
5 and I will lay a foundation here, but the 9.1 million
6 that he is referring to in sunk costs at the top of
7 the page --

8 A. Yes.

9 Q. If you look at the last page, page 5 of
10 OCC Exhibit 14 --

11 A. Yes.

12 Q. -- is it your understanding that CFL
13 program committed/spent, that number at the top,
14 that's the 9.1 million he's referring to?

15 A. Yes. It could be that number or it could
16 be the number from the previous page where we break
17 it down to 9.1 -- 9,160,890. We were approximating
18 many of these things going through multiple
19 renditions. So 9.1 we would, you know, in the
20 conversation of it be rounding and using approximate
21 numbers.

22 Q. Absolutely. And when you're looking at
23 that page before, page 4, that is supposed to -- that
24 number, that 9,160,890, that's supposed to go at the
25 top of page 5, correct?

1 A. Right, approximate.

2 Q. And the date on the top of this on page 5
3 states this is an estimate as of 11/13/2009, correct?
4 Page 5.

5 A. Yes. It's also marked a draft. The
6 11/13 date is really the date I was working on it.
7 The initials at the bottom on the 16th are also --
8 is probably the date I finished it. So this is
9 really a working document.

10 Q. Yes.

11 A. But it's approximate to those dates.

12 Q. And GMT is your initials, correct?

13 A. That's me.

14 Q. I want to go to the first page of OCC
15 Exhibit 14, and this is your response to
16 Mr. Sawmiller, correct?

17 A. You're talking about the first page from
18 me to Dan on 11/18?

19 Q. Yes.

20 A. I believe so.

21 Q. Isn't it true that if you look back at
22 page 4 which we've been referring to, which is the
23 CFL program committed/spent, this is the first time
24 that you've separated the \$9.1 million number out for
25 anyone in the collaborative?

1 A. No.

2 Q. When did you do it before this?

3 A. It was separated out earlier in November.
4 In fact, I think you brought it into testimony in one
5 of the other -- I saw a document that I think
6 probably had an earlier date, we'd have to look.

7 Q. So it was an e-mail or a document that
8 was provided that came up with this program CFL
9 committed/spent numbers, is that what we're referring
10 to?

11 A. Yes, I think there's an earlier date out
12 there when we shared this information with the
13 collaborative.

14 Q. Okay. Let me go to the other e-mail
15 then.

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

18 EXAMINER BOJKO: You may.

19 MR. POULOS: Thank you.

20 Your Honor, the document I just handed
21 the witness, I'd ask that be marked as OCC Exhibit
22 15. It states in the first line "From
23 TothG@FirstEnergyCorp.com to Greg Poulos," dated
24 11/19/2009, 2:12 p.m., and it is two pages long.

25 EXAMINER BOJKO: The e-mail with

1 attachments, or this one's just an e-mail.

2 MR. POULOS: Yes, your Honor.

3 EXAMINER BOJKO: The e-mail dated
4 November 19th will be marked as OCC Exhibit 15.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. (By Mr. Poulos) Mr. Toth, do you
7 recognize OCC Exhibit 15?

8 A. I don't know. I recognize it as a
9 correspondence that you and I probably had back and
10 forth, like numerous times, so I don't know how to
11 answer that. Yes, I do recognize it. How about
12 that?

13 Q. Well, I mean if you don't, I want to be
14 sure that -- I mean this is your e-mail address,
15 correct?

16 A. It is.

17 Q. And in this e-mail this is the date after
18 you provided the other information, correct? OCC
19 Exhibit 14.

20 A. Looks like the next day.

21 Q. And isn't it true that this e-mail on
22 page 2 I am asking you for figures behind the fourth
23 page of OCC Exhibit 14 which is the incurred costs?
24 Correct?

25 A. Those approximately match, yes.

1 Q. Well, in fact, don't they exactly match?

2 A. Let me take a look.

3 Yes, they do.

4 Q. And in your response on page 1 to my
5 request for the figures isn't it true that you state
6 a description of what the costs were used for?

7 A. I do.

8 Q. Isn't it true also that there were other
9 parties that were also asking for these figures and
10 costs behind the CFL redesigned program?

11 A. Yes. I think everybody in the
12 collaborative was interested in the costs and we
13 shared them with everybody.

14 Q. Now, I think as you referred to it, after
15 the residential committee meetings at the end of
16 November there was a couple full collaborative
17 meetings that took place, correct?

18 A. Yes.

19 Q. And do you recall there was a full
20 collaborative meeting on November 23rd?

21 A. Yes.

22 Q. And do you recall during that meeting
23 OCC, namely myself, asking -- stating that there were
24 still concerns with the CFL program, though the
25 design of the program was much -- had improved

1 significantly? Do you recall that?

2 A. Yes, I do.

3 Q. And do you recall OCC stating to the
4 collaborative that although the design was looking
5 good, that there were concerns about the marketing
6 and the customer awareness, correct?

7 A. No, I don't recall having issues with
8 marketing and customer awareness. We had by this
9 time had multiple renditions of the marketing plan as
10 well as all of the communication pieces and they
11 circulated, in fact, we made many edits to those
12 public documents or public pieces that we call them
13 collateral, that piece that would be going to the
14 public, and throughout that month November, and we're
15 very close I think to what I would have considered, I
16 think everybody would have considered our finals.

17 We might have had minor edits left but we
18 worked together as a collaborative and pulled
19 together I think a very comprehensive marketing and
20 communications plan.

21 EXAMINER BOJKO: I'm sorry, maybe
22 we're -- I think we need to be clear about the words
23 we're using.

24 In your questions you're talking about
25 the CFL program looking pretty good, and I'm not sure

1 if he's responding, I mean, we have two, I don't know
2 if we want to call it initial or in his testimony he
3 calls it approved CFL program versus the, I think you
4 call it redesigned CFL program or revised we've been
5 talking through the hearing.

6 I'm afraid that he's answering a
7 different question than what you're asking because of
8 that distinction. So why don't we try you rephrasing
9 your question with that clarification and see if the
10 response is the same.

11 MR. POULOS: Thank you, your Honor.

12 Q. Mr. Toth, do you recall as part of the
13 November 23rd meeting there was a presentation
14 regarding the redesigned program? Correct?

15 A. Yes.

16 Q. And after that presentation that was
17 given by you to the collaborative, a number of
18 parties commented about the CFL redesigned program,
19 correct?

20 A. At every collaborative meeting everyone
21 commented on the revised CFL program.

22 Q. Okay. Thank you.

23 And as part of OCC's statement regarding
24 the redesigned CFL program, OCC's stating that there
25 were still some issues left unresolved. Do you

1 recall that? Strike that. Let me ask that again.

2 As part of OCC's comments to your
3 presentation on the redesigned program do you recall
4 OCC commenting that there were still some concerns
5 with the redesigned program including the lost
6 revenues going -- as part of the old program and the
7 new program that were going to be collected? Do you
8 recall that?

9 A. I do remember us having -- hearing some
10 concerns about cost issues.

11 Q. And other cost issues that were included
12 were the fact that OCC was concerned about not having
13 documentation for the figures from the initial CFL
14 program that were going to be incorporated into the
15 redesigned program; is that correct?

16 A. No, I don't think so. I think we had --
17 I had given all the information I had up to that
18 point to the OCC, to you, and so I didn't have
19 anything additional at that time to share. So I gave
20 you everything I had.

21 EXAMINER BOJKO: And in that answer
22 you're talking about the committed and spent from the
23 approved CFL program, or are you talking about the
24 redesigned dollars?

25 THE WITNESS: I'm talking about the spent

1 on the approved CFL program.

2 Q. The initial program, correct?

3 A. Yes.

4 EXAMINER BOJKO: So you didn't think
5 there were any issues related to the committed/spent
6 dollars on the initial CFL program.

7 THE WITNESS: No, I knew we had some cost
8 issues, but I didn't have any additional information
9 to share. Those were just items that they said we
10 still have an issue with these things.

11 And we cleared 27, 30, 40 other issues
12 up, so it was an evolution, it wasn't a
13 one-day-in-time kind of thing. We were constantly
14 redesigning and evaluating.

15 And I had brought all the costs forward
16 to the collaborative members on multiple occasions,
17 we addressed them, and there were a couple items that
18 they had pointed out as still being open in their --
19 from their perspective.

20 MR. POULOS: Your Honor, may I approach
21 the witness?

22 EXAMINER BOJKO: You may.

23 MR. POULOS: Your Honor, may I have what
24 has been handed to the witness marked as OCC Exhibit
25 16, the first page is an, it looks to be an e-mail

1 from WilliamsW@FirstEnergyCorp.com to the full
2 collaborative, it starts with Ballio@COSE.org and it
3 is dated 12/2/2009, and the remaining pages, which
4 are four, are stated at the top of page 2
5 "FirstEnergy's Ohio Energy Efficiency Collaborative
6 11/23/09 Meeting Minutes."

7 EXAMINER BOJKO: The e-mail with the
8 attached meeting minutes will be marked as OCC
9 Exhibit 16.

10 MR. POULOS: Thank you, your Honor.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. (By Mr. Poulos) Mr. Toth, do you
13 recognize the meeting minutes that are attached to
14 the e-mail, pages 2 through 6 of this document?

15 A. Yes, I do.

16 Q. I'll have you look at the bottom of
17 page -- that first page of meeting minutes.

18 A. Okay.

19 Q. Let me ask you first, these meeting
20 minutes, is it your understanding FirstEnergy is the
21 one that produces these to the collaborative?

22 A. We do.

23 Q. And if you see at the bottom, this part,
24 section 3 is all referring to the CFL program
25 updates, correct?

1 A. Yeah, this is all information around my
2 update on the sixth draft, which ended up being the
3 final draft of the redesigned CFL plan.

4 Q. Section C under 3 on that first page of
5 the meeting minutes is comments from the
6 collaborative members regarding the program, correct?

7 A. Yes.

8 Q. If you see at the bottom they're from
9 Greg Poulos, OCC, and it states that "The program
10 design has come a long way, and has a lot of ideas."
11 Do you recall that?

12 A. I do.

13 Q. And the OCC stated that there were still
14 concerns with the customer awareness and marketing.
15 Do you recall that?

16 A. Yes.

17 Q. Lost revenue was still at issue, as
18 stated by OCC at that time. Do you recall that?

19 A. I do.

20 Q. And that there were details behind the
21 amounts that OCC was still looking for. Do you
22 recall that?

23 A. On the lost revenues.

24 Q. And that was also on the other numbers as
25 well, correct? The CFL, the incurred costs from the

1 CFL program.

2 A. Well, doesn't say that, but that looks to
3 be an issue on the lost revenues, however, we had
4 many conversations, you and I, about these issues.

5 Q. In response --

6 EXAMINER PRICE: Can I ask you a question
7 briefly?

8 MR. POULOS: Sure.

9 EXAMINER PRICE: And again this gets back
10 to the point Ms. Bojko was making about which
11 programs we're talking about.

12 The line that says "OCC would like to
13 work with FE Communications on customer awareness and
14 marketing," is that comment to the best of your
15 knowledge referring to marketing the revised program
16 or marketing costs of the initial program?

17 THE WITNESS: I believe since it's under
18 the redesigned category in my update that that's
19 probably what it's stating here, is that it's on the
20 redesign.

21 EXAMINER PRICE: Thank you.

22 Thank you, Mr. Poulos.

23 EXAMINER BOJKO: Wait. I'm sorry. So
24 when -- this No. 3 program update has the same
25 meaning as redesigned or revised CFL?

1 THE WITNESS: It says in "a, reviewed
2 FirstEnergy Redesigned CFL," so I think it was a
3 program update presented by me on the redesigned CFL
4 distribution proposal. So we would be calling this
5 the redesigned plan.

6 EXAMINER BOJKO: Okay.

7 Q. (By Mr. Poulos) Now, in response to the
8 concerns OCC states in here about costs, isn't it
9 true that you responded with an e-mail the next day?
10 Do you recall that?

11 A. No, I don't.

12 MR. POULOS: Your Honor, may I approach
13 the witness?

14 EXAMINER BOJKO: You may.

15 MR. POULOS: Your Honor, may I have the
16 document that's been handed to the witness marked as
17 OCC Exhibit 17? This is an e-mail from Mr. Toth to
18 Mr. Poulos on 11/25/2009, at 11:05, and it is a total
19 of three pages.

20 EXAMINER BOJKO: The 11/25/09 e-mail will
21 be marked as OCC Exhibit 17 for identification
22 purposes.

23 Mr. Poulos, to clarify, did you mean the
24 e-mail was sent, correspondence, two days after the
25 collaborative meeting?

1 MR. POULOS: Yes, your Honor. Thank you.
2 It was two days after.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. (By Mr. Poulos) Mr. Toth, do you
5 recognize this e-mail and the attachment?

6 A. I do.

7 Q. And isn't it true that this was providing
8 further information about the expenses for the
9 initial CFL program?

10 A. This is a breakdown of the costs for the
11 approved CFL program on page 3. Page 2 is a cost
12 estimate of the opt-in program that we worked through
13 in the collaborative to redesign the program.

14 Q. So page 2 is a redesign -- is the
15 redesigned program. These are the costs that will be
16 incurred by the company for the redesigned program,
17 correct?

18 A. Yes, this is a draft of that, so these
19 are working documents. We would continuously work
20 with the collaborative going back and forth and
21 picking up issues such as what group may have wanted
22 something for home delivery and making sure we were
23 hitting all of the categories, and it was very much a
24 collaborative effort.

25 So in the moment of time in which I sent

1 this, this was our cost at the time, as well as on
2 page 3, a breakdown of some of the additional costs
3 from the approved CFL program.

4 Q. So on page 3 is the approved program with
5 broken down figures that equal \$8,916,000 --
6 \$8,916,640, correct?

7 A. Yes. That's an approximate number based
8 upon what day I sent this. We were working
9 diligently to drive our costs down from the approved
10 CFL program, so these numbers as of today aren't
11 accurate, but at the time were.

12 We really tried to drive the costs down
13 of the original because our enormous challenge here
14 was to run the original plan, redesign it, and get
15 the CFLs out to customers in the redesign all under
16 the original approved amount of \$13.1 million.

17 So it was us driving these prices down
18 with our vendors and really putting some of our
19 relationships with these folks in peril because we
20 were really squeezing them to bring our costs down on
21 this. So this is accurate on the day I sent this to
22 you.

23 Q. On 11/25, correct?

24 A. Yes.

25 Q. And that number 8,916,640 from page 3 of

1 this document goes right into the top of page 2,
2 correct?

3 A. Yes, it does.

4 Q. And what that is implying, more than
5 implying, what that actually means is that the
6 incurred costs from the original program, which is
7 page 3, are being incorporated into the redesigned
8 program, correct?

9 A. Yes. Absolutely. You wouldn't have had
10 a redesigned program without the original approved
11 program.

12 Q. And looking at some of these costs on
13 page 3, that would be, for example the CFLs are a
14 cost that you're using those light bulbs from the
15 first program -- from the initial program, the
16 redesign, correct?

17 A. Yeah.

18 Q. Now, isn't it true that this page 3, this
19 breakdown of the costs into eight categories is the
20 first time that you've broken down -- gone this far
21 into breaking down the \$8,916,640? Correct?

22 A. No.

23 Q. Do you have any information available to
24 show that you provided this information, this
25 breakdown, to members of the collaborative before

1 this?

2 A. I think there's an earlier document,
3 however, it would be very similar to this. We really
4 had the same information. The numbers may have been
5 changing, but in the collaborative process I had
6 brought early in the process, when we were deciding
7 if it was going to be an opt-in or an opt-out or a
8 voucher coupon program with the collaborative, I
9 brought as many costs from the approved program as I
10 had. So we may have seen parts of this or some parts
11 of this as early as the beginning of November.

12 MR. POULOS: Your Honor, OCC does not
13 have that document. We'd like to have that document
14 made available to us that he's alluding to.

15 EXAMINER BOJKO: Can you reread the
16 response?

17 (Record read.)

18 EXAMINER BOJKO: Mr. Toth, are you
19 referring to, maybe if you look at OCC Exhibit 14, it
20 was an e-mail sent on 11/18, and I believe you have a
21 comparable two pages, one of the redesigned
22 committed/spent costs that totaled the 9.1 that we
23 referenced earlier and then you incorporated that and
24 including a new, an estimate of the redesigned
25 program. Is that maybe what you're referencing, you

1 had different versions of --

2 THE WITNESS: That would be an example of
3 it, yes.

4 EXAMINER BOJKO: You said early November,
5 so I don't know if you are talking about
6 November 13th or even earlier?

7 THE WITNESS: No. We were so interactive
8 with these folks, and this is a good example of an
9 earlier one to the date. You can see the categories
10 are slightly different and the costs are changing
11 based upon us kind of working through the plan. So
12 this is a good example of me giving them information
13 sooner.

14 EXAMINER BOJKO: Okay. So the estimates
15 dated 11/13 that came out to approximately, rounding,
16 9.1 is comparable to a revised estimate on
17 November 24th that now comes out to be 8.9.

18 THE WITNESS: Yes.

19 EXAMINER BOJKO: Okay.

20 MR. POULOS: And, your Honor, if I could
21 further clarify my questions, maybe that might help.

22 EXAMINER BOJKO: Please.

23 MR. POULOS: Thank you.

24 Q. (By Mr. Poulos) Looking strictly at, on
25 Exhibit 17, OCC Exhibit 17, the CFL Program

1 Committed/Spent page. Do you see that?

2 A. I didn't number them like I was supposed
3 to, so let's -- that was the three-page e-mail dated
4 11/25/09?

5 Q. Yes.

6 A. What is that?

7 Q. Exhibit 17.

8 A. Okay. Go ahead.

9 Q. And looking strictly at the, I'm looking
10 at the CFL program costs from the original, the
11 original program costs, and isn't it true that number
12 is \$8,916,640? Correct?

13 A. Yes.

14 Q. And isn't it true that this e-mail here,
15 page 3 of OCC Exhibit 17, is the first time you have
16 broken out that specific cost of 8,916,640 or the
17 figures that are close to that?

18 Like, for example, on earlier versions it
19 was 9.1 million and we were asking -- that's where
20 Mr. Sawmiller was asking for a breakout of what those
21 costs were. And isn't it true this is the first time
22 that you break it out into such categories as
23 management services or personnel services?

24 EXAMINER BOJKO: Mr. Poulos, are you
25 specifically referring to the 8.9 breakout?

1 MR. POULOS: Yes, your Honor.

2 EXAMINER BOJKO: Because there was a 9.1
3 breakout.

4 MR. POULOS: Yes. And the 9.1 was not
5 broken out.

6 EXAMINER BOJKO: That's what I'm trying
7 to clarify for the record. Are you asking for a
8 further breakout? Because Exhibit 14 has a
9 comparable breakout of committed/spent costs for the
10 9.1.

11 MR. POULOS: Your Honor, yes, the CFL
12 distribution. Thank you. Just the initial part of
13 the 8.4, and I apologize for misstating that.

14 Q. (By Mr. Poulos) If you look at Exhibit
15 14, we were asking Mr. Sawmiller's -- Mr. Sawmiller's
16 e-mail was asking for a specific breakout of the
17 8.49 -- \$8,493,750 figure and the \$427,000 figure and
18 the \$240,000 figure. So we're trying to -- I'm
19 trying to focus on the CFL distribution vendor
20 committed costs of 8,493,000.

21 EXAMINER PRICE: Could I ask a question?

22 What's the relevance to this line of
23 questioning? I mean, if he comes up with a document
24 that shows on November 10th they gave you this
25 information, do your objections fall away? I mean,

1 is there a magic date where if you got it before that
2 date, then you don't object to it?

3 MR. POULOS: We'd like to know what the
4 information is and I think what it comes down to is,
5 as you're asking, is when we did get provided this
6 information was February 11th as part of the full
7 group, so there's a lot of information here that we
8 don't know or don't have the information behind.

9 I think as the initial questions alluded
10 to, he has testimony where he states \$440,000 for
11 rescheduling, for management services, 31,000. We
12 don't know anything behind these figures and --

13 EXAMINER PRICE: Was there a discovery
14 dispute I'm not aware of? Did they not provide you
15 information you requested in discovery?

16 MR. POULOS: I will show you, I asked for
17 the incurred costs, I got a document with just
18 general numbers, and then after depositions I got
19 these full numbers, but I still haven't been able to
20 get, you know, to flush them out because of the
21 lateness of getting them.

22 I would say if there's a discovery
23 dispute, the problem is I didn't know there were
24 documents out there and I still think that we don't
25 know how we got to some of these numbers, so this is

1 the first chance I'm getting to explore with the
2 witness how these numbers were accrued. And it's
3 been a process of us asking for these numbers like
4 the management services since November.

5 MR. LANG: Your Honor.

6 EXAMINER BOJKO: Yes.

7 MR. LANG: If perhaps we could, to
8 Hearing Examiner Price's point, talk about the
9 rebuttal testimony that's been submitted and the data
10 submitted which is data the companies have now and
11 are submitting as part of rebuttal testimony, I'm
12 sure the witness would be happy to answer questions
13 about what's submitted as part of the rebuttal
14 testimony rather than preliminary documents that were
15 submitted in November.

16 MR. POULOS: Your Honor, at this point I
17 will be happy to move on to those discussions about
18 the specific documents he provided. I just, this is
19 the first time we've seen these numbers behind the
20 management services was late-February and I was
21 curious why we hadn't seen them till then.

22 - - -

23 EXAMINATION

24 By Examiner Bojko:

25 Q. Okay. I think that we need to clarify

1 some things because now I'm afraid that the record is
2 very confused, because I think people are talking
3 about management services and meaning something
4 different. So let me ask a couple questions to try
5 to help a little bit and then we'll go on from there.

6 I think the information in the record is
7 not clear and I'd like to make it clear at least with
8 what we've discussed before and then we can move on
9 if you choose to move on.

10 I need for you to look, please, at OCC
11 Exhibit 14, which is the 11/18 e-mail, and then OCC
12 Exhibit 17 which is the 11/25 e-mail. Approximately
13 a week apart; is that right?

14 A. Yes.

15 Q. Okay. If you look at, let's first look
16 at the CFL program committed/spent costs because the
17 breakdown is not exactly the same structurally, so
18 this might be causing some confusion.

19 If I look at the -- it starts with the
20 vendor committed cost of 8.4. I'm going to round, I
21 don't want to say all these numbers.

22 A. Sure.

23 Q. Well, it's really almost 8.5, it has that
24 distribution vendor. And if I look over on the
25 revised update, the newer 11/25 update, I see it says

1 distribution vendor committed costs at 8.9. So I can
2 see why there's some confusion in the numbers.

3 But then when I look down to the
4 advertising and expenses, which is separate on the
5 11/18 version, it's \$427,140, and I look at the last
6 line of the 11/25 version and it has that same
7 \$427,140 for advertising artwork and design, am I to
8 assume that that \$427,000 is the same in both of
9 those documents for the same costs? Maybe you can
10 explain the two versions because -- do you see the
11 confusion?

12 And I think that this might be part of
13 what the questions have gotten to is they're called
14 the same thing, but the numbers don't seem to match
15 up exactly correct.

16 A. Right. The 427,140 on the one that's
17 dated GMT 11/16 of 09 at the bottom.

18 Q. You're going to go not by the e-mail
19 date, let's go by the date at the bottom.

20 A. Yeah, that's that page, the 11/24/09, the
21 GMT 11/24/09, I could compare those. So the 427,140
22 is the advertising compensation. It's the same
23 thing, I just named it something different;
24 advertising artwork and design. It's only because I
25 didn't duplicate it, I re-wrote it. But it's the

1 same number.

2 Q. Okay.

3 A. Now, that's also -- those two are the
4 same.

5 You can see that there's a different
6 number for the warehousing and that's because we were
7 working our advertising so warehousing for CFLs and
8 materials, warehousing facilities and services, one
9 was 315,000, one says 240,000.

10 It was based upon us estimating how many
11 dates we were going to go out, how much space we were
12 taking up at the warehouse facility. We were really
13 working with these people, we were getting different
14 numbers from them so those numbers were always kind
15 of in flux.

16 Q. Okay. So you're saying the 240 dated
17 11/16 was an underestimate and that estimate went up
18 to 315 on the 11/24 estimate.

19 A. All I did was, in this particular case,
20 for the -- yes -- for the warehousing it was changing
21 based upon information I was receiving at the time.

22 Q. I'm just trying to make sure it didn't
23 incorporate multiple lines on this document.

24 A. No, it's the same thing.

25 Q. Equates to 315.

1 A. Exactly.

2 Q. Okay. Now then, why don't you tell us
3 how 11/16 came out with about 8.5 million for what is
4 the only other number you have on the 11/16 document,
5 but then on the 11/24 document you have one, two,
6 three, four, five other costs making up I guess what
7 I would maybe call that top line. Is that an
8 accurate --

9 A. Yes.

10 Q. -- assumption?

11 A. Yes.

12 Q. Okay. So now why don't you tell me, if
13 the warehousing increased and the advertising stayed
14 the same, what decreased in the remaining items that
15 would have lowered the total ultimate cost from 9.1
16 to 8.9?

17 A. I understand.

18 The difference is, I'm sorry, I did the
19 math, the difference was \$244,250. I would have to
20 really dive into this. It's really us working
21 through the process. I don't know what the
22 \$244,000 difference is, but the reduction is what we
23 were driving for. We were working to try to bring
24 our costs down the best we could.

25 So I may have gotten an updated invoice

1 or a change from one of our suppliers.

2 Q. Okay. Just one more time so we're clear,
3 that the 8.493750 amount on the 11/16 e-mail equates
4 to the first -- or, the five line items underneath
5 the total 8.9 on the 11/24 e-mail. So it's fair to
6 say that those five listed items was a breakdown from
7 the 8.4 on the 11/16 e-mail.

8 A. That's correct. That is a breakdown of
9 the 8.9.

10 Q. Because the 8.4, because then the
11 advertising and warehouse are in addition.

12 A. On top of that.

13 Q. Okay. Now, if we can go --

14 EXAMINER BOJKO: Bear with me for one
15 more moment, Mr. Poulos, I apologize.

16 Q. Let's go, Mr. Toth, to the second page of
17 the OCC Exhibit 17, which is also dated 11/24 at the
18 bottom.

19 A. I see it.

20 Q. And then go to the corresponding page,
21 which is the last page of OCC Exhibit 14, which has
22 the 11/16 date on the bottom, although note that the
23 top of this one has an 11/13 date.

24 A. I see that.

25 Q. I think you said it was a working

1 document those three days.

2 A. Right.

3 Q. Now, this breakdown of costs shows this
4 is the redesigned program but it incorporates the
5 initial approved CFL committed/spent program costs,
6 so the very first line you're going to see the
7 difference between the 8.9 and the 9.1 which is what
8 we just talked about.

9 A. Yes.

10 Q. If you walk down this list I have a
11 question of -- everything appears to be the same in
12 the first block of the Retail and Community Group,
13 all those numbers appear to be the same; is that
14 correct? Between the two estimates.

15 A. Yes.

16 Q. Okay. And then when we go to the second
17 block, all of those numbers appear to be the same of
18 the two e-mails.

19 A. Right.

20 Q. Okay. And when we go to the third block,
21 that's outlined in an actual square, the total costs
22 for small business appears to be different.

23 A. It is different.

24 Q. But the 14- and the 42,000 are the same,
25 and then on 11/24 estimate it says 154,000 and on the

1 11/16 it says 462,000?

2 A. That's correct.

3 Q. Okay. Can you tell me why that is
4 different?

5 A. Yes, I can. As the program evolved, this
6 small business distribution was us working with a
7 couple of small business groups, one from Cleveland,
8 one from Toledo, and we anticipated mailing most of
9 those to customers on the first go-around -- the
10 first go-around -- in the original -- in this plan
11 you see here with the 462,000, we were anticipating
12 sending all of those out in the mail and using other
13 forms of distribution.

14 As we redesigned the -- as we were
15 working on multiple redesigns, we worked with those
16 groups and instead of mailing a lot of those light
17 bulbs, we were going to go to their events and to
18 their annual meetings and hand them out in person,
19 thus lowering our cost.

20 Instead of mailing them to each customer
21 or each of their clients, we were going to reduce
22 that by going to their organization, speaking about
23 our programs, and then giving away the light bulbs to
24 their members.

25 So the first plan was us literally

1 putting them in boxes, mailing them. The second one
2 does have some mail in it, but it was mostly us going
3 directly to their convention or their organizations.

4 Q. Okay. So from what we've discussed so
5 far then you add sales tax and verification costs and
6 you come out with two different totals, and is it
7 fair to say that both the lowered committed/spent
8 figure, the 8.9 versus the 9.1, as well as the total
9 cost for small business decrease which you just
10 explained, which was the difference between 426 and
11 154,000, that those two decreases in the estimate
12 produced the lower total cost on the line after the
13 sales tax which is about 3.1 million on the 11/24
14 estimate and 3.4 million on the 11/16 estimate?

15 A. That's correct.

16 Q. Okay. And then you add a block of
17 additional costs for the multiyear program and those
18 costs remained the same in your two estimates and,
19 again, you have a grand total that has a difference
20 based on those two factors that we just discussed.

21 A. Yes, that's correct.

22 Q. And that gave a total lower cost per CFL
23 light bulb in those estimates well.

24 A. That's exactly what it did, yes.

25 Q. Okay. Now, in addition to the breakdowns

1 that we just talked about and the differences between
2 at least the two documents that we have in front of
3 us on the 11/16 estimate and the 11/24 estimate, did
4 the company produce any further breakdowns during
5 this November period?

6 A. No. This is it.

7 Q. Okay.

8 A. This is a lot of detail and multiple
9 renditions of this, but this is basically the
10 information we were sharing.

11 Q. Okay. And then I think going to one of
12 my very early questions of this afternoon -- or this
13 morning, after these breakdowns that you provided via
14 e-mail that we discussed today, then the only further
15 additional item that you provided to the
16 collaborative would be that through your rebuttal
17 testimony.

18 A. No. On February 11th during settlement
19 discussions we e-mailed some backup documentation on
20 February 11th, and then I provided additional
21 breakdown from that in my testimony.

22 Q. Okay. And from the cross-examination
23 you've received today in your rebuttal testimony,
24 have we seen discussed, marked, talked about today
25 the breakdown information from the February

1 settlement discussions?

2 A. Does that include my testimony? Because
3 some of the information from the February 11th
4 settlement discussions I do reiterate in my
5 testimony.

6 Q. Okay. I thought you said your testimony
7 was in addition to that.

8 A. It is in addition to that, but that's
9 where the number comes from and then I dig into it a
10 little bit more.

11 Q. Okay. So the answer really would be the
12 specific breakdown that was in any February
13 settlement discussions has not been presented today
14 before us except for that that might also be included
15 in your rebuttal testimony.

16 A. That's correct. I didn't bring that
17 information, so it's not in my testimony.

18 Q. Okay.

19 A. I don't know if previous testimonies had
20 it in there from other groups.

21 Q. Okay.

22 EXAMINER BOJKO: Let's go off the record.
23 (Discussion off the record.)

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

25 Mr. Poulos, you may continue.

1 MR. POULOS: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION (Continued)

4 By Mr. Poulos:

5 Q. Mr. Toth, looking at OCC Exhibit 17,
6 which is -- the third page which is GMT 11/24/09 at
7 the bottom of the page, do you see that?

8 A. I do.

9 Q. I'm looking for information. Do you have
10 further documentation to break down this \$630,000
11 that's categorized as personnel services?

12 A. I do have additional information and I
13 put it in my testimony.

14 Q. And do you have additional documentation
15 other than your testimony to support the breakdown of
16 the \$630,000 figure?

17 A. No. I don't have any additional
18 documentation.

19 Q. So you can't tell us what went into that
20 cost.

21 A. Certainly I can tell you what went into
22 the cost.

23 Q. How did you receive that information?
24 How do you know that information goes into the cost,
25 630,000 for personnel services that were spent on the

1 original CFL program?

2 A. As you know, I certainly lived this plan
3 from the day we designed it and worked with the
4 vendor continuously, in fact, day after day, week
5 after week. I knew exactly what I was getting and
6 what was included in those services.

7 So we spent a lot of time with these
8 folks, I was very comfortable with the CFL vendor,
9 they stuck with us through multiple renditions, so I
10 was very comfortable and knew what the funds were
11 for.

12 EXAMINER BOJKO: Okay. Mr. Toth, you're
13 referencing your reference in your testimony at page
14 10, the Q and A that begins on 4, and this is the
15 \$630,000 for vendor services that you were just
16 referencing in your response?

17 THE WITNESS: Yes.

18 EXAMINER BOJKO: Is there an associated
19 attachment from your testimony or is there an
20 attachment associated with that \$630,000 attached to
21 your testimony?

22 THE WITNESS: I did attach on the final
23 page of Exhibit GMT-1, the last page is the invoice
24 from the CFL vendor breaking down the costs really by
25 item. So I did include this.

1 EXAMINER BOJKO: And that is referencing
2 a document titled "Power Direct"?

3 THE WITNESS: That's Power Direct, yes.

4 EXAMINER BOJKO: And I see that number to
5 be 8.4, almost 8.5 million. So maybe you could tell
6 me --

7 THE WITNESS: Sure.

8 EXAMINER BOJKO: -- where you get the 630
9 from that.

10 THE WITNESS: If you look on the right,
11 the fourth number down is 630,000. And that was for
12 the personnel services that I believe Mr. Sawmiller
13 made reference to or that was asked throughout
14 testimony.

15 EXAMINER BOJKO: Okay. But you don't
16 have any further line item breakdown of that 630,
17 because that 630 is just included in the overall
18 bill.

19 THE WITNESS: It is. I do not have an
20 additional breakdown of that aside from the narrative
21 I put in my testimony about what it was for.

22 EXAMINER BOJKO: And that narrative would
23 be that on page 10, the Q and A beginning on 4, and I
24 guess as well as the Q and A beginning on 13.

25 THE WITNESS: Yes.

1 EXAMINER BOJKO: And going over to page
2 11.

3 THE WITNESS: Correct.

4 EXAMINER BOJKO: Mr. Poulos.

5 MR. POULOS: Thank you, your Honor.

6 Q. (By Mr. Poulos) In looking at this Power
7 Direct attachment to your testimony --

8 A. Okay.

9 Q. -- looking at the management supervision
10 and personnel services --

11 A. Yes.

12 Q. And the quantity total you move over to
13 the right from the description is 1.5 million. Do
14 you see that?

15 A. I do.

16 Q. And the rate for that is .15. Do you see
17 that?

18 A. I do.

19 Q. And if I multiplied those by each other,
20 you get 225,000, correct?

21 A. I don't know. The number is 225,000. I
22 don't know if those multiply out to that or not.

23 Q. And that 225,000, other than your
24 testimony, there's no documentation to support how
25 that 225,000 was spent, correct?

1 A. That's correct. We didn't have the
2 breakdown until just recently. That number of
3 225,000 for a project from this vendor that was
4 nearly 8.5 million was, you know, less than
5 2.5 percent of the total price of the job for
6 management, so it was well within line and deemed
7 reasonable. Really anything between 2 and 5 percent
8 would be considered reasonable for a management of a
9 project this size.

10 So I never questioned the vendor. I had
11 been working with them all this time, I knew exactly
12 what I was getting for that. I was very comfortable
13 with the number. I was very comfortable with them.

14 Q. And you provided this document to all the
15 parties February 11th, correct?

16 A. I did.

17 Q. And this document is dated September
18 17th of 2009.

19 A. This document is September 17th, 2009.
20 It was for our September 23rd contract date.

21 Q. You had this document for approximately
22 five months and waited until February 11th to
23 provide it to the parties.

24 A. It didn't give any other additional --
25 yes. It didn't give any additional detail. You look

1 at the numbers, they match all of the other numbers I
2 was showing you continuously. This was just the
3 invoice from the approved CFL plan that I included in
4 all of the documents that the collaborative used to
5 make decisions going forward in the redesign from the
6 beginning of November.

7 Q. And these numbers, you found them to be
8 reasonable, it sounds like, that are on this page as
9 Power Direct.

10 A. Yes.

11 Q. And you are aware that OCC would like
12 to -- further documentation how these figures were
13 spent, correct?

14 A. Figures from this invoice?

15 Q. Yes.

16 A. I sent them to you.

17 Q. You sent the invoices regarding this
18 Power Direct to us?

19 A. No. I think you're -- what exactly are
20 you asking me?

21 Q. The Power Direct invoice, September
22 17th, 2009.

23 A. Got it.

24 Q. And you are aware that we have asked in
25 the past for as much documentation as we can for

1 these costs, correct?

2 A. Yes.

3 Q. And you have not provided us with further
4 documentation regarding the personnel services or the
5 management services, correct?

6 A. That's correct. I gave you everything we
7 had. This isn't the breakdown. It's the same
8 number, I continuously used it throughout all of our
9 worksheets.

10 EXAMINER BOJKO: Do you have a breakdown
11 from Power Direct?

12 THE WITNESS: They did give me a
13 breakdown that I included in my testimony on the
14 management services. They did break it down by
15 percentages and dollars. And I say that --

16 EXAMINER BOJKO: That's of the 225,000.

17 THE WITNESS: Correct. That's for the
18 225,000. So I did get a breakdown of that. But I
19 recently went back to them and asked them for a
20 little more information around that.

21 EXAMINER BOJKO: But you never got a
22 breakdown for any of the other items on that invoice,
23 such as the 630.

24 THE WITNESS: No. I had a
25 conversation, continuous conversations with these

1 folks on what they were doing, what we were needing
2 to have done in the program. The timeline here is
3 extremely critical. To pull the 630,000 out and just
4 say "What's this for," is not really fair.

5 The 630,000 we spent for the personnel
6 services were an ongoing, us redesigning the program
7 continuously, putting the program on hold and pushing
8 all of the prestaging of these packages that we were
9 going to send to customers' houses forward, because
10 as we were lopping days off because of the delay, we
11 weren't giving them days at the end to deliver.

12 We were compressing their window on
13 delivery days, so they were doing as much back office
14 or in warehouse efforts that they could trying to
15 make sure they were meeting their deadline.

16 We were even into their contingency days
17 they were prestaging and prestaging and prestaging
18 ready to launch when we said -- it wasn't until
19 October 18th when you look at this we finally said
20 to them "We're not going to have anything that's
21 going to launch soon. We need to take all of this --
22 of this material that's prestaged and we need to
23 prepare it for storage."

24 One thing that really gets lost is this
25 program was enormous. It was two warehouses about

1 half the size of a football field with millions of
2 light bulbs lined up in boxes and bags ready to be
3 door-to-door delivered.

4 So they were coming in on 16, 17 semi
5 trucks being unloaded, packaged, set up, prestaged
6 and sorted for neighborhood delivery, and they kept
7 doing that. As the light bulbs came in, none were
8 going out, so they were stacking up and stacking up.

9 At one point they were about 40 feet high
10 to the ceiling the size of -- about half the football
11 field ready to go out. On the 18th we said to them
12 "We're not going to, it's just not going to happen."

13 So I walked into the warehouse on the
14 18th, I saw this massive amount of prestaged
15 materials and I thought, this is going to take us a
16 month to put away. And if you look at the timeline I
17 put in there, they did it in about nine days, and
18 they broke it all down saving us thousands of dollars
19 in storage, condensing all the materials.

20 And then prestaging it for the
21 redistribution -- or, for the now next plan because
22 we put it all in pallets, we sorted it, we got it
23 ready to go to retailers. We knew we weren't going
24 to go door to door so we took out of that kind of
25 prestaging and put it ready for retail distribution

1 for distribution to some of our affinity partners,
2 like United Way and things like that, the
3 collaborative work done in the redesign.

4 EXAMINER BOJKO: Wait. Wait. Was that
5 before or after knowing the redesign?

6 THE WITNESS: We didn't know. What we
7 knew was we weren't going to go door to door, so in
8 knowing that we weren't going door to door we staged
9 everything for some kind of bulk shipment. And that
10 was perfect for us to warehouse and it's turned out
11 to be perfect for us to send to retailers. So now
12 all of the materials are in storage ready to be sent
13 for the new plan.

14 EXAMINER BOJKO: I mean, I guess if you
15 sat there and told me that it cost a lot of money to
16 package these and put them all for neighborhood
17 distribution and then, without having a collaborative
18 decision on the redesigned program and without having
19 Commission approval, FirstEnergy just made a decision
20 to package a different way, not knowing whether that
21 packaging was going to have to be then again
22 repackaged to do something different, say the
23 neighborhood distribution was allowed.

24 THE WITNESS: Right. We couldn't keep
25 the materials in the warehouse the way they were.

1 They were in the middle of the floor prestaged ready
2 for door-to-door. We had to do something with them,
3 the warehouse people were not going to let us keep
4 them like that.

5 EXAMINER PRICE: When you say "prestaged
6 ready for door-to-door," are you saying that there
7 were thousands of bags each with two light bulbs in
8 it sitting on the floor?

9 THE WITNESS: With "A Hundred Ways to
10 Save" brochure and a usage manual. Absolutely that's
11 exactly how it was. And they were counted and sorted
12 for communities. So the trucks would come in and
13 pick it up for that community, take it to that
14 community, distribute it, and come back.

15 EXAMINER PRICE: So there was a big Parma
16 pile, a big Cleveland Heights pile, a big Shaker
17 pile.

18 THE WITNESS: That's exactly how it
19 worked. Even broken down even more detailed than
20 that. So we couldn't leave it like that, they were
21 stacked ready for hands to touch them. We needed to
22 be able to lift this stuff up with forklifts, so we
23 put it back in pallets and counted it and got the
24 inventory straight and secured it.

25 We would have had to do that no matter

1 what. The warehouse people weren't going to let us
2 keep that in the middle of their floors.

3 EXAMINER PRICE: And your testimony is
4 that that saved actual money on the warehousing by
5 condensing it to pallet size.

6 THE WITNESS: Sure. Some of the
7 estimates we received were double the amount we're
8 paying now. I think I say that in here, I know I say
9 it's \$30,000 a month for those two warehouses. The
10 original estimates were \$60,000 a month.

11 So just by condensing all of that put us
12 in a better situation and it secured our inventory,
13 which was important to us as well.

14 EXAMINER BOJKO: Mr. Poulos.

15 MR. POULOS: Thank you, your Honor.

16 Q. (By Mr. Poulos) So looking at this Power
17 Direct invoice, are there other invoices you received
18 from Power Direct other than this September 17th
19 invoice prior to that? Let me ask, prior to
20 September 17th?

21 A. No.

22 Q. So that the, let's take, for example, the
23 630,000 for personnel services, that number has not
24 been negotiated down, it's the same price it was
25 before.

1 A. That price wasn't negotiated. What we
2 were buying from them was a designated service. Now,
3 that service certainly morphed into something that
4 was very much out of scope. They worked about, you
5 know, we had about a 26-day distribution period in
6 here.

7 They worked about 10 days previous to the
8 distribution launch getting ready and then things
9 went out of scope as the program changed and they
10 redesigned and they reevaluated the delivery
11 timetables.

12 Things were coming in/out of scope, but
13 still within the limits of what we put forth and
14 said, look, how much is this going to cost us? Where
15 are we? What's the best way to save money?

16 It was actually our vendor working with
17 us on the 18th that they said to us we're not going
18 to need a year-end deadline or get into the holidays,
19 and that's how we were making that decision on the
20 18th.

21 Q. So that 630,000, you were relying on
22 Power Direct for that figure, and I wanted to look at
23 some of these other figures on this page.

24 A. We can look at the other figures, yes.

25 Q. I would look at, since you're relying on

1 them, the two CFLs right above that. Do you see the
2 two CFs right above the Power Direct?

3 A. Yes.

4 Q. There's 1.5 million CFLs, correct?

5 A. Yes.

6 Q. At a rate of \$3 a CFL. Do you see that?

7 A. Yes.

8 Q. Shouldn't that equal \$4.5 million or
9 4.725 million?

10 A. I would have to do the math. Let me
11 look. There's also another CFL for the door-to-door
12 below that, and -- I wouldn't be able to do that in
13 my head, I'm sorry.

14 Q. One of the easy ways that I was able to
15 look at was if you look at the top one, the recycled
16 kraft paper bag, it's 1.5 million at a rate of .3,
17 which is \$450,000.

18 A. Well, then if that's the case, the one
19 below it at 375,000 at \$3 --

20 Q. That was the next one I was going to
21 point out that was a little trickier because it's not
22 an easy number.

23 A. Sure. This invoice itself is, the one
24 that's dated 9/17 from Power Direct, I can't say
25 if -- we're making a lot of round numbers and I would

1 have to doublecheck the 1.5 million if it wasn't
2 1,500,230 or some other number.

3 If you look, these are all very round
4 numbers and we may have had a trueup or something
5 else to make -- because I know we don't have exactly
6 1.875 million households and we were sending two to
7 everybody plus the small business customers.

8 So to say we were going to be at 3.75, I
9 think what this is is probably just some estimations
10 on total.

11 Q. So what you're saying is this shouldn't
12 be relied upon.

13 A. No; I think it's very -- I think the
14 amount due is very reliable. I think when you come
15 down to quantity of 1.5 million or the rate, the
16 4,725,000 is very reliable.

17 EXAMINER BOJKO: I guess I don't
18 understand. Aren't you the person that created the
19 breakdown of the bag and box costs, the CFLs? Aren't
20 the documents we've been talking about your
21 documents?

22 THE WITNESS: They are.

23 EXAMINER BOJKO: Okay. Where did you
24 get -- how did you come up with 1,031,250 when you
25 did your breakdown? It says bag and box cost and

1 assemble, but now I hear you don't know how to get
2 these numbers. I don't understand.

3 THE WITNESS: No, it's not that I don't
4 know how to get the numbers. I took that, the bag
5 and box cost and assembly of \$1 million came from the
6 numbers here that you can see, there's line items for
7 each of these items, recycled kraft paper bag,
8 preparation, insertion, there's the boxes,
9 manufacture of box, the assembly of the box.

10 EXAMINER BOJKO: So tell me the numbers
11 that you added. You added 450, then you added the
12 285,000 and then you added 187,500? And did you say
13 another one? Tell me how you came up with
14 \$1,031,250.

15 THE WITNESS: So without having my
16 worksheet directly in front of me, I'm going to tell
17 you that I think the way I did it was took the
18 450,000 on line 1, recycled kraft paper bag, line
19 No. 5, preparing and inserting bag content, and third
20 area down 187,500 for manufacturer of bags, and
21 then -- or the boxes, I'm sorry. And then there's
22 two items, 37,500, 71,250 for the labeling and the
23 insertion.

24 So I think that's what's coming up to
25 1 million. Does that add up? I'm trying.

1 EXAMINER BOJKO: I don't have a
2 calculator, but okay.

3 THE WITNESS: I know that's close.
4 That's where I got the numbers from.

5 EXAMINER BOJKO: So just to be clear, on
6 your committed/spent 11/24 document with the
7 breakdowns for the CFL of the old program or initial
8 approved program, you just did that. You went to the
9 Power Direct invoice and you added specific line
10 items together to create the breakdown that you
11 provided on 11/24.

12 THE WITNESS: That's correct. That's the
13 information I had.

14 EXAMINER BOJKO: Okay.

15 EXAMINER PRICE: Now, did you continue to
16 negotiate with Power Direct to move some of these
17 numbers down? I mean, the document we're looking at
18 here in front of us, the invoice is from September,
19 so it, obviously, was for the initial program.

20 THE WITNESS: Right.

21 EXAMINER PRICE: Did you continue to
22 negotiate with Power Direct to move them down, is
23 that why these numbers are shifting over time?

24 THE WITNESS: That's why they're
25 shifting. They're also shifting because we're

1 redesigning the program and that final redesign is
2 using this same vendor and they gave us, here's a
3 great example of the numbers coming down, we had this
4 number and we were trying to redesign it and we said
5 "Well, how much would it cost us to use retail and
6 our affinity groups and low-income and all the things
7 we wanted to do? "Well, they gave us a number that
8 put us over the 13.125" million from our original CFL
9 filing that we needed to stay under. So we went back
10 to them and said "We can't be over. What can you do
11 to help us not be over?"

12 And that's when we started -- that's when
13 they started, we were negotiating with them on the
14 redesigned program to bring that in under or at the
15 \$13.125 million.

16 So our challenge was bring these prices
17 down, get a better price on the redesigned program,
18 and do it all for what we originally had an approval
19 for from the original CFL approved filing and pull
20 that all together and get something out the door to
21 customers and still be under our target number.

22 EXAMINER BOJKO: Okay. But right now
23 we're -- I understand that for the redesign, but I
24 thought we were focusing a little bit on the
25 committed/spent breakdown which is the old program.

1 And I guess what I'm really struggling
2 with is the invoice is dated September 17th, 2009,
3 you have one line item breakdown dated 11/16 that
4 we've been discussing today on OCC Exhibit 14. Then
5 you have another breakdown that has a lower cost
6 dated -- OCC Exhibit 17, dated November 24th.

7 I thought you told me the difference
8 between the 11/16 draft and the 11/24 was what you
9 were just kind of referencing there, the negotiating
10 lower costs, the negotiating of the warehouse costs,
11 and things of that nature. But then when I asked you
12 where you got the numbers on the 11/24, you go to a
13 9/17 invoice.

14 So where did you get the numbers? If
15 there were any kind of negotiations involved that
16 reduced your numbers, where did you pull those
17 numbers from to create this lower 11/24 draft
18 estimate?

19 THE WITNESS: That was just our
20 conversation, our negotiations with the CFL vendor.
21 He didn't take it out of a line. He just was, we
22 were just talking about what was being used, what was
23 being reused, how many -- where were we on actual
24 days, what day did we cut it off. We were -- this
25 was a conversation we were going on and we were --

1 EXAMINER BOJKO: Okay, but then when I
2 just asked you if this \$1,031,250, you pulled, you
3 know, one, two, three, four, you gave me five line
4 items from the September invoice that you pulled to
5 create that number. And I don't see where it could
6 possibly be reflected in the discussions that you're
7 talking about, if you told me you pulled the numbers
8 from this invoice.

9 I guess what I'm hearing you say is you
10 didn't pull the numbers from the invoice, or if you
11 did, I don't understand how you could have pulled the
12 numbers from the invoice for the 11/16 estimate
13 versus the 11/24 estimate.

14 THE WITNESS: I'm not really sure I
15 understand.

16 EXAMINER BOJKO: Well, we're talking
17 about the 11/24 estimate which is a reduction from
18 the 11/16 estimate, right?

19 THE WITNESS: Right.

20 EXAMINER BOJKO: And you just told me you
21 pulled from the 9/17 invoice certain cost figures
22 that the consultant provided, or the vendor provided
23 to you to arrive at your cost estimate of what was
24 committed and spent for the CFLs, and we just
25 specifically talked about the bag and box cost and

1 assembly.

2 I thought you told me that, I asked you
3 the question specifically for each line item on your
4 11/24 draft estimate, did you get that from the
5 invoice on 9/17, and you said "yes." But then I hear
6 you -- I thought you said "yes."

7 THE WITNESS: Yes.

8 EXAMINER BOJKO: Is that right? Yes?

9 THE WITNESS: I got the numbers from
10 there to start, yes.

11 EXAMINER BOJKO: Okay. Then you talk
12 about this negotiation and things coming down. Where
13 is that reflected and how did we get from 9.1 to 8.9
14 if we're looking at a 9/17 invoice?

15 THE WITNESS: I can't specifically say
16 what the 24,000 is. It was discussions that were
17 ongoing with these folks. So there were --

18 EXAMINER BOJKO: Okay. Okay. I
19 understand there were discussions and things, but you
20 had to create a hard document. You said you had a
21 worksheet. Where did you get those numbers?

22 If the discussions resulted in a \$244,000
23 reduction from 11/16 to 11/24, was that in -- that
24 wasn't in a document? How did you create your
25 spreadsheet?

1 THE WITNESS: I'm not really sure what --
2 how I created the spreadsheet on 11/24. I started
3 with the Power Direct invoice. There's some changes
4 in the two between warehousing and facilities. We
5 negotiated those items down.

6 EXAMINER BOJKO: Oh, well then that's
7 different from what you said. Is that the only thing
8 you negotiated down was the warehousing and that was
9 the difference of the repackaging and making smaller
10 warehouse space?

11 THE WITNESS: That's -- when I'm
12 comparing them, see the difficulty is that we're
13 selecting two distinct things out of a moment in time
14 and this was an evolving process. To say that, I
15 think the warehousing was 315 and it ended up coming
16 in under that, so I know there that's \$75,000 in
17 reduction.

18 EXAMINER BOJKO: Whoa. But 315 is what's
19 on the 11/24 invoice or estimate.

20 THE WITNESS: Oh, I'm sorry. Those are
21 the numbers I started with, the warehousing has been
22 in flux, we're down now to \$30,000 a month. The
23 warehousing numbers were based upon how many months
24 we were looking out.

25 You can see that I said final cost

1 subject to timing and delivery schedule. So we were
2 estimating some of the numbers going forward.

3 We know that it was 30,000 a month, so if
4 I went back and made a new spreadsheet or a copy, I
5 would say 30, 30, 30, for the warehousing expense
6 since we put them in there starting in -- at the end
7 of October.

8 EXAMINER PRICE: Let me ask you a
9 question. Is it fair to say that your primary goal
10 throughout all these iterations of spreadsheets and
11 invoices was to simply push the price for the revised
12 program below the price for the initial program and
13 that once you were done with that and negotiated with
14 Power Direct that they would do different tasks for
15 the same price, that you were done?

16 THE WITNESS: That's exactly right.
17 That -- it was us meeting the 13.125 million in the
18 final cost on the final day that we filed and sent
19 forth on December 15th. That's exactly what my
20 main purpose was, was to take something that was
21 costing estimating way over 13.125 and bringing it
22 down to that number.

23 EXAMINER PRICE: So, for example, for
24 management services you're not going to have a
25 document that shows initial budget equals \$225,000

1 for X activities and then revised budget is \$225,000
2 for Y activities. You just know that the total
3 management fee is \$225,000 and that contributed to
4 you keeping this below your target budget which is
5 the initial cost of the initial program; is that
6 correct?

7 THE WITNESS: That's correct.

8 EXAMINER BOJKO: Whoa. The budgeted
9 initial program?

10 THE WITNESS: Yes, the 13.125 million is
11 ultimately the price I have to stay under in the
12 redesign.

13 EXAMINER BOJKO: No. No. No. Not the
14 redesign, because you have a specific -- in the
15 redesigned program, if I understand on your
16 spreadsheet dated 11/24 attached to OCC Exhibit 17,
17 this is the redesigned program and in that redesigned
18 program you have a specific line item for CFL program
19 committed and spent costs, and that \$225,000 of
20 management that we were talking about is in that line
21 item. It's not in what was worked out to redesign
22 the program. Right? It's in the committed and spent
23 for the old CFL program.

24 THE WITNESS: It is. However, it also --
25 it's the final number to keep us under 13.125. So it

1 is included in that. There is no reason to redesign
2 if we went through with the original approved CFL
3 program. So I had to take all of those costs,
4 include them in the redesign, and get the redesigned
5 program out all under or at 13.125 million.

6 So that, the challenge was not to
7 separate things out and understand what these
8 services were for, I was kind of doing that for the
9 OCC's requests. My goal was at the end of the day to
10 take two programs and make them cheaper than my first
11 one or at the same cost as my first one.

12 EXAMINER PRICE: And Power Direct is
13 performing services for the revised program under
14 that \$225,000.

15 THE WITNESS: There is not a separate
16 line item now if you look in the redesigned program.
17 There's not a separate line item anymore where we're
18 saying, okay, management costs, I took that old --
19 the original program, rolled it into the new one,
20 negotiated with them to be under the amount, and that
21 at the end of the day that's the number we came up
22 with.

23 I don't know where they cut back their
24 cost.

25 EXAMINER PRICE: Let me ask the question

1 a different way. Power Direct is still your primary
2 vendor for the revised program.

3 THE WITNESS: That's correct.

4 EXAMINER BOJKO: I still don't understand
5 if you don't know where they cut back or what
6 changed, how you got your revised estimates to get
7 the committed/spent number. You just told me you
8 didn't think the whole 244,000 was just warehousing,
9 it was other things, right? It wasn't just the
10 warehouse costs that went down. Well, that was an
11 increase actually from the first one to the second
12 one.

13 THE WITNESS: The total cost was just
14 that to us, a total cost. So that's how we
15 negotiated with them. I didn't ask them to break
16 those items out. We knew what our mailing costs were
17 going to be going forward. We knew some of the other
18 costs from working with them.

19 They gave us -- I think we went through
20 five or six full renditions of different programs to
21 come up with one that the collaborative helped us
22 with and generally supported and one that we could do
23 to meet our cost requirements.

24 EXAMINER BOJKO: I guess maybe I just
25 misunderstand. I thought your testimony was

1 addressing what had been termed by Mr. Sawmiller to
2 be the "sunk costs," and the sunk costs on your own
3 definition was costs that were used to do the old
4 CFL, the original approved CFL program.

5 Are you telling me that's not the case?

6 THE WITNESS: No; that is the case. When
7 I say "sunk costs," we're not doing any services if
8 there's not an original plan. The original approved
9 plan. So all the expenses and all of the services we
10 got and everything we developed to launch that
11 program on our approved date, and we were going to go
12 live on October 10th, all of those charges are
13 real. There's no question about that. We were ready
14 to go on the day before, you know, we temporarily
15 halted the launch.

16 So we did have management expense. We
17 were ready. And then as the program changed, the
18 scope changed. So it morphed into something else.
19 We had a delay period, at the end of the delay period
20 we worked with the vendor to revise the program, we
21 revised the program with them, included all of the
22 original costs and came up with a number that still
23 met our goal.

24 EXAMINER BOJKO: Okay, look at page 5 of
25 your testimony. This is where you use the word

1 "sunk," and maybe we just need to put a dollar figure
2 to that. What, in your opinion, is "sunk"? Which
3 costs, when you use that word on line 15, did you
4 believe were sunk?

5 THE WITNESS: I don't break it out that
6 way. I apologize, it's not how I defined it. I was
7 responding to the question -- the sunk costs, from
8 what I say here, is not directly contributing to the
9 redesigned CFL program, those items that they worked
10 on we would have never done had we not an approved
11 program.

12 So did we work on the original? Yes.
13 Most of these costs in here go back and forth between
14 the original approved plan and items that they did to
15 help us redesign the other plan, the revised program.
16 So the scope was changing.

17 They certainly, in the management cost
18 breakdown, I can give you a little bit more -- if you
19 go to page 8, line 15, we talk about some of the
20 \$225,000 broken out and things they worked on for us,
21 and much of that was for the development and the
22 planning required before the launch taking us right
23 up to the launch. You know, we started those
24 discussions way back with these folks and they
25 provided the support to us.

1 So I do break it down a little bit more,
2 but then on line 6 I clearly say that they were
3 working on helping us change the schedule, redesign
4 the program to meet the delays, constantly
5 reevaluating their formulas. So I did my best to
6 break it down based upon the information they gave
7 me. These were all items that certainly were for the
8 approved CFL program.

9 And then there's some items in there that
10 include putting the things into like line 12, 13, 14,
11 where we talk about sending things to the warehouse
12 and safe storage and reorganizing the materials for
13 lower storage costs and managing that service. So
14 some things do carry over into the new.

15 Are those costs sunk? Well, sure,
16 they're in the invoice, they're in the number for
17 management services they provided me. I need them to
18 have provided that service for the new program.

19 I can't have one really without the
20 other. It wouldn't be the first -- it wouldn't have
21 been my first choice on how to do it, but this is us
22 playing the cards that we were dealt, and it worked.
23 I think now we're in a position to deliver.

24 EXAMINER BOJKO: Okay. But you don't
25 have a dollar figure associated with the sunk costs.

1 You don't know the dollar figure associated with what
2 you call the sunk costs as you defined it.

3 THE WITNESS: No, I don't break it out
4 like that.

5 EXAMINER BOJKO: Okay. Let's go off the
6 record.

7 (Discussion off the record.)

8 EXAMINER BOJKO: Let's take a lunch
9 break. 2:15 we'll return.

10 (Lunch recess taken.)

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1 Monday Afternoon Session,
2 March 8, 2010.

3 - - -

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

6 Mr. Toth, please remember that you are
7 still under oath.

8 Mr. Poulos, would you like to continue?

9 MR. POULOS: Thank you, your Honor.

10 - - -

11 GREGORY M. TOTH

12 CROSS-EXAMINATION (Continued)

13 By Mr. Poulos:

14 Q. Mr. Toth, I'll have you look at OCC 17
15 again and the last page.

16 A. Okay.

17 Q. This page states at the top "CFL Program
18 Committed/Spent." Do you see that?

19 A. Yes.

20 Q. "11/24/09" on the bottom left corner?

21 A. Yes.

22 Q. The number for management services
23 directly from the Power Direct invoices attached to
24 your testimony, 225,000?

25 A. Yes.

1 Q. And the -- for personnel services, the
2 630,000, that's directly from the Power Direct
3 invoice as well?

4 A. Yes.

5 Q. And the CFLs, the 5,996,250, did you get
6 that number directly from calculating the figures for
7 CFLs on the Power Direct invoice?

8 A. No.

9 Q. How did you get that figure?

10 A. This particular one, the 5.996250, I have
11 to say "approximately" because I don't have the exact
12 numbers, but when we ended up on 11/24 as we were
13 refining the number of households and we were getting
14 down to we had ordered for CFLs and some of the rush
15 delivery things, the average bulb cost, because of
16 some delivery issues and some other things, went up
17 just slightly, it was approximately -- for two CFLs
18 went from like \$3 to approximately \$3.15.

19 Keep in mind, these were -- this was a
20 working document and was ongoing. When the 9/17
21 invoice we were looking at, we hadn't purchased all
22 of the CFLs. So this 5,996,250 might be slightly
23 different than the original invoice amount.

24 Q. And do you have any documentation to show
25 how you calculated that?

1 A. No. We had a conversation with the
2 suppliers. We bought -- keep in mind, we were buying
3 3.75 million light bulbs, which was about all of the
4 available inventory in about a 15-state area.

5 So it was not like we were just getting
6 these at the local warehouse. These were being
7 shipped directly from manufacturers, overseas, and
8 when we were doing the final numbers, we were seeing
9 that we were off some and we wanted to make sure that
10 we had no delays in shipment and delivery to
11 customers, so the average costs varied a bit.

12 So I don't have documentation, I just
13 have us having conversations with manufacturers
14 saying this bulb's going to cost you a little more
15 than the next bulb because it's out of a wholesale
16 environment and not from a manufacturer, and there
17 were other details that kind of went into that.

18 Q. So looking at this Power Direct invoice,
19 is it your testimony that any discrepancies in this
20 individual -- in the individual numbers on this page
21 are not important because you met your goal of the
22 \$13.1 million? Is that your position?

23 A. No. No. That's certainly not that
24 they're not important. I would say no. They're all
25 very important. It was -- all of this was a critical

1 component into designing and redesigning with the
2 collaborative this program, so I'm not going to say
3 that any of these numbers weren't affecting our
4 program in the redesign, how we were working with the
5 collaborative, or what our final price was going to
6 end up being.

7 Q. Well, didn't you say earlier that this
8 document here, the Power Direct, this wasn't provided
9 to the parties until February 11th? Correct?

10 MR. LANG: Objection. Your Honors, if we
11 could try again, we're dealing with rebuttal
12 testimony to Mr. Sawmiller. Mr. Sawmiller addresses
13 specific line items of costs dealing with the CFL
14 program. None of those line items are being
15 questioned at this point by Mr. Poulos.

16 His questioning is beyond the scope of
17 the rebuttal testimony. The scope of the rebuttal
18 testimony is personnel services, management services,
19 warehousing costs, and advertising. That's what
20 Mr. Sawmiller addressed in his testimony, that's
21 what's being rebutted.

22 The cost of the CFLs is not in dispute in
23 this case. I understand Mr. Poulos has a curious
24 nature and likes to ask questions about everything,
25 but, your Honors, so that we can maybe get out of

1 here today, I would ask that you ask Mr. Poulos to
2 limit his questioning to the issues that are actually
3 here in the rebuttal testimony.

4 EXAMINER BOJKO: I'll let you respond.

5 MR. POULOS: Thank you, your Honor. Your
6 Honor, this is related to -- these figures are
7 related to management services and personnel costs,
8 but even further than that is that these are
9 documents that had been provided by the company in
10 the rebuttal testimony, we have a right to
11 cross-examine their witness who's offering these for
12 evidence into the record.

13 MR. LANG: Your Honors, they're offered
14 by the witness as party of the rebuttal testimony on
15 specific cost items, nothing else -- no other cost
16 items are in dispute.

17 EXAMINER BOJKO: I actually think that
18 there was a dispute about what information was
19 provided. I believe that was discussed in
20 Mr. Sawmiller's testimony and that was responded to
21 by your witness. So on that basis I'm going to allow
22 the questioning.

23 Please reread the question.

24 (Record read.)

25 A. That's correct. I did break down some of

1 the line items out of this invoice when I was asked
2 for additional detail, and you can see that between
3 the two dates on the -- No. 13 and No. 17, or No. 14
4 and No. 17. You can see the differences.

5 So I was trying to accommodate the OCC's
6 wanting additional information with all the
7 information I had. So I did try to break it down a
8 little bit more on the one dated 11/24, but I did not
9 give them this Power Direct invoice directly.

10 MR. POULOS: Your Honor, motion to strike
11 everything after "that is correct."

12 EXAMINER BOJKO: Granted.

13 Before proceeding on to your next
14 question, just help us out a little bit. You mention
15 the 3.15 and just per light bulb it increased from
16 your vendor's estimate of \$3. I'm not sure how you
17 calculated that.

18 I heard many things from you. Did you
19 get an array of prices from \$2 to \$5 and you yourself
20 averaged the cost to get to 3.15? Tell me how you
21 came to 3.15.

22 THE WITNESS: Sure. The \$3.15 was based
23 off of a request for prices from manufacturers. So
24 some bulbs came in under \$3, some bulbs came in over
25 \$3.

1 EXAMINER BOJKO: Okay.

2 THE WITNESS: That's correct.

3 EXAMINER BOJKO: Tell me what you did
4 next. I'm trying to figure out if you did the
5 physical calculations or your vendor did the physical
6 calculations.

7 THE WITNESS: We did them together. The
8 vendor -- we were certainly talking about where the
9 light bulbs were coming from, some of them weren't
10 meeting our specs, so we had to go back to some
11 manufacturers, we were a little bit short, and so we
12 end up on the 9/17 invoice date, I think the real
13 math here and the reason they don't add up when I do
14 the math in my head, I think they meant to have \$3.15
15 in as the rate, not \$3, but I'll have to dig into
16 that a little deeper.

17 The prices were averaged, they came in
18 some lower, some higher. We decided as a company
19 which bulbs we were going to buy based upon how high
20 we wanted those costs to go. So if we wanted to buy
21 a Sylvania light bulb, it was, you know, \$4.10,
22 were we going to buy those and how did that effect
23 our average price.

24 So we were looking at each manufacturer.
25 There were some manufacturers we did not buy from

1 because they were taking our average price up too
2 high.

3 EXAMINER BOJKO: Okay. Did you have a
4 spreadsheet that listed all the costs of the bulbs
5 and you averaged that to get the \$3, the 3.15?

6 THE WITNESS: I did not have the
7 spreadsheet. The vendor had the spreadsheet and then
8 we were talking about what the numbers were.

9 EXAMINER BOJKO: And then you got from
10 them the average of 3.15 and then -- now I'm hearing
11 something different. You think that if 3.15 is
12 inserted on the Power Direct's statement, that it
13 would equal the \$4,725,000? I thought you said the
14 3.15 calculation got you to the \$5.9 million.

15 THE WITNESS: Yeah, I think both these
16 approximate numbers. I think on the 5.996250 I would
17 have to do the math and see what the average price
18 was at that time and where we were on the purchases.

19 Keep in mind, these are moments in time
20 you're asking me about. We were evolving through
21 this process --

22 EXAMINER BOJKO: I understand that,
23 Mr. Toth. We were just trying to figure out where
24 your numbers came from as you did those calculations
25 at that moment in time.

1 I understand it was evolving, but I
2 thought you just told me that on the statement
3 \$3 should have really been 3.15 to get to the
4 4.7 million, and I thought you had said a few minutes
5 ago that the reason why it's higher on your 11/24/09
6 estimate sheet is because the 5.9 really equaled --
7 showed the increase of the CFL cost of 3.15. So I'm
8 just confused.

9 THE WITNESS: Yeah, it could be -- I
10 don't really have the worksheets behind it so I'm
11 just kind of speculating a little bit on -- I see
12 that the invoice has round numbers. We obviously
13 have to say 1.875 million households is an estimate.
14 So as we got closer to delivery time, we were doing
15 calculations off of our customer data to make sure we
16 had the exact number.

17 So the 9/17 invoice is showing some
18 approximate numbers. I am questioning a little bit
19 just the \$3 rate. I think that might be \$3.15. I'll
20 have to do the math on that.

21 And then on the 11/24, this is far after,
22 so we probably by this time have a more refined
23 number on households and we probably have a more
24 refined number on average costs.

25 EXAMINER BOJKO: So now I'm hearing a

1 different thing. So two numbers could have been
2 evolving during this process; it was the number of
3 households evolving as well as the price of the bulb.

4 THE WITNESS: That's possible, because
5 I'm just looking at the average numbers, I'm looking
6 at rounded numbers here and that's not how we -- at
7 the end of the day, you know, we bought an exact
8 number.

9 EXAMINER BOJKO: So when you got an
10 estimate of 5.9, what -- do you have some kind of
11 documentation that shows your math of doing both the
12 price of the light bulb as well as the number of
13 households that you were going to deliver those light
14 bulbs to?

15 THE WITNESS: Do I have that here in
16 front of me? No.

17 EXAMINER BOJKO: Does it exist?

18 THE WITNESS: No. I don't have anything
19 broken down like that. I've got -- at the end of the
20 day, I could probably see exactly how many light
21 bulbs we bought. I do have that number. That's a
22 solid number. So that would be a number that we
23 would have.

24 But I didn't include that on the 11/24.
25 We're not really saying anything here about how many

1 light bulbs that was or how many customers that was
2 for. I was just trying to, you know, in a worksheet
3 form kind of give approximate numbers to what this
4 program was going to cost.

5 EXAMINER BOJKO: Okay. So how did you
6 get to \$5,996,250? How did you arrive at that
7 number?

8 THE WITNESS: Right. On this 11/24/09
9 when I did this, I would say I received this number
10 from the CFL vendor telling us how many light bulbs
11 he bought, knowing how I was getting some of these
12 other numbers, and that would have been the average
13 price times how many light bulbs.

14 EXAMINER PRICE: You believe this is the
15 actual cost of the light bulbs?

16 THE WITNESS: It's getting close to that,
17 by this date on 11/24 we should be close to the
18 actual cost. I don't know if this is the final
19 document. I didn't bring this, it was, you know,
20 dated -- we know the actual number. That's not a
21 question.

22 EXAMINER BOJKO: Okay. Where did you get
23 \$5.9 million, was that number given to you and you
24 inserted it into this document?

25 THE WITNESS: Yes.

1 EXAMINER BOJKO: And it was given to you
2 by your Power Direct vendor?

3 THE WITNESS: Yes.

4 EXAMINER BOJKO: Thank you.

5 EXAMINER PRICE: But it may not be the
6 final number.

7 THE WITNESS: It may not be the final
8 number.

9 EXAMINER PRICE: Because this is a draft
10 document.

11 THE WITNESS: Right.

12 EXAMINER PRICE: Which is why it says
13 "Draft."

14 THE WITNESS: Right.

15 EXAMINER BOJKO: But you didn't do the
16 calculation. You told me three hours ago that you
17 did the calculation.

18 THE WITNESS: But it's easy to do. These
19 are conversations we're having with these people,
20 it's not like they, you know, they send us an
21 invoice, we don't talk to them.

22 We were going over manufacturers and who
23 was going to charge us what and making decisions by
24 the minute on do we want to buy the Sylvania or the
25 GE, and how much does that change our price, and

1 okay.

2 So it's an approximate number, you know,
3 from the vendor, it's easily derived by the average
4 of the number we purchased at this time.

5 I don't know how to answer, I'm sorry.

6 EXAMINER BOJKO: Please proceed,
7 Mr. Poulos.

8 MR. POULOS: Thank you, your Honor.

9 Q. (By Mr. Poulos) Mr. Toth, you stated that
10 there's a more current document out there than this
11 document?

12 A. No. There's not a more current document.
13 I didn't say that. What I said was we would know --
14 no. We would know at some point how many light bulbs
15 we actually ended up purchasing at the end of the
16 day.

17 Q. Is there a more -- let me make sure I'm
18 clear with that, the GMT 11/24/09 the CFL Program
19 Committed/Spent, this document, there's a more
20 current document for the costs regarding this
21 original program?

22 A. I did this break -- no, I did this
23 breakdown for you when you asked me when we were
24 setting it. So I had no reason to do this kind of
25 document again.

1 Q. So when you say there's -- you have more
2 current information, there's no documentation of that
3 current information.

4 A. I would know the total CFL cost.

5 Q. And what is that?

6 A. I don't know that at this time. I would
7 have to look and see how many we ended up purchasing.
8 It would be approximately -- we're very close here.
9 This is towards the end. This is an approximate
10 number close to this.

11 EXAMINER BOJKO: Wait, what's "towards
12 the end" mean?

13 THE WITNESS: We weren't changing things
14 much after this point. We were getting down to we
15 knew how many households, we knew, you know, we had
16 some things in flux, but the program was evolving.

17 EXAMINER BOJKO: Then maybe you need to
18 explain to me a little more the time -- I thought the
19 launch of this program was October 10th.

20 THE WITNESS: Yeah. But we were looking
21 at some costs here of committed/spent, we weren't
22 finished negotiating the advertising expense, we
23 didn't have the warehousing expenses --

24 EXAMINER BOJKO: No, no, no, I'm talking
25 about CFLs right now.

1 THE WITNESS: I would know certainly at
2 this point in time how many we had purchased, but I
3 can't say for certain. This is just a draft of me
4 trying to gather the numbers together. So --

5 EXAMINER BOJKO: No. I'm asking you more
6 fundamental to help me through the timeline. I
7 thought the program was supposed to launch by
8 October 10th. So I thought for the approved, the
9 initial program, which to me in my mind was the
10 committed/spent and I've learned today you just used
11 "sunk" synonymous with that again today and I don't
12 think that's what you meant.

13 I mean, we talked about this before lunch
14 and you said "sunk" did not mean all of these costs,
15 because I thought some of the management and some of
16 the advertising and some of the stuff was going to
17 carry forward, especially the 630 and the 225, and I
18 thought they were going to use some of these costs in
19 the redesigned program, particularly the light bulbs,
20 so I thought I heard you say earlier today that it
21 wasn't sunk. This did not mean "sunk."

22 THE WITNESS: That's correct, I just said
23 sunk, that's not how I meant it. You're absolutely
24 right. Thank you for pointing that out to me.

25 EXAMINER BOJKO: Okay. So I thought that

1 the light bulbs were purchased for the October
2 10th launch.

3 THE WITNESS: They were.

4 EXAMINER BOJKO: Okay. What date would
5 that have had to have occurred in order to be for the
6 October 10th launch?

7 THE WITNESS: They would have been being
8 purchased and negotiated for purchase well in advance
9 for that. We wouldn't have bought any light bulbs
10 until approximately September 23rd when we got the
11 approval to move forward. So we didn't buy any until
12 September 23rd and that's when we started the
13 purchases.

14 EXAMINER BOJKO: And when would you have
15 finished the purchases?

16 THE WITNESS: We would have -- well, I
17 can't give you an exact date. We would have finished
18 the purchases in the middle of October.

19 EXAMINER BOJKO: Okay. So then I don't
20 understand with the 11/24 date why you're saying we
21 were getting to the end. Shouldn't the light bulbs
22 have already been purchased? So shouldn't that have
23 already been a finite number?

24 THE WITNESS: Yes. That may -- the light
25 bulb being a finite number -- see, I don't remember

1 putting all of this in and how I developed it and
2 it's just one sheet with no details, so I'm trying to
3 say we were negotiating these other things. The CFLs
4 is that finite cost for that -- I don't know.

5 EXAMINER BOJKO: Go ahead.

6 MR. POULOS: Thank you, your Honor.

7 Q. (By Mr. Poulos) Mr. Toth, this third page
8 of OCC Exhibit 17, the CFL Program Committed/Spent,
9 the \$8,916,640 there on that page, do you see that?

10 A. Yes.

11 Q. That total, isn't it true that all that
12 \$8,916,640 will come out of the pockets of
13 residential customers? Correct?

14 A. Ask me that again exactly.

15 Q. Isn't it true that the \$8,916,640 will be
16 paid by residential customers? Correct?

17 A. Well, I guess I don't know how to answer
18 your question. Are you saying that is the CFL, the
19 approved CFL program being recovered? Is that what
20 you're asking, are we recovering --

21 Q. Yes. Is it going to be recovered from
22 residential customers, the full amount?

23 A. No, not the full amount. I believe we
24 have a small commercial category, some of those
25 customers in there.

1 Q. For some of the customers that -- the
2 small business customers?

3 A. Yes.

4 Q. So between the small business customers
5 and residential customers they will be incurring --
6 they will -- all those costs will be collected from
7 them; is that correct?

8 A. Well, I'm not an expert in cost recovery,
9 but I will say yes, that all of those costs are
10 included, and those are the costs that -- if we're
11 referring to the items in my testimony, then yes.
12 Yes.

13 Q. Okay. I'll have you turn now to your
14 testimony on page 8.

15 A. I'm there.

16 Q. You've been asked by the Bench a couple
17 questions about these figures on this page earlier,
18 but I had a couple of clarification questions for
19 you. Let's start with the \$40,750 that's on line 6.
20 Do you see that?

21 A. Yes.

22 Q. How did you get that number? Where did
23 you get that number from?

24 A. The CFL vendor gave it to me after a
25 conversation I had with him just recently.

1 Q. Now, right above it on line 4 it talks
2 about an invoiced amount. Do you see that? At the
3 end of line 4.

4 A. Yes.

5 Q. So there is no invoice for that 40,750.

6 A. The invoice is for the 225.

7 Q. Would that be the same answer, that the
8 vendor gave you the amount of money for the 31,250?
9 Is that correct?

10 A. Yes.

11 Q. And for the 153,000?

12 A. Yes.

13 Q. Are these activities that are being
14 summarized under those figures, let's start with the
15 40,000, 40,750 for rescheduling, that figure, is that
16 something you have personal knowledge about? Were
17 you actually there or knew this was going on?

18 A. Yes, I did. We had many, many
19 conversations as the delays were coming in day after
20 day about what communities we were going to push back
21 and which ones we were going to accelerate in trying
22 to maximize their delivery time when their window was
23 compressing for days that we gave them as a schedule.

24 So I worked very closely with them on the
25 five occasions I mentioned in doing the redesign

1 work.

2 Q. You said you had conversations with them?

3 A. This was a daily process with us; yes.

4 MR. POULOS: Your Honor, I motion to
5 strike his response -- his testimony, line 6 to line
6 21 on page 8 as hearsay.

7 EXAMINER BOJKO: Mr. Lang.

8 MR. LANG: I think the witness just
9 explained that he has personal knowledge of all the
10 services that are described. He was there.

11 MR. POULOS: Your Honor, if I may, he
12 stated that he had personal conversations regarding
13 these activities.

14 MR. LANG: He was involved in the
15 decision-making. This is -- hearsay is after the
16 fact he calls up and says "What did you do because I
17 have no idea." He knows exactly what was done
18 because he was involved when it was done.

19 EXAMINER BOJKO: Motion is denied.
20 Please continue, Mr. Poulos.

21 EXAMINER PRICE: Excuse me, Mr. Poulos, I
22 just have a question. I hate to interrupt you, but
23 the \$225,000, let's assume hypothetically that the
24 initial program had rolled out, everybody was happy,
25 the bulbs were delivered, was your vendor bearing the

1 risk on that? If it had taken twice as long as they
2 had estimated, they still were just going to bill you
3 \$225,000?

4 THE WITNESS: Yes.

5 EXAMINER PRICE: If it had taken half the
6 time they estimated, it would have been their profit,
7 right?

8 THE WITNESS: Yeah.

9 EXAMINER PRICE: They were paid for
10 performance, not by the hour, not by the bulb
11 delivered, this was a lump \$225,000 sum; is that
12 correct?

13 THE WITNESS: Yes.

14 EXAMINER PRICE: Okay. And so when you
15 decide to redo this program, or when the program was
16 canceled -- poor question.

17 To the best of your knowledge, when the
18 program was delayed, cancelled, whatever you want to
19 say, was FirstEnergy still contractually obligated to
20 pay your vendor the \$225,000?

21 THE WITNESS: Yes.

22 EXAMINER PRICE: I'm done. Thank you.

23 Thank you, Mr. Poulos.

24 MR. POULOS: Thank you.

25 Q. (By Mr. Poulos) Have you provided that

1 contract to the collaborative or any of the parties
2 in the collaborative?

3 A. No.

4 Q. The first time that we have seen these
5 statements with these figures was in the testimony,
6 correct?

7 A. The ones on page 8?

8 Q. Yes; thank you.

9 A. Yes. I showed them on -- the 225 date is
10 indicated -- or, the 225 number is indicated on other
11 "pre" documents that date this, but the breakdown was
12 from this document page 8.

13 Q. So when you're referring on line 1 and 2
14 to "one line item of costs provided to the
15 Residential Subcommittee participants," that's just
16 that figure, right? That's all you provided to the
17 residential subcommittee was just one figure, 225,
18 correct?

19 A. Yes.

20 Q. I'm going to have you turn to a different
21 subject --

22 EXAMINER PRICE: Before you leave, now I
23 have a follow-up, I was just making sure you were
24 done on this topic.

25 The 225 -- not that you're committed.

1 You can ask all the questions you want.

2 MR. POULOS: Thank you.

3 EXAMINER PRICE: The 225, you say you
4 were contractually obligated to pay that. So the
5 three figures on there, 40 -- 40,750, 31,250, and
6 \$150,000, those are just to illustrate -- are they
7 just to illustrate that their renegotiated contract
8 was reasonable?

9 THE WITNESS: Yes. What it's showing is
10 the scope of work was changing.

11 EXAMINER PRICE: The scope of work was
12 changing.

13 THE WITNESS: And they were providing
14 additional services to us, many, many things out of
15 the scope that we weren't getting additional charges
16 for, and when I asked for a breakdown of "what were
17 you working on?" You know, I had listed all of these
18 and they helped me kind of put them in the buckets
19 like the three categories.

20 EXAMINER PRICE: Okay. Thank you.

21 Thank you, Mr. Poulos.

22 Q. (By Mr. Poulos) I'm sorry, Mr. Toth, when
23 did you say you had the conversation with that vendor
24 to get that information?

25 A. I didn't say. I had it after the

1 February 11th settlement discussions.

2 Q. At that point when you had that
3 conversation, did it -- strike that.

4 I want to have you turn to page 2 of your
5 testimony, lines 17 and 18.

6 A. I'm ready.

7 Q. Looking at line 2, excuse me, line 17 and
8 18, you're talking about Mr. Sawmiller's testimony
9 regarding the 427,000 of the \$1.8 million of
10 advertising costs. Do you see that?

11 A. Yes.

12 Q. Now, it's my understanding that that
13 number is now 405,000; is that correct?

14 A. It's \$405,140.

15 Q. And you can find that number by looking
16 at one of your attachments to your testimony,
17 correct?

18 A. It is there. It was also in the
19 documentation we sent on February 11th.

20 Q. And February 11th was the first day you
21 provided this documentation to the other parties,
22 correct?

23 A. Which documentation?

24 Q. Exhibit GMT-1.

25 A. Are you referring to the invoices

1 attached?

2 Q. Yes.

3 A. First time I sent the invoices.

4 Q. That would be to the -- when I refer to
5 "the parties," that includes the residential
6 subcommittee parties as well.

7 A. February 11th.

8 EXAMINER BOJKO: Excuse me, could you
9 direct me to the 405 number in the attachments? Just
10 so we're clear then, GMT-1 exhibit attached to your
11 rebuttal testimony shows the reduced advertising and
12 marketing expenses, and that's the line that was
13 427,140 in both of the draft CFL committed/spent
14 breakdown exhibits that we've been talking about
15 today?

16 THE WITNESS: That's correct.

17 EXAMINER BOJKO: Thank you.

18 Q. And this \$405,140, this is for
19 advertising -- excuse me, preadvertising or
20 premarketing for this CFL, the original CFL program.

21 A. The approved CFL program, yes.

22 EXAMINER BOJKO: I'm sorry, GMT-1 is for
23 the approved CFL program?

24 THE WITNESS: Yeah, this is for the
25 approved CFL program. The original.

1 EXAMINER PRICE: When you say "approved,"
2 you mean initial.

3 THE WITNESS: Original. The first.
4 Yeah.

5 EXAMINER PRICE: Okay.

6 EXAMINER BOJKO: And the reduced
7 reflects, however, the approved costs that you -- or
8 the costs for the approved CFL program that you
9 renegotiated or reduced because it did not go
10 forward; is that accurate?

11 THE WITNESS: Yes. We brought the price
12 down based upon negotiating the fees, the charges,
13 looking at the actual dates an ad might have run.
14 There were numerous things that helped us draw the
15 price down.

16 EXAMINER BOJKO: Can you give us a date
17 that's associated with GMT-1?

18 THE WITNESS: This would be for the
19 marketing and advertising expenses associated with
20 the prelaunch and the launch of the program, so I --

21 EXAMINER BOJKO: No. I'm sorry, I just
22 mean which date did you create this document?

23 THE WITNESS: Oh.

24 EXAMINER BOJKO: All your other ones have
25 a nice little "GMT" date at the bottom.

1 THE WITNESS: I know. This was created
2 for the February 10th and 11th settlement
3 discussions and it was, the final one was sent on
4 February 11th.

5 EXAMINER BOJKO: Thank you.

6 MR. POULOS: Thank you, your Honor.

7 Q. (By Mr. Poulos) Looking at these costs on
8 this page 1 of Exhibit GMT which is the one that
9 itemizes the 405,000, there are eight costs on there,
10 correct? Eight items.

11 A. Yes.

12 Q. As you look through the invoices, the
13 invoices -- let me take one for example. The next
14 page is Artists -- Artists, Incorporated, I think.

15 A. Yes.

16 Q. And that invoice shows \$1,616 on the
17 bottom; is that correct?

18 A. Yes.

19 Q. And the date of that is 9/30/09. Is that
20 the date that you received it or the date that the
21 actual layout energy efficient light bulb storyboard
22 was created? If you're aware.

23 A. I'm not sure if that's the date we
24 received it or the date the invoice came in.

25 Q. Looking at the second one, the IMR, Inc.

1 A. Yes.

2 Q. This invoice states a date of 9/29/2009,
3 correct?

4 A. Yes.

5 Q. And these costs are specifically broken
6 down both on this page and the next page as to what
7 specific items were received by the company or at
8 least the services that were received, correct?

9 A. No.

10 Q. What is the second, the back page?

11 A. The back page represents the amount of --
12 represents the amount of media buys plus some agency
13 support fees for the campaign.

14 Q. The amount on the back side is 227,655.
15 Do you see that?

16 A. I do see that.

17 Q. And that figure, is that figure
18 incorporated into your \$405,140?

19 A. That figure is on the invoice previous to
20 that.

21 Q. Okay. The 238,341?

22 A. The invoice for 238,341 is the IMR, Inc.
23 advertising invoice on the previous page. So it's
24 227 represented in the first two lines, and then the
25 third line of the invoice dated 9/29 is \$10,000 for

1 support fees.

2 Q. I'm sorry, I didn't understand that. The
3 \$238,341 on the bottom of this page which says "IMR,
4 Inc." at the top.

5 A. Yes.

6 Q. This is the radio campaign, correct?

7 A. This is radio.

8 Q. Okay. Is this 238,341 part of the
9 \$405,140 that's on the itemized list of all the
10 reduced advertising and marketing expenses?

11 A. It is.

12 Q. And is this the whole number or was this
13 a negotiated down number?

14 A. This was negotiated down and is included
15 in the IMR, Inc. advertising of 279,115 supported by
16 a second IMR invoice a couple more pages back of
17 510,792, those combined and then negotiated down to
18 279,115.

19 Q. Let me ask you this, were there any other
20 numbers that were negotiated down besides those two
21 invoices you just pointed out?

22 A. Let me look.

23 The IMR invoices were the ones that were
24 negotiated down.

25 Q. All the others are strictly what they are

1 listed for, correct?

2 A. Yes.

3 Q. Okay. Looking at the -- I want to talk
4 about both the IMR ones but looking at the newspaper
5 campaign.

6 A. Okay.

7 Q. It says "IMR, Inc." at the top, it's
8 dated 9/29/2009, correct?

9 A. Yes.

10 Q. And it says under description "Newspaper
11 campaign."

12 A. Yes.

13 Q. Isn't it true that FirstEnergy received
14 this before the November collaborative meeting
15 started?

16 EXAMINER BOJKO: I'm sorry, which one are
17 you asking about that was received before?

18 MR. POULOS: The invoice for the IMR,
19 Inc. regarding the newspaper campaign.

20 EXAMINER BOJKO: Okay. Thank you.

21 A. Yes. These were from the original
22 approved CFL campaign.

23 Q. So all these would have been received
24 before the November residential collaborative
25 meetings started, correct? All the invoices included

1 in this packet.

2 A. Yes.

3 Q. Going back to the newspaper one, I want
4 to know some basic information about these
5 advertisements, if you could look at the second page
6 or the back side, the one that on the back side has
7 a, just a whole list of newspapers it appears. Do
8 you see that?

9 A. Yes.

10 Q. Could you describe what the Cleveland
11 Plain Dealer and the total net cost of \$177,601, what
12 were the services provided for that \$177,000?

13 A. I believe this was for the media buy.

14 Q. What do you mean you "believe"? Is there
15 someone else who would know? Is there some other
16 information that you have?

17 A. I don't have any additional information.
18 Just going by the two pages it clearly states in the
19 front that it's for print magazine and newspaper
20 advertising, so the 4601 Cleveland Plain Dealer
21 177,000 I would conclude that that's for the print
22 buy, the media buy, in the Plain Dealer.

23 Q. Do you know how many ads, I guess you --
24 strike that.

25 Part of your answer said you believe and

1 I'm curious to know if you know how many ads or type
2 of ads this line item, this first line item for the
3 Cleveland Plain Dealer would have bought.

4 A. Well, it's for print ads because it's a
5 newspaper.

6 EXAMINER BOJKO: Did you see the ad
7 campaign? Did you see the design?

8 A. Yes, I did. And so you can see some
9 samples of the ad in very small little boxes on some
10 of the other services rendered by other vendors. But
11 this was for the newspaper campaign.

12 Q. And what do you mean by "the newspaper
13 campaign"?

14 A. It was print ads for the Plain Dealer.

15 Q. Was it one ad or was there multiple days
16 of ads?

17 A. Yeah, this would have been for an entire
18 campaign. It would have been for -- it would have
19 been for so many times it got printed in each
20 newspaper. So it's kind of a multiple print day
21 campaign. So it would go on.

22 Q. That's what I'm looking for. I'm looking
23 for do you know how long the campaign was?

24 A. No, I don't know how long it was intended
25 or how many print buys that included.

1 Q. Do you know if the campaign had started?

2 A. The campaign had started.

3 Q. And how many days had it run?

4 A. I don't know the exact number.

5 Q. Do you know how many days that -- do you
6 know if days were canceled in the run?

7 A. Many -- most of the days, many of the
8 days were canceled, that's how the price came down
9 from a combined 740 or 50,000 down to 279,000. We
10 were able to cancel radio and TV -- radio, pardon me,
11 radio and print ads and then negotiate down any
12 cancellation charges.

13 Buying media is buying a contract, you
14 get a better deal the more you buy, so when we
15 canceled early, we were being charged additional
16 costs as if we only had a shorter media buy than we
17 actually contracted for and we were able to negotiate
18 with this vendor to help reduce those cancellation
19 charges and fees because we kind of lost our
20 economies of scale by the cancellation.

21 Q. When you're talking about vendor, are you
22 talking about the Cleveland Plain Dealer or IMR?

23 A. We would have negotiated with IMR. They
24 would have then, in turn, worked with the Plain
25 Dealer.

1 Q. And did you negotiate with IMR or did
2 someone else at FirstEnergy?

3 A. Someone else in FirstEnergy would have
4 done that.

5 Q. Do you have any of the specifics
6 regarding any of the campaigns that were run for
7 these newspapers listed on this back page of the IMR
8 invoice?

9 A. What are you looking for?

10 Q. The specifics of when they started or
11 when they were stopped.

12 A. No, I don't have that with me.

13 Q. Going back to the IMR radio spots, the
14 other one that you said was a negotiated invoice.

15 A. Yes.

16 Q. On the back page of this invoice it
17 states the schedule dates starts the weeks of 10/5,
18 do you see that, 10/12, 10/19 to 10/27?

19 A. I do.

20 Q. So if -- this radio spot had just started
21 like two days, three days before they were cut off?
22 Is that correct?

23 A. No, I don't know the date we cut it off.

24 Q. So this is something that FirstEnergy
25 negotiated with IMR but you did not?

1 A. I personally did not negotiate this with
2 IMR.

3 EXAMINER BOJKO: I'm sorry, did you say
4 that they stopped or didn't stop?

5 THE WITNESS: They stopped.

6 EXAMINER BOJKO: When they stopped the
7 marketing.

8 THE WITNESS: I don't know what date.

9 EXAMINER PRICE: Would it have been
10 around, I think you said in your testimony that you
11 got the order to cease on October 18th, would that
12 have been --

13 THE WITNESS: That would have been a date
14 that we told our vendor -- I can only speculate on
15 when in October it was that we stopped running radio
16 spots and how quickly they actually turned off. But
17 certainly it would have been in the second week of
18 October.

19 MR. POULOS: Thank you.

20 Q. (By Mr. Poulos) Mr. Toth, do you know how
21 many of the radio spots actually ran?

22 A. No, I don't know.

23 MR. POULOS: Your Honor, if I may have a
24 few minutes, I may be just about finished.

25 EXAMINER BOJKO: Sure.

1 Let's go off the record.

2 (Off the record.)

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

5 Please proceed.

6 MR. POULOS: I have no further questions
7 at this time. Thank you.

8 EXAMINER BOJKO: Mr. Lindgren, do you
9 have any questions?

10 MR. LINDGREN: No questions, your Honor.

11 EXAMINER BOJKO: Any redirect?

12 MR. LANG: Can we have five minutes or
13 less?

14 EXAMINER BOJKO: Sure. Let's go off the
15 record.

16 (Recess taken.)

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

19 Mr. Lang.

20 MR. LANG: Thank you, we have no
21 redirect, your Honor.

22 EXAMINER BOJKO: Thank you.

23 - - -

24

25

EXAMINATION

1
2 By Examiner Bojko:

3 Q. I have a couple questions on your
4 testimony. You didn't go page by page previously so
5 I want to try to give you a page reference and make
6 it go a little quicker.

7 If you look at page 3, you're talking
8 about the timeline here, I just want to make sure I'm
9 straight on the timeline. The initial rollout was
10 October 10th, right?

11 A. Yes.

12 Q. And then the Commission asked FirstEnergy
13 to stop the rollout on October 7th; is that right?

14 A. Right.

15 Q. But what you call the staging, that
16 didn't stop until October 18th.

17 A. Correct.

18 Q. Okay. And what happened between the
19 10th and the 18th? Is this when you started
20 re -- you switched your staging, you were restaging?

21 A. Right. We were restaging and staging.
22 That's when we were taking everything that was
23 prestaged and sorted and ready for door-to-door
24 delivery and started to take it off the floor and put
25 it into a warehousing type situation on pallets and

1 large boxes that could be put away safely.

2 In doing so we also did an inventory and
3 separated the items and condensed everything.

4 MR. LANG: Your Honors, the question you
5 were asking, you asked him between -- what was
6 happening between October 10 and October 18th.

7 EXAMINER PRICE: Yes.

8 EXAMINER BOJKO: Or October 7th when
9 the Commission said stop.

10 MR. LANG: October 7th and October
11 18th.

12 EXAMINER BOJKO: Correct.

13 Q. Which is only three days before the
14 program was supposed to roll out.

15 A. Yeah.

16 Q. Is your answer the same with that
17 clarification?

18 EXAMINER PRICE: Are you sure?

19 THE WITNESS: Go ahead.

20 EXAMINER PRICE: Between October 10th
21 and October 18th when you ceased operations, what
22 were you doing?

23 MR. LANG: When it was suspended.

24 EXAMINER PRICE: When it was suspended.

25 MR. LANG: Right.

1 THE WITNESS: At that period of time we
2 were ramping up, we were putting more into staging
3 because we were losing days in our window to deliver.
4 So we weren't -- at this point we thought we were
5 still going to deliver, but all we were losing were
6 days to actually do the work.

7 So the vendor was prestaging more
8 materials and getting ready to deliver more houses in
9 a shorter period of time. So as the materials were
10 coming in, we were escalating.

11 EXAMINER PRICE: And so then at what
12 point did you begin repackaging for long-term
13 storage?

14 THE WITNESS: That was on the 18th.

15 Q. (By Examiner Bojko) Now I'm even more
16 confused.

17 Despite the suspension on the 7th, you
18 were -- I'll say "you," the company, thought, and
19 despite all the publicity that was occurring at that
20 time, thought that the Commission was going to
21 restart the program within the next couple weeks?

22 A. There were ongoing conversations, so we
23 were looking for alternatives with all the parties.
24 So at that point we were still thinking that was
25 still an option to us. So we had to be prepared for

1 that. It was ongoing conversations with everybody
2 included. So I was still being prepared.

3 EXAMINER PRICE: I'm curious, during that
4 interim period between October 10th and October
5 18th, were you running advertisements and other
6 marketing or had you suspended that?

7 THE WITNESS: I am not really sure if
8 everything was stopped and canceled. I would --
9 can't really say. So I'm not certain.

10 EXAMINER PRICE: Thank you.

11 Q. Okay. And then if you look at page 11
12 going along this same line, you talked about
13 receiving the hold order. Who did that come from?
14 What are you referencing? Why on the 18th?

15 A. That was a decision made in part with the
16 vendor. They came back to us and said "We're pushing
17 into the holidays," which is something they didn't
18 want to do, so they were coming back to us, and then
19 on that October 18th it was relatively clear to all
20 of us that this was not going to get launched as a
21 door-to-door delivery program the way it was approved
22 and that it looked pretty certain that we were going
23 to go back and redesign it.

24 And that's really just a line in the
25 sand, a day that we said we're not going to be able

1 to go any further, and we had to make a decision.

2 Q. On that same page on line 18 you talk
3 about a cost of 16 cents per bulb and you say that's
4 for the handling, packaging, repackaging, and
5 unpackaging. So 16 cents per bulb included the
6 original packaging and then the repackaging?

7 A. Yes. That included all of that.

8 Q. So the original packaging is included in
9 that 16 cents per bulb.

10 A. Yes. That included -- really I was just
11 trying to make a simple handling per bulb to show
12 that the services that we received were reasonable
13 and something we couldn't provide for ourselves and
14 needed to have done.

15 EXAMINER PRICE: Is that calculation
16 then, 16 cents per bulb times 3.75 million bulbs
17 equals the 630,000?

18 THE WITNESS: That's correct. It's the
19 total number.

20 Q. I'm sorry, I really don't want to go into
21 these cost numbers again, but I thought you told me
22 that the 630 also includes future pieces of the
23 redesigned program.

24 A. The 630,000 was certainly for all the
25 prestaging and preparation and getting ready to

1 deliver. It was for the escalation period between
2 the 10th and the 18th.

3 Upon the 18th it was then for all those
4 things we couldn't do for ourselves, which was put
5 all those items back in storage, do the inventory, do
6 the repacking, and kind of the preparation work for
7 what was going to be the redesign.

8 So we had to take those -- if you recall,
9 take the CFLs off the floor, out of the bags, put
10 them away for storage, secure them, get ready for
11 the, what ultimately ended up being the redesigned
12 program.

13 Q. Okay. And you used the word "paid."
14 Does that mean 630 has already been paid for those
15 services?

16 A. Yes.

17 Q. Because, again, I thought we talked about
18 the going forward of the amount and I thought
19 Mr. Price asked you about the 630 and the 225 and
20 that also being an amount that the consultants would
21 receive on a going-forward basis for any redesigned
22 program or anything necessary for the new program
23 that hasn't even started yet.

24 A. We're not going to get another invoice
25 for \$630,000 to do all over again. This certainly

1 was out of scope from the approved plan.

2 EXAMINER PRICE: Let's ask more simply:
3 Will your vendor perform additional services for
4 which they're being compensated part of that 630,000
5 as part of the redesigned program. Do they have
6 anything left to do?

7 THE WITNESS: For this portion, this
8 personnel portion --

9 EXAMINER PRICE: Yes.

10 THE WITNESS: -- everything's been done.
11 It's finished. Everything is prestaged and ready for
12 the redesigned program.

13 EXAMINER PRICE: You will receive no more
14 services from Power marketing for that \$630,000.

15 THE WITNESS: Correct.

16 EXAMINER PRICE: Under any definition of
17 sunk, that's a sunk cost now.

18 THE WITNESS: It included services
19 prestaging and getting ready for the original
20 program, it did have some services in there getting
21 ready for -- or, getting ready for storage that we're
22 going to use in the redesigned program.

23 EXAMINER BOJKO: Maybe that's a key
24 point. I thought you told me that you had the two
25 light bulbs per bulb package and then you restaged,

1 repacked to be in more of a bulk kind of distribution
2 before you redesigned the program.

3 So now are you telling me that your
4 redesigned program just happens consistent with the
5 packaging you did in the interim?

6 THE WITNESS: That's exactly what I said.
7 When we put it into the pallet form it fits perfectly
8 into us sending them to retailers, so that's
9 exactly -- we separated them by manufacturer, we took
10 inventory of them and we prestaged them for bulk
11 delivery. We weren't sure at the time what bulk
12 delivery was going to mean, we just knew it wasn't
13 going to be something door to door.

14 Q. Now I'm asking you, you have this
15 redesigned program, is it consistent with how you
16 repackaged the bulk delivery?

17 A. Yes. It fits perfectly into the way
18 we've done it. So it's ready to go out the door.

19 Q. As preposed in your portfolio plan.

20 A. In the redesigned, yes.

21 EXAMINER PRICE: But not all of your
22 redesigned program involves bulk shipment, some of
23 them involves sending bulbs to more customers.

24 THE WITNESS: It does.

25 EXAMINER PRICE: So how will you

1 accommodate that with your bulk packaging?

2 THE WITNESS: Right. It does, in
3 breaking it down, I didn't know you wanted that level
4 of detail, but --

5 EXAMINER PRICE: We know way too much
6 about this.

7 THE WITNESS: We had it broken down into
8 customers that -- who were getting door-to-door
9 delivery which is in bags, then we had customers who
10 were receiving their CFLs in the mail that was
11 prestaged in a box.

12 If the items were in the box, we did not
13 disassemble that. What we did with those is directly
14 put those on pallets. It was the single bulbs which
15 was the majority, the vast majority, which were set
16 up for that way.

17 So when I was redesigning the program, I
18 was very sensitive to not overcommit to mail to
19 customers, to mail more than I had boxes for from the
20 original approved CFL program. So I didn't have to
21 go back and buy more boxes.

22 EXAMINER PRICE: So you anticipate
23 mailing the same number in the revised program as you
24 anticipated mailing in the initial program.

25 THE WITNESS: Let me make sure that I

1 know exactly what you're asking me. I will not be
2 sending more packages. I may send more light bulbs
3 in those boxes, but the boxes themselves that --

4 EXAMINER PRICE: Okay.

5 THE WITNESS: So that fits.

6 EXAMINER PRICE: Okay. But at the same
7 time, just so the record's clear, for the 630
8 personnel services and the \$225,000 management
9 services, there is nowhere some magic document that
10 says X number of employees put in Y number of hours
11 times an hourly rate and it equals \$630,000; is that
12 correct?

13 THE WITNESS: That's correct. There's
14 not.

15 EXAMINER PRICE: Okay. And that's for
16 both line items that's correct.

17 THE WITNESS: Correct.

18 Q. (By Examiner Bojko) If we go back to your
19 statement at the top of page 11, you say -- we're
20 going back to this interim what you call a suspension
21 period, October 10th to October 18th, and you
22 said that while it was suspended "the vendor's
23 employees accelerated prestaging of additional
24 material for delivery because of the anticipated
25 shorter delivery window."

1 A. Yes.

2 Q. I guess I'm just curious, I believe you
3 said that you thought that maybe the program could
4 restart; is that right?

5 A. Yes.

6 Q. Okay. And I guess my question is would
7 you have restarted the program without a guarantee of
8 cost recovery?

9 A. This program was -- this is the approved
10 CFL program.

11 Q. Well, are you aware that there was some
12 discussion of what costs were or were not actually
13 approved in the October 7th letter, I believe, that
14 actually suspended or asked FirstEnergy to suspend
15 the program, had a discussion of the different costs
16 whether it be the light bulb or the lost distribution
17 revenues cost? That's what I'm referencing. Are you
18 familiar with that at all?

19 A. Not enough to really discuss it.

20 Q. Okay.

21 EXAMINER PRICE: In your marketing
22 materials discussion on page 1 and the Exhibit GMT-1
23 I just have a couple questions. One is you have not
24 attached as part of GMT-1 the revised negotiated-down
25 invoices for IMR, have you?

1 THE WITNESS: No.

2 EXAMINER PRICE: You just have the
3 original invoices and then on GMT-1 just a summary of
4 what the negotiated amount is; is that correct?

5 THE WITNESS: What we paid, yeah.

6 EXAMINER PRICE: Okay. And then what was
7 the three-panel brochure from the PD invoice for
8 \$120,000? I didn't see an invoice for that one.
9 That was in Power Direct, right?

10 THE WITNESS: It was. And if you see it,
11 on that large Power Direct invoice, it's the one with
12 the star by it in the left-hand column, three-panel
13 brochure, fold-up glossy.

14 EXAMINER PRICE: Okay. Thank you. What
15 were you going to do with that?

16 THE WITNESS: That is a usage, kind of
17 shows you --

18 EXAMINER PRICE: No, I mean how were
19 you --

20 EXAMINER BOJKO: Was in the packaging?

21 THE WITNESS: Yeah.

22 EXAMINER PRICE: How were you going to
23 distribute it?

24 THE WITNESS: It was in the packages.

25 EXAMINER PRICE: Thank you.

1 Q. (By Examiner Bojko) Can we turn to page 4
2 of your testimony and, again, I'm sorry to take you
3 down the cost item again, but on line 19 you have yet
4 a different number and this says "total costs
5 incurred of the approved CFL program." And I thought
6 from your definition of "sunk" it was the cost
7 approved from the approved, but now I've learned that
8 this does not mean the sunk costs, this means the
9 total that you've already spent is what it says. Is
10 that right?

11 A. Yes.

12 Q. Okay. Now, why is this back to 9.1 when
13 I thought on 11/16 we were at 9.1 -- \$9,160,890 and
14 then I thought on 11/24 as we discussed things got
15 reduced and we were down to \$8,916,640, and now your
16 testimony that was filed on March -- when was this
17 filed, March 4th? Thursday?

18 MS. KOLICH: Thursday.

19 Q. March 4th, now, why are we to a
20 completely different number, we're not even on those
21 two numbers? Now we're at \$9,113,856?

22 A. This would represent a couple things, one
23 for certain, this would represent my most up-to-date
24 warehousing cost as of the day I put the number in
25 there. So this is a current warehousing number.

1 That's going to continuously go up every month by
2 \$30,000. So that's an update of the number.

3 And then -- that would be I think the
4 best representation of why the numbers changed.

5 Q. Okay.

6 EXAMINER PRICE: That one issue is the
7 best representation of why it was changing?

8 THE WITNESS: Yes.

9 Q. Okay. If you can go to page 6 now, lines
10 3 to 7 you talk about "Under the Redesigned CFL
11 Program, the Companies anticipate that they will need
12 to warehouse the CFL bulbs for up to 24 months."

13 Do you have an estimate of that today?

14 A. An estimate of the cost?

15 Q. No, an estimate of the duration of the
16 warehouse.

17 A. Sure. In the redesigned program that we
18 developed through the collaborative we designed the
19 program to meter out or get the light bulbs into the
20 hands of the customers over a 24-month period, so we
21 wrote it as a two-year plan. Whereas in the past
22 this was, you know, something we were trying to get
23 out in days. This is something that we're trying to
24 ease the customer into and we expect it to take up to
25 24 months.

1 Now, it certainly could go under that,
2 but this is what we're forecasting.

3 Q. And wouldn't -- is it fair to say that
4 maybe the warehousing costs might change based on the
5 amount of storage needed a year from now, two years
6 from now?

7 A. Yeah, it certainly would. As the light
8 bulbs leave the warehouse and we condense the storage
9 needs even further, that will bring that cost down.

10 Q. And then you were talking about -- you're
11 responding to OCC Sawmiller's questioning of
12 \$120,000, which is a time period I believe of four
13 months, and you state in there that you couldn't have
14 distributed them by the end of March 2010 even if you
15 would have started the program I believe -- well, is
16 it your understanding that Mr. Sawmiller's
17 disagreement with the costs were really focused
18 around the difference between the November 15th and
19 the -- no. November 30th and
20 December 15th dates? Is that what you were
21 responding to?

22 Or a time period -- wasn't OCC's concern
23 that you asked the Commission to delay the
24 implementation of this program and they wanted it to
25 begin on November 30th?

1 A. They did. And what I'm referencing here
2 is we asked for the delay at November 30th and got
3 until December 15th, and Mr. Sawmiller is saying
4 had we started the program even at the end of
5 November, the 15 days really makes no difference, and
6 we wouldn't have delivered the bulbs before the end
7 of March anyway. We rewrote this with the
8 collaborative to be a 24-month program.

9 Q. OCC's witness talked about a four-month
10 delay, I guess it was from December through March.
11 And your response is that even under the redesigned
12 program they wouldn't have been out of the warehouse
13 by the end of March; is that right?

14 A. That is correct. And the program hadn't
15 been approved at that point.

16 Q. Okay.

17 EXAMINER PRICE: But it still hasn't,
18 you're still talking about a 24-month approval from
19 whenever the Commission either approves your motion
20 for fast track or the overall application.

21 THE WITNESS: We are. With the knowledge
22 that, like we discussed, the warehousing costs will
23 be coming down as the bulbs go out.

24 Q. Well, you're in essence stating that --
25 so the agreed-upon redesigned program is tied to the

1 24 months, that's tied to the actual program that
2 you're proposing.

3 A. It is.

4 Q. Okay. Obviously, with what you just
5 stated, if more customers request the bulbs or you
6 get rid of them faster, that time is going to
7 decrease.

8 A. Right, exactly.

9 Q. Okay. And obviously the sooner the
10 program starts, the less warehousing costs you're
11 going to have because it's two years estimated from
12 the date of the start of the program.

13 A. Yes, that is true, as long as it's
14 acceptable to the customer. And that's why we put
15 the delay in, so after talking with the collaborative
16 members we decided to take that two weeks and include
17 it in our portfolio so we could combine that CFL
18 program with all the other residential energy
19 efficiency programs and make it kind of a universal
20 offering for the customers to help conserve and save
21 and draw less attention to a very cost-effective CFL
22 program and make it so we had other programs to
23 offer.

24 EXAMINER PRICE: There was not universal
25 agreement in the collaborative to go that way.

1 THE WITNESS: There was general
2 agreement. There was not universal agreement. We
3 knew that, after talking it over with the
4 collaborative, many of the members were in agreement
5 and said that is the way to help ease it into the
6 public and to try to make sure that we weren't having
7 these bulbs in other warehouses for 36 months or 48
8 months because no one wanted them.

9 And we've got a pretty good feeling from
10 that based off of our December 15th when we filed,
11 we also put out a press release that showed our
12 entire portfolio and that press release did not get a
13 lot of push back. It was very positively seen.

14 So we got a little barometer reading of
15 what the customers thought of when we put it into a
16 portfolio plan and we didn't receive push back from
17 the customers or the press.

18 So it kind of reconfirms to me as really
19 as a feeling that that was the right decision to
20 make.

21 EXAMINER PRICE: Let me rephrase my
22 question. OCC did not agree with rolling this into
23 the portfolio plan.

24 THE WITNESS: I can't be certain what the
25 OCC's position was.

1 EXAMINER PRICE: Well, if you look at
2 Exhibit OCC 16, page 2, meeting notes, 3c, "Comments
3 from Collaborative members," it says "Greg Poulos,
4 OCC: Indicated there was some concern expressed in
5 the residential sub-committee with including the CFL
6 in the portfolio plan."

7 THE WITNESS: So he might have had
8 concerns.

9 EXAMINER PRICE: Yes. I mean, that
10 doesn't sound like agreement.

11 THE WITNESS: No.

12 Q. (By Examiner Bojko) Well, what did you
13 mean when you wrote the sentence there was agreement
14 although not universal agreement?

15 A. Yeah, that some of the parties were in
16 agreement saying that that would ease the customers'
17 concerns and certainly help, I think in that same
18 document Dave Rinebolt points out that it's helpful
19 to do that or useful to do that.

20 Q. Okay. On that same, since Mr. Price took
21 us there I'll go back to my other questions first,
22 later. We'll stick talking about the bottom of page
23 6 where you're talking about the agreement although
24 not, you know, universal agreement about exactly what
25 to do with the CFL program.

1 I see two issues in this statement and I
2 guess my question is did you mean to state that there
3 was general agreement although not universal
4 agreement that the company should not rush to
5 implement the new program without Commission
6 approval?

7 So to me I see two issues. Was the issue
8 put before the collaborative to do it with or without
9 Commission approval, or was -- and/or was it put
10 before the collaborative to do it with or without the
11 entire portfolio plan?

12 A. And it was the "and" of your "and/or." I
13 say on line 20 that you pointed out to me that we did
14 not want to rush without Commission approval, and it
15 was generally agreed upon that it would be more
16 helpful to the customer and more receptive if we put
17 it in the portfolio plan.

18 Q. So the agreement only went to the latter
19 part of the question of whether it should be in- or
20 outside the portfolio plan.

21 A. The agreement with?

22 Q. Well, were there any parties that
23 disagreed with waiting for Commission approval?
24 Let's put it that way.

25 A. No.

1 Q. But there were parties that disagreed
2 with incorporating it into the portfolio plan.

3 A. Yeah, they had concerns with it, yes.

4 Q. Okay. Now, you just spent a few minutes
5 talking to Mr. Price about you thought it would be
6 better, the company thought it would be better as
7 well as other collaborative members to push it into
8 the portfolio plan, and you believe that thinking was
9 justified, based on the first press release anyway
10 that you've all issued, right?

11 A. Yeah. I don't know if that press release
12 justified it, but it certainly was a positive feeling
13 that I think the customers would be more receptive to
14 it in that form.

15 Q. My next question is why fast track? Why
16 pull it back out of the portfolio plan filing and
17 highlight it again?

18 A. Because the fast track includes, of the
19 residential programs that we could launch in a given
20 period of time, the fast track includes the home
21 energy analyzer, the appliance recycling program, and
22 the CFL program. So it's bundling with three into
23 one, which I think is the three things that the
24 customers would certainly be most interested in.

25 The other programs are, you know, new

1 home construction program and some other ones that
2 will develop after the entire portfolio is approved.

3 But those three I really think are ones
4 that the customers will embrace.

5 Q. So you really think that if approval of
6 the CFL program is done through the fast track, that
7 there will not be a renewed sense of customer outrage
8 or concern with this CFL program.

9 A. I certainly hope not. This is as well
10 thought out as I think, given what happened in the
11 past to us, that after the December 15th news
12 release, after customers being acclimated to this
13 thing, it's not brand-new anymore, we bundle it with
14 these other very popular programs, I think it's going
15 to be well received.

16 Q. Being as an expert in the field have you
17 continued to read the newspaper articles about this?

18 A. And the newspaper articles have
19 continuously improved in saying things like they're
20 necessary and they're important to have and we're
21 really seeing or feeling a change in the environment.

22 It may not be the most popular thing ever
23 launched, but I think the way it's designed at
24 retail, the way we're going to help the low-income,
25 the way we're going to use it for new movers and

1 other people, the way we designed it with the help of
2 the collaborative, I think customers will respond
3 positively.

4 Q. Would it have any relation to the
5 question of at what cost?

6 A. Now the cost is combined in the entire
7 portfolio.

8 Q. Okay, so that's my next question for you.
9 If the Commission approved this on a fast-track basis
10 with the other programs that you've mentioned, the
11 company is willing to begin the program without
12 guaranteed cost recovery.

13 Because obviously, as you just said, the
14 costs are included in the total portfolio plan which
15 is, per the company's proposal, to be decided later
16 after the fast-track programs are approved.

17 A. I'm not sure I'm the one to necessarily
18 answer that. I think we're expecting -- well, there
19 are probably other people that can help answer that
20 better than I can. I am saying that it is combined
21 in the portfolio and then pulled out to be fast
22 tracked.

23 Q. And it's your understanding if approval
24 is gained for the fast-track programs, they will
25 begin immediately?

1 A. That will begin immediately and I'm --
2 with the understanding that that includes full cost
3 recovery.

4 Q. You just told me that full cost recovery
5 isn't done until the portfolio plan, when I asked you
6 the question about cost.

7 A. I'm saying I'm not really sure so I'm not
8 really the one to answer. It's really outside my
9 scope.

10 Q. Okay. Going to the how quickly does this
11 get started, how quickly after the program approval
12 will the CFL program begin?

13 A. I have a schedule from the CFL vendor and
14 I think we can get something out to the market in
15 just a couple weeks. So within two weeks we'll have
16 some aspects of it, more channels of distribution
17 will develop quickly, but customers will start to see
18 those first ones within two weeks.

19 Q. All right. Can you turn to page 7. You
20 were responding to another OCC concern about the
21 marking dollars not being spent prior to the launch.
22 Or rollout are the terms that you use, of the initial
23 program. Is that right? Do you see where I'm
24 talking?

25 A. That's correct.

1 Q. In fairness we asked this of the OCC
2 witness so we'll ask it of you. You make the
3 statement that the company did not spend all the
4 money that it was planning on spending because the
5 program was suspended, but I think you told me the
6 initial rollout was October 10th, the suspension
7 came from around October 7th, and then you were
8 told to cease operations October 18th.

9 So from when the program was supposed to
10 roll out on October 10th you were going to spend
11 the whole \$1.9 million, I'm a little confused what
12 you said you would have spent had the program gone
13 forward. It seemed like there was some difference
14 of, well, depending on which days, seven days, eight
15 days, ten days.

16 A. The prelaunch marketing, I don't have the
17 exact start date, but we were planning on or had
18 already run marketing and advertising in advance of
19 the launch. So we were in the marketplace with radio
20 and TV well before that. We had budgeted 1.9 million
21 for the prelaunch, the launch, and the continuous
22 program to operate throughout campaign.

23 Up to about the launch period we
24 committed about 900,000 to it. When we stopped it,
25 our total, our bill ended up being 405,140. We were

1 on track to spend the 1.9 over the course of the
2 program because when you --

3 EXAMINER PRICE: How long is "over the
4 course of the program"?

5 THE WITNESS: The program would have
6 taken -- we know we were planning on delivering these
7 bulbs in a four- to five-week period. And one thing
8 that you have to keep in mind is, just like something
9 rolling out in your area, some of these customers
10 would have no knowledge that the program was going to
11 be in their community.

12 Let's say we started in Cleveland and we
13 were going through there and we were down to Maumee,
14 Ohio, we would then put something into that market to
15 let them know that we were coming. That could be,
16 you know, three weeks into the program.

17 So when I say "we're lunching," we have
18 prelaunch and then a launch and then continuing
19 marketing, that continued marketing is just a little
20 in advance of where we're going to be.

21 EXAMINER PRICE: But you would have had
22 it all wrapped up by the first of the year at least.

23 THE WITNESS: Absolutely.

24 Q. (By Examiner Bojko) Okay. So first of
25 all, you're correcting Mr. Sawmiller to say it wasn't

1 proposed to spend 1.8, it was -- the budget was 1.9;
2 is that right? Is that your first point of your
3 testimony?

4 A. Yeah, the budget was 1.9 million.

5 Q. And then your second point of the
6 testimony was that you were actually on track to
7 spend that whole 1.9, but as you say on lines 8 and
8 9, it was based on prior to the rollout of the
9 campaign and support campaigns after the launch,
10 which I just heard you respond to Mr. Price that that
11 would be for about a four- to five-week period.

12 A. That's correct.

13 Q. Okay. But nowhere -- do you have a
14 position on what I believe you're characterizing
15 Mr. Sawmiller's testimony to be that you should have
16 spent the 1.8, or 1.9 as you've corrected the budget
17 amount to be prior to the rollout, the initial
18 rollout?

19 Because I believe Mr. Sawmiller's point
20 was, and I'm characterizing, I'm not quoting, but I
21 believe his point was that had FirstEnergy spent the
22 whole amount prior to the launch of the program, that
23 maybe the advertising would have done a better job
24 and there might not have been the outcry that
25 actually occurred.

1 A. I'm not sure it would have been practical
2 to spend the entire amount before the first launch or
3 at launch. There would be many customers that
4 wouldn't -- we wouldn't be in their communities for
5 four weeks, so to them prelaunch is the ad that ran
6 in their paper yesterday or the day before, even
7 though we're three or four weeks into the program.
8 So to them that's prelaunch.

9 So we couldn't -- we set aside a pretty
10 substantial part of the budget to go prelaunch and
11 launch really getting it out there to the public as
12 more or less an umbrella, like this is coming.

13 When it got right down to getting into
14 the areas to say that -- to have the other half of
15 our budget to be used for that I think is reasonable.
16 I don't think it's reasonable to say we -- it would
17 have helped or have been better to spend the 1.9 all
18 in advance of the first light bulb being distributed.

19 Q. Can what was in the -- was this discussed
20 at the collaborative and what was in the -- what was
21 budgeted for in the collaborative? Is it for what
22 you -- I think you were trying to make a distinction
23 saying prelaunch for some customers might not have
24 been the same prelaunch time period as others. I
25 mean, what was in the budget language that the

1 collaborative saw?

2 A. The collaborative saw the marketing
3 materials that we brought, samples really, and our
4 communications people who attended at the time helped
5 us design -- we didn't give them dollar amounts, we
6 just were saying -- we just separated it into those
7 three categories, really; the prelaunch, the launch,
8 and then the campaign.

9 So I never broke it down for the
10 collaborative to say "Okay, of the 1.9 million we're
11 going to spend this much here and this much there,"
12 we didn't go into that much detail.

13 Q. But in your mind, in the company's mind,
14 this was how the program was supposed to start, that
15 the word "prelaunch" might be different and flow
16 through the whole program not meaning spend all the
17 dollars before the initial launch of the program to
18 the first customer.

19 A. Correct. We wouldn't expect to do that.

20 EXAMINER BOJKO: Okay. Thank you very
21 much for your time today. You may step down.

22 Ms. Kolich, or, I'm sorry, Mr. Lang.

23 MR. LANG: Thank you, your Honor. We
24 move Company Exhibit 12 into evidence.

25 EXAMINER BOJKO: Any opposition to

1 admitting Company Exhibit 12, which is Mr. Toth's
2 rebuttal testimony?

3 MR. POULOS: No, your Honor.

4 EXAMINER BOJKO: Hearing none, it will be
5 admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 EXAMINER BOJKO: Mr. Poulos?

8 MR. POULOS: Your Honor, we move OCC
9 Exhibits 13, 14, 15, 16, and 17.

10 EXAMINER BOJKO: Any opposition to the
11 admission of Exhibits 13 through 17?

12 MR. LANG: No, your Honor.

13 EXAMINER BOJKO: Exhibits 13, 14, 15, 16,
14 and 17 will be admitted.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 EXAMINER BOJKO: Do we have any more
17 rebuttal witnesses from the company?

18 MS. KOLICH: No, your Honor, but at this
19 time I would move proof of publication Company
20 Exhibit 5 into the record.

21 EXAMINER BOJKO: Any opposition to the
22 admission of Company Exhibit 5 which are the notices
23 of publication?

24 Hearing none, they will be admitted.

25 (EXHIBIT MARKED FOR IDENTIFICATION AND

1 ADMITTED INTO EVIDENCE.)

2 EXAMINER BOJKO: Anything further from
3 the parties?

4 We have previously established a briefing
5 schedule of 29th for initial briefs, and
6 April 12th for reply briefs.

7 If there's nothing further to come before
8 us, the case is submitted on the record and we are
9 adjourned. Thank you.

10 (Thereupon, the hearing adjourned at
11 4:01 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, March 8, 2010, and carefully compared with my original stenographic notes.

Maria DiPaolo Jones, Registered
Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2011.

(MDJ-3525)

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Case No(s). 09-1947-EL-POR, 09-1948-EL-POR, 09-1949-EL-POR, 09-1942-EL-EEC, 09-1943-EL-EEC,

Summary: Transcript FirstEnergy - VOL IV - Rebuttal from 3/8/10 electronically filed by Mrs. Jennifer Duffer on behalf of Jones, Maria DiPaolo Mrs. and Armstrong & Okey, Inc.