

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application of Ohio Edison:
Company, The Cleveland :
Electric Illuminating :
Company, and The Toledo :
Edison Electric Company : Case No. 10-388-EL-SSO
for Authority to Establish:
a Standard Service Offer :
Pursuant to Section :
4928.143, Revised Code, in:
the Form of an Electric :
Security Plan. :

- - -

PROCEEDINGS

before Mr. Gregory Price and Ms. Kimberly Bojko,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 10:00 a.m. on Tuesday,
April 20, 2010.

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VOLUME I

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Director of Law
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and

McNees, Wallace & Nurick
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On behalf the City of Akron.

Environmental Law and Policy Center
By Mr. Michael D. Heintz
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On behalf of the Environmental Law and
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1 Tuesday Morning Session,

2 April 20, 2010.

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

5 The Public Utilities Commission of Ohio has assigned

6 for hearing at this time and place Case No.

7 10-0388-EL-SSO, being in the Matter of the

8 Application of Ohio Edison Company, The Cleveland

9 Electric Illuminating Company, and The Toledo Edison

10 Company for Authority to Establish a Standard Service

11 Offer Pursuant to RC Section 4928.143 in the Form of

12 an Electric Security Plan.

13 My name is Kim Bojko, with me today is

14 Gregory Price, we are the attorney examiners assigned

15 to hear this case.

16 At this time we will take appearances of

17 the parties. Let's begin with the company.

18 MR. BURK: On behalf of the companies,

19 your Honor, James W. Burk, Arthur E. Korkosz, Mark A.

20 Hayden, Ebony L. Miller, and from the law firm of

21 Calfee, Halter & Griswold LLP, James F. Lang, Laura

22 McBride, and their address is 1400 Key Bank center,

23 800 Superior Avenue, Cleveland, Ohio 44114. And also

24 on behalf of the companies David A. Kutik of the

25 Jones Day law firm, 901 Lakeside Avenue, Cleveland,

1 Ohio 44114.

2 EXAMINER BOJKO: Thank you.

3 Mr. McNamee.

4 MR. McNAMEE: On behalf of the staff of
5 the Public Utilities Commission of Ohio, Richard
6 Cordray, Attorney General of the state of Ohio, Duane
7 Luckey, chief, Public Utilities Section, I am Thomas
8 W. McNamee, Assistant Attorney General, the address
9 is 180 East Broad Street, Columbus, Ohio 43215.

10 EXAMINER BOJKO: We'll just go down the
11 line. Go ahead, Mr. Yurick.

12 MR. YURICK: On behalf of the Kroger
13 Company the law firm of Chester, Willcox & Saxbe,
14 John Bentine, Mark Yurick, and Matthew White, the
15 address is 65 East State Street, Columbus, Ohio Suite
16 1000, 43215. Thanks.

17 MR. LAVANGA: Good morning, your Honors,
18 on behalf of Nucor Steel Marion, Michael K. Lavanga
19 and Garrett A. Stone of the law firm Brickfield,
20 Burchette, Ritts & Stone, 1025 Thomas Jefferson
21 Street, Washington D.C., zip code 20007.

22 MR. BOEHM: Good morning, your Honors.
23 On behalf of the Ohio Energy Group, I am David Boehm
24 and Michael Kurtz of the law firm of Boehm, Kurtz &
25 Lowery, 36 East Seventh Street in Cincinnati, Ohio,

1 45202.

2 MR. IRELAND: Your Honors, on behalf of
3 EnerNOC, Jacqueline Roberts, 75 Federal Street, Suite
4 300, Boston, Massachusetts, and Jeff Ireland and
5 Steve Weigand of Faruki, Ireland & Cox, PLL, 500
6 Courthouse Plaza, Dayton, Ohio.

7 MR. RANDAZZO: Good morning, your Honors,
8 on behalf of the Industrial Energy Users of Ohio I'd
9 like to enter the appearance of the law firm of
10 McNees, Wallace & Nurick, 21 East State Street,
11 17th Floor, Columbus, Ohio 43215, by Lisa McAlister
12 and Samuel C. Randazzo.

13 MR. SETTINERI: Good morning, your
14 Honors, on behalf of Constellation NewEnergy and
15 Constellation Energy Commodities Group, M. Howard
16 Petricoff, Michael J. Settineri, and Stephen Howard,
17 law firm Vorys, Sater, Seymour & Pease, 52 East Gay
18 Street, Columbus, Ohio, 43215. And also Cynthia
19 Fonner Brady, pro hoc vice, senior counsel,
20 Constellation Energy Resources, 550 West Washington
21 Boulevard, Suite 300, Chicago, Illinois 60661.

22 MR. DYAS: Good morning, your Honors, on
23 behalf of Direct Energy Services, LLC, the law firm
24 of Barnes & Thornburg, I am Charles R. Dyas, Jr.,
25 with me is Matthew D. Austin, also we have C. David

1 Paragas, address is 21 East State Street, Suite 1850,
2 Columbus, Ohio, 43215.

3 EXAMINER BOJKO: Mr. Conway.

4 MR. CONWAY: Thank you, your Honors, on
5 behalf of FirstEnergy Solutions Michael R. Beiting
6 and Morgan E. Parke, FirstEnergy Corp., 76 South Main
7 Street, Akron, Ohio 44308 and also on behalf of
8 FirstEnergy Solutions Daniel R. Conway and Eric B.
9 Gallon, Porter, Wright, Morris & Arthur, 41 South
10 High Street, Columbus, Ohio 43215.

11 MR. SMITH: On behalf of Materials
12 Science Corporation, Craig I. Smith, attorney at law,
13 2824 Coventry Road, Cleveland, Ohio 44120.

14 MR. SMALL: Your Honor, on behalf of the
15 residential customers of the FirstEnergy EDUs, Janine
16 Migden-Ostrander, Consumers' Counsel, Jeffrey L.
17 Small, counsel of record, also Gregory Poulos, Ann
18 Hotz, Assistant Consumers' Counsel, 10 West Broad
19 Street, 18th floor, Columbus, Ohio 43215. Thank you.

20 EXAMINER BOJKO: Mr. Eckert.

21 MR. ECKHART: Henry W. Eckhart, 50 West
22 Broad Street, Columbus, Ohio, representing the
23 Natural Resources Defense Council.

24 MR. O'BRIEN: On behalf of the Ohio
25 Hospital Association, Richard L. Sites, 155 East

1 Broad Street, Columbus, Ohio 43215, and Bricker &
2 Eckler, LLP by Thomas J. O'Brien, 100 South Third
3 Street, Columbus, Ohio 43215. I'm also entering an
4 appearance on behalf of the Ohio Manufacturers
5 Association and Bricker & Eckler, LLP, by Thomas J.
6 O'Brien, 100 South Third Street. Thanks.

7 MR. WARNOCK: On behalf of the Ohio
8 Schools Council and the Northeast Ohio Public Energy
9 Council Matthew W. Warnock, and Glenn S. Krassen, law
10 firm of Bricker & Eckler, LLP, 100 South Third
11 Street, Columbus, Ohio 43215.

12 MS. MOONEY: On behalf of Ohio Partners
13 for Affordable Energy, Colleen L. Mooney and David C.
14 Rinebolt, 231 West Lima Street, Findlay, Ohio
15 45839-1793.

16 MR. BAZLEY: On behalf of the Association
17 of Independent Colleges and Universities of Ohio also
18 known as the AICUO and general counsel Christine Todd
19 Jones, I'm Christopher L. Miller, also list Andre T.
20 Porter and Gregory Dunn from the law firm
21 Schottenstein, Zox & Dunn, 250 West Street, Columbus,
22 Ohio 43215.

23 MR. WELDELE: On behalf of the Council of
24 Smaller Enterprises, Eric Weldele on the law firm of
25 Tucker, Ellis & West, 41 South High Street, Suite

1 1225, Columbus, Ohio 43215.

2 EXAMINER BOJKO: Any other parties?

3 MS. CUNNINGHAM: Your Honor, on behalf of
4 the City of Akron, Chérie B. Cunningham, Director of
5 Law, 161 South High Street, Suite 202, Akron, Ohio
6 43208. I am Joseph M. Clark from the law firm
7 McNees, Wallace & Nurick, 21 East State Street, 17th
8 Floor, Columbus, Ohio, 43215.

9 MR. HEINTZ: On behalf of the
10 Environmental Law and Policy Center, Michael D.
11 Heintz, 1207 Grandview Avenue, Columbus, Ohio 43212.

12 MS. De LISI: On behalf of the Ohio
13 Environmental Council by Megan De Lisi, Will
14 Reisinger, Nolan Moser, and Trent Dougherty, the
15 address is 1207 Grandview Avenue, Suite 201,
16 Columbus, Ohio 43212.

17 EXAMINER BOJKO: Is that everyone? Let's
18 go off the record for a moment.

19 (Discussion off the record.)

20 EXAMINER BOJKO: Let's go back on the
21 record. We have a variety of outstanding motions
22 that we'd like to address at this time. We have
23 several interventions that we have not yet granted,
24 those would be Council of Smaller Enterprises,
25 CPower, Inc., Viridity Energy, Energy Connect,

1 Converge, Inc., Enterprise Technologies, Inc., Energy
2 Curtailment Specialists, Inc., all called the Demand
3 Response Coalition. We have the City of Akron,
4 Environmental Law and Policy Center, and EnerNOC,
5 Inc. At this time, I don't believe the time period
6 has expired for all of these. Is there any
7 opposition to granting intervention to any of these
8 parties?

9 MR. BURK: No, your Honor.

10 EXAMINER BOJKO: Hearing none, we will
11 grant intervention at this time.

12 We also have two pro hac vice motions,
13 one for Allen Freifeld and Samuel A. Wolfe. Any
14 opposition to the granting of these motions?

15 MR. BURK: No.

16 EXAMINER BOJKO: Hearing none, we will
17 grant those two pro hac vice motions.

18 We also have before us intervenor's
19 motion to vacate that was filed. At this time we'd
20 like to take oral arguments on this one. We know
21 that Nucor did actually file a memo contra in the
22 docket yesterday, I don't believe the time has
23 expired and the company has not yet had an
24 opportunity to respond so at this time are you
25 prepared to respond?

1 MR. BURK: Yes, your Honor.

2 EXAMINER BOJKO: Well, wait, I'm sorry,
3 before we go, given the lateness of the filing of the
4 motion let's have EnerNOC present its motion first to
5 the court for the record. Mr. Ireland.

6 MR. IRELAND: Yes, thank you, your
7 Honors. We did file last week a motion to vacate
8 your Honors' entry of March 24th, and I'll try to be
9 brief and not repetitive, but we believe that the
10 critical facts here are that EnerNOC is now bound by
11 issues resolved in the stipulation and it was not
12 privy to the settlement discussions, it relied on
13 information that was put into the public domain by
14 FirstEnergy and as a result wasn't a participant in
15 the underlying discussion. And then perhaps most
16 importantly the accelerated nature of the proceeding
17 that is beginning here this morning in terms of the
18 quickness of getting to hearing has not allowed
19 EnerNOC an opportunity to fully participate in
20 discovery.

21 We think, and it is explained in our
22 papers as well as in the testimony of Mr. Schisler
23 that's been filed that this is a violation of both
24 Ohio and federal due process rights and that there
25 was no opportunity to participate in the settlement

1 discussions, that there was a failure to disclose by
2 FirstEnergy of the precise status of the OLR and the
3 ELR tariffs, and that we now have FirstEnergy
4 proposing changes to those tariffs as they were
5 submitted and EnerNOC didn't have an opportunity to
6 participate in the discussions.

7 The Ohio Supreme Court in the Time Warner
8 case has talked about grave concerns regarding a
9 partial stipulation which arose from exclusionary
10 settlement meetings, and we believe that that is
11 exactly what has happened here, and federal due
12 process would require the same treatment.

13 In addition, as a second reason, the
14 accelerated nature of this proceeding has precluded
15 us from participating effectively in discovery. The
16 Statute 4903.082 accords intervenors and parties
17 ample rights of discovery, which is defined as full
18 and reasonable discovery by all parties, and the
19 nature of this proceeding has been such that while
20 some discovery has occurred, it has not been the type
21 of full and reasonable discovery that EnerNOC should
22 be able to participate in.

23 We've got discovery that is, as we just
24 discussed a few minutes ago, is ongoing as we speak,
25 we've got depositions --

1 EXAMINER PRICE: Wait a second. It's my
2 understanding everything's resolved. It's not
3 ongoing. All discovery requests have been fulfilled.
4 Is that not true?

5 MR. IRELAND: I think there a difference,
6 your Honor, between fulfilling discovery requests and
7 giving a party full and reasonable discovery. It's
8 one thing to say you've got the information, but if
9 you get the information the day before the hearing,
10 how much of an opportunity -- how much of a full
11 opportunity do you have to process that information,
12 to work with your experts, to prepare for
13 cross-examination, to maybe retain other experts, to
14 do follow-up discovery; that kind of discovery has
15 not been afforded EnerNOC.

16 I think you can say yes, we've touched
17 the base, we've given them the opportunity, but it's
18 the follow-up and the full discovery which is
19 typically accorded any party in a proceeding before
20 the Public Utilities Commission, that's what the
21 problem is in this case.

22 And the result of that is, a third point
23 that's made in our papers is that as a result you end
24 up with a regulatory proceeding that's being based
25 upon an inadequate and an incomplete record for the

1 PUCO Commission to consider the stipulation.

2 So for those reasons we think that the
3 March 24th order should be vacated. And if the
4 attorney examiners decide to deny the motion, then we
5 would ask that it be -- that an interlocutory appeal
6 be made available to the Commission. Thank you.

7 EXAMINER BOJKO: Just so we're clear for
8 the record, the March 24th entry was an attorney
9 examiner entry; is that right?

10 MR. IRELAND: That's right.

11 EXAMINER BOJKO: And you did not seek
12 interlocutory appeal of that entry at that time; is
13 that correct?

14 MR. IRELAND: That's correct.

15 EXAMINER BOJKO: But you are asking for
16 an interlocutory appeal of any decision we make here
17 today.

18 MR. IRELAND: That's correct again.

19 EXAMINER BOJKO: Mr. Burk.

20 MR. BURK: I think your Honor picked up
21 on what was going to be my first point, we believe
22 that the motion to vacate is procedurally deficient,
23 that the remedy offered to parties is an
24 interlocutory appeal within five days following a
25 Commission entry or an attorney examiner entry. That

1 was not followed by EnerNOC. And so we think on that
2 basis alone the motion should be deemed to be
3 inappropriate and denied.

4 And I think clearly, you know, citing
5 Commission rules would support that position. Going
6 beyond that, EnerNOC certainly could have intervened
7 in the MRO case. They've indicated that they
8 monitored that case. There are publicly filed staff
9 testimony or comments in that case that indicated
10 that an ESP would be negotiated. So that's something
11 they could have done and chose not to do.

12 They've also had an opportunity to do
13 discovery. They've had two rounds of discovery which
14 were not served on us until effectively April, I
15 believe 8th and 9th when they had intervened back on
16 March 29th and the case was filed on March 23rd.

17 There is no pending discovery right now.
18 We've been posed no questions that we've not
19 responded to. The last set of discovery is due today
20 and I believe we have already responded to that. And
21 part of their discovery we responded to early in an
22 effort to expedite the process. They've also gotten
23 additional discovery through conferences with your
24 Honors as you well know.

25 So we think they have had an opportunity

1 for discovery, they certainly have an opportunity to
2 be heard, they're here today. They prefiled
3 extensive testimony that will be presented today and
4 subject to cross, they have full rights of
5 cross-examination and briefing, so I think that they
6 certainly do have a notice or an opportunity to be
7 heard and that their due process claim really has no
8 merit.

9 And as far as the Time Warner case, the
10 facts of this case clearly don't match up with Time
11 Warner. That was talking about excluding an entire
12 class of customers. And even within that opinion the
13 court said there was no suggestion that they would
14 create a requirement that all parties participate in
15 settlement meetings. So that case cited clearly
16 doesn't have applicability. Thank you.

17 EXAMINER BOJKO: Nucor. I know you have
18 a response.

19 MR. LAVANGA: Yes. Our response is
20 pretty simple. As we mentioned or as we discussed in
21 our memoranda contra that was filed yesterday, we
22 simply disagree that EnerNOC did not have an
23 opportunity to address these issues when they came up
24 in the MRO.

25 This ESP proceeding is a direct outgrowth

1 of the MRO proceeding and it should have been readily
2 obvious to EnerNOC that the status of rider ELR and
3 OLR were issues that were going to be addressed in
4 the MRO proceeding. So EnerNOC had an opportunity,
5 they had notice to participate in the MRO proceeding.
6 If they had done that, they would have been privy to
7 the settlement negotiations that grew out of the MRO
8 proceeding.

9 That's in a nutshell.

10 EXAMINER BOJKO: Mr. Small.

11 MR. SMALL: I'm not entirely clear what
12 the order of the events for the arguments and what it
13 is that your Honors are going to take up. I would
14 just like to point out since there's been a
15 discussion or an oral argument concerning the
16 discovery rights and whether there has been an
17 interlocutory appeal taken, the OCC did take an
18 interlocutory appeal on much the same matters that
19 have been brought up by EnerNOC, I'm not sure if you
20 wanted to take that up separately.

21 EXAMINER BOJKO: Yes. Your motion is
22 next on our list. We thought we'd take up the one to
23 vacate the whole proceeding before we took up ones
24 that --

25 MR. SMALL: Very well.

1 EXAMINER BOJKO: -- are in the
2 proceeding.

3 Mr. Randazzo.

4 MR. RANDAZZO: Yes, your Honors.
5 Predicate for the ability to take an appeal or to
6 advance the kind of arguments that EnerNOC is making
7 here today is a claim that a party has been injured.

8 As best we can determine, EnerNOC is not
9 certified by this Commission to provide competitive
10 service to the state of Ohio and is not registered
11 with the Secretary of State to do business in the
12 state of Ohio. I do not believe EnerNOC has any
13 standing and -- to do business in the state of Ohio
14 and thereby has no standing to protest the process of
15 this proceeding because there's, absent registration
16 with the Secretary of State, certification by this
17 Commission, it's not authorized to do business in the
18 state in FirstEnergy's service territory or any other
19 service territory.

20 I'm sorry to raise that at this point at
21 this late hour, but we just had the deposition last
22 night and it was a matter that we explored during the
23 course of the deposition.

24 EXAMINER BOJKO: Any other parties wish
25 to speak to the motion to vacate?

1 Mr. Ireland, quick response.

2 MR. IRELAND: Thank you, your Honors. It
3 strikes me that what I'm hearing is you should have
4 done this and --

5 EXAMINER PRICE: Let's take up
6 Mr. Randazzo's point which is --

7 MR. IRELAND: One that came up at 10:30
8 last night?

9 EXAMINER PRICE: I assume EnerNOC knew
10 they weren't licensed or weren't registered to do
11 business in this state before 10:30 last night. So
12 it's news to us but --

13 MR. IRELAND: I don't know that that -- I
14 don't know. I haven't seen any authority that
15 suggests that failure to be registered to do business
16 in the state of Ohio precludes you -- doesn't give
17 you standing.

18 EXAMINER BOJKO: That wasn't the
19 question. Is EnerNOC certified to do business in the
20 state of Ohio?

21 MS. ROBERTS: Your Honor, those questions
22 were asked of Mr. Schisler last night.

23 EXAMINER BOJKO: I'm asking you,
24 counselor.

25 MS. ROBERTS: And we don't know. He said

1 he didn't know and we have asked the company that,
2 between 10:30 last night and this morning, we don't
3 have an answer to that. That's what happens when you
4 have no time.

5 MR. IRELAND: I mean, that is part of the
6 problem of a proceeding that's moving along so
7 quickly.

8 EXAMINER PRICE: Well, let's talk about
9 the MRO proceeding then.

10 EXAMINER BOJKO: Whoa. Wait a second.
11 Please do not bring in the company's failure to know
12 their own business into this room and tell us that it
13 is a problem with our process. EnerNOC employees are
14 sitting here right now. If they don't know whether
15 they can do business in the state of Ohio, that is
16 not our problem. That sounds like an internal
17 problem. So we're not going to do that today.

18 You talk about the issues and we'll move
19 forward on those. Please do not try to muddy up the
20 record by throwing in those kind of accusations.

21 MR. IRELAND: And I'm sorry, I didn't
22 mean to -- I'm not casting aspersions here. I'm just
23 trying to be practical that if the question comes up
24 in the evening and the next morning, you have to find
25 out from the people who know the answer to the

1 question and we just were not able to do so.

2 EXAMINER BOJKO: Thank you. Now move on.

3 MR. IRELAND: I'm sure that can be
4 responded to by the end of the day.

5 EXAMINER BOJKO: And we would like a
6 response to that.

7 MR. IRELAND: And I'm confident that
8 you'll have it.

9 EXAMINER BOJKO: We could go downstairs
10 and look at the Secretary of State's office if need
11 be. Now let's move on.

12 EXAMINER PRICE: Let's talk about the MRO
13 proceeding. We know by Mr. Lavanga's presence in the
14 room that we're going to talk about interruptibles.
15 Rider ELR and OLR were proposed to be replaced in the
16 MRO proceeding. And it strikes me that Rider ELR and
17 Rider OLR are your key issues in this proceeding;
18 isn't that correct?

19 MS. ROBERTS: That's correct.

20 EXAMINER PRICE: I'm sorry, who's
21 speaking? I know that Ms. Bojko did ask a question
22 of Ms. Roberts, but I thought Mr. Ireland was doing
23 your oral arguments.

24 MR. IRELAND: We are doing -- I just
25 think it's going to be easier if some of these

1 questions can be directed to Ms. Roberts and she can
2 answer rather than asking me a question.

3 EXAMINER PRICE: Fair enough.

4 MR. IRELAND: And then me asking her and
5 parroting.

6 EXAMINER PRICE: Fair enough.

7 MR. IRELAND: You've got a lot of people
8 here and a lot to do.

9 EXAMINER BOJKO: We'll allow it here, but
10 there are a lot of attorneys sitting at this table
11 today and we are not going to be tag teaming counsel
12 throughout this proceeding. It's going to be the one
13 attorney that's cross-examining the one witness, but
14 for these oral arguments we did kind of throw this
15 upon you and we're asking questions, we'll allow it.
16 But I just want to put everybody on notice you don't
17 want the four attorneys, five attorneys of
18 FirstEnergy tag teaming either, so we want to be fair
19 to everybody.

20 MR. IRELAND: All right, that's fine,
21 thank you.

22 EXAMINER BOJKO: So, Ms. Roberts, please
23 answer the question.

24 EXAMINER PRICE: Let's go back to the MRO
25 proceeding. Certainly as filed FirstEnergy proposed

1 to eliminate Riders ELR and OLR, but that filing was
2 not binding upon the Commission, was it?

3 MS. ROBERTS: That filing was not binding
4 on the Commission.

5 EXAMINER PRICE: That filing wasn't
6 binding on any of the intervenors, was it?

7 MS. ROBERTS: It was not binding on any
8 of the intervenors.

9 EXAMINER PRICE: Did we not have
10 testimony from the intervening parties requesting the
11 Commission extend Riders ELR and OLR?

12 MS. ROBERTS: There was testimony to that
13 effect, yes, your Honor.

14 EXAMINER PRICE: And so why didn't you
15 intervene at that point when that was a contested
16 issue in the MRO proceeding?

17 MS. ROBERTS: EnerNOC did not intervene
18 at that point because of the unique provision in
19 Senate Bill 221 that gives FirstEnergy full veto
20 power over any modification made to either its MRO
21 plan or its ESP plan or the stipulation. And we know
22 this has happened in the past.

23 EXAMINER BOJKO: Whoa, whoa, whoa. I'm
24 sorry. So just because they have a veto you're not
25 going to intervene to participate?

1 EXAMINER PRICE: First of all, I'd like
2 to know where you understand they have a veto right
3 over the MRO of a Commission order in an MRO
4 proceeding, can you point to the provision of Ohio
5 law that demonstrates that?

6 MS. ROBERTS: I can't.

7 EXAMINER BOJKO: And my question was
8 assuming.

9 EXAMINER PRICE: Well.

10 MS. ROBERTS: I'd be happy to provide
11 that to you but, no, I can't point you to that right
12 now.

13 EXAMINER PRICE: Well, so then it could
14 explain why you didn't -- if you can't point to the
15 provision of the law that you're relying upon, can
16 you explain why you didn't intervene in the MRO
17 proceeding?

18 MS. ROBERTS: Well, there were other
19 issues upon which EnerNOC based its decision not to
20 intervene and the primary issue were the
21 representations made to the market participants in
22 the ATSI integration auctions. FirstEnergy --

23 EXAMINER PRICE: When were those?

24 MS. ROBERTS: When were those? Those
25 started before the MRO was filed and continued

1 through at least when the auction closed. And in
2 those representations and when you have an auction at
3 a wholesale market --

4 EXAMINER PRICE: That certainly was
5 FirstEnergy's litigation position, but what made you
6 think that the Commission would not -- go a different
7 way? Mr. Lavanga put on Mr. Goins who presented
8 extensive testimony and, frankly, I don't know off
9 the top of my head when Mr. Goins' testimony was
10 filed, but clearly that was the last chance to see
11 this was a contested issue in that proceeding.

12 MS. ROBERTS: If you look at it only from
13 the state proceeding that is true, but as a market
14 participant EnerNOC was entitled to rely upon
15 statements made about what FirstEnergy was doing with
16 Riders ELR and OLR and FirstEnergy made
17 representations in the public ATSI auction materials
18 available to all market participants, and it could
19 only make statements in the course of information
20 made available to all market participants, not inside
21 conversations and not in, you know, PUCO proceedings,
22 but the market participants were --

23 EXAMINER PRICE: So the PUCO is somehow
24 bound by the comments they made in their proceedings?

25 MS. ROBERTS: No, if I could just --

1 EXAMINER BOJKO: Before we go on, who's
2 FirstEnergy, are you talking about the operating
3 companies or are you talking -- who actually made
4 those statements?

5 MS. ROBERTS: Who made -- those
6 statements were made on behalf of the operating
7 companies regarding how Riders ELR and OLR would be
8 treated in the ATSI integration auctions, and the
9 statements made in the auction materials to all
10 market participants is that Riders ELR and OLR would
11 expire by their own terms May 31st, 2011.

12 EXAMINER PRICE: And weren't those true
13 at that time? That was what their terms said.

14 MS. ROBERTS: Those were true.

15 EXAMINER PRICE: But you're saying they
16 didn't disclose there was a pending proceeding.

17 MS. ROBERTS: They didn't disclose that
18 they had decided at some point during the
19 negotiations that that would not abide and that they
20 would allow those riders to extend.

21 EXAMINER BOJKO: I'm sorry, some point
22 during the negotiations. I guess I thought we were
23 talking about the MRO proceeding and now what are you
24 jumping to?

25 MS. ROBERTS: You asked why we didn't

1 intervene in the MRO proceeding.

2 EXAMINER BOJKO: Well, right. But I'm
3 trying to figure out what you're talking about with
4 discussions. Are you talking about MRO discussions,
5 because the testimony that we heard from Nucor was
6 before the ESP discussions.

7 MS. ROBERTS: It was.

8 EXAMINER PRICE: It was filed in October,
9 I think.

10 MS. ROBERTS: It was.

11 EXAMINER BOJKO: So which one are you
12 talking about?

13 MS. ROBERTS: That's absolutely correct.
14 You need to understand that EnerNOC when it entered
15 the market was indifferent as to whether riders ELR
16 and OLR continued, didn't continue. What it was
17 interested in was a full disclosure of FE's best
18 estimates and the most accurate information about
19 whether they would continue or whether they wouldn't
20 continue, and it was that information that was
21 important to EnerNOC and it was that information that
22 it was relying upon to not participate in the MRO.

23 If the MRO had been decided in
24 December 2009 and the tariffs had been continued at
25 that point, then all market participants, including

1 EnerNOC, could have taken that information into
2 account when they placed their bids in the ATSI
3 auctions for 2011-2012, 2012-2013.

4 EXAMINER BOJKO: Can you give me a time
5 period again? I know it's in Mr. Schisler's
6 testimony.

7 MS. ROBERTS: For the auction?

8 EXAMINER BOJKO: Yes. Or for when these
9 statements were made. I need a time line.

10 EXAMINER PRICE: Can you tell us who made
11 the statement and on what date.

12 MR. RANDAZZO: Are you tag teaming?

13 EXAMINER PRICE: Yes, we are.

14 You need to be more specific. Tell us
15 which FirstEnergy employee, who he was working for
16 and what date.

17 MS. ROBERTS: I can be more specific. In
18 the PJM ATSI integration stakeholder meeting that
19 occurred in Columbus, Ohio, on October 2nd, 2009,
20 both PJM, and who discussed demand response was Pete
21 Langbein at PJM and a FirstEnergy employee, and I
22 don't know who that was, talked about the auction,
23 planned DR, the tariffs expiring, and whether ILR
24 would be available in the PJM auction.

25 Subsequently in the ATSI integration PJM

1 stakeholder auction meetings on January 19th, 2010,
2 EnerNOC asked at those meetings what the status of
3 the interruptibles would be for FirstEnergy utilities
4 in the PJM auction, whether they would be -- how they
5 would be bid, and I would refer to his testimony for
6 what his, you know, what his conversation was.

7 At the conclusion or at a break in that
8 meeting Morgan Parke, attorney for FirstEnergy and in
9 this case FirstEnergy Solutions and their FERC
10 attorney, approached Mr. Schisler said -- and
11 confirmed we are not doing demand response, that's
12 what you're for. And then made the statement, oh,
13 maybe -- maybe I shouldn't say that outside of the
14 auction domain, but maybe I can because it's a state
15 issue.

16 I mean, further --

17 EXAMINER PRICE: One second. That's on
18 January 19th, 2010.

19 MS. ROBERTS: January 19th.

20 EXAMINER PRICE: And isn't it true that
21 Mr. Gonzalez in his testimony that he's about to
22 present to us at some point this week criticizes the
23 fact that nothing happened between the end of the MRO
24 proceeding and February 25th, 2010, when negotiations
25 for the ESP began? Do you dispute that his statement

1 is incorrect?

2 MS. ROBERTS: I have no reason to -- I
3 have no information upon which to dispute or not
4 dispute the subject.

5 EXAMINER PRICE: So on
6 January 19th Mr. Park's statement that he alleged
7 made was true, it was the state of play at that
8 point.

9 MS. ROBERTS: Yes, it was a further
10 confirmation that that was the state of play.

11 In addition, in the frequently asked
12 questions sections of the ATSI integration utilities
13 filed information and in response to a question, and
14 I have it here, I'd be happy to provide it, I only
15 have one copy unfortunately, but they did make
16 statements in that information that they would be
17 bidding their demand response as planned demand
18 response that was secured through an RFP, and so it
19 was a continuing set of statements and I -- that
20 lasted, and that information persisted in the auction
21 until after the auction closed.

22 EXAMINER BOJKO: Okay. So I missed that
23 date. What was that date?

24 MS. ROBERTS: I'll have to look.

25 EXAMINER PRICE: If the Commission takes

1 no action in this proceeding and no action in the MRO
2 proceeding, what happens to Rider ELR and Rider OLR?

3 MS. ROBERTS: They expire by their terms.

4 EXAMINER PRICE: Has FirstEnergy ever
5 said anything that's not true? Whatever they may
6 agree to do in the future, this is the default.

7 MS. ROBERTS: It is -- our position is
8 that at the time that they realized that they would
9 agree to the extension of Riders ELR and OLR, they
10 had an obligation to correct the information that
11 persisted in the ATSI auction for market participants
12 that things had changed.

13 EXAMINER BOJKO: Well, I'm still, I
14 thought the whole question was, and I know my
15 colleague here is taking me off track a little bit,
16 but I thought the whole original question was why
17 didn't you participate in the MRO. And nothing you
18 have said so far, I'll let you say more, but nothing
19 you have said so far answers that question for me.
20 Why did you not participate?

21 MS. ROBERTS: It wasn't necessary to
22 participate in the MRO as long as the ATSI auction
23 information was accurate and all market participants
24 including EnerNOC knew whether or not Riders ELR and
25 OLR were likely to continue. It wasn't that -- it

1 wasn't that EnerNOC needed to intervene in the MRO to
2 fight the termination of Riders ELR and OLR.

3 EXAMINER BOJKO: But we had a witness
4 testifying that put that issue right before the
5 Commission that the Commission could have decided to
6 continue, and you thought that that wasn't relevant?

7 MS. ROBERTS: It was only relevant if it
8 was relevant to the information available to the
9 market participants.

10 EXAMINER PRICE: Okay, I'm going to roll
11 back around to Mr. Randazzo's standing argument now.
12 The ATSI auction that you're now hanging your hat on
13 is a FERC regulated auction, is it not? That's a
14 wholesale auction.

15 MS. ROBERTS: It is.

16 EXAMINER PRICE: If you have complaints
17 about statements, misleading statements,
18 misrepresentations that FirstEnergy made in that
19 wholesale auction, should those not be directed to
20 FERC? You keep telling us the state proceeding is
21 irrelevant to you when it's convenient for you.

22 MS. ROBERTS: FERC does have oversight
23 whether there's market manipulation or market power,
24 as does the PJM market monitor, independent market
25 monitor, and whether those avenues will be pursued is

1 being considered, but for the purposes of --

2 EXAMINER BOJKO: Wait. Have you yet,
3 have you filed a complaint yet?

4 MS. ROBERTS: No, we have not, your
5 Honor. But for the purpose of this proceeding we now
6 are required to address the filings of the Commission
7 on an expedited basis not believing that the
8 information in the MRO would prejudice the company.
9 So that's the basis of our position with the MRO.

10 EXAMINER BOJKO: I think you said this
11 earlier, I think you told us you were aware of the
12 MRO. I heard somebody say that you were monitoring,
13 it might even be in your intervention.

14 MS. ROBERTS: Yes, your Honor.

15 EXAMINER PRICE: Let's go back to
16 Mr. Burk's first point. You intervened on
17 March 29th; is that correct?

18 MS. ROBERTS: Yes, your Honor.

19 EXAMINER PRICE: And that was within five
20 days of the issuance of the March 24th entry if my
21 math is correct.

22 MS. ROBERTS: That's correct.

23 EXAMINER PRICE: And did you seek time to
24 extend the time for filing an interlocutory appeal at
25 that point?

1 MS. ROBERTS: No, your Honor. The
2 company was trying to evaluate the filing and
3 understand what had happened with respect to the
4 state proceeding and the auction proceeding, and I
5 understand the time frames for doing that were
6 modified in the March 24th order.

7 EXAMINER PRICE: Not modified; set.

8 MS. ROBERTS: Set. Set in the
9 March 24th order, and we weren't prepared to seek or
10 not seek an interlocutory appeal at that point.

11 EXAMINER PRICE: But you could have even
12 asked for additional time. You could have said give
13 us five more days from the date of our intervention,
14 couldn't you?

15 MS. ROBERTS: We could have.

16 MR. BOEHM: Your Honor, I don't want to
17 double-team either, but I am confused by one part of
18 this argument and --

19 EXAMINER PRICE: As long as Mr. Kurtz
20 doesn't show up, you're fine.

21 MR. BOEHM: I can promise you he's safely
22 put away.

23 What I think I hear counsel saying is
24 that they don't care whether there's an ELR or OLR or
25 not an ELR or OLR, what they care about was knowing

1 whether there was going to be one in advance of the
2 ATSI auction. And my understanding is that their
3 complaint is they didn't, and I guess my question is,
4 they're having -- assuming the best case for their
5 argument, they're having not had that information,
6 what did they think this Commission can do? It can't
7 give money judgments. How can that be remedied?
8 That's the part I don't understand.

9 EXAMINER BOJKO: When was the auction?

10 MS. ROBERTS: March 15th it opened, it
11 closed March 19th, 2010.

12 EXAMINER PRICE: So there was never going
13 to be a final decision on the -- whether it's the MRO
14 case or this case there was never going to be a final
15 decision on the existence of the Riders ELR or OLR
16 before auction. That was never going to happen.
17 Isn't that correct?

18 MS. ROBERTS: There may or may not have
19 been a final before the end but what changed was that
20 FirstEnergy agreed to extend the riders when it
21 previously represented they would expire.

22 EXAMINER BOJKO: Well, does the
23 Commission have the authority to sua sponte extend
24 the riders, any tariff provision?

25 MS. ROBERTS: Without FirstEnergy's

1 consent in this plan?

2 EXAMINER BOJKO: Absolutely.

3 MS. ROBERTS: My understanding is that in
4 a plan as they have filed, that the Commission cannot
5 modify that without their consent.

6 EXAMINER BOJKO: But I thought earlier we
7 were talking about the MRO, not the ESP.

8 MS. ROBERTS: I think both are at issue.

9 EXAMINER PRICE: You need to show us
10 where in the MRO statute they can veto, now.

11 MS. ROBERTS: I can't now. I apologize.

12 EXAMINER PRICE: Then your statement has
13 no weight. I mean, if you can't cite to a provision
14 of the law that supports the statement you're making,
15 then it doesn't have any weight. That's not my
16 understanding of the statute.

17 Mr. Randazzo.

18 MR. RANDAZZO: Your Honor, I just wanted
19 to remind the Bench that there is a view, legal view
20 that in the event that the current ESP is not
21 replaced by a successor MRO or ESP, that the current
22 ESP remains in force until a new plan is approved by
23 the Commission. In that context I believe that doing
24 nothing, and we have had that experience,
25 unfortunately, doing nothing causes the existing plan

1 to remain in effect. There is a view that supports
2 that conclusion, a legal view based upon statutory
3 language.

4 So before anybody jumps the gun and
5 assumes that a vacuum were to occur in the event that
6 nothing was done, I would remind the Bench of that
7 legal argument.

8 EXAMINER BOJKO: And your point being
9 that the tariffs would continue under that scenario.

10 MR. RANDAZZO: Yes, your Honor.

11 EXAMINER BOJKO: We are prepared at this
12 time to rule on the motion to vacate. We believe
13 that the motion to vacate was improperly filed, that
14 it should be filed as an interlocutory appeal within
15 the five-day time limit of the attorney examiner
16 entry, that is the proper process before the
17 Commission laid out in the rules. We also have
18 precedent to that effect.

19 We looked at a case recently, the
20 administrative law judge found in Case No.
21 06-1357-EL-BTX that the motion should have been filed
22 as an interlocutory appeal and reconsidering any
23 substance of an entry that is issued after or before
24 the five days of interlocutory appeal expires is an
25 improper motion.

1 You cannot avoid the requirements of
2 4906-7-15 of the administrative code by calling it a
3 motion rather than an interlocutory appeal. And,
4 therefore, we are going to deny EnerNOC's motion to
5 vacate as improper.

6 But we would also like to speak
7 substantively to it, we do not believe that EnerNOC
8 has been prejudiced in any way. EnerNOC has had
9 ample time to do discovery, they've been doing
10 discovery since April 8th was when their discovery --
11 FirstEnergy has responded to that discovery, they
12 have participated in depositions, long, lengthy
13 depositions from my understanding, so that discovery
14 has occurred.

15 They've also had the opportunity to file
16 testimony in this case and their witness will have an
17 opportunity to speak, I believe the testimony speaks
18 to many of these issues that Miss Roberts has
19 summarized for us today.

20 Continuing on to OCEA, am I seeing
21 that -- OCEA's motion for certification of their
22 interlocutory appeal of the same exact entry, we will
23 take that up at this time.

24 At this time we are going to deny
25 certification of OCEA's motion for certification of

1 the March 24th attorney examiner entry. We do not
2 believe that their interlocutory appeal raises new or
3 novel question of law or policy, it is discussing a
4 procedural issue which this Commission has constantly
5 and consistently allowed the examiners to do in these
6 types of proceedings.

7 Although this is a proceeding that has
8 not consistently occurred, this is only the second
9 one for FirstEnergy, second round for all of the
10 utilities of the ESP type, we still believe that
11 scheduling local public hearings and scheduling
12 testimony dates does not present a new or novel
13 question of law or policy and that is the
14 Commission's precedent that we continue to follow.

15 Just to close the loop on one more item,
16 I believe I heard Mr. Ireland say that he is
17 requesting an interlocutory appeal of our decision
18 today, similarly, we are going to deny certification
19 of that interlocutory appeal of our decision on their
20 motion to vacate. Again, we think it was an improper
21 motion, it should have been an interlocutory appeal,
22 and as I've cited case precedent, this, again, does
23 not raise any new, novel question of law or policy.

24 So I believe that the rationale is
25 similar for our decision to deny your certification

1 as well.

2 Those are all of the outstanding motions
3 that we have on our list. Did we miss one? Anybody
4 have an outstanding motion that we need to consider
5 before proceeding?

6 MR. SMALL: Your Honors, there were
7 filings made yesterday, and I believe EnerNOC filed a
8 motion or an amended motion, I won't speak to it.

9 EXAMINER PRICE: What motion is that,
10 Mr. Small?

11 MR. SMALL: I just said I wouldn't speak
12 to it.

13 EXAMINER BOJKO: Is there an outstanding
14 motion that you filed?

15 EXAMINER PRICE: There are applications
16 for rehearing that were filed.

17 MR. IRELAND: Right.

18 MR. SMALL: That's where I was going,
19 your Honor, but I'll let him speak.

20 EXAMINER BOJKO: Those are applications
21 for rehearing, not regarding this proceeding; is that
22 right?

23 MR. IRELAND: That's the way I understand
24 the procedure, yes.

25 MR. SMALL: All right. I did want to

1 bring up the application for rehearing.

2 EXAMINER PRICE: Which we have no
3 authority to rule on.

4 MR. SMALL: It does --

5 EXAMINER PRICE: It takes three votes of
6 the Commissioners to grant rehearing.

7 MR. SMALL: Nonetheless, it does address
8 a matter of what constitutes the record in this case
9 which does seem to be in the purview of the attorney
10 examiners.

11 EXAMINER PRICE: I think we're bound by
12 the Commission decision until they reverse
13 themselves.

14 MR. SMALL: Then for the purposes of this
15 hearing and proceeding today I'd like to put on the
16 record an objection, OCC's objection to the
17 administrative notice taken of the MRO proceedings
18 and for reasons -- I won't belabor the point, but for
19 the reasons stated in our application for rehearing
20 it's unlawful to --

21 EXAMINER PRICE: Mr. Small, haven't you
22 asked us to take administrative notice from prior
23 testimony? If I go back through my notes in other
24 cases, I'm not going to find any requests by OCC to
25 take administrative notice of testimony filed in

1 other cases?

2 MR. SMALL: I don't actually know the
3 answer to your question, your Honor.

4 EXAMINER PRICE: But you're happy to
5 represent that you would never do that. Or was it
6 lawful then but not now?

7 MR. SMALL: The legal reasoning and my --
8 my application for rehearing does not say there is an
9 absolute rule against administrative notice, but it
10 does say there is an absolute rule of lessening the
11 burden of proof on an applicant and that is what is
12 being done in this case and it is unlawful.

13 Now, I said I was going to put this
14 objection on the record and I just wanted to make
15 sure that to the extent that the OCC proceeds without
16 any more burden than any other party to rely on parts
17 of the MRO record, that any reliance we have on the
18 MRO record should not be taken as acceptance of the
19 administrative notice of the MRO.

20 EXAMINER PRICE: Let me ask you then,
21 just as a, not to put you directly on the spot, but
22 it's a fairly common practice here to take
23 administrative notices of portions of other records;
24 is it not? Maybe not at your request.

25 MR. SMALL: And that is the reason why it

1 is very important to look at the case law before the
2 Supreme Court. Because you will find before the
3 Supreme Court instances where the Supreme Court has
4 permitted that practice and situations where they
5 have not accepted that practice.

6 The case we cited in our application for
7 rehearing on Monday, Canton Storage, makes a clear --
8 a bright line against lessening of a party's burden
9 of proof by administrative notice of another record.
10 That's not an absolute rule against administrative
11 notice of another record, but it is an absolute rule
12 against lessening the burden of proof which is
13 exactly what's going on in this case.

14 EXAMINER PRICE: Can you explain to me
15 why?

16 EXAMINER BOJKO: Right.

17 MR. SMALL: It's a --

18 EXAMINER PRICE: Why do you think --

19 MR. SMALL: The clearest explanation
20 would be it's a statutory requirement. That burden
21 of proof is --

22 EXAMINER BOJKO: No. No. He's asking
23 how we are lessening it because we do not believe
24 that the burden of proof has been lessened. Let's
25 just state that.

1 EXAMINER PRICE: I don't think the
2 Commission order ever used the, to any extent implied
3 or used the phrase "burden of proof."

4 EXAMINER BOJKO: And I think, as you can
5 tell from our discussions this morning, we've had
6 quite a bit of discussion about the MRO proceeding
7 and I envision that will continue throughout the rest
8 of the week.

9 MR. SMALL: If you remove, I'd like to go
10 back to the genesis of this proceeding which is there
11 are a lot of -- there's a lot of discussion, and no
12 doubt there will be throughout the day, of the
13 various provisions in the stipulation that have
14 nothing to do with providing a standard service
15 generation, you know, the service is a generation
16 service, the standard service offer. That's the
17 fundamentals this.

18 And if you take away all the testimony
19 and so forth on the competitive bidding and so forth,
20 then the company cannot possibly meet its burden of
21 proof in an ESP proceeding. You just take away --
22 there's virtually nothing filed, for instance, in
23 Mr. Ridmann's testimony that explains the competitive
24 bidding process. The company is entirely relying for
25 the competitive bidding process on its testimony from

1 the MRO case.

2 EXAMINER BOJKO: Okay. Now you're
3 talking about having a problem with the witness
4 answering one of your questions and I think we can
5 take that up when the question is posed to the
6 witness because I believe that Mr. Ridmann does speak
7 to the stipulation in his testimony and that he will
8 testify to questions asked about every provision in
9 the stipulation.

10 MR. SMALL: It's not about the
11 stipulation, though. The company doesn't even have
12 an application that explains its competitive bidding
13 procedure. In fact, all it has is a reference back
14 to something which is in the record in the MRO case.
15 If you take away that record, there is no explanation
16 of even their competitive bidding process.

17 EXAMINER PRICE: I don't understand how
18 you're saying if you take away the record. The point
19 of taking administrative notice of that was for the
20 parties to be able to rely upon that testimony and
21 form their arguments based upon that testimony.
22 You're just wishing it away.

23 MR. SMALL: Well, it's the Supreme Court
24 that says you can't.

25 EXAMINER PRICE: No; you didn't answer

1 her question. How is this lessening their burden of
2 proof?

3 MR. SMALL: Because they don't have to
4 create the extensive record in support of their ESP.
5 And that's exactly what Canton Storage says. You
6 can't -- you can take administrative --

7 EXAMINER BOJKO: We need to take this up
8 with the individual witness because they do speak to
9 it in the testimony and they do have the burden of
10 proof and just because they bring in another record
11 to try to be redundant to a process that we've
12 already had and we are supplementing their current
13 application and stipulation, that does not mean that
14 we're lessening the burden nor do they have to
15 address it, speak to it, answer questions about it.
16 I think that that is -- we are not taking away your
17 right to cross-examine this witness on that subject
18 matter. Let's just be clear about that.

19 MR. SMALL: I don't really think those
20 are the same issues, but I understand you're making a
21 ruling here.

22 EXAMINER PRICE: We're not making a
23 ruling. Again, the application is pending before the
24 Commission, we don't have the ability to change their
25 existing order.

1 MR. LAVANGA: Your Honor, can I make a
2 quick statement for the record?

3 EXAMINER PRICE: Please.

4 MR. LAVANGA: I'd just like to note that
5 we, Nucor, and I'm sure several other parties relied
6 on the Commission's order taking notice of the record
7 in the MRO in deciding whether to file testimony or
8 not in this proceeding. So we would be severely
9 prejudiced if the Commission were to grant this
10 rehearing and take that record out of this
11 proceeding.

12 EXAMINER PRICE: All right. I think you
13 need to make that argument to the Commission.
14 Telling us doesn't help.

15 MR. LAVANGA: Thank you.

16 EXAMINER BOJKO: We thank you, though.

17 MR. IRELAND: One final point, your
18 Honor, we would join the objection that's been made
19 by OCC. Our participation in the hearing is not a
20 waiver of the argument that we're making to the
21 Commission.

22 EXAMINER BOJKO: Well, which argument do
23 you have pending --

24 MR. IRELAND: We have an application for
25 rehearing as well.

1 EXAMINER BOJKO: Sorry, I jumped back to
2 the motion to vacate.

3 MR. IRELAND: That's okay.

4 EXAMINER PRICE: Obviously, we will
5 proceed under the existing ground rules. If the
6 Commission reverses itself, then we'll all be back
7 here and we'll have a more extensive proceeding and
8 we won't be worrying about administrative efficiency
9 at that point.

10 EXAMINER BOJKO: In all fairness to the
11 company, do you want to respond or would you just
12 wait till your memo contra is filed in the docket?

13 MR. BURK: I think that would be our
14 preference at this time, your Honor.

15 EXAMINER BOJKO: Anything else before
16 we -- Mr. Eckhart.

17 MR. ECKHART: Your Honor, on behalf of
18 the Natural Resources Defense Council we would join
19 in the OCC motion.

20 EXAMINER BOJKO: Wait a second. There
21 isn't a motion. What are you joining in? There's no
22 motion pending before us. Don't create one, please.

23 MR. ECKHART: The application, excuse me.

24 EXAMINER BOJKO: The what?

25 MR. ECKHART: The argument that Mr. Small

1 just made.

2 EXAMINER BOJKO: Again, there's nothing
3 pending before us, you need to file an app. for
4 rehearing which I assume your time period has expired
5 by now. You need to take that up with the
6 Commission.

7 Anything else before we proceed?

8 MR. SMALL: Just to be clear --

9 EXAMINER BOJKO: Is he in it?

10 MR. SMALL: Yes.

11 EXAMINER PRICE: Thank you.

12 Mr. Conway.

13 MR. CONWAY: Thank you, your Honor. Just
14 a small point I'd put in the category of
15 housekeeping. FirstEnergy Solutions and OCC engaged
16 in discovery, FirstEnergy Solutions provided a
17 massive -- a mass of documents to the OCC in response
18 to discovery requests from OCC, and in accordance
19 with a nondisclosure agreement which OCC executed the
20 documents contained customer proprietary information,
21 and before we made the production we got an oral
22 commitment from OCC and we discussed with Attorney
23 Examiner Price our request that, which OCC agreed
24 with, to, as was the case in the MRO proceeding, that
25 our divulgement to the OCC of the documents which

1 include the CPI would be done, if it did offend or
2 potentially conflict with any existing Commission
3 rules concerning the disclosure of customer
4 information, that those restrictions/prohibitions
5 would be waived for purposes of the discovery, and
6 Attorney Examiner Price gave his oral ruling over the
7 phone during our conversation and we indicated that
8 we would reiterate the request during the hearing
9 today, and so I do so.

10 EXAMINER PRICE: Thank you, Mr. Conway.
11 Yes, we will reiterate on the record that our ruling
12 was that FirstEnergy Solutions was directed to
13 produce those documents pursuant to a valid discovery
14 request and any Commission rules precluding that were
15 waived.

16 MR. CONWAY: Thank you, your Honor.

17 MR. SMALL: For the OCC's part, I'll just
18 point out this was contained, we have no problem with
19 Mr. Conway's representation and this was contained,
20 this argument that this is exactly the way we should
21 proceed was contained in the March 24th motion by the
22 OCC.

23 EXAMINER PRICE: Thank you.

24 MR. BURK: I guess just to clarify the
25 record, we had a similar -- the companies had a

1 similar arrangement and went through a similar
2 process with your Honors so maybe we should just
3 state that on the record.

4 EXAMINER PRICE: Yes, I will reiterate
5 again that FirstEnergy operating utilities, Ohio
6 Edison, Toledo Edison and Cleveland Electric
7 Illuminating Company, were also directed to fulfill
8 the discovery and any Commission rules precluding
9 that would be waived.

10 MR. BURK: Thank you.

11 EXAMINER PRICE: Mr. Randazzo.

12 MR. RANDAZZO: Your Honor, since I expect
13 some of our companies are involved in the exchange of
14 information, my understanding is that information was
15 provided subject to confidentiality or protective
16 agreements and that those protective agreements, the
17 testimonies of those agreements still apply.

18 EXAMINER PRICE: Yes.

19 MR. RANDAZZO: To the use of that
20 information.

21 EXAMINER PRICE: Thank you for that
22 clarification. Yes, that's correct.

23 Is that not correct, Mr. Small?

24 MR. SMALL: We have protective agreements
25 with both FirstEnergy and with FirstEnergy Solutions.

1 EXAMINER PRICE: Thank you.

2 EXAMINER BOJKO: Anything else? Mr. Burk
3 or Mr. Korkosz.

4 MR. KORKOSZ: The applicants call
5 Mr. Ridmann.

6 EXAMINER BOJKO: Mr. Ridmann, would you
7 please raise your right hand.

8 (Witness sworn.)

9 EXAMINER BOJKO: Please be seated.
10 Let's go off the record

11 (Discussion off the record.)

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

14 Please state your name and address for
15 the record.

16 THE WITNESS: My name is William R.
17 Ridmann. By business address is 76 South Main
18 Street, Akron, Ohio 44308.

19 - - -

20 WILLIAM R. RIDMANN

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

23 DIRECT EXAMINATION

24 By Mr. Korkosz:

25 Q. Mr. Ridmann, by whom are you employed and

1 in what capacity?

2 A. I'm employed by FirstEnergy Service
3 Company as vice president of rates and regulatory
4 affairs.

5 Q. Let's get some housekeeping items taken
6 care of, if we may.

7 MR. KORKOSZ: If your Honors please, I
8 would ask to have marked for identification as the
9 Companies' Exhibit No. 1 the application and
10 stipulation attached materials that were filed and
11 docketed in this matter on March 23rd.

12 EXAMINER BOJKO: It will be so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MR. KORKOSZ: Also while I'm identifying
15 I will ask to have marked for identification as
16 Companies' Exhibit 2 the errata filing that was
17 docketed and supplied to the parties on March 30th.

18 EXAMINER BOJKO: It will be so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. KORKOSZ: And finally I would ask to
21 have marked as Companies' Exhibit 3 for
22 identification the errata, the second errata filing
23 and filing pursuant to the Commission's April 6th,
24 2010, entry.

25 EXAMINER BOJKO: It will be so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MR. KORKOSZ: These documents have been
3 previously supplied to the court reporter.

4 EXAMINER BOJKO: Thank you.

5 MR. SMALL: If I may, Mr. Korkosz, what
6 was the date of the second errata?

7 EXAMINER BOJKO: April 13th, 2010.

8 MR. SMALL: Thank you.

9 EXAMINER BOJKO: I'm assuming it was
10 filed on the date of the letterhead.

11 MR. KORKOSZ: That's my understanding,
12 your Honor.

13 EXAMINER BOJKO: Thank you.

14 Q. (By Mr. Korkosz) Mr. Ridmann, are you
15 familiar with what has been marked for identification
16 as Companies' Exhibits 1, 2, and 3?

17 A. Yes, I am.

18 EXAMINER PRICE: Let's go off the record.
19 (Off the record.)

20 EXAMINER PRICE: Back on.

21 Q. Mr. Ridmann, do you understand those
22 documents to be, in fact, as I represented
23 respectively, Companies' Exhibit 1, the application
24 and stipulation, Companies' Exhibit 2, the first
25 errata filing, and Companies' Exhibit 3, the second

1 errata filing in response to the April 6th entry?

2 A. Yes.

3 Q. And you are the witness in this case on
4 behalf of the companies to sponsor those exhibits?

5 A. Yes, I am.

6 Q. All right.

7 MR. KORKOSZ: I ask, your Honors, to have
8 marked for identification as Companies' Exhibit 4 a
9 multipage document styled the direct testimony of
10 Mr. Ridmann.

11 EXAMINER BOJKO: It will be so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Mr. Ridmann, do you have that document
14 before you?

15 A. Yes, I do.

16 Q. Do you intend it to be your direct
17 testimony in this proceeding?

18 A. Yes.

19 Q. Do you have any additions or corrections
20 to that?

21 A. I have one correction, one minor
22 correction. Page 7, line 20, after the last word on
23 that line, after the word "exclusion," insert the
24 word "of." So it will read "Would have been due to
25 the exclusion of these amounts."

1 EXAMINER BOJKO: Mr. Ridmann, could you
2 pull the microphone closer to you, please. Thank
3 you.

4 Q. Any others?

5 A. No, that is all.

6 Q. Mr. Ridmann, subject to that correction,
7 if I were today to ask you the questions contained in
8 Companies' Exhibit No. 4, would your answers be the
9 same?

10 A. Yes, they would.

11 MR. KORKOSZ: Mr. Ridmann is available.

12 EXAMINER BOJKO: Thank you.

13 MR. SMALL: Your Honors, I have motions
14 to strike.

15 EXAMINER BOJKO: Let's take those up
16 first. Thank you.

17 MR. SMALL: As has been the practice
18 before the hearing examiners, I have a number of
19 motions to strike all based on the same argument so
20 if you would like, we can take them up together.

21 EXAMINER BOJKO: That would be great.
22 Thank you.

23 MR. SMALL: The supplemental stipulation
24 in Case 08-935-EL-SSO stated on page 1, which I have
25 the relevant copies of the pages that I'm going to

1 cite, if you would like copies of it.

2 EXAMINER PRICE: Yes, I would.

3 MR. SMALL: I have copies for other
4 counsel if they wish.

5 I have just included the relevant
6 portions in 08-935. There were two stipulations.
7 There was a supplemental stipulation on February 26th
8 and it relates back to the first stipulation that was
9 filed at the Commission on February 19th and so I've
10 included the relevant pages from both of them.

11 The supplemental stipulation on page 1,
12 which is the first page that I handed out, stated
13 that the signatories agreed to all of the terms and
14 conditions of the stipulation and recommendation
15 filed in Case Nos. 08-935-EL-SSO and so forth. It
16 refers to the February 9th, 2009, filing, subject to
17 various changes that were contained in the
18 supplemental stip.

19 Turning to the stipulation itself that it
20 relates back to, which I've provided the cover page,
21 and then I've provided a copy of page 45 of that
22 stipulation which provides, and this was unaltered by
23 the supplemental stipulation, the February 19th,
24 2009, stipulation stated that it was submitted for
25 purposes of this proceeding only and is not deemed

1 binding on any other proceeding and except as
2 otherwise provided herein, nor is it to be offered or
3 relied upon in any other proceedings except as
4 necessary to enforce the terms of this stipulation.

5 The portion that I just read, I hope I
6 did it accurately, is underlined in the portion that
7 I handed out.

8 Turning to Mr. Ridmann's testimony on
9 page 12, the sentence starting on line 7 and ending
10 on line 10, the witness here in this portion of the
11 testimony relies upon the similarity of components
12 for purposes of arguing that the stipulation in this
13 particular case does not violate any important
14 regulatory principle or practice. In other words, he
15 bases his argument on the previous stipulation which
16 is not permissible under the terms of the stipulation
17 and, I would add, stipulations that were accepted by
18 the Commission.

19 Page 17, line 12, starting with the word
20 "was" through line 13 ending in "ESP, and it."

21 MR. KORKOSZ: May I have that one more
22 time, Mr. Small?

23 MR. SMALL: Page 17, line 12, starting
24 with the word "was" and going through line 13 ending
25 in the words "ESP, and it."

1 Then again right below that, page 17,
2 line 14, starting with the word "Continue," and going
3 through line 15 ending in the words "and also to."

4 The witness in this portion of his
5 testimony relies upon the support of Rider DSI, that
6 was approved in the stipulation in the prior case by,
7 I quote, signatory parties, to support Rider DCR
8 which Mr. Ridmann claims substitutes for Rider DSI.

9 And on page 19 of his testimony --

10 EXAMINER PRICE: Let's -- go ahead. How
11 many of these do you have, Mr. Small?

12 MR. SMALL: I'm on my last one.

13 EXAMINER PRICE: Oh, never mind. Which
14 page, I'm sorry?

15 MR. SMALL: Page 19, line 9. The
16 sentence starting with the words "for example" and
17 ending at the end of the sentence on line 12, the
18 last words there are "delivery system," the witness
19 relies in this portion of his testimony on support
20 by, and I quote from line 10, signatory parties as a
21 reference to the prior stipulation in 08-935, to
22 support, again, required DSI and the concept of a
23 distribution rider, he's trying to support Rider DCR
24 based on signatory parties acceptance and the
25 Commission approval of the stipulation regarding

1 Rider DSI in the previous case.

2 Those are my three or four, depending
3 upon how you look at it, on page 17 I had two
4 portions, four motions to strike regarding
5 Mr. Ridmann's testimony.

6 EXAMINER BOJKO: Thank you.

7 FirstEnergy, Mr. Korkosz.

8 MR. KORKOSZ: If your Honor please, I
9 think the point of Mr. Small's motion is misguided.
10 I think it's clear from the context of Mr. Ridmann's
11 testimony that he is relying on the Commission's
12 approval of the stipulation in that case in support
13 of the points that he is offering there, it is not,
14 as Mr. Small would characterize it, just taking the
15 agreement of the parties and speaking from that, but
16 rather Mr. Ridmann is looking to the Commission's
17 approval of that stipulation and the commentary the
18 Commission made in the course of that approval to
19 advance the arguments that his testimony contains.

20 EXAMINER PRICE: Isn't it fair, though,
21 merely the phrases were used a couple times
22 "Supported by the signatory parties," I mean isn't it
23 fair that that's pushing your luck and relying upon
24 the signatory parties' prior agreement which you
25 agreed would never be relied upon?

1 MR. KORKOSZ: I would, however,
2 reiterate, your Honor, acknowledging your Honor's
3 point that it is perhaps an arguable area, I would
4 nonetheless reiterate the point that we are now
5 speaking of the Commission's approval and points the
6 Commission relied on and were in support of that and
7 were part of the Commission's order.

8 MR. SMALL: If I may, your Honor.

9 EXAMINER BOJKO: You may.

10 MR. SMALL: The witness could have simply
11 supported the provisions in the stipulation in this
12 particular case on their own merits, but instead the
13 portions that I've cited he relies on the prior case
14 for support and yes, of course, your Honor, there's
15 absolutely no point to putting in reliance on the
16 signatory parties if he's just simply recognizing
17 what exists right now. He is relying upon the
18 signatory parties and their acceptance of the
19 provisions in the prior stipulation.

20 EXAMINER BOJKO: We're going to grant in
21 part and deny in part your motion to strike. We are
22 going to deny the first motion to strike in its
23 entirety, that will remain as is.

24 MR. BOEHM: Excuse me, your Honor, do you
25 mean the materials on page 12; is that right?

1 EXAMINER BOJKO: Yes, page 12, motion to
2 strike is denied.

3 Turning to page 17, we are going to grant
4 your second motion to strike and strike from the
5 record "Was supported by the signatory parties to the
6 companies' current ESP, and it," so grant that one in
7 its entirety and strike the whole portion of that
8 sentence.

9 And then for the third one right on the
10 next line we're going to deny that motion to strike.

11 And then turning to 19, we're going to
12 grant the motion to strike with regard to the
13 following words "and supported by the signatory
14 parties." I guess we'll be consistent with the other
15 one, "and supported by the signatory parties in the
16 companies' current ESP."

17 I'm sorry. Okay, I'm sorry, we're going
18 to just strike "and supported by the signatory
19 parties" on line 10 because in the companies' current
20 ESP going with the beginning portion of that
21 sentence, so the sentence should read now "for
22 example, as approved by Commission in the companies'
23 current ESP, Rider DS was established as a mechanism
24 to enable future investments in the delivery system."

25 MR. POULOS: Your Honor, what page was

1 that?

2 EXAMINER BOJKO: 19.

3 Everybody get those or do I need to
4 repeat them?

5 Do you have another motion, Mr. Small?

6 MR. SMALL: No, thank you, your Honor.

7 EXAMINER BOJKO: Let's go off the record
8 for a minute.

9 (Discussion off the record.)

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

12 MR. LAVANGA: No questions, your Honor.

13 EXAMINER BOJKO: OEG?

14 MR. BOEHM: No questions.

15 EXAMINER BOJKO: FES?

16 MR. GALLON: No questions, your Honor.

17 EXAMINER BOJKO: IEU.

18 MR. RANDAZZO: No questions.

19 EXAMINER BOJKO: Constellation?

20 MR. SETTINERI: No questions.

21 EXAMINER BOJKO: Mr. Smith?

22 MR. SMITH: Material Sciences Corporation
23 does not have questions.

24 EXAMINER BOJKO: Okay. COSE?

25 MR. WELDELE: No questions, your Honor.

1 EXAMINER BOJKO: Colleges?

2 MR. MILLER: No questions, your Honor.

3 EXAMINER BOJKO: OPAE?

4 MS. MOONEY: No questions, your Honor.

5 EXAMINER BOJKO: Schools? Ohio Schools
6 Council.

7 MR. WARNOCK: No questions.

8 EXAMINER BOJKO: Hospital Association?

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

10 EXAMINER BOJKO: OMA is the same as
11 Hospitals. Okay, Kroger.

12 MR. YURICK: No questions, your Honor,
13 thank you.

14 EXAMINER BOJKO: PJM Power Providers are
15 not here, right? City of Akron.

16 MR. CLARK: No questions.

17 EXAMINER BOJKO: NOPEC?

18 MR. WARNOCK: No questions.

19 EXAMINER BOJKO: Direct?

20 MR. DYAS: Thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Dyas:

24 Q. If I may, Mr. Ridmann, my name is Chuck
25 Dyas here on behalf of Direct Energy Services, the

1 firm of Barnes & Thornburg. We are going to limit to
2 these very narrow issues here so I hope not to hold
3 you up.

4 Beginning with on pages 7 and 8 of the
5 stipulation and recommendation it states that while
6 PIPP customers will remain retail generation
7 customers of companies, their retail load and usage
8 will be excluded and the bid product will then be
9 supplied by the companies at a 6 percent discount off
10 the PIPP customers' price to compete. Our question
11 to you, sir, is why is the PIPP customer's retail
12 load and usage?

13 Why is the PIPP retail load and usage
14 provided at a 6 percent discount?

15 A. Because that was what was agreed to among
16 the parties to the stipulation.

17 Q. And how was the 6 percent determined,
18 Mr. Ridmann?

19 A. It was part of the settlement process and
20 6 percent, by the party who asked for this, seemed
21 like a reasonable amount and it's more than they are
22 currently getting under the current ESP.

23 Q. Can you tell me who those parties were
24 that you discussed the 6 percent amount with?

25 A. I think in the initial conference that we

1 had with all the parties early in December, I think
2 several parties spoke up but the one that comes to
3 mind is the initial party was OPAE asking if
4 basically a discount could be given to PIPP customers
5 in this process.

6 Q. Does FirstEnergy offer a discount in your
7 other jurisdictions?

8 A. Who do you include in the term
9 "FirstEnergy"?

10 Q. In this case I'm saying the FirstEnergy
11 service providers, your companies.

12 A. So are you talking about Ohio Edison,
13 Cleveland Electric, and Toledo Edison in your
14 question?

15 Q. I would say the FirstEnergy electric
16 service providers who provide services to
17 Pennsylvania and New Jersey. Is that within your
18 territory?

19 A. So are you talking about the regulated
20 utilities that are part of FirstEnergy in --

21 Q. Yes.

22 A. -- Pennsylvania and New Jersey?

23 Q. Yes.

24 A. And the question is do they provide a
25 discount?

1 Q. A discount.

2 A. There are I believe discounts provided in
3 Penn Elec and Met Ed to certain customers through the
4 rate design process. I don't recall any in New
5 Jersey and I'm not absolutely certain about Penn
6 Power, they may provide -- they may provide some
7 discount, I'm just not certain at this point.

8 Q. Of those that you have knowledge of, do
9 you know what the amount of their discount is?

10 MR. KORKOSZ: Objection. Relevance.

11 EXAMINER BOJKO: Do you have a response?

12 MR. DYAS: It's within the stipulation
13 they're asking for a discount, is that a competitive
14 rate compared to what they would offer in other
15 areas.

16 MR. KORKOSZ: Is that another question or
17 an argument?

18 EXAMINER BOJKO: I liked that question
19 better, can you ask that question, please?

20 MR. DYAS: I'll keep them simple
21 sentences instead of complex.

22 Q. Is your 6 percent discount a competitive
23 rate compared to what you're offering in other areas?

24 MR. KORKOSZ: Objection, same grounds.

25 EXAMINER BOJKO: Overruled.

1 A. Again, by other areas you're talking
2 about the other companies of FirstEnergy that provide
3 generation to its customers; is that correct?

4 Q. That's correct.

5 A. Yes, and those that I've indicated that
6 they provide possible discounts I believe it's
7 competitive.

8 Q. Can that 6 percent PIPP discount be set
9 larger?

10 A. Oh, I suppose as part of the overall
11 process of reaching agreement on a very complex or as
12 part of this process basically there are many
13 dynamics that come into play in terms of an overall
14 package for all the parties involved, and there's
15 always some give and take in terms of, you know, the
16 overall process and the individual provisions. And
17 so it could be higher or could be lower. Or it could
18 be nonexistent like it is in the existing ESP.

19 Q. Furthermore, on pages 7 and 8 of the
20 stipulation and recommendation it follows to
21 accomplish this pricing, the PIPP pricing, the
22 companies will enter into a wholesale bilateral
23 contract with FirstEnergy Solutions for this power
24 supply for a three-year period with power flow under
25 such wholesale contract commencing June 1st, 2011.

1 How is FirstEnergy related to FirstEnergy Solutions
2 Corporation?

3 A. How do you define FirstEnergy in your
4 question?

5 Q. The applicant.

6 A. So you're talking about Ohio Edison,
7 Cleveland Electric Illuminating, and Toledo Edison?

8 Q. Yes, sir.

9 A. They are affiliates.

10 Q. Is FirstEnergy Solutions certified by the
11 Commission to enter into this type of agreement as
12 set forth in the stipulation?

13 A. I don't know of any reason why they're
14 not.

15 Q. Do you know whether the Commission has
16 jurisdiction over the cost of pricing of any of
17 FirstEnergy Solutions in this process, in the
18 stipulation?

19 A. Could you repeat the question, please?

20 Q. Yes, sir.

21 A. Or reread it.

22 (Record read.)

23 A. I think the pricing is between, basically
24 FirstEnergy Solutions and the operating companies,
25 it's a wholesale bilateral contract and therefore

1 that's subject to the FirstEnergy --

2 Q. It's not subject to this Commission; is
3 that correct?

4 A. I don't believe that contract is .

5 EXAMINER PRICE: Mr. Ridmann, you need to
6 project your voice into the microphone.

7 THE WITNESS: I'm sorry.

8 EXAMINER BOJKO: Mr. Eckhart, there's
9 chairs over here you may sit in.

10 Q. Mr. Ridmann, are there other companies
11 capable of providing the services that FirstEnergy
12 Solutions is anticipated to provide under the terms
13 of the stipulation?

14 A. I don't know if there are or not.

15 Q. Mr. Ridmann, do you know if FirstEnergy
16 Solutions is subject to the excessive earnings test?

17 A. No, FirstEnergy Solutions is not subject
18 to the excess earnings test under the stipulation.
19 Or, for that matter, I don't think under the
20 provisions of the Senate Bill 221.

21 Q. Mr. Ridmann, do you agree that providing
22 FirstEnergy Solutions with an exclusive opportunity
23 precludes the rate from being competitively bid on?

24 A. Well, I presume as stated in the
25 stipulation that, you know, there are provisions

1 where if the ODOD wanted to take the PIPP load, it
2 could do so and seek alternate supplies laid out in
3 the stipulation on page 8.

4 Q. Mr. Ridmann, did FirstEnergy bring this
5 arrangement to the attention of the Ohio Department
6 of Development?

7 A. And when you say "this arrangement," do
8 you mean the --

9 Q. The PIPP pricing.

10 A. I believe there were discussions with the
11 ODOD.

12 Q. Mr. Ridmann, would you agree that the ESP
13 circumvents the market rate option?

14 A. What do you mean by "circumvents" in the
15 question?

16 Q. Do you have an answer for that question?

17 THE WITNESS: Can you reread the
18 question?

19 (Record read.)

20 A. Well, since I'm not sure what you mean by
21 "circumvents," I would just say that I think the ESP
22 incorporates many of the concepts laid out in the MRO
23 and enhances it beyond what was proposed in the MRO.
24 And, if accepted by the Commission, it would be in
25 place instead of the MRO.

1 MR. DYAS: One second.

2 Thank you, Mr. Ridmann. Your Honors,
3 that's all Direct Energy Services has.

4 EXAMINER BOJKO: Thank you. I
5 inadvertently forgot to ask staff as a signatory
6 party if you had any --

7 MR. McNAMEE: No questions.

8 EXAMINER BOJKO: -- questions, thank you.
9 Mr. Eckhart, do you have any questions?

10 MR. ECKHART: No questions, your Honor.

11 EXAMINER BOJKO: OEC.

12 MS. De LISI: No questions your Honor.

13 EXAMINER BOJKO: ELPC.

14 MR. HEINTZ: Just a couple questions,
15 your Honor.

16 EXAMINER BOJKO: Would you like to come
17 up to the table. Please proceed.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Heintz:

21 Q. Good morning, Mr. Ridmann, my name is
22 Michael Heintz, I'm an attorney with the
23 Environmental Law and Policy Center. Like Direct
24 Energy I'd like to just ask you a couple of questions
25 on a very narrow piece of the stipulation.

1 On page 5 of your testimony you reference
2 FirstEnergy, and by FirstEnergy I mean Toledo Edison,
3 Ohio Edison, and The Cleveland Electric Illuminating
4 Company, their plan to seek renewable energy credits
5 through an RFP process; did I represent that
6 correctly?

7 A. Yes, I presume you are talking about
8 lines 5 through 13.

9 Q. I am. And as part of the proposed
10 stipulation the FirstEnergy companies will be seeking
11 renewable energy credits on a three-year RFP?

12 A. I'm not absolutely certain it would
13 necessarily -- it won't go out past the term of the
14 ESP but I'm not certain that you couldn't develop an
15 RFP that would basically go out, for instance, for
16 one year of seeking RFPs. One year providing the
17 RECs.

18 Q. Sure. You say it couldn't go out beyond
19 the ESP. Why is that?

20 A. Basically, because that's how we set up
21 the requirements for bidding into the overall
22 auction, the fact that the RECs would be supplied
23 separately from the overall auction. I suppose if
24 later on the decision is made to seek power POLR
25 supply, if you will, that it would include the RECs,

1 for instance, that after the term of the ESP that
2 then the RECs that were beyond what was already lined
3 up, if you will, would be part of that process.

4 I think all we're committing to here is
5 the term of the ESP.

6 Q. There are other portions of the ESP that
7 extend beyond the terms of the ESP, for example, cost
8 recovery on the smart grid proposal is proposed to be
9 a ten-year time period, correct?

10 A. Yes, that provision goes out ten years.

11 Q. And similarly the demand response
12 provision contained in this proposed stipulation is
13 also a ten-year.

14 A. I'm sorry, what were you referring to
15 there?

16 Q. The demand response.

17 A. Where exactly are you referring to there
18 going out ten years?

19 Q. Referring to the proposed stipulation,
20 page 23.

21 A. Page 23 is talking about the MI rider, is
22 that what you're talking about?

23 Q. Yes, I am.

24 A. Yes, thank you.

25 Q. And similarly Rider DFC has a 25-year

1 proposed time period under the stipulation?

2 A. The recovery period for the recovery of
3 the deferrals, the future deferrals are out over 25
4 years.

5 Q. Okay. So could the FirstEnergy companies
6 procure renewable energy credits beyond the terms of
7 the ESP?

8 A. Just give me one minute.

9 Q. Sure.

10 A. The provisions that you referenced
11 basically dealing with going out past the term of the
12 ESP basically deal with recovery of costs going out
13 past this period. The REC provision really doesn't
14 deal with recovery of costs in terms of going out
15 past the recovery period, it really has to do with
16 what's going to be supplied during the term of the
17 ESP. So I think there's a distinction between the
18 two.

19 Q. Okay. If the contract seeking renewable
20 energy credits, if cost recovery for the costs
21 associated with procuring renewable energy credits
22 ran concurrently with the length of the contract,
23 would that allow the FirstEnergy companies to seek
24 renewable energy contracts beyond the terms of the
25 ESP?

1 A. Not under the terms of this ESP.
2 Basically the ESP lays out how RECs would be supplied
3 or obtained, if you will, during the term of the ESP.

4 Q. Okay. If cost recovery ran concurrently
5 with the contracts seeking renewable energy credits,
6 could the companies seek renewable energy credits
7 beyond the terms of the ESP?

8 MR. RANDAZZO: Might I inquire what you
9 mean by "cost recovery"?

10 EXAMINER BOJKO: Can you clarify?

11 MR. HEINTZ: Sure.

12 Q. Under the terms of the proposed ESP
13 stipulation there is a rider AER that, and I'm
14 reading from Mr. Ridmann's testimony on page 5, cost
15 related to the procurement of RECs would be provided
16 through the alternative energy resource AER, and
17 reconciled on a quarterly basis; that's what I'm
18 referring to.

19 MR. RANDAZZO: So it would continue to be
20 bypassable.

21 MR. HEINTZ: Sure.

22 A. You know, you're asking a hypothetical
23 question and it gets to basically could the parties
24 agree to a stipulation which would provide for
25 different provisions than which they agreed to. And

1 I guess the answer is sure, if all the parties agreed
2 to something different. The fact of the matter is
3 the parties didn't, they agreed to this ESP with all
4 the nuances and all the provisions put into it.

5 MR. HEINTZ: Thank you.

6 Your Honor, I have nothing further.

7 EXAMINER BOJKO: Thank you.

8 Let's go off the record.

9 (Discussion off the record.)

10 EXAMINER BOJKO: We will take a lunch
11 recess at this time. We will reconvene at 1 o'clock.
12 Thank you.

13 (At 11:57 a.m., a lunch recess was taken
14 until 1 p.m.)

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1 Tuesday Afternoon Session,
2 April 20, 2010.

3 - - -

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

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

8 THE WITNESS: Okay.

9 EXAMINER BOJKO: And we will move to
10 Mr. Small.

11 MR. SMALL: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Small:

15 Q. Mr. Ridmann, Jeff Small, OCC. I have a
16 few questions for you this afternoon.

17 EXAMINER BOJKO: Just a few?

18 MR. SMALL: A few.

19 Q. Would you please turn to page 15 of the
20 stipulation. That would be FirstEnergy -- part of
21 FirstEnergy Exhibit 1.

22 EXAMINER BOJKO: I'm sorry, which page?

23 MR. SMALL: 15.

24 Q. The lines aren't numbered but I'm down on
25 line 10, I believe the line starts with the word

1 "distribution."

2 A. All right.

3 Q. And there's a sentence there that starts
4 with the word "net," and on lines 11 and 12 the
5 stipulation refers to net job losses at the companies
6 as a result of involuntary attrition. Do you see
7 that?

8 A. Yes, I do.

9 Q. Okay. The companies that you are
10 referring to are the three electric distribution
11 utilities CEI, Toledo Edison, and Ohio Edison; is
12 that correct?

13 A. That's correct.

14 Q. Now, I noticed a little bit of confusion
15 earlier in the cross-examination and I want to be
16 clear, when I use the word "FirstEnergy" as we did in
17 your deposition, I mean the three electric
18 distribution utilities. Do you understand that?

19 A. Yes, I do.

20 Q. And when I want to talk about another one
21 of the FirstEnergy affiliated companies, I will say
22 "the affiliated companies" or "FirstEnergy Solutions"
23 or "ATSI" or whatever. You understand?

24 A. Yes.

25 Q. Thank you.

1 You are employed by the FirstEnergy
2 Service Company so your job is not covered by the
3 stipulation language that we just went over; is that
4 correct?

5 A. That's correct.

6 Q. Are there any FirstEnergy employees in
7 the hearing room today?

8 A. No, there are not.

9 Q. And many of those who fulfill utility
10 functions for FirstEnergy are contract workers and
11 their jobs are not covered by that language in the
12 stipulation either; is that correct?

13 A. I may quibble with the word "many."
14 There are contract workers and they're not covered by
15 the stipulation.

16 Q. And FirstEnergy Solutions owns and runs
17 the power plants and FirstEnergy does not have -- own
18 operating power; is that correct?

19 A. That's correct.

20 Q. So there are no power plant employees
21 covered by that provision in the stipulation.

22 A. That's correct.

23 Q. Now, page 15 of the stipulation refers to
24 "involuntary attrition." Do you see those words?

25 A. Yes, I do.

1 Q. And if FirstEnergy had a program of
2 providing financial incentives for its employees to
3 leave employment, you don't know whether that would
4 be covered by the provision for involuntary
5 attrition; is that correct?

6 A. You asked me that a question on my
7 deposition and I indicated at the time I wasn't sure.
8 And having time to think about it since the
9 deposition I believe if an offer or a program was
10 made for employees to, for instance, a VEROP, they
11 were offered a voluntary retirement program incentive
12 to leave and they, you know, I would see that as a
13 voluntary program and the employee would have a
14 choice to either accept or not accept the package.

15 Q. Okay. So that would also not be covered
16 under the provisions of page 15 of the stipulation
17 because, as you termed it, it's voluntary; is that
18 correct?

19 A. That's correct.

20 MR. SMALL: Your Honors, the OCC intends
21 on using OCC Exhibits 1 and 2 for its prefiled
22 testimony and at this time I'd like OCC Exhibit 3
23 marked. It is a response to a discovery request 61.

24 Approach, your Honor?

25 EXAMINER BOJKO: It will be so marked,

1 and yes, you may approach.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. Mr. Ridmann, you're the witness
4 identified on this as a respondent to this
5 interrogatory, have you seen this before?

6 A. Yes, I have.

7 Q. The interrogatory requests information on
8 the baseline for measuring job loss, that is it asks
9 for the detail of when and how this comparison will
10 be made -- I'm sorry.

11 This interrogatory asks for a baseline
12 for measuring job loss. How is that job loss
13 determined? How would that job loss be determined as
14 specified in the stipulation?

15 A. I think you compare the employee levels
16 for the FE companies as you have defined them at some
17 point before the merger and at some point after the
18 merger to determine the net difference, if any,
19 resulting from the merger and resulting from
20 involuntary reduction of employees.

21 Q. Is that answer different than the one
22 found on OCC Exhibit 3, and I'm specifically
23 referring to response (b) to OCC interrogatory 61
24 which reads "Because the proposed merger between
25 FirstEnergy Corp. and Allegheny Energy, Inc. has not

1 been finalized, the detail of when and how this
2 comparison will be made has not yet been determined."

3 Is your answer different than what I just read?

4 A. The answer is different because I think
5 the question was different. You asked basically how
6 would it be determined, and I generically described
7 how it would be determined.

8 In the discovery request you asked for a
9 specific date, and we indicated that's not been
10 finalized yet.

11 Q. Well, we could have it reread but I don't
12 want to go through the trouble. I believe I refer to
13 the baseline against which the comparison will be
14 made which was actually the question (b) of that
15 part. Is your response the same as in this
16 interrogatory? How the comparison will be made has
17 not yet been determined?

18 A. As I said, I think I generically
19 described how it would be determined. You basically
20 look at a date before the merger and after the merger
21 and you would look at the difference in employees at
22 the FirstEnergy companies and determine the,
23 basically the amount of reductions due to involuntary
24 severance, if you will, which is what the stipulation
25 says.

1 Q. Did you --

2 A. I don't know the exact date that you're
3 going to measure from or to because I don't know the
4 date that the merger's going to take place.

5 Q. Were you somehow incapable of providing
6 that answer in response to OCC interrogatory 61?

7 A. Well, again, I think you're asking for
8 what is the date, and I don't know the date in the
9 discovery request.

10 Q. A couple times I've asked the question
11 and I asked it having to do with the baseline against
12 which the comparison will be made. That's the
13 question in (b). It has what is the date, it also
14 says what is the baseline.

15 A. I guess I'll go back to the way I read
16 the discovery question is what is the date for the
17 baseline against which a comparison will be made. I
18 don't know the date and that's how I'd responded to
19 the discovery request.

20 Q. Would you please turn to page 3 of your
21 testimony. On lines 18 and 19, you state that "The,"
22 and I quote, "CBP design mirrors in material respects
23 the process that was used in the successful May 2009
24 auction." Do you see that?

25 A. Yes, I do.

1 Q. Now, the auction that you refer to was
2 held on May 14th, 2009, correct?

3 A. I don't know the exact date, but it was
4 around that date.

5 Q. Subject to check, May 14th?

6 A. Yes.

7 Q. Now, the auction that's proposed in the
8 stipulation and in the application would begin
9 July 13th, 2010; is that correct? If you'd like a
10 reference, you can find it in the application
11 Attachment A, there's a time sequence --

12 A. That's exactly what I was looking for,
13 thank you.

14 Yes, July 13th, 2010.

15 Q. Is it fair to say that you don't know
16 whether one month is as good as another as far as
17 holding an auction?

18 A. That's correct, I'd have to be an
19 excellent forecaster in order to know whether one
20 month is better than another.

21 Q. Since you brought up the topic of
22 forecasting, it is hotter in July, generally, than it
23 is in May; is that correct?

24 A. Yes, it is.

25 Q. And the electric loads are considerably

1 heavier for FirstEnergy in July than they are in May
2 as a general rule?

3 A. Ignoring economic situations, but just
4 based on the weather, that's because of the use of
5 air conditioning load.

6 Q. You don't have to be that great a
7 forecaster to know that the meters are spinning more
8 in July than they are in May, do you?

9 A. Nope. But I will also add that's not the
10 thing that goes into pricing necessarily,
11 particularly when you're looking at forwards.

12 Q. All right. I direct your attention to
13 the bottom of page 3 in your testimony where you
14 refer to the PIPP provision in the stipulation.

15 A. Yes.

16 Q. And you were asked a couple questions by
17 counsel for Direct Energy about this earlier. Do you
18 view the 6 percent as a concession by FirstEnergy,
19 and when I -- again, I mean FirstEnergy, the
20 FirstEnergy EDUs, the applicants in this proceeding,
21 do you view that 6 percent discount as a concession
22 by FirstEnergy that provides benefits in the
23 stipulation?

24 EXAMINER PRICE: It seems like that's a
25 compound question. It seems like there's two

1 questions buried in there, one is is the concession
2 by FirstEnergy, and two is does it provide benefits.

3 MR. SMALL: I'd be happy to split it into
4 those two parts.

5 EXAMINER PRICE: Thank you.

6 Q. (By Mr. Small) Let's try again,
7 Mr. Ridmann. Was the 6 percent discount a concession
8 by FirstEnergy? And I'm referring now to the EDUs.

9 A. I don't know if I would characterize it
10 as a concession. It was basically a provision that
11 various parties wanted and was part of the overall
12 structure of the stipulation.

13 Q. Well --

14 A. And it was an item that FirstEnergy
15 agreed to.

16 Q. In your testimony you count the PIPP
17 discount as a benefit to customers in the ESP as
18 compared to the MRO; is that correct?

19 A. Yes, absolutely. I think there are
20 benefits to customers associated with it.

21 Q. Why shouldn't that be viewed as a
22 provision in which FirstEnergy received the PIPP
23 load? In other words, it's something that
24 FirstEnergy Solutions, a party to this case, won as a
25 concession during the settlement discussions.

1 A. Again, as I stated before, I'm not sure
2 it's a concession on the part of FirstEnergy, it was
3 part of the overall structure of the deal and it
4 provides benefits to customers.

5 Q. I don't think that was the question.

6 MR. SMALL: Could I have the question
7 reread?

8 EXAMINER BOJKO: You may.

9 (Record read.)

10 A. Well, again, you mixed FirstEnergy with
11 FirstEnergy Solutions. Earlier you identified for me
12 how you would define FirstEnergy and you said it was
13 basically the operating companies or the applicants,
14 and I'm talking on behalf of the applicants. I
15 didn't necessarily see it as a concession, I saw it
16 as a benefit to customers.

17 Is there a benefit to Solutions? I don't
18 know.

19 Q. There are more than one -- FirstEnergy
20 Solutions is a supplier of generation services.
21 There are more than one such entities in -- parties
22 to this case; is that correct?

23 A. Suppliers of power?

24 Q. Yes.

25 A. At the wholesale level or at the retail

1 level?

2 Q. Correct.

3 A. Yes, there are.

4 Q. And how was FirstEnergy Solutions
5 selected as the supplier that was to receive this
6 contract with FirstEnergy?

7 A. It was part of the overall structure of
8 the stipulation. The stipulation is a whole and
9 there are various provisions in it that various
10 parties wanted and, you know, basically an overall
11 stipulation was agreed to based on the overall
12 provisions, this being one of them.

13 Q. Okay. And with that said FirstEnergy --
14 then do you assume that FirstEnergy Solutions wants
15 to serve PIPP customers at the 6 percent discount?

16 A. I presume so or else they would have
17 objected or not signed.

18 EXAMINER PRICE: Mr. Ridmann, before we
19 leave this topic, on the other hand, you testified
20 earlier that DOD does not have to, the Ohio
21 Department of Development does not have to rely on
22 this, if they can get a better offer, they can take a
23 better offer?

24 THE WITNESS: There's provisions in the
25 stipulation that allow for that to happen under I

1 think it's Senate Bill 221, there are provisions for
2 that to occur.

3 EXAMINER PRICE: So in theory this
4 6 percent discount provides the minimum discount that
5 PIPP customers would receive under the stipulation,
6 and if a better offer is available from a different
7 provider, DOD would have the discretion to take that.

8 THE WITNESS: Under the provisions of
9 Senate Bill 221, yes.

10 EXAMINER PRICE: Thank you.

11 THE WITNESS: And all the provisions that
12 apply to that.

13 EXAMINER PRICE: Thank you.

14 Q. (By Mr. Small) Would you please direct
15 your attention to page 6 of your testimony. And on
16 page 6, Mr. Ridmann, you mention at the top of the
17 page Rider DCR. Do you see that?

18 A. Yes, I do.

19 Q. And you mention on line 5 using the date
20 certain in Case No. 07-551-EL-AIR, do you see that?

21 A. Yes, I do.

22 Q. Okay. That is commonly referred to as
23 the most recent FirstEnergy distribution rate case,
24 correct?

25 A. Correct.

1 Q. And the date certain for that case was
2 May 31st, 2007, correct?

3 A. Correct.

4 Q. And the investments covered by the DCR
5 are those that are post-date certain for case 07-551,
6 in other words, post-date certain to May 31st, 2007,
7 correct?

8 A. Investments and also I think there's some
9 description in the stipulation talking about the
10 general plant issue.

11 Q. The only question I asked was about the
12 date covered by the investments and that would be
13 post-date certain which is May 31st, 2007, correct?

14 A. If you would hold on one minute.

15 Referring to page 13 of the stipulation,
16 basically it also talks about, I'm looking at about
17 paragraph 2, B-2 of the stipulation. About halfway
18 down on paragraph 2 on the line that leads with the
19 word "associated," it says and "associated income
20 taxes and earn a return on and of plant in service
21 associated with distribution, subtransmission, and
22 general and intangible plant, including allocated
23 general plant from FirstEnergy Service Company that
24 supports the Companies, which was not included in the
25 rate base determined in the Opinion and Order of

1 January 21, 2009."

2 Q. Again, Mr. Ridmann, the only question I
3 asked was investments post-date certain so that
4 answer is telling me it is post-date certain to the
5 07-551 case?

6 A. Well, I guess I'm quibbling with how you
7 define investments and what I'm saying is that there
8 were some general plant that was not included in the
9 last distribution case and under the terms of the
10 stipulation that would be counted for recovery under
11 DCR, Rider DCR.

12 Now, whether you define that as
13 investment or not, I don't know. All I'm doing is
14 clarifying the answer to your question.

15 Q. Okay. And for all those things that you
16 mentioned, if they were before the date certain, then
17 they wouldn't be in the DCR.

18 A. I think the stipulation talks for itself
19 on this item and when you look at page 13 and the
20 lines I read.

21 MR. SMALL: Your Honor, can I have that,
22 I guess it would be the last two portions of
23 Mr. Ridmann's response read back to me?

24 EXAMINER BOJKO: You may.

25 MR. SMALL: The portion about the general

1 plant.

2 (Record read.)

3 Q. Your answer, Mr. Ridmann, your response
4 was that there was general plant that was not
5 included in rate base. Why wasn't it included in
6 rate base?

7 A. Well, I think you can go back to the
8 testimony of the staff that indicated basically the
9 company had made the staff known of this issue late
10 in the case, and I'm going to paraphrase the
11 testimony, and therefore they excluded it -- the
12 staff excluded it at least for recovery and
13 ultimately the Commission accepted the staff's
14 recommendation in that case.

15 EXAMINER PRICE: If I recall,
16 Mr. Ridmann, this was plant that was transferred
17 after the date certain of the rate case; isn't that
18 correct? And that was the issue in that proceeding
19 is because it was transferred on the books from, I
20 think from FirstEnergy Service Company to the
21 operating companies after the date certain, staff
22 excluded it and that was how the Commission ruled; is
23 that correct?

24 THE WITNESS: There were actually two
25 parts to it, your Honor.

1 EXAMINER PRICE: I was close.

2 THE WITNESS: You were very close. There
3 was a piece that was transferred back from the
4 service company back to the operating companies, but
5 there was also a piece that continued to reside at
6 the service company, if you will. And so there are
7 two pieces to it.

8 EXAMINER PRICE: And that second piece is
9 allocated to the distribution companies.

10 THE WITNESS: Yes, basically.

11 EXAMINER PRICE: Thank you.

12 THE WITNESS: We wanted to make sure we
13 can earn a return of and on that piece.

14 EXAMINER PRICE: Thank you.

15 THE WITNESS: And the piece also that got
16 transferred back to the operating companies after the
17 date certain.

18 EXAMINER PRICE: Yes.

19 EXAMINER BOJKO: Because they were after
20 the date certain so they weren't included in the
21 distribution rate case in the rate base, but they are
22 now included for purposes of this rider.

23 THE WITNESS: They are -- those that were
24 transferred back are now included on the books of the
25 company. There is still a piece that resides in the

1 service company that supports the operating companies
2 and those should also be included.

3 EXAMINER BOJKO: Okay. Thank you.

4 EXAMINER PRICE: And just one follow-up,
5 and that was a disputed issue in the rate case.

6 THE WITNESS: Yes, it was.

7 EXAMINER PRICE: The company had
8 originally asked for it to be included in rate base,
9 the staff said no, the Commission ultimately agreed
10 with the staff.

11 THE WITNESS: Yes, because the piece that
12 was transferred was after the date certain and the
13 other piece was, I think, too late for them to
14 analyze.

15 EXAMINER PRICE: Thank you.

16 Q. (By Mr. Small) As a matter of clarity,
17 and in your exchange with Mr. Price did I understand
18 you to say that there was something that remained
19 with the service company and that the companies
20 through the stipulation want to include that in the
21 calculation of the DCR?

22 A. Yes. Because the general plant that's at
23 the service company is allocated out to the operating
24 companies of all FirstEnergy basically.

25 Q. What function does that serve?

1 A. What function does the plant that the
2 service company --

3 Q. What is it?

4 A. A lot of it is computer resources, IT
5 equipment, communication equipment that supports all
6 the companies under FirstEnergy and particularly the
7 distribution companies.

8 Q. And so what we've reached for a
9 conclusion is there would be some plant which was in
10 service before the date certain in the 07-551 case
11 which you propose to use in the calculations of your
12 DCR rider; is that correct?

13 A. Yes. I think that's what part of
14 paragraph B-1 on page 13 provides for.

15 Q. Could you give me that reference again?
16 What page?

17 A. Page 13, paragraph B-2.

18 EXAMINER BOJKO: Of the stipulation?

19 THE WITNESS: Of the stipulation.

20 EXAMINER BOJKO: While Mr. Small's
21 pausing, the examiners would like to for ease of
22 reference, we would like to mark the stipulation and
23 recommendation actually Joint Exhibit 1, so that
24 would be separated from the application which is
25 Company Exhibit 1. If we identify them separately,

1 we think it will be easier to refer to them in the
2 brief. And it's also my understanding that the
3 attachments, the tariff sheets would actually go with
4 the stipulation; is that correct?

5 MR. KORKOSZ: Yes.

6 EXAMINER BOJKO: Okay.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. SMALL: So you are marking as Joint
9 Exhibit 1 simply the stipulation without any of the
10 attachments.

11 EXAMINER BOJKO: No. No. The
12 stipulation would contain the attachments to the
13 exhibit. So the application will just be separate.

14 MR. SMALL: Which exhibit are the tariffs
15 part of?

16 EXAMINER BOJKO: The stipulation.

17 It is my understanding that they're
18 referenced to in the stipulation; is that correct,
19 Mr. Burk?

20 MR. BURK: Yeah, there were tariffs filed
21 with the March 23rd filing, then there were corrected
22 tariffs in the errata filings.

23 MR. SMALL: And that's part of the Joint
24 Exhibit 1. Is that what I understand?

25 EXAMINER BOJKO: Well, the errata, both

1 erratas have their own exhibit number, we will leave
2 those in place.

3 MR. SMALL: But the tariffs are part of
4 the stipulation.

5 EXAMINER BOJKO: That's correct.

6 Thank you, that helps us distinguish the
7 application versus the stipulation.

8 MR. SMALL: And since we're a little bit
9 on housekeeping we have multiple joint exhibits,
10 exhibits 1s and 2s as in we're incorporated the MRO
11 which has its own set of exhibit numbers, but I'm
12 sure we can probably figure that out on brief.

13 EXAMINER BOJKO: On brief you can just
14 call them MRO Exhibit.

15 MR. SMALL: And ESP, okay.

16 Q. (By Mr. Small) Would you please turn to
17 pages 19 and 20 of your testimony?

18 EXAMINER PRICE: I'm sorry. Can I have
19 that page reference again?

20 MR. SMALL: 19 and 20.

21 EXAMINER PRICE: Thank you.

22 Q. At this point, Mr. Ridmann, in your
23 testimony you discuss how Rider DCR would be subject
24 to review and audit, correct?

25 A. Yes.

1 MR. SMALL: Your Honor, I'd like to mark
2 another OCC interrogatory 62, its response, as OCC
3 Exhibit 4.

4 EXAMINER BOJKO: It will be so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MR. SMALL: Approach, your Honor?

7 EXAMINER BOJKO: You may.

8 EXAMINER PRICE: What's the
9 identification for this?

10 MR. SMALL: 4.

11 EXAMINER PRICE: No, I mean the discovery
12 response.

13 EXAMINER BOJKO: 62.

14 EXAMINER PRICE: Thank you.

15 MR. SMALL: 62.

16 Q. (By Mr. Small) Again, Mr. Ridmann, you're
17 marked as the witness responding to OCC interrogatory
18 62, you're familiar with this question and answer?

19 A. Yes, I am.

20 Q. As far as the audits that are mentioned
21 in your testimony, is it the -- is it FirstEnergy's
22 view that, and I'm looking down here under response
23 to (c). The question was. What matters would be
24 considered in the annual audit related to Rider DCR?
25 And the answer is: The audits would be of a

1 technical nature, primarily involving reviews for
2 accuracy, consistency with the stipulation,
3 mathematical errors and correctness of supporting
4 calculations. Do you see that?

5 A. Yes, I do.

6 Q. Is that the review that is contemplated
7 in your testimony pages 19 and 20?

8 A. Yes, but it's not only contemplated by my
9 testimony, I think it also is laid out in the
10 stipulation in terms of the stipulation talks about
11 accuracy.

12 Q. Would you please turn to page 6 of your
13 testimony. On lines 15 and 16 you refer to a
14 \$3 million economic development fund. Do you see
15 that?

16 A. Yes, I do.

17 Q. Now, am I correct that there are no more
18 details regarding this \$3 million, that is, other
19 than what's stated here in the stipulation?

20 A. That's correct, it's stated on page 26
21 under paragraph F-1 of the stipulation.

22 Q. Okay. Let's turn to that, page 26 of the
23 stipulation, I'm not sure I heard you, but that was
24 section F and the first subpoint to that, right?

25 A. Yes.

1 Q. Okay. And the stipulation states no
2 application process, does it?

3 A. No, it doesn't.

4 Q. And the stipulation doesn't provide
5 criteria for the selection of the projects that would
6 be funded by the \$3 million, does it?

7 A. None other than what's in F-1 in terms of
8 describing the nature of some of the things that it
9 would be used for.

10 Q. But if you fell within that, we don't
11 know, for instance, there's no rule there first come
12 first served or approved by some agency, there's no
13 criteria other than you have to fit within the bounds
14 of the description on page 26 of the stipulation,
15 correct?

16 A. There's more than what's contained in
17 paragraph F-1 of the stipulation.

18 Q. And there's no accountability for the
19 \$3 million, whether it's spent, how it's spent, and
20 so forth to the PUCO, correct?

21 A. That's correct. These are shareholder
22 dollars that are basically being provided for
23 economic development.

24 EXAMINER PRICE: Do you anticipate that
25 you will consult with the staff in determining where

1 to spend the 3 million?

2 THE WITNESS: I'm not sure if that's
3 contemplated, your Honor. I think, you know, we get
4 information from our reps and from other parties
5 about economic development opportunities, and we --
6 basically we decide what, you know, where the money
7 is being spent since they're shareholder dollars. I
8 would suspect if the staff asked us where did you
9 spend the money, we would provide the information,
10 but I'm not sure we contemplated consulting with them
11 in terms of getting approval or anything like that.

12 EXAMINER PRICE: Thank you.

13 EXAMINER BOJKO: What about the next
14 paragraph, Mr. Ridmann, is that also shareholder
15 dollars that fund the Community Connections program?

16 THE WITNESS: Are you talking about the
17 stipulation?

18 EXAMINER BOJKO: It's on page 6 of your
19 testimony right after the \$3 million economic
20 development fund that was just --

21 THE WITNESS: Yes, that was also
22 shareholder money.

23 EXAMINER BOJKO: And that was, you said
24 you will continue it. It was -- you agreed to this
25 in the last ESP stipulation and it was funded by

1 shareholder dollars, now you're continuing that; is
2 that correct?

3 THE WITNESS: We're continuing a level of
4 funding under this ESP and there was a provision
5 under the prior -- or the current ESP also provides
6 funding at shareholder expense for this type of
7 thing.

8 MR. KORKOSZ: If your Honor please, could
9 I have the prior, the penultimate question and answer
10 reread?

11 EXAMINER BOJKO: Sure. Mr. Ridmann, can
12 you speak up, please?

13 (Record read.)

14 THE WITNESS: I'm sorry, I misspoke, I
15 thought you were referring to a million-and-a-half
16 dollars under the same paragraph.

17 EXAMINER BOJKO: No, the Community
18 Connections program.

19 THE WITNESS: Community Connections is
20 not funded by shareholder money. And that basically
21 came out of the, I believe the distribution rate case
22 actually, where that was ordered.

23 EXAMINER BOJKO: So that is recovered
24 through customers?

25 THE WITNESS: Yes, it is. And I

1 apologize, I was referring to the million-and-a-half,
2 the same paragraph that the \$3 million is mentioned.

3 EXAMINER PRICE: Thank you, Mr. Korkosz.

4 EXAMINER BOJKO: And then to follow up
5 similarly as I asked previously, the funded by
6 customers is how the program was previously funded in
7 the last, I believe you said the rate case, the
8 distribution rate case?

9 THE WITNESS: Correct. It came out of
10 the distribution rate case.

11 EXAMINER BOJKO: Thank you.

12 Thank you, Mr. Small.

13 Q. (By Mr. Small) I'd like to summarize a
14 little bit. Is it your position, Mr. Ridmann,
15 regardless of whether the provision is contained -- a
16 provision that is contained in the stipulation is
17 treated differently as far as reporting to the PUCO
18 or the PUCO staff depending upon whether it's
19 shareholder dollars or whether it's being recovered
20 in some manner through the tariffs -- let me start
21 again.

22 A provision in the stipulation for a
23 certain amount of money, but it's not being run
24 through the tariffs or the riders but is, as you have
25 used the term, shareholder dollars, you don't feel

1 that there's any responsibility for the company to
2 report to the staff regarding the use of those funds.

3 A. I don't think that's what I said. First
4 of all, I was asked specifically referring to the
5 \$3 million and so that was relative to that specific
6 provision. I was asked would we consult, and as I
7 think of consult, it's kind of asking for approval or
8 whatever and I didn't really see that being
9 contemplated under this language.

10 What I did say was if the staff asked did
11 you spend the money, where did you spend it,
12 basically did you live up to the terms of the
13 stipulation, we would provide that information.

14 Q. And would you be providing that
15 information to the staff because it's in the
16 stipulation?

17 A. Yes, it's one of the terms of the
18 stipulation that we've agreed to.

19 Q. And do you see it as having a higher
20 degree of reporting to the PUCO or the PUCO staff if
21 it's being run -- if the fund is being, as you term
22 it, not shareholder dollars? Is there a greater
23 responsibility to report under those circumstances?

24 A. Well, I think you have to look under each
25 provision of the stipulation basically and make that

1 determination. I think under -- for this particular
2 provision there is nothing laid out about consulting
3 with the staff or, you know, any other criteria than
4 what's in the stipulation and, therefore, it wasn't
5 contemplated on our part to do anything other than,
6 if asked, to show that we met the terms of the
7 stipulation.

8 Q. Please turn to page 7 of your testimony,
9 and on lines 10 through 12 you discuss the benefits
10 as you see them of the stipulation that you connect
11 with RTEP charges, correct?

12 A. Yes.

13 Q. Or to be more precise, you see the
14 benefit of the stipulation through what you term as
15 legacy RTEP charges, correct?

16 A. Yes, we're basically legacies for those
17 projects who were approved prior to ATSI entering
18 PJM.

19 Q. Yes, that's exactly what I meant.

20 Now, two projects that have been commonly
21 discussed as being part of those legacy RTEP costs
22 are connected, the PATH, P-A-T-H, and MAPP, M-A-P-P,
23 projects, correct?

24 A. That's correct.

25 Q. And you're somewhat familiar what those

1 projects; is that correct?

2 A. In a general sense.

3 Q. And in the calculations that you do as
4 far as the benefits that you claim for the ESP, you
5 assume a delay in those two projects of about two
6 years; is that correct?

7 A. That's correct.

8 Q. Are you aware that the delays in those
9 projects were the subject of a presentation by
10 FirstEnergy to the Public Utilities Commission on
11 January 7th, 2010, in Case 09-778-EL-UNC? And when I
12 mean a presentation to the PUCO, I mean directly to
13 the Commissioners?

14 A. If you'll hold on just one minute.

15 EXAMINER BOJKO: Mr. Small, for the
16 record and to help the witness you're referring to
17 the RTO realignment case in front of the Commission,
18 there was an oral argument scheduled on that date?

19 MR. SMALL: Yes, that's a very apt
20 description.

21 A. I believe there was some discussion
22 before the Commission at that proceeding.

23 Q. You are aware that that presentation took
24 place.

25 A. I'm aware this was a technical conference

1 I guess is what I would call it, a conference, and
2 there was presentation about ATSI's entrance into PJM
3 and related costs.

4 Q. Did you attend that meeting?

5 A. I did not.

6 Q. Did you view the presentation materials
7 that were presented at that meeting?

8 A. I don't recall if I did or not.

9 EXAMINER BOJKO: Mr. Ridmann, just to be
10 clear, this wasn't a technical conference. This was
11 actually like a question-and-answer session.

12 THE WITNESS: Before the Commissioners.

13 EXAMINER PRICE: In front of the
14 Commission. Okay, thank you.

15 Q. You're familiar with Mr. Brian Farley,
16 are you?

17 A. Yes, I am.

18 Q. And who is Mr. Farley?

19 A. He's a director of the Transmission
20 Policy Organization of FirstEnergy Services.

21 Q. And he's a person who would generally
22 have contact with the subject matter of the RTEP
23 legacy costs, the same subject matter as your
24 testimony?

25 A. Yes.

1 Q. Did you rely on Mr. Farley's work in the
2 preparation of your testimony and the tables that
3 accompany your testimony?

4 A. I relied on some input from Mr. Farley,
5 yes.

6 MR. SMALL: I'd like at this time to mark
7 OCC Exhibit 5, it's an excerpt from the transcript
8 prepared. Your Honors, these materials are on the
9 website as a transcript from the meeting on
10 January 7th, 2010, was transcribed and is on the
11 docketing. I know the Bench sometimes has a
12 preference for taking administrative notice as
13 opposed to marking it as an exhibit. Your
14 preference?

15 EXAMINER PRICE: You're asking us to take
16 administrative notice?

17 MR. SMALL: Of the document, of a
18 document on the Commission's own docketing system,
19 yes.

20 EXAMINER BOJKO: I don't think that helps
21 you, Mr. Small.

22 MR. SMALL: OCC Exhibit 5 then.

23 EXAMINER BOJKO: Just to be clear, I
24 don't think you finished your sentence, this is a
25 transcript of the RTO realignment, I called it oral

1 argument before, a question-and-answer session in
2 front of the Commissioners on January -- what was the
3 date?

4 MR. SMALL: Seventh.

5 EXAMINER BOJKO: -- 7th, 2010. Is that
6 what you're referencing?

7 MR. SMALL: Yes, it's an excerpt.

8 EXAMINER BOJKO: Let's mark it just for
9 ease of identification. We may take administrative
10 notice of the whole thing later, but...it will be
11 marked as OCC Exhibit 5.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. (By Mr. Small) Mr. Ridmann, what I've
14 given you as OCC Exhibit 5 identifies the transcript,
15 the first couple of pages, and the speakers, the
16 Commissioners, and then I've taken an excerpt from
17 the portion of the transcript that deals with the
18 PATH and MAPP projects that we just discussed.

19 If you do turn to page 21 of that
20 transcript, and this is in a portion where Mr. Farley
21 is speaking, he discusses, and I quote, "I think the
22 PATH project has already been announced it will be
23 delayed until at least 2016." Do you see that?

24 A. Yes, I do.

25 Q. Do you believe that that's a correct

1 statement?

2 A. I don't know any reason why it wouldn't
3 be.

4 Q. Pushing back the RTEP projects in this
5 fashion to 2016 or beyond, according to the terms of
6 the stipulation, this takes the payment for these
7 projects into the zone where, according to your
8 testimony, retail customers would have to pay for
9 these projects; is that correct?

10 A. Well, let's back up a minute.

11 EXAMINER PRICE: Please speak up,
12 Mr. Ridmann.

13 A. Basically, my understanding is under
14 these projects you're allowed CWIP and so that
15 although a project is delayed, which we've included
16 in our estimates in terms of my attachment to my
17 testimony, a delay for MAPP and PATH of two years,
18 that doesn't mean the recovery necessarily pushes it
19 out during the time frame when the companies would
20 not be able to recover these amounts under the
21 stipulation for these projects because CWIP would
22 continue, the date it may go into service may be
23 delayed, and therefore the companies will have costs
24 under the current schedule from these projects that
25 they will not be able to pass along to consumers

1 under the stipulation.

2 Q. All right. I think all that says that
3 there might be some charges from these projects
4 earlier than their in-service date, is that what
5 you're saying?

6 A. That's correct.

7 Q. But you're not saying that pushing back
8 the projects means that we -- the RTEP charges would
9 be exactly the same in early years, are you?

10 A. No, I'm not suggesting that.

11 Q. It does push back the RTEP charges, it's
12 just that there might be some earlier than the
13 in-service date; is that correct?

14 A. That's correct. And that has been
15 recognized in our calculations associated with my
16 attachment to my testimony. The delay has been
17 recognized.

18 Q. That's the two-year delay that you're
19 talking about.

20 A. That's correct.

21 Q. Would you please turn to page 9 of your
22 testimony.

23 A. Okay.

24 Q. And on lines 7 to 8 you refer to a
25 meeting on December 1st, 2009, to discuss an ESP,

1 correct?

2 A. Yes, December 1st, 2009.

3 Q. And the parties that you referred to on
4 line 8, those are the parties to the MRO case,
5 correct?

6 A. That's correct.

7 Q. And is it true that you don't know in
8 what month the next meeting took place on that
9 subject?

10 A. I don't know the exact date. There were
11 discussions going on with various parties on and off
12 during this time period starting with December 1st.

13 Q. That wasn't the question that I asked. I
14 asked you whether you knew the month in which the
15 next meeting took place.

16 A. Well, if you're talking about individual
17 parties in that, I can tell you discussions were held
18 in December.

19 Q. Just to be clear, I'll go back to the
20 original question, your testimony on page 9 you
21 discuss a meeting on December 1st at which all
22 parties were invited, correct?

23 A. Yes.

24 Q. And I'm asking you whether you know the
25 month in which the next meeting when all parties were

1 invited to settlement discussions, so I'm not
2 referring to whether you met with some individual
3 party, I'm asking when the next meeting where all
4 parties were invited was to discuss settlement
5 related to an ESP.

6 A. I don't know that offhand.

7 Q. You don't know the month.

8 A. I guess it was in late-January,
9 early-February time frame.

10 MR. SMALL: Can I have that answer read
11 back? I'm just having a little trouble hearing.

12 (Record read.)

13 A. Subject to check.

14 Q. Mr. Ridmann, do you recall being asked
15 that question during your deposition?

16 A. Yes.

17 MR. SMALL: May I approach, your Honor?

18 EXAMINER BOJKO: You may.

19 MR. SMALL: I have the deposition pages
20 67 and 68. Would you please read the indicated
21 passages?

22 A. "What was the next meeting date where all
23 the parties then were invited?

24 "I don't know at this point.

25 "Do you know what month it was in?

1 "No, not offhand I don't."

2 Q. Thank you, Mr. Ridmann.

3 A. And I think that's consistent with what I
4 stated.

5 Q. Let's turn to page 13, line 13, of your
6 testimony.

7 A. I'm sorry, what page?

8 Q. Page 13, line 13.

9 A. All right.

10 Q. And there you refer to some targeted rate
11 benefits. Do you see that?

12 A. Yes, I do.

13 Q. And you're generally referring to the
14 economic development portions of the stipulation?

15 A. I'm referring to Rider EDR.

16 Q. Okay. Which cover the economic
17 development portions of the stipulation, correct?

18 A. Yes. Well, again, we talked earlier
19 about other economic development provisions, for
20 instance, the \$3 million.

21 Q. Right. What you're saying is they're not
22 entirely in Rider EDR.

23 A. That's correct.

24 Q. Can you tell me what the annual shortfall
25 associated with the credits in Rider ELR and Rider

1 OLR are, and what I'm asking is for the annual
2 revenue shortfall. I'm referring to those that you
3 assumed in Schedule 1 for May 2012, May 2012 rates.

4 A. For Rider ELR and OLR it's approximately
5 \$31 million.

6 Q. Now on page 26 of the stipulation,
7 provision 2 having to do with the Cleveland Clinic.

8 A. All right.

9 Q. Pardon?

10 A. I said all right.

11 Q. The Cleveland Clinic has provided support
12 in the stipulation for an expansion project and
13 that's described beginning on page 26 of the
14 stipulation, correct?

15 A. That's correct.

16 Q. Do you know if the Cleveland Clinic is
17 receiving any city or county support in the form of
18 abatements or credits, job programs, any other
19 incentives to your knowledge with regard to this
20 project?

21 A. I don't know.

22 Q. And would the Cleveland Clinic receive
23 state support in the form of tax abatements or
24 credits, job programs, other incentives? Do you know
25 whether the clinic would receive that kind of support

1 in connection with this project?

2 MR. RANDAZZO: I object.

3 EXAMINER BOJKO: Grounds?

4 MR. RANDAZZO: Relevance.

5 MR. SMALL: I'd like to address it if...

6 EXAMINER BOJKO: Go ahead.

7 MR. SMALL: May I address it?

8 EXAMINER BOJKO: Please.

9 MR. SMALL: One of the topics for this
10 ESP would be whether it is preferable to have the
11 matters decided in the ESP as a matter of the ESP or
12 whether they would be better -- we would be better
13 served by separating them and having them as separate
14 proceedings. The information that I asked
15 Mr. Ridmann for would be the type of information that
16 we would be asked by the Commission in which the
17 applicant would have to provide if this was a
18 separate proceeding. And I point out that the
19 stipulation itself says that the Cleveland Clinic was
20 preparing or was -- made some headway in preparing a
21 separate application.

22 I'm simply asking the witness whether he
23 has the information that the Commission would
24 normally ask in connection with such an arrangement.

25 EXAMINER PRICE: Could I ask you a

1 question, Mr. Small?

2 MR. SMALL: Yes.

3 EXAMINER PRICE: Can you point to a
4 Commission precedent that makes one of the issues in
5 this proceeding whether other cases should be
6 resolved as of the stipulation rather than dealing
7 with them separately?

8 MR. SMALL: I believe that what the
9 company is --

10 EXAMINER PRICE: Answer my question
11 first.

12 MR. SMALL: I'm sorry.

13 EXAMINER PRICE: Can you point to a
14 Commission precedent that indicates that one of the
15 portions, one of the issues that should be decided by
16 the Commission is whether it's best to consolidate
17 other resolutions of other proceedings in the
18 stipulation?

19 MR. SMALL: I certainly think it would be
20 covered under the second -- one of the three criteria
21 for the evaluation of stipulations which would be
22 whether it's --

23 EXAMINER PRICE: That's where you're
24 making that argument.

25 MR. SMALL: Whether it's a sound policy

1 or practice or whether it violates an important
2 regulatory policy or practice, which is the subject
3 matter of Mr. Ridmann's testimony.

4 EXAMINER BOJKO: Mr. Randazzo, would you
5 like to respond.

6 MR. RANDAZZO: Yes, your Honor. Having
7 read OCC's testimony I understand the position of one
8 of their witnesses is that the provision dealing with
9 the Cleveland Clinic, for example, would be separated
10 out of the settlement and dealt with in accordance
11 with the rules that govern applications for
12 reasonable arrangements. The witness then proceeds
13 to apply the rules that apply to that kind of
14 process.

15 The law dealing with the electric
16 security plans, Section 4928.143 specifically
17 provides for the opportunity to include provisions
18 dealing with economic development, economic retention
19 as part of an ESP.

20 My objection based on relevance is that
21 the Office of Consumers' Counsel wants to apply rules
22 that are related to a different process to the
23 evaluation of an ESP that has specific statutory and
24 separate statutory authority to include provisions on
25 economic development. I believe it's apples and

1 oranges and that's why I objected based upon
2 relevance.

3 EXAMINER PRICE: Mr. Small, if you
4 could -- maybe I got you sidetracked there in my
5 question. If you could respond to Mr. Randazzo's
6 point about relevance.

7 MR. SMALL: Well, the last argument, I'm
8 not -- I thought relevance was addressed when I
9 mentioned --

10 EXAMINER PRICE: Perhaps it was and maybe
11 I was thinking about the other issue.

12 MR. SMALL: In an earlier argument you
13 asked me what the basis of this would be and I said
14 it's the Commission's traditional three criteria for
15 evaluating stipulations which have to do with
16 regulatory policies and practices.

17 Now, I just heard Mr. Randazzo discuss
18 the statutory framework and that statutory framework
19 for ESPs permits, but it doesn't require, nor does it
20 encourage, it just permits this to be put into an
21 ESP. We're not making the argument there's a legal
22 prohibition against doing this. We're making the
23 argument this is bad policy to have special
24 arrangements for just a couple customers when an ESP
25 comes along but when it comes to other programs of

1 this nature, they get into the long line and have to
2 provide extensive information and justification for
3 their programs.

4 So this is a policy issue and one of the
5 prongs of the three-prong analysis for evaluation of
6 settlements has to do with policies and practices of
7 the Commission.

8 EXAMINER BOJKO: Mr. Randazzo.

9 MR. RANDAZZO: I beg to differ. The
10 third criteria is does it violate any important
11 Commission policy or practice or principle. And in
12 this case, as we have seen in the past, we have had
13 the Commission include provisions dealing with
14 economic development and economic retention in
15 settlement provisions and in other proceedings that
16 have been resolved not by settlement, but through
17 litigation, as part of the Commission's approach to
18 the development of ESPs.

19 The most recent electric security plans
20 for American Electric Power and Columbus Southern and
21 Ohio Power, the prior electric security plans for the
22 three operating companies that are subject to this
23 proceeding, there is nothing in the Commission's
24 history that suggests that OCC's assertion would give
25 rise to some conflict between considering economic

1 development in the course of this ESP settlement and
2 anything the Commission has done thus far. So for
3 that reason I just don't understand the relevance of
4 that question.

5 At the base of the argument is that the
6 Commission must apply rules that attach to
7 applications for reasonable arrangements for purposes
8 of evaluating provisions in an ESP dealing with
9 economic development and economic retention, I think
10 the argument is misplaced, I think the information
11 being sought here is irrelevant.

12 EXAMINER BOJKO: We're going to overrule.
13 You may answer Mr. Small's question.

14 THE WITNESS: Could I have the question
15 read back?

16 (Record read.)

17 A. I don't know if they're getting that type
18 of support or not.

19 Q. (By Mr. Small) Mr. Ridmann, are you aware
20 of any studies that have been conducted concerning
21 the benefits for the economy of the Cleveland Clinic
22 project?

23 A. No, and I wouldn't necessarily
24 characterize it as a study, but nothing more than
25 what's in the stipulation and the testimony of

1 Mr. D'Angelo.

2 Q. Regarding your knowledge of the project
3 that we've been -- has been the subject of questions
4 and answers, there's a reference in the stipulation
5 to the main campus of the Cleveland Clinic. Is this
6 project just the main campus...

7 A. Are you finished with your question?

8 Q. No, I'm not. I apologize for my delay,
9 Mr. Ridmann.

10 To your knowledge, is this project just
11 in the main campus of the Cleveland Clinic or is
12 there something else that's being served by those
13 facilities? The facilities that are the subject
14 matter of the stipulation.

15 A. To the best of my knowledge, it's for the
16 main campus of the Cleveland Clinic.

17 MR. SMALL: Your Honors, I approach the
18 next subject with a little bit of caution. There has
19 been some portion of the deposition transcript from
20 Mr. Ridmann's deposition that was marked as
21 confidential. It's my understanding that the
22 sensitive nature of the material has to do with the
23 identity of customers referred to in the stipulation
24 as domestic automakers, so I'm alerting the Bench and
25 also I've had a brief discussion with Mr. Korkosz to

1 the effect.

2 Q. And, Mr. Ridmann, in my questions you
3 should understand that I'm not asking at any point
4 for the identity of the customers that are covered by
5 the domestic automakers' provision in the
6 stipulation. Do you understand that?

7 A. Yes, I do.

8 MR. SMALL: And I'm sure Mr. Korkosz will
9 alert us if we're getting into any trouble here, but
10 I don't think there will be any need to clear the
11 hearing room.

12 EXAMINER BOJKO: Thank you. Please
13 proceed.

14 Q. Mr. Ridmann, there's also a provision in
15 the stipulation having to do with benefits for
16 domestic automakers, correct?

17 A. Yes.

18 Q. And that is located on pages 28 and 29 of
19 the stipulation, provision 3 on page 28, correct?

20 A. That's correct.

21 Q. Can you define what the term "domestic
22 automaker facilities" means? And I'm asking domestic
23 as opposed to something that would just say automaker
24 facilities. What is the definition of a "domestic
25 automaker facility"?

1 A. An automaker headquartered in the United
2 States.

3 Q. So, for instance, a Nissan or a Toyota or
4 some other brand generally referred to as a
5 foreign -- BMW, all these would not fit under the
6 category of domestic automaker, correct? I didn't
7 pick those examples for any particular reason, I just
8 tried to name off some companies that were
9 headquartered -- that seemed to be headquartered
10 overseas.

11 A. That's correct.

12 Q. Now, are all the facilities that would be
13 covered by this, are all of the customers GT
14 customers?

15 A. There are certain of these facilities
16 that are under contract currently that date back for
17 a period of time that absent the contract would be
18 supplied power under something other than GT, Tariff
19 GT.

20 Q. So to speak --

21 A. And during the term of this ESP would be
22 served on a schedule or tariff other than GT.

23 Q. Okay. Is that a situation where their
24 contract is ending at some relevant point relative to
25 the ESP? Do they sort of return to a tariff class?

1 A. That's correct. There are CEI contracts
2 there that have been in existence for a number of
3 years which expire at the end of this year.

4 Q. And then when they expire, they would go
5 back to a tariff and that would not be GT; is that
6 what you're saying?

7 A. They would go to a tariff that was other
8 than GT.

9 Q. Okay. On the GT tariffs -- I'm sorry.
10 The customers who are subject to the GT
11 tariffs, are there customers on the GT tariffs other
12 than domestic automaker facilities?

13 A. Yes.

14 Q. So there's no identity between GT
15 customers and customers that are identified as
16 domestic automaker facilities. That's not a
17 one-to-one relationship, correct?

18 A. That's correct, there are other customers
19 other than domestic automakers which are served under
20 the GT tariff.

21 Q. I'm going to ask the same question with
22 regard to the domestic automaker facilities as I did
23 for the Cleveland Clinic. Are you aware with respect
24 to these facilities whether they are receiving local,
25 state, or federal support in any form in connection

1 with their efforts to increase their production at
2 those facilities?

3 A. I am not aware of any.

4 Q. Let me return just for a moment to the
5 Cleveland Clinic provision in the stipulation. Now,
6 there's a provision in the stipulation having to do
7 with \$70 million payment or a maximum
8 \$70 million payment in the stip, correct?

9 A. Well, there's \$70 million mentioned on
10 the top of page 28, if that's what you're referring
11 to.

12 Q. Yes. And it says "The first
13 seventy million dollars of the original cost of such
14 plant, facilities and equipment shall be funded by a
15 non-bypassable distribution rider." If this
16 provision is not approved or if this hadn't been made
17 part of the stipulation in this case, how would, you
18 know, this project, if it had, if this project goes
19 forward without this provision in the stipulation,
20 how would that \$70 million in plant, facilities, and
21 equipment be treated by the company, that is how
22 would you treat that \$70 million?

23 A. And absent any other type of arrangement.

24 Q. That's correct.

25 A. The company would basically bill the

1 Cleveland Clinic, if you will, for the services that
2 are beyond its standard service that is normalized,
3 and the Cleveland Clinic would make payment to the
4 companies as basically a contribution in aid to
5 reflect the, what I will call the premium service.

6 Q. And would that be a large payment, and I
7 define large to be more than 50 percent of that
8 \$70 million?

9 A. Yes, I would expect that.

10 Q. And how would the remainder of that
11 expenditure by the company be recovered by the
12 company?

13 A. Well, anything that would not be paid by
14 the Cleveland Clinic would basically be reflected in
15 the company's plant in service.

16 Q. And that would be the part which would be
17 considered the premium service; is that correct? I
18 think you said that they would have to pay you for
19 the premium service.

20 A. Well, they would pay the premium service
21 and the standard service would basically be included
22 in the plant in service because the Cleveland Clinic
23 would not have made payment for the remainder.

24 EXAMINER PRICE: But you can't tell us on
25 the stand today what percentage that would be.

1 THE WITNESS: No, because I think the
2 project is still basically being finalized, if you
3 will, it's still, you know, the engineering is not
4 yet complete, there are engineering studies out
5 there, but I know there are estimates of what the
6 total project are, I also know there are efforts
7 underway to try to reduce the amount of the project,
8 if you will.

9 EXAMINER PRICE: But this the -- let me
10 rephrase my question.

11 In the absence of the stipulation you're
12 not saying the Cleveland Clinic would pay the full
13 70 million.

14 THE WITNESS: That's correct. There's
15 some piece that they would not pay. Now, I'm
16 quibbling a little bit here because total cost of the
17 project is substantially above 70 million, so when
18 you say the 70 million, you know, there's a piece out
19 there that's not reflected -- that's above and beyond
20 the 70 million and --

21 EXAMINER PRICE: That Cleveland Clinic
22 will pay.

23 THE WITNESS: That basically the
24 Cleveland Clinic could pay if it's beyond that, you
25 know, if it's basically for premium service.

1 EXAMINER PRICE: Thank you.

2 Q. (By Mr. Small) I apologize for wandering
3 a little bit but would you please turn to the top of
4 page 29 of the stipulation.

5 A. All right.

6 Q. At that point there are three bullet
7 points and there's a discussion of the benefits that
8 are going to be provided to domestic automakers; is
9 that correct?

10 A. Yes.

11 Q. Okay. And there's two, kind of two
12 components to it, there's the blocking, the first
13 10 percent increment of usage, and then the second
14 point is for the second 10 percent increment of usage
15 there's a kind of blocking, and then there's a
16 benefit at the end of the line which is a discount of
17 1 cent per kWh and so forth.

18 How is that structure, both the blocking
19 and the benefit, determined?

20 A. It is basically part of the negotiation
21 process, as part of the overall ESP stipulation.

22 Q. Are there any studies or cost
23 assignments, allocations, something that the company
24 did that guided this blocking and this level of
25 discount?

1 A. There's no cost study, if you will,
2 associated with it.

3 Q. Just a product of negotiation; is that
4 correct?

5 A. That's correct.

6 MR. SMALL: Your Honors, with that, I
7 have no further questions.

8 EXAMINER BOJKO: Before we move off of
9 the domestic automaker provision on paragraph 3 on
10 the bottom of 28 of the stip, can you explain to me
11 what is meant by a nonbypassable discount?

12 MR. KORKOSZ: May I have your Honor's
13 reference again?

14 EXAMINER BOJKO: Page 28 of the stip,
15 bottom, paragraph 3, last sentence.

16 THE WITNESS: Basically even if they
17 shop, they get this level of discount. Again, it's
18 to encourage economic development in a sector of
19 FirstEnergy that is a good part of the manufacturing
20 base of the company.

21 EXAMINER BOJKO: Thank you.

22 EnerNOC, Ms. Roberts.

23 MS. ROBERTS: I'm ready. Are we going to
24 be --

25 EXAMINER BOJKO: Let's go off the record

1 for a minute.

2 (Discussion off the record.)

3 EXAMINER BOJKO: Let's come back at 3
4 o'clock.

5 (Recess taken.)

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

8 Mr. Ridmann, I'd just like to remind you
9 that you are still under oath.

10 THE WITNESS: Thank you.

11 EXAMINER BOJKO: Please proceed,
12 Ms. Roberts.

13 MS. ROBERTS: Yes, before I proceed with
14 my questioning of Mr. Ridmann I can inform the Bench
15 that EnerNOC is in possession of a certificate of
16 registration with the Secretary of State in Ohio to
17 do business and is qualified to do business in Ohio
18 and that was filed today and has been issued on an
19 expedited basis.

20 EXAMINER BOJKO: Thank you.

21 - - -

22 CROSS-EXAMINATION

23 By Ms. Roberts:

24 Q. Mr. Ridmann, my name is Jackie Roberts.
25 I'm with EnerNOC, and if you recall I participated in

1 your deposition. Do you recall that?

2 A. Yes.

3 MS. ROBERTS: Okay. First, I would ask
4 FirstEnergy to stipulate to the confidential
5 discovery responses 1 and 2 and to the demand
6 resource plan for the '11-'12 and '12-'13 ATSI
7 integration auctions that were provided to EnerNOC
8 yesterday.

9 MR. KORKOSZ: I'm not sure --

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

11 (Discussion off the record.)

12 EXAMINER BOJKO: Let's go back on the
13 record. Ms. Roberts, please proceed with your
14 cross-examination of Mr. Ridmann.

15 MS. ROBERTS: Thank you.

16 Q. (By Ms. Roberts) Mr. Ridmann, my name is
17 Jackie Roberts, I'm with EnerNOC. I participated in
18 the deposition of you on April 13th; do you recall
19 that?

20 A. Yes, I do.

21 Q. All right. You stated in your testimony
22 that you're vice president of rates and regulatory
23 affairs; is that correct?

24 A. Correct.

25 Q. And as vice president of rates and

1 regulatory affairs, are you knowledgeable about the
2 FirstEnergy utilities' rates and tariffs offered to
3 its retail customers?

4 A. Yes.

5 Q. And are you familiar with how each those
6 tariffs operate?

7 A. Generally, yes.

8 Q. And are you familiar with other
9 information about the customers of the FirstEnergy
10 operating utilities such as how many residential
11 customers there would be in the operating utility's
12 service territory?

13 A. Only in a very general sense. I don't
14 know the specific number of residential customers of
15 the FE operating companies.

16 Q. All right. And you are also generally
17 familiar with the number of interruptible customers
18 on Tariffs ELR and OLR?

19 A. In a general sense.

20 Q. And did you testify in your deposition
21 that there are about 30 or 40 customers in Rider ELR
22 presently?

23 A. I indicated somewhere, you know, in that
24 range on ELR. There are no customers under OLR.

25 Q. Thank you.

1 The credit under Rider ELR is being
2 proposed to be raised to \$5 a kilowatt month; is that
3 correct?

4 A. Yes, it's being raised from \$1.95 to
5 \$5 under this proposed ESP stipulation.

6 Q. And is it correct that Rider OLR, the
7 kilowatt month credit is remaining as it currently
8 exists at \$1.95?

9 A. Yes, that's correct.

10 Q. You're aware, aren't you, of the ATSI
11 integration auctions for delivery years '11-'12, and
12 '12-'13 that occurred last month?

13 A. In a general sense.

14 Q. Do you know what the clearing price was
15 in the '11 and '12 ATSI integration auction?

16 Would you accept, subject to check, it's
17 \$108.89 a megawatt day?

18 A. There were two prices, one was for the
19 '11 through '12 time period, June 1st of '11 through
20 May 31st of '12 and that's in the \$108 a megawatt day
21 range. And then there was another price that cleared
22 for the June 1st, 2012, through the May 31st, 2013,
23 which was like in the \$20 range, megawatt day.

24 Q. Mr. Ridmann, would you accept, subject to
25 check, that the clearing price for the 2011-2012

1 delivery year was \$108.89?

2 A. I would say subject to check because I'm
3 looking at a document that I have that was slightly
4 off, pennies off, but subject to check.

5 Q. Thank you.

6 A clearing price of \$189.89 per megawatt
7 day --

8 A. I'm sorry, did you say 189 or 108?

9 Q. I did, I misspoke, thank you.

10 A price of \$108.89 a megawatt day
11 represents what rate for a kilowatt month; can you
12 tell me?

13 A. Basically you would provide a conversion
14 by converting the megawatts into kilowatts, a
15 thousand kilowatts per megawatt, and then the other
16 adjustment is to take, basically you want it on a day
17 basis?

18 Q. Yes. Month. I'm sorry, month.

19 A. So you want to take it from what to what?

20 Q. From a megawatt day to a kilowatt month.

21 A. All right, then you would adjust
22 basically for the number of days in a month, the
23 average number of days in a month, and use that in
24 the calculation also, so there are roughly 30 days in
25 a month.

1 Q. Would you accept, subject to check, that
2 for the auction delivery year 2011-2012 the clearing
3 was \$3.31 a kilowatt month?

4 A. Subject to check.

5 Q. And how does that compare, the '11-'12
6 delivery or clearing price for the ATSI integration
7 auction with the credit, monthly credit in Rider ELR?

8 A. Assuming the calculations are right that
9 you gave me, basically the credit under ELR is higher
10 than the \$3.31.

11 Q. So it would be the difference between
12 \$5 a kilowatt month under Rider ELR and \$3.31 a
13 kilowatt month?

14 A. Assuming your calculation is correct.

15 Q. Yes. And for the ATSI integration
16 delivery years 2012-2013, I believe you accepted,
17 subject to check, that the clearing price was \$20.46;
18 is that correct?

19 A. Subject to check.

20 Q. And would you accept, subject to check,
21 that that equivalent is 62 cents per kilowatt month?

22 A. Subject to check.

23 EXAMINER PRICE: Let's go off the record
24 for one moment, please.

25 (Discussion off the record.)

1 EXAMINER BOJKO: Back on the record.

2 Q. I'm sorry, before we were interrupted,
3 did you say that the appropriate comparison for the
4 kilowatt month capacity credit, the kilowatt per
5 month credit under Rider ELR coming out of the
6 integration auction would be \$5 versus 62 cents?

7 A. No, I --

8 MR. RANDAZZO: I object.

9 A. -- didn't say that at all.

10 MS. ROBERTS: Let me go back, I know we
11 got interrupted.

12 Q. You had accepted, subject to check, that
13 the clearing price for the '12-'13 integration
14 auction is \$20.46.

15 A. Yes.

16 Q. Is that correct? All right. And what is
17 that rate in terms of a kilowatt month credit?

18 A. You had indicated it was 62 cents and I
19 said subject to check.

20 Q. Subject to check. And so if you were to
21 compare the clearing price in the '12-'13 auction to
22 the credit under rider ELR for kilowatt month
23 charges, what two numbers would you compare?

24 A. The credit under the ELR is \$5 per
25 kilowatt month, and subject to check the 62 cents

1 would be the comparison, that's on a kW per month
2 basis.

3 Q. Thank you.

4 Now, Rider ELR contains a buy-through
5 provision, doesn't it?

6 A. Rider ELR provides an economic
7 interruption buy-through provision, right.

8 Q. Is there any benefit to FE utilities of
9 having this buy-through provision in that they don't
10 have to serve ELR customers during high price periods
11 as defined in the tariff?

12 EXAMINER PRICE: If I can clarify because
13 we're trying to do this fairly consistently,
14 Ms. Roberts, when you say any benefit to FirstEnergy,
15 you're referring to the FirstEnergy operating
16 utilities; is that correct?

17 MS. ROBERTS: Yes, I am.

18 EXAMINER PRICE: Thank you.

19 MS. ROBERTS: The applicants.

20 A. I believe there are benefits to the
21 customers of the companies.

22 Q. Are there any benefits to the companies
23 of not having to supply ELR customers during high
24 price periods as defined under the tariff?

25 A. I can't recall any to the company

1 specifically other than maybe a secondary impact of
2 providing benefit to the customers that are provided
3 POLR load in the sense of recognizing that the costs
4 that they would have to pay may be reduced as a
5 result, that would otherwise be the case absent that
6 provision.

7 Q. Are customers on Rider ELR on a fixed GEN
8 rate?

9 A. Generally, yes.

10 Q. And their GEN rate isn't determined by
11 whether the L and P at PJM is at 1.5 as defined in
12 the economic buy-through provision of the tariff?

13 A. Well, I believe the benefits come about
14 because presumably suppliers of POLR load would know
15 that part of the POLR load is being supplied under
16 Rider ELR which has a provision in it that allows for
17 interruption or buy-through of load, if you will, if
18 the price gets above a certain level at an RTO, and
19 therefore would recognize when that happens that they
20 would not have to supply POLR load and would
21 presumably take that into account in their bidding
22 process and, therefore, benefit the customers of the
23 company that are taking -- of the companies that are
24 taking POLR load.

25 MS. ROBERTS: Could you reread my

1 question, please?

2 (Record read.)

3 Q. Would you please answer that question.

4 A. Well, I thought I did. Basically my
5 answer is, is that I think the 1.5 provision in the
6 ELR rider impacts the price that suppliers would
7 charge for supplying POLR load under the auctions,
8 and that impacts the fixed price that consumers would
9 pay that are taking POLR load.

10 Q. Did you also say in your deposition that
11 there are about 400 megawatts of load in Rider ELR?

12 A. I believe on a nondiversified -- or on a
13 diversified basis there may be.

14 Q. I'm sorry, what do you mean by a
15 nondiversified basis?

16 A. On a diversified basis.

17 Q. What do you mean by on a diversified
18 basis?

19 A. On a diversified basis meaning
20 diversified in terms of the electric utility industry
21 means that basically the loads can occur at different
22 periods of the day, different periods of the month,
23 and so when you consider diversity -- so that's
24 what's meant by diversified is that the load, the
25 peak loads or loads that you're measuring may not all

1 occur at one particular point in time.

2 Q. Thank you. Thank you.

3 Have the customers on Rider ELR ever been
4 interrupted?

5 A. Customers who are currently under ELR
6 have been interrupted in the past.

7 Q. Since 2008?

8 A. I don't know the exact dates, but they
9 have been interrupted in the past. Many of these
10 customers had previously been on either an
11 interruptible tariff or an interruptible contract,
12 they are currently under a Rider ELR and had been
13 interrupted in the past.

14 Q. Can you tell me whether those customers
15 have been interrupted in 2010?

16 A. I'm not aware of any interruptions this
17 year.

18 Q. Can you tell me whether they've been
19 interrupted in 2009?

20 A. There may have been a discovery question
21 on this. Are you referring to a discovery question
22 by any chance?

23 Q. I can -- if you would like that, I can --
24 if I can get my computer to come up.

25 EXAMINER PRICE: Well, if you don't know,

1 why don't you say you don't know.

2 THE WITNESS: I don't know offhand
3 without looking at the --

4 EXAMINER PRICE: Okay.

5 A. I don't recall at this moment.

6 Q. You don't recall that they were
7 interrupted or not interrupted, you just don't
8 recall.

9 A. In 2009, correct. I do know that they
10 were interrupted previously when they were under
11 tariffs or under a contract.

12 Q. Are there customers -- strike that.

13 Rider ELR requires that customers taking
14 service under that rider execute contracts with the
15 FE utilities; is that correct?

16 A. That's correct.

17 Q. Are there customers of the FE utilities
18 that have executed contracts for interruptible
19 service that are not taking service under that rider?

20 THE WITNESS: Could you repeat the
21 question, please? Or reread the question.

22 (Record read.)

23 A. Well, a couple things. First of all, by
24 the FE utilities I presume you mean Ohio Edison, CEI,
25 and Toledo Edison.

1 Q. That's correct.

2 A. And the second is there may be some
3 customers that are under contract with CEI that have
4 interruptible provisions and under the contracts that
5 exist maybe provided interruptible service, I just
6 don't remember.

7 Q. Can you please quantify the approximate
8 number of customers under contract and their
9 approximate load?

10 A. Are you referring back to my answer about
11 there may be some customers under a contract with CEI
12 that go back for quite a period of time, actually,
13 they were entered in many years ago?

14 Q. I was just referring to the response you
15 gave me, you had just given to me.

16 A. In my response I indicated I think there
17 are CEI contracts that go back in time that were
18 established several years ago that have interruptible
19 provisions in them and I don't know the exact terms
20 of those contracts sitting up here today.

21 Q. Do you know approximately how many
22 customers --

23 A. No, I don't.

24 Q. -- are served under those contracts?

25 A. Oh, under various -- I'd say there are up

1 to a dozen contracts that are with CEI. I'm not sure
2 how many of those contracts have interruptible
3 provisions, how many or if any have interruptible
4 provisions. As I said, those contracts were entered
5 into several years ago.

6 Q. All right. Let me start again. Are
7 there any customers of CEI, Ohio Edison, or Toledo
8 Edison that have contracts for interruptible service
9 that aren't served under Tariff ELR?

10 MR. RANDAZZO: May I inquire, are we
11 talking about contracts that will be in place post
12 May of 2011?

13 MS. ROBERTS: No.

14 MR. RANDAZZO: Or contracts that are in
15 place now?

16 MS. ROBERTS: Contracts that are in place
17 now.

18 MR. KORKOSZ: With that clarification
19 I'll raise an objection based on relevance. What
20 relevance does that have?

21 EXAMINER BOJKO: I didn't understand your
22 question to begin with because I thought we were
23 talking about past interruptible contracts as well.
24 Can you try to rephrase?

25 MS. ROBERTS: Yes.

1 Q. (By Ms. Roberts) Rider ELR requires that
2 its customers taking service under that tariff
3 execute contracts; is that correct?

4 A. That's correct.

5 Q. And in addition you testified that CEI
6 has contracts with customers for interruptible
7 service that do not take service under Rider ELR; is
8 that correct?

9 A. I indicated there are contracts that CEI
10 has with customers that date back a period of time,
11 some of which may have interruptible provisions in
12 it.

13 Q. Okay. And can you as vice president of
14 rates and regulatory affairs give me any idea how
15 many customers that you have just described that have
16 contracts with CEI that are not taking under Tariff
17 ELR which contracts have provision for interruptible
18 services, about how many of those customers exist and
19 about what their load is?

20 A. No, not sitting here today I can't.
21 These are old contracts that were established I think
22 some ten years or more ago.

23 Q. All right. Can you turn to your Exhibit
24 WRR Attachment 1.

25 A. Yes.

1 retail customers of the credits provided in ELR and
2 OLR and collected through DSC1 and EDR, would one way
3 to offset those credits be to bid the load of the ELR
4 customers into the ATSI integration auctions and then
5 credit that revenue back to the riders, recovery
6 riders?

7 A. Well, I'm going to quibble with the word
8 "load" because you're using the 400-megawatt level
9 and, as I previously indicated, that's not a --
10 that's a diversified level. But I think to the
11 extent that the company would bid in an interruptible
12 load and it was accepted for demand response and the
13 companies would get revenue for it, as I indicated,
14 we would offset the charges under DSC1 or EDR for
15 that.

16 Q. And wouldn't you agree that the company
17 should do everything it can to maximize the revenues
18 that would be credited to retail customers from the
19 ATSI integration auctions to Riders DSC1 and EDR?

20 A. No, not necessarily. And the reason I
21 say that is because, you know, the company is
22 basically limited under Rider ELR, those customers
23 that can be -- that are eligible for Rider ELR, and
24 under those provisions, you know, it's basically a
25 set amount. And no other customers basically are

1 allowed under that.

2 MS. ROBERTS: I'm sorry, can you reread
3 my question, please?

4 (Record read.)

5 Q. Can you answer that question, please?

6 A. I thought I did, but basically what I'm
7 stating is that you have to look at the overall
8 benefit to customers and maximizing one item may not
9 maximize the entire benefit overall.

10 Q. And can you please explain how not
11 maximizing the revenue available to credit to retail
12 customers out of the ATSI auctions against the costs
13 of Riders ELR and OLR benefits the customers less
14 than some other action the company might take?

15 A. Well, you don't know basically the credit
16 that would necessarily be given for a maximum amount
17 of interruptible load. You don't know the dollar
18 amount. So if all you're doing is maximizing a
19 subpart, you may not maximize the overall benefit.

20 Q. When you say maximizing the dollar amount
21 per load, what dollar amount are you referring to?

22 A. The interruptible load that would be bid
23 in.

24 Q. So you're saying there may be
25 considerations other than maximizing the load bid

1 into the ATSI integration auctions to provide a
2 credit to Riders DSC1 and EDR.

3 A. All I'm saying is that you may not --
4 maximizing a portion may not maximize the overall
5 benefit when you look at it on a very broad basis is
6 all I'm saying, and that's just isolating on one
7 credit or one maximum amount may not overall result
8 the overall best benefit.

9 Q. Can you identify other benefits for me
10 that may be minimized by bidding the maximum amount
11 of load into the ATSI integration auctions as an
12 offset to the cost of these riders?

13 EXAMINER BOJKO: Mr. Ridmann, are you
14 answering the question what are you maximizing, the
15 load that's put into the auction or are you
16 maximizing the revenues, because I thought
17 Ms. Roberts asked about maximizing the revenues and I
18 hear -- then I heard her switch to maximizing the
19 load and I'm confused of what you're responding to.

20 Do the utilities have anything to do with
21 the revenue that they're getting from the PJM or the
22 ATSI auction?

23 THE WITNESS: Other than as I indicated
24 before, they would flow back the revenue that they
25 got back to the DSC --

1 EXAMINER BOJKO: Right. You have no
2 control of the amount of credit or revenues that
3 you're receiving from that participation in the
4 auction.

5 THE WITNESS: That's correct, unless we
6 had bid in a price. We didn't bid in a price so it's
7 basically a take. Whatever the capacity comes in at
8 is what's reflected in the revenue that we get.

9 EXAMINER BOJKO: So, Ms. Roberts, are you
10 really saying -- are you asking him if the utility
11 should maximize the amount of the load that they put
12 into the auction? Is that your question?

13 MS. ROBERTS: You know, the greater
14 amount of load they bid into the auction the greater
15 the revenues will be that are credited against the
16 cost of that required --

17 EXAMINER BOJKO: Whoa. Whoa. The answer
18 to my question is yes. Then you're talking about
19 their ability to put into the auction, not their
20 ability to extract revenues from the auction.

21 MS. ROBERTS: Yes, they will be paid
22 whatever clears the auction.

23 EXAMINER BOJKO: Okay. We were talking
24 about two different maximizing concepts there, I just
25 want to make sure we're clear.

1 Now let's go back to her last question
2 which she properly stated maximizing the load this
3 time.

4 (Record read.)

5 THE WITNESS: I hate to ask you to reread
6 it but could you reread it.

7 (Record read.)

8 A. All I'm saying is to acquire the maximum
9 load there's a price for that. And you don't
10 necessarily know when you bid that into the PJM
11 auction what credit you're going to get, and so that
12 if all you're looking at is maximizing the load, it
13 may not result in the best overall benefit to
14 consumers.

15 Q. Is what you're saying that what load you
16 bid in may affect how much load is cleared and what
17 benefit you can then receive from the --

18 A. Well, clearly what's bid in affects, you
19 know, what you can get. There's also the, you know,
20 the pricing aspect of what price do you get out of
21 the auction.

22 Q. That's right. But you agree, don't you,
23 that the FirstEnergy utilities should do everything
24 they can to maximize the revenues that can ultimately
25 be credited to these riders?

1 MR. RANDAZZO: I can't --

2 EXAMINER BOJKO: That's where you lose
3 me, Ms. Roberts, you said -- now you're saying
4 maximizing revenues and I think we're talking about
5 what can the utilities do. They have no control,
6 Mr. Ridmann said, about what comes out of the
7 auction. So if you're talking about maximizing what
8 they put in and if you're then going down the path of
9 saying that correlates into more money if you put
10 more in, I mean --

11 MS. ROBERTS: Clearly the clearing prices
12 of the auction are the clearing prices of the
13 auction, and clearly FirstEnergy utilities has
14 control over trying to get the most out of the
15 auction it can in terms of megawatts to be paid the
16 clearing price.

17 EXAMINER BOJKO: You lost me there.

18 MS. ROBERTS: Well, the revenues are
19 dependent upon the clearing price and the load that
20 clears the auction. That's the revenues that will be
21 generated as a credit to riders -- the cost of Riders
22 ELR and OLR.

23 MR. RANDAZZO: I object. It's absolutely
24 incorrect. There's no factual predicate for any of
25 this, and it's wrong.

1 EXAMINER BOJKO: I'm really trying to
2 follow you and I even tried to help you with the
3 maximizing load versus maximizing revenues. I mean,
4 I think that -- why don't we try reasking the
5 question, or instead of you testifying about how it
6 happens why don't you let Mr. Ridmann tell us how it
7 happens and then maybe your questions will fall out
8 from there.

9 Q. (By Ms. Roberts) Mr. Ridmann, how will
10 the amount of revenues credited to the costs of Rider
11 ELR and OLR from the ATSI auctions be determined?

12 A. I presume they'll be determined by PJM
13 from the amount of load management reduction, if you
14 will, that cleared and based on the pricing that come
15 out of the auction.

16 Q. And is it your testimony that in trying
17 to reduce the cost of Riders ELR and OLR that the
18 FirstEnergy utilities should use their best efforts
19 to maximize the load cleared in the auction which
20 will then maximize the revenues credited to the cost
21 of these riders?

22 MR. KORKOSZ: Object.

23 EXAMINER BOJKO: Let's try to break that
24 out a little bit. Can you try to break that down,
25 please?

1 MS. ROBERTS: Sure, I can break it down.

2 Q. Do you agree that the revenues credited
3 to ELR and OLR from the ATSI auction will depend upon
4 the load that the utilities clear in that auction for
5 these customers?

6 A. I presume now you're talking about demand
7 reduction that cleared.

8 Q. Yes.

9 A. Yes, it will be dependent on the amount
10 of demand reduction that clears.

11 Q. And in attempting to generate a credit to
12 riders -- the cost of Riders ELR and OLR, will the
13 company use its best efforts to ensure that the
14 greatest amount of load will clear the auction, for
15 demand response is what we're talking about?

16 MR. KORKOSZ: I object. Foundation I
17 guess for --

18 EXAMINER BOJKO: Sustained for
19 foundation. That was the exact objection I was
20 thinking, Mr. Korkosz.

21 You keep missing a step.

22 MR. KORKOSZ: Me too.

23 EXAMINER BOJKO: You're missing a step.
24 You're jumping to the conclusion that there's some
25 kind of requirement for FirstEnergy to do something

1 specific and maybe you should focus on that a minute
2 to lay some foundation before you get to your
3 conclusions that you're jumping to.

4 Q. (By Ms. Roberts) Mr. Ridmann, didn't you
5 testify that any revenues received from the ATSI
6 integration auction from bidding in demand response
7 would be credited to the cost of rider ELR and OLR?

8 EXAMINER BOJKO: That's been asked and
9 answered. That's not the foundation I'm talking
10 about.

11 MS. ROBERTS: I know.

12 EXAMINER BOJKO: Go to your next step.

13 MS. ROBERTS: Yes.

14 Q. I think I have everything I need from
15 that, I'm going to go to your Schedule WRR Attachment
16 1.

17 A. Okay.

18 Q. Does this schedule contain any credit to
19 the cost of Riders ELR and OLR for revenues received
20 from the ATSI integration auction demand response?

21 A. You're talking about my Attachment 1
22 which compares the ESP to the MRO to determine the
23 net benefits?

24 Q. Yes.

25 A. This really doesn't incorporate any

1 provisions of ELR and EDR in this attachment. This
2 attachment really tries to compare the benefits of
3 ESP to an MRO and quantifies basically the
4 differences, if you will, between the MRO and the ESP
5 and identifies the net benefits between an ESP and an
6 MRO.

7 Q. Well, Mr. Ridmann, are Riders ELR and OLR
8 treated the same? Do Riders ELR and OLR have the
9 same costs in the MRO as they do in the proposed
10 stipulation?

11 A. I don't know.

12 Q. The current Rider ELR has a cost, does it
13 not, of \$1.95 a kilowatt month?

14 A. The current ELR has a price of -- under
15 the current ESP has a price of \$1.95.

16 Q. And under the MRO filed by the company --

17 A. Yes.

18 Q. -- that credit was not changed; is that
19 correct?

20 EXAMINER PRICE: No. I'm sorry, that's
21 not right. I mean, that's not an accurate
22 representation of what their filed MRO was.

23 EXAMINER BOJKO: I thought that's what we
24 talked about a long time ago this morning.

25 EXAMINER PRICE: Mr. Ridmann, under your

1 MRO as filed, Riders ELR and OLR would expire on
2 their own terms --

3 THE WITNESS: That's correct.

4 EXAMINER PRICE: -- before the MRO took
5 effect. On the effective date of the MRO.

6 THE WITNESS: That's correct, or the day
7 before.

8 EXAMINER PRICE: Right. Right.

9 MS. ROBERTS: Okay, I understand your
10 point here. Okay. Thank you. I have no other
11 questions.

12 - - -

13 EXAMINATION

14 By Examiner Price:

15 Q. I actually do have a follow-up question
16 because I think Ms. Roberts was on the right track to
17 a certain degree. There is a cost in the ESP to
18 ratepayers for riders, that's recovered from
19 ratepayers for Riders ELR and OLR as agreed in the
20 ESP stipulation, correct?

21 A. That's correct. The only caveat I would
22 have, your Honor, is that there are no customers
23 under OLR.

24 Q. I understand that.

25 A. Given that caveat.

1 Q. Even if I keep saying "and OLR," we'll
2 leave that caveat in there.

3 A. Okay.

4 Q. There will be a different cost under the
5 MRO for the demand response program proposed by
6 FirstEnergy, correct?

7 A. That's correct.

8 Q. Because you'll go to a market-based
9 option. Do your numbers on WRR Attachment 1 take
10 into account any projected difference in the cost of
11 continuing ELR and OLR versus what you believe the
12 customer's cost would be under the MRO as filed?

13 A. The answer is no, because I don't know
14 under an RFP what potential interruptible customers
15 would bid in to meet the qualifications to count as
16 demand reduction under Senate Bill 221 and possibly
17 also under the PJM rules.

18 Q. Did you do any projections --

19 A. No, we did not.

20 Q. -- in preparing for the MRO?

21 A. We did not.

22 Q. Thank you.

23 A. Or I did not.

24 Q. You're not aware of any that FirstEnergy
25 did.

1 A. And I'm not aware of any.

2 EXAMINER PRICE: Thank you.

3 MS. ROBERTS: Thank you, Mr. Ridmann.

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

5 (Discussion off the record.)

6 EXAMINER BOJKO: Let's go back on the
7 record. Mr. Korkosz, do you have any redirect?

8 MR. KORKOSZ: Yes, your Honor.

9 - - -

10 REDIRECT EXAMINATION

11 By Mr. Korkosz:

12 Q. Mr. Ridmann, Mr. Small asked you some
13 questions about the domestic automaker provision in
14 the stipulation. Do you recall that?

15 A. Yes, I do.

16 Q. And in particular at one point you gave
17 Mr. Small a definition of what "domestic" meant as a
18 qualifying adjective. Do you recall that?

19 A. Yes, I do.

20 Q. Are you aware of any automakers in the
21 service territories of the company that would
22 otherwise be eligible, that is, because of their
23 load, eligible to avail themselves of this provision
24 of the tariff but are excluded because of their not
25 being domestic within the definition you gave?

1 A. I am not aware of any customers.

2 Q. All right. In questioning by Ms. Roberts
3 there was some discussion where you were asked to
4 make a comparison between the \$5 credit available to
5 potential customers under the ELR tariff and to
6 compare that with the auction clearing price of \$3.31
7 and, I forget the other number, 62 cents. Do you
8 recall that?

9 A. Yes, I do.

10 Q. Do you believe it's appropriate
11 conceptually to make that kind of comparison?

12 A. No, it is not, because ELR tariff also
13 elicits demand response or interruptible load to also
14 comply not only with PJM but also the state
15 requirements of demand reduction under Senate Bill
16 221.

17 MR. KORKOSZ: Nothing further, your
18 Honor.

19 EXAMINER BOJKO: Thank you.
20 Constellation?

21 MR. SETTINERI: No, no questions, your
22 Honor.

23 EXAMINER BOJKO: Nucor?

24 MR. LAVANGA: No questions, your Honor.

25 EXAMINER BOJKO: OEG?

1 MR. BOEHM: No questions, your Honor.

2 EXAMINER BOJKO: COSE?

3 FES?

4 MR. GALLON: No, no questions, your
5 Honor.

6 EXAMINER BOJKO: IEU?

7 MR. RANDAZZO: None.

8 EXAMINER BOJKO: Colleges?

9 OP&E?

10 MR. RINEBOLT: No, your Honor.

11 EXAMINER BOJKO: OHA-OMA?

12 Schools?

13 MR. WARNOCK: No.

14 EXAMINER BOJKO: Materials Science
15 Corporation?

16 MR. SMITH: No questions.

17 EXAMINER BOJKO: Staff?

18 MR. McNAMEE: No, thank you.

19 EXAMINER BOJKO: Kroger?

20 PJM Power Providers?

21 City of Akron?

22 MR. RANDAZZO: None.

23 EXAMINER BOJKO: OCC?

24 MR. SMALL: No questions.

25 EXAMINER BOJKO: EnerNOC?

1 ELPC?

2 MR. HEINTZ: No questions, your Honor.

3 EXAMINER BOJKO: OEC?

4 MS. De LISI: No questions.

5 EXAMINER BOJKO: NRDC?

6 NOPEC?

7 MR. WARNOCK: No.

8 EXAMINER BOJKO: Direct?

9 MR. DYAS: Nothing.

10 EXAMINER BOJKO: Please let the record
11 reflect any nonresponses meant the parties are not
12 here, and they have thus waived their right to
13 recross.

14 Mr. Price.

15 - - -

16 FURTHER EXAMINATION

17 By Examiner Price:

18 Q. Mr. Ridmann, Mr. Small raised some
19 questions about the wisdom of globally settling
20 multiple cases in this case. In your experience with
21 the Commission is it unusual for a global settlement
22 in a case to bring in other cases and resolve those
23 cases?

24 A. No, it's not unusual.

25 Q. Can you think of any specific instances

1 involving FirstEnergy where that's happened off the
2 top of your head?

3 A. I believe in the current ESP there were
4 provisions that brought in other cases basically that
5 were settled as part of that overall ESP.

6 EXAMINER PRICE: Thank you. That's all I
7 have.

8 - - -

9 EXAMINATION

10 By Examiner Bojko:

11 Q. Mr. Ridmann, I'd like to direct your
12 attention to the list of riders contained in the
13 stipulation on pages 20 and 21. If you could bear
14 with me for a moment, I'd like to take this list of
15 riders and with each one I'd like you to tell me when
16 they are nonbypassable or bypassable. We can do this
17 quickly just by going down the list. If there's one
18 you don't know, say you don't know. Can we do that?

19 A. Sure, we can do that.

20 Q. Rider DSM.

21 A. I will say all of these are subject to
22 check. I believe DSM is not bypassable.

23 Q. Rider DUN.

24 A. That's nonbypassable.

25 Q. Rider PUR.

1 A. I believe that's also nonbypassable.

2 Q. Rider LEX.

3 A. Nonbypassable.

4 Q. Rider AER.

5 A. I believe that one's bypassable.

6 Q. Rider CDR.

7 A. I believe that one's nonbypassable.

8 Q. Rider CPP.

9 A. Would you hold on for just one moment.

10 Bypassable.

11 Q. Rider CPP.

12 A. I'm sorry, I thought that's the one you
13 asked about.

14 Q. It was. Is that, Rider CPP is
15 bypassable?

16 A. Yes.

17 Q. Rider DRR.

18 A. Let me check that one real quick.

19 Nonbypassable.

20 Q. Rider NDU.

21 A. Bypassable.

22 Q. Rider TAS.

23 A. There are currently two provisions under
24 TAS. TAS1 is basically bypassable. TAS2 is not
25 avoidable during the period January 1st, 2010,

1 through December 31st, 2010. I guess that's a split
2 answer.

3 Q. DSI.

4 A. Nonbypassable.

5 Q. Rider DFC.

6 A. Nonbypassable.

7 Q. Rider RAR.

8 A. Rider RAR basically deals with a
9 reasonable arrangement and so I would think it would
10 be dependent on what the reasonable arrangements were
11 provided for under the specific contract or
12 opportunity that the Commission approved for each
13 reasonable arrangement.

14 Q. Rider ELR.

15 A. Basically it's nonbypassable.

16 Q. Rider EDR.

17 A. There are many provisions under Rider
18 EDR, would you like me to step through all the
19 provisions? And I presume -- if you do, do you want
20 it under basically the current EDR or that which is
21 being proposed under the ESP stipulation that is
22 before us?

23 Q. That which is proposed under the ESP.

24 A. Okay.

25 EXAMINER PRICE: How many are there?

1 THE WITNESS: I think the provisions go
2 from A through I.

3 EXAMINER PRICE: Okay. That's fine.
4 Could have been A through ZZ.

5 THE WITNESS: That's true.

6 EXAMINER PRICE: That would have been a
7 different response.

8 A. Okay. I'm looking under Rider EDR A
9 which is the residential nonstandard credit
10 provision, this is the provision that basically gives
11 discounts to what has been the subject of a lot of
12 discussion recently at the Commission, and so this is
13 bypassable.

14 Under EDR provision B which is the
15 interruptible credit provision, and like I discussed
16 with Rider ELR basically if a customer wants the
17 credit that is being provided, that basically they
18 need to -- they won't get if they are supplied power
19 from a certified supplier.

20 EDR rider or paragraph C deals with a
21 nonresidential credit provision applied potentially
22 to customers under GT and the three lighting
23 schedules, and this credit is bypassable.

24 Rider EDR paragraph D deals with the
25 general service transmission rate provision,

1 oftentimes referred to as the load factor adjustment
2 for the TT class, and this provision is not
3 avoidable.

4 E of Rider EDR deals with the standard
5 charge provision which basically pays for some of the
6 credits that are throughout EDR and that's not
7 bypassable.

8 Paragraph F of Rider EDR deals with the
9 school credit provision and that credit provision is
10 bypassable.

11 Paragraph G deals with the infrastructure
12 improvement provision under Rider EDR and that's not
13 bypassable.

14 Rider H deals with the automaker credit
15 provision that we've discussed, and basically a
16 customer is eligible for that credit whether they
17 shop or not.

18 Provision I deals with the recovery of
19 the automaker provision contained in H and that's not
20 bypassable.

21 Q. Rider GCR.

22 A. Rider GCR is really, as laid out in the
23 stipulation, is kind of a mixed bag depending on at
24 what level the GCR balance gets into. So it's, at
25 one point it's avoidable, but if it gets to a certain

1 level above, for instance, 5 percent of the G I think
2 as described or if there's a default by a service
3 supplier, then it becomes nonbypassable, so it's a
4 combination.

5 EXAMINER PRICE: But initially it will be
6 avoidable. Is that right?

7 THE WITNESS: Let me just check the
8 provisions real quick because I could see a situation
9 where --

10 EXAMINER PRICE: That's okay.

11 THE WITNESS: -- the initial balance
12 could be above 5 percent.

13 EXAMINER PRICE: I'll pass on that
14 question.

15 Q. It's bypassable up to 5 percent.

16 Rider OLR is more of a tariff option.
17 Rider DSE.

18 A. There are really two provisions under
19 DSE, DSE1 and DSE2, and they are both nonbypassable.

20 Q. Rider GEN?

21 A. Bypassable.

22 Q. Rider AMI?

23 A. Nonbypassable.

24 Q. Rider DGC?

25 A. Nonbypassable.

1 Q. And RTP?

2 A. Bypassable.

3 Q. If you could turn to page 12 of your
4 testimony, line 22, you say -- it starts on 21, "The
5 CBP proposed in the Stipulation mirrors in material
6 respects the process that was used in the highly
7 competitive and successful May 2009 auction." Do you
8 see that?

9 A. Yes.

10 Q. Can you explain to me what "mirrors in
11 material respects" means? Where does it differ?
12 Maybe it would be easier to talk about the
13 differences.

14 A. The ones I think of right now that differ
15 from what was in existence is that there was an
16 optionality under this ESP to provide for a load cap
17 provision. Again, it's possible, it's not absolute.
18 There's also a provision under this ESP that provides
19 for PIPP customers to be carved out of basically the
20 auction, get a 6 percent discount, that is different
21 from the existing ESP in the auction that was held in
22 May of '09.

23 There were credit provisions that I think
24 changed under this ESP. There were -- there are
25 differences in the products being offered in terms of

1 the length of the product. Those are the differences
2 that come to mind.

3 Q. Let's talk about a couple of them. Let's
4 start with the load cap. Can you explain what you
5 mean that there's an optionality for a load cap?

6 A. Basically under page 12 of the
7 stipulation, paragraph A-10, there's language that
8 states the Commission may order a load cap of no less
9 than 80 percent on an aggregated load basis across
10 all auction products for each auction date.

11 Q. So the Commission would be the one that
12 would implement that load cap?

13 A. Yes, they may order it under the
14 stipulation.

15 Q. How was the 80 percent load cap arrived
16 at in the stipulation as opposed to 35 percent or
17 50 percent like in New Jersey?

18 A. I think it was part of the overall
19 negotiation process in terms of negotiating a package
20 recognizing that there were I think some parties that
21 basically thought there was a disadvantage to a load
22 cap and other parties possibly thought there may be
23 an advantage, and so I think taking into
24 consideration the various discussions that all the
25 parties had on that provision, and just as a total

1 package, that's the number that was arrived at.

2 Q. Do you think --

3 A. I think from the company's perspective
4 the load cap is a disadvantage to its customers.

5 EXAMINER PRICE: Why do you believe that?

6 Q. Why is that?

7 A. I believe to the extent that a supplier
8 is willing to supply more load at an auction price
9 that cleared and they are prohibited from doing that,
10 that basically it would result in higher prices for
11 customers under the auction and I think that's a real
12 disadvantage to the customers of the company that are
13 taking POLR load.

14 Q. Do you think it provides a disincentive
15 to a bidder?

16 A. Absolutely not based on the May 2009
17 experience. There were plenty of bidders and there
18 was no load cap.

19 EXAMINER PRICE: In other states where
20 FirstEnergy operates do they have load caps?
21 Examiner Bojko mentioned New Jersey, what's the New
22 Jersey load cap?

23 THE WITNESS: New Jersey has -- or, I
24 don't recall the exact level of the load cap, though.

25 EXAMINER PRICE: How about any other

1 states you operate in?

2 THE WITNESS: Pennsylvania may. When you
3 say "operate in," you mean from a distribution
4 utility standpoint.

5 EXAMINER PRICE: Distribution utilities
6 that you have responsibility for.

7 THE WITNESS: I don't recall if there's a
8 load cap, quite frankly, on all three of the
9 Pennsylvania utilities, I just don't recall at this
10 point.

11 EXAMINER PRICE: It's likely that there's
12 a load cap in at least one of them.

13 THE WITNESS: Yes, or will be.

14 EXAMINER PRICE: Or will be. Do you know
15 the approximate amount of that load cap?

16 THE WITNESS: I don't offhand that I
17 could -- I don't offhand, not right now.

18 EXAMINER PRICE: If you recall, after the
19 last auction was there some assignment of tranches
20 from the winning bidders to other interested parties?

21 THE WITNESS: Yes, there were.

22 EXAMINER PRICE: And is there any
23 provision in the stipulation that would limit the
24 assignments of those -- of tranches in that manner?

25 THE WITNESS: In the ESP that's currently

1 subject to these hearings --

2 EXAMINER PRICE: Yes.

3 THE WITNESS: No, I'm not aware of any
4 provision that would limit it nor should there be.

5 EXAMINER PRICE: Nor should there be.

6 Q. (By Examiner Bojko) And can you explain
7 why, why there shouldn't be?

8 A. Yes, I believe that basically
9 opportunities between free business enterprises
10 entered into discussions and contracts provide, after
11 the auction basically provide benefits to customers
12 in the sense that it may provide for additional
13 bidders to decide to participate in the auction
14 knowing that there may be some opportunities after
15 the auction to enter into business advantages or
16 business arrangements, I should say, that they may
17 find advantageous at some point after the auction, so
18 why limit that.

19 EXAMINER PRICE: Do you think there is a
20 merit in allowing the free assignability of tranches
21 but not allowing parties to do so at a profit so that
22 if you win tranches, you'd have to assign them at the
23 same value?

24 THE WITNESS: No, I think these are free
25 enterprises that can enter into contracts on their

1 own.

2 EXAMINER BOJKO: Do you think that -- is
3 there any gaming that could be going on or any
4 bidding behavior that may be impacted by the ability
5 to transfer tranches after the auction has ended?

6 THE WITNESS: Could you repeat the
7 question?

8 (Record read.)

9 THE WITNESS: Not that I can think of.

10 EXAMINER PRICE: Well, the rules preclude
11 arrangements ahead of time; is that correct?

12 THE WITNESS: That's correct.

13 EXAMINER PRICE: So for the Commission to
14 be -- how can the Commission be assured that a
15 transaction that occurs after the fact was not
16 subject to a previous arrangement?

17 THE WITNESS: I guess you could query the
18 winning bidders as to whether there was a previous
19 arrangement.

20 EXAMINER BOJKO: But basically it's
21 against the rules to have a prearrangement prior to
22 the auction.

23 THE WITNESS: Absolutely, but I took
24 Mr. Price's question to be how do you know that that
25 didn't occur, and I think the only way would be to

1 query the parties that they didn't violate the
2 bidding rules.

3 EXAMINER PRICE: I guess the question is,
4 is there a way to create a disincentive from parties
5 to reach prior arrangements so that we're not simply
6 left with inquiring from the parties did you do this?
7 It never works with my children.

8 THE WITNESS: I think the concept of
9 collusion or working against the rules beforehand I
10 think is sufficient notice that it won't occur.

11 EXAMINER BOJKO: You talk -- on page 12
12 on 23 of your testimony, you used the word
13 "successful May 2009 auction." Is there anything
14 that you believe could be done differently to improve
15 the 2009 auction?

16 THE WITNESS: Well, the one thing that
17 comes to mind, quite frankly, is the May auction was
18 held under a very compressed time period. You know,
19 what we heard through the collaborative effort that
20 we held with suppliers is that it would be
21 advantageous if they had more time because the -- you
22 know, the order came out in the existing ESP and I
23 think, you know, I think they were -- I think they
24 wanted a little bit more time to prepare or whatever.

25 So I think we've tried to take that into

1 account in the current auction process and what was
2 proposed in the MRO to allow more time and I think
3 schedule -- or Exhibit A I think attached to the
4 stipulation where it lays out the time frame tries to
5 do that.

6 EXAMINER PRICE: I hate to go back to
7 load cap, but in your -- in the stipulation
8 provisions regarding the 80 percent load cap, does
9 that apply to each product or each auction? What I'm
10 trying to say is in the first auction, for example,
11 there will be a series of different products. Is the
12 80 percent applied overall, or is it applied to each
13 individual product?

14 THE WITNESS: It's applied to the overall
15 for that particular auction date, not for each
16 product that's being auctioned off on that auction
17 date.

18 EXAMINER BOJKO: But 80 percent would
19 apply to each of the three separate auctions.

20 THE WITNESS: No.

21 EXAMINER PRICE: No.

22 THE WITNESS: Oh, to each of the three
23 separate auctions.

24 EXAMINER BOJKO: Yes.

25 THE WITNESS: By separate auctions how do

1 you define that?

2 EXAMINER BOJKO: The July 2010 -- oh
3 you're saying the three staggered or laddered options
4 throughout the year, 80 percent would apply to all
5 three of those but each year you would have a new
6 80 percent load cap. Is that what you mean?

7 THE WITNESS: Let me step back. For each
8 auction date, if you look under Exhibit A, I think
9 it's Exhibit A -- Attachment A, I'm sorry, the second
10 page.

11 EXAMINER BOJKO: July 10th.

12 THE WITNESS: So you have an auction date
13 of July 10th. There are three products on that
14 auction date, a one-year product, a two-year product,
15 a three-year product. Page 12 of the stipulation at
16 paragraph 10 basically states on an aggregated load
17 basis across all auction products for each auction
18 date that any given bidder may win not more than
19 80 percent of the tranches in the auction.

20 EXAMINER PRICE: So it is hypothetically
21 possible for a single bidder to win all on the
22 July 10 auction, to win all 16 of the 36-month
23 tranches, all 17 of the 24-month tranches, but none
24 of the 1-year tranches; that would be legal.

25 THE WITNESS: Yes. Because the average

1 of that would basically be below 80 percent.

2 EXAMINER PRICE: Yes, yes. Okay.

3 EXAMINER BOJKO: Thank you. That's what
4 I attempted to articulate, I just didn't do it so
5 well.

6 EXAMINER PRICE: Mr. Small raised the
7 issue about holding an auction in a peak month, in
8 July, to which I think your response was the forward
9 markets, knowing the peak months are always going to
10 occur in Ohio, you know, build that into the price;
11 is that correct? The market builds the weather into
12 the forwards.

13 THE WITNESS: I think the forwards, if
14 you will, reflect basically the market going forward
15 basically is what I --

16 EXAMINER PRICE: Right. Do any other
17 states that FirstEnergy operating companies or
18 FirstEnergy distribution utilities operate in under
19 do auctions in peak months?

20 THE WITNESS: If you define peak month as
21 July?

22 EXAMINER PRICE: Yes. June, July,
23 August.

24 THE WITNESS: Not that I'm aware of.
25 There are some that occur in May.

1 EXAMINER PRICE: Should we be concerned
2 that other states don't do these auctions in peak
3 months and the stipulation is asking us to do so?

4 THE WITNESS: No, I don't think so. I
5 think there's a real advantage to take advantage of
6 the market as it exists today and changes in the
7 market could occur. We had originally proposed in
8 the MRO June and, you know, had this current ESP
9 effort gone quicker, we wouldn't have pushed it back
10 to July I don't think.

11 EXAMINER BOJKO: Would your answer be the
12 same, though, with regard to -- I think I understood
13 you to say take advantage of the market, how it
14 exists today. Would your answer be the same for
15 July 2011 and July 2012, those procurement dates?

16 THE WITNESS: I don't know about those
17 dates in particular. I was really referring to the
18 July 2010 where basically based on the economic
19 situation that we find ourselves in today, having an
20 auction earlier we would probably be better off if
21 you assume economic recovery will occur.

22 EXAMINER PRICE: Do the markets, I mean,
23 this is a tough question to ask, do the markets build
24 in the assumption that economic recovery is going to
25 occur in the out years?

1 THE WITNESS: I don't know.

2 EXAMINER BOJKO: In response to my
3 question before another question was posed you only
4 explained one benefit of or one change you would make
5 to what you've termed a successful May 2009 auction
6 and that being the -- I think it was the load cap.

7 THE WITNESS: I think I said that
8 basically the suppliers want a little bit more
9 time --

10 EXAMINER BOJKO: Oh, more time, I'm
11 sorry. Are there any other improvements over the
12 2009 auction?

13 THE WITNESS: I think there was some
14 interest also instead of just having one auction for
15 the time period that you would have different dates
16 for the auction, not just one date as we had for the
17 May 2009, and as we've just discussed, there are four
18 auction dates for this ESP time period. So I think
19 that's an advantage.

20 EXAMINER BOJKO: And the multiple product
21 offerings is probably -- would you put that under
22 that same classification?

23 THE WITNESS: Yes.

24 EXAMINER BOJKO: You mentioned earlier on
25 one of the things that was different this time, you

1 mentioned credit provision changes, and is one of
2 those credit provision changes that you were
3 referencing the credit based tranche cap?

4 THE WITNESS: I'm not really sure I would
5 describe it that way. I was thinking more in terms
6 of basically under Attachment A to the stipulation on
7 page, basically 40 and 41, and then the changes that
8 were reflected in the supplier tariffs, that's what I
9 was referring to.

10 EXAMINER BOJKO: Are you familiar with
11 the credit based tranche cap?

12 THE WITNESS: Maybe if you could describe
13 what you mean by that.

14 EXAMINER BOJKO: The bidders have -- it's
15 my understanding that the suppliers have to have a
16 certain credit rating in order to participate in the
17 auction, and if they don't have a certain rating,
18 they're only allowed to obtain six tranches, I
19 believe.

20 THE WITNESS: I don't know that offhand.
21 I can look at the supplier tariff if you'd like.

22 EXAMINER PRICE: Let me ask the question
23 a different way. It's not your belief that's changed
24 at all from the May 2009 auction.

25 THE WITNESS: No, I don't think anything

1 changed from that. I think what's changed is
2 basically what's on Attachment A. And there were
3 really two provisions under the supplier tariff I
4 know changed, one is the credit provisions in A and
5 the PIPP provisions.

6 EXAMINER PRICE: When you say in A,
7 you're talking about page 41, section 6.6; there's a
8 table?

9 THE WITNESS: Yes. On page 41, did you
10 say?

11 EXAMINER BOJKO: We have nothing further,
12 thank you very much.

13 Yes, Mr. Korkosz.

14 MR. KORKOSZ: If your Honors please, I
15 offer into evidence Companies' Exhibits 1, 2, 3, and
16 4, and also offer Joint Exhibit No. 1.

17 EXAMINER BOJKO: Any opposition to the
18 admission of Companies' Exhibits 1, 2, 3, 4, and
19 Joint Exhibit 1?

20 MR. SMALL: Only with regard to the
21 motions to strike that were granted.

22 EXAMINER BOJKO: Thank you very much.

23 Any other opposition?

24 Companies' Exhibits 1, 2, and 3 will be
25 admitted in their entirety. Company Exhibit 4 will

1 be admitted except for the provisions that were
2 stricken pursuant to the motion to strike.

3 And Joint Exhibit 1 will be admitted as
4 well.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER BOJKO: Mr. Small.

7 MR. SMALL: OCC moves for admission of
8 OCC Exhibits 3, 4, and 5.

9 EXAMINER BOJKO: Any opposition to the
10 admission of OCC Exhibits 3, 4, and 5?

11 OCC Exhibits 3 and 4 will be admitted.

12 (EXHIBITS ADMITTED INTO EVIDENCE.)

13 EXAMINER BOJKO: OCC Exhibit 5 I believe
14 we marked for identification purposes. We'll just
15 take administrative notice of that. It's the excerpt
16 from the oral argument transcript in Case 09-778.

17 Mr. McNamee.

18 MR. McNAMEE: At the time, your Honors,
19 the staff would call Hisham Choueiki.

20 (Witness sworn.)

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

23 THE WITNESS: Hisham Choueiki, 180 East
24 Broad Street, Columbus, Ohio 43215.

25 EXAMINER PRICE: Mr. McNamee.

HISHAM CHOUEIKI, PH.D., P.E.

DIRECT EXAMINATION

Q. Dr. Choueiki, by whom are you employed
and in what capacity?

Q. Okay.

I'd ask to have marked for identification as Staff Exhibit 1 a multipage document filed in this case on tax day, April 15th, it's denominated Testimony of Hisham Choueiki, Ph.D., P.E.

(EXHIBIT MARKED FOR IDENTIFICATION.)

A. Yes.

A. That's my prefiled testimony.

1 your direction?

2 A. Yes.

3 Q. Do you have any corrections to be made to
4 that document as you sit here today?

5 A. Not that I'm aware of.

6 Q. Okay. Fair enough.

7 Are the contents of what's been marked
8 for identification as Staff Exhibit 1 true to the
9 best of your knowledge and belief?

10 A. Yes.

11 Q. If I were to ask you the questions
12 contained within what's been marked for
13 identification as Staff Exhibit 1 again today, would
14 your answers here be as presented therein?

15 A. Yes.

16 MR. McNAMEE: With that, your Honors,
17 Dr. Choueiki is available for cross.

18 EXAMINER PRICE: Thank you.

19 Mr. Lavanga?

20 MR. LAVANGA: No questions, your Honor.

21 EXAMINER PRICE: Mr. Boehm?

22 MR. BOEHM: No questions, your Honor.

23 EXAMINER PRICE: Mr. Randazzo?

24 MR. RANDAZZO: A couple.

25 - - -

CROSS-EXAMINATION

By Mr. Randazzo:

Q. Doctor, page 8 of your testimony you update us on the results of the what I'll call the integration auction, correct?

A. Yes.

MR. RANDAZZO: And I'm going ask some leading questions even though this might be classified as friendly cross in order to get through this, your Honors.

EXAMINER PRICE: We will indulge you.

MR. RANDAZZO: Okay. If I offend anybody, I'm sure I'll hear about it, for this purpose.

Q. The 2011 and 2012 planning year, do you know how much capacity was bid in and how much cleared?

A. Yes, I know the volume and I'm not quite sure if it's proprietary or not, the volume.

Q. It's on PJM's website.

A. Oh, is it?

Q. Yes.

A. Then it's a little more than 9,000 megawatts that cleared.

1 Q. Would you accept, subject to check, that
2 approximately 12,583 megawatts cleared and that
3 offered was 14,236 megawatts?

4 A. Okay. Subject to check.

5 Q. Okay. And that would mean that if those
6 numbers are correct, that would mean that more
7 capacity was offered than cleared in the auction.

8 A. Oh, yes, yes.

9 Q. All right. And for purposes of the
10 2012-2013 planning year, I've learned a lesson from
11 our prior answer, would you accept, subject to check,
12 that that period the amount of offered capacity was
13 18,648 megawatts and the amount of capacity that
14 cleared was 13,038 megawatts?

15 A. Subject to check. The only question I
16 have is that some of the load opted out, so with that
17 in mind I don't think all of the FirstEnergy load
18 went -- was bid into because not everything was
19 acquired. You know, you had the option of load being
20 opted out and I thought some of the load in the ATSI
21 zone opted out so they wouldn't procure capacity.

22 Q. We're talking about the load opting out.
23 You're talking about the load serving entities that
24 elected not to participate in the auction process.

25 A. Correct.

1 Q. That's correct. And that would primarily
2 be municipals, utilities, and co-ops, correct?

3 A. Yeah, and I don't remember what value but
4 that's what I -- if you say that the load that
5 cleared the auction is 13,000, subject to check, I'll
6 accept it.

7 MR. RANDAZZO: Okay. And I will have an
8 exhibit for the record to supplement this, your
9 Honor. That's all I have, thank you very much.

10 EXAMINER PRICE: Thank you.

11 Constellation?

12 MR. SETTINERI: No questions.

13 EXAMINER PRICE: Materials Science?

14 MR. SMITH: No questions.

15 EXAMINER PRICE: Mr. Warnock?

16 MR. WARNOCK: None for the Schools.

17 EXAMINER PRICE: Pardon me?

18 MR. WARNOCK: None for the Schools.

19 EXAMINER PRICE: None for the Schools,
20 thank you.

21 Mr. Rinebolt?

22 MR. RINEBOLT: No questions, your Honor.

23 EXAMINER PRICE: Mr. Gallon?

24 MR. GALLON: No questions, your Honor.

25 EXAMINER PRICE: Company?

1 MR. HAYDEN: No questions, your Honor.

2 EXAMINER PRICE: Okay. Mr. Heintz?

3 MR. HEINTZ: No questions, your Honor.

4 EXAMINER PRICE: Ms. De Lisi.

5 MS. De LISI: No questions, your Honor.

6 EXAMINER PRICE: City of Akron?

7 MR. RANDAZZO: None.

8 EXAMINER PRICE: Mr. Warnock, on behalf
9 of NOPEC?

10 MR. WARNOCK: I have a few. Do you mind
11 if I go after OCC because I feel they're going to ask
12 a few of my questions.

13 EXAMINER PRICE: Not at all.

14 Mr. Small.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Small:

18 Q. Jeff Small, OCC, I have a few questions.
19 Would you please turn to page 4 of your testimony,
20 lines 6 through 7.

21 A. All right.

22 Q. There you state that FirstEnergy provided
23 the estimates for the MISO exit fee and the PJM
24 integration fee. Do you see that?

25 A. Yes.

1 Q. When were those estimates provided to
2 you?

3 A. Actually, those were in the testimony of
4 Mr. Ridmann. Although these were the same numbers
5 that were -- I mean, I just cited the source. These
6 numbers we were familiar with from a while back just
7 from discussions with MISO and with --

8 Q. Just to be clear, I didn't -- I asked
9 when you were provided with this information.

10 A. Yes. The source of the two numbers here
11 is Mr. Ridmann.

12 Q. And when were you first provided these
13 numbers?

14 A. Oh, when we first met with FirstEnergy
15 they gave us an estimate, and it was about
16 \$35 million, so that's what --

17 Q. Could you give me a time frame here?

18 A. The first time we met with them, I can't
19 remember, it was -- we met with the chairman and a
20 couple, it was after August. I mean, August, it was
21 I think announced that they were going to, whenever
22 they filed the application at FERC, and several weeks
23 later they met with us.

24 Q. So this is approximately September of
25 2009?

1 A. Yeah, the fall, early fall.

2 Q. These numbers are subject to change, are
3 they not?

4 A. Yes. I mean, at the end of the day
5 MISO's going to give them that day the last official
6 bill or, you know, as of May 31st, 2011, they will
7 get the official actual bill.

8 Q. Well, approximately, if I've counted
9 right, approximately seven months has elapsed since
10 you received these numbers. Have they been updated?

11 A. Well, I mean, the number that we heard a
12 while back was 35 million, and now I saw in his
13 testimony it's 37.5, so I put that number.

14 EXAMINER PRICE: So the answer to his
15 question is yes they have been updated.

16 THE WITNESS: Yes. It has been updated,
17 yes. 35 to 37-1/2.

18 Q. Have you been able to verify those
19 numbers independently with PJM and with MISO?

20 A. I have posed these questions back then
21 during our discussions to MISO and PJM and the
22 numbers seemed reasonable, so I -- or else I wouldn't
23 have asked for actually, you know, official answers
24 from MISO and PJM, but the numbers haven't changed
25 from my discussions, that's why I sourced

1 Mr. Ridmann's testimony.

2 Q. I'm not sure I completely followed that.
3 Are you saying that in your discussions with PJM and
4 MISO in approximately the same time frame, the
5 September time frame, they were giving you about the
6 same numbers?

7 A. No. The 35 million was from that time
8 frame. And now it's just updated by 2-1/2 million.
9 The PJM at some point in time also in discussions
10 with them, that was -- they came and met with us
11 also.

12 Q. I'll ask for a little bit of assistance.

13 MR. McNAMEE: Objection. I don't believe
14 he was done with his answer.

15 EXAMINER PRICE: Sustained.

16 THE WITNESS: I was going to state that
17 at some point in time also in late fall we met with
18 PJM and asked these questions, and the numbers were
19 in the 5 to 6 million-dollar range. So when I saw
20 \$5 million in his testimony, I used that because I
21 thought that was also a good estimate of what I heard
22 before in discussions between the staff and PJM.

23 Q. It would probably help in your answers if
24 you could identify who you're talking about instead
25 of theys and them, I get confused.

1 A. Okay. I apologize.

2 Q. Now, on page 4, line 1 of your testimony
3 you refer to this matter as being "not ripe," those
4 are your words. Do you see that?

5 A. Yes.

6 Q. Is it fair to say that you, by using
7 those words, are saying that there's some uncertainty
8 about whether customers, retail customers, would
9 ultimately have to pay those sums or some updated
10 value for those sums?

11 A. No, the context here was FERC, that was
12 one of the concerns we raised at FERC in our
13 complaint when we filed our complaint at FERC in the
14 realignment case at FERC. What we raised -- what we
15 raised were ethics of the exit and entrance fees and
16 what we stated was that FirstEnergy did not make a
17 commitment to hold the retail customers in three
18 operating companies, FirstEnergy Ohio operating
19 companies, harmless from the exit and entrance fees,
20 and what FERC answered back to us is that this issue
21 should be raised not now, it should be raised later
22 on when FirstEnergy becomes a member of PJM, when
23 ATSI is a member of PJM, and they come and ask for
24 recovery under the PJM tariff, then go raise that
25 issue.

1 Q. Okay. And your response when you were
2 referred to the PUCO complaint, were you referring to
3 the PUCO's comments in the FERC docket regarding the
4 switch to PJM?

5 A. Yes.

6 Q. And when you were referring to the
7 response, were you referring to the December 17th,
8 2009, order from the FERC?

9 A. Yes.

10 Q. And my question, my original question was
11 is it fair to assume that there's some uncertainty
12 regarding who would have to pay that amount?

13 A. Yes.

14 Q. Okay. The stipulation on page -- do you
15 have the stipulation on the stand with you there?

16 A. Yes. If I can find it. I have it.

17 Q. On page 31, paragraph 4, that paragraph
18 requires the PUCO to withdraw from the FERC case, and
19 I think the FERC case -- well, let me go about it
20 another way.

21 The FERC case that we discussed, we
22 talked about comments from the PUCO and a FERC order
23 on December 17th, that would be among the numbers on
24 it, ER09-1589-000 which is contained in the paragraph
25 4 on page 31 in the stip, correct?

1 A. Yes.

2 Q. And this paragraph would require the PUCO
3 to withdraw from the FERC cases that are cited; is
4 that correct?

5 A. Yes.

6 Q. On page 8 of your testimony, line 14, you
7 refer to "simply hoping for FERC to ultimately order
8 FirstEnergy to" be -- "to absorb 100 percent of the
9 legacy RTEP charges." Do you see that?

10 A. Yes.

11 Q. When you say "simply hoping for FERC to
12 ultimately order," are you referring to the PUCO's
13 involvement in the FERC cases?

14 A. Yes. In general, you know, anything
15 that's FERC jurisdiction and FERC -- something that
16 FERC deemed outside of that, they deemed just and
17 reasonable and not unduly discriminatory, it's
18 generally our history it's very hard to argue with
19 them. So, you know, the context again, you have to
20 look at the context, the context is we asked FERC in
21 its order to order FirstEnergy to absorb these costs,
22 and they did not directly. They did not directly.
23 The only thing they said for the exit and entrance
24 fees as I stated earlier is they said, well, you can
25 object to it when they decide to -- when ATSI decides

1 to recover it and in the other, in the RTEP charges,
2 they said they only ordered or suggested that ATSI
3 goes and negotiates to reduce these legacy charges
4 with the other transmission owners so they didn't
5 respond to our request.

6 MR. SMALL: For the next line of
7 questioning I'd like to provide the witness with the
8 copy of the order we've been discussing. It was also
9 passed out in the MRO proceeding, and I'm the one who
10 came with all the copies so I didn't make as many
11 copies this time around.

12 Approach, your Honor?

13 EXAMINER PRICE: You may.

14 A. I have a copy.

15 Q. Okay.

16 A. I think so. Yes.

17 Q. Would you turn to paragraph 113 of the
18 order.

19 A. I'm there.

20 Q. All right. The beginning of paragraph
21 113 says "transmission owners that seek to change
22 RTOs should be prepared to assume the costs
23 attributed to their decisions. ATSI is permitted to
24 balance the benefit it associates with its decision
25 to join PJM under its existing tariff against the

1 costs it anticipates it will incur in exiting the
2 Midwest ISO and joining PJM to determine whether such
3 a move is cost justified."

4 Have you read that before?

5 A. Yes.

6 Q. Isn't that a -- FERC is referring there
7 to the RTEP charges; is that correct?

8 A. Yes.

9 Q. So FERC did say something more than go
10 and negotiate with PJM.

11 A. Yeah, that's in paragraph 114. In 113,
12 what you read is what they stated. But that's in the
13 context of why they denied the waiver of charges.
14 FirstEnergy asked to waive the charges because, you
15 know, in their opinion they were paying MISO charges,
16 RTEP charges, through May 31st, 2007, and they didn't
17 want to double pay on legacy charges on MISO and PJM.

18 Q. Paragraph 113 doesn't say anything about
19 retail customers, it's talking about ATSI, correct?

20 A. Correct. But it is for these charges,
21 it's for the RTEP charges, that's the context. And
22 it's the denying of the waiver request. They did not
23 go and directly say that retail customers will not
24 pay. The only thing they said is ATSI shall pay
25 those charges. They didn't discuss whether those

1 charges would be recovered through retail customers
2 or not. That's what we asked for and they did not.

3 EXAMINER PRICE: Dr. Choueiki, when you
4 say that's the context, you're referring to the
5 language in paragraph 111 that says "We deny ATSI's
6 request for a waiver and dismiss FirstEnergy's
7 related complaint"?

8 THE WITNESS: Correct.

9 EXAMINER PRICE: So you're saying the
10 language in paragraph 113 flows from the introduction
11 of the topic in paragraph 111.

12 THE WITNESS: Correct. It has nothing to
13 do what -- whether retail customers will pay the ATSI
14 charges or not. There is no certainty. There's no
15 certainty in paragraph 113 about retail customers
16 being held harmless.

17 Q. On page 8, line 15 of your testimony, you
18 use the word "infinitesimal probability." Do you see
19 that?

20 A. Yes.

21 Q. So the uncertainty, the uncertainty that
22 you just referred to you apparently think is
23 certainly decided against retail customers.

24 A. That's been our history is generally.
25 Again, if it's an approved FERC tariff, it's an

1 approved FERC tariff, it's not us. We have no impact
2 at all. We can ask if FERC would agree with us, but
3 in this case had they agreed with us they would have
4 told us so right away in that order, and given that
5 it is a just and reasonable tariff, staff doesn't see
6 it that it's a high probability, that's why I said
7 it's a very small probability that FERC would end up
8 later on agreeing to our concern.

9 Q. Do you know what the status of this case
10 is right now?

11 A. Well, I know that they approved the
12 voluntary and -- the voluntary movement to PJM and
13 they are moving June 1st, 2011.

14 Q. Have you followed the request for
15 rehearing that has been filed at FERC?

16 A. I know we've requested rehearing but I
17 don't know what's happened to it.

18 Q. Would you please turn to page 5, line 16.

19 A. Okay.

20 Q. I notice that you use an OCC data request
21 to document your numbers -- and I'm sorry. Yes, it's
22 a data request. When did you receive this
23 information?

24 A. I received this information late last
25 week from the company and basically it had that title

1 on it.

2 Q. I'm sorry?

3 A. I received it last week and it had that
4 title on it, OCC 2-26.

5 Q. Did you have the material that is -- the
6 information that's provided by the company, did you
7 have it before receiving the OCC -- the response to
8 the OCC discovery?

9 A. Yeah, we had estimates. We had estimates
10 that looked like this too.

11 Q. And where did you receive -- when did you
12 receive the estimates?

13 A. Those were through negotiations with the
14 company.

15 Q. So the source was FirstEnergy again.

16 A. Correct.

17 Q. If you could turn to footnote 3 of your
18 testimony on that same page.

19 A. Yes.

20 Q. Are you familiar with the PJM projects
21 that are noted in your footnote?

22 A. Somehow. I mean I know that they're all
23 backbone high voltage 500 and above projects.

24 Q. Have you followed, as an example, have
25 you followed the developments concerning the PATH

1 project and are you familiar with developments in
2 Virginia where the requests for Virginia approval's
3 been withdrawn?

4 A. Yes. I mean I heard about the request
5 from the testimony of your witness. I can't
6 remember, it's one of the two witnesses, I think it
7 was Dr. Gonzalez.

8 Q. You're saying that's where you learned of
9 it?

10 A. Yes. But I did follow up with PJM from a
11 while back about all these projects one by one and
12 according to PJM, as of their filing on April 13th at
13 FERC in response to the Seventh District remand, that
14 all these projects will be considered again and so
15 long as there are no reliability violations in 2014
16 or 2015, then one of them, either PATH or MAPP, might
17 be postponed to 2016.

18 So even PJM does not right now up front
19 admit that it will be delayed. They've just through,
20 you know, just said that last year when they did RTEP
21 2009, there was no violation in 2014. But at this
22 point they are not going to say that it will be
23 postponed until they run RTEP 2010.

24 Q. Let's be clear about what proceedings
25 we're talking about. When you referred to the

1 remand, you're referring to an action in the
2 Seventh Circuit Court which was remanded, a matter
3 that the PUCO was an appellant; is that correct?

4 A. That's correct.

5 Q. And this was remanded back to PJM; is
6 that correct?

7 A. To FERC.

8 Q. I'm sorry, it was remanded to FERC.

9 A. And then FERC ordered PJM answer a bunch
10 of questions.

11 Q. And the subject of that appeal and of
12 that remand wasn't approval of these projects, but it
13 was the method by which costs were --

14 A. Allocation.

15 Q. Allocation of the RTEP cost, correct?

16 A. Right. And what PJM did is they answered
17 all the questions including what projects are being
18 considered when they do the cost allocation because
19 they do cost allocation under different methods and
20 all these projects that are here were included in
21 their response. None of them were taken out.

22 Q. My original question was whether you were
23 familiar with the developments in Virginia where the,
24 where PATH actually withdrew their application for
25 siting authority.

1 A. Correct. But that doesn't mean the
2 project won't happen if there is a reliability
3 violation, okay, then it will be highlighted and it
4 will be included.

5 Q. And you're saying they're going to
6 proceed without the state of Virginia hearing the
7 matter as far as the siting is concerned?

8 A. No, I didn't say that. I'm not sure what
9 will happen to a project if a state decides not to,
10 like if the state of Virginia decides not to allow
11 this project. The only thing I'm saying is we can't
12 take them out of consideration because PJM did not.
13 They are worried about the reliability violations.

14 So to the extent PJM finds out there
15 won't be any reliability violations till 2018 then
16 maybe they will be delayed to 2018, but PJM is not
17 willing at this time to postpone them to 2016.

18 Q. The reason for the Virginia action wasn't
19 because of a rejection of the siting but PATH
20 withdrew their application; isn't that right?

21 A. I'm not sure if that's the case. Subject
22 to check, if you say it's right, it's right.

23 Q. Well, do you understand what the reason
24 for the withdrawal of the -- or for the troubled
25 history of the PATH project, why it might be delayed?

1 A. No. Well, I know why or I know they're
2 talking about delay because last year there was no
3 violation in 2014 when PJM ran the study, okay? I
4 asked that question to PJM and they said they will
5 not know until they run RTEP 2010 which is the
6 planning study for five years ahead. So until -- if
7 they find out there's a violation, then that
8 project -- and that project resolves that violation,
9 it won't be delayed. It's just I don't know if it
10 will be delayed or not but we can't assume that it
11 will be delayed.

12 Q. When is the PJM expected to release their
13 next report?

14 A. I'm not quite sure when RTEP 2010. Right
15 now they started.

16 Q. I mean, isn't it coming in the next month
17 or two?

18 A. I hope so. I'm not too -- I mean, I know
19 that they will very soon. They're running the
20 studies right now so they're meeting with
21 stakeholders, developing all the assumptions.

22 Q. I'm simply asking based on experience --

23 EXAMINER PRICE: Mr. Small, I don't think
24 he finished his answer.

25 Please finish, Dr. Choueiki.

1 THE WITNESS: I'm done.

2 EXAMINER PRICE: Okay.

3 Q. I was just simply asking the experience.
4 Every year they release such a report, correct?

5 A. Yes.

6 Q. And what has been the history, what month
7 have they released it in in the past?

8 A. I can't recall. Maybe it's later in the
9 year. I can't recall when exactly it is done. I'm
10 not that involved with the PJM process as much as the
11 MISO process.

12 MR. SMALL: Okay. I have no further
13 questions.

14 EXAMINER PRICE: Thank you.

15 Mr. Warnock?

16 MR. WARNOCK: Just a couple, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Warnock:

20 Q. I'm just going to quickly follow up on
21 one of Mr. Small's questions regarding the
22 calculation of your RTEP charges based on the
23 attachment to your testimony.

24 A. Yes.

25 Q. You indicated to Mr. Small that your

1 calculations are based on FirstEnergy's responses to
2 an OCC data request?

3 A. Yes, the spreadsheet from the OCC request
4 2-26, 2-26.

5 Q. And did you or any other staff member
6 perform any independent verification of the estimated
7 RTEP charges?

8 A. I did my back-of-the-envelope calculation
9 and the numbers for PJM, I mean we've been doing that
10 for a while since FirstEnergy advertised or --
11 advertised. Since FirstEnergy announced that they
12 are going to align with PJM we asked these questions.
13 And we looked in the RTEP projects, approved projects
14 by the board, the backbone projects, and it's about
15 \$6-1/2 billion, so basically we took \$6-1/2 billion
16 and multiplied it by 8.4 or 8.5 percent, whatever the
17 load for ATSI would be once they joined, and that
18 number's about \$550 million.

19 So when I did the computations from the
20 FirstEnergy, from the OCC spreadsheet or
21 FirstEnergy's spreadsheet of an OCC request, that was
22 provided to OCC, the number was about \$557 million.

23 Q. And when you said you asked questions,
24 were you asking questions of PJM?

25 A. Yes. And documents that PJM publishes.

1 Q. Okay. And then I believe in your
2 testimony on page 6, lines 13 through 15, you
3 indicate that retail customers of The Cleveland
4 Electric Illuminating Company, Ohio Edison, and
5 Toledo Edison will be responsible for paying the
6 legacy RTEP charges June 1st, 2016; is that correct?

7 A. Yeah, the FirstEnergy commitment is
8 through May 31st, 2016, so after that.

9 Q. And will the retail customers of CEI,
10 Ohio Edison, and Toledo Edison also be paying MTEP
11 charges from June 1st, 2016, going forward?

12 A. No, they wouldn't be paying MTEP, they
13 will cease to pay charges after 2011 on new future
14 projects, on all projects they will pay, correct. So
15 nothing after -- that gets approved by the MISO board
16 after June 1st, 2011, ATSI customers would be
17 responsible for.

18 Q. But for projects approved prior to 2011,
19 the retail customers will still be responsible for
20 those MTEP charges --

21 A. Correct.

22 Q. -- going forward.

23 A. Correct.

24 MR. WARNOCK: No further questions, your
25 Honor.

1 EXAMINER PRICE: Do you know
2 approximately how long retail customers will be
3 paying those MTEP charges, when they will fall off?

4 THE WITNESS: I know they're right now
5 about 6 or 7, I mean just my estimate, rough estimate
6 is 6 or 7, maybe 7 or 8 million dollars a year.

7 EXAMINER PRICE: For how many years?

8 THE WITNESS: I am not sure. I haven't
9 amortized it but I know it's about 7 or 8. 7, 7-1/2,
10 for the life of the asset, whatever the life of the
11 asset is.

12 EXAMINER PRICE: Thank you.

13 Direct Energy?

14 MR. DYAS: No.

15 EXAMINER PRICE: EnerNOC?

16 MS. ROBERTS: No, your Honor.

17 EXAMINER PRICE: Redirect?

18 MR. McNAMEE: No redirect.

19 EXAMINER PRICE: Ms. Bojko?

20 You're excused.

21 MR. McNAMEE: Staff moves for the
22 admission Staff Exhibit 1.

23 EXAMINER PRICE: Any objections to the
24 admission of Staff Exhibit 1? Hearing none, that
25 will be admitted.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER PRICE: Let's go off the record
3 while we contemplate our next move.

4 Five minutes.

5 (Recess taken.)

6 EXAMINER PRICE: Let's go back on the
7 record. Mr. McNamee.

8 MR. McNAMEE: At this time the staff
9 would call Tamara S. Turkenton.

10 (Witness sworn.)

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

13 THE WITNESS: It's Tamara Turkenton, 180
14 East Broad, Columbus, Ohio 43215.

15 EXAMINER PRICE: Thank you.

16 Mr. McNamee.

17 - - -

18 TAMARA S. TURKENTON

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

21 DIRECT EXAMINATION

22 By Mr. McNamee:

23 Q. Ms. Turkenton, by whom are you employed
24 and in what capacity?

25 A. The Public Utilities Commission of Ohio

1 as chief of accounting and electricity.

2 MR. McNAMEE: At this time, your Honors,
3 I'd ask to have marked for identification as Staff
4 Exhibit 2 a multipage document filed April 15
5 denominated Prefiled Testimony of Tamara S.
6 Turkenton.

7 EXAMINER PRICE: Tamara S. Turkenton's
8 testimony will be so marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.).

10 Q. Do you have before you what's been marked
11 for identification as Staff Exhibit 2?

12 A. I do.

13 Q. What is it?

14 A. My prefiled testimony in this case.

15 Q. Prepared by you or under your direction?

16 A. It was.

17 Q. Do you have any corrections to make to
18 that document today?

19 A. Unfortunately I do.

20 Q. Could you identify those for us slowly?

21 A. They will be quick. Or slowly. The
22 first one's on page 2, question 5, and the answer
23 indicates "March 25th," that should be March 23rd.

24 The second one is on page 4, at line 2,
25 instead of "May 31st, 2013," that should be May 3,

1 2014.

2 On that same page, page 4, on line 18,
3 "the 248 million" should read "the 257 million."

4 And then the last one on page 4 is at
5 line 20 where it says "This represents
6 290.5 million," that should be "approximately
7 300 million." And then I have one other.

8 MR. RANDAZZO: Do you want to insert the
9 word "approximately 300"?

10 THE WITNESS: Because actually if you add
11 those numbers, it's 299.5 and I used 300 in line --
12 300 in line 15. It's approximately 300.

13 MR. RANDAZZO: Are you inserting the word
14 "approximately"?

15 THE WITNESS: Yes, I'm sorry, Sam.

16 And the last correction is on page 5,
17 line 4, where it says "automaker facilities that use
18 more than," it should be "used," just add a D. And
19 that completes the corrections.

20 Q. (By Mr. McNamee) With those corrections
21 as noted are the contents of what's been marked for
22 identification as Staff Exhibit 2 true to the best of
23 your knowledge and belief?

24 A. It is.

25 Q. Do you adopt what's been marked for

1 identification as Staff Exhibit 2 as your direct
2 testimony in this case?

3 A. I do.

4 Q. If I were to ask you the questions
5 contained within what's been marked for
6 identification as Staff Exhibit 2 again here today,
7 would your answers be as reflected therein with the
8 corrections as noted?

9 A. They would.

10 MR. McNAMEE: With that, your Honor, the
11 witness is available for cross.

12 EXAMINER PRICE: Thanks. Mr. Lavanga?

13 MR. LAVANGA: No questions, your Honor.

14 EXAMINER PRICE: Mr. Boehm?

15 Mr. Gallon?

16 MR. GALLON: No questions, your Honor.

17 EXAMINER PRICE: Mr. Randazzo?

18 MR. RANDAZZO: None.

19 EXAMINER PRICE: Mr. Randazzo on behalf
20 of Akron?

21 MR. RANDAZZO: None.

22 EXAMINER PRICE: Constellation?

23 MR. SETTINERI: No questions, your Honor.

24 EXAMINER PRICE: Mr. Warnock, on behalf
25 of Schools?

1 MR. WARNOCK: No.

2 EXAMINER PRICE: Direct Energy?

3 MR. DYAS: No questions, your Honor.

4 EXAMINER PRICE: Mr. Heintz?

5 MR. HEINTZ: No questions, your Honor.

6 EXAMINER PRICE: Ms. De Lisi?

7 MS. De LISI: No questions, your Honor.

8 EXAMINER PRICE: EnerNOC?

9 MS. ROBERTS: No questions, your Honor.

10 EXAMINER PRICE: Mr. Warnock, on behalf
11 of NOPEC?

12 MR. WARNOCK: No questions.

13 EXAMINER PRICE: Mr. Smith? I'm sorry, I
14 skipped you earlier.

15 MR. SMITH: No questions.

16 EXAMINER PRICE: Mr. Small?

17 MR. KORKOSZ: Your Honor.

18 EXAMINER PRICE: I'm sorry.

19 MR. KORKOSZ: No questions.

20 EXAMINER PRICE: The company has no
21 questions.

22 Mr. Small?

23 MR. SMALL: Thank you, your Honor.

24 - - -

25

CROSS-EXAMINATION

By Mr. Small:

Q. Ms. Turkenton, would you please turn to page 6 of your testimony.

A. I'm there.

Q. Line 4 of your testimony you refer to "reasonably priced" on the next line the "reliable electric service," I'm focused on the words "reasonably priced." There you're referring at least, maybe not entirely, but at least you're referring to the generation price that would come out of the CBP process that has been proposed in this case; is that correct?

A. I'm sorry, could you reread the question?

Q. When you -- let me start again.

When you referred to reasonably priced service, that is at least a reference to the generation, the price of generation service; is that correct?

A. It could be.

Q. It could be to distribution but you're not excluding generation there.

A. I'm not excluding.

Q. Would you agree with me that a major

1 component of this case as well as the MRO case that's
2 pending at the Commission is a determination of a
3 process for developing a generation price?

4 A. Correct.

5 Q. And it's staff's objective -- is it
6 staff's objective to get a bidding process that
7 produces a low price for retail customers?

8 A. Yes.

9 Q. Has the Public Utilities Commission ever
10 approved and has there ever been a bid conducted in
11 the month of July in Ohio?

12 A. Not that I'm aware of.

13 Q. Has the Commission ever approved and has
14 there ever been a bid, bidding process that was
15 conducted as far ahead of the delivery period as July
16 is, July 2010 is to June 1st, 2011?

17 A. Not that I'm aware of.

18 Q. That period was much shorter the one time
19 we did have a competitive bid. That was the May
20 auction of 2009, correct?

21 A. Correct.

22 EXAMINER PRICE: Can I have the last, the
23 preceding question read back and answer read back,
24 please?

25 (Record read.)

1 EXAMINER PRICE: Mr. Small, you're asking
2 whether or not one's been approved that is 11 months
3 ahead of the delivery point?

4 MR. SMALL: I was asking about the period
5 between when the auction took place and delivery
6 started, in this case it's been proposed that
7 July 2010 would be the first auction and the delivery
8 for that auction would start on June 1st, 2011.

9 EXAMINER PRICE: Which is 11 months.

10 MR. SMALL: Yes.

11 EXAMINER PRICE: Roughly, thank you.

12 A. My answer still holds true.

13 Q. Has the staff of the Public Utilities
14 Commission conducted a study of the effects of
15 holding auctions or investigated in any way the
16 effects of holding auctions in different periods of
17 the year?

18 A. I personally have not, I'm not aware of
19 any other staff that have, you know, performed such
20 studies, not saying that they couldn't have happened
21 in another department, but I'm not aware of any
22 studies.

23 Q. Same question as far as the distance
24 between the time of auction and the time of delivery,
25 in this case Mr. Price had identified the 11 months,

1 has there been a study of the effects or
2 investigation of the effects of the time period
3 between the time when the auction takes place and
4 when delivery begins?

5 A. Not that I'm aware of.

6 Q. Okay. Do you have the stipulation with
7 you on the stand?

8 A. I do.

9 Q. Would you please turn to, it's a very
10 long provision, it has to do with distribution which
11 begins on page 13, but the part that I would like you
12 to pay particular attention to is on page 16 of the
13 stipulation. And there in the stipulation it refers
14 to, and I'm going down a few lines, says "The
15 Companies will bear the burden of proof to
16 demonstrate the accuracy of the quarterly filings.
17 Staff and signatory parties shall at their discretion
18 conduct an annual audit following the Companies'
19 January 31," and so forth and so on. I'm
20 concentrating on the audit provisions of this
21 stipulation. Are you familiar with them?

22 A. I am.

23 Q. On the stand you should have a copy of
24 OCC Exhibit 4 that's a response from FirstEnergy to
25 OCC interrogatory 62.

1 A. I have that.

2 Q. Do you have that?

3 A. I have it.

4 Q. Were you in the room when this exhibit
5 was discussed with Mr. Ridmann?

6 A. I was.

7 Q. I'm sorry?

8 A. I was present.

9 Q. Okay. And you heard some questions and
10 answers concerning part (c) and the company's
11 response to part (c), correct?

12 A. Yes.

13 Q. All right. I will repeat the response
14 that -- or the question and answer, the question is:
15 "What matters would be considered in the annual audit
16 related to Rider DCR?" The response reads: "The
17 audits would be of a technical nature primarily
18 involving reviews for accuracy, consistency with the
19 Stipulation, mathematical errors, and correctness of
20 supporting calculations." Do you see that?

21 A. I do.

22 Q. In your view of the stipulation and the
23 audit provisions that you've said that you are
24 familiar with, are the -- is the description that's
25 provided by the company in response to OCC

1 interrogatory 62 the view of how the staff would
2 investigate the DCR -- amounts put into the DCR
3 rider?

4 A. As reflected in OCC data request 62 the
5 response, response (c) --

6 Q. Yes.

7 A. -- I agree that everything that the
8 companies have presented in this response would be
9 true, but I would -- from the staff perspective I
10 think that an audit, at least what we would do, I
11 don't know what other signatory parties would do,
12 would go beyond this. We would not just be looking
13 at the accuracy, we would actually be out in the
14 field looking as to whether investments were put into
15 the distribution system. We would not just be
16 ticking off numbers looking for the accuracy of the
17 filing. There would be, you know, out in the field
18 type review done on this capital infrastructure.

19 Q. And you would envision that taking place
20 on a -- I read it earlier, on an annual basis?

21 A. Yes.

22 Q. Would anything be done on any other basis
23 other than annually?

24 A. There are quarterly filings that will be
25 submitted to the Commission per the stipulation that

1 from a staff perspective, you know, we would look at,
2 but the annual audit would be the time that we would
3 actually go out and make sure the capital
4 infrastructure is in place and everything conforms to
5 the stipulation.

6 Q. Did you attend the technical conference
7 for this case?

8 A. Are you referencing the technical
9 conference a week or so ago?

10 Q. It's a very compressed time period; yes.

11 A. Yes, I was there.

12 Q. During that discussion or exchange there
13 was a -- there were some questions and answers having
14 to do with ELR and OLR that have been discussed
15 several times earlier today. Are you familiar -- do
16 you recall the company referring to approximately
17 400 megawatts of interruptible load that they
18 presently have on those programs?

19 A. To be honest, no, I don't remember that.

20 Q. Okay. Are you aware that there, that the
21 company has load that is being served on ELR and OLR
22 programs?

23 A. I am aware, at least on ELR. I don't
24 think there's any customers on OLR.

25 Q. Now, the stipulation, at least the

1 tariffs that were attached to it, ELR tariff and OLR
2 tariff, those are sheets 101 and 102, are you
3 familiar with those provisions?

4 A. I'm generally familiar with the cost
5 recovery aspects and the, you know, the credits
6 associated with ELR and OLR, some of the mechanisms
7 in terms of how everything works with PJM I would not
8 say I'm -- I'm generally aware.

9 Q. And those tariffs declare the amounts
10 that would be on ELR and OLR during the new rate plan
11 period, that is beginning June 1st, 2011, to be
12 incremental; is that your understanding of the
13 situation?

14 A. What do you mean by the word
15 "incremental"? As compared to the last ESP?

16 Q. That's the word that's in the tariff.

17 A. Could you direct me?

18 Q. It's sheet 101 and sheet 102.

19 A. Could you direct me to the reference
20 where "incremental" is, please?

21 Q. Let's take sheet 101, and I have a
22 redline version. Do you have that on the stand?

23 A. I do.

24 Q. And I'm down in the redline portion,
25 fifth line up from the bottom of that redline

1 section.

2 A. I'm with you.

3 Q. And it says "Consider incremental to
4 enter up to the load on the company's system that
5 existed in 2008." Do you see that?

6 A. Yes.

7 MR. RANDAZZO: You're on page 1 of 5?

8 MR. SMALL: 1 of 5. 101, first page,
9 yes.

10 Q. And the reason why this is -- the purpose
11 of this wording of incremental is for purposes of
12 qualifying for the peak demand benchmarks, correct?

13 A. Correct.

14 Q. Are these amounts incremental or have
15 they just been declared to be incremental in the
16 stipulation?

17 A. I don't see the stipulation -- where the
18 stipulation references incremental in the
19 stipulation. I see it in the tariffs.

20 Q. Okay. These are attached to the
21 application.

22 A. Yes.

23 Q. Are you saying that there's nothing in
24 the stipulation that supports this language?

25 A. No, what I'm saying is the word

1 incremental is not in the actual stipulation.

2 Q. Okay. Well, I guess I'm asking another
3 question which is has the company submitted tariffs
4 that are consistent with the stipulation?

5 A. Yes.

6 Q. All right. So this incremental language
7 was intended by the stipulating parties; is that
8 correct?

9 A. Yes.

10 Q. All right. So I'll go back to my
11 original question. Is this load incremental?

12 A. Yes.

13 Q. And is it just because that was the
14 agreement between the parties?

15 A. I think it's in consideration of what's
16 in the statute which says that this has to -- cannot
17 be for historic projects so they're trying to make
18 this incremental to what existed in 2008. That's my
19 understanding. So that those that are exempt from
20 the rider, this would be new energy efficiency.

21 Q. Would you please turn to page 30 of
22 the --

23 A. Page 30 of the stipulation?

24 Q. Yes.

25 A. I'm there.

1 Q. Do you see the reference to corporate
2 separation?

3 A. I do.

4 Q. Now, on several pleadings in this case by
5 FirstEnergy they referred to the corporate separation
6 plan as having received interim approval from the
7 PUCO. When did the PUCO approve the corporate
8 separation plan from FirstEnergy?

9 A. What line are you referencing? I'm
10 sorry, I know on page 30, but what line?

11 Q. Page 30, other issues H, No. 1 is about
12 corporate separation. And I'm asking when the
13 corporate separation plan for FirstEnergy was
14 approved.

15 A. I do not know.

16 Q. Is it fair to say that it's been many
17 years?

18 A. I do not know.

19 Q. Do you know whether it was before Senate
20 Bill 221 was enacted?

21 A. Yes.

22 Q. Have there been any reviews of any of the
23 electric company corporate separation plans since
24 they were initially filed and approved by the
25 Commission?

1 A. What do you mean by "initially filed"?

2 Q. Well, let's go back a step. Senate Bill
3 3 initiated the need for a corporate separation; is
4 that correct?

5 A. Correct.

6 Q. And so there had to be, at least
7 relatively soon after Senate Bill 3 was enacted and
8 affected there had to be corporate separation plans,
9 correct?

10 A. Correct.

11 Q. And then the Commission approved those
12 plans.

13 A. Correct.

14 Q. So that FirstEnergy, like the other
15 companies, has a corporate separation plan in effect.

16 A. Correct.

17 Q. So it's been approximately since the
18 period of time when the Commission reviewed the
19 applications by electric companies following the
20 enactment of Senate Bill 3 that the staff has or that
21 the PUCO has reviewed the corporate separation plans,
22 correct?

23 A. Correct.

24 EXAMINER BOJKO: Ms. Turkenton -- are you
25 saying the Commission approved or staff reviewed?

1 MR. SMALL: The Commission approved.

2 EXAMINER BOJKO: Ms. Turkenton, are you
3 aware that there were new corporate separation rules
4 that were recently approved and passed JCARR and are
5 effective of the Commission?

6 THE WITNESS: As a result of 221, yes.

7 EXAMINER BOJKO: And as a result of that
8 proceeding, are you aware of a Commission order that
9 required the utilities to file revised stand-alone
10 corporate separation plans within 60 days of that
11 order?

12 THE WITNESS: I am.

13 EXAMINER BOJKO: Thank you.

14 Q. (By Mr. Small) And with that, and that's
15 what initiated the corporate separation plan Case
16 09-462 that's listed on page 30 of the stipulation,
17 correct?

18 A. Correct.

19 Q. And the company essentially refiled its
20 existing approved corporate separation plan; is that
21 correct?

22 A. Correct.

23 Q. And now in the stipulation the
24 stipulating parties recommend that the corporate
25 separation plan, the initial one dating back to the

1 period just after Senate Bill 3 be approved as filed;
2 is that correct?

3 A. Correct. With a caveat.

4 Q. The caveat that you mentioned is that
5 there will be an audit concerning compliance with it.

6 A. Correct.

7 Q. But there's nothing here that would
8 review or change or update the corporate separation
9 plan.

10 A. Not at this time, no.

11 Q. Would you please direct your attention to
12 page 26, item 2, that would be section F-2 of the
13 stipulation.

14 A. I'm there.

15 Q. Now, this provision has to do with the --
16 the provision here deals with the Cleveland Clinic,
17 correct?

18 A. Correct.

19 Q. And on page 27 there's a reference to,
20 and I'm down on the, I'm on the third line of page
21 27, "intended to file an application for a reasonable
22 arrangement." Do you see that?

23 A. I do.

24 Q. What would be the normal process if --
25 upon a filing of the application for a reasonable

1 arrangement at the Commission?

2 A. Well, a reasonable arrangement can be
3 filed by just a customer, can be filed jointly with
4 the customer and the EDU. As an application it comes
5 before the Commission, staff or any other intervening
6 party that, you know, wishes to intervene can enter
7 into the case and process that case just like you
8 would any other case that's before the Commission.

9 Q. And when you say process any other case,
10 there would be or there has been at the Commission,
11 there have been cases with discovery and a hearing.

12 A. Discovery, opportunity for a hearing.

13 Q. What does the Commission have for rules
14 as far as the application for a reasonable
15 arrangement?

16 A. Like the corporate separation rules out
17 of 221, we do have new rules regarding reasonable
18 arrangements, it's section 35, I think.

19 Q. Okay. Extensive information required of
20 the applicant before they can -- as part of their
21 application?

22 A. It is, or at least enough information to
23 allow the Commission to make a decision.

24 Q. Did this case and the provision stated on
25 page 27 where the Cleveland Clinic was -- intended to

1 file an application but didn't, has this case
2 provided the Cleveland Clinic with an opportunity to
3 shortcut the normal process and move that reasonable
4 arrangement through the ESP plan?

5 A. I wouldn't label it or denote it as it's
6 shortcutting the reasonable arrangement process.

7 Q. Has the normal information that would be
8 filed that you mentioned according to the rules been
9 provided as part of this case?

10 MR. RANDAZZO: I object. The question
11 presumes or assumes that there is a normal
12 requirement.

13 EXAMINER PRICE: Sustained. If you can
14 rephrase it without the use of the word "normal." If
15 you want to say in accordance with the rules, that
16 will be fine.

17 MR. SMALL: That was my intent, your
18 Honor.

19 Q. Has the information that would be
20 provided in accordance with the rules been provided
21 as part of this case?

22 MR. RANDAZZO: I object.

23 EXAMINER PRICE: Grounds?

24 MR. RANDAZZO: The rules provide for
25 great opportunity for waivers and Commission

1 modification on a case-by-case basis, so the rules
2 set forth the template and it doesn't dictate any
3 specific requirements that must be filed.

4 EXAMINER PRICE: Unfortunately we don't
5 have any approved waivers at this point. Overruled.
6 You can answer the question.

7 THE WITNESS: Could you reread the
8 question, I'm sorry?

9 (Record read.)

10 A. To my knowledge, in accordance with the
11 rules I don't think that everything's been provided,
12 you know, as laid out in our rules, no.

13 Q. Have you been involved in one or more of
14 these cases that you described as being litigated at
15 the Public Utilities Commission?

16 A. I would say that I'm peripherally
17 involved.

18 Q. Okay. The cases that you are aware of
19 involve a longer time frame, for instance, for
20 parties to conduct discovery than has been provided
21 by this particular case?

22 MR. McNAMEE: Your Honors, if I might
23 make a suggestion, we are going to put Mr. Fortney on
24 the stand who is the staff witness who testifies in
25 those kinds of proceedings and knows lots and lots

1 about --

2 EXAMINER PRICE: So you're suggesting
3 Mr. Fortney is the better witness to pose these
4 questions to?

5 MR. McNAMEE: Well, he assuredly would be
6 the better or the more direct witness I guess to
7 answer these kinds of questions since he does those
8 cases.

9 MR. SMALL: Unfortunately, your Honor,
10 the staff put this witness on on the matter of
11 regulatory principles and practices and so I think
12 it's important for this witness to be cross-examined
13 on this subject by the OCC.

14 EXAMINER BOJKO: Can you restate your
15 question?

16 I'm sorry, can you reread it, Maria,
17 please.

18 (Record read.)

19 EXAMINER BOJKO: I'm sorry, the cases,
20 you're referencing other unique arrangement cases?

21 MR. SMALL: "Reasonable arrangement
22 cases," that's the wording that's in the stipulation.

23 EXAMINER PRICE: Mr. Randazzo, do you
24 have an objection?

25 MR. RANDAZZO: I mean, the problem that I

1 think we're getting ourselves into is that we are
2 referencing one channel that a reasonable arrangement
3 or economic development arrangement might be
4 presented to the Commission, setting that up as the
5 normative approach, and then saying that it's a
6 violation of regulatory principles that apply to the
7 Commission to also consider an economic development
8 or retention proposal through an ESP.

9 And I think that's an unfair comparison
10 and is going to create problems for the Commission in
11 terms of applying the record to reach a result in
12 this case. They are two channels. One is not
13 mutually exclusive to the other, and I think it is
14 inappropriate for counsel to suggest that that
15 comparison where you apply rules applicable to
16 applications for reasonable arrangement under 4905.31
17 to set a standard for what can be done under an ESP.
18 I do not believe that that is either relevant or
19 appropriate.

20 EXAMINER PRICE: I agree with your
21 objection. I also, again, I don't know of any
22 outstanding discovery disputes so I don't know the
23 point of asking this witness whether more time for
24 discovery would have been relevant because I don't
25 know of any outstanding motions to compel any

1 discovery that has not been answered.

2 If you've got questions regarding an
3 important regulatory principle or practice, you need
4 to start asking those questions now and then we'll go
5 from there.

6 Q. (By Mr. Small) Let's move on to page 25
7 of the stipulation.

8 A. I'm there.

9 Q. Paragraph 5 on page 25 refers to -- has a
10 provision in it for AICUO college and university
11 members. Do you see that?

12 A. I do.

13 Q. And it also has a reference to Revised
14 Code Section 4928.66. Do you see that?

15 A. Yes.

16 Q. Now, the only people who could benefit
17 from this provision are members of AICUO; is that
18 correct?

19 A. Provision 5 on page 25?

20 Q. Yes.

21 A. Yes.

22 Q. So do I read this right that the statute
23 RC 4928.66 is being determined -- or it is being
24 interpreted in this provision in the stipulation as
25 applying to colleges and universities but only those

1 that are members of the AICUO?

2 A. Yes.

3 Q. Why would a statute apply to just the
4 AICUO?

5 A. It's not that the statute applies, it's
6 that we're treating -- there's a provision under
7 4928.66 about mercantile customers and the
8 definition, and we're treating the provision in
9 Section 5 on page 20 that they would be treated as a
10 mercantile customer under that definition of 4928.66.

11 Q. Well, wouldn't either colleges or
12 universities similarly situated all be covered under
13 RC 4928.66 or none of them be covered by it? But why
14 would only members of the AICUO be covered by that
15 statute?

16 A. This was a provision that was negotiated
17 by the signatory parties in the stipulation that are
18 for the purposes of AICUO, they would be treated as a
19 mercantile customer under 4928.66.

20 Q. Do you consider it regulatory policy to
21 just favor colleges and universities that have to be
22 members of a particular association?

23 MR. McNAMEE: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. McNAMEE: He's assuming that no one

1 else would ever be qualified and I don't think that
2 that's what she's testifying to.

3 EXAMINER PRICE: Let's have the question
4 back again, please, Maria.

5 (Record read.)

6 EXAMINER PRICE: Why don't you rephrase
7 your question in hopefully an unobjectionable manner.

8 MR. SMALL: I used the word policies or
9 practices, I thought that would be satisfactory to
10 the Bench.

11 Q. Correct me if I'm wrong, this provision
12 appears to only apply, the treatment as a mercantile
13 customer only appears to apply to members of the
14 AICUO.

15 A. That's correct.

16 Q. I'm curious about Mr. McNamee's objection
17 more than anything else, if there's somebody else
18 that's a college with multiple units in it that's not
19 a member of AICUO, would they be considered a
20 mercantile customer if the Commission approved this
21 stipulation?

22 A. Not from my reading, no.

23 Q. Okay. So I go back to my question which
24 is do you consider it good regulatory practice to
25 favor members of the AICUO over other colleges and

1 universities that might otherwise, you know, other
2 things being equal, would want to be covered as a
3 mercantile customer?

4 A. Yes, I think in the context of this
5 stipulation if those other colleges or universities
6 wanted the same treatment, they should have
7 intervened in the case and got the same treatment.
8 So yes, I think it is sound regulatory policy, it's
9 in the context of an overall stipulation where the
10 parties agreed.

11 Q. So in my hypothetical where we have two
12 colleges both similarly situated except for the fact
13 that one of them belongs to the AICUO, that would be
14 discriminatory between the two colleges or
15 universities, correct? It would be discriminatory on
16 the basis of their affiliation.

17 A. I don't think it's discriminatory. That
18 other college you're referencing chose not to be a
19 party to this case, chose not to come to the table
20 and negotiate and, therefore, they weren't afforded
21 the same treatment as AICUO. If they were, perhaps
22 the signatory parties would have thought it was, you
23 know, beneficial for them to get the same mercantile
24 exemption, but you're asking me a question, a
25 hypothetical where the other colleges weren't part of

1 this stipulation.

2 Q. When staff considers a stipulation such
3 as the one in front of us, is it the objective of the
4 staff to consider all retail customers of
5 FirstEnergy?

6 A. Most certainly.

7 Q. But you don't think it's important that
8 the staff be concerned about the college or
9 university that's not an AICUO member.

10 MR. McNAMEE: Objection.

11 EXAMINER PRICE: Grounds?

12 MR. KORKOSZ: I object.

13 EXAMINER PRICE: Mr. McNamee first.

14 MR. McNAMEE: Assumes a fact not in
15 evidence. We don't know if there are any colleges
16 that are not members. No one's testified to that.

17 EXAMINER PRICE: Mr. Korkosz?

18 MR. KORKOSZ: Argumentative.

19 EXAMINER PRICE: Sustained and overruled.

20 Mr. Small.

21 MR. SMALL: Hypothetically?

22 EXAMINER PRICE: I mean, he is posing it
23 as a hypothetical, but you're so not having a
24 foundation here.

25 MR. SMALL: Well.

1 EXAMINER BOJKO: Ms. Turkenton, do you
2 know if there are any colleges or universities not
3 included in this group?

4 THE WITNESS: I do not know.

5 EXAMINER PRICE: Have you embarked upon
6 studies of independent colleges and universities in
7 the state?

8 MR. RANDAZZO: Independent studies that
9 would be.

10 THE WITNESS: Not lately. No. No, not
11 ever, no.

12 Q. (By Mr. Small) Can you rule out the
13 possibility that somebody doesn't belong to this
14 organization?

15 A. I cannot rule it out.

16 EXAMINER BOJKO: Ms. Turkenton, even if
17 there were universities that did not get to take
18 advantage of this provision, do you still believe
19 that the stipulation overall benefits the public
20 interest?

21 THE WITNESS: Yes.

22 Q. Would you please turn to page 6, line 10
23 of your testimony.

24 EXAMINER PRICE: Let's go off the record
25 for one second.

1 (Discussion off the record.)

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

4 Q. Actually, I haven't looked at my watch
5 and I wasn't aware of the time, but at least we're
6 very near the end. On line 10 you use the phrase
7 "uncertain state of the economy and electric
8 markets," do you see that?

9 A. I do.

10 Q. When is it that you think conditions
11 would be most favorable for moving to an MRO?

12 A. I could not answer that.

13 MR. SMALL: I have no further questions.

14 EXAMINER PRICE: Mr. McNamee, redirect?

15 MR. McNAMEE: No questions.

16 - - -

17 EXAMINATION

18 By Examiner Bojko:

19 Q. Ms. Turkenton, do you remember my
20 conversation with Mr. Ridmann about what's called a
21 credit based tranche cap?

22 A. I do.

23 Q. Are you familiar with this?

24 A. Generally.

25 Q. And I think I did misspeak before. This

1 was in the last auction; is that right?

2 A. It was.

3 Q. And do you believe that any bidder was
4 limited as a result of the credit based tranche cap
5 in the last auction?

6 A. I think in terms of the credit provisions
7 anyone that is not -- it's based on credit rating and
8 I think that anyone that is not rated by one of the
9 rating agencies such as Standard & Poor's, Moody's,
10 et cetera, I think the credit based tranche cap is
11 limited to six tranches.

12 Q. Do you know what that risk, what the risk
13 is that that is trying to mitigate? Do you know what
14 it is trying to fix, the problem it might be trying
15 to fix?

16 A. Again, this credit based tranche that's,
17 you know, limited to the six tranches is just for the
18 bidders initial eligibility for round 1 -- I think
19 what it's trying to prevent is anyone is, you know,
20 what I would deem, I don't know if the word's
21 "creditworthy," but not rated, when they don't have a
22 high bond rating, that they're just trying to limit
23 their initial ability to, you know, bid in anything
24 more than six, something that they could not deliver
25 on.

1 I mean if they had a rating that is not
2 even, if they actually have no rating, I think what
3 the credit provisions are trying to do is just ensure
4 that that particular supplier doesn't go in and, you
5 know, bid 20 or 30 tranches and then can't deliver it
6 later on.

7 Q. Do you believe that this risk mitigation
8 method, this method of risk mitigation actually does
9 solve the problem or prevent the problem that it is
10 trying to prevent?

11 A. Yes. At least in terms of the last
12 auction when this provision was the same, it's
13 essentially the same as it was in the last ESP, I
14 personally from a staff perspective have not heard
15 anyone that has any issues with this.

16 Q. When you say that, do you know of any
17 suppliers that have stated that this might be an
18 obstacle to their participation in the auction?

19 A. I have not had any suppliers state that
20 this is an obstacle, no.

21 Q. Do you know if any other states have this
22 type of credit based tranche cap?

23 A. I do not know.

24 Q. Do you recall my discussion with
25 Mr. Ridmann about the differences in the CBP from the

1 2009 auction to this auction?

2 A. Yes.

3 Q. Do you have anything to add of any other
4 differences or any other improvements I think is the
5 word that I used over the last auction with the
6 auction that's contained in this ESP?

7 A. I don't remember his exact testimony,
8 but, you know, I don't know that he mentioned the
9 staggered delivery periods which is an improvement
10 over the last auction. But perhaps he did. But I
11 don't think I have anything else to add other than
12 what he's already put on the record.

13 Q. Would you believe -- is it your testimony
14 that a load cap is an improvement over the last
15 auction?

16 A. An improvement?

17 Q. Yes.

18 A. Yes.

19 Q. Do you recommend, I believe Mr. Ridmann
20 said that the exact language in the stipulation is
21 the Commission may implement an 80 percent load cap,
22 do you recommend the implementation of such load cap?

23 A. Yes.

24 - - -

25

EXAMINATION

By Examiner Price:

Q. Ms. Turkenton, have you reviewed
Mr. Sullivan's testimony from NRDC?

A. Yes, I have.

Q. And you're aware that he believes that
lost revenue collection in the stipulation should be
considered a cost that reduces the company's claimed
benefits under the stipulation?

A. Yes.

Q. Assuming for the sake of argument that
they were, would you still believe that the ESP is
worth, in the aggregate, more favorable than the MRO?

A. Without checking Mr. Sullivan's numbers,
if you just take his numbers at face as to what he
said they were, the ESP would still be more favorable
than the MRO.

Q. Thank you.

Mr. Small asked you a number of questions
about cases that had been filed by -- reasonable
arrangement cases that have been filed, I believe he
characterized as normal but we'll just say filed in
accordance with the Commission's recently adopted
rules. Do you remember that line of questioning?

1 A. I do.

2 Q. You said you're familiar with some of
3 those cases. Are you familiar with the Eramet case?

4 A. Generally.

5 Q. Do you believe, is it your understanding
6 that was filed according to the rules set forth by
7 the Commission?

8 A. Yes, it was.

9 Q. Did OCC support the Eramet case?

10 A. Yes, they did.

11 Q. Would you like to rethink that?

12 A. I guess they didn't.

13 Q. Do you know one way or the other? If you
14 don't know --

15 A. No, I honestly thought they did. Yes, I
16 thought they did support it.

17 EXAMINER PRICE: Okay. That's all I
18 have.

19 THE WITNESS: Sorry.

20 EXAMINER PRICE: You're excused.

21 THE WITNESS: I knew they opposed Ormet,
22 I thought they supported Eramet.

23 EXAMINER PRICE: You're excused,
24 Ms. Turkenton.

25 MR. McNAMEE: Staff moves the admission

1 of Staff Exhibit 2.

2 EXAMINER PRICE: Any objections to the
3 admission of Staff Exhibit 2?

4 Seeing none it will be admitted.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 EXAMINER PRICE: We will begin tomorrow
7 at 9 o'clock, at which point we will begin taking the
8 witnesses that are on the schedule whose names escape
9 me right at this moment. Let's go off the record.

10 (Thereupon, the hearing was adjourned at
11 6:15 p.m.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by me in this matter on Tuesday, April 20, 2010, and
5 carefully compared with my original stenographic
6 notes.

7
8 Maria DiPaolo Jones, Registered
9 Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

10 My commission expires June 19, 2011.

11 (MDJ-3549)

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electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones,
Maria DiPaolo Mrs.